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Re: Petition to Revive Application Serial No. 74/557566
Applicant: Pulsotronic Merten GmbH & Co. KG
For: VIDEOLAB

Dear Mr. Ramik:

This will acknowledge receipt of the petition to revive the above-referenced application, filed October 23, 1996.

Decision: Petition to Revive is DENIED.

ANALYSIS

The application was abandoned for failure to respond to the Office Action dated January 19, 1996 within the statutory six month period from the Office Action's mailing date. The Office Action was a letter inquiring the status of the relevant foreign application. Counsel for the Applicant declared that he did not realize that the status inquiry letter contained a response deadline. Instead, the Office Action was understood to be a suspension notice not requiring a response. Accordingly, the status inquiry letter was not docketed for response but merely identified as being suspended on the face of the file. Counsel declares that the sentence specifically requiring response to the status inquiry letter within six months was covered up by the mailing label.

In any petition to revive an abandoned application, the applicant must show that the delay in responding was unavoidable. 37 C.F.R. §2.66. The term "unavoidable" means that reasonable steps had been taken, or precautionary systems were in operation which were designed to avoid the circumstances which caused the delay, but the delay occurred despite these precautions. If there were reasonable precautions that could have been taken to anticipate and avoid the delay, and those precautions were not taken, then the delay is considered avoidable and the petition to revive the application will not be granted. TMEP §§1112.05(b) and 1112.05(b)(i). Delays due to circumstances that could have been avoided with the exercise of care and attention are not considered unavoidable delays.

Counsel declares that the status inquiry letter was mischaracterised as not requiring a response. However, the Office Action clearly stated that a proper response was due within six months of the mailing date to avoid abandonment. Counsel's failure to read the Office Action fully cannot be said to constitute unavoidable delay.

Furthermore, the status inquiry letter specifically requested Applicant to specify the status of the relevant foreign application. Because the file identification label is not affixed to the paper, verification of when a response was due could have been ascertained by simply lifting the unaffixed label.

In this case, counsel's docketing system has not been shown to be reliable, because it does not accurately and properly operate with respect to an inquiry as to the status of a foreign applicant's foreign application. While this may be inadvertent or unintentional, it is not unavoidable.

Pursuant to Section 12(b) of the Trademark Act, 15 U.S.C. §1062(b), an applicant must respond to an Examining Attorney's Office Action within six months of the mailing date. If no response is filed, the application is abandoned. 37 C.F.R. §2.65. Because the response period is set by statute, the Office has no authority to extend or waive it.

Applicant may wish to consider filing a new application. The Office will not hold the denial of this petition to be prejudicial to the Applicant in the filing of a new application. Currently, the application filing fee is \$245.00 per class.

Sincerely,

Sarah Lee Chung
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Office of the Assistant Commissioner
for Trademarks
(703) 308-8900 ext. 35