

Gregg Marazzo, Esq.  
One Bausch & Lomb Place  
Rochester, New York 14064

Re: Petition to Revive Application Serial No. 74-454224  
Applicant: Gregory F. Arnette  
For: ESSX

Dear Mr. Marrazzo:

1. This will acknowledge receipt of the Request for Reconsideration, filed on March 24, 1997.
2. As you point out, the Office did receive a third request for extension of time to file a Statement of Use with respect to this application. Therefore, the petition to revive can be considered on its merits.<sup>1</sup>
3. Decision: Petition to Revive is hereby DENIED.
4. Explanation:

In its July 11, 1996 petition, Applicant indicates that its failure to timely file a second extension request was due to the transfer of trademark files from a previous attorney to the offices of Applicant's present counsel. According to Applicant's counsel, the delay in filing the second extension request was unavoidable because all the files were in transit and full details concerning the subject trademark, including the extension-request due date, were not yet apparent. The second Request for Extension of Time to File a Statement of Use was filed on July 11, 1996, together with the petition to revive.

Changes in ownership or reorganization of a business do not in themselves constitute unavoidable delay, since there are arrangements which can be made in such situations to assign responsibility for responding. TMEP §1112.05(b)(v). Further, misplacement of a file during such transitions is not considered unavoidable.

The deadline for filing a response to an Office Action is known six months in advance, and Applicants are responsible for keeping adequate records and making proper allocations of time to meet the deadline. While the transfer of files from one address to another may cause some logistical problems, it is reasonable to expect that appropriate precautions will be taken to avoid misplacement of time-sensitive documents so that legal deadlines can be met. TMEP §1112.05(b)(v).

In this case, there is no evidence that any steps were taken to avoid missed deadlines during the move of files between Arnet Optic Illusions, Inc. and Bausch & Lomb Incorporated. For example,

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<sup>1</sup> A recent petition decision also permits review of the petition to revive. In re Swatch A G, \_\_\_ USPQ2d \_\_\_ (Comm'r Pats. 1997), permits retroactive submission and payment of interim extension requests where a petition to revive would otherwise be granted and failure to timely file an extension request is the only outstanding issue.

there is no evidence that a list of upcoming deadlines was maintained or that Applicant's new counsel was advised of upcoming deadlines. Therefore, the delay is not considered unavoidable and the application will remain abandoned.

4. The Office records indicate that \$100 for the third extension request was charged to Deposit Account No. 02-1427 on December 12, 1996.<sup>2</sup> Rather than debit this account \$100 for the petition filing fee and refund the \$100 for the third extension request, the Office will change the fee attribution code, so that it is clear that \$100 have been received for the petition filing fee.

5. Please feel free to contact the undersigned staff attorney with any questions concerning this letter.

Sincerely,

Eleanor K. Meltzer,  
Staff Attorney  
Office of the Assistant Commissioner  
for Trademarks  
Tel: (703) 308-8910 x58  
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<sup>2</sup> Although Deposit Account No. 02-1427 should have been debited \$300 (\$100 x 3 for the ~~three-class application~~), the Office ~~only~~ debited \$100.