

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

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Mailed: October 2, 2009

Opposition No. 91191142

NOVARTIS AG

v.

JCA DEVELOPMENT OF MIAMI,  
INC.

By the Board:

On September 15, 2009, the Board issued a notice of default based on applicant's failure to file a timely answer, and issued an order allowing applicant time in which to show cause why judgment by default should not be entered against it in accordance with Fed. R. Civ. P. 55(b). On September 17, 2009, applicant filed its answer with the Board, and on September 24, 2009 filed a response to the show cause order referencing its previously-filed answer.<sup>1</sup>

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown the court may set aside an entry of default." Good cause to set aside a default is generally found where the applicant's delay has not

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<sup>1</sup> Inasmuch as the September 24, 2009 paper does not include a proper Certificate of Service, the Board includes a copy of said paper with opposer's copy of this order. As noted herein, all

been the result of willful conduct or gross neglect, opposer will not be substantially prejudiced by the delay, and applicant has a meritorious defense to the action. See TBMP § 312.02 (2d ed. rev. 2004). See also *Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, answer was due by August 30, 2009. While the answer filed on September 17, 2009 includes a statement that it was "served via fax" on counsel for opposer on August 25, 2009, this statement of transmission by fax fails to comply with Trademark Rule 2.119 inasmuch as it does not constitute a proper Certificate of Service. Furthermore, it is unclear why the answer was not filed via ESTTA with the Board until over three weeks after said transmission by fax, inasmuch as the answer caption includes the correct proceeding number.

Notwithstanding these circumstances, and applicant's resulting default, the Board finds no indication that applicant willfully failed to file a timely answer, and finds that the answer itself appears to substantively set forth a meritorious defense to the notice of opposition. Finally, inasmuch as this proceeding was recently instituted, the delay occasioned by the untimely filing has been insubstantial, and only minimal potential prejudice to opposer has been caused thereby.

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papers filed with the Board must indicate compliance in full with Trademark Rule 2.119 and applicable authorities.

In view thereof, and for good cause shown, the Board's September 15, 2009 notice of default is hereby set aside. Applicant's answer filed September 17, 2009 is accepted.

As a final matter, the Board directs applicant's attention to Trademark Rules 2.119(a) and 2.195(c)(3), as well as TBMP §§ 106.03 ("Form of Submissions"), 113 ("Service of Papers"), 113.04 ("Manner of Service"), and 311.01(c) ("Filing and Service of Answer") (2d ed. rev. 2004). The Board may, in its discretion, decline to consider any motion or paper filed with the Board that does not include proof of service, as required. See TBMP § 106.03 (2d ed. rev. 2004) (Board may refuse to enter and consider submissions filed in violation of Trademark Rule 2.126).

Schedule

Proceedings are resumed. Conferencing, disclosure, discovery and trial dates are reset as follows:

<b>Deadline for Discovery Conference</b>	<b>10/31/2009</b>
Discovery Opens	10/31/2009
Initial Disclosures Due	11/30/2009
Expert Disclosures Due	3/30/2010
Discovery Closes	4/29/2010
Plaintiff's Pretrial Disclosures	6/13/2010
Plaintiff's 30-day Trial Period Ends	7/28/2010
Defendant's Pretrial Disclosures	8/12/2010
Defendant's 30-day Trial Period Ends	9/26/2010
Plaintiff's Rebuttal Disclosures	10/11/2010
Plaintiff's 15-day Rebuttal	11/10/2010

## Period Ends

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. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.