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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

kuhlke

Serial Number 76341367

Mailed: February 25, 2005

Opposition No. 91162554

The Guardian Life Insurance
Company of
America

v.

Church Mutual Insurance
Company

On October 19, 2004, the Board instituted this proceeding and allowed applicant until November 28, 2004 to file an answer or other response to the notice of opposition. This case now comes up for consideration of applicant's contested motion (filed December 10, 2004) to file a late answer.¹

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 *Paolo's Associates Limited Partnership*

¹ The Board notes applicant's withdrawal (filed December 23, 2004) of its motion (filed December 15, 2004) to extend time to respond to requests for production of documents. In view thereof, applicant's December 15, 2004 motion to extend will be given no consideration. In addition, the Board notes the revocation and substitution of attorney for applicant filed on January 28, 2005. Applicant's correspondence address has been changed to Linda McLeod, Finnegan, Henderson, Farabow, LLP, 901 New York Avenue, N.W., Washington, DC 20001-4413.



03-14-2005

v. *Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990). See also *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991); TBMP 312.01. Good cause is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action.

Moreover, it is the policy of the law to decide cases on their merits.

Upon consideration of the parties' briefs, and affidavits and declarations, the Board finds that the failure to file an answer was unintentional and not the result of any willful conduct or intent to delay the proceeding. Moreover, opposer has not shown that it has been substantially prejudiced by the delay.² Finally, by the submission of an answer, which is not frivolous, applicant has adequately shown that it has a meritorious defense.

In view thereof, applicant's motion to file a late answer is granted and applicant's answer is accepted.

Discovery and trial dates are reset as indicated below.

² Opposer's statements that the delay occasioned by the late-filed answer and the need for opposer to "waste time and money" to respond to this motion do not rise to the level of prejudice contemplated by this standard.

DISCOVERY PERIOD TO CLOSE:

June 23, 2005

Thirty-day testimony period for party in
position of plaintiff to close:

September 21, 2005

Thirty-day testimony period for party in
position of defendant to close:

November 20, 2005

Fifteen-day rebuttal testimony period to
close:

January 4, 2006

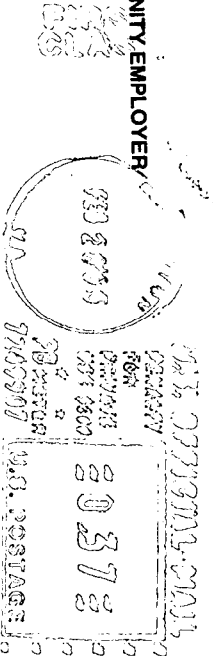
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