

«seal»

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

98-358

Re: Trademark Registration of :
Imation Corp. :
Registration No. 644,744 :
Issued: April 30, 1957 : On Petition
For: DUPLICARD :
Petition Filed: May 27, 1998 :

Imation Corp. has petitioned the Commissioner to revive the above identified registration, pursuant to 37 C.F.R. §2.66. The petition is more appropriately reviewed under 37 C.F.R. §2.146(a)(3).¹ The petition is denied under 15 U.S.C. §1059.

FACTS

The above registration issued on April 30, 1957, and was renewed on April 30, 1977. Pursuant to 15 U.S.C. §9, an application for second renewal of the registration was due to be filed within the six months preceding April 30, 1997, or, on payment of a late fee, within the three month grace period following that date.

Registrant did not file a second renewal application within the statutory period for filing. The registration expired on May 1, 1997. This petition followed.²

ANALYSIS

Renewal of trademark registrations is governed by 15 U.S.C. §1059, which provides, in part:

- (a) Each registration may be renewed for periods of ten years from the end of the expiring period upon...the filing of a verified application therefor.... Such

¹ 37 C.F.R. §2.66 provides for revival of abandoned applications upon a showing that the applicant was unavoidably delayed in responding to an Office Action or for failed to file a Statement of Use under 37 C.F.R. §2.88 in an application under 15 U.S.C. §1051(b) in a timely fashion. In this case, Petitioner’s registration expired because the registrant failed to file a renewal application under 15 U.S.C. §1059, within the statutory period.

² Registrant’s argument that the registration should be revived because the delay in filing the second renewal application was unavoidable due to the failure of Registrant’s reliable docketing system is based on the standard for reviewing abandoned applications under 37 C.F.R. §2.66 and will not be considered.

application may be made at any time within six months before the expiration of the period for which the registration was issued or renewed, or it may be made within three months after such expiration on payment of the additional fee herein prescribed.

In this instance, the registration expired because Petitioner did not file a second renewal application within the statutory period. 15 U.S.C. §9 clearly requires that a complete renewal application be filed within the time limits set forth therein. The Commissioner cannot extend, suspend, or waive the time for filing a complete application for renewal for any reason. *In re Culligan International Co.*, 915 F.2d 680, 16 USPQ2d 1234 (Fed. Cir. 1990); *In re Holland American Wafer Co.*, 737 F.2d 1015, 222 USPQ 273 (Fed. Cir. 1984); *In re Michaels Stern & Co., Inc.*, 199 USPQ 382 (Comm'r Pats. 1978); *Ex parte Firmenich & Co.*, 137 USPQ 476 (Comm'r Pats. 1963).

DECISION

The petition is denied. The registration shall remain expired.

Petitioner may wish to file a new application for registration of its mark. The Office will, upon request, expedite handling of the new application. See TMEP §1102.03.

Robert M. Anderson
Deputy Assistant Commissioner
for Trademarks

RMA:CLB

Date:

Attorney for Petitioner:

William K. Weimer, Esq.
Post Office Box No. 64898
St. Paul, MN 55164 0898