

«seal»

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

99-260

Re: Trademark Application of :
Magee-Womens Hospital :
Serial No. 74/665283 :
Filing Date: April 24, 1995 : On Petition
For: MAGEE-WOMENS :
HOSPITAL. WOMANCARE :
FOR A LIFETIME :
Petition Filed: December 21, 1998 :

Magee-Womens Hospital, has petitioned the Commissioner to revive the subject application, which was abandoned for failure to pay the statutory appeal fee. 37 C.F.R. §2.146(a)(3), provides authority for the requested review. The petition is denied under Section 20 of the Trademark Act. 15 U.S.C. §1070.

FACTS

On July 31, 1997, the Examining Attorney issued a final refusal to register the above identified mark. Pursuant to Section 12(b) of the Trademark Act, and Trademark Rules 2.64(a) and 2.142(a), Petitioner had six months in which to file a Notice of Appeal with the Trademark Trial and Appeal Board (Board). On January 20, 1998, Petitioner filed an appeal brief to the Trademark Trial and Appeal Board. The application was abandoned on February 26, 1998. This petition was filed on December 21, 1998, along with a notice of appeal and the appeal fee of \$100.

Counsel for Petitioner states that he inadvertently failed to file a notice of appeal and a fee. Counsel further argues that the petition should be granted because sufficient time remained after receiving the appeal, for notification by the PTO of any deficiency, prior to expiration of the response period of the final refusal.¹

DECISION

Pursuant to Section 12(b) of the Trademark Act, 15 U.S.C. §1062(b), an application is abandoned if an applicant fails to respond to an Office Action within six months of the mailing

¹ According to Office records, there were 11 days remaining in the six-month response period from the final refusal. Please note that it is the Petitioner who is ultimately responsible for filing proper documents. Although the Office attempts to notify parties as to defective papers to permit timely refile, it has no obligation to do so. *In re Holland American Wafer Co.*, 737 F.2d 1015, 222 USPQ 273 (Fed. Cir. 1984); *In re Fuller-Jeffrey Broadcasting Corp. of Santa Rosa*, 16 USPQ2d 1456 (Comm'r Pats. 1990).

date. After a final Office Action, an applicant's response is limited to an appeal, a petition if permitted by Rule 2.63(b), or compliance with any requirement made by the Examining Attorney. 37 C.F.R. §2.64(a).

15 U.S.C. §1070 provides:

An appeal may be taken to the Trademark Trial and Appeal Board from any final decision of the examiner in charge of the registration of marks upon the payment of the prescribed fee.

The payment of the fee for filing an appeal to the Trademark Trial and Appeal Board is a statutory requirement that cannot be waived by the Commissioner.

The petition is denied. The \$100 appeal fee submitted with the petition will be refunded in due course.

Robert M. Anderson
Acting Assistant Commissioner
For Trademarks

RMA:NLO:CPS

Date:

Attorney for Petitioner:

Michael G. Panian, Esq.
Buchanan Ingersoll
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219