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Filing date: **10/13/2011**

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

Proceeding	91200730
Party	Defendant Annoncent Technology Group, Inc.
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY 344 MAPLE AVE W STE 151 VIENNA, VA 22180-5612 UNITED STATES admin@thetrademarkcompany.com
Submission	Other Motions/Papers
Filer's Name	Matthew H. Swyers
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Signature	/Matthew H. Swyers/
Date	10/13/2011
Attachments	Response to Show Cause Order & Answer and Grounds of Defense.pdf (8 pages)(260644 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of Trademark Application Serial No. 85/097,885,
For the mark ANONCENT MAKING YOU THINK, HELPING YOU CHANGE and design,

Avocent Corporation,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. 91200730
	:	
Anoncent Technology Group, Inc.,	:	
	:	
Applicant.	:	

**RESPONSE TO SHOW CAUSE ORDER AND
MOTION TO ACCEPT ANSWER LATE**

COMES NOW the Applicant, Anoncent Technology Group, Inc. (hereinafter “Applicant”), by counsel, and submits the instant Response to the Show Cause Order entered by the Board on or about September 13, 2011 and pursuant to TBMP § 312.02 with good cause shown respectfully requests that the Board set aside the Notice of Default in the instant case and accept the attached Answer and Grounds of Defense in this matter. In support thereof Applicant states as follows:

STATEMENT OF THE CASE

1. On or about July 18, 2011 Avocent Corporation (“Opposer”) instituted the instant proceeding against the registration of Applicant’s ANONCENT MAKING YOU THINK, HELPING YOU CHANGE and design mark.
2. Applicant failed to timely file its Answer and Grounds of Defense.
3. The Board subsequently issued the Notice of Default at issue herein.

RESPONSE

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, 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.

The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant. TBMP § 312.02.

In the instant case Applicant inadvertently lost track of the deadline to file an answer in the instant matter and was not aware that the same had passed until the default notice. Moreover, Applicant has, only recently, been able to secure counsel to defend the matter at hand. As such, it is submitted that good cause be established in this matter as to why the default should be set aside on the basis of Applicant's inadvertent lapse in not having the answer filed in a timely manner.

It is respectfully submitted that the instant oversight was not as a result of willful conduct or gross neglect on the part of the Applicant but rather a calendaring error. Moreover, it is submitted that the Opposer would not be prejudiced whatsoever by the instant setting aside of the default at issue as the simple delay at issue is not sufficient to warrant a finding of prejudice in this regard.

In regard to a meritorious defense, for the purposes of completeness the Applicant has attached an Answer which it moves the Board to accept as late given the good cause shown herein. *See* Exhibit 1.

WHEREFORE for good cause considered, the Applicant, by counsel, respectfully requests that the Board set aside the Notice of Default in the instant case and accept the attached Answer and Grounds of Defense in this matter.

Respectfully submitted October 13, 2011,

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

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Attorney for Applicant

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Opposer,	:	
	:	
vs.	:	Opposition No. 91200730
	:	
Annoncent Technology Group, Inc.,	:	
	:	
Applicant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing pleading, this 13th day of October, 2011, to be served, via first class mail, postage prepaid, upon:

Lisa M. DuRoss, Esq.
Harness, Dickey & Pierce, P.L.C.
5445 Corporate Drive Suite 200
Troy, MI 48098

/Matthew H. Swyers/
Matthew H. Swyers

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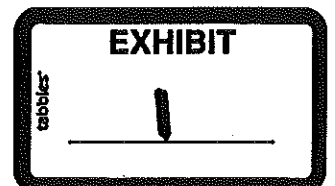
ANSWER AND GROUNDS OF DEFENSE

COMES NOW the Applicant Annocent Technology Group, Inc. (hereinafter “Applicant”), by and through counsel, The Trademark Company, PLLC, and files its Answer and Grounds of Defense to the Notice of Opposition and in response to Opposer’s allegations states as follows:

ANSWER

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the Introductory Paragraph of the Notice of Opposition and therefore denies the same. In response to the specifically enumerated paragraphs of the Notice of Opposition, Applicant responds as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Applicant admits to the truth of the allegations of Paragraph 2 of the Notice of Opposition.



3. Applicant denies the allegations of Paragraph 3 of the Notice of Opposition as phrased.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Applicant denies the allegations of Paragraph 5 of the Notice of Opposition as phrased.

6. Applicant denies the allegations of Paragraph 6 of the Notice of Opposition as phrased demands strict proof thereof.

7. Applicant admits to the truth of the allegations of Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations of Paragraph 8 of the Notice of Opposition as phrased and demands strict proof thereof.

9. Applicant denies the allegations of Paragraph 9 of the Notice of Opposition and demands strict proof thereof.

10. Applicant denies the allegations of Paragraph 10 of the Notice of Opposition and demands strict proof thereof.

11. Applicant denies the allegations set forth in Paragraph 11 of the Notice of Opposition and demands strict proof thereof.

12. Applicant denies the allegations set forth in Paragraph 12 of the Notice of Opposition and demands strict proof thereof.

Applicant further denies all allegations not specifically, actually or constructively, admitted in the foregoing paragraphs of this Answer and Grounds of Defense.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed.

Respectfully submitted this 13th day of October, 2011.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

344 Maple Avenue West, Suite 151

Vienna, VA 22180

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Counsel for Applicant

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I HEREBY CERTIFY that I caused a copy of the foregoing this 13th day of October, 2011, to be served, via first class mail, postage prepaid, upon:

Lisa M. DuRoss, Esq. and
Jessica S. Sachs, Esq.
Harness, Dickey & Pierce, P.L.C.
5445 Corporate Drive, Suite 200
Troy, MI 48098

/Matthew H. Swyers/
Matthew H. Swyers