

United States Patent and Trademark Office
Trademark Trial and Appeal Board
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Mailed: March 2, 2011

In re Prema Jyothi Light

Serial No. 76293326

Serial No. 76293327

Filed: 7/31/2001

PREMA JYOTHI LIGHT
12000 E. 16TH AVE. #104,
AURORA, CO 80010

By the Trademark Trial and Appeal Board:

On November 9, 2010 the Board consolidated the above appeals, and allowed applicant until January 9, 2011 in which to file her consolidated appeal brief. On January 10, 2011,¹ instead of filing her brief, applicant filed virtually identical requests for remand in the two applications.

One of the reasons given by applicant for remand is that, in her requests for reconsideration, she had amended her applications, in the alternative, to assert acquired distinctiveness, and that this amendment raised a new issue. Therefore, the examining attorney should not have simply denied her requests for reconsideration, but should have

¹ Because January 9, 2011 was a Sunday, applicant's brief, if filed on January 10, 2011, would have been timely.

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issued a nonfinal action. A review of the two application files reveals that applicant did make such a request in Application Serial No. 76293327, and therefore the examining attorney should indeed have issued a nonfinal action rather than denying the request for reconsideration. However, with respect to Application Serial No. 76923326, no such request appears in the file. Although applicant stated in her request for reconsideration that she was attaching "argument text" within the evidence section of her TEAS submission, no such attachment was included.

Because it appears that applicant was attempting to assert an alternative claim of acquired distinctiveness in Application Serial No. 76923326 as she did in Application Serial No. 76923327, we think it appropriate to remand the applications to the examining attorney to consider such claims. However, because the claim of acquired distinctiveness is not in fact part of application Serial No. 76923326, and because these proceedings have been consolidated, it would be helpful to all concerned if they moved in tandem. Therefore, applicant is allowed **thirty days** in which to submit the alternative claim of acquired distinctiveness in application Serial No. 76293326. It is also noted that applicant continues to complain of difficulties she has had in submitting specimens in connection with both applications. Therefore, she may also

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submit within those same thirty days, copies of any specimens that she wishes the examining attorney to consider. She should caption these submissions, including the claim of acquired distinctiveness, as a request for remand, and file it with the Board through the ESTTA, the Board's online filing system.

If applicant fails to file these submissions within the allowed thirty days, the Board will vacate its order consolidating the proceedings because there will be no claim of acquired distinctiveness in connection with Application No. 76203326. Application Serial No. 76203327 will be remanded to the examining attorney to consider the claim of acquired distinctiveness that was made in the earlier request for reconsideration. The appeal in Serial No. 76203326 will be resumed, and applicant will be allowed time only in which to file a supplemental appeal brief.
