

ESTTA Tracking number: **ESTTA561031**

Filing date: **09/24/2013**

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

Proceeding	92057484
Party	Plaintiff Shirley's World, L.P.
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Date	09/24/2013
Attachments	Opposition to Motion for Extension.pdf(196267 bytes)

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

**In the Matter of Registration No. 3418196
Issued on April 29, 2008**

Shirley's World, L.P.,

Cancellation No.:
92057484

Petitioner,

- against -

Earl C.J. Prater,
Respondent

**PETITIONER'S OPPOSITION TO MOTION
FOR EXTENSION OF TIME TO FILE ANSWER**

I. INTRODUCTION

Respondent's request for an extension of time must be denied. Not only is the request unsupported by the requisite good cause, it reflects the exact opposite of good cause. Specifically, Respondent's "motion" is based entirely upon Respondent's inability to contact a TTAB paralegal, from whom Respondent apparently seeks substantive legal advice. Shirley's World, L.P. filed the Petition on July 8, 2013 and, as reflected on the Certificate of Service, served it via overnight courier that same day so that Respondent received it on July 9, 2013. The TTAB immediately issued an Institution Order that sets Respondent's deadline to Answer the Petition on August 18, 2013. This timing provided Respondent 40 days – *nearly six weeks* – to seek advice from whomever appropriate and to retain counsel before filing an Answer.

Respondent did not use his time wisely. Instead, Respondent apparently sought substantive legal advice from a TTAB paralegal and, when those efforts proved futile, made no effort to comply with the Board's Institution Order. Rather, Respondent blithely requested a 60 day extension of time "to seek legal counsel," and then did nothing. Respondent's request is

totally unreasonable, lacks good cause, and should be denied. Moreover, because Respondent failed to file an Answer within the time ordered, Petitioner respectfully requests that the Petition be decided as in case of default pursuant to 37 C.F.R. §§ 2.106(a), 2.114(a).

II. RESPONDENT'S MOTION MUST BE DENIED

A. The Motion Lacks Good Cause.

Rule 509.01(a) of the TMBP provides:

A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient. See e.g. SFW Licensing Corp. v. Di Pardo Packing Ltd., 60 USPQ2d 1372, 1373 (TTAB 2001) (opposers had not come forward with “detailed facts” required to carry their burden explaining their inaction); Luemme, Inc. v. D. B. Plus Inc., 53 USPQ2d 1758, 1760-61 (TTAB 1999) (sparse motion contained insufficient facts on which to find good cause); Johnston Pump/General Valve Inc. v. Chromalloy American Corp., 13 USPQ2d 1719, 1720 n.3 (TTAB 1989) (“The presentation of one’s arguments and authority should be presented thoroughly in the motion or the opposition brief thereto.”).

Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party’s own lack of diligence or unreasonable delay in taking the required action during the time previously allotted. National Football League v. DNH Management LLC, 85 USPQ2d 1852, 1854 (TTAB 2008) (“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 extension is not abused” and the moving party has the burden of persuading the Board that it was diligent in meeting its responsibilities) (emphasis added). And, the Board will “scrutinize carefully” any motion to extend time to

determine whether the requisite good cause has been shown. Luemme, Inc. v. D. B. Plus Inc., 53 USPQ2d at 1760-61.

Here, Respondent's motion fails to provide the minimum showing necessary to demonstrate that good cause exists to extend the time to Answer the Petition. On the contrary, The motion reflects a complete lack of diligence, negligence, and unreasonable delay, including that Respondent has done nothing since making its half-hearted request for an extension time, notwithstanding that the deadline for filing an Answer to the Petition has come and gone.

B. Respondent Is In Default.

509.01(a) also provides that, [i]f a motion to extend the time for taking action is denied, the time for taking such action may remain as previously set.

Pursuant to the Board's Institution Order, Respondent's deadline to file an Answer was August 18, 2013. Therefore, Respondent is in default and judgment should be entered in favor of Petitioner absent a showing by Respondent of good cause why default judgment should not be entered against it. See TBMP §§ 312, 508.

III. CONCLUSION

Respondent's motion is devoid of good cause to grant the requested relief. Therefore, Petitioner respectfully requests that Respondent's Motion To Extend Time To Answer be denied. In addition, because the time for responding to the Petition has expired, Petitioner also requests that the Board enter Respondent's default, and enter judgment on the Petition in favor of Petitioner.

Dated: September 24, 2013

EISNER KAHAN
GORRY CHAPMAN ROSS & JAFFE

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITIONER'S OPPOSITION TO MOTION FOR EXTENSION OF TIME TO FILE ANSWER** 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 September 24, 2013, at Beverly Hills, California.

EISNER KAHAN
GORRY CHAPMAN ROSS & JAFFE

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