United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

EJS/kk

Mailed: September 24, 2012

In re Kenneth Joekel

Serial No. 85204813

Filed: 12/23/2010

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Applicant and the examining attorney should note that the Board's orders, mailed September 10, 2012 and September 21, 2012, were issued in error, and are hereby vacated. This instant order addresses applicant's request made in its appeal brief, and the examining attorney should take action as directed herein.

On April 17, 2012 applicant filed a notice of appeal, a request for reconsideration, and a request to divide application Serial No. 85204813 to put certain of the Class 35 services in a child application, while retaining other Class 35 services in the parent application. The Board instituted the appeal on May 8, 2012, but suspended proceedings on it while the Intent to Use Branch of the Office considered the request to divide. It appears that, prior to the Office taking action on the request to divide, the examining attorney issued a decision on the request for

reconsideration on June 4, 2012. Therefore, when the application was divided, the June 4, 2012 Office action became part of both the parent and child files. The Office granted the request to divide on June 20, 2012, with the parent file retaining the serial number 85204813, and the child application being given the serial number 85977047.

On July 5, 2012, the Board resumed proceedings in the parent application, Serial No. 85204813, and allowed applicant time to file its appeal brief. The Board did not issue an action with respect to the child application. Instead, the examining attorney issued a "subsequent final action" on July 12, 2012, in order to make clear that the likelihood of confusion refusal that had been made final prior to the division of the application applies to the child application as well. She also submitted additional evidence pertaining to the services in the child application.

Applicant has now timely filed its appeal brief for the parent application. However, applicant has identified in the caption of the brief not just the serial number of the parent application, but also of the child application. In the brief, applicant makes the statement that applicant's intention was to have both applications, the parent and child, remain under "this Appeal" and under the jurisdiction of the Board. Applicant notes that the Notice of Divisional Request Completed indicated that both applications would be routed to the Board for resumption of

the appeal. Applicant request that the July 12, 2012 "subsequent final action" in the child application be withdrawn and the child application be rerouted back to the Board for consideration as a consolidated appeal with the parent application.

The procedural problem that has occurred stems from the fact that the examining attorney issued an action on the request for reconsideration prior to the division of the application. Because it is clear that applicant wishes to have the appeals of the parent and child application consolidated, the Board hereby suspends proceedings in the appeals for both Application Serial No. 85204813 (the parent) and for 85977047 (the child), and remands the applications to the examining attorney to issue actions, in each file, with respect to the request for reconsideration filed on April 17, 2012. The examining attorney may issue actions that are essentially of copy of the June 4, 2012 Office action, or she may issue actions that are each directed specifically to the services that are in the parent application and in the child application. She may also include evidence with these actions. The actions should be issued within 30 days of this order, and the "six-months-response" clause should be omitted. The examining attorney should then return the files to the Board, which will resume action on the appeals, and consider applicant's request for consolidation at that point.

By the Trademark Trial and Appeal Board