

THIS DISPOSITION IS
NOT CITABLE AS PRECEDENT
OF THE TTAB

Mailed: December 14, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re UTi Worldwide Inc.

Serial No. 76177195

Request for Reconsideration

Thomas J. Moore of Bacon & Thomas, PLLC for UTi Worldwide Inc.

Raul Cordova, Trademark Examining Attorney, Law Office 114 (Margaret Le, Managing Attorney).

Before Chapman, Bucher and Holtzman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On November 3, 2005, the Board affirmed the Examining Attorney's refusal to register applicant's mark shown below

The logo for eMpower features the word "eMpower" in a bold, sans-serif font. The "e" is lowercase and italicized, while "Mpower" is uppercase. A thick, black, curved line arches over the letters "M" and "p", resembling a stylized power cord or a signal wave.

for services involving providing information relating to the storage and forwarding of freight and information

relating to the tracking of freight under Section 2(d) of the Trademark Act in view of the registered mark IMPOWER for goods involving computer programs for use in the shipping industry (a customs regulation and import information database), and services involving transportation of the goods of others and providing a database containing shipping and freight information.¹

Applicant timely filed on December 5, 2005 a "Request For Reconsideration And Rehearing."² See Trademark Rules 2.144 and 2.196.

Applicant explains that in footnote 3 of the Board's November 3, 2005 decision, it noted that applicant's previously filed (July 8, 2005) request for suspension and remand for consideration of one third-party application and one third-party registration had been denied in an interlocutory Board order dated July 12, 2005. Applicant then contends that the two third-party "cases should be part of the record because they show that the U.S. Patent and Trademark Office has been arbitrary and capricious in not approving the present application, while simultaneously

¹ For the precise identifications of applicant's services and registrant's goods and services, see the original decision, pp. 1-3.

² The Board held an oral hearing in this case on October 11, 2005 pursuant to applicant's request under Trademark Rule 2.142(e). To the extent applicant now seeks an oral hearing on its request for reconsideration, the request for an oral hearing is denied.

approving two marks that are closer to the mark of the cited registration than is the mark of the present application"; and that "The Order maintains that Appellant has not adequately explained why these two cases were not made part of the record on the date that the Notice of Appeal was filed on February 22, 2005." (Request for Reconsideration, p. 2.) Applicant explains that the third-party application is now a third-party registration.

Applicant's arguments are essentially directed to the Board order of July 12, 2005 denying applicant's request to suspend and remand wherein the Board stated, inter alia, as follows: "Applicant has not provided a satisfactory explanation as to why this registration [No. 2673845, issued January 14, 2003] could not have been made of record prior to the filing of the appeal. ... In view of the limited probative value of a third-party application, and given the late stage of the appeal, we find that applicant has not shown good cause to remand its application so that the Examining Attorney could consider the third-party application [then application Serial No. 78373496 -- now Registration No. 2989173]."

To the extent applicant seeks reconsideration of the July 12, 2005 Board order, its request is untimely, being filed well after one month after the interlocutory order.

To the extent, applicant seeks reconsideration of the Board's decision dated November 3, 2005, its arguments are similar to arguments previously made by applicant during the prosecution of the application, and these arguments were considered by the Board as reflected in our decision at pages 12-15.

Applicant's arguments that the two third-party registrations should be considered in the decision are not persuasive that there has been any error of law or fact in our November 3, 2005 decision. The Board decision of July 12, 2005 clearly explained to applicant why its request for suspension and remand based on a third-party application and a third-party registration was denied. The decision of the Board, dated November 3, 2005, simply reiterated that the third-party application and registration had previously been excluded by the denial of applicant's request to suspend and remand. The Board nonetheless explained in the November 3, 2005 decision that third-party registrations are generally of limited probative value even if properly made of record as the determination of registrability of another mark in another case cannot control the merits of the case now before us.

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We find no error in our November 3, 2005 decision. Accordingly, applicant's request for reconsideration is denied.