

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
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Mailed: **October 23, 2006**

In re Universal Display
Corporation

Serial No. 78274542

Filed: 7/15/2003

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Gerard Rogers, Administrative Trademark Judge:

This appeal was filed on February 22, 2005, along with a request for reconsideration and request to suspend the appeal, pending disposition of the request for reconsideration. The suspension was granted, but the appeal was resumed after the examining attorney denied the request for reconsideration.

The Board resumed proceedings and set August 1, 2005 as the due date for applicant's brief. Applicant filed for extensions of the due date for its brief in early August, in early October, and in early December 2005, and in February 2006. Each time applicant provided the same reason for its requested extension of 60 days or more. Applicant filed the

February 2006 extension request without having heard from the Board regarding the December 2005 request, thereby exhibiting its understanding that Board practice requires an applicant to file its appeal brief when due, or request an extension, regardless of whether the Board has acknowledged a notice of appeal or extension request. Cf. *In re Live Earth Products Inc.*, 49 USPQ2d 1063 (TTAB 1998).

While it is now clear that applicant filed each of the referenced extensions, it was not clear after the February 2006 extension request was received that applicant had filed an extension request in December 2005. Accordingly, the Board requested a copy of the extension request, which applicant provided.¹

Once it was clear that the December request had been filed and there was therefore no gap between the October 2005 request and the February 2006 request, the Board was able to, and did, approve both requests. Applicant's appeal, however, was dismissed because applicant did not file its brief or a further request to extend by the due date of April 6, 2006 requested in the February 2006 extension request.

Applicant now requests reconsideration of the Board's order dismissing its appeal. Applicant has not established that the Board erred in any way in its processing of applicant's extension requests, or that any order issued by the Board provided applicant reasonable cause to not file

¹ Telephone calls were made in an effort to obtain the copy, but the Board was unsuccessful in this effort. Thus, a written order was issued.

its appeal brief or a request for a further extension by the due date of April 6, 2006.²

Notwithstanding that the appeal was properly dismissed and applicant has not established error by the Board, there is a preference in the law for determining matters on their merits whenever possible. In this case, the examining attorney is not believed to have suffered any prejudice by the delay in briefing this appeal. It is, however, more than one year beyond the original due date for applicant's brief. Accordingly, the appeal is reinstated and applicant is allowed until 30 days from the date of this order to file its appeal brief. No further extensions will be granted.

² The Board's order of April 6, 2006 requesting a copy of applicant's December 2005 extension request could not have been received by applicant until after the April 6, 2006 due date and could not have caused applicant to think that it did not have to either file its brief or request a further extension.