

ESTTA Tracking number: **ESTTA776969**

Filing date: **10/17/2016**

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

Proceeding	91219513
Party	Defendant Dr. Shirley Ross
Correspondence Address	ANTHONY M VERNA III VERNA LAW 170 KINGS FERRY ROAD, FL 2 MONTROSE, NY 10548 UNITED STATES anthony@vernalaw.com
Submission	Other Motions/Papers
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Attachments	motion for dismissal Shirley Ross.pdf(529666 bytes)

Plaintiff has not taken testimony nor served any disclosures on the Defendant or on the TTAB. See <http://ttabvue.uspto.gov/ttabvue/v?pno=91219513&pty=OPP&eno=19> showing that the last filing was Defendant's filing of a change in correspondence address.

“Trademark Rule 2.132(a) provides that a motion for dismissal for failure to prosecute may be made by a defendant if a plaintiff's testimony period has expired and that party has neither taken any testimony nor offered any evidence in support of its case. In response, the plaintiff must show cause why judgment should not be rendered against it and in the absence of a showing of good and sufficient cause, judgment may be rendered against the plaintiff. See 37 CFR Section 2.132(a). The 'good and sufficient cause' standard, in the context of this rule, is equivalent to the 'excusable neglect' standard which would have to be met by any motion under FRCP 6(b) to reopen the plaintiff's testimony period. See *Grobet File Co. of America, Inc. v. Associated Distributors Inc.*, 12 USPQ2d 1649 (TTAB 1989); and *Fort Howard Paper Co. v. Kimberly-Clark Corp.*, 216 USPQ 617 (TTAB 1982). See also, TBMP Section 535.02.”¹

When the Plaintiff has presented no evidence, the Plaintiff has failed to meet its burden of proof. “Inasmuch as petitioners have failed to offer any testimony or trial evidence in this case, we find that no reason exists for going forward with the remaining testimony periods. In the absence of any evidence of record on petitioners' behalf, petitioners have failed to meet their burden of proof herein and the entry of judgment against petitioners is appropriate.”²

¹ See *HKG Industries Inc. v. Perma-Pipe Inc.* (TTAB) 49 USPQ2d 1156 (10/16/1998)

² IBID.

WHEREFORE, the Defendant asks that judgment be entered for the Registrant under 37 CFR § 2.132 and TBMP Rule 534.01(a) because of Plaintiff's failure to take testimony and meet its burden of proof.

Dated: October 17, 2016

/s Anthony M. Verna III
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