

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Johnson

Mailed: January 23, 2003

In re Atopix Pharmaceuticals  
Corporation

Serial No. 76282224

Filed: 07/09/2001

JAMES W. PAUL  
FULWIDER PATTON LEE & UTECHT, LLP  
HOWARD HUGHES 6060 CENTER DR FL 10  
LOS ANGELES, CA 90045-1587

***By the Trademark Trial and Appeal Board:***

In an Office Action mailed on August 30, 2001, the Trademark Examining Attorney refused registration under Section 2(d) and other informalities.

On February 28, 2002 and March 6, 2002, applicant responded to the Office Action and filed an amendment to seek registration under Section 1(b). On July 9, 2002, the Examining Attorney issued an Office Action continuing the refusal to register pursuant to Section 2(d) and refusing registration under Section 1(b). On January 9, 2003, applicant filed its notice of appeal.<sup>1</sup>

---

<sup>1</sup> Applicant's appeal also indicates that a response to the latest Office Action was filed. However, this paper had yet to reach the file at the time of this Office Action.

Serial No. 76282224

This appeal is premature. Applicant's attention is directed to Trademark Rules 2.64(a) and 2.141, which provide in part that on the first or any subsequent re-examination or reconsideration, the refusal of registration or the insistence upon a requirement may be stated to be final, whereupon applicant's response is limited to an appeal or to compliance with a requirement; that every applicant for registration of a mark may, upon final refusal by the Examining Attorney, appeal to the Board upon payment of the prescribed fee; and that a second refusal on the same ground may be considered as final by applicant for purposes of appeal. Inasmuch as no final refusal or second refusal to register the mark on Section 1(b) has been issued in this case, it is not ripe for appeal and the Board cannot consider applicant's appeal.<sup>2</sup>

Accordingly, the file of this case is herewith remanded to the Examining Attorney. In the event that registration to applicant is continued under Section 2(d) and ultimately finally refused under Section 1(b), applicant may respond by filing a new notice of appeal, and

---

<sup>2</sup> Although the Trademark Examining Attorney repeated the refusal pursuant to Section 2(d), no requirement may be made final, even if it is a repeated requirement, unless the entire action is made final. Thus, if the examining attorney makes a new refusal or requirement in a subsequent action, a repeated refusal or requirement may not be made final. See *TBMP* §1201.

Serial No. 76282224

the appeal fee already submitted by applicant will be applied thereto.