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

Proceeding	91174328
Party	Defendant INNOVATIVE AFTERMARKET SYSTEMS, L.P.
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Date	11/12/2007
Attachments	IAS Reply.pdf (5 pages)(102655 bytes)

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

Intravision Technologies, LLC.,	§	
	§	
Opposer,	§	**Opposition No. 91174328**
v.	§	**Serial No. 78/666,540**
	§	
Innovative Aftermarket Systems, L.P.,	§	
	§	
Applicant.	§	
	§	
	§	
	§	

APPLICANT'S REPLY TO OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO SET ASIDE NOTICE OF DEFAULT AND TO ALLOW FILING OF ANSWER

Applicant, Innovative Aftermarket Systems, L.P., files this Reply to Opposer's Response to Applicant's Motion to Set Aside Notice of Default and to Allow Filing of Answer ("Response"), and respectfully shows the following:

1. IAS asserts a meritorious, uncontested defense, and the law favors substantive, rather than procedural, resolution of cases.

Opposer Intravision has not disputed that IAS has asserted the basis for a meritorious defense to Intravisions' opposition to IAS' application. The Board has established that cases should be resolved by an examination of merit, not by procedure alone. "The law favors determination of cases on the merits, and when circumstances dictate that a judgment by way of default or dismissal for failure to prosecute should be set aside, the Board will exercise its discretion under Fed. R. Civ. P. 60(b) to reopen the case." *CTRL Sys. Inc. v. Ultraphonics of N. Am. Inc.*, 52 U.S.P.Q.2d 1300, 1301 (T.T.A.B. 1999). Accordingly, IAS' assertion of a basis for

a meritorious defense, which Opposer Intravision concedes, should be the primary consideration in resolving IAS' motion to set aside the notice of default.

2. Any delay has not substantially prejudiced Opposer.

Opposer's Response and the related Declaration of Laura M. Franco fail to demonstrate that any delay in this opposition proceeding has substantially prejudiced Opposer. Rather, Opposer makes the conclusory prediction that the delay ***may*** affect Opposer's business strategy, increase legal fees, and increase the difficulty in proving its allegations. In support of its prediction, Opposer speculates on possible consequences of the approximately five month delay, such as "the loss of records, destruction of evidence, fading memories, and the unavailability of witnesses." However, Opposer does not offer any ***proof*** that any of these things have actually occurred Response at 4. Given that Opposer did not initiate any discovery during the discovery phase or initiate any proceedings to take testimony during the testimony phase, Opposer has not demonstrated genuine concern about the likelihood that it will actually experience any such loss of evidence or otherwise be substantially prejudiced as a result of any delay.

Further, even if Opposer had proven these claims to be more than mere speculation, they do not rise to the level of substantial prejudice. *See DeLorme Publ'g Co. v. Eartha's Inc.*, 60 U.S.P.Q.2d 1222, 1223–24, n. 5 (T.T.A.B. 2000) (the Board found that where the actual delay was nearly nine months, where the opposer had filed two additional applications, and where the opposer had increased its marketing campaign at considerable cost, the opposer was not prejudiced).

3. IAS exercised diligence by monitoring the status of its application within six months of its last filing.

Less than five months passed from the time that IAS filed its Motion to Reset Scheduling Order Dates and to Enlarge Time to Answer Notice of Opposition on May 10, 2007 to the time

the notice of default was discovered by a check of the TTAB docket. Thus, IAS's delay in filing its Answer to Notice of Opposition is therefore the result of inadvertence as explained in IAS' Motion to Set Aside Notice of Default. It is not the type of knowing and deliberate act that constitutes willful conduct or gross neglect. *See* TMEP § 108.03 (Applicant should "check the status of the application every six months between the filing date of the application and the issuance of a registration.")

4. Opposer never filed responses to IAS's prior motions, never sought discovery or testimony, and never moved for default.

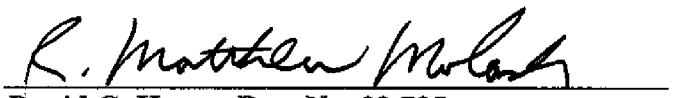
Notably, Opposer failed to file responses to any of IAS's prior motions, including IAS last Motion to Reset Scheduling Order Dates and to Enlarge Time to Answer Notice of Opposition (which the Board has never ruled on). Similarly, Opposer never initiated any discovery or took any action during its testimony period. Further, Opposer did not independently seek a default judgment against IAS. "Had Opposer desired certainty as to the status of this proceeding, it could have filed a motion for default judgment at any time after...applicant's answer was due." *DeLorme Publ'g Co.*, 60 U.S.P.Q.2d at 1224. Given that Opposer took no action to get a default judgment against IAS when it had the opportunity to do so casts doubt on whether Opposer will be inconvenienced, let alone substantially prejudiced, by the delay.

5. The Opposition should be decided on the merits and not on a procedural technicality

Applicant respectfully requests that the Board grant its Motion to Set Aside Notice of Default and to Allow Filing of Answer, that the Board enter a new scheduling order in this matter, and that the issues raised by Intravision's Opposition be resolved on their merits.

Dated: November 12, 2007

Respectfully submitted,



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FILING FEE STATEMENT

Applicant does not believe any filing fee is required. However, if a fee is required, please charge any such fees to Deposit Account 501343.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Motion To Set Aside Notice Of Default And To Allow Filing Of Answer was forwarded by certified mail #7006 3450 0003 6175 6733, return receipt requested, to the following counsel of record on this 12th day of November, 2007:

Susan E. Hollander
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R. Matthew Molash