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Filing date: **03/15/2010**

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

Proceeding	77320288
Applicant	Swanson Tool Company, Inc.
Applied for Mark	H
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Submission	Applicant's Request to Extend
Attachments	100315 Request for 60 day extension.pdf (4 pages)(16321 bytes)
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Date	03/15/2010

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

Applicant: Swanson Tool Company, Inc.

Serial No.: 77/320,288

Mark: H & Diamond Design

Filing Date: November 02, 2007

Examiner: Paul Moreno

Law Office: 103

REQUEST FOR A 60-DAY EXTENSION OF TIME TO FILE APPEAL BRIEF

Applicant, through its undersigned counsel, files this request for a 60-day extension of time to file its appeal brief. Applicant filed its application to register the mark H & Diamond Design (“Applicant’s Mark”). Because the Examiner has refused registration, contending that under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), there is a likelihood of confusion between Applicant’s Mark and Registration No. 3,099,993 (“Cited Registration”), Applicant filed an *ex parte* appeal. Applicant now seeks a sixty day extension of time to file its appeal brief. As demonstrated below, Applicant has good cause to extend the time to file its appeal brief for a period of sixty days until May 28, 2010.

BACKGROUND

Applicant filed its application to register the mark H & Diamond Design on November 2, 2007 in connection with goods in classes 8 & 9. The Examiner issued his Final Refusal on October 6, 2008. Registration was refused because the Examiner contends that there is a likelihood of confusion between Applicant's Mark and the Cited Registration, under Section 2(d) of the Trademark Act. On April 6, 2009, Applicant filed a Request for Reconsideration with the Examiner. Also, on April 6, 2009, Applicant filed its Notice of Appeal and requested that these proceedings be suspended while the Request for Reconsideration was pending. Ultimately, the Request for Reconsideration was denied, and the present appeal was resumed. The deadline for Applicant to submit its appeal brief is currently set to expire on March 29, 2010.

Applicant has contacted the owner of U.S. Reg. No. 3,099,993 ("Cited Registrant"), which is the sole Cited Registration identified in the Examiner's final refusal. During this exchange, the principals of Applicant and Cited Registrant discussed providing mutual consent to each other's use and registration of their respective marks. Applicant promptly sent a letter of consent for review and execution. Applicant is now awaiting for a response from the Cited Registrant, which is currently reviewing the letter of consent. Moreover, the principal for Applicant is currently traveling overseas and is unable to follow-up with the Cited Registrant.

ARGUMENT

Under Rule 1203.02(d) of the TTAB Manual of Procedure ("TBMP"), an applicant may request an extension of time to file an appeal brief upon showing good cause for the requested extension. TBMP Rule 1203.02(d). The rule states that "[t]he determination of

good cause will be based upon all relevant circumstances, including the length of time of any previously granted extensions.” TBMP Rule 1203.02(d). The rule further provides that “good cause has been found when...[the party is] attempting to negotiate a consent agreement,” among other reasons identified. TBMP Rule 1203.02(d).

Applicant seeks this extension request in good faith and not for purposes of delay. As detailed above, Applicant is currently negotiating a consent agreement with the Cited Registrant. Applicant has acted diligently in this effort. Applicant has already discussed the issue of consent with Cited Registrant and sent the letter of consent to the Cited Registrant for review and execution. At this time, Applicant is waiting for a response. In addition, Applicant’s principal is currently traveling overseas and is unable to follow-up with the Cited Registrant. Applicant’s actions and prior requests have at all times been reasonable and not excessive.

The execution of a consent agreement with the Cited Registrant is directly relevant to this Proceeding because the Examiner’s refusal under Section 2(d) is based entirely upon the U.S. registration owned by the Cited Registrant. Once the consent letter has been executed, Applicant will likely file a request to suspend this Proceeding and remand the Application to the Examiner for consideration of the executed consent agreement. If the Board declines to grant the requested extension, then Applicant will need to expend time, money and resources preparing an Appeal brief regarding a citation that is the subject of a letter of consent. Moreover, the Examining Attorney will need to prepare his own Examiner’s brief on such a citation. Applicant has acted in good faith, and has not abused the discretion of the Board. In the interest of judicial efficiency and to the conserve the time and resources of all parties involved, the Board should grant Applicant’s request for a sixty-day extension of time.

CONCLUSION

Based upon the foregoing, Applicant respectfully requests that the Board grant its request for a 60-day extension of time to file its appeal brief until May 28, 2010. Applicant has demonstrated good cause to grant this request.

Respectfully submitted,

SWANSON TOOL COMPANY, INC.

Dated: March 15, 2010

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