

# ORIGINAL

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

INTEL CORPORATION,

Opposer,

v.

KRESIMIR RUPNIK

Applicant.

MOTION FOR ENTRY OF DEFAULT  
JUDGEMENT AS SANCTION FOR FAILURE TO  
COMPLY WITH TTAB ORDER AND TO  
SUSPEND

Opposition No.: 91/121,000

Serial No.: 75/555,111

Published: June 6, 2000

Opposed Mark: INTELION



05-30-2003

U.S. Patent & TMOs/TM Mail Rpt Dt. #22

On March 18, 2003, the Board granted a Motion to Compel discovery responses filed by Opposer, Intel Corporation ("Intel"), and ordered Applicant, Kresimir Rupnik ("Rupnik") to provide further responses to Intel's First Set of Interrogatories. The order provides that Applicant's further responses were due on May 7, 2003. Rupnik has ignored the Board's order by failing to provide further responses to Intel's discovery requests. See Declaration of Erica Heibel filed herewith. The appropriate sanction in this case is entry of a default judgment in Intel's favor under trademark Rule 2.120(g) and FED. R. CIV. P. 37(b)(2)(c). The Board has held that in a situation where there has been continuing avoidance of discovery, the Board may enter a default judgment against the disobedient party. (See *Unicut Corporation v. Unicut, Inc.*, 220 USPQ 1013 (TTAB 1983)). Intel respectfully requests that this Honorable Board issue a judgment by default against Rupnik in this matter.

Opposer also respectfully requests that this case be suspended pending the disposition of this motion. Opposer requests that the discovery and testimony period dates be reset in their entirety in the event the Board is unwilling to enter a default judgment.

Respectfully submitted,

INTEL CORPORATION

Date: May 30, 2003

By: Erica J Heibel

Robert N. Phillips

Erica J. Heibel

HOWREY SIMON ARNOLD & WHITE, LLP

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Menlo Park, CA 94025

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Attorneys For Opposer

INTEL CORPORATION

CERTIFICATE OF EXPRESS MAIL

NUMBER EV 200889065 US

DATE OF DEPOSIT May 30, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL-POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Ro Renojo

Ro Renojo

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Motion For Entry of Default Judgement As Sanction For Failure To Comply With TTAB Order And To Suspend" was served on Mr. Kresimir Rupnik, 4375 Alvin Dark #3, Baton Rouge, LA 70820 by First Class mail, postage prepaid, this 30<sup>th</sup> day of May, 2003.

Ro Renojo

Ro Renojo

# ORIGINAL

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

INTEL CORPORATION,

Opposer,

v.

KRESIMIR RUPNIK

Applicant.

DECLARATION OF ERICA J. HEIBEL IN  
SUPPORT OF MOTION FOR ENTRY OF  
DEFAULT JUDGEMENT AS SANCTION FOR  
FAILURE TO COMPLY WITH TTAB ORDER  
AND TO SUSPEND

Opposition No.: 91/121,000

Serial No.: 75/555,111

Published: June 6, 2000

Opposed Mark: INTELION



05-30-2003

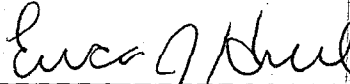
U.S. Patent & TMOs/TM Mail RptDt. #22

I, Erica J. Heibel, hereby declare that:

1. I have personal knowledge of the matters set forth in this declaration. If I were called to testify about these matters in a court of law, I could and would provide competent testimony.
2. I am an attorney at law licensed to practice in the State of California. I am an associate in the law firm of Howrey Simon Arnold & White, LLP, attorneys of record for Opposer, Intel Corporation.
3. On January 15, 2003, Opposer filed a Motion to Compel supplemental discovery responses.
4. On March 18, 2003, the Trademark Trial and Appeal Board granted Opposer's Motion to Compel in part and ordered Applicant to provide supplemental responses to the First Set of Interrogatories to the Opposer within fifty days.
5. Applicant's supplemental responses were due May 7, 2003.

6. Applicant has failed to comply with the Honorable Board's order and we have never received supplemental responses to Opposer's First Set of Interrogatories.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration was executed in Menlo Park, California, on May 30, 2003.

  
Erica J. Heibel

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing DECLARATION OF ERICA J. HEIBEL IN SUPPORT OF MOTION FOR ENTRY OF DEFAULT JUDGEMENT AS SANCTION FOR FAILURE TO COMPLY WITH TTAB ORDER AND TO SUSPEND was served on Applicant, Mr. Kresimir Rupnik, 4375 Alvin Dark #3, Baton Rouge, LA 70820, by First Class mail, postage prepaid, this the 30<sup>th</sup> day of May, 2003.

Ro Renojo  
Ro Renojo

CERTIFICATE OF EXPRESS MAIL

NUMBER EV 200889065US

DATE OF DEPOSIT May 30, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to: Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513.

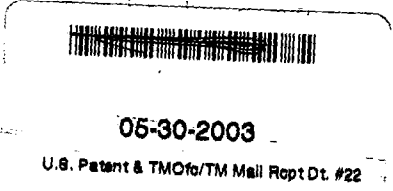
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May 30, 2003



Via Express Mail No. EV 200889065US

Commissioner for Trademarks  
Box TTAB NO FEE  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

RE: *Motion for Entry of Default Judgment as Sanction for Failure to Comply with TTAB Order and to Suspend Opposition No.: 91/121,000*  
*Mark: INTELION*  
*Serial No.: 75/555,111*  
*Published: June 6, 2000*  
*Applicant: Kresimir Rupnik*  
*Our File No.: 11357.0480.000000*

Dear Sir/Madam:

Enclosed for filing are:

1. This letter (in duplicate);
2. Motion for Entry of Default Judgment as Sanction for Failure to Comply with TTAB Order and to Suspend; Declaration of Erica J. Heibel in support thereof; and Protective Order; and
3. A self-addressed stamped postcard to evidence receipt of this (1) Motion for Entry of Default Judgment as Sanction for Failure to Comply with TTAB Order and to Suspend, and (2) Protective Order.

The Commissioner for Trademarks is hereby authorized to draw on the deposit account of Howrey Simon Arnold & White, Account No. 08-3038, Order No. 11355.0153.00US00/HEI/INLM:480 for any necessary fees.

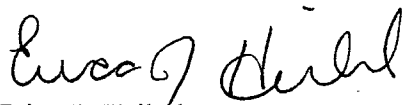
Assistant Commissioner for Trademarks

May 30, 2003

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Please return the enclosed postcard to evidence receipt of the (1) Motion for Entry of Default Judgment as Sanction for Failure to Comply with TTAB Order and to Suspend and (2) Protective Order.

Very truly yours,



Erica J. Heibel

EJH/rfr

Enclosures