

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: December 31, 2003

Opposition No. 91156554

Opposition No. 91156916

Opposition No. 91156981

Quest Diagnostics Incorporated

v.

MediQuest Therapeutics, Inc.

Nancy L. Omelko, Interlocutory Attorney:

Opposition No. 91156981

On October 21, 2003, the Board sent a notice of default to applicant because no answer had been filed. Applicant was allowed thirty days to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b). Counsel for applicant filed a response with the Board on November 3, 2003, in which he states that the firm's address has changed and although a change of address was filed with the USPTO, counsel had not received the notice of opposition.

The standard to apply in order to permit the late filing of an answer is the "good cause" standard of Fed. R. Civ. P. 55(c). We find that the applicant's apparent failure to receive a copy of the notice of opposition constitutes good cause not to enter judgment by default.

See, e.g., *Perfect Film and Chemical Corporation v. The Society Ordinastral*, 172 USPQ 696 (TTAB 1972). Accordingly, the notice of default is hereby set aside; and applicant's answer, filed on October 30, 2003, is noted.

Consolidation

It is the view of the Board that the three opposition proceedings referenced above should be consolidated inasmuch as the parties are the same and the two proceedings involve common questions of fact. Accordingly, Opposition Nos. 9115655; 91156916; and 91156981 are hereby consolidated.

The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13USPQ2d 1618 (TTAB 1989). As a general rule, from this point on only a single copy of any paper or motion should be filed herein; but that copy should bear all proceeding numbers in its caption. Exceptions to the general rule involve stipulated extensions of the discovery and trial dates, see Trademark Rule 2.121(d), and briefs on the case, see Trademark Rule 2.128.

Discovery is open and the trial dates including the close of discovery are reset as indicated below.

Discovery period to close:	April 20, 2004
30-day testimony period for party in position of plaintiff to close:	July 19, 2004
30-day testimony period for party in position of defendant to close:	September 17, 2004

15-day rebuttal testimony period
for plaintiff to close:

November 1, 2004

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within 30 days after completion of the taking of testimony. See Trademark Rule 2.125.

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