

Stealth Industries, Inc.

v.

Stone Age Equipment, Inc.

Opposition No. 81,164

Petition to the Commissioner
Filed August 1, 1996
Request Upon Reconsideration
Filed: April 7, 1997

Stealth Industries, Inc. (“Stealth”) has requested reconsideration of the Commissioner’s decision dated March 14, 1997, denying its petition to reverse an interlocutory order of the Trademark Trial and Appeal Board (the “Board”). Although the Trademark Rules do not specifically provide for requests for reconsideration of decisions on petitions, the Commissioner has the discretion to consider such requests pursuant to Trademark Rule 2.146(a)(3). Inasmuch as no new facts or persuasive arguments have been raised by Petitioner, the request upon reconsideration is denied pursuant to this authority.

FACTS

In a petition decision dated March 14, 1997, the Commissioner denied Stealth’s request to reverse a Board order because no clear error or abuse of discretion on the part of the Board was shown. This request was then filed on April 7, 1997. Stealth asserts in the request that it will be “prejudiced” in the opposition proceeding if the Board decision is not reversed because “it allows only the Defendant to file a main brief and [Stealth] to file a reply brief,” and that if Stealth “is not permitted to file its trial briefs containing its prima facie and irrefutable evidence of priority of use of the identical mark on similar goods, the Board will not be able to render a fair decision based on the merits of [Stealth’s]/Opposer’s case.” In the original petition papers, Stealth claimed that the Board’s denial of the interlocutory order “has clearly *prejudiced* [Stealth’s] ability to have its case heard on the merits.”

DECISION

While the Commissioner has the discretion to consider requests for reconsideration pursuant to Trademark Rule 2.146(a)(3), reconsideration is not a matter of right. In some cases, the Commissioner will grant a request for reconsideration because new facts are presented which warrant equitable relief. However, the Commissioner will deny a request for

reconsideration which merely reiterates or expands on arguments previously presented. Inasmuch as no new facts or persuasive arguments have been raised by Petitioner, the request upon reconsideration is denied. The files will be returned to the Board for resumption of the opposition proceeding.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:LBK

Date:

Petitioner:

Leo Stoller, President
Stealth Industries, Inc.
Trademark and Licensing Dept.
P.O. Box 35189
Chicago, IL 60707-5189

Attorney for Opposer:

Russell R. Palmer, Jr., Esq.
Christie, Parker & Hale
350 W. Colorado Blvd., 5th Floor
Pasadena, CA 91103