ESTTA Tracking number: **ESTTA215902**

Filing date: **06/05/2008**

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

Proceeding	91181708
Party	Defendant RITTAL RES Electronic Systems GmbH & Co . KG
Correspondence Address	John Alumit Patel & Alumit, PC 16830 Ventura Blvd., Suite 360 Encino, CA 91436-1711 UNITED STATES 818 380-1900
Submission	Response to Board Order/Inquiry
Filer's Name	Michael Cerrati
Filer's e-mail	jalumit@patelalumit.com, michael@patelalumit.com
Signature	/michael cerrati/
Date	06/05/2008
Attachments	RITCA Response to Order to Show Cause (91181708).pdf (5 pages)(163978 bytes)

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

I.R.C.A. SPA INDUSTRIA RESISTENZE CORAZZATE ED AFFINI, Opposer, v. RITTAL RES ELECTRONIC SYSTEMS GMBH & CO. KG, Applicant.	Opposition No.: 91181708 Serial No: 79/024,632 Mark: RITCA Filed: July 29, 2005 Published: September 4, 2007

RESPONSE TO ORDER TO SHOW CAUSE WHY DEFAULT JUDGMENT SHOULD NOT BE ENTERED AGAINST APPLICANT

Applicant, RITTAL RES Electronic Systems GmbH & Co. KG, by and through its attorneys, presents this showing of cause why the Board should not enter a default judgment against Applicant due to Applicant's failure to file an answer or motion to further extend its time to answer. By the terms of the Board's May 6, 2008 Order, Applicant is allowed thirty (30) days from the mailing date of the Order to show cause why judgment by default should not be entered against Applicant, i.e., until June 5, 2008. Accordingly this response is timely filed.

As will be explained below, Applicant and Opposer are currently engaged in settlement negotiations. As a result, Applicant's failure to file an answer or motion to extend its time to answer should not result in the entry of a default judgment.

STATEMENT OF FACTS.

Opposer initiated this matter by filing a Notice of Opposition on January 2, 2008. Approximately one month later, Applicant's domestic counsel was informed by Applicant's German counsel that Applicant and Opposer (through foreign counsel) were currently engaged in

the negotiation of a worldwide settlement agreement stemming from Opposer's concurrent opposition of Applicant's German trademark registration and several other international trademark registrations. On February 8, 2008, Applicant's domestic counsel contacted Opposer's domestic counsel seeking a sixty (60) day extension of the time to file an answer in order to give the parties ample time to negotiate settlement. The parties stipulated to the extension and the extension was granted by the Board on March 1, 2008. Despite the fact that the parties are still engaged in settlement negotiations through foreign counsel, neither an answer nor a subsequent extension of time to file an answer has been filed.

APPLICANT CAN SHOW GOOD CAUSE.

Under section 312.02 of the TBMP, the Board will set aside a notice of default upon a satisfactory showing of good cause why the default judgment should not be entered against a defendant. Such good cause is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. TBMP § 312.02; *See DeLorme Publishing Co. v. Eartha's, Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000).

1. There Was No Willful Conduct or Gross Neglect by Applicant.

Since the commencement of this proceeding by Opposer, the parties have been engaged in settlement negotiations concerning the application at issue and multiple international trademark registrations. The parties' stipulation for the first sixty (60) day extension of time to answer is evidence of the parties' willingness to amicably resolve this proceeding. At no time did Applicant intentionally decide not to file an answer, nor did Applicant grossly neglect the obligation to file an answer. At all times Applicant has been fully committed to agreeably concluding this matter.

In light of the ongoing settlement discussions, Applicant believed that this proceeding would either resume or conclude following the termination of the settlement discussions. When the settlement discussions continued past the original sixty (60) extension of time to file the answer, Applicant's failure to timely respond is most accurately described as inadvertent and unintentional. Consequently, there was no willful conduct or gross neglect by Applicant.

2. Opposer Will Not Be Substantially Prejudiced By The Delay.

There is no danger of prejudice to Opposer. As set forth above, the parties' willingness to amicably resolve this proceeding and the international disputes is apparent. Such determination to settle these matters is highlighted by the fact that the settlement discussions are now entering their sixth month. If Opposer was desirous of further pursuing this proceeding, Opposer would not have agreed to the first extension of time to file an answer nor would Opposer have participated in the settlement discussions to such an extent. If anything, the delay has been beneficial to Opposer by allowing the parties to continue settlement negotiations without incurring additional legal fees in this opposition.

3. Applicant Has a Meritorious Defense.

While Applicant is not required to herein set forth its arguments against Opposer's claims in the Notice of Opposition, Applicant does affirmatively deny that there is any likelihood of confusion between the parties' respective marks. In view of the fact that Applicant has not engaged in any investigation or discovery into this matter, Applicant is unable to confirm the veracity of any of the allegations made by Opposer. Nevertheless, there is no doubt that Applicant can raise, and will raise should the settlement negotiations break down, a plausible response to the allegations in the Notice of Opposition.

CONCLUSION.

In view of the circumstances described above, Applicant believes that entering a default judgment in this instance is unwarranted. Rather, a suspension of the proceeding pending the conclusion of the parties' settlement negotiations would better serve the interests of the parties, the Board and judicial economy.

Respectfully Submitted,

PATEL & ALUMIT, P.C.

Dated as of: June 5, 2008

By: _____

John Alumit
Michael Cerrati
16830 Ventura Blvd., Suite 360
Encino, CA 91436
(818) 380-1900
Attorneys for Applicant,
RITTAL RES Electronic Systems GmbH & Co. KG

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **RESPONSE TO ORDER TO SHOW CAUSE WHY DEFAULT JUDGMENT SHOULD NOT BE ENTERED AGAINST APPLICANT** has been served on Kristina M. Foudray, Esq., counsel for Opposer, on June 5, 2008, via First Class U.S. Mail, postage prepaid to:

Kristina M. Foudray, Esq.
Hamre, Schumann, Mueller & Larson P.C.
P.O. Box 2902-0902
Minneapolis, MN 55402

My Stern