

United States Patent and Trademark Office
Trademark Trial and Appeal Board
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EJS

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In re Convertabath, Inc.

Serial No. 77443743

Filed: 4/9/2008

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Upon further review of the file, it appears that, although applicant indicated on the ESTTA cover sheet that it was filing an "appeal brief" on July 13, 2009, along with its notice of appeal, in fact applicant filed a request for reconsideration. On the document itself applicant calls it a "Response to Office Action." It further appears that much of this confusion was caused by the fact that, when filing the notice of appeal through the ESTTA electronic system, applicant failed to check the box indicating that it was filing a request for reconsideration. As a result, the system electronically generated an order instituting the appeal and setting a deadline of September 11, 2009 for applicant to file its appeal brief.

In view thereof, the Board's July 13, 2009 order is hereby modified. Although the appeal has been instituted, proceedings in the appeal are suspended, and the application is remanded to the examining attorney to consider applicant's July 13, 2009 "Response to Office Action," which the examining attorney should treat as a request for reconsideration. If registrability is found on the basis of this submission, the appeal will be moot; if the refusal of registration is maintained, the examining attorney should issue an Office action to that effect,¹ and return the file to the Board.² The Board will then resume proceedings in the appeal, and allow applicant time in which to file its appeal brief.

¹ The examining attorney is permitted to submit evidence and additional argument in support of her position.

² It is noted that the response includes an amendment of the identification "in response to the Office Action dated July 17, 2008." This amendment was previously submitted by applicant on January 21, 2009, and is no longer an issue in the application/appeal. Accordingly, applicant's resubmission of the same amendment does not serve to raise a new issue.