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One Riverfront Plaza
Newark, NJ 07102-5497

Re: Petition to Revive Application Serial No. 74-595891
Applicant: DFL Ingenierie Informatique SA
For: DFL and design

Dear Mr. Hodulik:

This will acknowledge receipt of the petition to revive the above-identified application, filed March 19, 1997.

Decision: Petition to Revive is hereby DENIED.

This application was abandoned for failure to file a Statement of Use, or Request for Extension of Time to File a Statement of Use, within 6 months of the Notice of Allowance, i.e., on or before October 30, 1996.

Please note that pursuant to Section 1(d) of the Trademark Act, 15 U.S.C. §1051(d), an applicant must file a Statement of Use, or Request for Extension of Time to File a Statement of Use, within six months of the mailing date of a Notice of Allowance. If no Statement of Use or extension request is timely filed, the application is abandoned. 15 U.S.C. §1051(d)(4); 37 C.F.R. §§2.65(c) and 2.88(h); TMEP §1105.05(e)(1).

In any petition to revive an abandoned application, the applicant must show that the delay in responding was unavoidable. Delays due to circumstances that could have been avoided with the exercise of care and attention are not considered unavoidable delays.

Due to the importance of filing dates in trademark cases, applicants and their attorneys are expected to keep adequate records to ensure that papers are filed within time periods prescribed by statute. The inadvertent failure to comply with a statutory requirement does not amount to an unavoidable delay.

In this instance, the Notice of Allowance was issued to the applicant's U.S. attorney on April 30, 1996. On July 16, 1996, more than two months later, that attorney forwarded it to the applicant's Canadian counsel. Despite the departure from the Canadian law firm of the particular attorney dealing with the matter, the firm sent the Notice of Allowance to the applicant in France on August 15, 1996. The applicant did not execute a Statement of Use until November 25, 1996, approximately one month past the expiration of time for filing a Statement of Use. The replacement of the applicant's local U.S. counsel occurred on October 18, 1996, twelve days prior to the expiration date.

The majority of responses filed in this Office are filed in a timely manner even though they often involve foreign applicants and changes in counsel. The ability to maintain adequate communication between the foreign applicant (or its foreign representative) and U.S. counsel is within the control of the applicant and its U.S. counsel.

When dealing with a foreign applicant, it is essential that adequate time be allocated to the preparation, execution and submission of time sensitive documents in order to avoid abandonment of an application for failure to timely file such documents. Execution of a document in a foreign country on or after the due date cannot be said to be a situation in which reasonable time allowances were made to ensure timely submission of the document to the Office. Therefore, while the delay may have been inadvertent or unintentional, it cannot be said to have been unavoidable.

Since the applicant has not shown that the failure to file the Statement of Use was unavoidable, the petition to revive is denied. The 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.

The \$100 fee for filing the Statement of Use will be refunded in due course. However, the \$100 petition fee will not be refunded.

Sincerely,

Hope E. Slonim
Staff Attorney
Office of the Assistant Commissioner
for Trademarks

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