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

Proceeding	91214528
Party	Plaintiff Shirley's World, L.P.
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Date	06/19/2014
Attachments	Consented Motion To Set Aside Default & Reopen Time to Respond to Opposition (Opposition Proceeding).pdf(153202 bytes)

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

In the Matter of Application Serial No. 85723707

Shirley's World, L.P.,

Opposition No.
91214528

Opposer,

- against -

Earl C.J. Prater,
Applicant

**CONSENTED MOTION TO SET ASIDE DEFAULT,
REOPEN TIME TO RESPOND TO ANSWER,
AND EXTEND ALL DEADLINES BY 45 DAYS**

I. The Parties' Request.

Pursuant TBMP §501.01 and §509.01, Opposer, Shirley's World, L.P., on the one hand, and applicant, Earl C.J. Prater, on the other hand (collectively, the "Parties"), have agreed to set aside the default entered by the TTAB on or about June 16, 2014, reopen the time for Applicant to answer the notice of opposition, and extend all deadlines prescribed by the Board in this proceeding by forty five (45) days.¹ Accordingly, the Parties request an order that the default is set aside, and the dates for this proceeding be reset, as follows:

Answer Due:	7/10/2014
Deadline for Discovery Conference	8/11/2014
Discovery Opens	8/11/2014
Initial Disclosures Due:	9/9/2014
Expert Disclosures Due:	1/9/2015

¹ Pursuant to TBMP §502.02 and CFR §2.121(d), Applicant has given his consent to this Motion.

Discovery Closes:	2/6/2015
Plaintiff's Pretrial Disclosures:	4/2/2015
Plaintiff's 30 Day Trial Period Ends:	5/5/2015
Defendant's Pretrial Disclosures:	5/21/2015
Defendant's 30 Day Trial Period Ends:	7/6/2015
Plaintiff's Rebuttal Disclosures:	7/20/2015
Plaintiff's 15 Day Rebuttal Period Ends:	8/19/2015

This request is being made so as to provide the Parties with additional time to attempt to negotiate a settlement of the contested issues raised in this proceeding without the need to proceed before the Board.

II. Good Cause Exists To Grant This Consented Motion.

This Motion is made prior to the expiration of all deadlines, with the exception of the May 27, 2014 deadline for Applicant to answer the notice of opposition.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. See Fed. Rule Civ. Proc. 6(b)(1). Ordinarily, the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. American Vitamin Products, Inc. v. DowBrands, Inc., 22 USPQ 2d 1312, 1314 (TTAB 1992). Moreover, as made applicable by Trademark Rule 2.116(a), the relevant provisions of Fed. Rule Civ. Proc. 6(b) permit the Board in its discretion to reopen a past deadline where the failure to act is shown to be due to excusable neglect. American Vitamin Products, 22 USPQ 2d at 1313.

Here, good cause exists to grant the stipulated extension as to all deadlines, including the past deadline for Applicant to answer the notice of opposition. The Parties have been earnestly

engaged in settlement negotiations since April, 2014, and in fact, previously requested and received an extension of all deadlines so as to allow sufficient time to explore the possibility of settlement. Since that time, the Parties engaged in good faith negotiations regarding a global settlement of all claims; the expiration of the deadline for Applicant to answer the notice of opposition was inadvertent.

Additional time is needed to consider the potential for settlement without simultaneously engaging in the adversarial proceeding. There is no basis upon which to allege bad faith, negligence, or tactics solely designed to delay in connection with this joint request for an extension.

III. Conclusion.

The Parties respectfully request that the Board grant their consented motion to set aside the default, reopen the time for Applicant to answer the notice of opposition, and extend all currently existing deadlines by forty five (45) days, as set forth above, so that they may take the time needed to continue to negotiate a settlement of this matter.

Dated: June 17, 2014

EISNER JAFFE
GORRY CHAPMAN & ROSS

By: /s/ Jackie M. Joseph
Jackie M. Joseph
Attorneys for Opposer, Shirley's World,
L.P.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CONSENTED MOTION TO SET ASIDE DEFAULT, REOPEN TIME TO RESPOND TO ANSWER, AND EXTEND ALL DEADLINES BY 45 DAYS** was served upon Respondent in this action addressed as follows:

Mr. Earl C.J. Prater
Respondent, acting on his own behalf
P.O. Box 51542
Sparks, NV 89435-1542

BY MAIL. I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. Postal Service on the same day this declaration was executed, with postage thereon fully prepaid at 9601 Wilshire Boulevard, Suite 700, Beverly Hills, California 90210, in the ordinary course of business.

Executed on June 19, 2014, at Beverly Hills, California.

EISNER JAFFE
GORRY CHAPMAN & ROSS

By: /s/ Jackie M. Joseph
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Shirley's World, L.P.