

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

Mailed: September 30, 2008

Opposition No. 91181708

I.R.C.A. SpA Industria  
Resistenze Corazzate ed  
Affini

v.

RITTAL RES Electronic Systems  
GmbH & Co . KG

**George C. Pologeorgis, Interlocutory Attorney:**

This case now comes up on applicant's construed motion (filed June 5, 2008) to extend its time to file an answer to the notice of opposition. The motion is fully briefed.

Answer in this case was due, as last reset, on April 16, 2008. Applicant did not file its answer by this due date nor did it request an extension of time to file its answer. Accordingly, on May 6, 2008, the Board issued an order requiring applicant to show cause why judgment should not be entered against applicant for failing to file a timely answer or to request an extension of time to answer by the April 16, 2008 due date.

In its June 5, 2008 response to the Board's May 6, 2008 show cause order, applicant contends that its failure to

file an answer was inadvertent inasmuch as the parties have been negotiating settlement.

In response to applicant's June 5, 2008 filing, opposer argues that applicant has not put forth any honest effort to settle this case. Specifically, opposer contends that, while it provided applicant with a settlement proposal in February 2008, applicant did not respond to such proposal until the deadline for responding to the Board's May 6, 2008 default notice approached.

In reply, applicant asserts, for the first time, that its failure to file a timely answer was due, in part, to a docketing error. Additionally, applicant contends that once it received the Board's default notice it attempted to obtain consent from opposer for a further extension of time to file its answer, but without success. Moreover, applicant argues that it did respond to opposer's February 2008 settlement proposal in May of 2008 and, therefore, opposer's contentions to applicant's unresponsiveness and dishonest efforts to settle this matter are unfounded and misguided. Applicant further contends that the parties are currently engaged in settling disputes relating to numerous trademarks in multiple countries and while applicant's good faith settlement efforts may not have been as expedient as opposer would have liked, applicant's conduct has nonetheless been focused on settlement.

The Board notes that it is reluctant to enter judgment on default and would prefer to resolve cases on their merits. *Thrifty Corporation v. Bomax Enterprises*, 228 USPQ 62 (TTAB 1985). That being said, it is clear that applicant intends to defend itself in this proceeding, and that its failure to file a timely answer was due to the fact that that the parties have been negotiating settlement, as demonstrated by applicant's submission of communications between opposer and applicant filed concurrently with applicant's July 7, 2008 reply brief.

In view thereof, applicant has established the requisite "good cause" sufficient to justify an extension of time to file an answer. Fed. R. Civ. P. 6(b); see authorities cited in TBMP § 509 (2d ed. rev. 2004). Accordingly, applicant's construed motion to extend is granted, the Board's May 6, 2008 default notice is set aside, and applicant is allowed until **October 30, 2008** to file an answer to the notice of opposition, failing which judgment may be entered against applicant. In the event applicant requires additional time in which to file its answer, applicant must file a request to extend time to answer setting forth the requisite good cause for the extension request **prior to the new deadline set forth above.**

The trial schedule for this proceeding, including discovery, conferencing deadlines and trial dates, is reset as follows:

Time to Answer	10/30/2008
Deadline for Discovery	
Conference	11/29/2008
Discovery Opens	11/29/2008
Initial Disclosures Due	12/29/2008
Expert Disclosures Due	4/28/2009
Discovery Closes	5/28/2009
Plaintiff's Pretrial	
Disclosures	7/12/2009
Plaintiff's 30-day Trial Period	
Ends	8/26/2009
Defendant's Pretrial	
Disclosures	9/10/2009
Defendant's 30-day Trial Period	
Ends	10/25/2009
Plaintiff's Rebuttal	
Disclosures	11/9/2009
Plaintiff's 15-day Rebuttal	
Period Ends	12/9/2009

**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 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](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

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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>