

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

Mailed: May 29, 2007

Opposition No. 91173530

Industrial Wire Products, Inc.

v.

King Long Metal Industrial
USA, LLC

**Robert H. Coggins,
Interlocutory Attorney:**

No answer having been timely received, the Board issued notice of default to applicant on December 22, 2006, allowing it thirty days to show cause why judgment by default should not be entered against it. Now before the Board is applicant's January 31, 2007 motion to set aside the notice of default and to accept applicant's concurrently filed late answer.¹ Opposer has filed a brief in opposition thereto.

By its response, applicant states that its failure to file a timely answer to the notice of opposition was the result of a docketing error. Applicant's failure to file a timely answer does not appear to be willful, in bad faith,

¹ Although applicant titled its motion as an extension of time to file an answer, the Board construes it as a motion to set aside the notice of default and to accept applicant's concurrently filed late answer.

or unduly prejudicial², but due to a docketing error. Without evaluating the merits of this case, the Board further finds that applicant's late answer contains a meritorious defense to the complaint inasmuch as it contains a plausible response to opposer's allegations. The Board is persuaded that the foregoing constitutes good cause to discharge the notice of default and to accept the answer. Fed. R. Civ. P. 55; *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). Accordingly, applicant's motion is granted, the notice of default is set aside, and applicant's answer is noted.

Discovery is open. The close of discovery and testimony periods are reset as follows.

Discovery period to close:	10/26/07
30-day testimony period for party in position of plaintiff to close:	1/24/08
30-day testimony period for party in position of defendant to close:	3/24/08
15-day rebuttal testimony period to close:	5/8/08

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served

² Contrary to opposer's assertion that it will be prejudiced by having to proceed through an expensive opposition proceeding, the normal delay and expense inherent in prosecuting a case before the Board has not been held to constitute prejudice.

Opposition No. 91173530

on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

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