UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

WINTER

Mailed: July 15, 2015

Opposition No. 91221515

Conceivex, Inc.

v.

Jill Sweazy

BY THE TRADEMARK TRIAL AND APPEAL BOARD:

Default Judgment Vacated

An answer was due in this matter on May 25, 2015. The Board notes that Applicant submitted papers in response to the notice of opposition on April 19, 2015. In view thereof, Opposer's motion for default judgment was granted in error and the Board's order issued on July 14, 2015, is hereby **VACATED**. Accordingly, the Board's consideration of Opposer's motion for default judgment is *deferred*, this proceeding is resumed, and trial dates will be reset at the conclusion of this order.

Notwithstanding the foregoing order, Applicant's informal "answer" filed on April 19, 2015, is argumentative in nature, rather than being directly responsive to the specific allegations in the notice of opposition.[1] For this reason, Applicant's purported answer does not comply with Rule 8(b) of the Federal Rules of Civil

[1] Additionally, Applicant submitted various materials, which presumably is intended to constitute evidence in support of her answer. Applicant is advised that such materials will not be considered. *See* Trademark Rule 2.122(c).

Procedure, made applicable this proceeding by Trademark Rule 2.116(a). Furthermore, Applicant failed to indicate that she served Opposer's counsel with a copy of her "answer," which is required for all submissions to the Board. *See* Trademark Rule 2.119(a).[2] In view of the foregoing, **APPLICANT IS ORDERED TO SUBMIT AN ANSWER**, along with proof of service on Opposer's counsel. Information regarding an answer and proof of service is provided below.

The notice of opposition filed by Opposer herein consists of twelve (12) paragraphs setting forth the basis of Opposer's claims of damage. In accordance with Federal Rule 8(b), it is incumbent on Applicant to answer the notice of opposition by ***admitting or denying*** the allegations contained in each paragraph. Ordinarily, an applicant will use the same paragraph numbering format found in the complaint (notice of opposition), *i.e.,* one through twelve. If Applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, she should so state and this will have the effect of a denial.

In view of the foregoing, **Applicant is allowed until THIRTY DAYS FROM THE MAILING DATE OF THIS ORDER in which to file an answer herein which complies with Fed. R. Civ. P. 8(b)**, *failing which judgment by default may be entered against applicant* in accordance with Fed. R. Civ. P. 55(b) and the opposition may be sustained. *See* Fed. R. Civ. P. 55(a).

[2] Applicant's submissions in response to Opposer's notice of opposition may be viewed at the following URL: http://ttabvue.uspto.gov/ttabvue/v?pno=91221515&pty=OPP&eno=6.

Trial Dates Reset

Because Applicant is allowed time to submit an answer, conferencing, disclosure, discovery and trial dates are reset as follows:

Time to Answer	**8/14/2015**
Deadline for Discovery Conference	**9/13/2015**
Discovery Opens	**9/13/2015**
Initial Disclosures Due	**10/13/2015**
Expert Disclosures Due	**2/10/2016**
Discovery Closes	**3/11/2016**
Plaintiff's Pretrial Disclosures Due	**4/25/2016**
Plaintiff's 30-day Trial Period Ends	**6/9/2016**
Defendant's Pretrial Disclosures Due	**6/24/2016**
Defendant's 30-day Trial Period Ends	**8/8/2016**
Plaintiff's Rebuttal Disclosures Due	**8/23/2016**
Plaintiff's 15-day Rebuttal Period Ends	**9/22/2016**

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. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

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The following information is provided to Applicant as a courtesy:

Nature of an Opposition Proceeding

An *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. **No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.**

Legal Representation Is Strongly Encouraged

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent him or herself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition or cancellation proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. These rules may be viewed at the USPTO's trademarks page:

http://www.uspto.gov/main/trademarks.htm. The Board's main webpage, http://www.uspto.gov/web/offices/dcom/ttab/, includes information on the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to The Trademark Trial and Appeal Board Manual of Procedure (the TBMP).

Further, all Board proceedings and other information regarding the Trademark Trial and Appeal Board may be accessed at the following URLs: http://ttabvue.uspto.gov/ttabvue/ and

http://www.uspto.gov/trademarks/process/appeal/index.jsp.

Requirement for Service on Adverse Party of All Papers Filed

Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, **copies of all papers which Applicant may file in this proceeding (including for Applicant, the answer required herein) must be accompanied by "proof of service" of a copy on the adverse party's counsel.**

"Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served, (2) the method of service (e.g., first class mail), (3) the person being served and the address used to effect service, and (4) the date of service. This written statement should take the form of a "certificate of service" which should read as follows:

> The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via first class mail, postage prepaid to: [insert name and address].

The certificate of service must be signed and dated.

All Parties Must Comply with Board Deadlines

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991).

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

Applicant's Correspondence Address

Applicant is reminded that it is her responsibility to ensure that the Board[3] has her current correspondence address. *See* TBMP § 117.07 (2015) (If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party).

Mailed Submissions to the Board; Using ESTTA is Encouraged

Correspondence required to be filed in the Office within a set period of time will be considered as being timely filed on the date of deposit in the mail if

[3] When an *inter partes* proceeding is not pending before the Board, registrant must maintain a current address with the Trademark Office.

accompanied by a certificate of mailing (see sample in footnote[4]). The actual date of receipt by the Office will be used for all other purposes, *including electronically filed documents*.

The Board encourages the use of Electronic System for Trademark Trials and Appeals (ESTTA), available through the USPTO website, for the filing of all documents with the Board. See the following URL: http://estta.uspto.gov/.

General Information on Discovery Conferences

Applicant is referred to the Board's institution order in this proceeding and to the following URL:

http://www.uspto.gov/trademarks/process/appeal/RULES08_01_07.pdf, see, e.g., pp. 42245, 42246, 42248 and 42252. During the conference, the following topics must be discussed:

(1) the nature of and basis for their respective claims and defenses;

(2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and;

(3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case.

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[4] Certificate of Mailing

I hereby certify that this correspondence
is being deposited with the United States
Postal Service with sufficient postage as
first-class mail in an envelope addressed to:

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

on _____ (Date)
_____ (Signature)
_____ (Typed or printed name)

Either party may request the participation of the Board in the discovery conference. *See* Trademark Rule 2.120(a)(2), 37 C.F.R. § 2.120(a)(2).

Information on Initial Disclosures

The parties are referred to the following web addresses to obtain information regarding initial disclosures:

http://www.uspto.gov/trademarks/process/appeal/RULES08_01_07.pdf and to http://edocket.access.gpo.gov/2006/pdf/06-197.pdf or to

http://www.uspto.gov/trademarks/process/appeal/RULES01_17_06.pdf. *See* Notice of Final Rulemaking ("Miscellaneous Changes to Trademark Trial and Appeal Board Rules") in the Federal Register, 72 Fed. Reg. 147 (August 1, 2007) and 71 Fed. Reg. 10, 2501 (January 17, 2006).

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