

**THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB**

Mailed:
September 6, 2006
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Aesgen, Inc.

Serial No. 76500182

Request for Reconsideration

Charles E. Steffey of Schwegman Lundbert Woessner & Kluth,
P.A. for Aesgen, Inc.

Kim Saito, Trademark Examining Attorney, Law Office 102
(Thomas V. Shaw, Managing Attorney).

Before Bucher, Drost and Cataldo, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

The Board, in a final decision dated July 25, 2006,
affirmed the refusal to register applicant's **PROTORIS** mark
under Section 2(d) of the Trademark Act. Applicant filed a
timely request for reconsideration (see Trademark Rule
2.144, 37 C.F.R. § 2.144), based solely on the assertion
that Aesgen, Inc. has recently concluded negotiations with
registrant resulting in a consent agreement between
applicant and the owner of the cited **PROTEROS** mark.

Generally, the premise underlying a request for reconsideration is that, based upon the evidence of record and the applicable legal authorities, the Board erred in reaching the decision it issued. The request may not be used to introduce additional evidence. Accordingly, the recently concluded consent agreement¹ submitted with applicant's request for reconsideration is untimely and has been given no consideration. See Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d).

Decision: Accordingly, the final decision dated July 25, 2006 stands. Applicant's request for reconsideration is hereby *denied*. Nonetheless, applicant's time for filing an appeal, or for commencing a civil action for review of the Board's decision, will expire two months after the date on which this order issued. See Trademark Rule 2.145(d)(1), 37 C.F.R. § 2.145(d)(1).

Finally, applicant's petition to the Director to reopen prosecution of the application is being referred to the Office of the Commissioner for Trademarks.

¹ Given just how critical a factor a consent agreement with registrant must be in making a likelihood of confusion determination, we should note for applicant's benefit that the better practice would have been to have requested suspension of the appeal pending ongoing negotiations with registrant over this agreement.