

Petition to the Director under TM Rule 2.146 requesting revival of Application No 88030716 for the mark "CUE" and the application be returned to active status

To the Director:

Applicant/Petitioner hereby petitions the Director to revive Application No 88030716 and return it to active status from abandonment on Nov. 30, 2019 based on the following: "In this case, applicant did not (1) raise a new issue, (2) resolve all outstanding issues in the final Office action, (3) provide any new or compelling evidence with regard to the outstanding issues, or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issues."

In this petition Applicant contends that return to active status and may be granted if there is shown that (1) the USPTO committed a clear procedural error or abuse of discretion, or (2) applicant can show substantial compliance with the response requirements. TMEP §§715.03(a)(ii)(D), 718.03(b), 1713.01-02.

Applicant/Petitioner herein explains that there was both an abuse of discretion in this matter and that also, contrary to the examiners issuance of abandonment, Applicant/Petitioner was in substantial compliance with the response requirements.

1. Abandonment was inappropriate because Applicant/Petitioner had provided basis for Issues to be resolved

Applicant/Petitioner contends that in the Response to the Final Office Action, Applicant/Petitioner evidence that would resolve issues was provided, and any suggested or indicated actions were taken.

In particular, the applicant has adequately addressed a the refusal to register the mark "CUE" was issued on the basis that Applicant/Petitioner's mark was in conflict with registered mark No 5476120. However, the marks were applicable to different fields and products. Applicants goods relate to lighter fluids and fuel for lighters, whereas the registered mark is for a field of goods related to electronic cigarettes.

Applicant/Petitioner has provided substantial evidence of the commercial success of his mark on lighter fuel products, which evidence should overcome the examiners suggestion of a likelihood of confusion due to the secondary meaning which has been achieved in relation to Applicants mark in the field of use.

It is not clear that Applicant's evidence of secondary meaning which has been achieved by this mark was considered. Furthermore, Applicant/Petitioner does not comprehend an abandonment for failure of providing a basis for resolution of this case.

2. Abuse of Discretion for Failure to Provide Adequate Explanation of Abandonment and Additional 30 Days under 37 CFR Section 2.65(a)(2)

Not only did the examining attorney provided inadequate explanation of the reasons for abandonment, the examiner failed to grant additional time to perfect the response under 37 CFR Section 2.65(a)(2). Additional time to perfect the response may be provided when the following conditions are met, which they were:

- (1) the response was filed within the six-month period;
- (2) the response was a bona fide attempt to advance the examination;
- (3) the response was a substantially complete response to the examining attorney's action; and
- (4) consideration of some matter or compliance with some requirement was omitted.

Applicant/Petitioner has met these conditions, and believes that the examiner should have provided some explanation of the abandonment along with a 30 day extension to perfect the response.

Respectfully Submitted

Petitioner/Applicant