

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

APPLICANT
INDIANA RETANA.-MOVIEVISION INC.

SERIAL NUMBER OF APPLICATION
76655958

APPLICATION DATE
March 2, 2006

OPPOSITION NUMBER
91175280

PETITIONER'S OPENING APPELLATE BRIEF

INDIANA RETANA -- In pro se
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02-12-2010

STATEMENT OF THE CASE

On March 2, 2006, Applicant, Indiana Retana herein, and Appellant filed an intent-to-use application for the mark MOVIEVISION and design which was published for opposition on November 14, 2006. Upon publication, Magnadyne Corporation instituted opposition proceedings on January 24, 2007 which the Trademark Trial and Appeal Board, hereinafter referred to as the "Board," sustained the opposition to publication and subsequently refused registration. Applicant timely filed a Motion for Reconsideration on July 31, 2009, which was denied on September 3, 2009. Petitioner, appeals the Board's decision denying her motion to reconsider refusing registration and sustaining opposition to publication.

The Board denied Petitioner's motion to reconsider based on Petitioner submitting new evidence and its belief that Petitioner was attempting to reargue issues which had already been decided. When the Board denied Petitioner's motion for reconsideration, it did so by stating that Petitioner was attempting to reargue her motion for reconsideration and add new evidence as well. The Board's action actually amounted to a sanction against Petitioner without Due Process. Instead of not allowing the alleged new evidence and not allow the "re-argument" of what it considered to be new issues, it denied the entire motion for reconsideration.

Petitioner did point out erroneous findings of fact as well as misapplication of law, however, the Board simply overlooked Petitioner's contentions and denied her request for reconsideration.

**A PARTY MAY SEEK RECONSIDERATION OF ANY ORDER MADE BY THE
TRADEMARK TRIAL AND APPEAL BOARD**

In accordance with TBMP Rule 518 and 37 CFR sec. 2.127(b) “A request for reconsideration or modification of an order or decision issued on a motion must be filed within one month from the date of the order or decision. Unless the Director, upon petition, waives the time requirement of 37 CFR sec. 2.127(b) the Board need not consider a request for reconsideration or modification filed more than one month from the date of the order or decision complained of. Nor does the rule contemplate a second request for reconsideration of the same basic issue. However, the Board may, on its own initiative, reconsider and modify one of its orders or decisions if it finds error therein, and the Board may also, in its discretion, consider an untimely request for reconsideration...” Petitioner, Indiana Retana filed her original request which was accepted and ruled upon by the TTAB by denying the motion stating that it was no more than an attempt to re-argue the original issues but also that it was an attempt to re-introduce new evidence.

Further TBMP Rule 518 and 37 CFR sec. 2.127(b) state that when deciding on a motion for reconsideration that “the premise underlying a motion for reconsideration, modification or clarification under 37 CFR sec. 2.127(b) is that, based on the facts before it and the prevailing authorities, the Board erred in reaching the order or decision it issued. Such a motion may not properly be used to introduce additional evidence, nor should it be devoted simply to a re-argument of the points presented in a brief on the original motion. Rather, the motion should be limited to a demonstration that based on the facts before it and the applicable law, the Board's ruling is in error and requires appropriate change.” Although the Board used this Rule to deny Petitioner's motion, it is virtually impossible to have the Board review any motion to reconsider its ruling without presenting the evidence which was used to make its decision originally. The

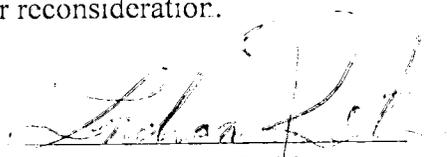
opinion of the Board does not make one single reference as to new evidence actually submitted by Petitioner nor does it once state what issue Petitioner attempts to re-argue. This failure by the Board to deduce its findings to an opinion which succinctly and specifically informs Petitioner of the reason it denied her motion for reconsideration deprives her of any Due Process Rights she may have in the form of a property right which may be attributable to money she would expect to receive from doing business under the name she applied to have registered. In the alternative in accordance with F.R.C.P sec. (b) “ On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:.....(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial.....” Even if there was new evidence the Board could have decided against considering in or simply excluded it without reviewing it instead of plainly denying the motion of reconsideration as being simply an attempt to introduce new evidence or reargue old issues.

CONCLUSION

Petitioner's motion for reconsideration allegedly contained new evidence and re-argued the orders sustaining opposition of her application for registration. The nature of a motion for reconsideration in itself is to review the evidence which was submitted for the Board's review. There were arguments as to the specific areas not reviewed by the Board as well as reasons the evidence submitted was not actually new evidence, but instead the same evidence that was overlooked by the Board in its initial review. The mere fact that Petitioner decided to allow her application to stand on its own with the evidence submitted should not have been a reason for the Board to overlook the evidence which was actually submitted.

By not allowing the evidence to be part of the record in the application for registration, which was in fact submitted is an abuse of the discretion of the Board to make a fair decision in

this case. As stated earlier, Petitioner has a right to have all evidence submitted in her application to be reviewed whether she says one word regarding the evidence or not. The mere fact that is part of the original application should suffice. For these reasons, Petitioner respectfully requests a fair determination of her request for reconsideration.

A handwritten signature in cursive script, appearing to read "Indiana Retana", written over a horizontal line.

Indiana Retana, Petitioner

DATED: February 8, 2010

