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

Proceeding	91201430
Party	Defendant Central Holding Corporation
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Date	10/14/2011
Attachments	111014_Motion.pdf (4 pages)(26630 bytes)

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

In re Application of : Central Holding Corporation
Serial No. : 85204480
Filed : December 12, 2010
Mark : DOUBLETAP
Published Official Gazette : May 3, 2011

HORNADY MANUFACTURING COMPANY,

Opposers,

v.

CENTRAL HOLDING CORPORATION

Applicant.

Opposition No. 91201430

MOTION TO ACCEPT LATE FILED ANSWER TO NOTICE OF OPPOSITION

Central Holding Corporation, a corporation of Missouri (“Applicant”), by and through its undersigned attorney, hereby moves for an Order permitting the late filing of its Answer to the Notice of Opposition filed by Hornady Manufacturing Company (“Opposer”), respectfully showing the TTAB, as follows:

While the Answer was due on October 11, 2011, it was incorrectly docketed for October 12, 2011, and it was duly filed on and accepted by the electronic filing system on October 12, 2011. The incorrect docketed date entry was unintentional, and resulted from confusion in that there was a federal holiday on October 10, 2011 (“Columbus Day”), whereby the docketing was inadvertently pushed back by one day. Upon realizing that the error was made, undersigned immediately brought the situation to the attention of the Interlocutory Attorney, who suggested seeking consent from the Opposer.

Notwithstanding undersigned's request for such consent to Opposer's counsel, Opposer's counsel denied granting the same, whereby the present Motion is made seeking an Order that the late filed Answer, due on October 11, 2011 but actually filed on October 12, 2011, be accepted.

Legal Argument

The filed Answer shows that Applicant has meritorious defenses to the Notice of Opposition. The late filing was made well within the time that the TTAB would have allowed before issuing an Order to Show Cause; the Answer was filed only a few hours beyond the deadline; such late filing was inadvertent; it was recognized by Applicant's counsel (rather than Opposer's counsel or the TTAB), and it was immediately brought to the attention of both the TTAB and Opposer's counsel; and the minimal delay in filing caused no prejudice to the Opposer.

The failure of Opposer's counsel to grant the requested one day extension as a matter of professional courtesy is not understood in that the Opposer could not, possibly, have been harmed by the minimal delay (which was made known to both the TTAB and to Opposer's counsel by Applicant's counsel). Nevertheless, the inexplicable refusal to consent to the *de minimis* delay by Opposer's counsel has now made it necessary for Applicant to file the present Motion, to which Opposer will now, presumably, respond, thereby causing the parties additional delay and expense, while burdening the TTAB with the present Motion (and, presumably an associated response and reply) along with rescheduling the dates in the matter.

Further, the entry of a default in a TTAB matter does not operate as *res judicata* with respect to the underlying issue as it is not a decision on the merits, *Sharp Kabushiki Kaisha v. ThinkSharp, Inc.*, 79 USPQ2d 1376 (Fed. Cir. 2006). Consequently, even if a default was entered and sustained, Applicant could refile the application, whereupon Opposer would

have to, presumably, file yet another Opposition proceeding, thereby costing both Applicant and Opposer even more time and expense.

In view of the foregoing, Applicant respectfully shows that it has established good cause for the accepting the Answer filed on October 12, 2011, prior to the entry of any default, and Applicant further shows the Board that the foregoing reasons for accepting the late-filed Answer would be sufficient good cause, pursuant to Fed. R. Civ. Pr. 55(c), for opening and vacating any default which had been entered.

Wherefore, Applicant hereby respectfully solicits an Order accepting the late filed Answer.

Dated: October 14, 2011

By: /s/ Sanford J. Asman
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CERTIFICATE OF SERVICE

Undersigned hereby certifies that, on the date set forth below, a copy of the foregoing:

MOTION TO ACCEPT LATE FILED ANSWER TO NOTICE OF OPPOSITION

was served through the electronic filing system of the U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, and by first class mail, postage prepaid, upon Opposer's counsel, addressed as follows:

Angela V. Langlotz, Esq.
PO Box 96503 #3785
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Dated: October 14, 2011

By: /s/ Sanford J. Asman

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