

United States Patent and Trademark Office
Trademark Trial and Appeal Board
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Mailed: April 10, 2012

In re Milo Shammass

Serial No. 77758863

Filed: 6/12/2009

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By The Trademark Trial and Appeal Board:

On February 27, 2012, the Board allowed applicant twenty days to provide an explanation as to why its reply brief was filed late. Now before the Board is applicant's response, filed March 5, 2012. By way of the response, applicant states that, pursuant to 37 CFR § 41.42(a)(1), a reply brief to an examiner's answer is due within two months from the date of the examiner's answer. Applicant is informed that the rule it cites pertains to the prosecution of a patent application. The correct rule regarding the filing of a reply brief is 37 CFR § 2.142(b)(1), which provides that the applicant may file a reply brief within twenty days from the mailing date of the brief of the examining attorney.

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Because the examining attorney's brief was filed on December 15, 2011, applicant was allowed until January 4, 2012 in which to file a reply brief.

Accordingly, the Board does not find good cause to accept applicant's late filed reply brief. As for applicant's statement that accepting the late-filed reply brief would not prejudice the case from the point of view of the examining attorney, the standard for accepting a late-filed brief is a showing of good cause, and applicant has failed to make such a showing. Applicant also states that any error was his counsel's, and that it would be an unfair penalty to applicant because of his attorney's error. However, applicant chose his counsel, and is bound by his attorney's mistakes. Cf. CTRL Systems Inc. v. Ultraphonics of North America Inc., 52 USPQ2d 1300, 1302 (TTAB 1999) (a party is accountable for the acts or omissions of its counsel). Therefore, the late-filed reply brief will be given no consideration.

A decision in the appeal will be rendered in due course.