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Filing date: **05/25/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204288
Party	Defendant Appneta, Inc.
Correspondence Address	ROBERT M O'CONNELL JR GOODWIN PROCTER LLP EXCHANGE PLACE , 53 STATE STREET BOSTON, MA 02109 UNITED STATES tmadmin@goodwinprocter.com
Submission	Response to Board Order/Inquiry
Filer's Name	Kathryn Jennison Shultz
Filer's e-mail	kjs@jennisonlaw.com
Signature	/Kathryn Jennison Shultz/
Date	05/25/2012
Attachments	Motion for leave to file late answer.pdf (6 pages)(181048 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NETAPP, INC.,	:	
	:	
Opposer,	:	Opposition No. 91/204,288
	:	Serial No. 85/355,876
v.	:	Trademark APPNETA
	:	
APPNETA, INC.,	:	
	:	
Applicant.	:	

APPLICANT'S MOTION FOR LEAVE TO FILE LATE ANSWER

Applicant Appneta, Inc., by new counsel, responds to the show cause order issued by the Trademark Trial and Appeal Board on May 7, 2012.

The standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is the Fed.R.Civ.P.55(c) standard, that is, whether the defendant has shown good cause why default judgment should not be entered against it. TBMP Section 312.01. Judgment by default should not be entered against applicant for the following reasons: 1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, 2) the plaintiff will not be substantially prejudiced by the delay, and 3) the defendant has a meritorious defense to the action. TBMP Section 312.02.

In the present case, the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, the plaintiff will not be substantially prejudiced by the delay, and the defendant has a meritorious defense to the action.

Applicant, who is unfamiliar with Board practice, was notified by prior counsel that he and his firm had a conflict and were unable to represent applicant in this matter. Due to this conflict, applicant had the need to retain new counsel. By inadvertence, the applicant overlooked the deadline for filing the answer to the notice of opposition and did not became aware of this oversight until receipt of the show cause order. Applicant has now retained the undersigned counsel to represent it in connection with the prosecution of the subject application including its defense in this proceeding.

Applicant has continuous maintained its intention to defend itself against the allegations contained in the notice of opposition and maintains that there is no likelihood of confusion between its trademark and the ones alleged by the opposer.

In accordance with the suggestions contained in Administrative Judge Gerard F. Rogers article, "Inter Partes Proceedings at the TTAB: Practice Updates and Tips" presented at the INTA Annual Meeting 2010, we contacted opposer's counsel first to see if the opposer would stipulate to late filing of the answer. As noted by Mr. Rogers, plaintiff should agree to late filing if its counsel understands Board practice enough to realize that there is little chance the Board would refuse to accept a late answer and enter default judgment. Contrary to this advice, opposer's counsel would not stipulate to our request. As a result, we are filing this motion showing good cause and respectfully request the granting of this motion and the acceptance of the answer, which is being concurrently filed.

Respectfully submitted,

Date: May 25, 2012

By: Kathryn Jennison Shultz

Kathryn Jennison Shultz

Jennison & Shultz, P.C.
2001 Jefferson Davis Highway – Suite 1102
Arlington, Virginia 22202
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing was served upon Opposer by mailing same via First Class Mail, postage prepaid, to Rochelle D. Alpert, Morgan, Lewis & Bockius LLP, One Market, Spear Street Tower, San Francisco, California 94105, this 25th day of May, 2012.

Kathryn Jennison Shultz

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NETAPP, INC.,	:	
	:	
Opposer,	:	Opposition No. 91/204,288
	:	Serial No. 85355876
v.	:	Trademark: APPNETA
	:	
APPNETA, INC.,	:	
	:	
Applicant.	:	

ANSWER TO THE NOTICE OF OPPOSITION

Applicant Appneta, Inc., by counsel, hereby responds to the grounds set out in the Notice of Opposition, filed March 13, 2012, by Opposer Netapp, Inc., as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 2 of the Notice of Opposition and therefore denies the same.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 3 of the Notice of Opposition and therefore denies the same.
4. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 4 of the Notice of Opposition and therefore denies the same.
5. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 6 of the Notice of Opposition and therefore denies the same.
7. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 7 of the Notice of Opposition and therefore denies the same.
8. Applicant admits that allegations set forth in the first sentence in paragraph 8 of the Notice of Opposition. Applicant admits that the opposed application was filed on June 24, 2011. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph 8 of the Notice of Opposition and therefore denies the same.
9. Applicant repeats its answers to the allegations contained in paragraphs 1 through 8 of this Notice of Opposition.
10. Applicant denies the allegations set forth in paragraph 10 of the Notice of Opposition.
11. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 11 of the Notice of Opposition and therefore denies the same.
12. Applicant denies the allegations set forth in paragraph 12 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

In further answer to the notice of opposition, Applicant asserts that:

1. Applicant will rely on any and all valid defenses, which may be developed through discovery and/or the testimony periods in this opposition proceeding.

WHEREFORE, having fully answered the Notice of Opposition, Applicant Appneta, Inc. respectfully requests that the Notice of Opposition be in all respects dismissed with prejudice, and that a registration is issued to Applicant for its mark.

Respectfully submitted,

APPNETA, INC.

Date: May 25, 2012

By: Kathryn Jennison Shultz

Kathryn Jennison Shultz
John N. Jennison
Carl E. Jennison
JENNISON & SHULTZ, P.C.
2001 Jefferson Davis Highway – Suite 1102
Arlington, Virginia 22202
Telephone: (703) 415-1640
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER TO THE NOTICE OF OPPOSITION was served upon Opposer by mailing same via First Class Mail, postage prepaid, to Rochelle D. Alpert, Morgan, Lewis & Bockius LLP, One Market, Spear Street Tower, San Francisco, California 94105, this 25th day of May, 2012.

Kathryn Jennison Shultz