

T T A B

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

CLARK EQUIPMENT COMPANY)
)
 Opposer,)
)
 v.)
)
 BALCRANK PRODUCTS, INC.,)
)
 Applicant.)

Opposition No. 124, 677



10-31-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #30

Opposed Mark: BOBCAT

02 NOV 13 AM 9:30
TRADEMARK TRIAL AND APPEAL BOARD

CONSENTED MOTION TO EXTEND TIME TO RESPOND TO ORDER

Opposer hereby moves the Board to reopen the time for Opposer to respond to an Order to consider Applicant's proposed amendment to its description of goods and allow Opposer time to consider and respond to the same. This motion is supported by the Declaration of Patricia A. Motta and consented to by Applicant.

Due to a series of events beyond the control of Opposer, a written answer responding to the Board's Order dated September 4, 2002 was not submitted to the Board in a timely fashion. As will be demonstrated, Opposer's failure to file its response within the time allotted could not have been avoided. Applicant has demonstrated due diligence in monitoring the status of this case and to obtain copies of the documents Applicant filed with the Trademark Trial and Appeal Board. Opposer has discussed the filing of this motion with Applicant, who has also filed a motion on Opposer's behalf to allow Opposer to oppose or consent to Applicant's proposed amendment. Accordingly, Applicant respectfully requests that the Board grant its Consented Motion to Extend the Time to Respond to the Order and accept its late-filed response.

The grounds for this motion are as follows:

1. On or around July 1, 2002, Opposer received via mail the Notice of Default entered against Applicant for failure to file an Answer. This was the last piece of correspondence received by Opposer from either the Applicant or Board regarding this proceeding until October 15, 2002.

2. On August 1, 2002, Patricia A. Motta, attorney for Opposer, reviewed the Trademark Trial and Appeal Board's (TTAB) website database and discovered that Applicant had submitted a response on July 3, 2002 to the Notice of Default issued by the Board on June 25, 2002. See Declaration of Patricia A. Motta in Support of Opposer's Motion to Extend Time to Respond to Order ("Motta Decl.") at ¶ 2. On or around August 20th, Ms. Motta telephoned Arthur Plantamura, attorney for Applicant, and discussed the possibility of settlement. Motta Decl. at ¶ 3. Ms. Motta informed Mr. Plantamura that she was still waiting to confirm with the client whether Applicant's proposed amendment to the identification of goods were workable grounds for settlement. Id. Ms. Motta also informed Mr. Plantamura that she had not received copies of any documents filed with the TTAB by Applicant and requested copies. Id. Shortly thereafter, Ms. Motta exchanged telephone calls with Ms. Gail Keim, legal assistant to Mr. Arthur Plantamura to request copies of Applicant's filing, but did not receive them. Motta Decl. ¶ 6.

3. On September 3, 2002, Opposer's counsel again reviewed the TTAB website database. Motta Decl. at ¶ 4. Since Opposer had not yet received any documents from the Applicant, on September 6, 2002, Ms. Motta called the TTAB Examining Attorney, Andrew Baxley, to inquire as to the status of the opposition. Id. Mr. Baxley informed Ms. Motta that the Board issued an Order and reset the trial dates. Id. Mr. Baxley, however, could not forward or fax the Order to Opposer at that time, nor could Mr. Baxley provide Opposer with

Applicant's response to the Notice of Default. Id. Mr. Baxley informed Ms. Motta that she would receive the Order from the TTAB via mail. Id. However, Michael Best & Friedrich never received this Order until October 15, 2002, when a copy was faxed to us by Ms. Keim.

4. On October 1, 2002, Opposer's counsel again reviewed the TTAB website database and telephoned Mr. Andrew Baxley to determine the status of the proceedings. Motta Decl. ¶ 6.

5. On October 15, 2002, Opposer's counsel received a telephone call from Applicant and discovered that Opposer had missed the deadline within which to respond to the Board's Order. Opposer could not have timely filed a response because it did not know the Order existed or what was in it until October 15, 2002. Id. Applicant's counsel immediately faxed over missing documentation from Opposer's file. In turn, Opposer contacted Mr. Baxley to discuss how to handle this situation. Id.

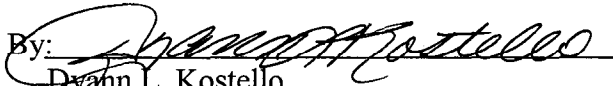
6. Opposer never received the Order from the TTAB until Applicant's counsel faxed a copy to it on October 15, 2002. Because Opposer never received the Board's Order, it was unaware of the September 24, 2002 deadline in which to accept or deny Applicant's proposed amendment. Motta Decl. ¶ 7. In fact, Opposer was completely unaware that Applicant filed an amendment to its description of goods with the TTAB. Motta Decl. ¶ 5.

For all the reasons above, Opposer respectfully requests that the Board grant its Consented Motion to Extend the Time to Respond to the Order and accept its late-filed response.

Dated this 28th day of October, 2002.

Respectfully Submitted,

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Applicant

By: 
Dyann L. Kostello
Patricia A. Motta

P. O. ADDRESS:
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202-4108
(414) 271-6560

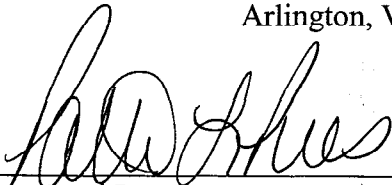
CERTIFICATE OF MAILING AND OF SERVICE

I hereby certify that a true copy of the foregoing Motion To Extend Time To Respond To Order has been served on Applicant by sending the same via first-class regular United States mail to Applicant's attorney:

Arthur J. Plantamura
General Chemical Corporation
90 East Halsey Road
Parsippany, NJ 07054

on the 28th day of October, 2002 and that the original of said document was filed on the same day with the U.S.P.T.O. by depositing the same with the U.S. Postal Service, First Class Mail, postage prepaid, as addressed to:

Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



Patti L. Pues