



Commissioner for Trademarks
P.O. Box 1451
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Date: August 26, 2016

John P. Sullivan
Volpe & Koenig PC
30 South 17th St, Suite 1800
Philadelphia, PA 19103

RE: Petition to the Director
Application Serial No. 79160528
Mark: OSYPKA-MEDTEC

Dear Mr. Sullivan,

This letter acknowledges receipt on July 26, 2016 of your petition, filed on behalf of Osypka AG (“Petitioner”), to the Director of the United States Patent & Trademark Office (“USPTO”). The request is premature and is, accordingly, dismissed.

On March 14, 2016, Petitioner filed a timely notice of appeal and request for reconsideration to the Trademark Trial and Appeal Board (“Board” or “TTAB”). On the same day, the Board issued an order acknowledging receipt of the notice of appeal and appeal fee, suspending action on the appeal, and remanding the application to the examining attorney for consideration of the request for reconsideration. In an Office Action dated May 19, 2016, the examining attorney denied Petitioner’s request for reconsideration. In an order dated May 23, 2016, the Board resumed the appeal and allowed Petitioner time to submit its appeal brief. In accordance with the order, the appeal brief was due July 22, 2016. Petitioner filed the appeal brief on July 26, 2016.

According to Petitioner, the brief was not timely filed due to a docketing error. Petitioner believes that the application is abandoned and requests that the Director revive the application so that the appeal may go forward. Petitioner notes that the abandoned status of the application is not yet reflected in USPTO records.

Under 37 C.F.R. § 2.146, an applicant may petition the Director to reverse an examining attorney’s holding that the application is abandoned. *See also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) § 1713.01 (April 2016). An abandoned application is one for registration that is removed from the USPTO docket of pending applications either because of express abandonment or because the applicant failed to take appropriate action within the specified response period. TMEP § 718. A

petition to revive is not available if an application is abandoned because the Board dismisses an appeal for failure to file a brief. In such a situation, the applicant may file a motion with the Board to set aside the dismissal and accept a late-filed brief. TMEP § 1714.01(f)(ii)(E). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) §1203.02(a). It is only after the Board denies such motion that an applicant may file a petition to the Director under 37 C.F.R. §2.146, asking the Director to reverse the Board’s order. TMEP § 1714.01(f)(ii)(E).

In this case, Petitioner acknowledges its appeal brief was filed late. Petitioner’s remedy is to file a motion with the TTAB to accept its late-filed brief. TBMP § 1203.02(a). Should the Board deny the motion, a petition to the Director is available and appropriate. *Id.* A petition to the Director will require a new petition fee of \$100. Accordingly, Petitioner’s petition is dismissed.

A copy of the petition and this correspondence will be entered into the TTAB’s record. The file will be returned to the TTAB for a determination on accepting Petitioner’s late-filed brief based on the information provided in the petition.

/Cheryl Butler/

Cheryl Butler
Senior Counsel
Trademark Trial and Appeal Board