

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3514

Mailed: June 8, 2004

Opposition No. 91123805

RKO PICTURES, INC.

v.

RKO CENTURY WARNER THEATRES,
INC.

Nancy L. Omelko, Interlocutory Attorney:

Applicant's "Request for Clarification of March 2, 2004 Response from Trademark Trial and Appeal Board" (filed on March 10, 2004) is construed as a motion for reconsideration of that Board order. Applicant has requested that the Board terminate this opposition proceeding in favor of a concurrent use proceeding.

TBMP § 1113.01 "Conversion of Opposition Proceeding" states in pertinent part:

(1) When an opposition to a concurrent use application is filed by a party specified in the application as an exception to applicant's claim of exclusive use, the opposition may be dismissed without prejudice in favor of a concurrent use proceeding. This action may be taken by the Board upon its own initiative, or upon motion.

As such, the Board has the discretion to terminate an opposition in favor of a concurrent use proceeding. The action is permissive, not mandatory. We see no error in the

Board's decision to suspend proceedings herein pending resolution of two relevant opposition proceedings, one of which is against the application involved in this proceeding; the other against the opposer in this proceeding. Accordingly, applicant's motion for reconsideration is denied.

As an update we note that proceedings in Opposition No. 91120565, filed against the involved application herein, have been resumed commencing with plaintiff's testimony period. Opposition No. 91125220, involving an application of the opposer in this proceeding, is currently in defendant's testimony period.