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Re: Petition to Revive Application Serial No. 74-706424
Applicant: Everex Systems, Inc.
For: EVERVISION

Dear Mr. Strabala:

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

Decision: Petition to Revive is hereby DENIED.

FACTS

Applicant filed the above-identified trademark application on July 26, 1995. On July 9, 1996, a Notice of Allowance was mailed to Applicant's counsel. When no Statement of Use or Request for Extension of Time to File a Statement of Use was submitted within the statutory six (6) month period following the Notice of Allowance, the application was declared abandoned.

This petition followed. In a letter dated August 19, 1997, Counsel was requested to provide additional information regarding his docketing procedures. A supplemental statement was filed on September 19, 1997.

ANALYSIS

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 the time periods prescribed by statute. In connection with errors in docketing or record-keeping, it must be shown that the system normally operates to avoid the error which occurred. A failure to respond due to errors in a docketing system is not considered unavoidable unless it is shown that the system is highly reliable, such that the applicant's reliance on it is reasonable. TMEP § 1112.05(b)(v). If the system contained no safeguards or procedures to avoid the type of error that occurred, the delay is not considered unavoidable.

Counsel argues the delay was unavoidable despite the firm's reliable docketing system. Counsel declares that there was some confusion in docketing caused by the firm's relocation of offices, and that a Notice of Change of Address filed with the Trademark Office was treated in the docketing system as a response to the Notice of Allowance.

Counsel's firm did not have a reliable docketing system during the time in question. The docketing system utilized by Counsel apparently does not provide a means for logging and determining what papers have been filed, and whether a proper response was actually mailed to the Trademark Office.

Furthermore, Counsel asserts that "[h]ere there was no special need to take unusual steps, since the docketing system, dual in nature had work [sic] flawlessly in the past." However, a firm's relocation of offices always necessitates the implementation of special precautions for the handling of important mail, i.e., ensuring that all mail is properly forwarded to the new address, and, as in this case, ensuring that a filing of a Notice of Change of Address is not confused with statutory responses due in pending cases.

As such, since Counsel did not have any safeguards or procedures in place to avoid the type of error that occurred here, the delay is not considered unavoidable, and the petition to revive is denied.

APPLICANT MAY FILE NEW APPLICATION

Applicant may file a new application. This Office will not hold the abandonment of this application as being prejudicial to the Applicant in the filing of a new application. Currently, this application filing fee is \$245.00 per class.

Sincerely,

Nancy L. Omelko
Administrator for Petitions
Office of the Assistant Commissioner
for Trademarks
(703) 308-8910, ext. 39

NLO/hsp