

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: August 29, 2011

Cancellation No. 91200265

Wizard Co., Inc. and Avis
Budget Group

v.

Technikus AG

Andrew P. Baxley, Interlocutory Attorney:

On August 11, 2011, the Board sent a notice of default to respondent because no answer had been filed.

In response, respondent contends that the parties had agreed to a sixty-day extension of time for respondent to file its answer and that respondent was under the impression that petitioner would file the consented motion to extend. Accordingly, respondent asks that the Board set aside the notice of default and allow it sixty days in which to file an answer.

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown the court may set aside an entry of default." As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in

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bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). The determination of whether default judgment should be entered against a party lies within the Board's sound discretion. In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible and therefore only reluctantly enters judgment by default for failure to timely answer. See TBMP Section 312.02 (3d ed. 2011).

The Board finds that respondent's failure to take timely action prior to the due date for its answer was inadvertent in that it was caused by respondent's mistaken belief that petitioner would file the consented motion to extend.¹ In addition, there is no evidence of prejudice to petitioner, and respondent has indicated that it intends to defend the petition to cancel on the merits.

In view thereof, the notice of default is set aside. However, under the circumstances, the Board finds that the sixty day extension that respondent seeks is excessive.² Dates herein are reset as follows.

¹ The Board notes that the party seeking an extension of its time to act usually files the consented motion to extend.

² If respondent needs additional time to answer, it can file a motion to extend time to answer prior to the end of the extension granted by this order.

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Answer Due	9/25/11
Deadline for Discovery Conference	10/25/11
Discovery Opens	10/25/11
Initial Disclosures Due	11/24/11
Expert Disclosures Due	3/23/12
Discovery Closes	4/22/12
Plaintiff's Pretrial Disclosures Due	6/6/12
Plaintiff's 30-day Trial Period Ends	7/21/12
Defendant's Pretrial Disclosures Due	8/5/12
Defendant's 30-day Trial Period Ends	9/19/12
Plaintiff's Rebuttal Disclosures Due	10/4/12
Plaintiff's 15-day Rebuttal Period Ends	11/3/12

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.