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

RE: TRADEMARK APPLICATION OF RENT A BOXX MOVING SYSTEMS INC.
Serial No. 74/004,277
June 24, 1992
***1** Petition Filed: September 13, 1991

For: MOVETECH BOXX
Abandonment Date: April 24, 1991 [FN1]
Filing Date: November 21, 1989

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On Petition

Rent A Boxx Moving Systems Inc. has petitioned the Commissioner to reverse the refusal of the ITU/Divisional Applications Examiner to accept the statement of use and reinstate the above-captioned application. Trademark Rule 2.146 provides authority for the requested review.

The notice of allowance for the subject application issued on October 23, 1990. Pursuant to Section 1(d)(1) of the Act, applicant was required to file a statement of use within six months from the date of issuance of the notice of allowance, i.e., between October 23, 1990 and April 23, 1991.

On April 23, 1991, applicant filed a statement of use. In a letter dated May 28, 1991, the ITU/Divisional Unit Applications Examiner withheld initial acceptance of the statement of use because the papers failed to include a verified statement that the mark is in use in commerce, as required under Trademark Rule 2.88(e)(3). Because the period of time with which the applicant could file an acceptable statement of use or extension request had expired, the ITU/Divisional Unit Applications Examiner notified petitioner that the application was abandoned. This petition was then filed on September 13, 1991.

In a declaration under 37 C.F.R. § 2.20 accompanying the petition, petitioner's counsel declares that the minimum requirements for filing a statement of use had been satisfied. The petition also includes a re-executed statement of use, dated August 15, 1991, which includes a verified statement that the mark is in use in commerce.

Timeliness of Petition

Under Trademark Rule 2.146(d), 37 C.F.R. § 2.146(d), a petition to the Commissioner "on any matter not otherwise specifically provided for shall be filed within sixty-days from the date of mailing of the action from which relief is requested." Timeliness of petitions concerning relief from abandonment of an application for failure to submit a statement of use is not specifically provided for in the Rules and, therefore, the sixty day period is applicable.

In the instant petition, the last written communication from the Office to the petitioner was dated May 28, 1991, approximately four months prior to the filing of the petition on September 13, 1991. Although petitioner claims that several telephone call attempts were made on or about June 5, 1991, no additional communication with the Office was achieved.

Accordingly, the petition is denied as untimely. The application will remain abandoned.

FN1. The application was declared abandoned for failure to file a statement of use.

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