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Filing date: **03/31/2022**

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

Proceeding no.	92078812
Party	Defendant nMetric, LLC
Correspondence address	NMETRIC LLC 3525 TURTLE CREEK BLVD, 19B DALLAS, TX 75219 UNITED STATES No email provided No phone number provided
Submission	Motion for Relief from entry of Default Judgment
Filer's name	Joseph A. Andelin
Filer's email	jandelin@fishiplaw.com
Signature	/Joseph A. Andelin/
Date	03/31/2022
Attachments	Motion to Set Aside.pdf(43681 bytes) Declaration C. Koski.pdf(36989 bytes)

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

In the Matter of:
Registration No. 4384488

Applied Materials, Inc.,

Plaintiff/Petitioner,

v.

nMetric, LLC.,

Defendant/Registrant.

Cancellation No. 92078812
Registration No. 4384488

RESPONSE TO NOTICE OF DEFAULT

AND MOTION TO SET ASIDE DEFAULT JUDGMENT

On January 10, 2022, Petitioner, Applied Materials, Inc., filed a petition to cancel US Registration No. 4384488 owned by Registrant, nMetric, LLC.

On January 12, 2022 the Trademark Trial and Appeal Board (TTAB) instituted trial and set a schedule with the Answer due February 21, 2022.

The Trademark Status and Document Retrieval ("TSDR") System shows nMetric, LLC, 3525 Turtle Creek Blvd, 19B, Dallas, TX 75219 for Current Owner Information and Attorney/Correspondence Information:

▼ Current Owner(s) Information	
Owner Name:	nMetric, LLC
Owner Address:	3525 Turtle Creek Blvd, 19B Dallas, TEXAS UNITED STATES 75219
Legal Entity Type:	LIMITED LIABILITY COMPANY
State or Country Where Organized:	DELAWARE
▼ Attorney/Correspondence Information	
Attorney of Record - None	
Correspondent	
Correspondent Name/Address:	NMETRIC LLC 3525 TURTLE CREEK BLVD, 19B DALLAS, TEXAS UNITED STATES 75219
Phone:	949-943-8300
Fax:	949-943-8358
Domestic Representative - Not Found	

On August 12, 2019, Registrant filed a change of address to update the primary correspondence from Registrant's company address at 3525 Turtle Creek Blvd to Registrant's attorney and law firm information, namely, Robert D. Fish, Fish IP Law, LLP, 2603 Main Street, Suite 1000, Irvine, CA 92614, trademarks@fishiplaw.com; rfish@fishiplaw.com; tlightman@fishiplaw.com. Declaration Koski, par. 5.

The TSDR System does not appear to have been updated with Registrant's attorney contact information and still list the Registrant's company information. Declaration Koski, par.

5. As a result, the Petition for Cancellation and the Notice of Default were not emailed to Registrant's attorney and were not mailed to the law firm address.

The company address at 3525 Turtle Creek Blvd is also the home address of Christine Koski, CEO of nMetric. While Ms. Koski does have a process for receiving and processing nMetric mail apart from personal mail, business mail delivery at this address has not been reliable on prior occasions. Declaration Koski, pars. 1-2.

Ms. Koski does not have any record showing delivery of the Petition to Cancel at her home address at 3525 Turtle Creek Blvd. Declaration Koski, par. 2.

On or around March 9, 2022, Ms. Koski received the Notice of Default, which she promptly forwarded to her attorney of record. Declaration Koski, par. 3.

nMetric did not intend to miss its deadline of February 21, 2022 to Answer the Petition to Cancel. Declaration Koski, par. 3.

nMetric continues to use its SMARTER SCHEDULING registration as shown in the specimens of use submitted on August 12, 2019 and the mark has substantial recognition among consumers. Declaration Koski, par. 4.

nMetric believes there is good cause for additional time to Answer the Petition because nMetric's failure to meet the original Answer deadline was due to an inadvertent clerical error and an out-dated email address in the TSDR System. Declaration Koski, par. 3.

WHEREFORE, nMetric requests that the Notice of Default Judgment be set aside and Registrant be given 30 additional days to Answer the Petition.

Respectfully submitted,

Dated: March 31, 2022

By: /Joseph A. Andelin/

Joseph A. Andelin, Esq.
Fish IP Law, LLP
2603 Main Street
Irvine, CA 92614
(949) 943-8300
rfish@fishiplaw.com

Attorney for Registrant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing RESPONSE TO NOTICE OF DEFAULT and MOTION TO SET ASIDE DEFAULT JUDGMENT have been served on March 31, 2022 via e-mail to:

Charles P. Guarino
Moser Taboada
1030 Broad Street
Suite 203
Shrewsbury, NJ 07702

cguarino@mtiplaw.com
docket@mtiplaw.com
MTIP Ref: No: 81503293US02

/Joseph A. Andelin/

Joseph A. Andelin, Esq.
Fish IP Law, LLP

Attorney for Registrant

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5 Irvine, California 92614
6 Telephone:(949) 943-8300
7 Facsimile: (949) 943-8358

8 *Attorneys for Registrant,*
9 nMetric, LLC

10 **UNITED STATES PATENT AND TRADEMARK OFFICE**
11 **TRADEMARK TRIAL AND APPEAL BOARD**

12 Applied Materials, Inc, a corporation,

13 Petitioner,

14 v.

15 nMetric, LLC, a limited liability company,

16 Registrant.

Cancellation No. 92078812

For Registration No. 4384488
Mark: SMARTER SCHEDULING

Assigned to:
Interlocutory Attorney: Elizabeth Winter
Paralegal: Lalita R. Webb

17 **DECLARATION OF CHRISTINE**
18 **KOSKI IN SUPPORT OF**
19 **REGISTRANT'S MOTION TO SET**
20 **ASIDE DEFAULT JUDGMENT**

Petition to Cancel filed: January 10, 2022
Oral Hearing (optional) Date: July 26, 2023

1 I, Christine L. Koski, declare:

2 1. I am Chief Executive Officer and owner of nMetric, LLC. I receive and process
3 mail for nMetric at my home address at 3525 Turtle Creek Blvd, 19B, Dallas, TX 75219.

4 2. I have no record of ever receiving service or notice of the petition to cancel filed
5 on January 10, 2022 (Cancellation No. 92078812) against nMetric's mark SMARTER
6 SCHEDULLING (Registration No. 4384488). We have had issues with receiving business mail
7 at my home address on past occasions.

8 3. On or about March 9, 2022, I received notice of default judgment for this matter
9 at my home address of 3525 Turtle Creek Blvd. I am now requesting that the notice of default
10 judgment be set aside because I did not receive notice of the petition to cancel and nMetric
11 continues to use the mark.

12 4. On August 12, 2019 Registrant submitted a section 8 & 15 declaration with
13 specimens showing product labels bearing the mark SMARTER SCHEDULING for computer
14 programs. Registrant continues to use the registration on similar labels today.

15 5. On August 12, 2019 Registrant filed a change of correspondence address to list
16 Registrant's attorney, Robert D. Fish, and his firm Fish IP Law, LLP, as the new correspondence
17 address and contact person. However, Trademark Status & Document Retrieval has not been
18 updated and still shows nMetric and my home address in the Attorney/Correspondence
19 Information.

20 6. I hereby submit this declaration in support of nMetric's Motion to Set Aside the
21 Default Judgment. The matters stated herein are based upon my personal knowledge. If called
22 upon, I could and would competently testify thereto.

23
24 I declare under penalty of perjury under the laws of the United States of America, the
25 foregoing is true and correct. Executed on March 30, 2022 at Dallas, Texas.

26
27 Dated: March 30, 2022


Christine L. Koski