UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: January 5, 2018

Opposition No. 91234215

Suyen Corporation

v.

Velarde, David, Krepin, David Robert, Swenor, Steven

Geoffrey M. McNutt, Interlocutory Attorney:

This case comes before the Board for consideration of Applicants' September 25, 2017, motion for an extension of its time to answer the amended notice of opposition. In its response, filed on October 11, 2017, Opposer contests the motion for an extension and moves for entry of default judgment. The motion for default judgment is contested.

On August 28, 2017, the Board granted as conceded Opposer's motion for leave to file an amended notice of opposition. Applicants were allowed until September 27, 2017, by which to file their answer to the amended notice of opposition. *See* 10 TTABVUE 1. On September 25, 2017, Applicants filed the motion for an extension of time to answer. The sole reason for the requested extension is that it "will facilitate the parties' resolution of this matter." *See* 11 TTABVUE 3. The motion was signed by only one of the joint applicants. *Id*.

In its response, Opposer argues that the motion should be denied because Applicants have not demonstrated good cause for the requested extension and because the extension was signed by only one of the individual applicants. Opposer maintains that judgment by default thus should be entered against the Applicants, or at least against those Applicants who did not sign the extension request.

As an initial matter, Applicants are advised that the Board does not grant unconsented motions to extend or suspend for purposes of settlement. Moreover, when joint applicants are not represented by counsel, all documents filed with the Board must be signed by each joint applicant.

However, if Applicants' time to answer is not reset, Applicants will be in default. The determination of whether default judgment should be entered against a party lies within the discretion of the Board. In exercising its discretion, the Board is mindful of the fact that it is the policy of the law to decide cases on their merits and therefore the Board is reluctant to grant judgment by default. *See, e.g.*, *Paolo's Assocs. L.P. v. Bodo*, 21 USPQ2d 1899, 1903-04 (Comm'r 1990); *Thrifty Corp. v. Bomax Enters.*, 228 USPQ 62, 63 (TTAB 1985).

In this instance, where the joint applicants are not represented by counsel, the severe sanction of default judgment is not warranted, particularly in the absence of evidence of willful misconduct by Applicants. In fact, although Applicants' answer to the original notice of opposition (filed on May 10, 2017) was signed by only one of the Applicants, Opposer raised the issue for the first time in its brief in opposition to the current extension request (filed on October 11, 2017). Had the issue of the

defect in the original answer been promptly raised, the Board would have addressed it at the time.

Accordingly, Opposer's motion for default judgment is **denied**. The Board is *sua sponte* resetting Applicants' time to answer the amended notice of opposition, and therefore denies Applicants' motion as moot. Applicants' answer to the amended notice of opposition is due by **February 28, 2018**.

Applicants are advised, however, that if they elect to proceed without an attorney, then all joint applicants must sign any documents filed with the Board, regardless of whatever logistical difficulties that may involve. *See* TBMP § 106.02 (June 2017). An individual who is not an attorney or otherwise entitled to practice before the Office in trademark cases may not represent another party in a proceeding before the Board. *See* TBMP § 114.06. Applicants may wish to consider retaining an attorney. However, in the event that they continue to represent themselves, they are advised that going forward strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, will be required of them. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx.865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008). Information for *pro se* litigants is provided at the end of this order.

Disclosure, discovery, and trial dates are reset on the following schedule.

Time to Answer	**2/28/2018**
Deadline for Discovery Conference	**3/30/2018**
Discovery Opens	**3/30/2018**
Initial Disclosures Due	**4/29/2018**

Expert Disclosures Due	**8/27/2018**
Discovery Closes	**9/26/2018**
Plaintiff's Pretrial Disclosures	**11/10/2018**
Plaintiff's 30-day Trial Period Ends	**12/25/2018**
Defendants' Pretrial Disclosures	**1/9/2019**
Defendants' 30-day Trial Period Ends	**2/23/2019**
Plaintiff's Rebuttal Disclosures	**3/10/2019**
Plaintiff's 15-day Rebuttal Period Ends	**4/9/2019**

The Federal Rules of Evidence generally apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

Information for Pro Se Litigants

The Board notes that Applicants currently represent themselves in this proceeding. While Patent and Trademark Rule 11.14 permits persons to represent themselves, it is strongly advisable for persons who are not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar

with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. *See* TBMP § 114.02.

Trademark Rules 2.119(a) and (b) require that except for the notice of opposition and petition for cancellation, every submission filed in a proceeding before the Board ***must*** be served upon the other party or parties, and proper proof of such service must be made before the submission will be considered by the Board. Accordingly, all submissions filed in this proceeding ***must*** be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as *prima facie* proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

> I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).
>
> Signature_____
> Date_____

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with

Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at http://estta.uspto.gov/.

It is recommended that any *pro se* party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab, the TTABVUE system for viewing the record for all Board proceedings, available at http://ttabvue.uspto.gov/ttabvue/, and the Standard Protective Order, available at https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0.

As noted above, strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel.