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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 Alunit Patel & Alunit, PC 16830 Ventura Blvd., Suite 360 Encino, CA 91436-1711 UNITED STATES 818 380-1900
Submission	Reply in Support of Motion
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Signature	/michael cerrati/
Date	07/07/2008
Attachments	RITCA Reply ISO Response to OSC (91181708).pdf ( 5 pages )(153560 bytes ) RITCA Cerrati Declaration ISO Reply (91181708).pdf ( 15 pages )(282094 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,	)	
	)	Opposition No.: 91181708
Opposer,	)	Serial No: 79/024,632
	)	Mark: RITCA
v.	)	Filed: July 29, 2005
	)	Published: September 4, 2007
RITTAL RES ELECTRONIC SYSTEMS)	)	
GMBH & CO. KG,	)	
	)	
Applicant.	)	
_____	)	

**APPLICANT’S REPLY IN SUPPORT OF ITS RESPONSE TO  
ORDER TO SHOW CAUSE**

Applicant, RITTAL RES Electronic Systems GmbH & Co. KG, by and through its attorneys, presents this reply (the “Reply”) in support of its response to order to show cause why the Board should not enter a default judgment against Applicant, and in response to Opposer’s Objection to Applicant’s Response to Show Cause Order (the “Objection”). This Reply is further supported by a declaration attached hereto.

**APPLICANT HAS SHOWN GOOD CAUSE**

Initially, Applicant notes that it is well-established that the courts and the Board are reluctant to grant judgments by default and tend to resolve doubt in favor of setting aside a default, since the law favors deciding cases on their merits. *See Paolo’s Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm’r 1990); *Morris v. Charnin*, 85 F.R.D. 689 (S.D.N.Y. 1980); *Alopri v. O’Leary*, 154 F.Supp. 78 (E.D.Penn. 1957); *Thrifty Corporation v. Bomax Enterprises*, 228 USPQ 62 (TTAB 1985); *Regent Baby Products Corp. v. Dundee Mills, Inc.*, 199 USPQ 571 (TTAB 1978). In addition, where it is the attorney rather than the party itself that is

responsible for the failure to properly defend an action courts are likely to vacate a default. *See Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990); *Trust Company Bank v. Tingen-Millford Drapery Company, Inc.*, 119 F.R.D. 21, 22 (E.D.N.C. Raleigh Div. 1987).

As explained in Applicant's Response to Order to Show Cause, Applicant's failure to file an Answer or extension of time was an inadvertent mistake. The deadline to file the Answer was improperly docketed by Applicant's counsel, which regrettably resulted in the issuance of a Notice of Default. When informed of the potential entry of a default judgment, Applicant's foreign counsel informed its domestic counsel that Applicant was still actively pursuing settlement negotiations and to attempt to seek an extension to file the Answer from Opposer (which Applicant's domestic counsel pursued without success).

Clearly there was no willful conduct or gross neglect by Applicant; there is no supporting evidence nor has Opposer made any such allegations. In addition, the Board has held that a docketing error committed by a party's counsel is not sufficient grounds to support a finding of willful conduct. *See Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990). Consequently, there has been no willful conduct or gross neglect underlying Applicant's failure to timely respond.

#### **THERE IS NO SUBSTANTIAL PREJUDICE TO OPPOSER**

At all times Applicant has actively, diligently and consistently participated in settlement negotiations with Opposer. For example, Applicant corresponded with Opposer through foreign counsel in April 2007 and in January and May of 2008 in response to Opposer's communications in April and May of 2007 and March of 2008. *See Declaration of Michael Cerrati*, at ¶ 2. Consequently, Opposer's allegations of unresponsiveness and dishonest efforts in the Objection

are unfounded and misguided. The parties are currently engaged in settling disputes relating to numerous trademarks in multiple countries, which requires Applicant to coordinate its efforts with various counsel. While Applicant's good faith settlement efforts may not have been as expedient as Opposer would have liked, Applicant's conduct was always focused on settlement and never unreasonable.

Moreover, any alleged delay in this proceeding has not resulted, and will not result, in substantial prejudice to Opposer. Notwithstanding several conclusory statements, Opposer has failed to show how it will be substantially prejudiced by the delay. There is not an extraordinary amount of correspondence from Opposer to Applicant regarding this matter, nor has Opposer alleged any significant expenditures of time or money. Applicant also respectfully notes that Applicant has spent considerable amounts of time and money throughout the last year of negotiations, and would also like to see this matter promptly resolved. In fact, Opposer's failure to consent to an additional extension of time to Answer has caused Applicant to incur additional legal fees and further delayed the settlement process. Nevertheless, there is no evidence that Opposer will be substantially prejudiced, or even prejudiced at all, by this delay.

Most importantly, the so-called "prejudice" to Opposer does not justify depriving Applicant of its opportunity to have this proceeding properly tried and decided on the merits.

### **CONCLUSION.**

In view of the foregoing policy, law and current facts, the entry of a default judgment is not warranted. Applicant should not be penalized for the mistake of its counsel, nor has Opposer been substantially prejudiced by the delay.


In the event the Board does not find that a suspension of the proceedings is necessary, Applicant respectfully requests that the Board grant Applicant additional time to submit an

Answer to the allegations contained in the Notice of Opposition so that the case may be decided on its merits.

Respectfully Submitted,

PATEL & ALUMIT, P.C.

Dated as of: July 7, 2008

By:   
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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 **APPLICANT'S REPLY IN SUPPORT OF ITS RESPONSE TO ORDER TO SHOW CAUSE** has been served on Kristina M. Foudray, Esq., counsel for Opposer, on July 7, 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

  
Nikki Steen

**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,	)	
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RITTAL RES ELECTRONIC SYSTEMS)	)	
GMBH & CO. KG,	)	
	)	
Applicant.	)	
<hr/>		

**DECLARATION OF MICHAEL CERRATI**

I, Michael Cerrati, declare as follows:

1. I am an attorney at the law firm of Patel & Alumit, P.C., counsel for Applicant RITTAL RES Electronic Systems GmbH & Co. KG (“Applicant”) in this matter. Except where otherwise noted, I have personal knowledge of the facts set forth herein. If called as a witness, I could and would competently testify thereto under oath.
2. Attached hereto as Exhibit A is a true and correct copy of the continuous correspondence between Applicant’s foreign counsel, Jochen Herrmann of Jeck, Fleck, Herrmann Patentanwälte and Opposer’s counsel, Birgit Hein of Patentanwaltskanzlei Fritz regarding the settlement negotiations in the above-referenced proceedings. This correspondence was provided to me by Applicant’s foreign counsel. Note, that the content of the communications has been redacted to maintain confidentiality between the parties.

I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

Executed on this 7<sup>th</sup> day of July, 2008, at Encino, CA.

  
\_\_\_\_\_



**Exhibit A**

**JECK • FLECK • HERRMANN**  
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Dr.-Ing. Hermann-Josef Fleck \*

Dipl.-Ing. Jochen Herrmann

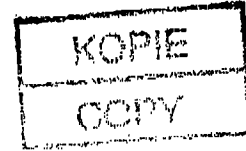
\* zugel. Vertreter beim EPA

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Ihr Zeichen:  
ST 06/313

Unser Zeichen:  
V 17105

Bearbeiter:  
h/sch

Datum:  
01. April 2007

**RITCA ./.** RIC+Bildbestandteil Deutsche Marke 305 05 794.4 "RITCA"

Sehr geehrte Frau Kollegin Krengel,

wir vertreten die RITTAL RES Electronic Systems GmbH & Co. KG in 35745 Herborn.

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Ihr Zeichen / your reference  
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Arnberg, 27.04.2007/HE/OR  
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Durchwahl: 02932/9761-116

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für B. Hein - urlaubsabwesend

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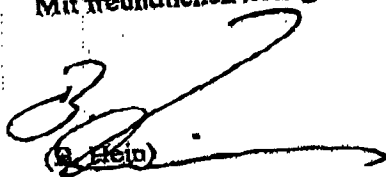
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Bearbeiter:

Datum:

ST 06/313

V 17105 i.V. m.  
W 15874 und  
W 15874-IR

h/pec

20. Mai 2008

**I.R.C.A. S.P.A. . / . Rittal RES Electronic Systems GmbH & Co.KG**  
**RICA . / . RITCA**

Sehr geehrte Frau Kollegin Hein,

wir nehmen Bezug auf Ihr Schreiben vom 11. 03. 2008.

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G. Herrmann

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W 15874 - h/pec

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RITCA

**Waren- und Dienstleistungsverzeichnis**

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Beschriftungsleisten;