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

Re: Trademark Application of :
Mu Co., Ltd. : 98-536
Serial Number 75-034,741 :
Filing Date: December 19, 1995 : On Petition
For: COUNT MANAGER :
Petition Filed: April 22, 1998 :

Mu Co. Ltd. has petitioned the Commissioner¹ to revive the above referenced application. The petition is denied pursuant to 37 C.F.R. §2.146(a)(3).

FACTS

Petitioner filed the above referenced application on December 19, 1995. A Notice of Allowance issued on August 12, 1997, and a Request for an Extension of Time to File a Statement of Use was filed on January 30, 1998. However, this extension request identified the applicant not as Mu Co., Ltd. but as Miyoshi & Miyoshi, an entity described in the petition as a Japanese law firm which represents Petitioner in trademark matters in Japan.

In a letter dated March 16, 1998, the legal instruments examiner at the Intent to Use Division of the Office advised Petitioner that the extension request had not been filed by the applicant of record. Petitioner was further advised that the application would be abandoned unless Petitioner demonstrated that Miyoshi & Miyoshi was the owner of the mark.

The present petition followed.

ANALYSIS

Pursuant to 15 U.S.C. §1051(d)(2) and 37 C.F.R. §2.89, a Request for Extension of Time to file a Statement of Use must be filed by the owner of the mark. An applicant may submit evidence that the party who filed the extension request was the owner of the mark at the time the request was

¹ It is noted that 37 C.F.R. §2.146 requires that petitions be verified by an affidavit or declaration. Although this petition was not verified, no verification will be required, since the petition is denied.

filed, even after expiration of the time for filing the Statement of Use. However, if the party who filed the extension request was not the owner of the mark at the time the request was filed, a substitute verification in the name of the true owner cannot be filed unless there is time remaining in the statutory period for filing the Statement of Use. TMEP §1105.05(d). *In re Raychem Corp.*, 20 USPQ2d 1355, 1358 (Comm'r Pats. 1991).

Here, a party other than the applicant was identified as the filer of the extension request. A substitute verification in the name of the true owner cannot be filed, because the statutory time for filing an extension request has expired.

Petitioner argues that the application should not have been abandoned because the reference to Miyoshi & Miyoshi was the result of a “human error.” However, the requirement that the applicant file the extension request is statutory. 15 U.S.C. §1051(d). Therefore, the requirement cannot be waived even if the failure to meet the requirement was inadvertent.

Petitioner also notes that the extension request was signed by the applicant’s president, and that the request was therefore signed by a proper person. However, it does not follow from this that the extension request identified the proper party: while the signatory may have been an officer of the proper party, that party nevertheless was not named as the filer of the extension request.

DECISION

The Petition is denied. The application will remain abandoned.

Robert M. Anderson
Acting Assistant Commissioner
for Trademarks

RMA:AL

Date:

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