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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92064417
Party	Plaintiff SelectNY New York LP
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Submission	Motion for Default Judgment
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Date	10/25/2016
Attachments	Motion for Default Judgment.pdf(23509 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No.: 3192241
For the Mark: "THE END"
Date of Registration: January 2, 2007
Cancellation No.: 92064417

SelectNY New York LP,
Petitioner,

v.

QMAX Systems, LLC,
Registrant.

TRADEMARK TRIAL & APPEAL BOARD
Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MOTION FOR DEFAULT JUDGMENT

TO REGISTRANT: QMAX SYSTEMS, LLC

PLEASE TAKE NOTICE that the Petitioner SelectNY New York LP by this document and pursuant to sections 312.01 and 508 of the Trademark Trial and Appeal Board Manual of Procedure, as well as 37 CFR §§2.114(a) and Rule 55 of the Federal Rules of Civil Procedure, hereby moves the Trademark Trial and Appeal Board to enter default judgment of cancellation against Registrant QMAX Systems, LLC for failure to answer the Petition for Cancellation herein within the time allowed.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a Petition for Cancellation proceeding instituted by Petitioner SelectNY New York LP with respect to Reg. No. 3192241 of the mark “THE END” registered by Registrant on January 2, 2007. Notice of filing of the Petition of Cancellation was mailed by the TTAB on September 14, 2016. As of the date of this motion, no answer has been filed by the Registrant, nor has an Answer or other document been received from Registrant by Petitioner.

II. RELEVANT STATUTORY AUTHORITY

A. The Time for filing of an answer to petitioner’s petition for cancellation is 40 days from date of mailing of notification by TTAB. TBMP 310.03(a) provides as follows:

As provided by 37 CFR 2.105(a) and 2.113(a), in part, the Board’s notification of the filing of an opposition or petition to cancel “shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed.”...It is the general practice of the Board to allow the defendant in an opposition or cancellation proceeding 40 days from the mailing date of the notification in which to file its answer.

B. If the registrant fails to answer the petition for cancellation within the time provided, default may be entered either (1) following service of a notice of default by the Board to which the registrant fails to respond within twenty (20) days, or (2) failing issuance of such notice by the Board, following the motion of the Petitioner. TBMP 312.01 reads as follows:

37 CFR §2.114(a). If no answer is filed within the time set, the petition may be decided as in case of default.

....

If a defendant fails to file an answer to a complaint during the time allowed therefor, the Board may issue a notice of default. The notice states that no answer has been filed; enters notice of default under FRCP 55(a); and allows the defendant 30 days from the mailing date of the notice in which to show cause why default judgment should not be entered against it. If the defendant fails to file a response to the notice, or files a response which does not show good cause, default judgment may be entered against it (citations omitted).

....

*The issue of whether default judgment should be entered against a defendant, for failure to file a timely answer to the complaint, may also be raised by means other than the Board's issuance of a notice of default. For example, the **plaintiff, realizing that the defendant is in default, may file a motion for default judgment (in which case the motion may serve as a substitute for the Board's issuance of a notice of default)**; or the defendant itself, realizing that it is in default, may file a motion asking that its late-filed answer be accepted. However the issue is raised, the standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is the FRCP 55(c) standard, that is, whether the defendant has shown good cause why default judgment should not be entered against it. (citations omitted.)(emphasis added)*

TBMP §312.01

C. Registrant has 20 days from the date of service by mail of Petitioner's motion for default judgment to file his brief in response to Petitioner's motion. TBMP 502.02(b). If Registrant fails to timely file a brief, Petitioner's motion is deemed conceded. TBMP 502.04

D. If the Registrant fails to timely file a brief in reply to Petitioner's motion for default judgment, default judgment may be entered against Registrant. TBMP 508 in relevant part provides as follows:

*If a plaintiff files a motion for default judgment for failure of the defendant to file a timely answer to the complaint, and the defendant fails to file a brief in opposition to the plaintiff's motion, default judgment may be entered against the defendant.
(citations omitted)*

III. ARGUMENT

The notice of Petitioner's Petition for Cancellation was mailed by the TTAB on September 14, 2016. The forty-day period within which the Registrant were to answer the petition under the manual of procedure expired on October 24, 2016.

Petitioner has received no copy of a notice of default issued by the TTAB; if, however, such notice has been served, Registrant has 20 days from service of such notice to file a response. If such notice has been served, and Registrant has failed to respond, the TTAB is urged to enter default judgment in Petitioner's favor forthwith.

No notice of default having been received by Petitioner from the Board, Petitioner makes the instant motion for entry of default judgment against Registrant. Assuming the TTAB has not already entered default judgment against Registrant due to Registrant's failure to respond to any TTAB notice of default, Registrant has 20 days from the date of service by Petitioner to file and serve his response to this motion for default judgment. If Registrant fails to file such a response within the time specified, the motion should be deemed conceded and should be granted forthwith (37 CFR §2.127(a) (the Board may treat the motion as conceded).

IV. CONCLUSION

For the foregoing reasons, it is submitted that good grounds exist for granting the motion for default judgment, and such action is requested. If Registrant fails to file his response within 20 days of the date of service of this motion, this motion should be granted forthwith and Registrant's Registration should be cancelled.

If the Board has already issued a notice of default and the 20-day period for reply has expired, then Petitioner requests the alternative relief that the Board grant immediate default judgment against the Registrant and that his Registration herein be cancelled.

Dated: October 25, 2016

Respectfully submitted,

/s/ Stephen B. Mosier

Stephen B. Mosier
Attorney for Petitioner

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being transmitted with the United States Patent and Trademark Office (USPTO) Trademark Trial and Appeal Board (TTAB) electronic filing system (ESTTA) to the TTAB on Tuesday, October 25, 2016 at Tucson, Arizona.

By: /s/ Stephen B. Mosier

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SBM:tdl

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CERTIFICATE OF SERVICE

I, Stephen B. Mosier, counsel for Petitioner, hereby certify that copies of the foregoing Motion for Default Judgment were served upon the Registrant and upon Registrant's attorney of record, via first class mail , postage prepaid on Tuesday, October 25, 2016, at the following addresses:

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