

Re: Trademark Application of :
 Europe Online Deutschland GmbH :
 Serial No. 75-065987 :
 Filing Date: March 1, 1996 : On Petition
 For: DEVICE¹ :
 Petition Filed: December 10, 1996 :

Europe Online Deutschland GmbH, has petitioned the Commissioner for correction of the application file to incorporate the second sheet of Petitioner's formal drawing. The petition is denied under Trademark Rule 2.146.

FACTS

On March 1, 1996, Petitioner filed the above-identified trademark application. The application papers, attorney's cover letter and the drawing page itself identified the proposed mark as the type-written word "DEVICE." The application was accompanied by a check for \$1,715, the filing fee for seven classes. All seven classes were represented on the drawing page containing the word "DEVICE."

Petitioner contends that the Patent and Trademark Office lost the second page of its drawing. According to Petitioner, the formal drawing submitted with the application was comprised of one sheet containing the identification of goods and services and one sheet containing Petitioner's design mark.

ANALYSIS

Multiple-Page Drawings - - *In re Hocalar*

In re Hocalar, B.V., 35 USPQ2d 1575 (Comm'r Pats. 1994), significantly changed Office practice with respect to multiple-page drawings. Prior to *Hocalar*, the Office routinely denied filing dates to applications accompanied by multiple-page drawings. The Office now grants filing dates to applications accompanied by multiple page drawing on which mark fails to appear on first page of multiple page drawing. *Hocalar* specifically overruled the *Official Gazette* notice at 1139 TMOG 24 (June 9, 1992), to the extent that applications accompanied by multiple page drawings are not denied a filing date solely because the mark does not appear on the first page.

Drawing Headings - - *In re Hackmack*

Although *In re Hocalar* permits acceptance of a multi-page drawing for purposes of granting a filing date, a second decision is also relevant. *In re Hackmack*, 16 USPQ2d 1895 (Comm'r Pats. 1990) holds that an application will be denied a filing date only when the heading is omitted entirely from the drawing page. A filing date will be granted if the heading is merely incomplete.

Discussion

While Petitioner doubtless submits that the heading information contained on the first page of its drawing should be attributed to the second page of its drawing, this argument is, for the following reasons rejected.

The drawing page of record, which is claimed by Petitioner as the first page of the drawing, contains all of the elements required for an acceptable drawing page. Specifically, this page contains the Applicant's name, mailing address, information regarding the foreign application, the goods and services, and what appears to be the mark. The second page, submitted on petition, contains absolutely no wording. All that appears is a design located on the bottom third of the page. In addition, nothing in the application papers, including counsel's cover letter, the application itself, and the drawing page of record, indicates that the proposed mark is anything other than the type-written word "DEVICE."²

While *In re Hocalar* permits filing of multi-page drawings, the decision itself encourages Applicants to continue submitting one-page drawings to avoid misplacement or loss of the drawing page with the mark. In *Hocalar*, the first page of the drawing identified the Applicant, the Applicant's address, and the goods and services. The second page exhibited the mark and also identified counsel for petitioner's law firm and address. *Hocalar* at 1575. In the present application, as noted above, the second page of the drawing, submitted on petition, contains absolutely no wording. Unlike the drawing page in *Hocalar*, Petitioner's second drawing page provides nothing with which to support the argument that it should now be accepted as a part of a multi-page drawing. Based on the evidence of record, there is no way to conclude that the Office could (or should) have recognized the second page as the applied-for mark.

DECISION

The petition to incorporate the second sheet of Petitioner's formal drawing is denied. The application file will be returned to the Examining Attorney. If Petitioner has not filed a separate response to the outstanding Office Action of September 24, 1996, since the petition responds in material part to the outstanding Office Action, the Examining Attorney may accept the petition as a timely-filed response.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:EKM

Date:

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¹ The filed-for mark is the issue on petition.

² Any argument that the Office should have known that the word “device” might be synonymous with the term “miscellaneous design” cannot be accepted, because “device” is not an Office term used to designate a design mark. Additionally, it was entirely reasonable for the Office to accept the term “DE-VICE” as the applied-for mark, since this was the only potential mark appearing on the drawing page.