

ESTTA Tracking number: **ESTTA815195**

Filing date: **04/18/2017**

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

Proceeding	91230403
Party	Plaintiff Securrency, Inc.
Correspondence Address	KEVIN J KEENER KEENER AND ASSOCIATES PC 161 N CLARK ST STE 4700 CHICAGO, IL 60601 UNITED STATES kevin.keener@keenerlegal.com, rishi.nair@keenerlegal.com
Submission	Motion to Strike Pleading/Affirmative Defense
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Date	04/18/2017
Attachments	Motion to Strike and For Default Securrency 91230403.pdf(127523 bytes)

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

In the matter of:

Trademark Application Serial No. 86/904,230

Filing Date: February 10, 2016

Mark: SECURENCY

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Securrency, Inc.)	
)	
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)	
)	
Opposer,)	
)	
v.)	Opposition No. 91230403
)	
Luigi Boschin)	
)	
)	
Applicant.)	
)	

MOTION TO STRIKE ANSWER AND FOR DEFAULT

Opposer, Securrency, Inc., by and through their attorney of record, hereby moves to strike Applicant’s Answer and for the entry of a default judgment for Applicant’s failure to file a timely answer that fully complies with the Board’s rules.

In support of the Motion, Opposer states as follows:

BRIEF IN SUPPORT OF MOTION

1. Opposer filed its Notice of Opposition on October 3, 2016 and Applicant filed a Motion to Dismiss for failure to state a claim for fraud due to insufficient pleading.

2. On February 28, 2017, the Board dismissed the fraud count but allowed Opposer leave to refile an Amended Notice of Opposition that addressed deficiencies in the pleading (D.E. #8). Applicant was to Answer the Amended Notice of Opposition within 20 days of service.

3. Opposer did not elect to amend its Notice of Opposition to include its prior pleaded fraud claim. Thus, Applicant's Answer was due April 10, 2017.
4. Applicant filed its Answer on April 12, 2017 (D.E. #9), which was after the period established by the Board's February 28 Order. Thus, Applicant's Answer was late and Applicant did not file an accompanying Motion to Enlarge with any explanation for why its Answer was filed late.
5. Further, Applicant's Answer has a Certificate of Service which is clearly erroneous as it lists November 14, 2016. While Opposer does not contest receiving actual service, Opposer does not believe such an error should remain uncorrected because it runs afoul of Trademark Rules.
6. Trademark Rule 2.119(a) states that every submission filed in an *inter partes* proceeding must be served upon the other party or parties, and proof of such service "clearly stating the date and manner in which service was made" must be made before the submission will be considered. *See* TBMP §§ 113.02, 113.03.
7. Under Rule 2.106, 37 C.F.R. § 2.106, "If no answer is filed within the time set, the opposition may be decided as in case of default."
8. In practice, when the Applicant fails to file a timely answer, they are "in default" once the due date for the answer has passed. In such cases, the Applicant must then prove there is "good cause" not to enter judgment by default.
9. Here, Applicant has not provided any rationale nor has it asked the Board to enlarge its time to Answer to accommodate its late filing.

As such, for the foregoing reasons, Opposer requests that the Board strike Applicant's late filed answer and grant Opposer a default judgment for lack of compliance with Board rules.

Dated this 18th day of April 2017

/Rishi Nair/

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Opposer's Motion to Strike and For Default has been served on, BRUNO TARABICHI, counsel for Applicant, the following by emailing said copy on this 18th of April, 2017, at the following addresses:

btarabichi@owenstarabichi.com

By: /Rishi Nair/

Rishi Nair