

Re: Trademark Application of Chronomite :
 Laboratories, Inc. :
 Serial No. 74/S69449 :
 Filing Date: September 2, 1994 : On Petition
 For: INSTANT-TEMP :
 Petition Filed: April 29, 1996 :

Chronomite Laboratories, Inc. has petitioned the Commissioner to deny requests for extension of time to file a Notice of opposition filed by Whirlpool Properties, Inc. (the "Potential opposer"). The petition is denied under Trademark Rule 2.146(a)(3), 37 C.F.R. §2.146(a)(3).

FACTS

The subject application was filed September 2, 1994 and published for opposition on November 14, 1995. The Potential opposer filed a request for a 60-day extension of time to file the Notice of opposition on December 14, 1995, and a request for a 30-day extension on February 12, 1996. On February 6, 1996, the subject application issued inadvertently as Registration No. 1,954,419. The Potential opposer filed a third extension request on March 13, 1996.

In an order dated March 28, 1996, the Trademark Trial and Appeal Board (the "Board") stated that requests for extension of time to file a Notice of opposition had been received but were not timely associated with the file and that the subject application inadvertently issued as a registration while subject to an opposition. The Board also stated that it was without authority to vacate the issuance of the registration and would forward the registration to the Assistant Commissioner for Trademarks for consideration of the cancellation of the inadvertently issued registration. This petition followed.

DECISION

The Commissioner may invoke his supervisory authority in appropriate circumstances. Trademark Rule 2.146(a)(3), 37 C.F.R. §2.146(a)(3). However, the Commissioner will reverse the action of Applications Examiner only where there has been clear error or abuse of discretion. *In re Richards-Wilcox Manufacturing Co.*, 181 USPQ 735 (Comm'r Pats. 1974); *Ex parte*

Peerless Confection Co., 142 USPQ 278 (Comm'r Pats. 1964). No clear error or abuse of discretion on the part of the Applications Examiner at the Board has occurred in this case.

The inadvertent issuance of a registration suspends the running of the potential opposer's extension of time to oppose. *In re Siemens Aktiengesellschaft*, 34 USPQ2d 1862 (Comm'r Pats. 1995). Because this registration issued on February 6, 1996, prior to the expiration of the first requested extension, the question of whether the second and third extension requests met the requirements of Trademark Rule 2.102(c) is moot. Therefore, this petition turns on whether the first extension request met the requirements of the rule.

¹ The order noted that the extension requests had not been associated with the file until after the registration issued inadvertently.

Trademark Rule 2. 102(c) states, in pertinent part:

The written request to extend the time for filing an opposition must be filed in the Patent and Trademark office before the expiration of thirty days from the date of publication or within any extension of time previously granted, should the specify the period of extension desired, and should be addressed to the Trademark Trial and Appeal Board. A first extension of time for not more than thirty days will be granted upon request...

The first extension request met all requirements under Trademark Rule 2. 102(c). The first extension request was (1) filed on December 14, 1996, prior to the expiration of the time to file the Notice of opposition or extension request; (2) specified the period of extension desired, namely sixty (60) days; and (3) addressed to the Board. The decision of the Board to grant the first extension request was proper.

The registration is cancelled. The application file will be restored to pendency and forwarded to the Board for resumption of the opposition.

Philip G. Hampton, II
Assistant Commissioner for Trademarks
PGH:NLO: SLC
Date: 0EC O 2 1998

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