

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
General Email: TTABInfo@uspto.gov

March 5, 2019

Opposition No. 91245034

MAVALA S.A.

v.

Weshare IP, LLC

Victoria von Vistauxx, Paralegal Specialist:

On January 18, 2019, the Board issued a notice of default to Applicant for its failure to file an answer to the notice of opposition.¹ On January 31, 2019, Applicant filed its response to the notice of default and requested that the Board sets aside the notice of default.² The request to set aside the notice of default 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*

¹ 4 TTABVUE.

² 5 TTABVUE.

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's counsel states that Opposer and Applicant were involved in ongoing settlement discussions in other related opposition proceedings³ pending before the Board, and that due to an inadvertent oversight the counsel who has been handling the opposition was not "included on the docket for the present case."

In view of the foregoing, the Board finds that Applicant's failure to timely answer the notice of opposition was not willful or in bad faith, Petitioner will not be prejudiced by the Respondent's default, as the request to set aside the notice of default is conceded. Accordingly, Applicant's request to set aside the notice of default is **GRANTED** as conceded. Applicant's answer to the notice of opposition filed in conjunction with its request to set aside the notice of default is accepted and it is now its operative pleading in this proceeding.

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

Deadline for Discovery Conference	4/4/2019
Discovery Opens	4/4/2019
Initial Disclosures Due	5/4/2019
Expert Disclosures Due	9/1/2019
Discovery Closes	10/1/2019

³ Opposition Nos. 91232974 (Parent Case) and 91233848.

Plaintiff's Pretrial Disclosures Due	11/15/2019
Plaintiff's 30-day Trial Period Ends	12/30/2019
Defendant's Pretrial Disclosures Due	1/14/2020
Defendant's 30-day Trial Period Ends	2/28/2020
Plaintiff's Rebuttal Disclosures Due	3/14/2020
Plaintiff's 15-day Rebuttal Period Ends	4/13/2020
Plaintiff's Opening Brief Due	6/12/2020
Defendant's Brief Due	7/12/2020
Plaintiff's Reply Brief Due	7/27/2020
Request for Oral Hearing (optional) Due	8/6/2020

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, matters in evidence, the manner and timing of taking testimony, 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).