

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

Baxley

April 22, 2024

Opposition No. 91289331

NIHC, Inc.

v.

James Lindsay

Andrew P. Baxley, Interlocutory Attorney:

On March 13, 2024, the Board issued a notice of default under Fed. R. Civ. P. 55(a), to which Applicant, on April 11, 2024, responded. 4 and 5 TTABVUE. In an April 15, 2024 order, the Board determined that there was no indication of prejudice to Opposer resulting from Applicant's failure to timely answer and that Applicant had set forth a meritorious defense in his answer. However, because Applicant did not explain why he filed his answer late, the Board could not determine whether was not the result of Applicant's willful conduct and continued the notice of default. 6 TTABVUE.

In response, Applicant stated that his attorney made a "calendar error." 7 TTABVUE 3. In view thereof, the Board finds that Applicant's failure to timely file his answer was inadvertent. The notice of default is set aside.

Proceedings are resumed. Dates are reset as follows.

Deadline for Discovery Conference 5/22/2024

Discovery Opens	5/22/2024
Initial Disclosures Due	6/21/2024
Expert Disclosures Due	10/19/2024
Discovery Closes	11/18/2024
Plaintiff's Pretrial Disclosures Due	1/2/2025
Plaintiff's 30-day Trial Period Ends	2/16/2025
Defendant's Pretrial Disclosures Due	3/3/2025
Defendant's 30-day Trial Period Ends	4/17/2025
Plaintiff's Rebuttal Disclosures Due	5/2/2025
Plaintiff's 15-day Rebuttal Period Ends	6/1/2025
Plaintiff's Opening Brief Due	7/31/2025
Defendant's Brief Due	8/30/2025
Plaintiff's Reply Brief Due	9/14/2025
Request for Oral Hearing (optional) Due	9/24/2025

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). Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing. *See* TBMP § 801.03. 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 may decline to 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.