

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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dmd/ejs

Mailed: December 14, 2015

In re Fuel Industries Inc.

Serial No. 86185707

Filed: 2/5/2014

By the Trademark Trial and Appeal Board:

Applicant's communication, filed December 9, 2015, that the Board take judicial notice or, alternatively, remand the application, is noted.

Applicant seeks to have the Board consider evidence regarding a companion application, Serial No. 86388876, for the mark BRODDCAST in design form. With respect to Applicant's request that the Board take judicial notice of this evidence, that is a matter for the panel that decides Applicant's appeal at final hearing. Therefore, Applicant's request for judicial notice is deferred until final decision.

Applicant requests, in the alternative, that the application be remanded to the Examining Attorney to consider this evidence, which consists of the fact that Applicant's design mark was published for opposition, and that a notice of allowance has issued. Applicant states that these events occurred after Applicant filed its notice of appeal on June 19, 2015, and therefore Applicant could not have made this material of record during examination.

A request for remand in order to introduce additional evidence must be supported by a showing of good cause. See TBMP Section 1207.02. The length of the delay in making the request after the reason for the remand becomes known, or the point in the appeal process at which the request for remand is made, will be considered in the determination of whether good cause exists. Generally, the later in the appeal proceeding that the request for remand is filed, the stronger the reason that must be given for good cause to be found. *Id.*

In this case, Applicant's request has come after Applicant's and the Examining Attorney's briefs have been filed, and only five days before the due date for Applicant to file a reply brief. The design mark was published for opposition on August 25, 2015; although this was after Applicant filed its notice of appeal on June 19, 2015, it was prior to Applicant's filing of its appeal brief on September 25, 2015. In fact, Applicant submitted with its brief a copy of the Office records showing the publication of the design mark, so clearly Applicant was aware of this evidence before briefing began. Despite this, Applicant chose not to file a request for remand when it first became aware that the Office had approved its companion application (the mark was approved for publication on July 2, 2015). Indeed, the present request for remand was apparently prompted by the Examining Attorney's objection, in his brief, to consideration of material that was not of record.

Because of the advanced stage of the appeal, and because Applicant has not given a satisfactory reason as to why it did not request remand at the point it

learned that its companion application had been approved for publication, we find that Applicant has failed to show good cause, and the request for remand is denied.

Applicant is allowed ten days from the mailing date of this order to file a reply brief, if it desires to do so.