

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
July 21, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Magnadyne Corporation  
v.  
Movievision, Inc.

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Opposition No. 91175280  
to application Serial No. 76655958  
filed on March 2, 2006

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SECOND REQUEST FOR RECONSIDERATION

Hope V. Shovein of Brooks Kushman P.C. for Magnadyne Corporation.

Movievision, Inc. *pro se*.

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Before Grendel, Mermelstein and Bergsman, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

On July 31, 2009, Movievision, Inc. ("applicant") filed a request for reconsideration from the April 9, 2009 decision sustaining the opposition and refusing registration. In an order dated September 8, 2009, the Board denied applicant's request for reconsideration on the ground that applicant merely reargued its case and did not identify any errors in the Board's analysis and findings of facts. However, in its order, the Board addressed

applicant's arguments regarding the similarity of the marks and the similarity of the goods and services. The Board reached the following conclusion:

After careful review of the evidence of record, the April 9, 2009 decision and applicant's request for reconsideration, we find that the decision was correct and that we did not make any erroneous findings of fact or incorrectly apply the appropriate authorities.

On November 9, 2009, applicant filed a document entitled a notice of appeal. In the document, applicant stated that it "hereby appeals to the Trademark Trial and Appeal Board from the decision of the Trademark Examining Attorney refusing registration after Reconsideration."<sup>1</sup>

On January 11, 2010, applicant filed a request for an extension of time to file its opening appeal brief.

On February 12, 2010, applicant filed its opening appellate brief. Through this brief, applicant explains that it "appeals the Board's decision denying her motion to reconsider refusing registration and sustaining opposition to publication." It is applicant's position that the Board improperly refused to consider new evidence that applicant submitted with its request for reconsideration.

We construe applicant's "notice of appeal" to be a request for reconsideration from the Board's decision

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<sup>1</sup> It appears to us that applicant may have confused the ex parte examination of its trademark application with this opposition proceeding.

denying applicant's first request for reconsideration. Because applicant has requested the Board to review its previous order, applicant's document is a request for reconsideration and not a notice of appeal. A notice of appeal from a decision of the TTAB must be filed with the Director of the USPTO, as well as the Court of Appeals (and the appellant must pay the fee for appeal to the Court). Trademark Rule 2.145(a)(1)-(2).

Applicant's second request for reconsideration is denied. First, applicant's second request for reconsideration was not timely filed.

Any request for rehearing or reconsideration or modification of a decision issued after final hearing must be filed within one month from the date of the decision.

Trademark Rule 2.129(c).<sup>2</sup> Applicant filed its request for reconsideration from the Board's September 8, 2009 order on November 9, 2009, 62 days after the order was issued, and is therefore untimely.<sup>3</sup>

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<sup>2</sup> See also Trademark Rule 2.127(b) for requests for reconsideration from an order or decision issued on a motion.

<sup>3</sup> Applicant should note that an untimely request for reconsideration of a final TTAB decision does not toll the time to file an appeal to the Court of Appeals for the Federal Circuit. "Successive motions periods, which would encourage piecemeal attack on a judgment and delay appeals, are not authorized." See *Kraft, Inc. v. United States*, 85 F.3d 602, 605 (Fed. Cir. 1996).

Second, there is no provision in the Trademark Rules for filing a second or subsequent request for reconsideration.

Third, even if considered on the merits, applicant's contention that the Board improperly declined to consider the evidence that applicant submitted with its first request for reconsideration is expressly rejected. The parties in an opposition must submit their testimony and evidence during their assigned testimony periods and "[n]o testimony shall be taken except during the times assigned." Trademark Rule 2.121(a). Furthermore, a request for reconsideration may not be used to introduce additional evidence. TBMP §543 (2<sup>nd</sup> ed. rev. 2004). Accordingly, there is no basis for applicant's contention that the Board improperly refused to consider the evidence that applicant attached to its request for reconsideration.

In view of the foregoing, applicant's second request for reconsideration filed on November 9, 2009 and entitled a notice of appeal is denied.

The Board will not consider any further papers filed by applicant.

Decision: Applicant's request for reconsideration is denied.