

Re: Trademark Application of :
 Henry Steiner :
 Serial No. 75/039315 :
 Filing Date: December 26, 1995 : On Petition
 For: THE ART OF CORPORATE DEFINITION :
 Petition Filed: December 11, 1997 :

Henry Steiner has petitioned the Commissioner to reverse the denial of a Request for Extension of Time to File a Statement of Use in connection with the above identified application. 37 C.F.R. §2.89(g) and §2.146(a)(3) provide authority for the requested review.

FACTS

A Notice of Allowance issued for the subject application on April 22, 1997. On October 15, 1997, Petitioner filed the first Request for Extension of Time to File a Statement of Use.

In an Office Action dated November 14, 1997, the Applications Examiner in the ITU/Divisional Unit denied the extension request because it did not include a verified statement that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce, as required by Trademark Act Section 1(d)(2), 15 U.S.C. §1051(d)(2), and Trademark Rule 2.89, 37 C.F.R. §2.89. Petitioner was advised that, since the period of time within which to file an acceptable extension request or Statement of Use had expired, the application would be abandoned in due course.

DECISION

A Request for Extension of Time to file a Statement of Use must include “a verified statement that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services on or in connection with which the applicant has a continued bona fide intention to use the mark.” 15 U.S.C. §1051(d)(2), and 37 C.F.R. §2.89. This requirement must be fulfilled prior to the expiration of the period for filing the Statement of Use. *In re Hoffmann-La Roche Inc.*, 25 USPQ2d 1539, 1541 (Comm’r Pats. 1992); *In re Custom Technologies, Inc.*, 24 USPQ2d 1712 (Comm’r Pats. 1991); TMEP §§1105.05(d)(i) and 1105.05(d)(ii).

The requirement that a request for extension of time to file a statement of use including a verified statement of the applicant’s bona fide be filed within six months of the Notice of Allowance is a

statutory requirement. Therefore the Office cannot waive that requirement. *In re Custom Technologies, Inc.*, 24 USPQ2d 1713

Petitioner's attorney states that the format used in the extension request has previously been accepted by this Office. However, the propriety of past requests for extension of time to file a statement of use filed in this Office is not the subject of this petition. If the Office erred by allowing a prior Request for Extension of Time to file a Statement of Use that failed to include a verified statement of the applicant's bona fide intent, it would be inappropriate to continue that error in this case. Consistency must be secondary to correctness of Office practice. See *In re Stenographic Machines, Inc.*, 199 USPQ 313, 317 (Comm'r Pats. 1978).

The petition is denied. The application will be forwarded to the examining attorney to be processed for abandonment.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:JCL:JAD

Date:

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