

Paul W. Stanga, Esq.¹
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1200 Rand Tower
527 Marquette Avenue South
Minneapolis, MN 55402

Re: Petition to Revive Application Serial No. 74/654606
Applicant: United Healthcare Corporation
For: MEDICARE COMPLETE

Dear Mr. Stanga:

This will acknowledge receipt of the petition to revive the above-identified application, filed February 18, 1997.

This application was abandoned for failure to file a Statement of Use, or Request for Extension of Time to File a Statement of Use, within six months of the Notice of Allowance, i.e., on or before December 4, 1996.

Pursuant to Section 1(d) of the Trademark Act, 15 U.S.C. §1051(d), an applicant must file a Statement of Use, or Request for Extension of Time to File a Statement of Use, within six months of the mailing date of a Notice of Allowance. If no Statement of Use or extension request is timely filed, the application is abandoned. 15 U.S.C. §1051(d)(4); 37 C.F.R. §§2.65(c) and 2.88(h); TMEP §1105.05(e)(1). Because the time for filing the Statement of Use is set by statute, it cannot be waived.

Under Section 12(b) of the Trademark Act, 15 U.S.C. §1062(b), and Trademark Rule 2.66, 37 C.F.R. §2.66, an abandoned application can be revived only if the applicant can show that the delay in responding to an Office Action was "unavoidable." A showing of unintentional delay is not enough.

Here Applicant misplaced the Notice of Allowance it received from the office. Applicant then hired an attorney to take over the prosecution of the file. However, the applicant's file did not contain the Notice of Allowance and the attorney's written status request was not returned until after the deadline for filing a Statement of Use or extension request had passed.

The Office Action was sent to the Applicant, since no power of attorney had been submitted with the application. Thus, the Applicant was aware of the deadline well in advance, and had a responsibility

¹It is noted that the petition was filed by an attorney who has not been named as the attorney of record. If Applicant wishes to change the correspondence address, a written request to do so, signed by Applicant, should be submitted. Trademark Rule 2.18, 37 C.F.R. §2.18; TMEP §603. The mere transmittal of a communication by an attorney does not effect a change in a correspondence address. Although a courtesy copy of this letter is being sent to the attorney who filed the petition, duplicate correspondence will not be undertaken in the future. It is the responsibility of the applicant to maintain a current and accurate correspondence address in its application file.

to keep adequate records, allocate sufficient time, and take whatever action was necessary to prepare a good faith response.

Although misplacing a file or an important paper such as the Notice of Allowance is unintentional and inadvertent, it is not unavoidable. Due to the importance of filing dates in trademark cases, applicants are expected to keep careful records to ensure that papers are filed within the time periods prescribed by statute. Errors in record-keeping are not considered unavoidable unless it is shown that safeguards had been established for the purpose of doublechecking and catching the error. TMEP §1112.05(b)(v). If the system contained no safeguards or procedures to avoid the type of error that occurred, the delay is not considered unavoidable. In this case, it has not been established that adequate safeguards were in place to avoid abandonment for failure to meet statutory deadlines.

Since Applicant has not shown that the delay in responding to the Office Action was unavoidable, the petition to revive is DENIED.

Applicant may wish to consider filing a new application. The office will not hold the denial 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. Applicant's fee for filing the statement of use will be refunded in due course.

Sincerely,

Jeffrey J. Look
Staff Attorney
Office of the Assistant Commissioner
for Trademarks
(703)308-9108 ext. 178