

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: August 8, 2017

Opposition No. 91234433

Andersen Corporation

v.

All Weather Architectural Aluminum

Victoria von Vistauxx, Paralegal Specialist:

On June 27, 2017, the Board issued a notice of default to Applicant for its failure to file an answer to the notice of opposition. On June 29, 2017, Applicant filed its response to the notice of default and a request to file late answer. The said request is uncontested. Trademark Rule 2.127 (a).

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55 (c), which reads in pertinent part: “for good cause shown the court may set aside an entry of default.” As a general rule, a good cause to set aside a defendant’s default will be found where the defendant’s delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where the defendant has a meritorious defense. *See Fred Hyman Beverly Hills, Inc. v. Jacques Barnier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Moreover, because it is the policy of the Board to decide cases on their merits, the Board is reluctant to enter default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in

favor of the defendant. *See Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

In its response to the notice of default, Applicant states that prior to the institution of this proceeding and thereafter the parties have been in a settlement negotiations in an attempt to resolve their differences. Applicant further states that the parties have exchanged draft agreement and "I believe and still believe the parties will reach a resolution of the dispute by a written settlement agreement. As of the date for a response to the opposition action, however, the agreement had not been signed. I inadvertently allowed the date to respond to pass without filing a response to the court. I did so without any intent to cause delay."

The Board finds that Applicant's failure to timely answer the notice of opposition was not willful or in bad faith, Opposer will not be prejudiced by the Applicant's default, as the request to allow late filed answer is conceded. Accordingly, in view of the foregoing, the notice of default is discharged and Applicant request to allow late file answer is **GRANTED** as conceded. Applicant's answer to the notice of opposition filed concurrent with its response to the notice of default is accepted as its operative pleading in this proceeding.

In view thereof, the proceedings are resumed and trial dates are reset as follows:

Deadline for Discovery Conference	9/7/2017
Discovery Opens	9/7/2017
Initial Disclosures Due	10/7/2017
Expert Disclosures Due	2/4/2018
Discovery Closes	3/6/2018
Plaintiff's Pretrial Disclosures Due	4/20/2018

Plaintiff's 30-day Trial Period Ends	6/4/2018
Defendant's Pretrial Disclosures Due	6/19/2018
Defendant's 30-day Trial Period Ends	8/3/2018
Plaintiff's Rebuttal Disclosures Due	8/18/2018
Plaintiff's 15-day Rebuttal Period Ends	9/17/2018
Plaintiff's Opening Brief Due	11/16/2018
Defendant's Brief Due	12/16/2018
Plaintiff's Reply Brief Due	12/31/2018
Request for Oral Hearing (optional) Due	2/19/2019

Generally, the Federal Rules of Evidence 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).