

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
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General Contact Number: 571-272-8500

ra/EJS

Mailed: June 8, 2015

In re Ebab Arfeh

Serial No. 85574542

Filed: 3/20/2012

MATTHEW H SWYERS
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By the Trademark Trial and Appeal Board:

Applicant's "Motion to Bifurcate Response to Refusal," filed May 26, 2015, is noted. Essentially Applicant asks that the Board make a determination of the ground of refusal of genericness, and if it affirms that ground, remand the application to the Examining Attorney "to determine how to them deal with the merely descriptive refusal" which the Examining Attorney made in the alternative. Applicant argues that such a course is necessary in the interests of fairness, because if the Board were, at the same time as reversing the genericness refusal, to affirm the alternative refusal of mere descriptiveness, Applicant would be unable to amend his application to the Supplemental Register.

Applicant points to no rule or other authority that would allow the Board to decide issues in separate appeals, and with further examination taking place between such appeals. Nor do we see the need for such an action, even if it were permitted. Applicant is apparently concerned that he will be precluded from amending his application to the Supplemental Register if the Board were to affirm the refusal based on descriptiveness. While that is correct, since the circumstances under which an application decided on appeal are extremely limited, Applicant has an acceptable procedural alternative, namely, to amend his application to the Supplemental Register in the alternative, before the Board decides the appeal. The Board recognizes that examination has already come to a close, and the time for briefing has been set. Therefore Applicant is allowed 20 days to file a request for remand with an amendment in the alternative, which can then be considered by the Examining Attorney. If Applicant chooses not to file such request, the time to file his appeal brief is reset to 60 days from the mailing date of this order.