

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

BUO

Mailed: December 8, 2015

Cancellation No. 92053315

American University

v.

*The American University for Science and
Technology*

Benjamin U. Okeke, Interlocutory Attorney:

Now before the Board is Respondent's October 6, 2015 response to the Board's notice of default, issued that same day. The notice of default issued due to Respondent's failure to timely file an answer to Petitioner's amended petition to cancel. Petitioner filed, on October 21, 2015, a submission requesting that default judgment be entered against Respondent, alleging that Respondent failed to show cause why default judgment should not be entered.

Rather than incur further delay to the proceeding, the Board, in its discretion, suggested that the issue should be resolved by telephone conference as permitted by TBMP § 502.06 (2015).¹

¹ Patent and Trademark Rule 1.2, 37 C.F.R. § 1.2, which requires all business with the USPTO be transacted in writing, is waived to the extent that Board attorneys or judges may accept from parties, or direct parties to present, oral recitations of procedural facts and presentations of argument. In addition, Trademark Rule 2.119(b), 37 C.F.R. § 2.119(b), which specifies the acceptable

The parties agreed to hold a telephone conference on Tuesday, November 17, 2015. Participating in the conference was Petitioner's counsel, Alisa C. Simmons, Respondent's President and CEO Dr. Wahab, appearing *pro se*, and Board interlocutory attorney, Benjamin U. Okeke.

The Board has considered the parties' submissions and presumes the parties' familiarity with the arguments made therein. The parties' arguments will not be further summarized herein except as necessary to explain the Board's decision.

During the telephone conference, the Board made the following findings and determinations:

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, 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).

On August 31, 2015, the Board granted Petitioner's motion to amend its petition to cancel, and accepted the amended petition as Petitioner's operative pleading in this matter, except that paragraph 12 of the amended petition was stricken. Respondent was directed to "file an answer to the amended petition, as stricken," by September 21, 2015. 49 TTABVUE 5. Respondent was informed that it "need not

methods for forwarding service copies of papers filed with the Board, is waived to the extent necessary to facilitate telephone conferencing.

answer Paragraph 12 which ha[d] been stricken.” *Id.* at n.1. Finally, Respondent was cautioned that failure to file an answer to the amended petition to cancel in the time allowed could result in default. *Id.* at 5.

Despite clear direction from the Board, Respondent argued that he had not been served with an amended petition to cancel from Petitioner and therefore, was under no duty to file an answer. During the telephone conference, the Board ascertained that although there was no mention in the Board’s prior order of any requirement that Petitioner serve Respondent with a “clean” copy of the amended petition to cancel removing the stricken paragraph 12, Respondent was operating under the impression that Petitioner would first serve such a “clean” copy before its obligation to file an answer arose.

The Board finds that Petitioner is not prejudiced by Respondent’s approximate eight-week delay, and has not alleged any cognizable prejudice in its response to Opposer’s motion. Mere delay does not constitute the type of prejudice envisioned by this rule, and Petitioner can hardly complain that it would have to now proceed with the cancellation proceeding—which Petitioner would have had to do, and should have been prepared to do nonetheless, had Respondent not failed to timely file its answer.

Additionally, Respondent expressed an intention to assert a meritorious defense to the amended petition to cancel. Moreover, while the Board is concerned about Respondent’s ability to effectively litigate this matter – an apparent misunderstanding of the Board’s rules and the nature of its proceedings, there is

nothing in the record which indicates that the reason for Respondent's delay was in bad faith.² In view of the foregoing, Petitioner's motion for default judgment is **DENIED** without prejudice. Respondent is allowed until December 10, 2015,³ to file an appropriate answer to the amended petition to cancel.

Accordingly, inasmuch as the record indicates that Respondent seeks to set forth a meritorious defense to the allegations, that any prejudice to Petitioner is minimal, and that Respondent has not acted in bad faith, for the purpose of delay or with a lack of diligence, the Board's October 6, 2015, notice of default is set aside.

Schedule

The proceeding is **RESUMED**. The remaining disclosure and trial dates are reset as follows:

Plaintiff's Pretrial Disclosures	12/17/2015
Plaintiff's 30-day Trial Period Ends	1/31/2016
Defendant's Pretrial Disclosures	2/15/2016
Defendant's 30-day Trial Period Ends	3/31/2016
Plaintiff's Rebuttal Disclosures	4/15/2016
Plaintiff's 15-day Rebuttal Period Ends	5/15/2016

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

² Respondent is expected to fully comply with the directives and the deadlines set by this order; as indicated below, failure to do so could result in the entry of judgment against Respondent.

³ Unfortunately, due to a technical error, this order was not entered into the Board's systems in a timely manner; therefore, this date does not reflect the date given during the telephone conference. The Board regrets any inconvenience this may cause the parties.