

THIS DECISION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed:
October 12, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re JDK Select, Inc.

Serial No. 78324310

Jason D. Firth of Greenberg Traurig LLP for JDK Select,
Inc.

Steven W. Jackson, Trademark Examining Attorney, Law Office
107 (J. Leslie Bishop, Managing Attorney).

Before Seeherman, Drost and Walsh, Administrative Trademark
Judges.

Opinion by Walsh, Administrative Trademark Judge:

In a paper filed September 5, 2006, JDK Select, Inc.
(applicant) requests reconsideration of our decision of
August 2, 2006 in this case. In that decision, we affirmed
a refusal to register applicant's mark under Section 2(d)
of the Trademark Act, 15 U.S.C. § 1052(d), in view of Reg.
No. 2591771. Applicant requests reconsideration on the
ground that it filed a petition to cancel the cited
registration, also on September 5, 2006. The cancellation
proceeding (No. 92046250) was instituted on September 6,

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2006, and it asserts, among other things, that the registrant committed fraud in obtaining the registration.

Applicant's request for relief states, "As the cited registration is invalid, Applicant requests that the Board either reconsider its refusal to register pursuant to Section 2(d) or stay the current status of this application until the cancellation proceedings have been decided."

The correct characterization of Applicant's request is as a request to reopen the proceeding. See In re Vycom Electronics Ltd., 21 USPQ2d 1799, 1800 (Com'r Pats. 1986). In the Vycom Electronics case, the applicant asked the Board to suspend proceedings in its application after the Board had rendered a final decision in an appeal. The applicant in that case also based its request on cancellation proceedings it filed after the decision in the appeal. Id. Also, as in this case, the purpose of the proceedings was to cancel registrations which served as the basis of the refusal which the Board affirmed on appeal.

In Vycom Electronics, the Commissioner stated, "Although petitioner has characterized its motion as one to stay proceedings, in fact it is a motion to reopen prosecution because of what at the time was contemplated and are now filed petitions to cancel. Rule 2.142(g) makes it clear that a motion to reopen except for entry of a

disclaimer, must be upon order of the Commissioner." Id.
The Commissioner stated further that, even if the applicant had directed its request to the Commissioner, the Commissioner would deny the request under the circumstances. The Commissioner concludes by stating, "Further, during the pendency of the application before the Examining Attorney, the petitioner could have elected to file petitions to cancel the cited registrations and to request suspension of further action on its application. (Citation omitted.) Instead petitioner elected to file an *ex parte* appeal and pursue it to a final decision by the Board. Rule 2.142(g) was not intended to permit an applicant to pursue the wholly different procedural alternative of a cancellation proceeding after the Board has finally disposed of an application by a decision adverse to applicant on an *ex parte* appeal." Id.

The provisions of current Trademark Rule 2.142(g) are, in all respects, identical to the rule in effect at the time of the Vycom Electronics case. Furthermore, the facts before us in this request are, in all relevant respects, identical to those in the Vycom Electronics case.

Accordingly, we deny applicant's request for reconsideration because it, in effect, seeks to reopen the

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application and we have no authority to do so in these
circumstances. See Trademark Rule 2.142(g).