Commissioner of Patents and Trademarks
Patent and Trademark Office (P.T.O.)

RE: TRADEMARK APPLICATION OF NO.120 CORPORATE VENTURES LTD.
97-14
February 7, 1997
***1** Petition Filed: November 5, 1996

For: WHO KILLED JFK, THE GAME and Design:
Serial No. 75/187160
Filing Date: October 18, 1996 [FN1]

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Assistant Commissioner for Trademarks

On Petition

No.120 Corporate Ventures Ltd. has petitioned the Commissioner to waive the drawing requirements of 37 C.F.R. § 2.52, and to reinstate the original application filing date of October 18, 1996, for the above-identified application. The petition is granted under Trademark Rule 2.146(a)(3).

FACTS

Petitioner filed the subject application on October 18, 1996, pursuant to Sections 1(b) and 44(d) of the Trademark Act. The application papers were returned to Petitioner, with a "Notice of Incomplete Trademark Application" dated October 22, 1996. The Notice indicated that the application papers were defective because the drawing of the mark was too large. On October 24, 1996, Petitioner re-submitted its application. [FN2] This petition followed.

Petitioner has submitted a copy of the application papers, as originally filed on October 18, 1996. A review of the papers reveals that the mark presented on the application drawing page measures 3 1/2" x 5."

ANALYSIS

Past Practice of the Office With Respect to Rules 2.21(a)(3) and 2.52

It has been the practice of the Office to deny filing dates to applications with drawings larger that 4"x4." Trademark Rule 2.21(a)(3), 37 C.F.R. § 2.21(a)(3), requires than an application include "[a] drawing of the mark sought to be registered substantially meeting all the requirements of § 2.52." Trademark Rule 2.52(c), 37 C.F.R. § 2.52(c), provides that the size of the drawing "in no case" may be larger than 4 inches by 4 inches. The Office has strictly enforced the size restrictions for drawings. See In re Fuller-Jeffrey Broadcasting Corp. of Santa Rosa, 16 USPQ2d 1456 (Comm'r Pats. 1990).

The drawing rule was amended, effective September 22, 1986, "to reduce the computer system storage space required for drawings; to insure that all applications which are filed can be searched under the automated search system; [and] to insure that drawings can be faithfully reproduced by photocomposition techniques...." 51 FR 29920. In response to a stated fear of overzealous enforcement of the amended rules, with marks being excluded from the trademark registration system because of technicalities, the Office responded that it "will make every effort to interpret the rule sensibly, and will accord an application a filing date as long as the drawing meets the size restrictions and consists of black lines on white paper, without gray or half tones." 51 FR 29921.

***2** As noted in the May 2, 1989, Official Gazette, the drawing size limitation in Rule 2.52 was necessary in order for the drawing to be entered into the computerized records of the Office as quickly as possible. Reducing the size of the drawing would increase processing time and delay providing notice to the public about the filing of the application.

Change of Office Policy With Respect to Rules 2.21(a)(3) and 2.52

Upon further consideration and review of Rules 2.21(a)(3) and 2.52, the Commissioner has determined that drawings larger than 4" x 4" do, for the following reasons, substantially meet the requirements of Rule 2.52.

The purpose of the drawing requirement, embodied in Rule 2.21(a)(3), is to provide notice to the public of marks intended to be registered. As long as the mark is legible, public notice is provided. Thus, most drawings can be interpreted as "substantially meeting" the requirements of Rule 2.52.

While reducing the size of drawings can increase application-processing time, strict enforcement of Rule 2.52 results in the denial of a filing date. Given modern computer storage-space capacity and drawing-reproduction technology, there appears to be little justification for denying a filing date simply because a drawing is

larger than 4" x 4", or contains some gray tones. Therefore, the policy rationale given in In re Fuller-Jeffrey for denying filing dates to applications with drawings over 4" x 4" square is explicitly overruled.

Effective immediately, the requirements of Rule 2.52 will be enforced as requirements for registration, rather than as filing-date requirements. The Legal Instruments Examiners in the Pre-Examination Section will prominently flag drawings that are not in compliance with Rule 2.52, so that Examining Attorneys can issue requests for acceptable drawings. As a requirement for registration, the Office will continue its strict enforcement of Rule 2.52, since black-and-white drawings less than 4" x 4" are necessary for preparation of the Official Gazette and registration certificates.

It is emphasized that filing dates will continue to be denied when there is no drawing page, or no trademark on the drawing page, where multiple trademarks appear on the drawing page, where there is color on the trademark in the drawing, or when the heading on the drawing is omitted.

DECISION

The petition is granted. The application will be granted a filing date of October 18, 1996.

FN1. The filing date is the issue on petition.

FN2. The re-submitted application has been assigned application Serial No. 75/187160, with a filing date of October 24, 1996.

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