

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

RLS/Johnson

Mailed: July 8, 2002

In re J & J Industries

Serial No. 76231818

Filed: 03/29/2001

J.W. GIPPLE  
GIPPLE & HALE  
P. O. BOX 40513  
WASHINGTON, DC 20016

***LaToya C. Johnson, Paralegal:***

In an Office Action mailed on January 22, 2002, the Trademark Examining Attorney issued a Final Refusal regarding a requirement to submit a substitute specimen.

On April 10, 2002, applicant filed a request for reconsideration which included a proposed amendment to the identification of goods. In response to applicant's request, on April 29, 2002, the Trademark Examining Attorney maintained the requirement for a substitute specimen as well as issued a first refusal with respect to the proposed amendment to the identification of goods. On May 20, 2002, applicant filed its notice of appeal and, on June 6, 2002, its appeal brief.

This appeal is premature. The proposed amendment to the identification of goods raised a new issue such that any refusal to register on this basis must be made final in addition to the requirement for a new specimen for the application to be ripe for an appeal.<sup>1</sup>

Accordingly, the file of this case is herewith remanded to the Examining Attorney to await the six-month response period to the Office Action of April 29, 2002. The Examining Attorney may treat applicant's appeal brief as its response, if she so chooses. In the event that registration to applicant ultimately finally refused, applicant may respond by filing a new notice of appeal, and the appeal fee already submitted by applicant will be applied thereto.

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<sup>1</sup> The Trademark Examining Attorney erred in indicating in her Office Action of April 29, 2002 that a proper response must be received by July 22, 2002 (six-months from the date of the final refusal issued on January 22, 2002).