

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Baez

Mailed: May 15, 2003

Opposition No. 91153438

GUSTAFSON, LLC

v.

BAYER CORPORATION

**David Mermelstein, Interlocutory Attorney:**

On January 3, 2003, the Board sent a notice of default to applicant because no answer had been filed. Applicant filed a response to the notice of default accompanied by a proffered answer on March 3, 2003.<sup>1</sup>

The standard to apply in order to permit the late filing of an answer is the "good cause" standard of Fed. R. Civ. P. 55 (c). *See, Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). We find

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<sup>1</sup> We note that applicant's paper was not accompanied by a certificate of service, as required by Trademark Rule 2.119(a). Applicant is reminded that all papers filed in a Board *inter partes* proceeding (with the exception of the complaint) must be served upon all parties to the proceeding, and a certificate attesting to such service must accompany the filing. In order to expedite this matter, a copy of applicant's filing is enclosed with this order for opposer's information. However, the Board's rules with respect to the service and filing of papers will be strictly enforced hereafter.

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that the circumstances recounted by applicant constitute good cause not to enter judgment by default.

In view thereof, the notice of default is **set aside** and the answer is noted.

In accordance with the Trademark Rules of Practice, discovery is open, and the close of discovery and testimony dates are reset as indicated below. In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Discovery period to close: November 28, 2003

Testimony period for party in  
Position of plaintiff to close  
(opening thirty days prior thereto): February 26, 2003

Testimony period for party in  
Position of defendant to close  
(opening thirty days prior thereto): April 26, 2003

Rebuttal testimony period to close  
(opening fifteen days prior thereto): June 10, 2004

Briefs shall be filed in accordance with Trademark Rule 1.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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