

Re: Trademark Application of :
 HI-TEC SPORTS PLC :
 Serial No. 74/7111111 :
 Filing Date: August 4, 1995 : On Petition
 For: 50 PEAKS HIGH TECH :
 and Design :
 Petition Filed: February 4, 1997 :

Hi-tec Sports, PLC has petitioned the Commissioner to revive the above identified application. Trademark Rules 2.89(g) and 2.146(a)(3) provide authority for the requested review.

FACTS

On June 18, 1996, a Notice of Allowance was issued requiring Petitioner to file either a Statement of Use or a Request for Extension of Time to File a Statement of Use on or before December 18, 1996. On December 3, 1996, Petitioner filed a Request for Extension of Time to File a Statement of Use. In an Office Action dated January 24, 1997, the Applications Examiner in the ITU/Divisional Unit denied the extension request because it was not accompanied by the prescribed fee, as required by Trademark Act Section l(d)(2), 15 U.S.C. §1051(d)(2), and Trademark Rule 2.89, 37 C.F.R. §2.89. Petitioner was advised that, since the period of time within which to file an acceptable extension request or Statement of Use had expired, the application would be abandoned in due course.

Petitioner contends that the failure to include the prescribed fee was due to an inadvertent clerical mistake and that such mistake is an extraordinary situation. Petitioner contends that it would be unjust to declare the file abandoned after months of prosecution and since it promptly filed this petition, no other party would be injured. Trademark Rules 2.146(a)(5) and 2.148 permit the Commissioner to waive any provision of the Rules which is not a provision of the statute, where an extraordinary situation exists, justice requires and no other party is injured thereby. All three conditions must be satisfied before a waiver is granted.

DECISION

Section l(d)(2) of the Trademark Act specifically requires that the extension request be filed within six months of the date of issuance of the notice of allowance, or within a previously approved extension period, and that it “be accompanied by payment of the prescribed fee.”

Since these requirements are statutory, they cannot be waived by the Commissioner. *In re Stakis plc*, 25 USPQ2d 1529 (Comm’r Pats. 1992).

The petition is denied. The application is abandoned. The \$100 fee for filing the extension request will refunded in due course.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:JL

Date:

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