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Filing date: **05/18/2006**

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

Proceeding	91168050
Party	Defendant Yamaha Corporation of America Yamaha Corporation of America 6600 Orangethorpe Avenue Buena Park, CA 90620
Correspondence Address	NICOLE S. BRADLEY PILLSBURY WINTHROP LLP 725 SOUTH FIGUEROA STREET, SUITE 2800 LOS ANGELES, CA 90017
Submission	Other Motions/Papers
Filer's Name	Christopher J. Chaudoir
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Signature	/cjc/
Date	05/18/2006
Attachments	MOTION.PDF (4 pages)(305228 bytes) DECL.PDF (4 pages)(380853 bytes)

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

In the matter of Trademark Application
Serial No. 76/572,763
Filed: January 29, 2004
Trademark: HEIRLOOM ASSURANCE PROGRAM
Published: October 11, 2005

_____)	
Assurant, Inc.,)	
)	
Opposer)	
)	
v.)	
)	Opposition No. 91168050
Yamaha Corporation of America,)	
)	
Applicant.)	
_____)	

**UNOPPOSED MOTION FOR RELIEF FROM DEFAULT
AND ENTRY OF JUDGMENT AND NOTICE OF RESOLUTION**

Pursuant to Federal Rule of Civil Procedure 55(c) and 60(b), Applicant Yamaha Corporation of America (“Yamaha”) hereby seeks relief from the Trademark Trial and Appeal Boards (“TTAB”) entry of default judgment against Applicant in the above referenced Opposition. Any delay in responding to the Opposition was solely do to mistake, inadvertence, surprise, and excusable neglect as described in the Declaration of Christopher J. Chaudoir (“Chaudoir Decl.”) attached hereto and incorporated herein by reference. Additionally, the Opposition has been resolved by the parties.

Trademark Trial and Appeal Board Manual of Examining Procedures (“TBMP”) Section 317.03 states “because default judgments for failure to timely answer the complaint are not favored by the law, a motion under FRCP 55(c) and 60(b) seeking relief from such judgment is generally treated with more liberality by the Board than are other motions under FRCP 60(b) for relief from other types of judgments.” Additionally, TBMP Section 545 states that “upon such terms as are just, the Board, on motion, may relieve a party from a final judgment for one of the reasons specified in FRCP 60(b).”

The Board should exercise its discretion in granting relief from judgment based upon mistake, inadvertence, surprise and/or excusable neglect. Applicant did not receive notice of the Opposition or Notice of Default from the TTAB until completing a routine check of the firm’s docketing report. See Chaudoir Decl. As soon as Applicant discovered the Opposition had been filed, Applicant contacted opposing counsel to seek resolution of the Opposition. Id. On May 10, 2006, Applicant and Opposer resolved the Opposition whereby the parties agreed to coexist and Opposer agreed to withdraw its Opposition. Id.

Since any delay in filing an Answer or otherwise responding to Opposer’s Opposition was based entirely on having received no notice of the Opposition or Notice of Default, request is made for relief from entry of default and default judgment.

Applicant also notes that Opposer and Applicant have resolved the pending opposition by way of a coexistence agreement. Pursuant to the terms of that agreement, Opposer will withdraw its opposition within thirty days of relief from entry of judgment.


For the foregoing reasons, Applicant respectfully requests that relief from entry of

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judgment be granted and that the Opposition be reinstated.

Dated: May 18, 2006.

PILLSBURY WINTHROP
SHAW PITTMAN LLP
RICHARD H. ZAITLEN
CHRISTOPHER J. CHAUDOIR
725 South Figueroa Street
Suite 2800
Los Angeles, CA 90017-5406

By 

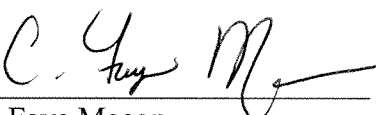
Christopher J. Chaudoir
Attorneys for Applicant
Yamaha Corporation of America

CERTIFICATE OF SERVICE

I, C. Faye Macon, hereby certify that on this 18th day of May, 2006, a true copy of the foregoing **UNOPPOSED MOTION FOR RELIEF FROM DEFAULT AND ENTRY OF JUDGMENT AND NOTICE OF RESOLUTION** was served on Opposer's counsel of record by depositing a true and correct copy thereof in the United States mail in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Anne J. Randall, Esq.
Alston & Bird LLP
101 S. Tyson Street, Suite 4000
Charlotte, North Carolina 28280-4000

Executed: May 18, 2006



C. Faye Macon

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

In the matter of Trademark Application
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Assurant, Inc.,)	
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Opposer)	
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)	Opposition No. 91168050
Yamaha Corporation of America,)	
)	
Applicant.)	
_____)	

**DECLARATION OF CHRISTOPHER J. CHAUDOIR IN SUPPORT OF
APPLICANT’S UNOPPOSED MOTION FOR RELIEF FROM DEFAULT
AND ENTRY OF JUDGMENT AND NOTICE OF RESOLUTION**

I, Christopher J. Chaudoir, declare as follows:

1. I am a Senior Associate at the law firm Pillsbury Winthrop Shaw Pittman, counsel for Applicant Yamaha Corporation of America (“Applicant”). I am one of the attorneys responsible for handling this Opposition and have personal knowledge of the facts stated herein and, if called as a witness, could and would competently testify thereto.

2. On April 4, 2006 during a routine investigation of the trademark docket, a paralegal that works for Pillsbury Winthrop Shaw Pittman, LLP verified the status of

Yamaha's trademark application for HEIRLOOM ASSURANCE PROGRAM (Serial Number 76/572,763) using the United States Patent and Trademark Office's online system.

3. During that review, it was discovered that an Opposition had been filed by Assurant Inc. ("Opposer") against the application. Further review of the Trademark Trial and Appeal Board ("TTAB") website revealed that the Opposition was filed on December 9, 2005 and a Notice of Default was entered on February 27, 2006.

4. This office conducted a thorough investigation of the docket between the dates December 9, 2005 and April 4, 2006 and located no records concerning the Opposition or Notice of Default.

5. This office also conducted a thorough investigation of all incoming electronic and regular mail from the TTAB during the time period December 9, 2005 and April 4, 2006 and again did not locate any records concerning the filed Opposition or Notice of Default.

6. On or about April 4, 2006, I contacted opposing counsel Mr. Jason Sneed and Ms. Anne Randall to advise them that Applicant had not received a copy of the Opposition or the Notice of Default and requested that a stipulation be agreed upon whereby Applicant would be granted relief from the Notice of Default and be allowed to respond to the Opposition.

7. On April 6, 2006, I contacted the case manager Ms. Angelea Lykos in the TTAB to advise her that this office had not received the documents related to the Opposition and indicated that I had contacted opposing counsel to seek a stipulation to allow Applicant to respond to the Opposition.

8. On April 6, 2006, I again contacted Mr. Sneed and Ms. Randall to follow up on my previous telephone calls regarding the Opposition. I received a message from Ms. Randall indicating that Opposer would not enter into the requested stipulation. In response to this message, I contacted Ms. Randall and indicated that this office had not

received a copy of the opposition or the notice of default. I also indicated that Applicant was willing to resolve the issues contained in the Opposition by way of a coexistence agreement.

9. Between April 7, 2006 and May 5, 2006, the parties continued to discuss resolution of the Opposition and exchanged drafts of a coexistence agreement. During this time Opposer agreed that any delay in filing a Motion for Relief from Default during the negotiation period would not be used against Applicant.


10. On May 2, 2006, the TTAB entered judgment against Applicant.

11. On May 18, 2006, I received Opposer's signed copy of the coexistence agreement regarding Applicant's use of its trademark with an agreement effective date of May 10, 2006. As part of the coexistence agreement, Opposer agreed not to oppose Applicant's Motion for Relief from Default and Entry of Judgment and further agreed to withdraw its opposition within thirty days of the Trademark Trial and Appeal Board setting aside the default judgment.

12. Relief from default and judgment are sought in good faith based on mistake, inadvertence, surprise, and excusable neglect.

13. Had Applicant received notice of the Opposition it would have timely responded.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on May 18, 2006 at Los Angeles, California.



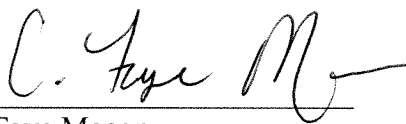
Christopher J. Chaudoir

CERTIFICATE OF SERVICE

I, C. Faye Macon, hereby certify that on this 18th day of May, 2006, a true copy of the foregoing **DECLARATION OF CHRISTOPHER J. CHAUDOIR IN SUPPORT OF APPLICANT'S UNOPPOSED MOTION FOR RELIEF FROM DEFAULT AND ENTRY OF JUDGMENT AND NOTICE OF RESOLUTION** was served on Opposer's counsel of record by depositing a true and correct copy thereof in the United States mail in a sealed envelope with postage thereon fully prepaid, addressed as follows:

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