

Ms. Stephana I. Colbert
Senior Associate Counsel for Research
Office of the Vice President for Research
The University of Iowa
201 Gilmore Hall
Iowa City, Iowa 52242-1320

Re: Petition to Revive Application Serial No. 74/721649
Applicant: The University of Iowa
For: TORRE DE PAPEL

Dear Ms. Colbert:

This will acknowledge receipt of the petition to revive the above-referenced application, filed November 13, 1996.

Decision: Petition to Revive is DENIED.

The application was abandoned for failure to file a response to the Office Action dated February 21, 1996 within the statutory six month period (i.e. on or before August 21, 1996). The Applicant declares through Thomas Baker, Assistant to the Dean of Students, that while the response to the Office Action was prepared, it was inadvertently re-filed in the Applicant's files and not filed with the Patent and Trademark Office within the statutory period as a result.

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.

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.

The Office Action was sent to the Applicant, since no power of attorney had been submitted with the application. Thus, the Applicant was aware of the deadline well in advance, and had a responsibility to keep adequate records, allocate sufficient time, and take whatever action was necessary to prepare and file a good faith response. While the failure to mail to the Office Action was unintentional and inadvertent, it was not unavoidable. Due to the importance of filing dates in trademark cases, an applicant has a responsibility to keep adequate records and allocate sufficient time to ensure compliance with statutory deadlines. In this case, a misunderstanding concerning the necessary steps to be taken to file a timely response to the Office Action was not unavoidable.

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
Staff Attorney
Office of the Assistant Commissioner
for Trademarks
(703) 308-8900 ext. 35