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Filing date: **02/02/2007**

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

Proceeding	92046567
Party	Defendant COMPGEEKS.COM COMPGEEKS.COM 2604 TEMPLE HEIGHTS DRIVE , CA 92056
Correspondence Address	JOHN C. WILSON HELLER EHRMAN LLP 4350 LA JOLLA VILLAGE DRIVE SAN DIEGO, CA 92122-1246 UNITED STATES john.wilson@hellerehrman.com
Submission	Other Motions/Papers
Filer's Name	John C. Wilson
Filer's e-mail	john.wilson@hellerehrman.com, sf-trademark@hellerehrman.com
Signature	/John C. Wilson/
Date	02/02/2007
Attachments	Reply ISO Motion to Accept Late Filed Answer.pdf (4 pages)(33439 bytes)

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

Registration No. 2,499,396

Trademark: **COMPGEEKS.COM**

Computer Geeks, Inc., Petitioner, v. COMPGEEKS.COM, Respondent.	Cancellation No.: 92046567
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REPLY IN SUPPORT OF MOTION TO ACCEPT LATE-FILED ANSWER

Petitioner Computer Geeks, Inc. (“Petitioner”) has failed to rebut Respondent COMPGEEKS.COM’s (“Respondent’s”) showing of “good cause” supporting the granting of its motion and acceptance of its late-filed Answer.

First, Petitioner does not even argue in its opposition papers – much less establish – that Respondent has not shown good cause for the acceptance of its late-filed Answer. Indeed, Petitioner did not assert arguments or introduce any evidence refuting Respondent's detailed showing that (1) the delay in filing its answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) Petitioner will not be substantially prejudiced by the delay, and (3) Respondent has a meritorious defense to the action, which are the factors considered by the Board in determining whether there is good cause for accepting a late-filed answer and not entering default judgment. *See Paolo’s Assocs. Ltd. P’ship v. Bodo*, 21 U.S.P.Q.2d 1899, 1902 (T.T.A.B. 1990). Thus, it is clear there is good cause for granting Respondent’s motion.

Petitioner does discuss the filing of its Petition for Cancellation and whether Mr. Gregory Hansen had knowledge of it. While the point of this discussion is unclear – except to disparage Mr. Hansen, that is – it is clear that Petitioner misrepresents the statements of Mr. Hansen in his declaration in support of Respondent’s motion. Mr. Hansen never stated that he had no knowledge that a Petition for Cancellation had purportedly been filed, as Petitioner suggests in its opposition papers. (See Opposition p. 2.) Rather, Mr. Hansen stated that he never received the actual Petition for Cancellation and related notice and order of relevant dates until they were obtained by Respondent’s outside counsel and forwarded to Mr. Hansen’s attention. (Hansen Decl. ¶¶ 3-4.) It is the mailing date of the notice and order of relevant dates that establishes the deadline to answer the Petition for Cancellation, so without having received that correspondence, Mr. Hansen was unaware of the *deadline* to answer and could not notify and instruct his outside counsel accordingly. The record demonstrates, however, that once Mr. Hansen received the Petition for Cancellation and related notice and order of relevant dates, he took immediate and appropriate steps to address the passed deadline to answer.¹

Lastly, Petitioner argues that there was no “offer and acceptance” or “meeting of the minds” with respect to a proposal by Petitioner that would have resulted in withdrawal of the Petition for Cancellation. (See Opposition p. 3.) However, Respondent did not argue or seek to imply in its moving papers that an enforceable contract was created by these discussions nor did Respondent seek a ruling from the Board on the issue. Rather, Respondent recounted the discussions between the parties and their timing in order to demonstrate that Respondent was diligent in addressing the passed

¹ Respondent takes issue with Petitioner’s attack on Mr. Hansen’s integrity by questioning the truthfulness of his sworn statements – an attack shown by the record to be baseless. We ask that in the future Petitioner and its counsel take greater care examining the facts before attacking a witness in this manner.

deadline to file an answer by pursuing a potential resolution that would have terminated the proceeding and rendered an answer unnecessary. When it became clear that Petitioner was no longer interested in pursuing such a resolution, Respondent promptly began preparing its Answer and the present motion. Petitioner does not deny Respondent's diligence in this regard. In any event, Petitioner's argument as to whether an enforceable contract was created is immaterial to the present motion.

In view of Respondent's arguments and evidence demonstrating good cause for accepting its late-filed Answer, and the absence of any – much less compelling – arguments or evidence from Petitioner to the contrary, Respondent respectfully request that its motion be granted and its late-filed Answer be accepted and deemed timely filed.

Respectfully submitted,

HELLER EHRMAN LLP

Dated: February 2, 2007

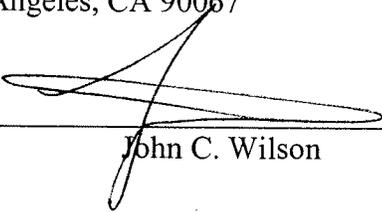
By: _____


John C. Wilson
4350 La Jolla Village Drive
San Diego, CA 92122-1246
(858) 450-8400
Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing REPLY IN SUPPORT OF MOTION TO ACCEPT LATE-FILED ANSWER was served upon Petitioner's attorneys of record by depositing copies thereof in the United States Mail on February 2, 2007, first-class mail, postage prepaid, in an envelope addressed as follows:

Jane Shay Wald
Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067



John C. Wilson