

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Mailed: June 3, 2005
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Unsworth Transport International, Inc.
v.
UTI Worldwide, Inc.

Opposition No. 91125078

Request for Reconsideration

Ernest D. Buff of Ernest D. Buff & Associates, LLC for
Unsworth Transport International, Inc.

Thomas J. Moore of Bacon & Thomas for UTI Worldwide, Inc.

Before Hairston, Chapman and Bucher, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

The Board, in a decision issued January 26, 2005,
sustained the opposition of Unsworth Transport
International, Inc. to UTI Worldwide Inc.'s application to
register the mark "UTi" and design for "freight brokerage;
freight forwarding; freight forwarding by air, sea or land;
shipping of freight; warehouse storage; [and] packaging of
freight for transportation." Further, we gave no

Opposition No. 91125078

consideration to applicant's arguments, raised for the first time in applicant's brief on the case, that opposer had abandoned its "UTi" mark. In particular, we found that the issue of abandonment was not tried by opposer's implied consent.

In its request for reconsideration, applicant now argues that because opposer does not own a registration for its "UTi" mark, opposer had the burden of establishing that it had not abandoned its "UTi" mark. Also, applicant continues to argue that opposer has indeed abandoned its "UTi" mark.

The purpose of reconsideration is to point out legal and/or factual errors made by the Board in making its decision, not to reargue the case as applicant has done.

Further, contrary to applicant's contention, opposer did not have the burden of establishing that it had not abandoned its "UTi" mark. Rather, it was opposer's burden to establish prior common law use of its "UTi" mark which opposer did.¹ As we noted in footnote 5 of our decision, the testimony relied on by applicant to establish abandonment concerned opposer's decision to stop identifying itself as "UTi" in its dealings with a single company. The

¹ At pages 8-9 in our decision, we discussed in detail the evidence establishing opposer's prior common law use of the "UTi" mark in connection with its services. This is not a case of an opposer making only sporadic, non-commercial sales of its goods or services.

Opposition No. 91125078

record showed that opposer does business with a number of companies, and such testimony would not establish, as applicant argues, that opposer unequivocally abandoned its "UTi" mark.

In view of the foregoing, applicant's request for reconsideration is denied and the decision of January 26, 2005 stands.