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This Opinion is Not
Citable as Precedent of
the TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Robert Ameet

Serial No. 78114391

On Request for Reconsideration

John J. Connors of Connors & Associates for Robert Ameet.

Georgia Ann Carty Ellis, Trademark Examining Attorney, Law Office 108 (Andrew Lawrence, Managing Attorney).

Before Hairston, Rogers and Zervas,
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Robert Ameet applied to register FASTRAK, in standard character form, as a mark on the Principal Register for services eventually identified, following amendment, as "tracking services for retrieval of encoded products, excluding railcars in transit," in International Class 45. Registration was refused by the examining attorney, in view

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of the prior registration of FAST-TRAX for "services for computerized tracking and tracing of railcars in transit," in International Class 35 (Registration No. 2727717). We affirmed the final refusal of registration and applicant now seeks reconsideration of that refusal, because applicant has now obtained the consent of the owner of the cited registration to registration of applicant's mark.

In essence, applicant seeks to have the adverse decision it obtained on appeal vacated, and to have the application reopened following appeal, so that the examining attorney can consider the consent agreement. In support of its request, applicant relies on In re Digequip Security Industries, Inc., 225 USPQ 230 (TTAB 1984).¹ That case, however, is distinguishable from the case at hand. Digequip did not involve a consent agreement at all and did not involve any newly obtained evidence. Rather, Digequip involved a situation in which the applicant convinced the panel that rendered the decision on appeal that it had misunderstood the facts, as they existed at the time of the appeal.

¹ Applicant timely filed a request for reconsideration within one month of the issuance of the decision affirming the examining attorney's refusal of registration. Approximately two weeks later, applicant filed a supplement, expanding on the initial request. We have exercised our discretion to consider the supplement.

The Digequip panel agreed that the examining attorney's decision to refuse registration was "based on an imperfect understanding of the facts," vacated its decision and instructed the examining attorney to withdraw the finality of the refusal of registration, so that further examination of the true facts of the case could be made. Id. While Digequip may be read as contemplating, after vacation and remand, submission of additional evidence, it cannot be read to suggest that the applicant therein was being granted permission to submit evidence of new facts or facts that arose subsequent to the prosecution of the application and appeal. In the case at hand, applicant proposed to do exactly that, i.e., submit new evidence gathered after the conclusion of the appeal.

Once the Board has heard and decided a case on appeal, reopening of the application may be possible for entry of a disclaimer (typically when the appeal involved the propriety of the requirement that a disclaimer be submitted), or if a petition to the Commissioner is granted. See discussion in TBMP Section 1218. Obtaining a consent from the owner of a cited registration *after* issuance of decision in an appeal has been found not to provide sufficient cause for reopening of an application

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via such a petition. See In re Mack Trucks, Inc., 189 USPQ
642, 643 (Comm'r 1976).

The request for reconsideration is denied.