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

em

Mailed: January 18, 2007

Opposition No. 91172109

INTIME SOLUTIONS, INC.

v.

SECOND SPAN and MANNY ORMAZA[1]

Elizabeth A. Dunn, Attorney:

On December 7, 2006, the Board allowed applicants thirty days to show cause why judgment should not be entered against it in accordance with Fed. R. Civ. P. 55(b). In response, on December 18, 2006, applicants filed a response to the notice of opposition.[2]

---

[1] The Board's earlier orders failed to refer to the second of the two joint applicants. The Board regrets the error.

[2] Applicants' communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer.

Because applicants were advised of the requirement for service of all papers in the Board's October 6, 2006 order, any papers hereinafter filed by applicants which do not include proof of service will be given no consideration. That is, for example, if the answer to the notice of opposition required herein does not include proof of service, default judgment will be entered against applicants and its application will be abandoned.

LEGALLY SUFFICIENT ANSWER REQUIRED

A reading of this informal response reveals, however, that it is argumentative and more in the nature of a brief on the case than an answer to the notice of opposition. As such, it does not comply with Federal Rule of Civil Procedure 8(b), made applicable this proceeding by Trademark Rule 2.116(a). Applicants have not discharged their default.

Fed. R. Civ. P. 8(b) provides, in part:

> A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer herein consists of seven paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b), it is incumbent on applicants to answer the notice of opposition by simply admitting or denying the allegations contained in each paragraph. If applicants lack sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

In view of the foregoing, applicants are allowed until thirty days from the mailing date of this order to file an answer which complies with Fed. R. Civ. P. 8. If applicants fail to respond with a proper answer, judgment will be entered against applicants in accordance with Fed. R. Civ. P. 55(b).

LEGAL COUNSEL STRONGLY RECOMMENDED

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition 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 applicants obtain a copy of the Trademark Board Manual of Procedure (TBMP), available online at:

http://www.uspto.gov/web/offices/dcom/ttab/tbmp/index.html

and the Trademark Rules of Practice, available online at:

http://www.uspto.gov/web/offices/tac/tmlaw2.html.

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.

REQUIREMENTS FOR PROOF OF SERVICE

As noted earlier in this order, 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. The Board will accept, as *prima facie* proof that a party filing a paper in a Board *inter partes* proceeding has served a copy of the paper upon every other party to the proceeding, a statement signed by the filing party, or by its attorney or other authorized representative, clearly stating the date and manner in which service was made.

This written statement should take the following form:

CERTIFICATE OF SERVICE

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

KATHRYN JENNISON SHULTZ
JENNISON & SHULTZ, P.C.
CRYSTAL PLAZA #1, SUITE 1102
ARLINGTON, VA 22202

_____

signature of applicant
Typed name and title
Date

The certificate of service must be signed and dated.

Proceedings herein remain suspended until applicant discharges its default or default judgment is entered.

***