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

Proceeding	91206885
Party	Defendant Halliburton Energy Services, Inc.
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Submission	Opposition/Response to Motion
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Date	11/02/2012
Attachments	Applicant's Response to Motion for Default.pdf (5 pages)(104253 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SCHLUMBERGER TECHNOLOGY CORPORATION, Opposer, v. HALLIBURTON ENERGY SERVICES, INC., Applicant.	In the matter of Serial No. 85/509,570 For the mark RAPIDSHIFT Published August 21, 2012 Opposition No.: 91206885

APPLICANT'S RESPONSE IN OPPOSITION TO
OPPOSER'S MOTION FOR DEFAULT AGAINST APPLICANT

Through the undersigned counsel, Applicant, Halliburton Energy Services, Inc. ("Applicant"), submits this response in opposition to the Motion for Default Judgment Against Applicant filed by Opposer, Schlumberger Technology Corporation ("Opposer").

I. Background

On October 31, 2012, the Board issued a Notice of Default giving Applicant 30 days to show cause why default judgment should not be entered. That same day, Applicant filed its response to the Notice of Default setting forth good cause for why default judgment should not be entered against Applicant. Also on October 31, 2012, Opposer filed a Motion for Default Judgment Against Applicant. For the reasons set forth below and stated in Applicant's October 31, 2012 response to the Notice of Default, Applicant submits that good cause exists for why default judgment should not be entered against Applicant. Applicant, therefore, respectfully requests that default judgment not be entered and that Applicant's Answer, which was filed and served on October 31, 2012, be accepted.

II. Default Judgment Should Not Be Entered

Default judgment should not be entered when a defendant makes a "satisfactory showing of good cause why default judgment should not be entered against it." T.B.M.P. § 312.02. Good cause "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." *Id.*

Applicant's delay was not the result of willful conduct or gross neglect. Applicant and Opposer are parties to a number of opposition proceedings that have been consolidated under Opposition No. 91201442. Before filing the Notice of Opposition against Applicant's Serial No. 85/509,570 for the mark RAPIDSHIFT, Opposer sought Applicant's consent to consolidate the opposition to the RAPIDSHIFT mark with the oppositions consolidated under parent Opposition No. 91201442. Applicant consented to consolidation, as noted in Paragraph 9 of Opposer's Notice of Opposition to Serial No. 85/509,570. Applicant had prepared its Answer to the Notice of Opposition (which it filed and served on October 31, 2012). However, there was confusion at Applicant's counsel in terms of docketing the Answer deadline given that it was believed that Opposition No. 91206885 was to be consolidated with parent Opposition No. 91201442. Applicant respectfully submits that good cause exists given that the parties consented to consolidating 91206885 with parent Opposition No. 91201442 and the presumed consolidation led to docketing confusion at Applicant's counsel. The delay was not the result of willful conduct or gross neglect on the part of Applicant.

Applicant respectfully submits that Opposer will not be substantially prejudiced by the short delay in filing and serving the Answer. As indicated, the parties have consented to

consolidating Opposition No. 91206885 with parent Opposition No. 91201442. Parent Opposition No. 91201442 is currently on hold following Opposer's Motion for Leave to File a First Amended Notice of Opposition, which was filed by Opposer on June 28, 2012 and to which Applicant consented. The parties are awaiting a ruling from the Board on Opposer's Motion to Amend its Notice of Opposition. As such, the schedule in Opposition No. 91201442, into which the parties have requested Opposition No. 91206885 be consolidated, is on hold. Therefore, Opposer will not be substantially prejudiced by the late filing of the Answer in Opposition No. 91206885. Moreover, the issues involved in the oppositions consolidated under parent Opposition No. 91201442 are the same as the issues involved in Opposition No. 91206885. In all oppositions, Opposer is alleging rights in a "RAPID" family of marks against a mark of Applicant's that contains "RAPID."

Finally, Applicant has a meritorious defense to the Notice of Opposition. Applicant is defending five oppositions that are consolidated under parent Opposition No. 91201442. As set forth in the Answer filed and served on October 31, 2012, Applicant likewise has a valid basis to defend Opposition No. 91206885 on the merits.

In exercising its discretion whether to enter default judgment, "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." T.B.M.P. § 312.02. Applicant respectfully requests that the Board not enter default judgment in Opposition No. 91206885, accept Applicant's Answer, and consolidate Opposition No. 91206885 with the opposition proceedings consolidated under parent Opposition No. 91201442 so all the oppositions can be decided on the merits.

Respectfully submitted,

Date: November 2, 2012

/Joel D. Leviton/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the following document:

APPLICANT'S RESPONSE IN OPPOSITION TO
OPPOSER'S MOTION FOR DEFAULT AGAINST APPLICANT

has been served this 2nd day of November, 2012 by U.S. mail, postage prepaid, upon counsel for the Opposer:

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/Joel D. Leviton/______________________________
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