UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
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February 16, 2023

In re Liebherr-MCCtec GmbH

Ex Parte Appeal No. 97073355

Appeal received: **02/16/2023**

Brief due: **N/A**

ESTTA1266733

Appellant filed a notice of appeal, with the required fee, on the date indicated above. The appeal was filed under the provisions of Trademark Rule 2.141(a) from a final refusal in above-identified application and is hereby instituted.

Appellant checked the box on the ESTTA form indicating that it has filed a request for reconsideration which is still pending before the Trademark Examining Attorney, or it is filing a request for reconsideration today. Appellant should notify the Board immediately if it has not filed a timely request for reconsideration and does not intend to do so.

In view of the filing of the request for reconsideration, the appeal is suspended and the application is remanded to the Examining Attorney to consider the request for reconsideration.

If registrability is found on the basis of the request for reconsideration, the appeal will be moot. In the event the refusal of registration is maintained, and assuming that the request for reconsideration does not raise a new issue, the application will be returned to the Board, proceedings in the appeal will be resumed, and Appellant will be allowed time in which to file an appeal brief. If the request for reconsideration raises a new issue, the Examining Attorney may not issue a final refusal until the Appellant has been given an opportunity to respond. Upon issuance of a final refusal, proceedings in the appeal will be resumed, and Appellant will be allowed time in which to file an appeal brief.

Request to Divide

If, in addition to filing a notice of appeal and request for reconsideration, Appellant has also filed a request to divide the application, then the Examining Attorney should forward the application to the ITU/Divisional Unit of the Office to act on the request to divide. After the request to divide is processed, the Examining Attorney should consider the request for reconsideration. If registrability is found on the basis of the request for reconsideration, the appeal will be moot. If the refusal of registration is maintained, the divided file containing classes for which an appeal has been filed should be returned to the Board, and the Board will then resume proceedings in the appeal and allow Appellant time to file an appeal brief. The file for which no appeal has been taken should be treated by the Examining Attorney in the same manner as any request for reconsideration where there has been no appeal.

Appeal Briefs

Upon resumption of the appeal, Appellant will be allowed time to file an appeal brief, with the required fee. Failure to file the brief may result in dismissal of the appeal. Trademark Rules 2.142(b)(1) and 2.6(a)(18).

The Trademark Rules of Practice provide that the Examining Attorney shall file a written brief answering Appellant's brief and shall send a copy of the brief to Appellant within sixty days after Appellant's brief is sent to the Examining Attorney. Appellant may file a reply brief within twenty days from the mailing date of the Examining Attorney's brief. If an oral hearing is desired, Appellant must file a separate request accompanied by the required fee not later than ten days after the due date for Appellant's reply brief. Trademark Rules 2.142, 2.6(a)(18) and 2.6(a)(24).

Briefs must meet each of the requirements prescribed in Trademark Rule 2.126, which states that submissions must be made to the Board via ESTTA. *See* Trademark Rule 2.142(b)(2). ESTTA forms for electronic filings are available at https://estta.uspto.gov. Board proceeding files can be viewed using TTABVUE at https://ttabvue.uspto.gov.