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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN C. PHILIPPS, et al.,
Plaintiffs,
v.
MICHELLE K. LEE, et al.,
Defendants.

Case No. 17-cv-1021-PJH

**ORDER DENYING MOTION FOR
DEFAULT JUDGMENT**

The court is in receipt of a motion for default judgment against defendant Michelle K. Lee, Director of the United States Patent and Trademark Office (“USPTO”). The motion is DENIED because plaintiff did not first seek entry of default by the clerk. To the extent that the motion can be construed as a request for entry of default, it is DENIED because plaintiff has not established that he properly served defendant with the summons and complaint.

Plaintiff filed the complaint in this action on February 27, 2017. On May 12, 2017, plaintiff filed the present motion, asserting that Director Lee had failed to plead or otherwise defend as required by Federal Rule of Civil Procedure 55(a)(1)(d). He attached a proof of service, in which a Process Server stated that he had served the complaint by certified U.S. Mail on Director Lee on March 2, 2017. He does not say whether he also served the summons. He attached a copy of the tracking information

1 from the U.S. Postal Service, showing delivery on March 2, 2017.

2 In federal court, except as to defendants outside the country, service must be
3 made within 90 days after filing the complaint, or the case will be dismissed unless “good
4 cause” is shown for the delay. Fed. R. Civ. P. 4(m).

5 Service of process on the United States requires the following: (1) Personal
6 delivery of the summons and complaint to the U.S. Attorney for the district where the
7 action is brought (or to an Assistant U.S. Attorney or clerical employee designated by the
8 U.S. Attorney in a writing filed with the court clerk); or delivery of copies of the summons
9 and complaint by registered or certified mail addressed to the civil process clerk at the
10 U.S. Attorney’s office; and (2) delivery of the summons and complaint by registered or
11 certified mail to the Attorney General of the United States in Washington, D.C. See Fed.
12 R. Civ. P. 4(i)(1). Service on both the U.S. Attorney and the Attorney General is required.

13 Where the defendant is a federal agency or corporation of the United States, or
14 federal officer served in his or her official capacity, service may be effected by serving the
15 U.S. in accordance with the above procedures; and in addition, sending copies of the
16 summons and complaint by registered or certified mail to the officer, agency, or
17 corporation. Fed. R. Civ. P. 4(i)(2). Where federal officers are sued in their individual
18 capacity, the summons and complaint must be personally served. See Fed. R. Civ. P.
19 4(e)(1); Cal. Civ. P. Code § 415.10, et seq.

20 A defendant generally has 21 days after service of the summons and complaint
21 within which to answer the complaint or file a Rule 12 motion. Fed. R. Civ. P. 12(a)(1).
22 Where the U.S. Government or an officer or agency is a defendant, the time to respond is
23 60 days after service on the U.S. Attorney. Fed. R. Civ. P. 12(a)(2). Where a U.S. officer
24 or employee is sued in an individual capacity, the time to respond is 60 days after service
25 on the U.S. Attorney or on the officer or employee, whichever is later. Fed. R. Civ. P.
26 12(a)(3).

27 Finally, in the event that defendants do not timely respond after having been
28 properly served, the plaintiff may seek entry of default. Fed. R. Civ. P. 55(a). Only after

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default has been entered by the clerk may plaintiff apply for judgment based on the default. See Fed. R. Civ. P. 55(b).

In addition to the above, the court recommends that plaintiff review the materials available on the court's website, under the link "If You Don't Have a Lawyer."

IT IS SO ORDERED.

Dated: May 18, 2017



PHYLLIS J. HAMILTON
United States District Judge