

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: March 8, 2016

In re Abbyson Living Corporation

Serial No. 86382828

Filed: 9/2/2014

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Victoria von Vistauxx, Paralegal Specialist:

Applicant's appeal brief (filed March 2, 2016), is noted. A review of the appeal brief reveals that Applicant has included a request for amendment of goods in the above-entitled application.

If, at the time the Applicant files its appeal brief, it also wishes to amend its application, in order to, for example, attempt to comply with a final requirement or to overcome a final refusal [...], Board will treat the proposed amendment as a request for remand, and consider whether good cause has been shown in determining the request.¹ In its Office Action dated December 2, 2015, the Trademark Examining Attorney maintained its refusal based on likelihood of confusion with the U.S. Registrations, namely, Registration Nos. 0513425 and

¹ See TBMP 1205.01 (June 2015).

0732490. In order to avoid the cited likelihood of confusion by the Trademark Examining Attorney, Applicant seeks to amend the identification of goods in the subject application.

In view thereof, the Board considers Applicant's proposed amendment contained within its appeal brief, as a request for remand and finds that a good cause for remand has been established. Accordingly, the request for remand is granted, the appeal is suspended and the application file is remanded to the Trademark Examining Attorney for consideration of the amendment. If the amendment is accepted, the appeal will be moot and proceedings on the appeal will terminate in due course. If the amendment is found unacceptable, the Examining Attorney should issue an Office Action indicating the reasons why the proposed amendment is unacceptable and notify the Board, which will then allow Applicant time to file a supplemental appeal brief, if it wishes to do so.²

² If the Examining Attorney believes that the proposed amendment is unacceptable because it exceeds the scope of the original identification, or the identification as it has subsequently been amended, then the Examining Attorney may not issue a final refusal unless Applicant was previously advised that amendments broadening the identification are prohibited under Trademark Rule 2.71(a).