



TTAB

TRADEMARK
T-4755

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

Appellant: Diane M. and Richard G. HYATT

Serial No. 76/611740

Law Office: 104

Filed: 16 September 2004

Examining Attorney: Verna Beth Ririe

Mark: **IQ LOCK**
International Class(es) 9

PETITION

Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

Sir:

Appellant petitions the Commissioner from the ineffective conduct of the Oral Hearing held pursuant to the Request of Appellant under 37 C.F.R. §2.142(e)(1), and these reasons therefor, states that:

**CERTIFICATE OF
FACSIMILE TRANSMISSION**

I hereby certify that, on 28 May 2008, this correspondence is being facsimile transmitted to the U.S. Patent & Trademark Office (**Facsimile No. 571-273-0059**)

Total 6 sheets


For Robert E. Bushnell
Reg. No. 27,774

Folio: T-4755
Date: May 28, 2008
I.D.: REB/kf



05-28-2008

STATEMENT OF FACTS

1. Appellant, timely requested an Oral Hearing pursuant to 37 C.F.R. §2.142(e)(1), was duly notified of the time, place and date of the Oral Hearing on Wednesday, the 21st of May 2008, and attended that Oral Hearing before a panel of the Trademark Trial and Appeal Board.
2. Pursuant to 37 C.F.R. §2.142(e)(3), Appellant reserved part of the time allowed for oral argument to present a rebuttal argument.
3. The entirety of the oral argument presented by the Examining attorney during the Hearing was inaudible and unintelligible.
4. The oral argument was conducted under the “*Attendance Procedures and Hearing Protocol*” promulgated by the Director of the U.S. Patent & Trademark Office, which mandates, *inter alia*, that “when a hearing is in session, no one should be heard except for counsel making an argument or a judge.”
5. At the conclusion of the oral argument presented by the Examining attorney, and at the beginning of the rebuttal argument by Appellant, Appellant’s undersigned attorney advised the panel that the entirety of the oral argument presented by the Examining attorney was inaudible and unintelligible, and in point of fact, could not be heard or understood.

6. The Board neither responded to the statement of Appellant's undersigned attorney nor took any corrective action to enable Appellant to present the rebuttal argument in response to whatever argument had been presented by the Examiner.

REMARKS

Under both common law practice and 37 C.F.R. §2.142, an Appellant is granted opportunity for rebuttal of any oral argument presented by an Examining attorney during a Hearing before the Trademark Trial and Appeal Board. Despite the fact that Hearing Room C in which the Hearing for the above-captioned appeal was conducted is physically small and less than one-quarter of the floor space of typical U.S. federal appellate and state appeal court rooms, neither Appellant's undersigned attorney nor one witness present during the oral argument were able to hear any word spoken by the Examining attorney during the oral hearing.

It is extremely unusual for the presiding judge of an appellate panel, either in a United States court of appeal, before a Court of Appeals of a state, or an administrative appellate proceeding, to fail to prompt an inaudible representative of the U.S. Government presenting oral argument permit an advocate such as an Examiner representing the United States Government, to conduct the entirety of an argument in a voice that denies the Appellant an opportunity to hear the word of the advocate. In essence, although it is customarily for a hearing before the Trademark Trial and Appeal Board of the U.S. Patent & Trademark Office to be conducted under a written protocol so that,

“no one should be heard except for counsel making argument or a
judge”,

it is extremely uncommon for the presiding judge of any appellate panel to fail to briefly interrupt and prompt the counsel who is delivering an argument when the audio volume of the counsel's delivery is inadequate. When the appellant is unable to hear the oral delivery of argument by the

Examiner, the appellant is summarily denied a right to present oral argument in rebuttal. The unexpected failure of the presiding judge to either notice the extremely low volume of the counsel's delivery, or to request the advocate to increase the volume, effectively denies the Appellant such aspects of the Appellant's constitutionally guaranteed procedural due process rights as the customary right "to present a rebuttal argument" to the oral argument delivered by the Examiner to the Trademark Trial and Appeal Board by the Examining attorney, thereby effectively negating the constitutionally guaranteed substantive due process right of Appellant granted under 37 C.F.R. §2.142(e)(3) and common law.

Appellant submits therefore, that the refusal of the presiding judge to either notice the extremely low volume of the counsel's delivery, or to request the advocate to increase the volume of delivery of oral argument, unlawfully deprives your Appellant of legally protected rights without first giving your Appellant notice and the opportunity to be heard.

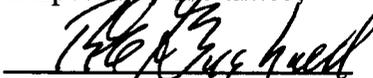
Appellant further submits that the sole effective remedy is to reschedule and repeat the hearing before a different panel of the Trademark Trial and Appeal Board.

RELIEF REQUESTED

In view of the foregoing, the Commissioner is respectfully requested to:

- A. Re-schedule the entirety of the Oral Hearing before the Trademark Trial and Appeal Board;
- B. Re-constitute a different panel of the Trademark Trial and Appeal Board; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,


Robert E. Bushnell
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