

Samuel B. Stone, Esq.
Lyon & Lyon
633 West Fifth Street
47th Floor
Los Angeles, CA 90071

Re: Application Serial No. 74-529777
Applicant: Vivitar Corp.
For: POCKET 35

Dear Mr. Stone:

This will acknowledge receipt of the petition to revive the above-identified application, filed November 20, 1996.

Decision: Petition to Revive is hereby DENIED.

FACTS:

A Notice of Allowance for POCKET 35 was mailed to Applicant on June 27, 1995. Applicant timely filed a Request for an Extension of Time to file a Statement of Use by December 27, 1995. The extension period expired on June 27, 1996, at which time a Statement of Use, or a second extension request was due from Applicant. Upon Applicant's failure to timely submit a Statement of Use or an extension request by this deadline, the application was abandoned on June 28, 1996. Applicant states that its failure to timely file a second Request for an Extension of Time to File a Statement of Use was due to the fact that it never received the Notice of Approval of the first extension request.

DECISION:

Trademark Rule 2.89(g) clearly states, in part:

The applicant will be notified of the grant or denial of a request for an extension of time, and of the reasons for a denial. Failure to notify the applicant of the grant or denial of the request prior to the expiration of the existing period or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under Sec. 2.88.

Nor does the filing of a petition to revive stay the time for filing these papers. TMEP Sec. 1105.05(d)(v). See *In re Hoffman-La Roche, Inc.*, 25 USPQ2d 1539 (Comm'r Pats. 1992).

Thus, an applicant's delay in filing an extension request or a Statement of Use because the applicant had not received a notice of approval of an earlier filed extension request is not deemed to be unavoidable, within the meaning of Rule 2.66.

Applicant may wish to consider filing a new application. The Office will not hold the dismissal of this petition to be prejudicial to the Applicant in the filing of a new application. Currently, the application filing fee is \$245.00 per class.

Sincerely,

Janis C. Long
Staff Attorney
Office of the Assistant
Commissioner for Trademarks
(703) 308-8910, Ext. 57

JL:hsp