

Anna Pettersson  
Synectics Medical AB (Publ)  
Public Company  
Renstiems gate 12  
S-116 28 Stockholm Sweden

Re: Petition to Revive Application Serial No. 74-648903  
Applicant: Synectics Medical AB  
For: DIAMYD

Dear Ms. Pettersson:

This will acknowledge receipt of the petition to revive the above-identified application, filed August 26, 1996 and supplemental papers received October 31, 1996. The petition is denied.

The application was abandoned for failure to respond to an Office Action dated January 30, 1996 within 6 months of the mailing date. 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.

Under Section 12(b) of the Trademark Act, 15 U.S.C. §1062(b), and Trademark Rule 2.66, 37 C.F.R. §2.66, an abandoned application can be revived only if the applicant can show that the delay in responding to an Office Action was "unavoidable." A showing of unintentional delay is not enough.

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)(i).

Because an applicant has six full months to respond to an Office Action, filing a late response due to problems with the postal service and summer holidays does not constitute an unavoidable delay.

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,

Chrisie Brightmire King  
Staff Attorney  
Office of the Assistant Commissioner  
for Trademarks  
(703) 308-9109 ext. 137