

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

JST/WINTER

Mailed: December 14, 2007

Opposition No. 91174328

INTRAVISION TECHNOLOGIES, LLC

v.

**INNOVATIVE AFTERMARKET
SYSTEMS, L.P.**

Jyll S. Taylor, Administrative Trademark Judge:

This case now comes up for consideration of applicant's motion, filed October 1, 2007, to set aside the notice of default and to accept its late-filed answer. The motion was accompanied by applicant's proposed answer and is fully briefed. Also pending is applicant's motion, filed May 10, 2007, to reset discovery and trial dates and to further extend its time to file an answer.

Turning first to applicant's motion to extend, applicant seeks to extend its time to answer the notice of opposition by 60 days, *i.e.*, until July 9, 2007, and to reset the discovery and trial dates by 60 days. Inasmuch as opposer did not file a brief in opposition to the motion, it

Opposition No. 91174328

is granted as conceded. Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a).

Although the requested dates have already passed, commensurate dates will be reset.¹ Accordingly, we consider applicant's answer, filed October 1, 2007, timely filed and of record. Consequently, the notice of default is hereby set aside and applicant's motion to accept a late-filed answer is considered denied as moot.

We hasten to add that even if we had considered the motion, it would have been granted. The standard for determining whether default judgment should be entered against a defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard, that is, whether the defendant has shown good cause why default judgment should not be entered against it. As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556

¹ While the Board attempts, where possible, to notify the parties of its decision on an unconsented motion to extend, prior to expiration of the enlargement sought, the Board is under no obligation to do so, and in many cases cannot. *See Chesebrough-Pond's Inc. v. Faberge, Inc.*, 618 F.2d 776, 205 USPQ 888 (CCPA 1980). Therefore, it is preferable, that a motion to extend request that the new period or periods be set to run from the date of the Board's decision on the motion.

Opposition No. 91174328

(TTAB 1991). Moreover, because it is the policy of the Board to decide cases on their merits, the Board is reluctant to enter default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant. See *Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

Despite opposer's objections, we would have found that applicant had shown good cause why default judgment should not be entered against it. Specifically, applicant's failure to file a timely answer was not the result of willful inattention or bad faith, but rather resulted from apparent confusion surrounding the delay in the Board's consideration of its motion to extend. Also, opposer's naked allegations of prejudice due to possible influence to its business strategy or difficulty in prosecuting its case are speculative at best, and we do not consider the costs inherent in prosecuting a case, especially one that the complaining party brought, prejudicial. Further, because opposer did not contest any of applicant's motions to extend its time to answer, we find opposer's claim of prejudice resulting from mere delay unconvincing. See *Fred Hayman Beverly Hills, Inc.*, 21 USPQ2d at 1557 (TTAB 1991). Moreover, by the submission of an answer that denies the essential allegations of opposer's notice of opposition,

Opposition No. 91174328

applicant has adequately shown that it has a meritorious defense to the opposition. *Id.*

Finally, discovery and testimony periods are reset as follows:

DISCOVERY PERIOD TO CLOSE:	February 11, 2008
Thirty-day testimony period for party in position of plaintiff to close:	May 11, 2008
Thirty-day testimony period for party in position of defendant to close:	July 10, 2008
Fifteen-day rebuttal testimony period to close:	August 24, 2008

IN EACH INSTANCE, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party **WITHIN THIRTY DAYS** after completion of the taking of testimony. See Trademark Rule 2.125, 37 C.F.R. §2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b), 37 C.F.R. §§2.125(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. §2.129.



NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For

Opposition No. 91174328

further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>