THIS OPINION IS NOT A PRECEDENT OF THE T.T.A.B.

Mailed: December 28, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Wieland Dental + Technik GmbH & Co.

Serial No. 76514103

Request for Reconsideration

Gary M. Nath and H. David Starr of Nath & Associates for Wieland Dental + Technik GmbH & Co.

Andrea D. Saunders, Trademark Examining Attorney, Law Office 108 (Andrew Lawrence, Managing Attorney).

Before Hohein, Walters and Walsh, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

On June 7, 2007, the Board issued a final decision in the above-captioned proceeding. In our June 7, 2007 decision, we affirmed the refusal to register, under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), the mark REFLEX, in standard character form, on the Principal Register for "ceramic masses for dental use, namely veneering material for dental use," in International Class

5.[1] The refusal was based on the ground that applicant's mark so resembles the mark REFLEX, previously registered on the Principal Register for "orthodontic appliances for use in the mouth formed from nickel titanium wire,"[2] that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

On July 9, 2007, applicant timely filed a motion for reconsideration of that decision. *See* Trademark Rule 2.144.

In its motion for reconsideration, applicant requests that "the Board reconsider its finding that the respective goods are sufficiently related that confusion as to source will be likely"; and contends that there is no basis in the record for the conclusion that "general dental, cosmetic dental, orthodontic services and dental laboratory services would be rendered in a single location, or that an appreciable number of such locations exist"; or that "the respective goods would be sold to overlapping purchasers,

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[1] Serial No. 76514103, filed May 14, 2003, based on an allegation of a bona fide intention to use the mark in commerce under Section 1B; and based on a claim of priority under Section 44(d) and a German registration under Section 44(e). Applicant subsequently filed an acceptable amendment to allege use alleging first use and use in commerce as of 2003.

[2] Registration No. 1476733 issued February 16, 1988, in International Class 10, to TP Orthodontics, Inc. Sections 8 and 15 affidavits accepted and acknowledged, respectively.

or that such overlap would be more than de minimus." Additionally, applicant contends that "the theoretical purchase by such dental offices of the respective goods would not support a finding of likelihood of confusion." (Request for Reconsideration, p. 1.)

It has often been stated that the premise underlying a request for reconsideration under Trademark Rule 2.144 is that, based on the evidence of record and the prevailing authorities, the Board erred in reaching the decision it issued. *See* TBMP §1219.01 (2d ed. rev. 2004) and the authorities cited therein. The request may not be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in the requesting party's brief on the case. *See Amoco Oil Co. v. Amerco, Inc.*, 201 USPQ 126 (TTAB 1978). Rather, the request normally should be limited to a demonstration that, based on the evidence properly of record and the applicable law, the Board's ruling is in error and requires appropriate change. *See, for example, Steiger Tractor Inc. v. Steiner Corp.*, 221 USPQ 165 (TTAB 1984), *different results reached on reh'g*, 3 USPQ2d 1708 (TTAB 1984). *Cf. In re Kroger Co.*, 177 USPQ 715, 717 (TTAB 1973).

In this case, applicant points to conclusions reached by the Board in our June 7, 2007 decision on final hearing

and claims that the facts in the record do not support these conclusions. However, applicant is essentially merely disagreeing with the result reached therein, and is rearguing points previously raised in support of its contention that the goods are not related and that there is no likelihood of confusion. As a result, we remain of the opinion that our June 7, 2007 decision is correct.

Accordingly, applicant's motion for reconsideration is denied.