

ESTTA Tracking number: **ESTTA352697**

Filing date: **06/14/2010**

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

Proceeding	91194697
Party	Plaintiff Pac-Dent International, Inc.
Correspondence Address	PHILIP H. GOTTFRIED AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016 UNITED STATES ptodocket@arelaw.com
Submission	Motion for Default Judgment
Filer's Name	Holly Pekowsky
Filer's e-mail	ptodocket@arelaw.com
Signature	/Holly Pekowsky/
Date	06/14/2010
Attachments	Memorandum of Law in Support of Motion for Default Judgment - 697 Opposition.pdf (3 pages)(98629 bytes) Declaration of Holly Pekowsky - 697 Opposition.pdf (4 pages)(144535 bytes)

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

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PAC-DENT INTERNATIONAL, INC., :
 :
Opposer, : Opposition No. 91194697
 :
v. :
SULZER MIXPAC AG, :
 :
Applicant. :
----- -x

**MEMORANDUM OF LAW IN SUPPORT OF OPPOSER
PAC-DENT INTERNATIONAL, INC.'S MOTION FOR A DEFAULT
JUDGMENT AGAINST APPLICANT SULZER MIXPAC AG**

I. PRELIMINARY STATEMENT

Opposer Pac-Dent International, Inc. ("Opposer") submits this Memorandum of Law in support of its Motion for a default judgment against Applicant Sulzer Mixpac AG ("Applicant") in the above referenced Opposition (the "Motion").

II. STATEMENT OF FACTS

On or about April 29, 2010, Opposer filed a Notice of Opposition against Application Serial Nos. 77/848,338, 77/848,320 and 77/848,315.

On or about April 29, 2010, the Trademark Trial and Board issued an Order commencing the Opposition and providing Applicant with forty days, until June 8, 2010, to file its Answer.

Opposer has not yet received an Answer, nor does it appear, based on the Trademark Trial and Appeal Board's online website, that an Answer has been filed on behalf of Applicant.

Pekowsky Decl.¹, Pars. 3-4 and Ex. A. Applicant did not request, nor did Opposer grant, any extension of time to Answer. Pekowsky Decl., Par. 3.

III. LEGAL ARGUMENT

Pursuant to 37 C.F.R. § 2.106(a), "If no answer is filed within the time set, the opposition may be decided as in case of default." Accordingly, since, as indicated above, Applicant has failed to submit an Answer, it is respectfully submitted that a default judgment be entered against Applicant in the instant Opposition.

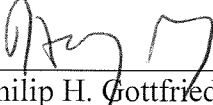
IV. CONCLUSION

For the reasons stated above, Opposer's Motion for a default judgment against Applicant should be granted.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Opposer Pac-Dent International, Inc.
90 Park Avenue
New York, New York 10016
(212) 336-8000 (telephone)
(212) 336-8001 (Facsimile)

Dated: June 14, 2010
New York, New York

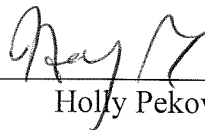
By: 
Philip H. Gottfried
Holly Pekowsky

¹ "Pekowsky Decl." refers to the Declaration of Holly Pekowsky, submitted herewith.

CERTIFICATE OF SERVICE

Holly Pekowsky, the undersigned attorney, hereby certifies that she is one of the attorneys for Opposer in the captioned action, and that on the date which appears below she served a copy of the annexed MEMORANDUM OF LAW IN SUPPORT OF OPPOSER PAC-DENT INTERNATIONAL, INC.'S MOTION FOR A DEFAULT JUDGMENT AGAINST APPLICANT SULZER MIXPAC AG by causing a copy thereof to be served on Applicant by Federal Express, postage pre-paid, as follows:

Michael T. Murphy, Esq.
Christopher S. Adkins, Esq.
K&L Gates LLP
1601 K Street N.W.
Washington, D.C. 20006



Holly Pekowsky

Dated: June 14, 2010
New York, New York

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

-----X

PAC-DENT INTERNATIONAL, INC.,	:	
	:	
Opposer,	:	Opposition No. 91194697
	:	
v.	:	
	:	
SULZER MIXPAC AG,	:	
	:	
Applicant.	:	

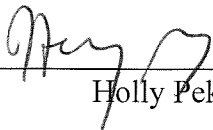
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**DECLARATION OF HOLLY PEKOWSKY IN SUPPORT OF
OPPOSER'S MOTION FOR A DEFAULT JUDGMENT**

HOLLY PEKOWSKY declares:

1. I am an associate in the law firm of Amster, Rothstein & Ebenstein, LLP, attorneys for Opposer Pac-Dent International, Inc. ("Opposer") in the above-referenced matter.
2. I make this Declaration in support of Opposer's Motion For a Default Judgment. Unless otherwise indicated, I make this Declaration based upon personal knowledge.
3. Opposer has not yet received an Answer. Applicant did not request, nor did Opposer grant, any extension of time for Applicant to Answer.
4. Attached as Exhibit A is a print out of the TTABVUE for the instant Opposition which I printed out on June 14, 2010. There is no indication that an Answer was filed.
5. I declare, under penalty of perjury, that all of the foregoing is true and correct.

Dated: June 14, 2010
New York, New York

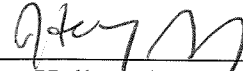


Holly Pekowsky

CERTIFICATE OF SERVICE

Holly Pekowsky, the undersigned attorney, hereby certifies that she is one of the attorneys for Opposer in the captioned action, and that on the date which appears below she served a copy of the annexed DECLARATION OF HOLLY PEKOWSKY IN SUPPORT OF MOTION FOR A DEFAULT JUDGMENT by causing a copy thereof to be served on Applicant by Federal Express, postage pre-paid, as follows::

Michael T. Murphy, Esq.
Christopher S. Adkins, Esq.
K&L Gates LLP
1601 K Street N.W.
Washington, D.C. 20006



Holly Pekowsky

Dated: June 14, 2010
New York, New York

EXHIBIT A



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Opposition

Number: 91194697**Filing Date:** 04/29/2010**Status:** Pending**Status Date:** 04/29/2010**Interlocutory Attorney:** GEORGE POLOGEORGIS

Defendant

Name: Sulzer Mixpac AG**Correspondence:** [MICHAEL T. MURPHY](#)K&L GATES LLP
1601 K STREET NW
WASHINGTON, DC 20006-1600
UNITED STATES
chicago.trademarks@klgates.com**Serial #:** 77848338[Application File](#)**Application Status:** Opposition Pending**Serial #:** 77848320[Application File](#)**Application Status:** Opposition Pending**Serial #:** 77848315[Application File](#)**Application Status:** Opposition Pending

Plaintiff

Name: Pac-Dent International, Inc.**Correspondence:** [PHILIP H. GOTTFRIED](#)AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE
NEW YORK, NY 10016
UNITED STATES
ptodocket@arelaw.com

Prosecution History

#	Date	History Text	Due Date
7	06/10/2010	SUSPENDED PENDING DISP OF CIVIL ACTION	
6	06/07/2010	D'S MOT TO SUSP PEND DISP CIV ACTION	
5	06/07/2010	D'S MOT TO SUSP PEND DISP CIV ACTION	
4	06/07/2010	D'S MOT TO SUSP PEND DISP CIV ACTION	
3	04/29/2010	PENDING, INSTITUTED	
2	04/29/2010	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	06/08/2010
1	04/29/2010	FILED AND FEE	

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