

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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EJW/tdc

May 19, 2020

Opposition No. 91249091

Intuitive Surgical Operations, Inc.

v.

*Board of Supervisors of Louisiana State
University and Agricultural and Mechanical
College*

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

The Board notes Applicant's motion (filed January 31, 2020) to set aside the notice of default issued on January 18, 2020, 9 TTABVUE, and Applicant's answer to Opposer's amended pleading. See 10 TTABVUE, 11 TTABVUE. Opposer has not filed a response thereto.

As a general rule, 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 defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, 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).

Applicant has explained that its failure to timely file an answer to Opposer's amended notice of opposition was due to a calendaring oversight and that the parties have been engaged in settlement negotiations. 10 TTABVue 3. In view thereof, the Board finds that the delay in filing its answer was neither willful nor in bad faith. Additionally, by submitting an answer that denies the essential allegations of Opposer's amended notice of opposition, Applicant has adequately shown that it has a meritorious defense to the opposition. *See Fred Hayman Beverly Hills, Inc.*, 21 USPQ2d at 1557. Further, Opposer has not responded to the motion and, therefore, has not shown substantial prejudice resulting from Applicant's delay in submitting its answer, and the Board finds none.

In view of the foregoing, the notice of default is hereby **SET ASIDE**. Applicant's amended answer is noted and accepted as its operative pleading.

Proceedings are resumed and trial dates are reset as follows:

Initial Disclosures Due	6/19/2020
Expert Disclosures Due	9/20/2020
Discovery Closes	10/20/2020
Plaintiff's Pretrial Disclosures Due	12/4/2020
Plaintiff's 30-day Trial Period Ends	1/18/2021
Defendant's Pretrial Disclosures Due	2/2/2021
Defendant's 30-day Trial Period Ends	3/19/2021
Plaintiff's Rebuttal Disclosures Due	4/3/2021

Plaintiff's 15-day Rebuttal Period Ends	5/3/2021
Plaintiff's Opening Brief Due	7/2/2021
Defendant's Brief Due	8/1/2021
Plaintiff's Reply Brief Due	8/16/2021
Request for Oral Hearing (optional) Due	8/26/2021

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).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered

– use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.¹ The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.

¹ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.