

ESTTA Tracking number: **ESTTA281317**

Filing date: **04/30/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179090
Party	Plaintiff Elgo, Inc.
Correspondence Address	Cynthia R. Moore 794 Los Robles Avenue Palo Alto, CA 94306 UNITED STATES moore@moorepatents.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Cynthia R. Moore
Filer's e-mail	moore@moorepatents.com
Signature	/Cynthia R. Moore/
Date	04/30/2009
Attachments	first notice of reliance.pdf (3 pages)(28790 bytes) ExhibitA.pdf (55 pages)(1917846 bytes) second notice of reliance.pdf (3 pages)(28480 bytes) third notice of reliance.pdf (3 pages)(29389 bytes) ExhibitB.pdf (13 pages)(93882 bytes) ExhibitC.pdf (13 pages)(94897 bytes) ExhibitD.pdf (9 pages)(313035 bytes) ExhibitE.pdf (13 pages)(474608 bytes) ExhibitF.pdf (22 pages)(14696185 bytes) fourth notice of reliance.pdf (3 pages)(29806 bytes) ExhibitG.pdf (3 pages)(175445 bytes) ExhibitH.pdf (9 pages)(1555986 bytes) ExhibitI.pdf (5 pages)(202687 bytes) ExhibitJ.pdf (16 pages)(386360 bytes) fifth notice of reliance.pdf (3 pages)(28757 bytes) ExhibitK.pdf (13 pages)(430248 bytes) sixth notice of reliance.pdf (3 pages)(28945 bytes) ExhibitL.pdf (3 pages)(94713 bytes) seventh notice of reliance.pdf (3 pages)(28994 bytes) ExhibitM.pdf (2 pages)(95660 bytes) ExhibitN.pdf (2 pages)(36150 bytes) eighth notice of reliance.pdf (3 pages)(28634 bytes) ExhibitO.pdf (5 pages)(194648 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090,694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.: 91179090

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

FIRST NOTICE OF RELIANCE

To: Christopher M. Bikus, Esq.
HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, Suite 2100
Omaha, Nebraska 68102

PLEASE TAKE NOTICE, pursuant to TBMP § 704.03(b)(1)(B) and 37 C.F.R. § 2.122(e), Opposer submits that they will rely upon the following documents and materials as indicated below:

1. The attached U.S. Trademark Registration No. 3,557,525, registered Jan. 6, 2009, and file history of application for same. (EXHIBIT A)

Basis of Reliance

The exhibit identified above is relevant to the issues of:

1. Standing to oppose
2. Priority of use
3. Likelihood of confusion

Respectfully submitted,

ELGO, INC., Opposer

Dated this 30th day of April, 2009

By: /Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF ESTTA FILING

The undersigned hereby certify that a copy of the foregoing papers and all exhibits thereto was filed electronically with the Trademark Trial and Appeal Board via the ESTTA on the 30th day of April, 2009.

/Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing papers and all exhibits thereto was served on Christopher Bikus, the attorney for Applicant SimplyWell, LLC, by first class mail postage prepaid this 30th day of April, 2009, addressed as follows:

HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, suite 2100
Omaha, Nebraska 68102
Attention: Christopher M. Bikus, Esq.

/Cynthia R. Moore/
Cynthia R. Moore
Attorney for Opposer

EXHIBIT A

TRADEMARK OPPOSITION NO. 91179090

Int. Cl.: 34

Prior U.S. Cls.: 2, 8, 9 and 17

United States Patent and Trademark Office

Reg. No. 3,557,525

Registered Jan. 6, 2009

TRADEMARK
PRINCIPAL REGISTER

SimplyQuit

GOLD, ELY (UNITED STATES INDIVIDUAL)
23679 CALABASAS RD.
SUITE 216
CALABASAS, CA 91302

FOR: SMOKER'S ARTICLES, NAMELY, CIGAR-
ETTES CONTAINING TOBACCO SUBSTITUTES

NOT FOR MEDICAL PURPOSES, IN CLASS 34
(U.S. CLS. 2, 8, 9 AND 17).

FIRST USE 9-15-2001; IN COMMERCE 9-21-2001.

SER. NO. 78-085,086, FILED 9-22-2001.

INGRID C. EULIN, EXAMINING ATTORNEY

Oct 1, 2008

NOTICE OF PUBLICATION UNDER 12(a)

- | | |
|--------------------------------------|--------------------------------------|
| 1. Serial No.:
78/085,086 | 2. Mark:
SIMPLYQUIT
(Stylized) |
| 3. International Class(es):
34 | |
| 4. Publication Date:
Oct 21, 2008 | 5. Applicant:
GOLD, ELY |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

Correspondence Address:

CYNTHIA MOORE
MOORE PATENTS
794 LOS ROBLES AVE
PALO ALTO, CA 94306

TMP&I

Trademark Snap Shot Publication & Issue Review Stylesheet
(Table presents the data on Publication & Issue Review Complete)

OVERVIEW

SERIAL NUMBER	78085086	FILING DATE	09/22/2001
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	EULIN, INGRID C	L.O. ASSIGNED	111

PUB INFORMATION

RUN DATE	09/16/2008		
PUB DATE	10/21/2008		
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE		
STATUS DATE	09/13/2008		
LITERAL MARK ELEMENT	SIMPLYQUIT		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	RE PUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	NO

LITERAL MARK ELEMENT	SIMPLYQUIT
MARK DRAWING CODE	5-AN ILLUSTRATION DRAWING WITH WORD(S)/LETTER(S)/NUMBER(S) IN STYLIZED FORM
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	GOLD, ELY
ADDRESS	23679 Calabasas Rd. Suite 216 Calabasas, CA 91302
ENTITY	01-INDIVIDUAL
CITIZENSHIP	United States of America

GOODS AND SERVICES

INTERNATIONAL CLASS	034
DESCRIPTION TEXT	smoker's articles, namely, cigarettes containing tobacco substitutes not for medical purposes

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	034	FIRST USE DATE	09/15/2001	FIRST USE IN COMMERCE DATE	09/21/2001	CLASS STATUS	6-ACTIVE
---------------------	-----	----------------	------------	----------------------------	------------	--------------	----------

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
PSEUDO MARK	SIMPLY QUIT

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
09/13/2008	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	023
09/12/2008	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	022
09/12/2008	DOCK	D	ASSIGNED TO EXAMINER	021
08/11/2008	ACEC	I	AMENDMENT FROM APPLICANT ENTERED	020
08/11/2008	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	019
08/08/2008	ALIE	A	ASSIGNED TO LIE	018

08/08/2008	DOCK	D	ASSIGNED TO EXAMINER	017
02/05/2008	PGRR	O	PETITION GRANTED - RESPONSE RECEIVED	016
03/18/2008	PRRG	O	PETITION RECONSIDERATION REQUEST GRANTED	015
02/05/2008	PRRR	I	PETITION RECONSIDERATION REQUEST RECEIVED	014
02/13/2008	CFIT	O	CASE FILE IN TICRS	013
02/05/2008	FAXX	I	FAX RECEIVED	012
10/16/2007	APET	A	ASSIGNED TO PETITION STAFF	011
10/09/2007	PRRR	I	PETITION RECONSIDERATION REQUEST RECEIVED	010
10/09/2007	MAIL	I	PAPER RECEIVED	009
08/31/2007	PETD	O	PETITION TO REVIVE-DENIED	008
08/28/2007	APET	A	ASSIGNED TO PETITION STAFF	007
07/18/2007	PETR	I	PETITION TO REVIVE-RECEIVED	006
07/18/2007	MAIL	I	PAPER RECEIVED	005
08/30/2002	MAIL	I	PAPER RECEIVED	004
08/19/2002	ABN2	O	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	003
12/03/2001	CNRT	F	NON-FINAL ACTION MAILED	002
11/30/2001	DOCK	D	ASSIGNED TO EXAMINER	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	CYNTHIA MOORE
CORRESPONDENCE ADDRESS	CYNTHIA MOORE MOORE PATENTS 794 LOS ROBLES AVE PALO ALTO, CA 94306
DOMESTIC REPRESENTATIVE	NONE

Smogovit

Trademark Snap Shot Publication Stylesheet
(Table presents the data on Publication Approval)

OVERVIEW

SERIAL NUMBER	78085086	FILING DATE	09/22/2001
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	EULIN, INGRID C	L.O. ASSIGNED	111

PUB INFORMATION

RUN DATE	09/13/2008		
PUB DATE	N/A		
STATUS	680-APPROVED FOR PUBLICATION		
STATUS DATE	09/12/2008		
LITERAL MARK ELEMENT	SIMPLYQUIT		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	RE PUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	NO

LITERAL MARK ELEMENT	SIMPLYQUIT
MARK DRAWING CODE	5-AN ILLUSTRATION DRAWING WITH WORD(S)/LETTER(S)/NUMBER(S) IN STYLIZED FORM
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	GOLD, ELY
ADDRESS	23679 Calabasas Rd. Suite 216 Calabasas, CA 91302
ENTITY	01-INDIVIDUAL
CITIZENSHIP	United States of America

GOODS AND SERVICES

INTERNATIONAL CLASS	034
DESCRIPTION TEXT	smoker's articles, namely, cigarettes containing tobacco substitutes not for medical purposes

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	034	FIRST USE DATE	09/15/2001	FIRST USE IN COMMERCE DATE	09/21/2001	CLASS STATUS	6-ACTIVE
---------------------	-----	----------------	------------	----------------------------	------------	--------------	----------

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
PSEUDO MARK	SIMPLY QUIT

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
09/12/2008	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	022
09/12/2008	DOCK	D	ASSIGNED TO EXAMINER	021
08/11/2008	ACEC	I	AMENDMENT FROM APPLICANT ENTERED	020
08/11/2008	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	019
08/08/2008	ALIE	A	ASSIGNED TO LIE	018
08/08/2008	DOCK	D	ASSIGNED TO EXAMINER	017

02/05/2008	PGRR	O	PETITION GRANTED - RESPONSE RECEIVED	016
03/18/2008	PRRG	O	PETITION RECONSIDERATION REQUEST GRANTED	015
02/05/2008	PRRR	I	PETITION RECONSIDERATION REQUEST RECEIVED	014
02/13/2008	CFIT	O	CASE FILE IN TICRS	013
02/05/2008	FAXX	I	FAX RECEIVED	012
10/16/2007	APET	A	ASSIGNED TO PETITION STAFF	011
10/09/2007	PRRR	I	PETITION RECONSIDERATION REQUEST RECEIVED	010
10/09/2007	MAIL	I	PAPER RECEIVED	009
08/31/2007	PETD	O	PETITION TO REVIVE-DENIED	008
08/28/2007	APET	A	ASSIGNED TO PETITION STAFF	007
07/18/2007	PETR	I	PETITION TO REVIVE-RECEIVED	006
07/18/2007	MAIL	I	PAPER RECEIVED	005
08/30/2002	MAIL	I	PAPER RECEIVED	004
08/19/2002	ABN2	O	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	003
12/03/2001	CNRT	F	NON-FINAL ACTION MAILED	002
11/30/2001	DOCK	D	ASSIGNED TO EXAMINER	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	CYNTHIA MOORE
CORRESPONDENCE ADDRESS	CYNTHIA MOORE MOORE PATENTS 794 LOS ROBLES AVE PALO ALTO, CA 94306
DOMESTIC REPRESENTATIVE	NONE

Smogovit

*** User:ieulin ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:01	78085086
02	2	0	2	2	0:01	*simp\$3quit*[bi,ti] not dead[lid]
03	234	N/A	0	0	0:05	*{"sz"}{v}mp\$4{"cqkx"}{v:2}t*[bi,ti] not dead[lid]
04	232	0	232	139	0:01	3 not 2
05	6	0	6	4	0:02	*simp*[bi,ti] not dead[lid] and *quit*[bi,ti] not dead[lid]
06	346	N/A	0	0	1:05	*{"sz"}{v}mpl{v}*[bi,ti] not dead[lid] and *{"cqkx"}{v:2}t*[bi,ti] not dead[lid]
07	88	0	88	62	0:02	6 and 034[cc]

Session started 9/12/2008 3:29:52 PM

Session finished 9/12/2008 3:37:13 PM

Total search duration 1 minutes 17 seconds

Session duration 7 minutes 21 seconds

Defaut NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 78085086

Trademark Snap Shot Amendment & Mail Processing Stylesheet
 (Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

SERIAL NUMBER	78085086	FILING DATE	09/22/2001
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	PEDERSEN, CHRIS A F	L.O. ASSIGNED	110

PUB INFORMATION

RUN DATE	08/12/2008		
PUB DATE	N/A		
STATUS	616-REVIVE-AWAITING FURTHER ACTION		
STATUS DATE	08/08/2008		
LITERAL MARK ELEMENT	SIMPLYQUIT		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	RE PUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	NO

LITERAL MARK ELEMENT	SIMPLYQUIT
MARK DRAWING CODE	5-AN ILLUSTRATION DRAWING WITH WORD(S)/LETTER(S)/NUMBER(S) IN STYLIZED FORM
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	GOLD, ELY
ADDRESS	23679 Calabasas Rd. Suite 216 Calabasas, CA 91302
ENTITY	01-INDIVIDUAL
CITIZENSHIP	United States of America

GOODS AND SERVICES

INTERNATIONAL CLASS	034
DESCRIPTION TEXT	smoker's articles, namely, cigarettes containing tobacco substitutes not for medical purposes

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	034	FIRST USE DATE	09/15/2001	FIRST USE IN COMMERCE DATE	09/21/2001	CLASS STATUS	6-ACTIVE
---------------------	-----	----------------	------------	----------------------------	------------	--------------	----------

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
PSEUDO MARK	SIMPLY QUIT

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
08/11/2008	ACEC	I	AMENDMENT FROM APPLICANT ENTERED	020
08/11/2008	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	019
08/08/2008	ALIE	A	ASSIGNED TO LIE	018
08/08/2008	DOCK	D	ASSIGNED TO EXAMINER	017
02/05/2008	PGRR	O	PETITION GRANTED - RESPONSE RECEIVED	016
03/18/2008	PRRG	O	PETITION RECONSIDERATION REQUEST GRANTED	015

02/05/2008	PRRR	I	PETITION RECONSIDERATION REQUEST RECEIVED	014
02/13/2008	CFIT	O	CASE FILE IN TICRS	013
02/05/2008	FAXX	I	FAX RECEIVED	012
10/16/2007	APET	A	ASSIGNED TO PETITION STAFF	011
10/09/2007	PRRR	I	PETITION RECONSIDERATION REQUEST RECEIVED	010
10/09/2007	MAIL	I	PAPER RECEIVED	009
08/31/2007	PETD	O	PETITION TO REVIVE-DENIED	008
08/28/2007	APET	A	ASSIGNED TO PETITION STAFF	007
07/18/2007	PETR	I	PETITION TO REVIVE-RECEIVED	006
07/18/2007	MAIL	I	PAPER RECEIVED	005
08/30/2002	MAIL	I	PAPER RECEIVED	004
08/19/2002	ABN2	O	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	003
12/03/2001	CNRT	F	NON-FINAL ACTION MAILED	002
11/30/2001	DOCK	D	ASSIGNED TO EXAMINER	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	CYNTHIA MOORE
CORRESPONDENCE ADDRESS	CYNTHIA MOORE MOORE PATENTS 794 LOS ROBLES AVE PALO ALTO, CA 94306
DOMESTIC REPRESENTATIVE	NONE

Smogovit

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

NOTICE OF REVIVAL OF APPLICATION

CYNTHIA MOORE
MOORE PATENTS
794 LOS ROBLES AVE
PALO ALTO, CA 94306

SERIAL NUMBER:	78/085086
MARK:	SIMPLYQUIT
OWNER:	GOLD, ELY
REVIVAL DATE:	August 8, 2008

The above referenced application was revived on the date shown above. The file will be forwarded to the appropriate section of the Office for further action. For example, if the abandonment resulted from failure to timely file a response to an Office Action, your file will be forwarded to the Examining Attorney; if the abandonment resulted from a failure to timely file a Statement of Use or Extension of Time to File a Statement of Use, your file will be forwarded to the Intent to Use Section. To verify the status and location of your application, please wait approximately three weeks, then check the Trademark Application and Registration Retrieval (TARR) system located at the USPTO website: www.uspto.gov, or call the Trademark Assistance Center at 1-800-786-9199.

ORIGINAL

Moore Patents

794 Los Robles Avenue
Palo Alto, CA 94306
www.moorepatents.com

Cynthia R. Moore, Ph.D., J.D.
David D. Dreyfuss, Sc.D.

PHONE: 650-565-8185
FACSIMILE: 650-493-1993

Facsimile Cover Sheet

To: Janis Long

From: Cynthia Moore

Fax: 1-571-273-9573

Pages: 5

Phone: 1-571-272-9573

Date: 2/5/2008

Re: copy of Office Action 78/085086

CC:

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Dear Examiner Long,

Thank you for your call today discussing the status of the above-referenced trademark application and indicating that the petition will likely be granted and the application reinstated for further examination. As you requested, a copy of the original Office Action dated Dec. 3, 2001 is attached for your records.

Please let me know if you require any additional information or assistance.

Respectfully submitted,



Cynthia Moore

PLEASE NOTE: This facsimile, including any attached pages, may include privileged, confidential and/or inside information. Any distribution or use of this communication by anyone other than the intended recipient(s) is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender by calling the phone number above and then dispose of the pages. Thank you.

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO. 78/085086 GOLD, ELY	APPLICANT	PAPER NO.
MARK SIMPLYQUIT (STYLIZED)		ADDRESS: Commissioner for Trademarks 2980 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov If no fees are enclosed, the address should include the words "Box Responses - No Fee." Please provide in all correspondence: Date, serial number, mark and applicant's name. Mailing date of this Office action. Mailing Attorney's name and office number. Telephone number and ZIP code.
ADDRESS ELY GOLD 23679 calabasas rd. suite 216 calabasas CA 91302	ACTION NO. 01	
	MAILING DATE 12/03/01	
REF. NO.		

FORM PTO-1528 (5-80) U.S. DEPT. OF COMM. PAT. & TM OFFICE

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 78/085086

The assigned examining attorney has reviewed the referenced application and determined the following.

Search Results

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

Applicant Must Amend Identification of Goods

The identification of goods is unacceptable as indefinite because it does not sufficiently specify the goods. TMEP section 804. Specifically, the phrase "simulated cigarette" does not sufficiently indicate the nature or purpose of the goods. For example, "cigarettes containing tobacco substitutes not for medical purposes" are classified in class 034, whereas "cigarettes containing tobacco substitutes for medical purposes" would be in class 010. The applicant must further describe the purpose and contents of its "simulated cigarettes."

78/083086

-2-

The identification is also unacceptable as too broad because it includes goods that could be classified in multiple international classes. TMEP section 804. Specifically, substitute cigarettes for medical purposes are in class 010 whereas those not for medical purposes are in class 034. If the applicant amends the identification to list goods/services in multiple international classes, it must comply with the requirements for multiple class applications, listed below.

The examining attorney suggests the following identification, which the applicant may adopt, if accurate:

Smokers' articles, namely, cigarettes containing tobacco substitutes not for medical purposes IC 034

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(a); TMEP section 804.09. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

** The PTO's Acceptable ID Manual is available on the Patent and Trademark Office's home page at www.uspto.gov. This manual includes explanations and notices of classification policy that may be beneficial to the applicant when amending the identification of goods.

Multi-Class Requirements

If the applicant prosecutes this application as a combined, or multiple-class, application, the applicant must comply with each of the following:

- (1) The applicant must specifically identify the goods in each class and list the goods by international class with the classes listed in ascending numerical order. TMEP section 1113.01.
- (2) The applicant must submit a filing fee for each international class of goods not covered by the fee already paid. 37 C.F.R. Sections 2.6(a)(1) and 2.86(b); TMEP sections 810.01 and 1113.01. The fee for filing a trademark application is \$325 for each class.
- (3) The applicant must submit:
 - (a) dates of first use and first use in commerce and one specimen for each class that includes goods or services based on use in commerce under Trademark Act Section 1(a). The dates of use must be at least as early as the filing date of this application. 37 C.F.R. Sections 2.34(a)(1) and 2.86(a), and the specimen(s) must have been in use in commerce at least as early as the filing date of the application, and/or
 - (b) a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class that includes goods or services based on a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), where such statement was not included for the goods or services in the original application.

78/085086

-3-

(4) The applicant must submit an affidavit or a declaration under 37 C.F.R. Section 2.20 signed by the applicant to verify (3) above. 37 C.F.R. Sections 2.59(a) and 2.71(c).

Substitute Specimen Required

The specimen is unacceptable as evidence of actual trademark use because it consists merely of the applicant's mark printed on a blank sheet of paper, rather than showing the mark used on the goods or on the packaging for the goods, as is required. Therefore, the applicant must submit a new specimen showing the mark as used in commerce on the goods or on the packaging for the goods. 37 C.F.R. Section 2.56. Examples of acceptable specimens are tags, labels, instruction manuals, containers or photographs that show the mark on the goods or packaging.

In addition, the applicant must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20, that the substitute specimen was in use in commerce at least as early as the filing date of the application. *Jim Dandy Co. v. Siler City Mills, Inc.*, 209 USPQ 764 (TTAB 1981); 37 C.F.R. Section 2.59(a); TMEP section 905.10.

The statement supporting use of the substitute specimen must read as follows:

The substitute specimen was in use in commerce at least as early as the filing date of the application.

The applicant must sign this statement either in affidavit form or with a declaration under 37 C.F.R. Section 2.20. The following is a properly worded declaration under 37 C.F.R. Section 2.20. At the end of the response, the applicant should insert the declaration signed by someone authorized to sign under 37 C.F.R. Section 2.33(a).

The substitute specimen was in use in commerce at least as early as the filing date of the application.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

Guidelines for Responding to Office Actions

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant must sign the response. In addition to the identifying

.78/085086

-4-

information required at the beginning of this letter, the applicant should provide a telephone number to speed up further processing.

In all correspondence to the Patent and Trademark Office, the applicant should list the name and law office of the examining attorney, the serial number of this application, the mailing date of this Office action, and the applicant's telephone number.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.



Branden Ritchie
Examining Attorney
Law Office 110
703.308.9110 x135

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:
Ely GOLD

Law Office: 110

Serial No.: 78085086

Filing Date: September 22, 2001

Mark: **SimplyQuit**

Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below:


Cynthia R. Moore
Oct. 3, 2007

REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 2.66(f)

Sir:

This submission is in response to the "Petition to Revive Denied," dated August 31, 2007. Applicant hereby requests reconsideration of the denial in accordance with 37 C.F.R. § 2.66(f), which states that if the Director denies a petition, the applicant may request reconsideration, if the applicant: (1) files the request within two months of the mailing date of the decision denying the petition; and (2) pays a second petition fee under § 2.6.

As this response is submitted within two months from the mailing date of the Denial dated August 31, 2007, and is accompanied by the fee due under 37 C.F.R. § 2.6, this Request for Reconsideration is timely filed.

Reconsideration is respectfully requested in view of the following remarks:



10-09-2007

REMARKS

Applicant acknowledges with appreciation the implicit acknowledgement of Office error with respect to the failure of the Office to act on the Petition to Revive dated August 30, 2002, and also the completeness and timeliness of said Petition. The Petition has now been denied on the grounds that Applicant had an obligation of diligence to prompt the Office to act if no action was taken within one year. Applicant respectfully traverses the grounds for the denial and requests reconsideration of the denial of the petition.

The pertinent facts in the present case are as follows:

1. A Notice of Abandonment was mailed on August 19, 2002.
2. A Petition to Revive an Abandoned Application was timely mailed by certified mail on August 26, 2002 and recorded as received in the Office on August 30, 2002, which is within 2 months of the date of the Notice of Abandonment, as required by 37 C.F.R. § 2.66(a).
3. In accordance with 37 C.F.R. § 2.66(b), the Petition included: (1) the required fee of \$100, (2) a Statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the response on or before the due date was unintentional, and (3) the proposed Response to the outstanding Office Action.
4. Confirmation was received of receipt of the mail by the Office. The Office deposited the check and stamped the amount received on the Response, and entered the papers into the application file as "paper received."
5. Applicant called the Office to confirm receipt of the Petition to Revive after it was submitted, was told that all documents were received and was guided by the Office to check their website to confirm receipt.
6. From August 6, 2002 through July 9, 2007, no action on the Petition was received by Applicant or posted on the Trademark Document Retrieval site. From time to time Applicant checked the status of his Application and could see that the documents were still posted on the website but no action had been taken.
7. Applicant, not being knowledgeable regarding how long the Office should take to respond to a Petition, waited patiently for a response while continuing to use the Mark in the course of normal business.
8. Applicant became aware on July 9, 2007 that his application was still marked "dead"

on the Trademark Document Retrieval site, and that his trademark had been awarded to another entity, immediately called the Office and was told that the petition had not been processed and granted due to Office error (Casandra, reference #1-89912332).

9. Applicant submitted a Request for Reinstatement due to Office Error on July 18, 2007, and submitted copies of the canceled check, Statement and the proposed Response with a request that the Office reinstate his application, act on the properly filed petition and reinstate the application.

10. Applicant filed a Notice of Opposition on August 22, 2007 opposing the registration of his mark to the other entity (Opposition No. 91179090).

11. The Office responded to the Request for Reinstatement with a "Petition to Revive Denied" dated August 31, 2007, where it acknowledged receipt of the Petition to Revive dated August 30, 2002, but denied the petition alleging a lack of diligence on the part of Applicant.

Applicant respectfully traverses the grounds for the denial for the following reasons:

I. The Petition received by the Office on August 30, 2002 should have been granted as a matter of right in accordance with 37 C.F.R. § 2.66. Denial of the Petition is in contradiction of Trademark Office rules and policy.

The relevant sections of 37 C.F.R. § 2.66 are as follows:

- (a) The applicant may file a petition to revive an application abandoned because the applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional. The applicant must file the petition:
 - (1) Within two months of the mailing date of the notice of abandonment; or
 - (2) Within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application every six months in accordance with §2.146(i).
- (b) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to an Office action are:
 - (1) The petition fee required by §2.6;
 - (2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the response on or before the due date was unintentional; and
 - (3) Unless the applicant alleges that it did not receive the Office action, the proposed response.

- (e) The Director *will* grant the petition to revive if the applicant complies with the requirements listed above and establishes that the delay in responding was unintentional. [Emphasis added].

There is no discretion given by the rule to the Office to deny a timely filed Petition to Revive, if it meets the requirements stated above. To deny Applicant's timely filed Petition to Revive is to act in contradiction to the rules governing petitions to revive and USPTO policy, and creates uncertainty and unpredictability in relations with the Office as well as with respect to the status of other trademark applications being examined by the Office. Third parties checking the status of abandoned applications on the USPTO website can see whether a Petition to Revive has been filed, and are on notice that an applicant is seeking to revive his application if it has become abandoned. To deny properly filed petitions is to create chaos and uncertainty, resulting in costly errors to applicants and unnecessary conflicts between applicants seeking registration of the same marks. Therefore, the Office should grant Applicant's petition, as a nondiscretionary matter and for consistency and predictability in dealings with the Office.

II. The Office alleged that Applicant lacked diligence when it denied the Petition to Revive dated August 30, 2002, and cited 37 C.F.R. § 2.146(i) in support of this allegation.

In response, **Applicants submit that the Office has misapplied the requirement for diligence in the present instance.** The rule cited in support of the contention that Applicant lacked diligence, 37 C.F.R. § 2.146(i), states (in the version in effect prior to May 2004):

Where a petitioner seeks to reactivate an application or registration that was abandoned or cancelled because papers were lost or mishandled, the Commissioner may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, the applicant must check to status of the application or registration within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected.

The relevant section of 37 C.F.R. § 2.66 governing petitions to revive is as follows:

- (a) The applicant may file a petition to revive an application abandoned because the applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional. The applicant must file the petition:
- (1) Within two months of the mailing date of the notice of abandonment; or
 - (2) **Within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was**

diligent in checking the status of the application every six months in accordance with §2.146(i). [Emphasis added].

Both 37 C.F.R. §§ 2.146(i) and 2.66(a)(2) relate to the diligence required of Applicant **before** filing a petition. To have a petition considered by the Office **when Applicant did not receive a notice of abandonment of his application**, Applicant must have been diligent in checking the status of his application in order to obtain actual knowledge of abandonment in the event papers are not received by either Applicant or the Office.

However, in the instant situation, Applicant did receive the Notice of Abandonment and responded with a timely filed Petition to Revive dated August 30, 2002 and associated documents for the required response to the Office Action, as discussed above. There was no need for Applicant to be diligent in ascertaining the need to file the Petition to Revive, as **actual knowledge of the abandonment was provided by receipt of the Notice of Abandonment**. Therefore, Applicant's petition should be granted, whether or not Applicant acted with diligence **after** filing the Petition, because the diligence requirements were met prior to filing, as required by the rule.

III. The Office alleges that the Petition to Revive was denied because Applicant was not diligent, and further argues that applicants are expected to keep themselves informed of the status of matters pending before the office, because third parties rely on the information in the records of the Office (citing TMEP §§ 1705.04, 1712.01 and 1714.01(d)). The Office further argues that since it is reasonable to expect some notice from the Office about a pending matter well within one year of the filing or receipt of any document, a party who has not received the expected action within that time frame should be on notice that the filing may have been lost.

Applicants respectfully disagree with these grounds for denying the Petition to Revive as well. **Applicant was diligent in checking the status of his application and acted promptly to request corrective action once the need for such action was apparent**. Applicant was directed by a USPTO representative to the USPTO website to confirm receipt of his Petition to Revive dated August 30, 2002, and did so. From time to time Applicant went to the website to again check the status of his application as instructed. The continued "abandoned" status of the application was no cause for concern for Applicant, as Applicant knew the Office to be in

possession of the required filed papers. **Applicant could not have been on notice that the filing may have been lost** because the check had been stamped as received and had been deposited by the USPTO, he could see that the papers were viewable on the USPTO website and that the application was assigned to Law Office 110, all of which made it appear that everything was in order and the application was awaiting its turn to receive attention. The filing clearly had not been “lost”; the Office was merely waiting to act on papers that it acknowledged to be in its possession by posting the papers and depositing the check. While it is “reasonable” to expect the Office to respond within one year, there is no law or rule that mandates such response, nor is there any law or rule that requires the Applicant to prompt the Office to act if no response is made within one year (see IV below). No further corrective action appeared necessary, as the required corrective action had already been taken.

In fact, **Applicant was put on notice that there was a problem only when he checked the status of his application and realized that an application for the same mark had been applied for and erroneously granted to a different entity.** This was the first notice Applicant had that the USPTO was apparently ignoring his Petition to Revive, his application and his prior use of the mark. At that time, Applicant acted promptly to file a Request for Reinstatement asking the USPTO to grant his Petition to Revive of August 30, 2002, well within the two month period required once Applicant had actual notice.

Therefore, **Applicant was diligent in taking corrective action once the need for such action became apparent.** Prior to the granting of Applicant’s mark to another, Applicant had no reason to believe the USPTO was unaware of or ignoring his application and his prior use of the mark, and of the Petition to Revive filed to place the application in active status and respond to the pending Office Action.

Further, the TMEP sections cited by the Office do not support the Office’s contention that Applicant was not diligent. TMEP § 1705.04 describes the time limits for filing various responses with the Office, and points out that a Petition to Revive must be filed within two months of the mailing date of a Notice of Abandonment, which was met by Applicant’s Petition to Revive dated August 30, 2002. TMEP § 1712.01 describes the time limits for filing a Request for Reinstatement, and points out that a Request for Reinstatement must be filed within two months of the mailing date of a Notice of Abandonment, or within two months of the date

Applicant had actual knowledge that his application was abandoned, all of which are either not relevant or were met by Applicant. TMEP § 1714.01(d) describes the time limits and requirement for diligence in filing a Petition to Revive under 37 C.F.R. § 2.66(a), which as discussed above, was also met by Applicant.

Therefore, the denial of Applicant's Petition to Revive due to a lack of diligence was improper and should be withdrawn, and the Petition should be granted.

IV. Further, Applicant was in fact diligent and had no duty to request corrective action sooner under the rule as alleged by the Office in the Denial of the Petition to Revive. In the Denial of the Petition to Revive, the Office alleges that TMEP § 1705.05 requires that a petitioner be diligent by inquiring as to the status of a pending matter within one year of filing or receipt of a document for which further action by the USPTO is expected. The definition of diligence in § 1705.05 is provided by 37 C.F.R. § 2.146(i), which was amended in September 2003 to clarify the definition of diligence and reduce the time period required to show diligence from 12 months to 6 months effective May 2, 2004. The rule now states:

(i) Where a petitioner seeks to reactivate an application or registration that was abandoned, cancelled or expired because papers were lost or mishandled, the Director may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, a petitioner must:

- (1) During the pendency of an application, check the status of the application every six months between the filing date of the application and issuance of a registration;
- (2) After registration, check the status of the registration every six months from the filing of an affidavit of use or excusable nonuse under section 8 or 71 of the Act, or a renewal application under section 9 of the Act, until the petitioner receives notice that the affidavit or renewal application has been accepted; and
- (3) **If the status check reveals that the Office has not received a document filed by the petitioner, or that the Office has issued an action or notice that the petitioner has not received, the petitioner must promptly request corrective action.** [Emphasis added].

There is no language in this rule in its previous form or as amended which requires an applicant to request corrective action with the Office when it fails to act on a received document within any particular time period. Applicant submits that the diligence requirement does not mandate or even contemplate that Applicant take action when it would be inappropriate for

Applicant to take action, that is, when Applicant ascertains that papers have been received and posted on the TDR website, and that no papers have been mailed from the Office to Applicant, but not received. **The rule specifically calls for the Applicant to promptly request corrective action only if a status check reveals that a document was not received by either the Office or the Applicant.** No such event occurred in the present instance, and therefore Applicant had no duty to request corrective action sooner under the rule as alleged by the Office in the Denial of the Petition to Revive.

In the instant situation, it would be absurd to accuse Applicant of a lack of diligence when in fact it is the USPTO that was not diligent in failing to take the next step in prosecution. Applicant respectfully submits that the diligence requirement was never meant to require that Applicants tell the Office how or when to carry out their responsibilities in acting on trademark applications and responses, absent the circumstances clearly laid out in 37 C.F.R. § 2.66 and TMEP § 1705.05. Therefore, Applicant respectfully requests reconsideration of the denial of his petition, and contends that the Petition to Revive should be granted.

V. Further, Applicant's Request for Reinstatement should have been granted and the application restored to active status. According to 37 C.F.R. § 2.146(d), a request for reinstatement must be filed within two months of the mailing date of the notice of abandonment **or, if the applicant has not received a notice of abandonment, within two months of the date the applicant or the applicant's attorney had actual knowledge that the application was abandoned.** If the applicant did not receive a notice of abandonment, the applicant must have been duly diligent in monitoring the status of the application, or the request for reinstatement will be denied. To be duly diligent, the applicant must check the status of a pending application every six months between the filing date of the application and issuance of a registration.

As explained above, Applicant was diligent, and took corrective action in filing the Request for Reinstatement promptly once put on notice that action was needed, well within the two month time period for filing the Request.

VI. Finally, even if the Office is correct in imposing a diligence requirement on

Applicant after the Petition to Revive was timely filed and denying the Petition to Revive and the Request for Reinstatement, Applicant requests that the rules be waived pursuant to 37 C.F.R. §§ 2.146(a)(5) and 2.148 and TMEP § 1708. These rules state that “the Director may waive any provision of the rules that is not a provision of the statute, when (1) an extraordinary situation exists, (2) justice requires, and (3) no other party is injured.”

In the instant situation, Applicant respectfully contends that extraordinary circumstances exist in the apparent failure of the Office to act on Applicant’s original Petition to Revive dated August 30, 2002, in that Applicant knew that the Office was safely in possession of his Petition and that the application was assigned to Law Office 110, and believed that the Office would act on it in due course. Applicant had no reason to believe that any further action on his part was required, as the information available from the online status check indicated that everything appeared to be in order. The evidence supports Applicant’s reasonable belief that the prosecution of his trademark application was under the control and authority of the USPTO, and Applicant had no expectation or belief that further action on his part was welcome or even allowed.

According to the Office, “oversights and inadvertent errors that could have been avoided [by Applicant] with the exercise of reasonable care” are not “extraordinary circumstances.” *See* TMEP § 1708. However, in the instant situation, there is nothing that Applicant could have done to avoid the “oversights and inadvertent errors” **performed by the Office**, given the information available when he performed a status check. Accordingly, Applicant’s situation should be considered an “extraordinary situation.” Therefore, Applicant contends that the receipt in the Office of his Petition to Revive, but subsequent failure of the Office to act on it, was an extraordinary circumstance beyond Applicant’s control, and that Applicant should not be penalized for circumstances beyond his control.

Secondly, justice requires that the Office grant Applicant’s original Petition to Revive. Applicants rely on the Office examining applications according to the stated rules. Applicants have a right to expect the Office not to arbitrarily and capriciously modify the application of the rules without notice or deny Applicant’s requests using novel interpretations to the rules. 37 C.F.R. § 2.66(e) states that the Petition to Revive **will** be granted if timely filed, and it would be unjust for the Office to choose to ignore this mandate because they want to cover up their own mistake in failing to act on the petition. Further, third parties checking the status of abandoned

applications on the USPTO website can see whether a Petition to Revive has been filed, and are on notice that an applicant is seeking to revive his application if it has become abandoned. Applicants searching the trademark database and finding an abandoned application for which a Petition to Revive has been filed have every expectation that the application will be revived in accordance with 37 C.F.R. § 2.66(e), and will choose not to pursue a trademark application on that mark. Denying properly filed petitions creates chaos and uncertainty, in that applicants will not know whether an application will be revived or not, and may make costly or erroneous filing decisions, as occurred here.

In addition, the Denial of the Petition to Revive dated August 31, 2007 states that Applicant may file a new application. However, there is an additional fee for filing a new application, and it would be unjust to require Applicant to pay yet additional fees to file a new trademark application when the previously filed trademark application should have been revived and examined. In addition, justice requires that the Office waive the petition fee for filing this Request for Reconsideration, since the petition fee paid on August 30, 2002 was deposited by the Office but the petition was not acted upon, resulting in the application remaining abandoned and the mark being erroneously granted to another entity, necessitating the filing of a Notice of Opposition and incurring additional expense and aggravation to Applicant in rectifying matters. Therefore, Applicant respectfully submits that justice requires that the Office act in accordance with its own rules to provide predictability to Office procedures, and contends that justice requires that Applicant's application be revived and examined.

Thirdly, Applicant contends that no other party is injured by the Office granting Applicant's Petition to Revive. What injury to third parties is possible has already occurred, as another entity was erroneously granted registration of Applicant's mark, and Applicant was forced to file a Notice of Opposition opposing the registration of his mark to that entity. As Applicant can show an earlier first use in commerce of the trademark at issue, and therefore has superior rights to register and use the mark, the injury is unavoidable whether or not the Office grants Applicant's Petition to Revive. Further, any injury could have been avoided had interested parties performed their own investigation and chosen a different mark. Therefore, no other party will be injured by waiving the rules in the instant case and reviving Applicant's trademark application.

Therefore, Applicant contends that all three elements that would allow a waiver of the rules in this case have been satisfied, and for this additional reason, the Petition to Revive and Request for Reinstatement should be granted.

CONCLUSION

Applicant requests that the Office reconsider the Denial of the Petition to Revive under 37 C.F.R. § 2.66(f), and that the Office comply with its own rules under 37 C.F.R. § 2.66(e), which mandates that Applicant's Petition to Revive dated August 30, 2002 be granted. In addition, Applicant has shown that the diligence requirements of 37 C.F.R. §§ 2.146(i) and 2.66(a)(2) were, in fact, satisfied. Should the Office continue to disagree that Applicant was diligent and refuse to revive his application, Applicant further submits that the requirements for a waiver of the rules have been satisfied.

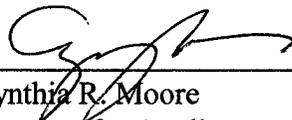
Accordingly, Applicant respectfully requests that the Office reconsider the Denial of the Petition to Revive, enter and grant the Petition as required by 37 C.F.R. § 2.66(e), revive the Application, and enter the Response for further action.

This Request is accompanied by the fee due under 37 C.F.R. § 2.6.

If the Office has any questions concerning this communication, or would like to discuss the application, or other pertinent matters, they are welcome to contact the undersigned attorney at (650) 565-8185.

Respectfully submitted,

By:



Cynthia R. Moore
Attorney for Applicant
(650) 565-8185

Dated: October 3, 2007
794 Los Robles Avenue
Palo Alto, CA 94306

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/085086

APPLICANT: GOLD, ELY

78085086

CORRESPONDENCE ADDRESS:

ELY GOLD
23679 calabasas rd.
suite 216
calabasas CA 91302

RETURN ADDRESS:

Commissioner for Trademarks
P. O. Box 1451
Alexandria, VA 22313-1451

MARK: SIMPLYQUIT

MAILING DATE

August 31, 2007

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

Please provide in your correspondence:

CORRESPONDENT'S EMAIL ADDRESS:

sago2000@hotmail.com

1. Filing date, serial number, mark and applicant's name.
2. Date of this Notice.
3. Attn: Petitions Office
4. Your telephone number and e-mail address.

PETITION TO REVIVE DENIED

Serial Number 78/085086

This will acknowledge receipt on July 18, 2007 of a copy of a Petition to Revive submitted on August 30, 2002.

Trademark Rule 2.146(i), 37 C.F.R. 2.146(i), provides the following:

Where a petitioner seeks to reactivate an application or registration that was abandoned or cancelled because papers were lost or mishandled, the Commissioner may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, the applicant must check the status of the application or registration within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected.

Applicants are expected to keep themselves informed of the status of matters pending before the Office.

The Office expects applicants to be diligent in prosecuting their applications because third parties rely on the information in the records of the Office. *See* TMEP §§1705.04, 1712.01 and 1714.01(d). Since it is reasonable to expect some notice from the Office about a pending matter well within one year of the filing or receipt of any document, a party who has not received the expected action within that time

frame should be on notice that the filing may have been lost.

In petitions filed prior to May 2, 2004, a petitioner is considered diligent if the petitioner inquired as to the status of a pending matter within one year of the filing or receipt of a document for which further action by the USPTO is expected.^[1] TMEP §1705.05.

In this case, Petitioner has not been duly diligent in monitoring the status of its application. The Petition to Revive was submitted on August 30, 2002, but no further action on the application was taken until a copy of the request was filed with the Office on July 18, 2007, almost five years later. Therefore, although the Petition to Revive was timely, the applicant was not duly diligent and the application remains abandoned.

Any fee(s) filed with the Petition to Revive for Reinstatement will be refunded in due course. Applicant may file a new application.

/Deborah D Mays/
Paralegal Specialist
Office of Petitions
Phone: (571) 272-9575
Fax:(571) 273-9575
E-mail: Deborah.Mays@uspto.gov

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

^[1] In petitions filed on or after May 2, 2004, to be considered diligent, a petitioner must: (1) check the status of a pending application every six months between the filing date of the application and issuance of a registration; (2) check the status of a registration every six months after filing an affidavit of use or excusable nonuse under §8 or §71 of the Trademark Act, or a renewal application under §9 of the Trademark Act, until the petitioner receives notice that the affidavit or renewal application has been accepted; and (3) promptly request corrective action in writing where necessary. 37 C.F.R. §2.146(i). See Exam Guide 1-03, Sec. IV (TMOG Dec. 16, 2003, available at <http://www.uspto.gov/web/offices/com/sol/og/2003/week50/patgui1.htm>).

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:
Ely GOLD

Serial No.: 78085086

Law Office: 110

Filing Date: September 22, 2001

Mark: **SimplyQuit**

Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

REQUEST FOR REINSTATEMENT DUE TO OFFICE ERROR

Sir:

In accordance with TMEP § 1712.01, Applicant hereby requests reinstatement and continued examination of the above-captioned application. The Petition received by the Office on August 30, 2002 should have been granted as a matter of right in accordance with 37 C.F.R. § 2.66. Applicant respectfully requests reinstatement of the application due to Office error.

The relevant sections of 37 C.F.R. § 2.66 are as follows:

(a) The applicant may file a petition to revive an application abandoned because the applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional. The applicant must file the petition:

- (1) Within two months of the mailing date of the notice of abandonment; or
- (2) Within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application every six months in accordance with §2.146(i).

(b) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to an Office action are:

- (1) The petition fee required by §2.6;
- (2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the response on or before the due date was unintentional; and
- (3) Unless the applicant alleges that it did not receive the Office action, the proposed response.



07-18-2007

(e) The Director *will* grant the petition to revive if the applicant complies with the requirements listed above and establishes that the delay in responding was unintentional.

(Emphasis added).

The pertinent facts in the present case are as follows:

1. A Notice of Abandonment was mailed on August 19, 2002.
2. A Petition to Revive an Abandoned Application was timely mailed on August 26, 2002 and recorded as received in the Office on August 30, 2002, which is within 2 months of the date of the Notice of Abandonment, as required by 37 C.F.R. § 2.66(a).
3. In accordance with 37 C.F.R. § 2.66(b), the Petition included: (1) the required fee of \$100, (2) a Statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the response on or before the due date was unintentional, and (3) the proposed Response to the outstanding Office Action. Copies of the canceled check, Statement and Response are submitted herewith.
4. The Office deposited the check and stamped the amount received on the Response.
5. The Office entered the papers into the application file as "paper received."
6. To date, no action on the Petition has been received by Applicant or posted on the Trademark Document Retrieval site.
7. Applicant, not being knowledgeable regarding how long the Office should take to respond to a Petition, waited patiently for a response while continuing to use the Mark in the course of normal business.
8. Applicant became aware on July 9, 2007 that his application was marked "dead" on the Trademark Document Retrieval site, immediately called the Office and was told that the petition had not been processed and granted due to Office error (Casandra, reference #1-89912332), and now submits this Request for Reinstatement due to Office Error.

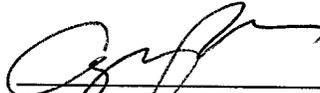
Accordingly, Applicant respectfully requests that the Office immediately enter and grant the Petition as required by 37 C.F.R. § 2.66(e), revive the Application, and enter the Response for further action. No fee is believed due for

this Request.

If the Office has any questions concerning this communication, or would like to discuss the application, or other pertinent matters, they are welcome to contact the undersigned attorney at (650) 565-8185.

Respectfully submitted,

By:



Cynthia R. Moore
Attorney for Applicant
Registration No. 46,086

Dated: July 16, 2007
794 Los Robles Avenue
Palo Alto, CA 94306
(650) 565-8185

Ely Gold
23679 Calabasas Rd. Ste. 216
Calabasas, CA 91302
(818) 224-4058

78/085086

United States Patent and Trademark Office
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA US 22202

I am very sorry. One of my associates received the Office Action from the USPTO and didn't realize that it needed a response so he just filed it away, he simply thought it was just confirmation of our trademark and did not bother to show me. I apologize for any inconvenience I have caused you and I would like to continue with my request for revival of my application. Again, I apologize, I unintentionally did not respond to the Office Action document.

Sincerely,



Ely Gold



TRADEMARK LAW OFFICE 10
Serial Number: 78/085086
Mark: SIMPLYQUIT (STYLIZED)

Please Place on Upper Right Corner
**of Response to Office Action ONLY **

Ely Gold
23679 Calabasas Rd. Ste. 216
Calabasas, CA 91302
(818) 224-4058

United States Patent and Trademark Office
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA US 22202

Reply to Office Action Mailed on 12-03-01

Identification of Goods

Smoker's articles, namely, cigarettes containing tobacco substitutes not for medical purposes IC 034.

Substitute Specimen Required

The substitute specimen is enclosed.

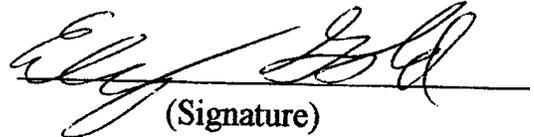
The substitute specimen was in use in commerce at least as early as the filing date of the application.

The undersigned, being of hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

09/04/2002 SWILSON 00000072 78085086

01 FC:375

100.00 OP


(Signature)

Ely Gold
(Print or Type Name and Position)

8-26-2002
(Date)



Ely Gold
23679 Calabasas Rd. Ste. 216
Calabasas, CA 91302
(818) 224-4058

78/085086

United States Patent and Trademark Office
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA US 22202

I am very sorry. One of my associates received the Office Action from the USPTO and didn't realize that it needed a response so he just filed it away, he simply thought it was just confirmation of our trademark and did not bother to show me. I apologize for any inconvenience I have caused you and I would like to continue with my request for revival of my application. Again, I apologize, I unintentionally did not respond to the Office Action document.

Sincerely,


Ely Gold

✓

Ely Gold
23679 Calabasas Rd. Ste. 216
Calabasas, CA 91302
(818) 224-4058

United States Patent and Trademark Office
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA US 22202

Reply to Office Action Mailed on 12-03-01

Identification of Goods

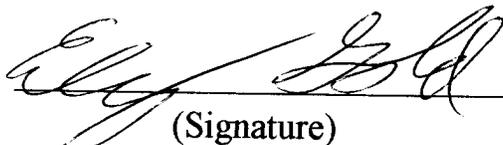
Smoker's articles, namely, cigarettes containing tobacco substitutes not for medical purposes IC 034.

Substitute Specimen Required

The substitute specimen is enclosed.

The substitute specimen was in use in commerce at least as early as the filing date of the application.

The undersigned, being of hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.



(Signature)

Ely Gold

(Print or Type Name and Position)

8-26-2002

(Date)

SimplyQuit™
www.simplyquit.com

SimplyQuit™

AS SEEN ON
TV SimplyQuit™

OPEN HERE OPEN HERE OPEN HERE OPEN HERE OPEN HERE OPEN HERE

QUIT SMOKING KIT

INCLUDES SIMULATED
CIGARETTE AND
STEP BY STEP
STOP
SMOKING
GUIDE



**DRUG & NICOTINE
FREE**



SimplyQuit™
www.simplyquit.com

Side - 1

NOTICE OF ABANDONMENT
ISSUE DATE: 08-19-2002

The trademark application identified below was abandoned because a response to the Office Action mailed on 12-03-2001 was not received within the 6-month response period.

If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement **must be received within two months from the issue date of this notice.**

For additional information, go to <http://www.uspto.gov/teas/petinfo.htm>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 703-308-9000.

SERIAL NUMBER: 78085086

MARK: SIMPLYQUIT

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3513

FIRST-CLASS
MAIL
U.S POSTAGE
PAID

ELY GOLD
23679 CALABASAS RD
STE 216
CALABASAS , CA 91302

Drawing Page

Serial Number:

78085086

Applicant:

ely gold
23679 calabasas rd.
suite 216
calabasas CA USA 91302



Date of First Use:

09/15/2001

Date of First Use in Commerce:

09/21/2001

Goods and Services:

smoker's articles, namely simulated cigarette

Mark:

SimplyQuit



NO OCR



09-22-2001

SimplyQuit

Internet Transmission Date:

2001/09/22

Serial Number:

78085086

Filing Date:

2001/09/22



TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

TOTAL FEES PAID: \$325

RAM SALE NUMBER: 105
RAM ACCOUNTING DATE: 20010924



NO OCR



09-22-2001

<SERIAL NUMBER> 78085086

<FILING DATE> 09/22/2001

<DOCUMENT INFORMATION>

<TRADEMARK/SERVICEMARK APPLICATION>

<VERSION 1.23>

<APPLICANT INFORMATION>

<NAME> ely gold
<STREET> 23679 calabasas rd.
<LN2> suite 216
<CITY> calabasas
<STATE> CA
<COUNTRY> USA
<ZIP/POSTAL CODE> 91302
<TELEPHONE NUMBER> 818 377 5046
<E-MAIL ADDRESS> sago2000@hotmail.com
<AUTHORIZE E-MAIL COMMUNICATION> Yes

<APPLICANT ENTITY INFORMATION>

<INDIVIDUAL: COUNTRY OF CITIZENSHIP> usa

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK>

<TYPED FORM> No

* Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). *

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<USE IN COMMERCE: SECTION 1(a)> Yes

* Applicant is using or is using through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. Section 1051(a), as amended.). Applicant attaches one SPECIMEN for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services. *

<SPECIMEN> Yes

<SPECIMEN DESCRIPTION> repeated word simplyquit

<LISTING OF GOODS AND/OR SERVICES> smoker's articles, namely simulated cigarette

<FIRST USE ANYWHERE DATE> 09/15/2001

<FIRST USE IN COMMERCE DATE> 09/21/2001

<FEE INFORMATION>

<TOTAL FEES PAID> 325
<NUMBER OF CLASSES PAID> 1
<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>

* The USPTO is authorized to communicate with the applicant at the below e-mail address *

<E-MAIL ADDRESS FOR CORRESPONDENCE> sago2000@hotmail.com

<SIGNATURE AND OTHER INFORMATION>

* PTO-Application Declaration: The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

*

<SIGNATURE> /ely gold/
<DATE> 09/22/2001
<NAME> ely gold

<MAILING ADDRESS>

<LINE> ely gold
<LINE> 23679 calabasas rd.
<LINE> suite 216
<LINE> calabasas CA 91302

<CREDIT CARD INFORMATION>

<RAM SALE NUMBER> 105
<RAM ACCOUNTING DATE> 20010924

<SERIAL NUMBER INFORMATION>

<SERIAL NUMBER> 78/085086
<INTERNET TRANSMISSION DATE> Saturday, 09-22-2001 17:00:42 EDT
<TEAS STAMP>

USPTO-24507265-20010922170028540-78/085086-1236856c0af0750261c0e86186c806a413e-

CC-105-20010922170028540

E-MAIL ADDRESS FOR ACKNOWLEDGMENT> sago2000@hotmail.com

Drawing Page

Serial Number:

78085086

Applicant:

ely gold
23679 calabasas rd.
suite 216
calabasas CA USA 91302



Date of First Use:

09/15/2001

Date of First Use in Commerce:

09/21/2001

Goods and Services:

smoker's articles, namely simulated cigarette

Mark:

SimplyQuit



NO OCR



09-22-2001

SimplyQuit

ORIGINAL SPECIMEN

Internet Transmission Date:

2001/09/22

Serial Number:

78085086

Filing Date:

2001/09/22

SimplyQuit
SimplyQuit
SimplyQuit
SimplyQuit

The applicant has submitted required color specimen.
The USPTO has printed only one copy of the specimen,
and extra copies can be produced in-house as needed.

SimplyQuit

SimplyQuit

SimplyQuit

SimplyQuit

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090,694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.: 91179090

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

SECOND NOTICE OF RELIANCE

To: Christopher M. Bikus, Esq.
HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, Suite 2100
Omaha, Nebraska 68102

PLEASE TAKE NOTICE, pursuant to TBMP § 704.03(a) and 37 C.F.R. § 2.122(b),
Opposer submits that they will rely upon the following documents and materials as indicated
below:

1. U.S. Trademark Application No. 77/090,694 file history.

Basis of Reliance

The exhibit identified above is relevant to the issues of:

1. Standing to oppose
2. Priority of use
3. Likelihood of confusion

Respectfully submitted,

ELGO, INC., Opposer

Dated this 30th day of April, 2009

By: /Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF ESTTA FILING

The undersigned hereby certify that a copy of the foregoing papers and all exhibits thereto was filed electronically with the Trademark Trial and Appeal Board via the ESTTA on the 30th day of April, 2009.

/Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing papers and all exhibits thereto was served on Christopher Bikus, the attorney for Applicant SimplyWell, LLC, by first class mail postage prepaid this 30th day of April, 2009, addressed as follows:

HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, suite 2100
Omaha, Nebraska 68102
Attention: Christopher M. Bikus, Esq.

/Cynthia R. Moore/
Cynthia R. Moore
Attorney for Opposer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090,694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.: 91179090

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

THIRD NOTICE OF RELIANCE

To: Christopher M. Bikus, Esq.
HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, Suite 2100
Omaha, Nebraska 68102

PLEASE TAKE NOTICE, pursuant to TBMP § 704.09 and 37 C.F.R. §§ 2.120(j) and 2.122(e), Opposer submits that they will rely upon the following documents and materials as indicated below:

1. The attached Opposer's Response to Applicant's First Set of Interrogatories (EXHIBIT B)
2. The attached Opposer's Response to Applicant's First Set of Document Requests (EXHIBIT C)
3. The attached Applicant's Answers to Opposer's First Set of Interrogatories (EXHIBIT D)

4. The attached Applicant's Answers to Opposer's Second Set of Interrogatories (EXHIBIT E)

5. The attached Applicant's Response to Opposer's Request for Documents (EXHIBIT F, with pages marked SW00001 – SW00012)

Basis of Reliance

The exhibits identified above are relevant to the issues of:

1. Date of First Use
2. Prior and Continuous Use
3. Likelihood of Confusion

Respectfully submitted,

ELGO, INC., Opposer

Dated this 30th day of April, 2009

By: /Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF ESTTA FILING

The undersigned hereby certify that a copy of the foregoing papers and all exhibits thereto was filed electronically with the Trademark Trial and Appeal Board via the ESTTA on the 30th day of April, 2009.

/Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing papers and all exhibits thereto was served on Christopher Bikus, the attorney for Applicant SimplyWell, LLC, by first class mail postage prepaid this 30th day of April, 2009, addressed as follows:

HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, suite 2100
Omaha, Nebraska 68102
Attention: Christopher M. Bikus, Esq.

/Cynthia R. Moore/
Cynthia R. Moore
Attorney for Opposer

EXHIBIT B

TRADEMARK OPPOSITION NO. 91179090

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.: 91179090

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

**OPPOSER'S ANSWERS TO APPLICANT'S
FIRST SET OF INTERROGATORIES**

TO: SimplyWell, LLC by and through their attorney Christopher M. Bikus, McGRATH NORTH MULLIN & KRATZ, PC LLO, Suite 3700, First National Tower, 1601 Dodge Street Omaha, Nebraska 68102

COMES NOW Elgo, Inc. ("Elgo"), and pursuant to the provisions of Rule 33 of the Federal Rules of Civil Procedure and Trademark Rule 2.120, responds to SimplyWell, LLC's ("SimplyWell") First Set of Interrogatories as follows.

GENERAL OBJECTIONS

1. Elgo has not yet completed its investigation of the facts in this matter, has not completed discovery, and has not completed trial preparation. Accordingly, Elgo is providing its present responses in a good faith effort to comply with SimplyWell's Interrogatories. Further investigation, discovery and trial preparation may lead to the discovery of additional information and facts. The following responses are made upon the basis of information available to Elgo at this time. It is anticipated that future discovery and independent investigation could supply additional facts or information, add meaning to known facts, may establish entirely new factual conclusions and contentions, all of which may lead to substantial additions to, changes in, and variations from the response set forth herein. Accordingly, the answers made herein are without prejudice to the right of Elgo to provide evidence at time of trial.

2. Elgo objects to each Interrogatory to the extent that it purports to require the disclosure of information which is protected by the attorney-client privilege, work product doctrine, proprietary or trade secret privileges, or any other privilege, immunity or exemption. No documents for which such privileges are asserted will be produced.

3. Elgo objects to the extent that these Interrogatories seek to require to produce documents within the possession, custody or control of third parties.

4. Elgo objects to the Interrogatories which seek confidential, proprietary, commercial or financial information without the entry by the Court of an appropriate Protective Order.

5. Elgo objects to the Definitions and Instructions contained within the Interrogatories to the extent that they purport to impose obligations and duties on Elgo beyond those under the Federal Rules of Civil Procedure.

6. Elgo objects under 37 C.F.R. § 2.120(d)(1) to the excessive number of interrogatories, which including subparts, exceed 75 in number. Nevertheless, Opposer has attempted to provide good faith answers where it was not excessively burdensome to do so.

7. Elgo specifically incorporates each of the foregoing General Objections into each of the answers to SimplyWell's Interrogatories and when appropriate, will state additional specific objections to each such discovery request. The answers of Elgo to SimplyWell's discovery are made subject to and without waiving these general and specific objections of Elgo.

OPPOSER'S ANSWERS TO INTERROGATORIES

Interrogatory No. 1: Identify all persons who you believe have knowledge of facts pertaining to the subject matter of this opposition, including within your answer a brief description of the facts for which each person has knowledge.

Answer:

Sam Gold (all relevant facts)
Ely Gold (inventor on patented simulated cigarette, trademark applicant)

Interrogatory No. 2: Please identify each person whom Opposer expects to call as an expert witness in this proceeding, and state all of the following: (a) The subject matter on which the expert is expected to testify; (b) The substance of the facts and opinions to which the expert is expected to testify; and (c) A summary of the grounds for each opinion.

Answer:

Opposer objects to this Interrogatory on the grounds that it seeks confidential company information, attorney-client privileged information and attorney work product, and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 3: For each expert identified in Opposer's answer to No. 2 above: (a) Please provide a complete statement of all opinions to be expressed and the basis and reasons therefore; (b) Please list all of the data or other information considered by the expert witness in forming the opinion; (c) Please list all exhibits to be used as a summary of or in support for the opinion; (d) Please describe the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten (10) years; (e) Please describe the compensation arrangement with the expert; and (f) Please describe all court cases or administrative proceedings in which the witness has testified as an expert at trial or by deposition within the preceding ten (10) years, providing for each case or proceeding all of the following: (i) the names of the parties involved in the proceeding; (ii) the proceeding number; (iii) Opposer's status therein; (iv) any trademark or service marks involved; (v) the type of proceeding involved; (vi) the name of the Court or agency in which the proceeding was filed; (vii) the date of the filing and file number; (viii) the ultimate disposition of the proceedings; and (ix) each document relating to such proceeding.

Answer:

Opposer objects to this Interrogatory on the grounds that it seeks confidential company information, attorney-client privileged information and/or attorney work product, and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 4: Identify each non-expert witness that Opposer expects to testify in this proceeding, the subject matter on which such witness is expected to testify, and the substance of the facts to which such witness is expected to testify.

Answer:

Opposer objects to this Interrogatory on the grounds that it seeks confidential company information, attorney-client privileged information and attorney work product, and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 5: With respect to Opposer's Mark, identify the person or persons most knowledgeable about Opposer's sales, advertising, and sales promotion, adoption and use, licensing, and/or assignment or other transfer of rights to Opposer's Mark.

Answer:

Sam Gold

Interrogatory No. 6: Identify all state and federal registrations, applications for registration, and uses by Opposer of Opposer's Mark and for each such registration, application, and use, identify all documents relating thereto.

Answer:

U.S. Trademark Application No. 78/085,086 for the mark SIMPLYQUIT™. Opposer's SIMPLYQUIT mark is used to sell products related to smoking cessation. Opposer refers Applicant to Opposer's U.S. Trademark Application and application file and to Opposer's website <http://www.simplyquit.com>.

Interrogatory No. 7: Describe in detail the nature of Opposer's business or businesses, including the date on which Opposer first engaged in such business.

Answer:

Opposer's business sells SIMPLYQUIT simulated cigarettes nationwide (and internationally) as an aid to smoking cessation and provides the SIMPLYQUIT Step by Step Stop Smoking Guide. The business was incorporated August 25, 2000, received a seller's permit on January 1, 2001, and completed the first sale on September 21, 2001.

Interrogatory No. 8: Identify and describe each of the goods and/or services on which Opposer intends to use, currently uses, or has used Opposer's Mark or any variation thereof.

Answer:

Opposer sells SIMPLYQUIT simulated cigarettes nationwide (and internationally) as an aid to smoking cessation, and provides the SIMPLYQUIT Step by Step Stop Smoking Guide.

Interrogatory No. 9: For each of the goods or services identified in answer to Interrogatory No. 8, identify all of the following: The number of units and dollar amount of the annual sales of such goods and services; The dollar amount of annual advertising expenditure on such goods or services; The individual medium in which such advertising took place; The dollar amount of advertising through each such medium; and (e) Documents sufficient to support your answer to this Interrogatory.

Answer:

Opposer objects to this Interrogatory on the grounds that it seeks confidential business information, and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 10: Identify all documents and set forth with specificity all facts regarding the selection by Opposer of Opposer's Mark including, without limitation, the circumstances and method by which Opposer adopted Opposer's Mark.

Answer:

Opposer objects to this Interrogatory on the grounds that it seeks confidential company information, and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 11: Identify all persons who were involved in, or participated in any way with, the decision to adopt, register and/or use Opposer's Mark, and for each such person, state his/her title and the role he/she played to adopt, register and/or use Opposer's Mark.

Answer:

Ely Gold, inventor of product, chose the mark and filed the trademark application. Sam Gold, owner of Elgo, Inc., manages Elgo, Inc. which manufactures and sells products under the SIMPLYQUIT trademark.

Interrogatory No. 12: State whether any searches or investigations were conducted by Opposer, its attorneys, or any persons on its behalf to determine whether Opposer's Mark was available for use and/or registration, and if so, identify each such search or investigation including the date such search or investigation was performed and the trademarks located in such search or investigation.

Answer:

Opposer objects to this Interrogatory on the grounds that it seeks confidential company information, and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 13: Identify all manufacturers or intended manufacturers of goods, and all promoters or intended promoters of any goods or services bearing Opposer's Mark.

Answer:

Opposer objects to this Interrogatory on the grounds that it seeks confidential company information, and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 14: For each of the goods and/or services identified in Opposer's application, Application Serial No. 78/085,086, identify all documents supporting the date in which Opposer's Mark was first used.

Answer:

Opposer refers Applicant to the Opposer's Trademark Application filed as "in use" under Section 1(a).

Interrogatory No. 15: Identify all documents and set forth with specificity all facts with respect to any instance where a person or entity has been confused, mistaken, and/or deceived as to whether any goods or services advertised or sold under Opposer's Mark are those of Applicant, or are connected or associated with Applicant, and for each such incident provide the date of such incident, the identity of the person or entity, and a detailed description of the circumstances of such confusion, mistake and/or deception.

Answer:

Documents associated with this Opposition.

Interrogatory No. 16: Identify a representative sample of each different sign, display, point-of-sale display, label, hand tag, wrapper, container, package, advertisement, brochure, promotional material, and the like, known to Opposer which contains or bears Opposer's Mark or any variation thereof and which is intended to be used, is currently in use, or has been used or disseminated by Opposer within the last (5) years.

Answer:

Opposer objects to this Interrogatory as unduly burdensome. Without waiving said objection, Opposer refers Applicant to sample internet, television, and radio advertising material posted at Opposer's website <http://www.simplyquit.com> as well as the record in his Trademark Application file at the USPTO.

Interrogatory No. 17: Identify each person employed by Opposer, or each outside agency or agent retained by Opposer, who has been or is responsible for the following activity with respect to any goods sold and/or services offered by and/or intended to be sold, offered, or promoted by under Opposer's Mark:

- (a) Marketing;
- (b) Advertising and promotion; and
- (c) Bookkeeping and accounting.

Answer:

Opposer objects to this Interrogatory to the extent that it requests confidential company information. Without waiving said objection, Opposer states that Sam Gold has overall responsibility and supervises other employees and outside contractors.

Interrogatory No. 18: State whether Opposer ever licensed or permitted or had negotiations to license or permit, or otherwise granted rights to third parties to use Opposer's Mark. If so, identify the following: (a) The party or parties who have received or sought such license or permission or other right; and (b) The nature and extent of any such license or permit of use or right, given or negotiated, and identify and describe all documents compromising [*sic*] or containing any such license, permission, or other right, or any agreement in respect to Opposer's Mark.

Answer:

Opposer has never licensed or permitted rights to third parties to use Opposer's Mark.

Interrogatory No. 19: State in detail the channels of trade in which Opposer's Mark is used, including all of the following: (a) The geographic area by state, territory, or possession to which each such channel reaches or extends; (b) The manner in which the goods or services reach the ultimate consumer in each such channel; (c) The approximate percentage of sales of goods and/or services sold in each such channel out of the total sales of goods and/or services sold under Opposer's Mark; and (d) Documents sufficient to support your answer to this Interrogatory.

Answer:

Opposer objects to this Interrogatory as seeking confidential business information. Without waiving said objection, Opposer states that Opposer's products are sold nationwide and internationally via internet, mail, and telephone orders. Products are shipped by various common carriers.

Interrogatory No. 20: Identify with specificity the marketing methods used in the advertising and/or sale of the goods and/or services by or for Opposer under Opposer's Mark, but not limited to, the names of television stations, radio stations, Internet Web sites, newspapers, magazines, trade journals, or periodicals, and/or retail establishments in which Opposer has advertised and intends to advertise its goods and/or services under Opposer's Mark, and identify documents sufficient to support your answer to this Interrogatory.

Answer:

Opposer objects to this Interrogatory as seeking confidential business information. Without waiving said objection, Opposer states that marketing has included the website <http://www.simplyquit.com>, various national media companies, including Stardust Media LLC, Central Point Media, TV Sales Pros LLC, PSST; print media including *Globe*, *National Enquirer*, *Star*, *Outdoor Life*, *Prevention*, *Inventor's Digest*, *Golf*, *Entertainment Today*, *Times Mirror*, *Mystery*, *Autoworld News*, *PennySaver*, *Acorn*, *Alaska Bush Shopper*; radio stations, including KQQU (Omaha Nebraska), KNIK, Talk Radio; and TV channels including Comedy Central, Family Net, Great American Country, WBIH TV, WYBE-LP, WCTV, KBTB, UATV, KFWD, WKAG, WYB33, KETK, CNTV, KMIR TV, TVHH.

Interrogatory No. 21: Identify the ordinary purchaser of the goods or services sold and intended to be sold under Opposer's Mark, including, but not limited to, the level of care exercised by such an ordinary purchaser in purchasing the goods and/or services sold under Opposer's Mark.

Answer:

Individuals seeking assistance with efforts to quit smoking, as well as health care personnel, including physicians, pharmacists, nurses and smoking cessation counselors.

Interrogatory No. 22: Identify all documents relating to and set forth with specificity all facts regarding each and every instance where Opposer has notified any third party that any trademark or service mark used by that person or entity infringe Opposer's Mark, and for each such instance

provide a detailed description of any action taken thereafter.

Answer:

Documents related to the instant Trademark Opposition.

Interrogatory No. 23: State whether Opposer has been a party to any litigation or administrative proceeding, other than the present opposition, involving Opposer's Mark. For all such litigation or administrative proceedings, provide all of the following: (a) The names of the parties involved in the proceeding; (b) The proceeding number; (c) Opposer's status therein; (d) The mark or marks involved; (e) The type of proceeding involved; (f) The name of the Court or agency in which the proceeding was filed; (g) The date of the filing and file number; (h) The ultimate disposition of the proceedings; and (i) Each document relating to such proceeding.

Answer:

There are none.

Interrogatory No. 24: For purposes of establishing priority of use, identify the earliest date upon which Opposer intends to rely in this proceeding with respect to its use of Opposer's Mark and identify all documents supporting that date of use.

Answer:

September 21, 2001. See Opposer's Trademark Application filed under Section 1(a).

Interrogatory No. 25: Identify any period of non-use of Opposer's Mark.

Answer:

There is none.

Interrogatory No. 26: Describe in detail the length of any period of non-use of Opposer's Mark identified in response to Interrogatory No. 25, and the circumstances and facts that led to such period of non-use.

Answer:

There is none.

Interrogatory No. 27: Describe in detail all facts and circumstances that led to the abandonment of U.S. Trademark Application Serial No. 78/085,06 [sic].

Answer:

Opposer refers Applicant to the file for U.S. Trademark Application Serial No. 78/085,086, wherein all circumstances are described and documented in detail. See especially, Opposer's Petition to Revive (response to Notice of Abandonment) dated August 26, 2002.

Interrogatory No. 28: Identify each person who participated in or supplied information used in answering any of the above Interrogatories. For each such person, state the number of the Interrogatory answer(s) with respect to which that person participated in or supplied information.

Answer:

Sam Gold (all Interrogatories) together with counsel.

Interrogatory No. 29: Identify all state and federal registrations, applications for registration, and uses by Opposer of any of Opposer's Marks, and for each such registration, application, and use, identify all documents relating thereto.

Answer:

Opposer object to this Interrogatory to the extent that it purports to require the disclosure of information that is protected by the attorney-client privilege, work product doctrine, and confidential business documents, and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 30: Identify all third-party state and federal registrations, applications for registration, and uses known to Opposer of any mark which incorporates the terms SIMPLYWELL.

Answer:

Opposer is not aware of any third party use of the Mark SIMPLYWELL.

Dated this 14th day of April, 2008

Respectfully submitted,

ELGO, INC., Opposer

By: /Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185
(650) 493-1993

ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing “Answers to Interrogatories” was served on Christopher Bikus, the attorney for Applicant SimplyWell, LLC, by first class mail postage prepaid and via email this 14^h day of April 2008, addressed as follows:

McGRATH NORTH MULLIN & KRATZ, PC LLO
Suite 3700, First National Tower
1601 Dodge Street
Omaha, Nebraska 68102
Attention: Christopher M. Bikus, Esq.

/Cynthia R. Moore/
Cynthia R. Moore
Attorney for Opposer

EXHIBIT C

TRADEMARK OPPOSITION NO. 91179090

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.: 91179090

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

**OPPOSER'S RESPONSE TO APPLICANT'S
FIRST SET OF DOCUMENT REQUESTS TO OPPOSER**

TO: SimplyWell, LLC by and through their attorney Christopher M. Bikus, McGRATH NORTH MULLIN & KRATZ, PC LLO, Suite 3700, First National Tower, 1601 Dodge Street Omaha, Nebraska 68102

COMES NOW Elgo, Inc. ("Elgo"), and pursuant to the provisions of Rule 34 of the Federal Rules of Civil Procedure and Trademark Rule 2.120, responds to SimplyWell, LLC's ("SimplyWell") First Set of Interrogatories as follows.

GENERAL OBJECTIONS

1. Elgo has not yet completed its investigation of the facts in this matter, has not completed discovery, and has not completed trial preparation. Accordingly, Elgo is providing its present responses in a good faith effort to comply with SimplyWell's Document Requests. Further investigation, discovery and trial preparation may lead to the discovery of additional information and facts. The following responses are made upon the basis of information available to Elgo at this time. It is anticipated that future discovery and independent investigation could supply additional facts or information, add meaning to known facts, may establish entirely new factual conclusions and contentions, all of which may lead to substantial additions to, changes in, and variations from the response set forth herein. Accordingly, the answers made herein are without prejudice to the right of Elgo to provide evidence at time of trial.

2. Elgo objects to each Interrogatory to the extent that it purports to require the disclosure of information which is protected by the attorney-client privilege, work product doctrine, proprietary or trade secret privileges, or any other privilege, immunity or exemption. No documents for which such privileges are asserted will be produced.

3. Elgo objects to the extent that these Document Requests seek to require to produce documents within the possession, custody or control of third parties.

4. Elgo objects to the Document Requests which seek confidential, proprietary, commercial or financial information without the entry by the Court of an appropriate Protective Order.

5. Elgo objects to the Definitions and Instructions contained within the Document Requests to the extent that they purport to impose obligations and duties on Elgo beyond those under the Federal Rules of Civil Procedure.

6. Elgo specifically incorporates each of the foregoing General Objections into each of the answers to SimplyWell's Document Requests and when appropriate, will state additional specific objections to each such discovery request. The answers of Elgo to SimplyWell's discovery are made subject to and without waiving these general and specific objections of Elgo.

OPPOSER'S ANSWERS TO DOCUMENT REQUESTS

Document Request No. 1: Produce all Documents and tangible things identified in response to Applicant's First Set of Interrogatories to Opposer.

Response:

Opposer objects to this Request to the extent that it purports to require the disclosure of information that is protected by the attorney-client privilege, work product doctrine, and confidential business documents, and is unduly burdensome in view of the excessive number of Interrogatories. Without waiving said objections, Opposer states that the sample specimen and other documentary evidence from Opposer's U.S. Trademark Application No. 78/085,086 is available to Applicant via the USPTO Trademark Document Retrieval system. In addition, links to copies of television and radio advertisements and other information are available to Applicant via Opposer's SimplyQuit website at www.simplyquit.com.

Document Request No. 2: Produce all Documents which record, refer to, or relate to any licenses, assignments, distribution agreements or other agreements, contracts, and/or arrangements between Opposer and any third party which relate in any manner to Opposer's Mark.

Response:

Opposer objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks confidential business information, and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 3: Produce all Documents which relate to Opposer's investigation of Opposer's Mark for its availability for adoption and registration.

Response:

Opposer objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks confidential business information, and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 4: Produce all Documents which relate to Opposer's use of Opposer's Mark in connection with products sold and/or services offered by and/or intended to be sold, offered, or promoted by Opposer under Opposer's Mark.

Response:

Opposer objects to this Request to the extent that it purports to require the disclosure of information that is protected by the attorney-client privilege, work product doctrine, and confidential business documents. Without waiving said objection, Opposer states that Applicant can refer to Opposer's website <http://www.simplyquit.com> for further information.

Document Request No. 5: Produce representative samples of all goods and/or services bearing Opposer's Mark or upon which Opposer intends to use Opposer's Mark in the future.

Response:

Applicant can purchase samples from Opposer using Opposer's website, <http://www.simplyquit.com>.

Document Request No. 6: Produce all Documents which record, refer to, or relate in any manner to the subject matter of this opposition proceeding.

Response:

Opposer objects to this Request to the extent that it purports to require the disclosure of information that is protected by the attorney-client privilege, work product doctrine, and confidential business documents, and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 7: Produce all Documents which record, refer to, or relate to Opposer's advertising, intended advertising, promotion, and/or intended promotion of any goods sold and/or services offered by and/or intended to be sold, offered, or promoted by Opposer under Opposer's Mark.

Response:

Opposer objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks confidential business information, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, Opposer directs Applicant's attention to Opposer's website, and representative television and radio advertisements which are available on Opposer's website, <http://www.simplyquit.com> . In addition, Opposer has advertised with various national media companies, including Stardust Media LLC, Central Point Media, TV Sales Pros LLC, PSST; print media including *Globe, National Enquirer, Star, Outdoor Life, Prevention, Inventor's Digest, Golf, Entertainment Today, Times Mirror, Mystery, Autoworld News, PennySaver, Acorn, Alaska Bush Shopper*; radio stations, including KQQU (Omaha Nebraska), KNIK, Talk Radio; and TV channels including Comedy Central, Family Net, Great American Country, WBIH TV, WYBE-LP, WCTV, KBTU, UATV, KFWD, WKAG, WYB33, KETK, CNTV, KMIR TV, TVHH.

Document Request No. 8: Produce all Documents which record, refer to, or relate to Opposer's sales of any goods sold and/or services offered by Opposer under Opposer's Mark for the last five (5) years.

Response:

Opposer objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks confidential business information, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, Opposer has reported income throughout the time period since the filing of Opposer's trademark application, including during the last five years.

Document Request No. 9: Produce all Documents which record, refer to, or relate to the selection, design, adoption, proposed use of, decision to use, and first use of Opposer's Mark, including samples of any names, designations and/or other marks considered and rejected.

Response:

Opposer objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks confidential business information, and is not reasonably calculated to lead to the discovery of admissible evidence. In particular, in view of Opposer's prior and continuing use, Opposer's selection and decision to adopt and use Opposer's SimplyQuit Mark at the time of filing Opposer's trademark application (2001) is not relevant to this Opposition. Notwithstanding these objections, Opposer states that the first use of Opposer's Mark and other documentary evidence from Opposer's U.S. Trademark Application No. 78/085,086 is available to Applicant via the USPTO Trademark Document Retrieval system.

Document Request No. 10: Produce all Documents which record, refer to, or relate to any searches, investigations, studies, analyses, or inquiries conducted by or on behalf of Opposer, or by any person acting for or on its behalf, regarding the availability and/or registration ability of Opposer's Mark.

Response:

Opposer objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks attorney-client privileged and/or confidential business information, and is not reasonably calculated to lead to the discovery of admissible evidence. In view of Opposer's prior and continuing use, Opposer's selection and decision to adopt and use Opposer's SimplyQuit Mark at the time of filing Opposer's trademark application is not relevant to this Opposition.

Document Request No. 11: Produce all Documents which refer to, relate to, or are in any way concerned with the corporation, filing and/or prosecution of any applications or registration, state or federal, of Opposer's Mark.

Response:

Opposer objects to the request for documents regarding "corporation" on the grounds that the Request is ambiguous and therefore overly broad, unduly burdensome, and/or requesting confidential business information, and is not reasonably calculated to lead to the discovery of admissible evidence. Opposer states that the first use of Opposer's Mark and other documentary evidence from Opposer's U.S. Trademark Application No. 78/085,086 is available to Applicant via the USPTO Trademark Document Retrieval system. The undersigned attorney further states that a representative of the USPTO called and requested that a copy of the Office Action preceding the Notice of Abandonment issued in Opposer's application be provided to complete the file; a copy of the missing Office Action was provided, and the complete application history

is now available.

Document Request No. 12: Produce a representative sample of each different logo type, design, packaging, font of type or style in which Opposer's Mark has been used, is being used, or is intended to be used, by or on behalf of Opposer.

Response:

Opposer states that a specimen of Opposer's Mark from Opposer's U.S. Trademark Application No. 78/085,086 is available to Applicant via the USPTO Trademark Document Retrieval system. Opposer further directs Applicant's attention to Opposer's website, and representative newspaper, magazine, television and radio advertisements which are available on Opposer's website, <http://www.simplyquit.com>. Copies of print advertisements are available at Opposer's office if required.

Document Request No. 13: Produce a representative sample of each and every advertisement, intended advertisement, item of promotional material, and/or intended item of promotional material printed and/or disseminated by or for Opposer in which Opposer's Mark has been displayed or is displayed for the last (5) years.

Response:

Opposer objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks confidential business information, and is not reasonably calculated to lead to the discovery of admissible evidence. Opposer states that a specimen of Opposer's Mark from Opposer's U.S. Trademark Application No. 78/085,086 is available to Applicant via the USPTO Trademark Document Retrieval system. Opposer further directs Applicant's attention to Opposer's website, and representative television and radio advertisements which are available on Opposer's website, <http://www.simplyquit.com>. Additional advertising was itemized in the response to Document Request No. 7. Copies of print advertisements are available at Opposer's office if required.

Document Request No. 14: Produce copies of all television commercials, press releases, radio scripts, and other media advertising not previously requested herein, prepared by or for Opposer, whether or not released or aired, in which Opposer's Mark appears or has appeared during the last (5) years.

Response:

Opposer objects to this Request on the grounds that it is overly broad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 15: Produce all Documents which record, refer to, or relate to Opposer's advertising and/or promotional expenditures or expected advertising and/or promotional expenditures, for any goods offered for sale, sold and/or distributed under Opposer's Mark including, but not limited to, the advertising medium, the dates of any such advertisements or promotions, and the costs associated with, such advertisements and/or promotions.

Response:

Opposer objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks confidential business information, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, Opposer has advertised Opposer's products using print media, internet, radio and television, as itemized in the Response to Document Request No. 7 above throughout the time period from 2001 to the present.

Document Request No. 16: Produce all Documents which record, refer to, or relate to the amount of sales (actual and/or projected) by calendar quarter of goods sold by or for Opposer under Opposer's Mark including, but not limited to, the identification of the goods or services, the number of units and/or services sold, the dates of the sales, and the dollar amount of the sales.

Response:

Opposer objects to this Request on the grounds that it is overly broad, unduly burdensome, seeks confidential company information, and is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, Opposer has reported income from the sales of Opposer's goods under Opposer's Mark "SIMPLYQUIT" throughout the time period since Opposer first used Opposer's Mark in 2001 until the present.

Document Request No. 17: Produce all Documents evidencing any confusion between Opposer, Opposer's Mark, and Applicant and Applicant's Mark, including inquiries, comments,

or other communications by or from customers, suppliers, manufacturers, distributors, or members of the public, either written or oral, showing any confusion, suspicion, belief or doubt as to a possible relationship between Opposer and Applicant or the origin of their respective products and/or services.

Response:

Documents associated with this Opposition.

Document Request No. 18: Produce all Documents which record, refer to, or relate to any inquiry, investigation, evaluation, analysis, or survey conducted by Opposer or any person acting for or on behalf of Opposer regarding any issues involved in this proceeding.

Response:

Opposer objects to this Request on the grounds that it seeks confidential company information, attorney-client privileged information and attorney work product, and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 19: Produce all Documents which record, refer to, or which constitute any research, reports, surveys, or studies conducted by or on behalf of Opposer of customer or consumer perception of Opposer's Mark.

Response:

Opposer objects to this Request on the grounds that it seeks confidential company information, attorney-client privileged information and attorney work product, and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 20: Produce all documents in Opposer's possession or control that refer or relate to Applicant or Applicant's Mark.

Response:

Opposer objects to this Request on the grounds that it seeks confidential company information, attorney-client privileged information and attorney work product, and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 21: Produce all press releases, articles, and clippings relating to or commenting on goods or services marketed or sold under Opposer's Mark.

Response:

An article in *The Acorn* featured Ely Gold and his simulated cigarette, published on February 14, 2002. See <http://www.theacorn.com/News/2002/0214/Community/033.html>. Whoopi Goldberg hosted an episode of ABC's "The View" on Monday Oct 29, 2007, in which smoking cessation methods were discussed, including the use of SIMPLYQUIT™ simulated cigarettes.

Document Request No. 22: Produce all documents that refer or relate to third-party state and federal registrations and/or applications for registration and/or third-party uses which incorporate the term SIMPLYQUIT.

Response:

There are none.

Document Request No. 23: Produce a copy of any statements and/or opinions, including but not limited to all drafts of statements and opinions, of any expert obtained by Opposer or any person acting for or on behalf of Opposer regarding any of the issues in this opposition proceeding.

Response:

Opposer objects to this Request on the grounds that it seeks confidential company information, attorney-client privileged information and attorney work product, and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 24: Produce a copy of all Documents, other than those produced in

response to any of the foregoing requests, upon which Opposer intends to rely in connection with this opposition proceeding.

Response:

Opposer objects to this Request on the grounds that it seeks confidential company information, attorney-client privileged information and attorney work product, and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 25: Produce a copy of all Documents that relate to any period of non-use of Opposer's Mark.

Response:

There are none.

Document Request No. 26: Produce a copy of all Documents that relate to Opposer's abandonment of U.S. Trademark Application Serial No. 78/085,086.

Response:

Opposer states that documents related to Opposer's U.S. Trademark Application No. 78/085,086 are available to Applicant via the USPTO Trademark Document Retrieval system. The undersigned attorney further states that a representative of the USPTO called the undersigned attorney requesting that a copy of the Office Action preceding the Notice of Abandonment issued in Opposer's application be provided to complete the file; a copy of the missing Office Action was provided, and the complete application history is now available.

Document Request No. 27: Produce all documents identified in, or relied upon to form, your responses to Applicant's First Set of Interrogatories to Opposer which have not already been produced in Response to the foregoing requests.

Response:

Opposer objects to this Request on the grounds that it seeks confidential company information, attorney-client privileged information and attorney work product, and is not reasonably calculated to lead to the discovery of admissible evidence.

Dated this 14th day of April, 2008

Respectfully submitted,

ELGO, INC., Opposer

By: /Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185
(650) 493-1993

ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing “Response to Applicant’s First Set of Document Requests” was served on Christopher Bikus, the attorney for Applicant SimplyWell, LLC, by first class mail postage prepaid and by email this 14^h day of April 2008, addressed as follows:

McGRATH NORTH MULLIN & KRATZ, PC LLO
Suite 3700, First National Tower
1601 Dodge Street
Omaha, Nebraska 68102
Attention: Christopher M. Bikus, Esq.

/Cynthia R. Moore/
Cynthia R. Moore
Attorney for Opposer

EXHIBIT D

TRADEMARK OPPOSITION NO. 91179090

information available to Simplywell at this time. It is anticipated that future discovery and independent investigation could supply additional facts or information, add meaning to known facts, may establish entirely new factual conclusions and contentions, all of which may lead to substantial additions to, changes in and variations from the responses set forth herein. Accordingly, the answers herein are made without prejudice to the right of Simplywell to provide evidence at time of trial.

2. Simplywell objects to each Interrogatory to the extent that it purports to require the disclosure of information which is protected by the attorney/client privilege, work product doctrine, proprietary or trade secret privileges, or any other privilege, immunity or exemption. No documents for which such privileges are asserted will be produced.

3. Simplywell objects to the extent that these Interrogatories seek to require to produce documents within the possession, custody or control of third parties.

4. Simplywell objects to the Interrogatories which seek confidential, proprietary, commercial or financial information without the entry, by the Court, of an appropriate Protective Order.

5. Simplywell objects to the Definitions and Instructions contained within the Interrogatories to the extent that they purport to impose obligations and duties on Simplywell beyond those under the Federal Rules of Civil Procedure.

6. Simplywell specifically incorporates each of the foregoing General Objections into each of the answers to Elgo's Interrogatories and, when appropriate, will state additional specific

objections to each such discovery request. The answers of Simplywell to Elgo's discovery are made subject to and without waiving these general and specific objections of Simplywell.

APPLICANT'S ANSWERS TO INTERROGATORIES

Interrogatory No. 1. Identify all state and federal registrations, applications for registration, and uses by Applicant of Applicant's Mark, and for each such registration, application and use, identify all documents relating thereto.

ANSWER:

Applicant states that it is the owner of pending federal trademark application number 77/090694 for the mark SIMPLYQUIT. Applicant's SIMPLYQUIT mark is used to offer counseling services in the field of smoking cessation. Applicant refers Opposer to Applicant's trademark application, specimen of use and amendment to allege use.

Interrogatory No. 2. Describe in detail the nature of Applicant's use of Applicant's Mark, including the date on which Applicant first engaged in each such use.

ANSWER:

Applicant states that its mark is used in connection with offering counseling in the field of smoking cessation to employees of Applicant's corporate customers.

Interrogatory No. 3. Identify and describe each of the goods and/or services on which Applicant intends to use or has used Applicant's Mark, or variations thereof.

ANSWER:

Counseling services in the field of smoking cessation.

Interrogatory No. 4. Identify all documents and set forth with specificity all facts regarding the selection by Applicant of Applicant's Mark including the circumstances and method by which Applicant adopted Applicant's Mark.

ANSWER:

Applicant objects to this request to the extent that it purports to require the disclosure of information that is protected by the attorney/client privilege and/or work product doctrine. Without waiving said objection, Applicant states that Applicant's Mark was selected as it is consistent with Applicant's family of "SIMPLY" derivative marks.

Interrogatory No. 5. Identify the person or persons most knowledgeable about Applicant's sales, advertising and sales promotion, adoption and use, licensing, and assignment or other transfer of rights with respect to Applicant's Mark.

ANSWER:

Michael Demman

Interrogatory No. 6. Identify all persons who were involved in, or participated in any way with, the decision to adopt, register and/or use Applicant's Mark, and for each such person, state his/her title and the role he/she played to adopt, register and/or use Applicant's Mark.

ANSWER:

Michael Demman

Interrogatory No. 7. State whether any searches or investigations were conducted by Applicant, its attorneys, or any persons on its behalf to determine whether Applicant's Mark was in use by another, and whether any searches or investigations were conducted to determine whether Applicant's Mark was available for use and/or registration, and if so, identify each such search or investigation including the date such search was performed and the marks located in such searches or investigations.

ANSWER:

Applicant objects to this request to the extent that it purports to require the disclosure of information that is protected by the attorney/client privilege and/or work product doctrine. Without waiving and subject to said objection, Applicant states that a trademark search was conducted in connection with Applicant's adoption and application for registration of Applicant's Mark. The trademark search disclosed Opposer's abandoned registration.

Interrogatory No. 8. Identify all manufacturers or intended manufacturers of goods, and all promoters or users or intended promoters or users of services bearing Applicant's Mark.

ANSWER:

Applicant states that the intended users of Applicant's services are individual employees of companies that are subscribers to SimplyWell's Integrated Health Solutions. Applicant does not offer its services directly to the general public; rather, services are offered through member employer subscribers.

Interrogatory No. 9. Identify all documents supporting the date on which the mark was first used, if use has commenced for each of the services identified in Applicant's application Serial No. 77/090694.

ANSWER:

Applicant refers Opposer to its amendment to allege use filed with the U.S.P.T.O. on February 7, 2007.

Interrogatory No. 10. Identify all documents and set forth with specificity the substance of each communication whether oral or written received by Applicant which suggests, implies or supports an inference that any of the products or services of Applicant sold under Applicant's Mark is a product or service of Opposer, or is affiliated, connected and/or associated with Opposer, or inquiries as to whether there is or may be an affiliation, connection and/or association between Applicant and Opposer, and identify any responses by Applicant to each such communication.

ANSWER:

None.

Interrogatory No. 11. Identify each different display, label, sign, wrapper, container, package, advertisement, brochure, promotional or informational material or the like known to Applicant which contains or bears Applicant's Mark or any variation thereof which is intended to be used or has been used or disseminated by Applicant at any time, and identify the date(s) and place(s) where such displays, labels, advertising, etc., bearing Applicant's marks have been so used and any such planned uses.

ANSWER:

Applicant objects to this Interrogatory in that it is overly broad, unduly burdensome and not reasonable calculated to lead to the discovery of admissible evidence. Without waiving, and subject to the foregoing, Applicant states that it maintains promotional materials that describe the SIMPLYQUIT eight step smoking cessation program.

Interrogatory No. 12. Identify with specificity the channels of trade in which Applicant's Mark is used and/or in which goods or services bearing Applicant's Mark are sold, including the geographic area by state, territory or possession in which Applicant's Mark is used and/or sold, the manner in which the goods or services reach the ultimate consumer, the geographical reach of each such channel, and the approximate percentage of total sales of goods and/or services through each such channel, and identify documents sufficient to support your response.

ANSWER:

Applicant's services are offered to corporations in connection with SimplyWell's Integrated Health Solutions. Applicant's services are marketed directly through sales representatives or account managers on a nationwide basis.

Interrogatory No. 13. Identify with specificity the marketing methods used in the advertising and/or sale of goods and/or services by or for Applicant under Applicant's Mark, including the

names of television stations, radio stations, Internet web sites, newspapers, magazines, trade journals or periodicals, and/or retail establishments in which Applicant has advertised and intends to advertise its goods and/or services under Applicant's Mark, and identify documents sufficient to support your response.

ANSWER:

Applicant's services are marketed through Applicant's sales representatives and account managers directly to corporate prospects. Applicant's SIMPLYQUIT smoking cessation program is offered as a party of SimplyWell's Integrated Health Solutions.

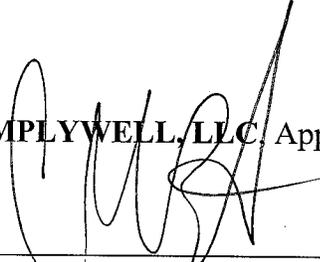
Interrogatory No. 14. Identify with specificity the dates and numbers of instances that Applicant has used Applicant's Mark for smoking cessation goods and/or services, and whether such uses have been related to interactions with individual consumers or with corporate clients or purchasers of Applicant's goods and/or services.

ANSWER:

Applicant objects to this Interrogatory in that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving, and subject to the foregoing objections, Applicant states that Applicant has been offering its corporate customers the SIMPLYQUIT smoking cessation program in connection with SimplyWell's Integrated Health Solutions continuously since as early as September 2006. Applicant offers its SIMPLYQUIT smoking cessation program to employees of SimplyWell corporate customers.

DATED this 9th day of April, 2008.

Respectfully submitted,


SIMPLYWELL, LLC Applicant

By:

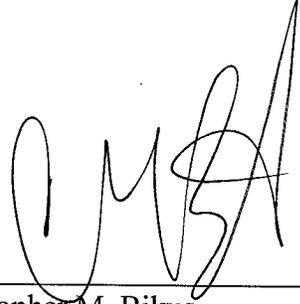
Christopher M. Bikus
McGRATH, NORTH, MULLIN & KRATZ, PC LLO
Suite 3700 First National Tower
1601 Dodge Street
Omaha, NE 68102
(402)341-3070
(402)341-0216 (fax)

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF INTERROGATORIES** was served on this 4th day of April, 2008, by sending the same, via first class mail, postage prepaid to:

Cynthia R. Moore
Moore Patents
794 Los Robles Avenue
Palo Alto, CA 94306
Tel: (650) 565-8185



Christopher M. Bikus

EXHIBIT E

TRADEMARK OPPOSITION NO. 91179090

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090,694

Published in the *Official Gazette* on August 7, 2007

ELGO, INC)	
)	
OPPOSER)	
	)	OPPOSITION NO. 91179090
v.)	
)	
SIMPLYWELL, LLC)	
)	
APPLICANT)	
)	

APPLICANT'S ANSWERS TO SECOND SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant, SIMPLYWELL, LLC ("Applicant"), by and through its attorneys, hereby submits its objections and responses to Opposer, ELGO, INC.'s ("Opposer") Second Set of Interrogatories to Applicant.

GENERAL OBJECTIONS

Applicant incorporates, by reference, any and all objections made with respect to Applicant's Responses to Opposer's Second Set of Interrogatories including, but not limited to, the following objections:

1. Applicant objects to these Interrogatories, including the instructions and definitions thereof, to the extent the same are vague, ambiguous, overly broad, unduly

burdensome, unreasonable in time and scope, and/or seek information and documents that are not relevant and not calculated to lead to the discovery of admissible evidence.

2. Applicant objects to these Interrogatories to the extent they seek discovery of "any" and/or "all" information or documents. Such Interrogatories fail to state with reasonable particularity the information or documents they seek and, therefore, are vague, ambiguous, overly broad, unduly burdensome, and/or are neither relevant nor likely to lead to the discovery of admissible evidence. Accordingly, except as specifically stated in Response to a specific Interrogatory, Applicant objects to producing such information or documents unless and until an appropriate protective order is agreed to by the parties or entered by the Board.

3. Applicant objects to these Interrogatories to the extent that they impose an undue burden on Applicant or attempt to impose obligations on Applicant beyond those set forth in the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

4. Applicant objects to these Interrogatories to the extent they seek information or documents subject to the attorney-client privilege, work product doctrine, and/or any other recognized privilege.

5. Applicant further objects to these Interrogatories to the extent they seek discovery of confidential information of third parties unrelated to this matter, and/or to the extent that they seek information or documents that are confidential, proprietary, and/or constitute trade secret information. Applicant objects to producing such information unless and until an appropriate protective order is agreed to by the parties or entered by the Board.

6. Applicant objects these Interrogatories to the extent they seek the production of information or documents that are equally accessible to Opposer, and/or seek the production of information or documents that are not within Applicant's corporate knowledge.

7. Applicant objects to these Interrogatories to the extent they seek the production of documents that are not within its possession, custody or control.

8. Applicant objects to these Interrogatories to the extent they subject Applicant to oppression or annoyance as contemplated by Federal Rule of Civil Procedure 26(c)(1).

9. Applicant objects to these Interrogatories to the extent they seek electronically stored information, including but not limited to email, from sources that are not reasonably accessible.

10. Applicant objects to these Interrogatories to the extent they exceed the number of Interrogatories allowed under the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

11. Pursuant to Federal Rule of Civil Procedure 33(d), where the answer to Opposer's interrogatories may be derived or ascertained from Applicant's business records, and to the extent Applicant would need to examine its business records in order to answer, Applicant reserves its right to produce such business records containing responsive information to answer the interrogatory.

12. To the extent that Applicant agrees to produce documents in response to these Interrogatories and to the extent such documents are readily available and capable of reproduction, such documents will be produced at a mutually agreeable place and time, and if appropriate under the terms of an appropriate protective order agreed to by the parties and entered by the Board.

13. An indication by Applicant that it will produce documents in response to a particular Interrogatory is not an admission that responsive documents exist. Rather, it indicates

that Applicant will produce those relevant, responsive, non-privileged documents, if any, that are within its possession, custody, or control and are located after a reasonable search.

14. Production of documents by Applicant in response to any of these Interrogatories is not an admission that such documents are admissible into evidence, and Applicant reserves the right to make any appropriate objections at a later time.

15. Applicant is continuing its investigation into the matters into which these Interrogatories inquire and will supplement its responses as required by the Federal Rules of Civil Procedure and Trademark Rules of Practice.

16. Any information provided by Applicant in response to these Interrogatories is provided expressly subject to any objections contained herein and is provided without waiving or intending to waive any objections that Applicant may have with respect to subsequent use of such information or with respect to the production of any information of a similar nature.

17. Any objection made in response to a specific Interrogatory is made without limiting these general objections. The foregoing statements and objections are hereby incorporated into each of the responses to each Interrogatory set forth below.

INTERROGATORIES

Interrogatory No. 1. Describe in detail the nature of Applicant's use of Applicant's Mark.

Answer: Applicant refers Opposer to Applicant's Answer to Interrogatory No. 2 to Opposer's First Set of Interrogatories.

Interrogatory No. 2. When did Applicant first engage in the use of Applicant's Mark as identified in the response to Interrogatory 1? Describe said use.

Answer: Applicant began use of the SIMPLYQUIT mark in September 2006. Applicant offers its smoking cessation counseling service to its corporate clients. Applicant generally offers the SIMPLYQUIT counseling service to existing clients once it is determined that there is a noticeable population of smokers employed by the corporate client.

Interrogatory No. 3. When did Applicant first engage in the use in interstate commerce of Applicant's Mark as identified in the response to Interrogatory 1? Describe said use.

Answer: Applicant began use of the SIMPLYQUIT mark in September 2006. Applicant offers its smoking cessation counseling services to its corporate clients. Applicant generally offers the SIMPLYQUIT counseling service to existing clients once it is determined that there is a noticeable population of smokers employed by the corporate client.

Interrogatory No. 4. Did Applicant continue to use Applicant's Mark after receiving the Notice of Opposition?

Answer: Applicant objects to this interrogatory in that it is vague, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to the foregoing objections, Applicant has continuously used Applicant's mark since September 2006.

Interrogatory No. 5. If the answer to Interrogatory 4 is yes, describe in detail the nature and dates of such use.

Answer: Applicant objects this interrogatory in that it is vague, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to the foregoing objections, Applicant has continuously used Applicant's mark as described in response to Interrogatory 2 above.

Interrogatory No. 6. Identify and describe each of the goods and/or services on which Applicant intends to use or has used Applicant's Mark, or variations thereof.

Answer: Applicant refers Opposer to Applicant's Answer to Interrogatory No. 2 set forth in Opposer's First Set of Interrogatories.

Interrogatory No. 7. Identify each of the goods and/or services in Interrogatory No. 6 which Applicant has used since receiving the Notice of Opposition.

Answer: Applicant refers Opposer to Applicant's Answer to Interrogatory No. 2 set forth in Opposer's First Set of Interrogatories. Applicant has not used the mark on any additional goods or services since receiving the Notice of Opposition.

Interrogatory No. 8. Identify and describe each of the goods sold or provided in Applicant's smoking cessation services, prior to and including the time period after initiation of this Opposition proceeding, whether or not such goods bear Applicant's Mark.

Answer: Applicant does not offer any goods of any kind under Opposer's mark.

Interrogatory No. 9. Identify all documents and set forth with specificity all facts regarding the decision by Applicant to continue use of Applicant's Mark after initiation of this Opposition proceeding, including the circumstances and method by which Applicant decided to continue use of Applicant's Mark despite knowledge of Opposer's prior and continuing use of the same mark.

Answer: Applicant objects to this request to the extent that it requires a disclosure of information as protected by the attorney/client privilege and/or work product doctrine.

Interrogatory No. 10. Identify all other marks of Applicant's family of "SIMPLY" derivative marks, identify all state and federal registrations, applications for registration, and

uses by Applicant of these additional marks, and for each such registration, application and use, identify all documents relating thereto.

Answer:

1. U.S. Trademark Registration No. 2,815,159 for the mark SIMPLYWELL;
2. U.S. Trademark Registration No. 2,753,860 for the mark SIMPLYWELL THE JOY OF GOOD HEALTH; and
3. U.S. Trademark Application Serial No. 77/090,694 for the mark SIMPLYQUIT.

Interrogatory No. 11. Identify the person or persons most knowledgeable about Applicant's sales, advertising and sales promotion, adoption and use, licensing, and assignment or other transfer of rights with respect to Applicant's Mark after initiation of this Opposition proceeding.

Answer: Michael Demman

Interrogatory No. 12. Identify all persons who were involved in, or participated in any way with, the decision to adopt, register and/or *continue use* of Applicant's Mark after initiation of this Opposition proceeding, and for each such person, state his/her title and the role he/she played to adopt, register and/or continue use of Applicant's Mark after initiation of this Opposition proceeding.

Answer: Applicant objects to this request to the extent that it purports to require the disclosure of information that is protected by the attorney/client privilege and/or work product doctrine.

Interrogatory No. 13. State whether any searches or investigations were conducted by Applicant, its attorneys, or any persons on its behalf to determine whether Applicant's Mark was in use by another, and whether any searches or investigations were conducted to determine

whether Applicant's Mark was available for use and/or registration, and if so, identify each such search or investigation, including the date such search was performed and the marks located in such searches or investigations, including the time period after initiation of this Opposition proceeding.

Answer: Applicant refers Opposer to Applicant's Answer to Interrogatory No. 7 set forth in Applicant's Answers to Opposer's First Set of Interrogatories.

Interrogatory No. 14. Identify all manufacturers or intended manufacturers of goods sold or provided as part of Applicant's smoking cessation services, whether or not such goods bear Applicant's Mark.

Answer: None

Interrogatory No. 15. Identify all service providers or intended service providers providing services attributed to, associated with, or under direction by Applicant or Applicant's assigns or agents, whether or not such services bear Applicant's Mark, and the dates and locations of such services provided.

Answer: Arbor Family Counseling. September 2006 to the present. Omaha, Nebraska.

Interrogatory No. 16. Identify all documents supporting the date on which the mark was first used, and of continued use during the time period after initiation of this Opposition proceeding, for each of the services identified in Applicant's Application Serial No. 77/090694.

Answer: Applicant refers Opposer to the documents filed with Applicant's Amendment to Allege Use filed in connection with Applicant's Trademark Application Serial No. 77/090,694.

Interrogatory No. 17. Identify all documents and set forth with specificity the substance of each communication whether oral or written received by Applicant which suggests, implies or supports an inference that any of the products or services of Applicant sold under Applicant's

Mark is a product or service of Opposer, or is affiliated, connected and/or associated with Opposer, or inquiries as to whether there is or may be an affiliation, connection and/or association between Applicant and Opposer, and identify any responses by Applicant to each such communication.

Answer: None

Interrogatory No. 18. Identify each different display, label, sign, wrapper, container, package, advertisement, brochure, promotional or informational material or the like known to Applicant which contains or bears Applicant's Mark or any variation thereof which is intended to be used or has been used or disseminated by Applicant at any time, and identify the date(s) and place(s) where such displays, labels, advertising, etc., bearing Applicant's marks have been so used and any such planned uses.

Answer: Applicant refers Opposer to Applicant's Answer to Interrogatory No. 11 set forth in Applicant's Answers to Opposer's First Set of Interrogatories.

Interrogatory No. 19. Identify with specificity the channels of trade in which Applicant's Mark is used and/or in which goods or services bearing Applicant's Mark are sold, including the geographic area by state, territory or possession in which Applicant's Mark is used and/or sold, the manner in which the goods or services reach the ultimate consumer, the geographical reach of each such channel, and the approximate percentage of total sales of goods and/or services through each such channel, and identify documents sufficient to support your response.

Answer: Applicant offers its SimplyWell Integrated Health Solutions to employers throughout the country. Applicant further states that once an employer subscribes to SimplyWell's Integrated Health Solutions, and it is determined that there is a noticeable number

of employees of the company that smoke, SimplyWell offers the SIMPLYQUIT smoking cessation counseling service to the client as an “add-on” service.

Interrogatory No. 20. Identify with specificity the marking methods used in the advertising and/or sale of goods and/or services by or for Applicant under Applicant's Mark, including the names of television stations, radio stations, Internet web sites, newspapers, magazines, trade journals or periodicals, and/or retail establishments in which Applicant has advertised and intends to advertise its goods and/or services under Applicant's Mark, and identify documents sufficient to support your response.

Answer: Applicant refers Opposer to Applicant's Answer to Interrogatory No. 13 set forth in Applicant's Answers to Opposer's First Set of Interrogatories. Applicant further states that the SIMPLYQUIT smoking cessation counseling service is generally marketed to clients as an “add-on” service if the population of smokers employed by the client warrants the service.

Interrogatory No. 21. Identify with specificity the dates and numbers of instances that Applicant has used Applicant's Mark for smoking cessation goods and/or services, and whether such uses have been related to interactions with individual consumers or with corporate clients or purchases of Applicant's goods and/or services.

Answers: Applicant objects to Interrogatory No. 21 in that it is vague, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 22. Identify with specificity the number of individuals exposed to Applicant's Mark in the following categories as shown below, and the dates and numbers of instances of each exposure.

I. Individual smokers receiving information regarding smoking cessation services through or associated with Applicant;

II. Individual smokers receiving smoking cessation services through or associated with Applicant;

III. Employees or staff of Applicant responsible for administering, marketing, or disseminating Applicant's smoking cessation programs;

IV. Employees or staff of Applicant's corporate customers receiving information regarding smoking cessation services through or associated with Applicant.

Answer: Applicant objects to Interrogatory No. 21 in that it is vague, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 23. Identify annual revenue associated with use of Applicant's Mark for each year that the mark as been in use.

Answer: Applicant objects to Interrogatory No. 21 in that it is vague, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

SIMPLYWELL, LLC

By: _____

Christopher M. Bikus
Husch Blackwell Sanders LLP
1620 Dodge Street, Suite 2100
Omaha, NE 68102

Tel: 402-964-5144
chris.bikus@huschblackwell.com

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing "APPLICANT'S ANSWERS TO INTERROGATORIES" was served on Cynthia R. Moore, the attorney for Elgo, Inc., by first class mail postage prepaid this 13th day of March, 2009, addressed as follows:

Cynthia R. Moore
794 Los Robles Avenue
Palo Alto, CA 94306

A handwritten signature in black ink, appearing to read 'CMB', is written over a horizontal line.

Christopher M. Bikus

EXHIBIT F

TRADEMARK OPPOSITION NO. 91179090

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090,694

Published in the *Official Gazette* on August 7, 2007

ELGO, INC)	
)	
OPPOSER)	
	)	OPPOSITION NO. 91179090
v.)	
)	
SIMPLYWELL, LLC)	
)	
APPLICANT)	
)	

APPLICANT'S RESPONSES TO REQUEST FOR DOCUMENTS

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant, SIMPLYWELL, LLC ("Applicant"), by and through its attorneys, hereby submits its objections and responses to Opposer, ELGO, INC.'s ("Opposer") Request for Documents to Applicant.

GENERAL OBJECTIONS

Applicant incorporates, by reference, any and all objections made with respect to Applicant's Responses to Opposer's Request for Documents including, but not limited to, the following objections:

1. Applicant objects to these Document Requests, including the instructions and definitions thereof, to the extent the same are vague, ambiguous, overly broad, unduly burdensome, unreasonable in time and scope, and/or seek information and documents that are not relevant and not calculated to lead to the discovery of admissible evidence.

2. Applicant objects to these Document Requests to the extent they seek discovery of "any" and/or "all" information or documents. Such Document Requests fail to state with reasonable particularity the information or documents they seek and, therefore, are vague, ambiguous, overly broad, unduly burdensome, and/or are neither relevant nor likely to lead to the discovery of admissible evidence. Accordingly, except as specifically stated in Response to a specific Document Request, Applicant objects to producing such information or documents unless and until an appropriate protective order is agreed to by the parties or entered by the Board.

3. Applicant objects to these Document Requests to the extent that they impose an undue burden on Applicant or attempt to impose obligations on Applicant beyond those set forth in the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

4. Applicant objects to these Document Requests to the extent they seek information or documents subject to the attorney-client privilege, work product doctrine, and/or any other recognized privilege.

5. Applicant further objects to these Document Requests to the extent they seek discovery of confidential information of third parties unrelated to this matter, and/or to the extent that they seek information or documents that are confidential, proprietary, and/or constitute trade secret information. Applicant objects to producing such information unless and until an appropriate protective order is agreed to by the parties or entered by the Board.

6. Applicant objects these Document Requests to the extent they seek the production of information or documents that are equally accessible to Opposer, and/or seek the production of information or documents that are not within Applicant's corporate knowledge.

7. Applicant objects to these Document Requests to the extent they seek the production of documents that are not within its possession, custody or control.

8. Applicant objects to these Document Requests to the extent they subject Applicant to oppression or annoyance as contemplated by Federal Rule of Civil Procedure 26(c)(1).

9. Applicant objects to these Document Requests to the extent they seek electronically stored information, including but not limited to email, from sources that are not reasonably accessible.

10. Applicant objects to these Document Requests to the extent they exceed the number of Document Requests allowed under the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

11. Pursuant to Federal Rule of Civil Procedure 33(d), where the answer to Opposer's Document Requests may be derived or ascertained from Applicant's business records, and to the extent Applicant would need to examine its business records in order to answer, Applicant reserves its right to produce such business records containing responsive documents to answer the request.

12. To the extent that Applicant agrees to produce documents in response to these Document Requests and to the extent such documents are readily available and capable of reproduction, such documents will be produced at a mutually agreeable place and time, and if appropriate under the terms of an appropriate protective order agreed to by the parties and entered by the Board.

13. An indication by Applicant that it will produce documents in response to a particular Interrogatory is not an admission that responsive documents exist. Rather, it indicates

that Applicant will produce those relevant, responsive, non-privileged documents, if any, that are within its possession, custody, or control and are located after a reasonable search.

14. Production of documents by Applicant in response to any of these Document Requests is not an admission that such documents are admissible into evidence, and Applicant reserves the right to make any appropriate objections at a later time.

15. Applicant is continuing its investigation into the matters into which these Document Requests inquire and will supplement its responses as required by the Federal Rules of Civil Procedure and Trademark Rules of Practice.

16. Any information provided by Applicant in response to these Document Requests is provided expressly subject to any objections contained herein and is provided without waiving or intending to waive any objections that Applicant may have with respect to subsequent use of such information or with respect to the production of any information of a similar nature.

17. Any objection made in response to a specific Document Request is made without limiting these general objections. The foregoing statements and objections are hereby incorporated into each of the responses to each Interrogatory set forth below.

DOCUMENT REQUESTS

Document Request No. 1. Produce samples of each different display, label, sign, wrapper, container, package, advertisement, brochure, promotional or informational material or the like known to Applicant, whether used by Applicant or customers or associates of Applicant, which contains or bears Applicant's Mark or any variation thereof which is intended to be used or has been used or disseminated by Applicant at any time. Where particular items that use the mark have had revisions, produce samples of each revision.

Response: Applicant objects to this request in that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the forgoing objection, Applicant refers Opposer to Documents No. SW1 - SW4.

Document Request No. 2. Produce copies of all documents regarding the decision by Applicant to continue use of Applicant's Mark after initiation of this Opposition proceeding, including the circumstances and method by which Applicant decided to continue use of Applicant's Mark despite knowledge of Opposer's prior and continuing use of the same mark.

Response: Applicant objects to this document request to the extent that it purports to require the disclosure of information that is protected by the attorney/client privilege and/or work product doctrine.

Document Request No. 3. Produce copies of samples and all documents related to all other marks of Applicant's family of "SIMPLY" derivative marks, state and federal registrations, applications for registration, and uses by Applicant of these additional marks.

Response: Applicant refers Opposer to Documents No. SW5 - SW8.

Document Request No. 4. Produce copies of the results of any searches or investigations conducted by Applicant, its attorneys, or any persons on its behalf to determine whether Applicant's Mark was in use by another.

Response: Applicant objects to this document request to the extent that it purports to require the disclosure of information that is protected by the attorney/client privilege and/or work product doctrine.

Document Request No. 5. Produce all documents supporting the date on which the mark was first used, and of continued use during the time period after initiation of this

Opposition proceedings, for each of the services identified in Applicant's Application Serial No. 77/090694.

Response: Applicant refers Opposer to Documents No. SW9 - SW12.

Document Request No. 6. Produce all documents supporting the date on which the mark was first used in interstate commerce.

Response: Applicant refers Opposer to Document No. SW 9 – SW12.

Document Request No. 7. Produce all documents which suggest, imply or support an inference that any of the products or services of Applicant sold under Applicant's Mark is a product or service of Opposer, or is affiliated, connected and/or associated with Opposer, or inquiries as to whether there is or may be an affiliation, connection and/or association between Applicant and Opposer.

Response: None.

Document Request No. 8. Produce all documents supporting the identification of the channels of trade in which Applicant's Mark is used and/or in which goods or services bearing Applicant's Mark are sold, including the geographic area by state, territory or possession in which Applicant's Mark is used and/or sold, the manner in which the goods or services reach the ultimate consumer, the geographical reach of each such channel, and the approximate percentage of total sales of goods and/or services through each such channel.

Response: Applicant refers Opposer to Documents No. SW1 – SW4.

Document Request No. 9. Produce all documents, video, audio, and web sites in which Applicant has used, uses, or intends to use Applicant's Mark in the advertising and/or sale of goods and/or services by or for Applicant under Applicant's Mark.

Response: Applicant refers Opposer to the Web site www.simplywell.com.

Document Request No. 10. Produce all documents which record, refer to, or relate to Applicant's sales of any goods and/or services offered by Applicant under Applicant's Mark for the last five (5) years.

Response: Applicant objects to this Request No. 10 in that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 11. Produce all documents which record, refer to, or relate to Applicant's advertising and/or promotional expenditures or expected advertising and/or promotional expenditures, for any goods or services offered for sale, sold and/or distributed under Applicant's Mark including, but not limited to, the advertising medium, the dates of any such advertisements or promotions, and the costs associated with such advertisements and/or promotions.

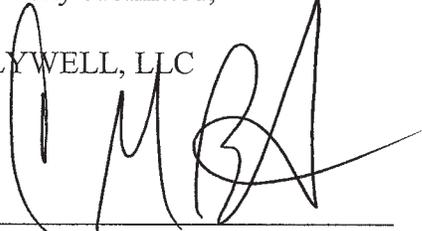
Response: Applicant objects to Document Request No. 11 in that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 12. Produce all documents which record, refer to, or relate to the amount of sales (actual and/or projected) by calendar quarter of goods or services sold by or for Applicant under Applicant's Mark including, but not limited to, the identification of the goods or services, the number of units and/or services sold, the dates of the sales, and the dollar amount of the sales.

Response: Applicant objects to Document Request No. 12 in that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

SIMPLYWELL, LLC



By: _____

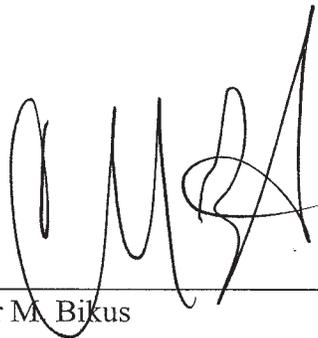
Christopher M. Bikus
Husch Blackwell Sanders LLP
1620 Dodge Street, Suite 2100
Omaha, NE 68102
Tel: 402-964-5144
chris.bikus@huschblackwell.com

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing "APPLICANT'S RESPONSES TO REQUEST FOR DOCUMENTS" was served on Cynthia R. Moore, the attorney for Elgo, Inc., by first class mail postage prepaid this 13th day of March, 2009, addressed as follows:

Cynthia R. Moore
794 Los Robles Avenue
Palo Alto, CA 94306



Christopher M. Bikus

SimplyQuitSM

Tobacco Cessation Services by **SIMPLYWELL**.

SimplyWell is pleased to offer an
EIGHT-STEP
smoking cessation program:
SimplyQuitSM

In partnership with Arbor Family Counseling, SimplyWell® provides the services of a Personal Quit Coach and 24-hour unlimited telephone support from Master Level counselors trained in both addiction and tobacco cessation.

STEP 1 A Great Opportunity

Initial contact when you are assigned a Personal Quit Coach

STEP 2 Personal Quit Strategy

Identify a Personal Quit Strategy after reviewing self-assessment

STEP 3 Commit to Quit

Build a tobacco free lifestyle and identify a quit date

STEP 4 Building Your Health

Reinforce healthy alternatives and address relapse prevention and access support systems

STEP 5 Staying Off Pack

Stretch the support of your Personal Quit Coach and address any roadblocks to success

STEP 6 Tobacco-Free Lifestyle

Learn the importance of Personal Quit Portfolio and journaling

STEP 7 Progress Evaluation

Evaluate the progress and program success

STEP 8 Certificate of Success

Final call to receive a certificate of completion



HERE IS HOW YOUR HEALTH
CAN IMPROVE AFTER YOUR
LAST CIGARETTE:

After 20 minutes...

- Blood pressure decreases
- Pulse rate drops
- Body temperature of hands and feet increases

After 8 hours...

- Carbon monoxide levels in blood drops to normal
- Oxygen levels increase to normal

After 48 hours...

- Nerve endings start redeveloping
- Ability to smell and taste is enhanced

After 10 years...

- Risk of lung cancer drops to as little as one-half that of continuing smokers

After 15 years...

- Risk of coronary heart disease is similar to that of people who never smoked

Studies show **success rates double** when counseling and interactive telephone support are worked into your plan towards a nonsmoking life.

Take the steps towards quitting by calling 800.922.7

SW00001

SimplyQuitSM

Tobacco Cessation Services by SIMPLYWELL.

SIMPLYWELL offers employers a comprehensive eight-step smoking cessation program combined with an optional 3 session telephonic EAP service. The services include:



- **Personal Quit Coach** providing eight (8) phone sessions with Arbor Family Counseling addiction counselors.
- **Twenty-four (24) hour** unlimited telephonic support.
- Arbor Addictions **Opportunities Packet** that provides participants a resource for tracking activity as it relates to their tobacco cessation program.



SimplyQuitSM delivers **Master Level** prepared professionals experienced in the field of addiction and trained in tobacco cessation to each participant enrolled in the Tobacco Cessation Program. They will receive an **Opportunities Packet** which includes both a workbook and a personal journal.



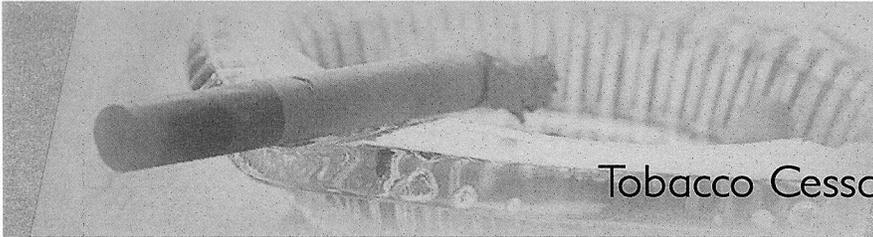
Participants will receive individualized assistance from their own **Personal Quit Coach** through a series of telephone coaching sessions in which an initial assessment and **Personal Quit Strategy** are completed. Each participant will receive an **Opportunities Journal** to reinforce continued success.

Marketing

Marketing materials that advertise the kickoff of the Tobacco Cessation Program and educate employees about the program will be provided through electronic files for employer distribution. They include:

- SimplyQuitSM Introduction Letter
- SimplyQuitSM Poster
- SimplyQuitSM Participant Product Flyer

Individuals will be encouraged to register by calling our twenty-four (24) hour access line.



SimplyQuitSM

Tobacco Cessation Services by SIMPLYWELL.

SimplyQuitSM offers a comprehensive, eight-step smoking cessation program to help you stop smoking.

The services include:

- Eight (8) phone sessions with a Personal Quit Coach provided by Arbor Family Counseling addiction counselors.
- Twenty-four (24) hour unlimited telephonic support with Master level counselors.
- An Arbor Addictions Opportunities Packet that provides participants a resource for tracking activity as it relates to your tobacco cessation program.

SimplyQuitSM Program Components

STEP ONE: A Great Opportunity	The initial phase begins with a registration call, continued by an initial contact with an assigned Personal Quit Coach, program orientation and concludes with a formal commitment by the participant to follow through with the program steps.
STEP TWO: Personal Quit Strategy	Step two includes a call to join together all the information from the participant's self-assessments and identify a Personal Quit Strategy addressing individual habits, triggers and potential road blocks for success.
STEP THREE: Commit to Quit	This call will focus on building a tobacco free lifestyle with healthy alternatives, solutions and strategies. In this call, participants will identify a quit date.
STEP FOUR: Building Your Health	A call by the Personal Quit Coach will reinforce healthy alternatives and address relapse prevention; including coaching on identified problem areas and accessing the participant's support system.
STEP FIVE: Staying Off Pack	This step focuses on addressing existing roadblocks to the participant's success for a tobacco free life. The call is structured to support the participant in moving forward into a strong recovery from smoking and emphasizing continued engagement with a support system.
STEP SIX: Tobacco-Free Lifestyle	Step six is structured to encourage the participant to embrace a tobacco free lifestyle with the help of the addiction specialist, learning the information in the participant's Personal Quit Portfolio and journaling in their Opportunities Personal Journal.
STEP SEVEN: Progress Evaluation	This call will focus on program and participant evaluation and includes a follow-up phone call by an addictions counselor.
STEP EIGHT: Certificate of Success	Once the program participant has completed the evaluation of the program and the self-evaluation, she/he will receive a certificate of completion.

Take the steps towards a smoke-free life and call SimplyQuitSM 1.800.922.7379

Telephone Cessation and Recovery Program

Each participant who enrolls in SimplyQuitSM will have access to an eight-step initial recovery process. Each step is guided and reinforced by the expertise of a Personal Quit Coach. Once a personal coach has been assigned to the participant, they will be involved in a total of six inbound telephone calls.

STEP ONE: A Great Opportunity	The initial phase begins with a registration call, continued by an initial contact with an assigned Personal Quit Coach, program orientation and concludes with a formal commitment by the participant to follow through with the program steps.
STEP TWO: Personal Quit Strategy	Step two includes a call to join together all the information from the participant's self-assessments and identify a Personal Quit Strategy addressing individual habits, triggers and potential road blocks for success.
STEP THREE: Commit to Quit	This call will focus on building a tobacco free lifestyle with healthy alternatives, solutions and strategies. In this call, participants will identify a quit date.
STEP FOUR: Building Your Health	A call by the Personal Quit Coach will reinforce healthy alternatives and address relapse prevention; including coaching on identified problem areas and accessing the participant's support system.
STEP FIVE: Staying Off Pack	This step focuses on addressing existing roadblocks to the participant's success for a tobacco free life. The call is structured to support the participant in moving forward into a strong recovery from smoking and emphasizing continued engagement with a support system.
STEP SIX: Tobacco-Free Lifestyle	Step six is structured to encourage the participant to embrace a tobacco free lifestyle with the help of the addiction specialist, learning the information in the participant's Personal Quit Portfolio and journaling in their Opportunities Personal Journal.
STEP SEVEN: Progress Evaluation	This call will focus on program and participant evaluation and includes a follow-up phone call by an addictions counselor.
STEP EIGHT: Certificate of Success	Once the program participant has completed the evaluation of the program and the self-evaluation, she/he will receive a certificate of completion.

Program Utilization Reports

An account representative will provide quarterly reports on program utilization to include number of participants who enrolled in the program and number of participants who successfully completed the program. This information can be provided in a manner that is complimentary to your existing wellness program documentation either in writing or electronically.

Fee Schedule

Per Participant

The cost is three hundred dollars (\$300.00) per participant.

Per Employee Per Month Fee Option

The cost of this option is one dollar and twenty five cent (\$1.25) per employee per month applied to all employees and includes all family members. The cost of the program with three (3) additional EAP sessions is \$1.75 per participant.



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Mar 6 04:01:04 EST 2009

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[SEARCH OG](#)
[BOTTOM](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)

[NEXT LIST](#)
[FIRST DOC](#)
[PREV DOC](#)
[NEXT DOC](#)
[LAST DOC](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) List At: OR [Jump](#) to record: **Record 8 out of 12**

[TARR Status](#)
[ASSIGN Status](#)
[TDR](#)
[TTAB Status](#)
 (Use the "Back" button of the Internet Browser to return to TESS)



Word Mark SIMPLYWELL THE JOY OF GOOD HEALTH.
Goods and Services IC 041. US 100 101 107. G & S: Educational services, namely conducting wellness programs that focus on prevention, wellness and self-care. FIRST USE: 20010201. FIRST USE IN COMMERCE: 20010501
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 02.01.02 - Men depicted as shadows or silhouettes of men; Silhouettes of men
 02.11.01 - Hearts excluding hearts as carriers or depicted on playing cards
Serial Number 76264866
Filing Date June 1, 2001
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition October 8, 2002
Registration Number 2753860
Registration Date August 19, 2003
Owner (REGISTRANT) Paramount Group, LLC LTD LIAB CO NEBRASKA 987424 Nebraska Medical Center Omaha NEBRASKA 681987424
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Michael Demman

Description of Mark "The mark consists of only one word- "SIMPLYWELL". The word "Simply" has a capital "S" and the remainder of the word is lower cased. The word Well has a capital "W" and the rest of the word is lower cased. The second line, which is centered under "SimplyWell", states: "The Joy of Good Health". The written component is preceded by a jumping human figure.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[SEARCH OG](#)
[TOP](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)

[NEXT LIST](#)
[FIRST DOC](#)
[PREV DOC](#)
[NEXT DOC](#)
[LAST DOC](#)

[|.HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Mar 6 04:01:04 EST 2009

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#) | [PREV LIST](#) | [CURR LIST](#)
[NEXT LIST](#) | [FIRST DOC](#) | [PREV DOC](#) | [NEXT DOC](#) | [LAST DOC](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) List At: OR [Jump](#) to record: **Record 3 out of 12**

[TARR Status](#) | [ASSIGN Status](#) | [TDR](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark SIMPLYWELL
Goods and Services IC 041. US 100 101 107. G & S: Educational services, namely conducting a wellness program that focuses on prevention, wellness and self-care. FIRST USE: 20010201. FIRST USE IN COMMERCE: 20010501
Mark Drawing Code (1) TYPED DRAWING
Serial Number 78234658
Filing Date April 7, 2003
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition November 25, 2003
Registration Number 2815159
Registration Date February 17, 2004
Owner (REGISTRANT) **Paramount Group**, LLC LTD LIAB JT ST CO NEBRASKA 987424 Nebraska Medical Center Omaha NEBRASKA 681987424
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record CHRISTOPHER M BIKUS
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [TOP](#) | [HELP](#) | [PREV LIST](#) | [CURR LIST](#)
[NEXT LIST](#) | [FIRST DOC](#) | [PREV DOC](#) | [NEXT DOC](#) | [LAST DOC](#)

Trademark/Service Mark Amendment to Allege Use (15 U.S.C. Section 1051(c))

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77090694
NOTICE OF ALLOWANCE	NO
EXTENSION OF USE	NO
REQUEST TO DIVIDE	NO
MARK SECTION	
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	SIMPLYQUIT
OWNER SECTION (no change)	
ATTORNEY SECTION (no change)	
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	044
GOODS AND/OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	09/00/2006
FIRST USE IN COMMERCE DATE	09/00/2006
SPECIMEN FILE NAME(S)	\\TICRS2\EXPORT12\770\906\77090694\xml3\AAU0002.JPG
SPECIMEN DESCRIPTION	copy of a brochure displaying the mark
PAYMENT SECTION	
NUMBER OF CLASSES	1
SUBTOTAL AMOUNT	100
TOTAL AMOUNT	100

SIGNATURE SECTION	
SIGNATURE	/Michael Demman/
SIGNATORY NAME	Michael D. Demman
SIGNATORY DATE	02/07/2007
SIGNATORY POSITION	Chief Executive Officer
FILING INFORMATION	
SUBMIT DATE	Wed Feb 07 15:13:00 EST 2007
TEAS STAMP	USPTO/AAU-209.34.193.2-20 070207151300128715-770906 94-360f7b912e922a61615902 31a871f5d18-CC-147-200702 06121201292199

PTO Form 1553 (Rev 9/2005)
OMB No. 0651-0054 (Exp. 11/30/2008)

Trademark/Service Mark Amendment to Allege Use (15 U.S.C. Section 1051(c))

To the Commissioner for Trademarks:

MARK: SIMPLYQUIT

SERIAL NUMBER: 77090694

The applicant, SIMPLYWELL, LLC, having an address of 4242 Farnam Street, Ste. 270, Omaha, Nebraska United States 68131, is using or is using through a related company or licensee the mark in commerce on or in connection with the goods and/or services as follows:

For International Class: 044, the applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 09/00/2006, and first used in commerce at least as early as 09/00/2006, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) copy of a brochure displaying the mark.

Specimen-1

The applicant hereby appoints Christopher M. Bikus to submit this Trademark/Service Mark Amendment to Allege Use on behalf of the applicant.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for 1 class.

Declaration

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /Michael Demman/ Date Signed: 02/07/2007

Signatory's Name: Michael D. Demman

Signatory's Position: Chief Executive Officer

RAM Sale Number: 147

RAM Accounting Date: 02/08/2007

Serial Number: 77090694

Internet Transmission Date: Wed Feb 07 15:13:00 EST 2007

TEAS Stamp: USPTO/AAU-209.34.193.2-20070207151300128

715-77090694-360f7b912e922a6161590231a87

1f5d18-CC-147-20070206121201292199

[Go Back](#)

SimplyQuitSM

Tobacco Cessation Services by SimplyWell[®]

HERE IS HOW YOUR HEALTH CAN IMPROVE AFTER YOUR LAST CIGARETTE:

After 20 minutes...

- ◇ Blood pressure decreases
- ◇ Pulse rate drops
- ◇ Body temperature of hands and feet increases

After 8 hours...

- ◇ Carbon monoxide levels in blood drops to normal
- ◇ Oxygen levels increase to normal

After 48 hours...

- ◇ Nerve endings start redeveloping
- ◇ Ability to smell and taste is enhanced

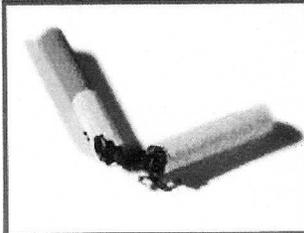
After 10 years...

- ◇ Risk of lung cancer drops to as little as one-half that of continuing smokers

After 15 years...

- ◇ Risk of coronary heart disease is similar to that of people who never smoked

Source: American Lung Association



SimplyWell[®] is pleased to offer an EIGHT-STEP smoking cessation program

SimplyQuitSM

In partnership with Arbor Family Counseling, SimplyWell[®] provides the services of a Personal Quit Coach and 24-hour unlimited telephone support from Master Level counselors trained in both addiction and tobacco cessation.

Step One: A Great Opportunity

- ◇ Initial contact when you are assigned a Personal Quit Coach

Step Two: Personal Quit Strategy

- ◇ Identify a Personal Quit Strategy after reviewing self-assessment

Step Three: Commit to Quit

- ◇ Build a tobacco free lifestyle and identify a quit date

Step Four: Building Your Health

- ◇ Reinforce healthy alternatives and address relapse prevention and access support systems

Step Five: Staying Off Pack

- ◇ Stress the support of your Personal Quit Coach and address any roadblocks to success

Step Six: Tobacco-Free Lifestyle

- ◇ Learn the importance of Personal Quit Portfolio and journaling

Step Seven: Progress Evaluation

- ◇ Evaluate the progress and program success

Step Eight: Certificate of Success

- ◇ Final call to receive a certificate of completion

Studies show **success rates** double when counseling and interactive telephone support are worked into your plan towards a nonsmoking life.

Take the steps towards quitting by calling 800.922.7379

SimplyQuitSM 1.800.922.7379

SW00012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090,694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.: 91179090

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

FOURTH NOTICE OF RELIANCE

To: Christopher M. Bikus, Esq.
HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, Suite 2100
Omaha, Nebraska 68102

PLEASE TAKE NOTICE, pursuant to TBMP §§ 704.08 and 704.07 and 37 C.F.R. § 2.122(e), Opposer submits that they will rely upon the following documents and materials as indicated below:

1. The attached article in the publication THE ACORN, dated Feb. 14, 2002, entitled “Teen Won’t Quit on New Invention.” (EXHIBIT G)
2. The attached summary of a TV broadcast on Oct. 29, 2007 of ABC’s “The View,” hosted by Whoopi Goldberg, in which SimplyQuit simulated cigarettes are mentioned. (EXHIBIT H)
3. U.S. Patent No. 6,606,998 to Ely Gold. (EXHIBIT I)

4. Printouts from the Wayback Machine indicating the history of the www.simplyquit.com website from 2001 to 2008. (EXHIBIT J)

Basis of Reliance

The exhibits identified above are relevant to the issues of:

1. Priority of use
2. Business development and goodwill
3. Likelihood of confusion

Respectfully submitted,

ELGO, INC., Opposer

Dated this 30th day of April, 2009

By: /Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF ESTTA FILING

The undersigned hereby certify that a copy of the foregoing papers and all exhibits thereto was filed electronically with the Trademark Trial and Appeal Board via the ESTTA on the 30th day of April, 2009.

/Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing papers and all exhibits thereto was served on Christopher Bikus, the attorney for Applicant SimplyWell, LLC, by first class mail postage prepaid this 30th day of April, 2009, addressed as follows:

HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, suite 2100
Omaha, Nebraska 68102
Attention: Christopher M. Bikus, Esq.

/Cynthia R. Moore/
Cynthia R. Moore
Attorney for Opposer

EXHIBIT G

TRADEMARK OPPOSITION NO. 91179090

Contact Us

 RSS Feed



**Desktop Publishing
for Newspaper Layout**
Seeking person with Graphic Design
experience for Ad Building and Page
Layout using Pagemaker. Experience in
Photoshop also preferred.
Fun Atmosphere - 4-Day Work Week
**Fax or E-mail Resume & Salary
Requirements to:**
(818) 707-7848 or production@theacorn.com
Attn: Bruce - Acorn Newspapers

Other Publications
[The Camarillo Acorn](#)
[Thousand Oaks Acorn](#)
[Moorpark Acorn](#) - [Simi Valley
Acorn](#)

Advertiser Index

Shopping

Going Out

Health

Faith

Youth

Real Estate

News

- Front Page
- Community
- Health & Wellness
- Bulletin Board
- Schools
- Sports
- Pets
- Police
- Faith
- On the Town
- Motoring
- Letters
- Columns
- Editorials
- Archive**

Community

February 14th, 2002

Search Archives:

**Click ads below
for larger version**

**teen won't quit on new invention
By John Loesing
Acorn Staff Writer**



NEW IDEA-Ely Gold, 17, shows the device he made to help people quit smoking because of his father's cigarette addiction.

There are almost 50 million smokers in the United States and counting, but the only nicotine habit that concerned young Ely Gold was his father's.

Sam Gold, a Lithuanian citizen who brought his family to America in 1990, had been a smoker for decades when his son began begging him to quit. Every year more than 400,000 Americans die from smoking related diseases and Ely didn't want to see his father wind up as another statistic.

Ely, a 17-year-old Calabasas High School student, watched his father try everything—the patch, the gum, the cold turkey—but to no avail.

"You name it I tried it," said the boy's father, and his pack-a-day habit continued.

Last year, Ely decided to take matters into his own hands. He invented a plastic, cigarette-looking device that allows a person to simulate smoking while breaking the nicotine habit at the same time.



Do You Suffer from Insomnia??
Are you age 65 or older?

If so, you may be eligible to participate in a research study testing an investigational medication for use in the treatment of insomnia.

Qualified participants will receive:
Study Drug
Study related medical examinations
Electrocardiogram (EKG)
Study-related lab tests

All at no charge

Men and women, age 65+, may participate.
Eligible participants may receive compensation for their time and travel.

To find out if you qualify, please call or email:

 WMR Clinical Trials
(815) 406-3322
latonya@wmresearch.com

08170081007

Advertising

- Private Party
- Classifieds
- Private Party Order
- Rentals Order
- Rentals

E-mail Us

Copyright©
2000 - 2008
J.Bee

Publications
All Rights
Reserved



Newspaper web site
content
management
software and
services

DMCA Notices

"Simply Quit" is the name of the product, and for Ely's father it worked. He quit.

While Ely recognizes that nicotine is the agent that hooks smokers, he says people must overcome their oral fixation with cigarettes before they can stop smoking altogether. That's where Ely's faux cigarette comes into play.

"It tricks you into thinking you're holding a real cigarette but you're not," Ely said.

Ely packages his product with a two-step, learn-how-to-stop program available on the Internet (www.simplyquit.com).

In "step one," smokers get to try the device free. In "step two," customers pay \$9.95 for one of the flavor-tasting cigarettes with a purported useful life of up to three months.

"I think the first week free program is proof that I'm serious about helping people," Ely said. "But it takes at least three months to develop the strength necessary to stop this addiction once and for all."

Ely and his father obtained the necessary manufacturing materials last October and went to work building a prototype. At first they thought about modifying a traditional cigarette holder to help wean smokers, but decided to make a device that looks more like a real cigarette.

"When you inhale it generates special smells that are pleasant to smokers," Sam Gold said. "Instead of cigarettes they can use this one and quit smoking ... [Ely] came up with something good not only for his dad and his family, but people all around."

According to Ely, Simply Quit's pleasant taste also helps prevent users from wanting to binge on food. Weight gain is common for smokers who are quitting.

Asked if he's concerned that his son might someday start smoking, Gold said not at all.

"Kids are so smart you don't have to tell them to quit, they tell you."

Do you suffer from Overactive Bladder??

If so, you may be eligible to participate in a research study testing an investigational medication for patients with Overactive Bladder.



Qualified participants may receive:
Study Drug or placebo
Study-related lab tests
Study-related medical examinations

All at no charge

Men and women, 18 years of age and older, may participate.
Eligible participants may receive compensation up to \$250.00 for their time and travel.

To find out if you qualify, please call or email:



WMR Clinical Trials
(855) 496-3322
karr@wmarclinical.com

FREE 24HR RECORDED INFORMATION
Health & Wellness Industry

Financial Stability, Security, Wealth and Independence Can NOW Be Yours! Est: 10

Stay at Home Mom or Corporate Executive? Generate residual income from home! Est: 20

Look years younger WITHOUT surgery...you must hear this! Est: 40

1-800-655-9715

Computer Expert to your Location
MAC and PC Support for your Home or Office

- Troubleshooting & Maintenance
- Networking & File Management
- Installation and Upgrades
- Internet, Email, DSL
- Backup & Data Solutions
- Wireless Set-Up
- Virus & Spyware Removal

Don't Delay! Call Today!
Certified Internet & Technology Professionals
818-908-1956 or 800-664-4850
www.HelpUsFixMyMac.com

Smog Check

We use every Test Only Smog Station in the State for Smog Check certification and repairs at our Price!

Agoura Auto Service
30115 Dorothy Dr., Unit #5
Agoura Hills, CA 91301

Agoura Auto Service - A GOLD SHIELD SMOG CHECK STATION
818-925-8415 OR 818-991-6900 • MON-SAT 9AM - 5 PM

Get up to \$500 in Smog Related Repair Assistance!

1. Reduce this smog check.
2. Owner calls 800-462-5200 or visits www.smogcheck.com for information and to get an appointment.
3. If the appointment is successful, owner receives a letter of approval.
4. Owner takes the letter and the vehicle to a Gold Shield Smog Check Station.
5. Call 818-991-6900 or visit www.agourautoservice.com.
6. Owner pays the first \$25 or the first \$100, depending on vehicle.
7. Call 800-462-5200 to request and receive your vehicle.

* See Smog Check Station for details and restrictions. Offer good only at participating Gold Shield Smog Check Stations.



[System and Method for Display Ads have a Patent Pending.](#)
[Click Here for More Information](#)

EXHIBIT H

TRADEMARK OPPOSITION NO. 91179090



[ABOUT THE SHOW](#) [RECAPS](#) [CO-HOSTS](#) [SCHEDULE](#) [VIDEO](#) [PHOTOS](#) [ASK THE VIEW](#) [TICKETS](#)

Recaps

More Recaps
2008

Select week

October 29 [October 22](#) [October 15](#) [October 8](#) [October 1](#)

Hot Topics and more...

Watch the latest Hot Topics, celebrity interviews and online exclusives in *The View's* video section!

[Watch now](#)

ADVERTISEMENT

May
 April
 March
 February
 January

2007

December
 November
October
 September
 August
 July

Videos

Check out great clips from past shows.



[View Here](#)

Week of October 29, 2007



Monday, Oct. 29

In honor of Breast Cancer Awareness Month, Joy had a giveaway for today's audience that is very close to her heart. Apparel designer and cancer survivor Paula Carbone created the "On The Mend" kit to contain what every woman needs when being treated for and recovering from cancer. The kit includes a plush quilted robe, ballet-type slippers, a lightweight turban, a handy cosmetics/pill pouch and a silver "Venus" bracelet—all in a signature tote bag. More importantly, a portion of the proceeds from each kit sold support Memorial Sloan Kettering Research Center for cancer research. Everyone in today's audience got the gorgeous and comfy quilted robe.

And that wasn't it! Everyone in today's audience also took home a \$100 gift card from White House | Black Market, which offers sophisticated and stylish apparel and accessories in black and white.

Next, we welcomed star of the new TV show, *The Big Bang Theory*, Kaley Cuoco. Check local listings to catch her as a beautiful but not-so-bright girl who befriends a group of brilliant, but nerdy neighbors in *The Big Bang Theory*, airing Monday nights.

And as many of you may know, Whoopi has been trying to quit smoking and she needs all the help she can get. Here this morning with absolutely every possible method to kick butts was the medical editor for *Best Life* magazine, Dr. Steven Lamm. From patches to pills to hypnosis, here are all the ways people quit smoking according to Dr. Lamm:

Nicotine Replacement Therapy: Nasal spray, gum, patch, inhaler

- Nicotrol (nasal spray & inhaler)
- Nicorette Cinnamon Surge (gum) also in Fresh Mint and Fruit Chill
- NicoDerm CQ (stop smoking patch)
- Commit (stop smoking Lozenge)

Prescribed Medications That Reduce Cravings

- Zyban (a depression drug that helps people stop smoking)
- Chantix (Varenicline) (stop smoking medication)
- Wellbutrin (Bupropion) (prescription stop-smoking aid that doesn't contain

NO CELEBRITY ENDORSEMENT IMPLIED

Schedule

Want to find out who's on the show? Do you need to know when the show airs in your town? Click a link below to get your answers.

[See the full schedule](#)

[See when The View plays](#)

nicotine)

Herbal Medicines

- Ester C
- Pycnogenol
- OPC3 Vitamin
- Herbal Medicines (Crave-Rx Drops , Butt it Out Plus Oral Spray & Capsules, Smokers Choice Multi-vitamins)

Complimentary Medicine

- Laser Treatment (laser into your wrist, hands, ears, arms and side of nose —helps block out cravings of nicotine)
- Acupuncture (combination on the ear but can be used all over the body, it depends on the patient)
- Hypnosis

Cigarette Modification Products

- E-Z quit (smokeless cigarette substitute)
- One Step At a Time (filters & removes up to 90% of the nicotine and tar in cigarettes)
- Super Stop (filter)
- Aquafilter (wet filtration)
- Simply Quit (simulated cigarette gives you something to puff on)

Other

- Self-Help Group Nicotine Anonymous
- Zerosmoke (it's a little magnet you wear in your ear)
- Cold Turkey
- Talk with your Physician



Tuesday, Oct. 30

After her awkward interview with Holly Hunter made her an Internet celebrity, Merry Miller was here to explain what really happened when she sat in as our special guest co-host today.

Next, we had a gift guaranteed to brighten the day of today's studio audience when we gave them each a \$150 gift card to Tommy Bahama®, purveyors of island lifestyles™. To view and purchase the very finest in island inspired living, fashion and accessories, visit tommybahama.com or check out Tommy Bahama® Stores.

Then, we welcomed the resident hottie on *Private Practice*, Tim Daly, whose character Dr. Pete Wilder just wants to "play doctor" with Addison. Watch as things heat up between them in the hit new show, *Private Practice*, which airs Wednesday nights at 9/8c on ABC.

If you want to know what's really happening in pop music, our next guest is the perfect go-to guy with the go-to sound—musician, composer and producer of some of your favorite songs, David Foster. He was here to sing some of his most unforgettable hits and to tell us which hot, young artists will be on your iPod soon! Furthermore, David will be joining the world's best-selling tenor, the legendary Andrea Bocelli, for the worldwide theatrical premiere of *Vivere: Andrea Bocelli Live in Tuscan* in New York at the Ziegfeld Theatre on November 1. For more information or to attend this event, go to bocellimovie.com.

Finally, since tomorrow is Halloween, everyone in today's audience also took home a 7-set special DVD collection of Fox and MGM horror films.



Wednesday, Oct. 31

Halloween has always been an outrageous extravaganza at *The View* and this year was no exception!

Think back to New York City in 1930. The sound, soul and pulse of the city was up in Harlem at the legendary Cotton Club—and this Halloween we were taking the A train back in time. We invited the ladies and gentlemen of our audience to take a seat and give a warm welcome to our fabulous Cotton Club orchestra, featuring Whoopi as Mr. Cab Calloway, Joy and Sherri as hot Cotton Club show girls and Barbara as a fame show girl from the greatest night club in New York City, Lou Walters' Latin Quarter.

And of course, it wouldn't be Halloween without plenty of candy! Everyone in our audience got "trick or treat" bags from Mars Snack Food U.S. stuffed with M&M's®, 3 Musketeers®, Snickers® and more.

But that's not all—they also got one of Whoopi's all-time favorite Halloween treats, the classic *Paul Lynde Halloween Special* DVD.

The headline act at the Cotton Club this morning was the legend Tony Bennett singing a song by an artist who defined that uptown sound—Duke

Ellington's "In A Mellow Tone." The treats kept coming because all the studio audience got Tony Bennett's album **TONY BENNETT SINGS THE ULTIMATE AMERICAN SOUNDBOOK, VOLUME 1**, the book **TONY BENNETT IN THE STUDIO: A LIFE OF ART & MUSIC** and the documentary **TONY BENNETT: THE MUSIC NEVER ENDS** on DVD.

Next, the man who goes *Cross Country* to get people in harmony with their past was here today. Famous psychic John Edward was picking out our own audience members to see who he could reconnect with lost loved ones. Everyone! went home with a copy of John Edward's book **PRACTICAL PRAYING USING THE ROSARY TO ENHANCE YOUR LIFE**.

Finally, since the Cotton Club was always jumping with people doing the dance of the era, the Jitterbug, Sherri a few some lessons from one of the best song and dance men alive, Ben Vereen (courtesy of Dance Times Square). Ben hit the floor with a show girl named Sherri to complete our magnificent Halloween show!

The View would also like to thank today's house band, members of the Jazz at Lincoln Center Orchestra. Everyone in the audience received tickets to see their show *Beyond the Spanish Tinge*.



Thursday, Nov. 1

Today we welcomed *Dancing With the Stars* judge Carrie Ann Inaba who joined the ladies as our special guest co-host.

Next, Since Sherri is new in town, we got to join her as she hit the streets of Manhattan to get to know her new home, and she got plenty of help from the locals.

Next, in the new movie *Before the Devil Knows You're Dead*, Ethan Hawke's character gets propositioned by his brother to pull a heist that's really close to home. Ethan stopped by this morning to discuss this captivating and dramatic film, the Oscar buzz surrounding it and his new role directing the off-Broadway play, *Things We Want*. Don't miss Ethan Hawke and Philip Seymour Hoffman in *Before the Devil Knows You're Dead*, playing in select theaters now.

Tuesday night's shocking *Dancing With the Stars* elimination had the audience booing and viewers in an uproar. Everyone thought Cheetah Girl

Sabrina Bryan and her partner Mark Ballas would dance away winners, but they took their final bow right here on *The View* this morning and danced the Cha-Cha. Tune in as the remaining stars battle it out on the dance floor —*Dancing With the Stars* airs Mondays at 8/7c and Tuesdays at 9/8c on ABC.

Thanks to Shopping.com®, a leading online comparison shopping site, everyone in today's audience took home a brand new Apple iPod Shuffle. To save time and money on all your holiday shopping, visit Shopping.com.<



Friday, Nov. 2

We ended the week on a great note today when we kicked off the show by giving everyone in the audience a DVD copy of the film, *El Cantante*, starring celebrity couple Marc Anthony and Jennifer Lopez.

Next, we welcomed funny man David Spade, who plays a blissfully unattached bachelor on the sitcom *Rules of Engagement*. He was telling us how his character on the show has recently found a fellow hell-raiser in guest star Heather Locklear. Check your local listings for *Rules of Engagement* on Monday nights.

Then, Whoopi was showing you how to put your best foot forward with a fashion show full of her favorite footwear. Here are some of her top picks:

1. **Jump Shoes:** Started in 1975 by Harry Chen to satisfy the demand for affordable fashion in the Asian youth market. However, it has since expanded to over 30 countries, and continues to meet the lifestyle of the stylish, global consumer. (jumpcorp.com)
2. **John Fluevog Shoes:** Started in 1970, these shoes are distinct and especially great because every pair has a positive message written on the sole. (fluevog.com)
3. **Ed Hardy Shoes:** Started in 2005 by Christian Audigier, this line is inspired by the tattoo artist Ed Hardy. (edhardyshop.com)
4. **Terra Plana Shoes:** For the environmentally conscious, these shoes are made from recycled materials using non-toxic glues that are safe for the environment. (terraplana.com)
5. **Sanita® Shoes:** This 100 year-old company has great clogs that are hand-made in Europe and great for anyone who spends long periods of time on their feet. (sanitaclogs.com)
6. **BAND-AID® Brand ACTIV-FLEX™ BLISTER BLOCK® Stick:** Although

this item is not a shoe, it's also one of Whoopi's favorite feet products that stops blisters before they start so that you won't have to choose between style and comfort in footwear. (bandaid.com)

Because Whoopi loves these unique shoe brands so much, she wanted all of our audience members to try them out as well. They all went home with gift certificates for shoes from each of these companies.

Finally, from stylish shoes to sensational food—our last guest was southern-inspired chef Delilah Winder, who came straight from Philadelphia—and she may just replace the cheese-steak as the official food of Philly with her world-famous macaroni and cheese. Get a pen and paper and give your diet a rest! Here is how to make the greatest, gooiest, most belt-busting macaroni and cheese ever:

AH HAI Macaroni and Cheese

(Serves 12 to 16)

Ingredients:

2 pounds elbow macaroni
12 eggs
1 cup cubed Velveeta cheese
½ pound (2 sticks) butter, melted
6 cups half-and-half
4 cups grated sharp yellow cheddar cheese
2 cups grated extra sharp white cheddar cheese
1 ½ cups grated mozzarella cheese
1 cup grated Asiago cheese
1 cup grated Gruyere cheese
1 cup grated Monterey Jack cheese
1 cup grated Muenster cheese
1/8 teaspoon salt
1 tablespoon black pepper

Directions:

Preheat the oven to 325°F. Bring a large saucepan of salted water to a boil. Add the macaroni and cook until still slightly al dente, about 10 minutes. Drain and set aside to keep warm. Whisk the eggs in a large bowl until frothy. Combine the Velveeta, butter, and two cups of the half-and-half in a large bowl. Add the warm macaroni, tossing until the cheese has melted and the mixture is smooth. Add the remaining half-and-half, three cups of the sharp yellow cheddar cheese, the remaining grated cheeses, and salt and pepper, tossing until completely combined. Pour the mixture into a 9 x

13-inch casserole or baking dish and bake for about 30 minutes. Sprinkle with the remaining one cup of sharp yellow cheddar cheese and bake until golden brown on top, about 30 minutes more. Serve hot.

We gave everyone in the audience a sample along with a copy of Delilah's cookbook ***DELILAH'S EVERYDAY SOUL: SOUTHERN COOKING WITH STYLE.***

[NEWSLETTERS](#) • [REGISTER](#) • [CASTING](#) • [CONTACT ABC](#) • [TV TICKETS](#) • [JOBS](#)
[A BETTER COMMUNITY](#) • [ABC FAMILY](#) • [ABC KIDS](#) • [ABC RADIO](#) • [ABC MOBILE](#) • [LOCAL STATIONS](#)
[DIGITAL TV TRANSITION](#) • [FAQ](#) • [SITE MAP](#) • [TERMS OF USE \(UPDATED 5/6/08\)](#) • [PRIVACY POLICY/YOUR CALIFORNIA PRIVACY RIGHTS](#) • [COPYRIGHT © ABC, INC.](#)

EXHIBIT I

TRADEMARK OPPOSITION NO. 91179090



US006606998B1

(12) **United States Patent
Gold**

(10) **Patent No.: US 6,606,998 B1**
(45) **Date of Patent: Aug. 19, 2003**

(54) **SIMPLE SIMULATED CIGARETTE**

(76) Inventor: **Ely Gold**, 23679 Calabasas Rd., Suite
216, Calabasas, CA (US) 91302

(*) Notice: Subject to any disclaimer, the term of this
patent is extended or adjusted under 35
U.S.C. 154(b) by 12 days.

(21) Appl. No.: **09/971,864**

(22) Filed: **Oct. 5, 2001**

(51) **Int. Cl.**⁷ **A24F 47/00**

(52) **U.S. Cl.** **131/273; 131/271; 131/270;**
131/274; 128/202.21

(58) **Field of Search** 131/273, 271,
131/270, 274, 276; 128/202.21

(56) **References Cited**

U.S. PATENT DOCUMENTS

2,860,638 A	*	11/1958	Bartolomeo	.....	128/201
3,631,856 A	*	1/1972	Taylor	.....	128/203
4,429,703 A	*	2/1984	Haber	.....	131/273
4,580,581 A	*	4/1986	Reece et al.	.....	131/231

4,765,348 A	*	8/1988	Honeycutt	.....	131/273
5,865,186 A	*	2/1999	Volsey, II	.....	131/194
5,893,371 A	*	4/1999	Rose et al.	.....	131/270

FOREIGN PATENT DOCUMENTS

GB 2266222 * 10/1993

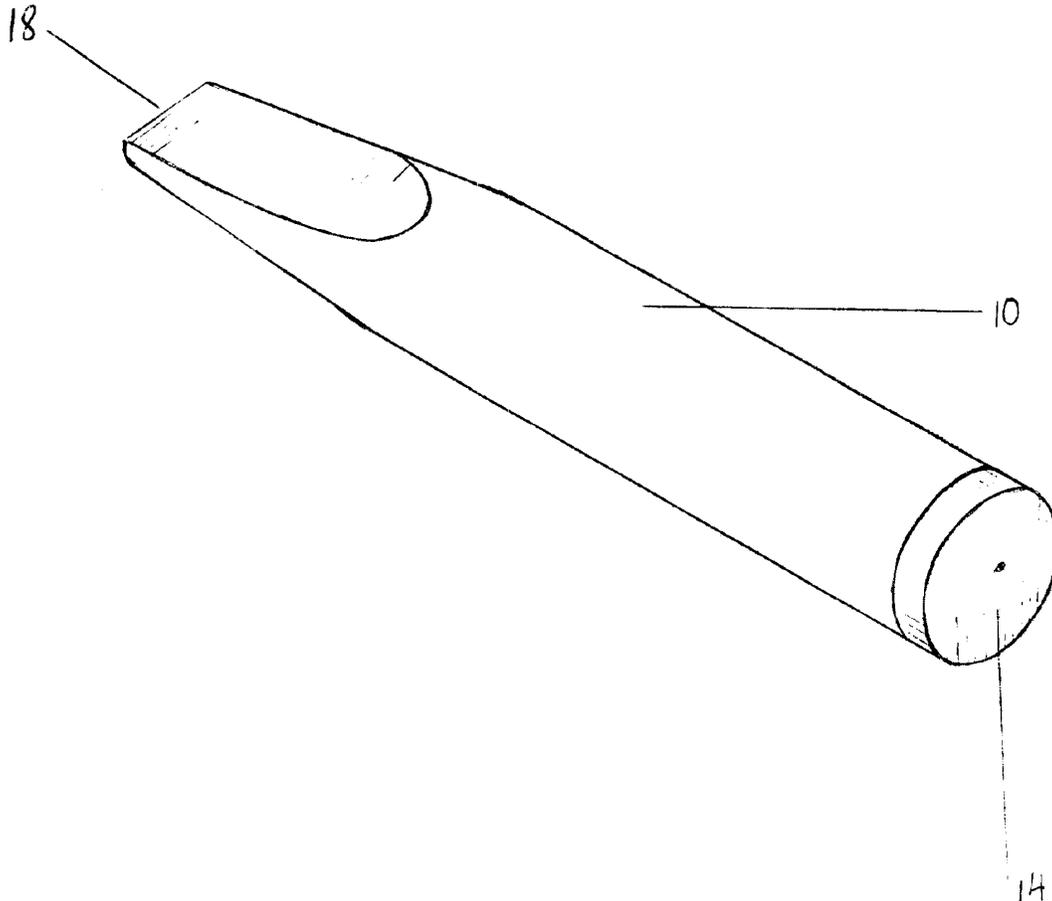
* cited by examiner

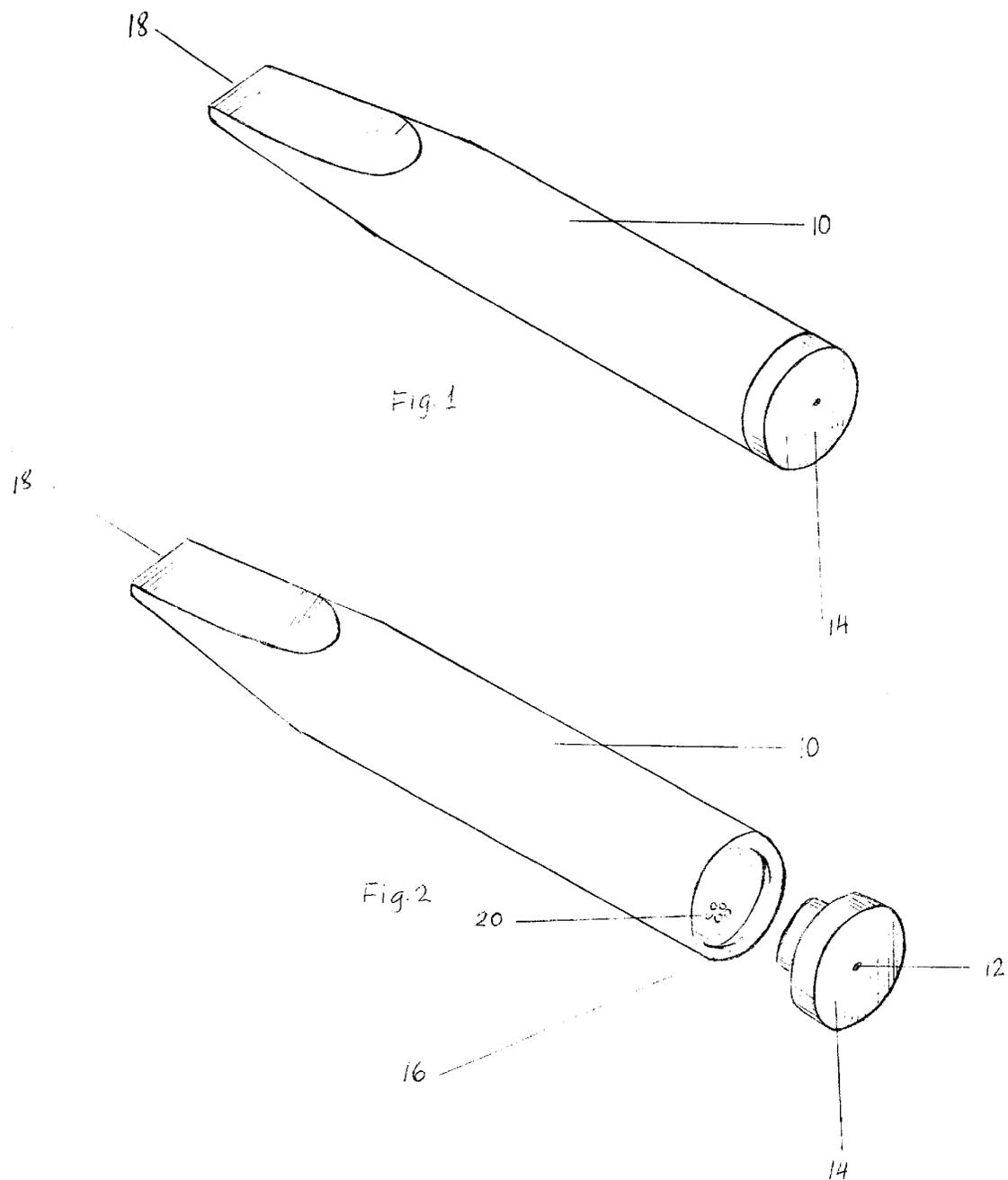
Primary Examiner—Steven P. Griffin
Assistant Examiner—Dionne A. Walls

(57) **ABSTRACT**

A simulated cigarette with a cylindrical plastic chamber that has a cap on one side and a semi-flattened mouthpiece on the othe. The cap has an open-air inlet in the center of it and the mouthpiece has an open-air outlet at its end. The invention only has two parts comprising it, the cap and the chamber. When the user covers the mouthpiece part of the chamber with his/her mouth and inhales through the mouth a suction will be produced inside the chamber and air will be pulled in, through the open-air inlet (the cap), into the chamber and out through the open-air outlet inside the mouth. Fragrance will be added to the air that goes through the device.

1 Claim, 1 Drawing Sheet





1

SIMPLE SIMULATED CIGARETTE**BACKGROUND OF THE INVENTION**

1. Field of Invention

This invention is similar in appearance to a cigarette. It contains no harmful chemicals, no tobacco, no nicotine, and does not only replace the average carcinogenic cigarette. In contrast it makes quitting the harmful and destructive habit much easier.

2. Description of Prior Art

Every year more than 400,000 Americans and about 3 million people worldwide die from smoking related diseases. After realizing that there is a direct correlation between smoking cigarettes (containing tobacco) and death, our society has chosen to break the strong grasp that cigarettes have on their victims/users by inventing many forms of possible remedies. Some of these likely remedies are hypnotism, gum containing nicotine, lozenges, seminars, patches that deliver nicotine (through the skin) into the bloodstream, and nicotine containing plastic simulated cigarettes. These alternatives can get very expensive and are in no way guaranteed to stop anybody from smoking. Evidently, the cigarette habit is more than just a physical need for a substance known as nicotine. Among smokers, there is a psychological need to hold a white cylindrical object, bring it to the mouth, suck slowly and deeply on it, hold it between the lips, and take it away from the mouth. Therefore, many inventions have been made to simply mimic the appearance and function of a cigarette with elements like fragrance instead of harmful substances such as nicotine and tobacco. These inventions are far from perfect. They have a complicated construction with many chambers, walls, filters, holes, and/or wicks. Inherent problems to these simulated cigarettes are that they are expensive to manufacture because of all the complex and intricate parts that comprise them and with more and more complicated parts put into them they do not become anymore beneficial to their users.

Not only are some of these previously mentioned devices complicated, but some have unnecessary chemicals in them. For example, the Völsey, II, Jack J., U.S. Pat. No. 5,865,186 issued on Feb. 2, 1999 uses an exothermic chemical reaction to heat a vapor which passes through an element from where the heated vapor gets its flavoring and then through a one-way valve it is expelled through the mouthpiece.

In the Taylor, Harold V., U.S. Pat. No. 3,631,856 a device is disclosed with a special container of pressurized oxygen in a tube-like outer layer. A valve (that is operated by orally exerted pressure) releases this oxygen into a mixing chamber, where the oxygen is mixed with air and flavorful, and fragrant filler. The mixture is then passed to the mouth of the user.

In the Honeycutt, Rufus H., U.S. Pat. No. 4,765,348, issued on Aug. 23, 1988 there are two air permeable materials. The one located inside the hollow tube across a segment of the transverse cross-sectional area of the tube is impregnated with a nicotine free base material and the second is impregnated with an acid. When this acid and base react, a salt with a pH level of about 5 to 7 is formed.

BRIEF SUMMARY OF THE INVENTION

In the present invention simplicity is paramount. There are only two parts: a chamber and a cap for this chamber. Due to this invention's lack of unnecessary and excessive

2

parts, many chambers, and chemicals many previously discussed drawbacks are precluded. This invention looks a lot more like a real cigarette than most bulky and crude devices with chambers and barriers and chemicals and valves going every which way. The price of this invention is radically less than similar looking devices that perform the exact same purpose. Since there are only two parts comprising this unique invention can be produced very easily and quickly. Most importantly, simplicity in design lets the flavoring, contained in the invention, be easily changed at the user's discretion. This simulated cigarette looks very sleek and is very user-friendly.

BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWINGS

A better understanding of the present invention will become apparent from reading the following detailed description of the preferred embodiment along with the accompanying drawings in which:

FIG. 1 is a perspective view of a simulated cigarette inhaler device of the present invention.

FIG. 2 is a exploded perspective view, with parts broken away of the simulated cigarette inhaler device according to FIG. 1.

DETAILED DESCRIPTION OF THE INVENTION

With reference to FIG. 1 and FIG. 2 there is shown a simulated cigarette inhaler comprising of two parts: a hollow cylindrical plastic chamber denoted as numeral 10 semi-flattened into the form of a mouthpiece at the end with an open-air outlet denoted as numeral 18 and a cap denoted as numeral 14 with an open-air inlet in the center of it denoted as numeral 12. In use, the user puts the mouthpiece tip with the open-air outlet 18 into his mouth and inhales to draw air through chamber 10. The inhaler contains a fragrance concentrate that occupies the said inhaler in any of three possible ways:

1. The main chamber 10 is made out of a mixture of any pleasant fragrance concentrate with LDPE, LLDPE (Low Density Polyethylene) and HDPE (High Density Polyethylene) resins in varying percentages. The percentages vary from 10 to 90 percent fragrance concentrate and 90 to 10 percent LDPE, LLDPE or HDPE resin. These percentages depend on how long I want the pleasant flavor to last. The less fragrance concentrate inside the chamber 10, the sooner the flavorful taste and smell will die out. Varying the percentage of fragrance concentrate is crucial in determining the length of time we want the user to continue using the invention. The enjoyable flavoring can last between 10 to 300 days depending on my discretion. The cap 14 fits inside the main chamber 10 and can be made out of any type of general purpose plastic. When the user inhales the suction in the chamber 10 will force air in through the open-air inlet (the cap) 12 and into the chamber 10 where the air will absorb the pleasant flavoring from the walls of the chamber 10. The mixture of air and fragrance will be pushed out through the open-air outlet in mouthpiece tip 18 and into the mouth of the user.
2. The main chamber 10 can be comprised from any type of general purpose plastic, while the cap 14 has to consist of up to 100% fragrance concentrate. When the user inhales the suction in the chamber 10 will force air in through the open-air inlet (the cap) 12. When the air passes through the hole 12 in the cap 14 it will absorb the pleasant

3

flavoring from the cap **14**. The mixture of air and fragrance will be pushed out through the main chamber **10** and the open-air outlet in mouthpiece tip **18** and into the mouth of the user. In this case, the pleasant flavoring will not last as long as it will in case **1**.

3. The main chamber **10** and the cap **14** can be produced from any type of general purpose plastic. The fragrance concentrate is contained inside of the main chamber **10** in the form of pellets denoted as numeral **20**. These fragrance concentrate pellets can vary from 1 to 5 in number. The variation in amount of the number of pellets depends on the discretion of the user. If the user wants a strong long-lasting flavor a high number of pellets **20** should be put inside the chamber. When the user inhales the suction in the chamber **10** will force air in through the open-air inlet (the cap) **12** and into the chamber **10** where the air will absorb the pleasant flavoring from the pellet(s) **20** inside the chamber **10**. The mixture of air and fragrance will be pushed out through the open-air outlet in mouthpiece tip **18** and into the mouth of the user. In all three

4

cases, the same fragrance concentrate is comprised of an LDPE co-polymer base resin designed to carry high loads of fragrance. These loads of fragrance range from 10 to 25 percent.

5 What I claim as my invention to be protected by the United States Patent and Trademark Office is:

1. A simulated cigarette inhaler comprising:

a hollow cylindrical chamber, having a proximal and distal end,

10 with an open-air outlet which is semi-flattened into the form of a mouthpiece at the proximal end, and a cap, with an open-air inlet in the center of it, inserted into the chamber at the distal end,

15 further comprising an aroma concentrate that is absorbed by air moving through the inhaler,

wherein said chamber is fabricated from a mixture of a synthetic resin and said aroma concentrate.

* * * * *

EXHIBIT J

TRADEMARK OPPOSITION NO. 91179090



Enter Web Address:

All

[Adv. Search](#) [Compare Archive Pages](#)

Searched for <http://simplyquit.com>

123 Results

Note some duplicates are not shown. [See all.](#)

* denotes when site was updated.

Material typically becomes available here 6 months after collection. [See FAQ.](#)

Search Results for Jan 01, 1996 - Nov 09, 2007

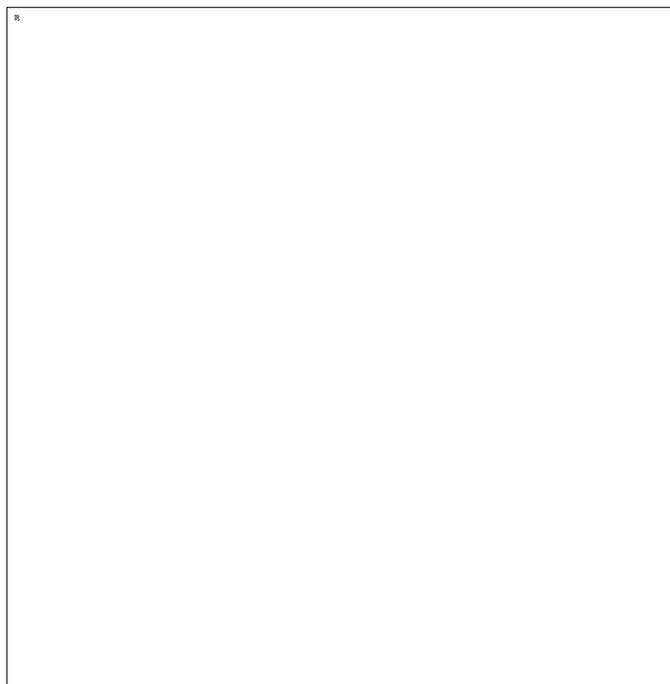
1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
0 pages	0 pages	0 pages	0 pages	0 pages	3 pages	12 pages	24 pages	19 pages	12 pages	25 pages	13 pages
					Oct 16, 2001 *	Jan 26, 2002	Feb 09, 2003 *	Jan 21, 2004	Jan 26, 2005	Feb 03, 2006 *	Jan 01, 2007
					Oct 31, 2001 *	Jun 06, 2002 *	Feb 12, 2003	Feb 02, 2004	Jan 29, 2005	Feb 05, 2006	Jan 06, 2007
					Dec 04, 2001 *	Jun 08, 2002 *	Feb 14, 2003	Mar 24, 2004	Feb 04, 2005	Feb 17, 2006	Jan 11, 2007
						Aug 06, 2002 *	Feb 17, 2003	Apr 01, 2004	Feb 07, 2005	May 07, 2006	Jan 16, 2007
						Sep 23, 2002 *	Mar 27, 2003	Apr 03, 2004	Feb 09, 2005	Jun 13, 2006	Jan 21, 2007
						Sep 28, 2002	Mar 29, 2003	May 20, 2004	Feb 10, 2005	Jun 15, 2006	Jan 26, 2007
						Sep 30, 2002	Apr 20, 2003	Jun 05, 2004	Mar 03, 2005	Jun 16, 2006	Feb 01, 2007
						Oct 04, 2002	Apr 22, 2003	Jun 06, 2004	Mar 05, 2005	Jul 01, 2006 *	Apr 28, 2007
						Nov 23, 2002 *	May 30, 2003	Jun 12, 2004	Apr 04, 2005	Jul 12, 2006	May 06, 2007
						Nov 27, 2002	Jun 01, 2003	Jun 14, 2004	Oct 01, 2005	Jul 13, 2006	May 29, 2007 *
						Dec 01, 2002 *	Jun 20, 2003	Jun 15, 2004	Nov 07, 2005	Jul 14, 2006	Jun 04, 2007
						Dec 06, 2002	Jun 21, 2003	Jul 29, 2004	Nov 09, 2005	Jul 17, 2006	Jul 02, 2007 *
							Jul 15, 2003	Jul 30, 2004		Jul 19, 2006	Aug 29, 2007
							Jul 18, 2003 *	Aug 05, 2004		Aug 04, 2006	
							Jul 19, 2003	Sep 23, 2004		Aug 05, 2006	
							Aug 04, 2003 *	Sep 25, 2004		Aug 07, 2006	
							Aug 11, 2003	Oct 22, 2004		Aug 09, 2006	
							Sep 22, 2003	Dec 05, 2004		Aug 10, 2006	
							Sep 30, 2003	Dec 06, 2004		Aug 14, 2006	
							Nov 24, 2003			Oct 04, 2006	
							Dec 03, 2003			Dec 05, 2006	
							Dec 06, 2003			Dec 06, 2006	
							Dec 17, 2003			Dec 11, 2006	
							Dec 19, 2003			Dec 15, 2006	
										Dec 23, 2006	

[Internet Archive](#) | [Terms of Use](#) | [Privacy Policy](#)



Simply Quit™ smoking without drugs, physicians, hypnosis and other costly treatments.

SQ Step 1 (includes Simply Quit™ Smoking Program)



We have created a simple yet unique product and program that we are positive will help you effortlessly quit smoking within a short period of time. If you really want to quit and are serious about following our program, we are so confident in our solution that we give it away for **FREE!**

Our Simply Quit™ (SQ) Step 1 kit, valued at \$29.95, which includes a simulated cigarette (SQ Step 1 and the Simply Quit™ Program) is **FREE!** All you pay is \$6.95 for Shipping and handling.

Please give us a chance to help you quit this deadly addiction and together we will definitely win!

SIMPLY QUIT™?
THE FREE STEP-BY-STEP STOP SMOKING PROGRAM

THE DEADLY LEGACY

THE OTHER SERVICES



English



Español

Simply Quit™ smoking without drugs, physicians, hypnosis or other costly treatments.



[The Simply Quit™ Kit Includes a SQ Simulated Cigarette and a Step-By-Step Quit Smoking Guide](#)



If you don't have Real Player [click here](#)



[Click Here To See Simply Quit Commercial A](#)

[Click Here To See Simply Quit Commercial B](#)

We have created a simple yet unique product and program that we are positive will help you effortlessly quit smoking within a short period of time or at least drastically reduce your daily quantity of cigarettes, thereby eventually ending your addiction.

Most smokers fail at their attempts to quit smoking because they can't control their psychological oral addiction.

When you feel the need to smoke just use Simply Quit™ and lose your cravings. You don't light Simply Quit™, just inhale like you would a real cigarette. Get what you usually enjoy but without the danger. This is what makes Simply Quit™ a miracle. Simply Quit™ is absolutely harmless. Great to use in non-smoking areas like offices, airplanes, and even hospitals.

If you really want to quit we can help. We are very confident in our product.

Simply Quit™ Quit Smoking Kit

Simply Quit™ is Drug and Nicotine free.

FDA Approved Materials



Simply Quit™ (SQ) Simulated Cigarettes replace the oral addiction caused by smoking cigarettes.

Patent Pending. Made In USA.

Order Now

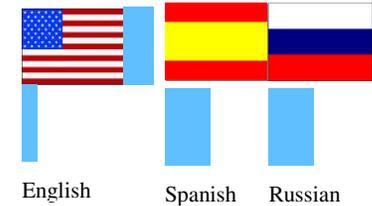
Give us a chance to help you quit this deadly addiction and together we will definitely win!

For a Limited Time Only: We offer the Step-By-Step Quit Smoking Guide For FREE!! with the purchase of a simulated cigarette.

THE DEADLY LEGACY

THE OTHER SERVICES

[Home](#) | [About Us](#) | [FAQ's](#) | [Shipping](#) | [Products](#) | [Link Partners](#) | [Contact Us](#)
Copyright? Elgo, Inc.



Simply Quit™ smoking without drugs, physicians, hypnosis or other costly treatments.



If you don't have Real Player [click here](#). 

[Click Here To See Simply Quit Commercial A](#)

[Click Here To See Simply Quit Commercial B](#)

[Click Here To Hear The Simply Quit Radio Commercial](#)



The Simply Quit™ Kit Includes a SQ Simulated Cigarette and a Step-By-Step Quit Smoking Guide

We have created a simple yet unique product and program that we are confident will help you effortlessly quit smoking within a short period of time.

- **No Drugs!**
- **No Nicotine!**
- **No Side Effects!**
- **No Prescription!**
- **No Weight Gain!**
- **No Discomfort!**
- **Lasts Up to 1 year!**
- **100% Gauranteed!**
- **Smokeless!**
- **Made in USA!**

Most smokers fail at their attempts to quit smoking because they can't control their psychological oral addiction (the actual hand-to-mouth ritual) and their craving for cigarettes. SimplyQuit™ gives them that control.

When you feel the need to smoke just use Simply Quit™ and lose your cravings. You don't light Simply Quit™, just inhale like you would a real cigarette. Get what you usually enjoy but without the danger. This is what makes Simply Quit™ a miracle. Simply Quit™ is

Simply Quit™ Quit Smoking Kit

Simply Quit™ is Drug and Nicotine free.

FDA Approved Materials



Simply Quit™ (SQ) Simulated Cigarettes replace the oral addiction caused by smoking cigarettes.

Patent Pending.
Made In USA.

Order Now

absolutely harmless. Great to use in non-smoking areas like offices, airplanes, and even hospitals.

If you really want to quit we will help. We are very confident in our product.

For a Limited Time Only: We offer the Step-By-Step Quit Smoking Guide For FREE!! with the purchase of a simulated cigarette.

THE DEADLY LEGACY

SQ Kit

THE OTHER SERVICES

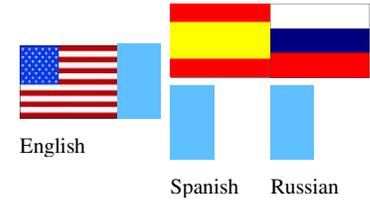
CrewClean™

Industrial Strength

Cleaning Solution

[Click Here to learn more.](#)

[Home](#) | [About Us](#) | [FAQ's](#) | [Shipping](#) | [Products](#) | [Link Partners](#) | [Contact Us](#)
Copyright? Elgo, Inc.



Simply Quit™ smoking without drugs, physicians, hypnosis or other costly treatments.



If you don't have Real Player [click here](#). 

[Click Here To See Simply Quit Commercial A](#)

[Click Here To See Simply Quit Commercial B](#)

[Click Here To Hear The Simply Quit Radio Commercial](#)



[The Simply Quit™ Kit Includes a SQ Simulated Cigarette and a Step-By-Step Quit Smoking Guide](#)

We have created a simple yet unique product and program that we are confident will help you effortlessly quit smoking within a short period of time.

- **No Drugs!**
- **No Nicotine!**
- **No Side Effects!**
- **No Prescription!**
- **No Weight Gain!**
- **No Discomfort!**
- **Lasts Up to 1 year!**
- **100% Gauranteed!**
- **Smokeless!**
- **Made in USA!**

Most smokers fail at their attempts to quit smoking because they can't control their psychological oral addiction (the actual hand-to-mouth ritual) and their craving for cigarettes. SimplyQuit™ gives them that control.

When you feel the need to smoke just use Simply Quit™ and lose your cravings. You don't light Simply Quit™, just inhale like you would a real cigarette. Get what you usually enjoy but without the danger. This is what makes Simply Quit™ a miracle. Simply Quit™ is absolutely harmless. Great to use in non-smoking areas like offices, airplanes,

Simply Quit™ Quit Smoking Kit

Simply Quit™ is Drug and Nicotine free.

FDA Approved Materials



Simply Quit™ (SQ) Simulated Cigarettes replace the oral addiction caused by smoking cigarettes.

Patent Pending.
Made In USA.

Order Now

and even hospitals.

If you really want to quit we will help. We are very confident in our product.

For a Limited Time Only: We offer the Step-By-Step Quit Smoking Guide For FREE!! with the purchase of a simulated cigarette.

THE DEADLY LEGACY

SQ Kit

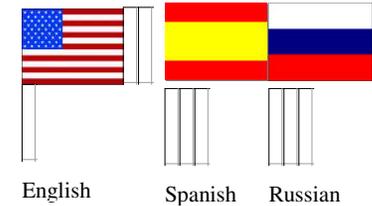
THE OTHER SERVICES

CrewClean™

Industrial Strength
Cleaning Solution

[Click Here to learn more.](#)

Home | About Us | FAQ's | Shipping | Products | Link Partners | Contact Us
Copyright? Elgo, Inc.



Simply Quit™ smoking without drugs, physicians, hypnosis or other costly treatments.



If you don't have Real Player [click here](#). 

[Click Here To See Simply Quit Commercial A](#)

[Click Here To See Simply Quit Commercial B](#)

[Click Here To Hear The Simply Quit Radio Commercial](#)



The Simply Quit™ Kit Includes a SQ Simulated Cigarette and a Step-By-Step Quit Smoking Guide

We have created a simple yet unique product and program that we are confident will help you effortlessly quit smoking within a short period of time.

- **No Drugs!**
- **No Nicotine!**
- **No Side Effects!**
- **No Prescription!**
- **No Weight Gain!**
- **No Discomfort!**
- **Lasts Up to 1 year!**
- **100% Gauranteed!**
- **Smokeless!**
- **Made in USA!**

Most smokers fail at their attempts to quit smoking because they can't control their psychological oral addiction (the actual hand-to-mouth ritual) and their craving for cigarettes. SimplyQuit™ gives them that control.

When you feel the need to smoke just use Simply Quit™ and lose your cravings. You don't light Simply Quit™, just inhale like you would a real cigarette. Get what you usually enjoy but without the danger. This is what makes Simply Quit™ a miracle. Simply Quit™ is

Simply Quit™ Quit Smoking Kit

Simply Quit™ is Drug and Nicotine free.

FDA Approved Materials



Simply Quit™ (SQ) Simulated Cigarettes replace the oral addiction caused by smoking cigarettes.

Patent Pending.
Made In USA.

Order Now

absolutely harmless. Great to use in non-smoking areas like offices, airplanes, and even hospitals.

If you really want to quit we will help. We are very confident in our product.

For a Limited Time Only: We offer the Step-By-Step Quit Smoking Guide For FREE!! with the purchase of a simulated cigarette.

THE DEADLY LEGACY

SQ Kit

THE OTHER SERVICES

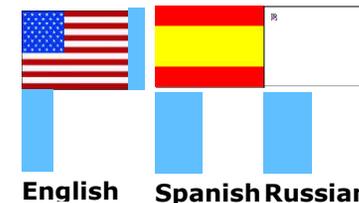
CrewClean™

Industrial Strength

Cleaning Solution

[Click Here to learn more.](#)

[Home](#) | [About Us](#) | [FAQ's](#) | [Shipping](#) | [Products](#) | [Link Partners](#) | [Contact Us](#)
Copyright? Elgo, Inc.


[HOME](#)
[ABOUT](#)
[FAQ](#)
[SHIPPING](#)
[PRODUCTS](#)
[CONTACT](#)
info@simplyquit.com

Tel: 1-818-705-9825

Simply Quit™ smoking without drugs, physicians, hypnosis or other costly treatments.


 If you don't have Real Player [click here](#)
[Click Here To See Simply Quit Commercial A](#)
[Click Here To See Simply Quit Commercial B](#)
[Click Here To Hear The Simply Quit Radio Commercial](#)


The Simply Quit™ Kit Includes a SQ Simulated Cigarette and a Step-By-Step Quit Smoking Guide

We have created a simple yet unique product and program that we are confident will help you effortlessly quit smoking within a short period of time.

- **No Drugs!**
- **No Nicotine!**
- **No Side Effects!**
- **No Prescription!**
- **No Weight Gain!**
- **No Discomfort!**
- **Lasts Up to 1 year!**
- **100% Gauranteed!**
- **Smokeless!**
- **Made in USA!**

Most smokers fail at their attempts to quit smoking because they can't control their psychological oral addiction (the actual hand-to-mouth ritual) and their craving for cigarettes. SimplyQuit™ gives them that control.

When you feel the need to smoke just use Simply Quit™ and lose your cravings. You don't light Simply

Simply Quit™ Quit Smoking Kit

Simply Quit™ is Drug and Nicotine free.

FDA Approved Materials



Simply Quit™ (SQ) Simulated Cigarettes replace the oral addiction caused by smoking cigarettes.

Patent Pending.
Made In USA.

Order Now

Quit™, just inhale like you would a real cigarette. Get what you usually enjoy but without the danger. This is what makes Simply Quit™ a miracle. Simply Quit™ is absolutely harmless. Great to use in non-smoking areas like offices, airplanes, and even hospitals.

If you really want to quit we will help. We are very confident in our product.

For a Limited Time Only: We offer the Step-By-Step Quit Smoking Guide For FREE!! with the purchase of a simulated cigarette.

THE DEADLY LEGACY

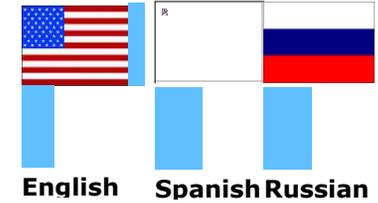
SQ Kit

THE OTHER SERVICES

CrewClean™
Industrial Strength
Cleaning Solution
[Click Here to learn more.](#)

[Home](#) | [About Us](#) | [FAQ's](#) | [Shipping](#) | [Products](#) | [Link Partners](#) | [Contact Us](#)

Copyright? Elgo, Inc.



English

Spanish

Russian

[HOME](#)[ABOUT](#)[FAQ](#)[SHIPPING](#)[PRODUCTS](#)[CONTACT](#)info@simplyquit.com

Tel: 1-818-705-9825

Simply Quit™ smoking without drugs, physicians, hypnosis or other costly treatments.



If you don't have Real Player [click here](#).



[Click Here To See Simply Quit Commercial A](#)

[Click Here To See Simply Quit Commercial B](#)

[Click Here To Hear The Simply Quit Radio Commercial](#)



[The Simply Quit™ Kit Includes a SQ Simulated Cigarette and a Step-By-Step Quit Smoking Guide](#)

We have created a simple yet unique product and program that we are confident will help you effortlessly quit smoking within a short period of time.

- **No Drugs!**
- **No Nicotine!**
- **No Side Effects!**
- **No Prescription!**
- **No Weight Gain!**
- **No Discomfort!**
- **Lasts Up to 1 year!**
- **100% Gauranteed!**
- **Smokeless!**
- **Made in USA!**

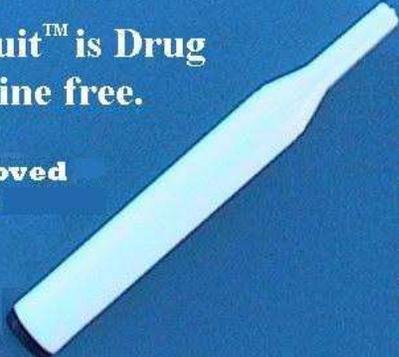
Most smokers fail at their attempts to quit smoking because they can't control their psychological oral addiction (the actual hand-to-mouth ritual) and their craving for cigarettes. SimplyQuit™ gives them that control.

When you feel the need to smoke just use Simply

Simply Quit™ Quit Smoking Kit

Simply Quit™ is Drug and Nicotine free.

FDA Approved Materials



Simply Quit™ (SQ) Simulated Cigarettes replace the oral addiction caused by smoking cigarettes.

Patent Pending.
Made In USA.

Order Now

Quit™ and lose your cravings. You don't light Simply Quit™, just inhale like you would a real cigarette. Get what you usually enjoy but without the danger. This is what makes Simply Quit™ a miracle. Simply Quit™ is absolutely harmless. Great to use in non-smoking areas like offices, airplanes, and even hospitals.

If you really want to quit we will help. We are very confident in our product.

For a Limited Time Only: We offer the Step-By-Step Quit Smoking Guide For FREE!! with the purchase of a simulated cigarette.

THE DEADLY LEGACY

SQ Kit

THE OTHER SERVICES

CrewClean™
Industrial Strength
Cleaning Solution
[Click Here to learn more.](#)

[Home](#) | [About Us](#) | [FAQ's](#) | [Shipping](#) | [Products](#) | [Link Partners](#) | [Contact Us](#)
Copyright? Elgo, Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090,694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.: 91179090

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

FIFTH NOTICE OF RELIANCE

To: Christopher M. Bikus, Esq.
HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, Suite 2100
Omaha, Nebraska 68102

PLEASE TAKE NOTICE, pursuant to TBMP § 704.06(b) and 37 C.F.R. § 2.122(e),
Opposer submits that they will rely upon the following documents and materials as indicated
below:

1. The attached Applicant's Brief in Opposition to Opposer's Motion for Summary
Judgment and Applicant's Brief in Support of Its Motion to Strike. (EXHIBIT K)

Basis of Reliance

The exhibits identified above are relevant to the issues of:

1. Priority of use
2. Likelihood of confusion
3. Standing

Respectfully submitted,

ELGO, INC., Opposer

Dated this 30th day of April, 2009

By: /Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF ESTTA FILING

The undersigned hereby certify that a copy of the foregoing papers and all exhibits thereto was filed electronically with the Trademark Trial and Appeal Board via the ESTTA on the 30th day of April, 2009.

/Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing papers and all exhibits thereto was served on Christopher Bikus, the attorney for Applicant SimplyWell, LLC, by first class mail postage prepaid this 30th day of April, 2009, addressed as follows:

HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, suite 2100
Omaha, Nebraska 68102
Attention: Christopher M. Bikus, Esq.

/Cynthia R. Moore/
Cynthia R. Moore
Attorney for Opposer

EXHIBIT K

TRADEMARK OPPOSITION NO. 91179090

ESTTA Tracking number: **ESTTA216568**

Filing date: **06/09/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179090
Party	Defendant SIMPLYWELL, LLC
Correspondence Address	Christopher M. Bikus McGrath, North, Mullin & Kratz, PC LLO Suite 3700 First National Tower, 1601 Dodge St. OMAHA, NE 68102-1637 UNITED STATES cbikus@mcgrathnorth.com
Submission	Other Motions/Papers
Filer's Name	Christopher M. Bikus
Filer's e-mail	cbikus@mcgrathnorth.com
Signature	/ChristopherMBikus/
Date	06/09/2008
Attachments	APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT.pdf (11 pages)(415380 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In The Matter of Application Serial No. 77/090,694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,)	
	)	Opposition No. 91179090
)	
v.)	
)	
SIMPLYWELL LLC,)	
)	
Applicant.)	
)	

**APPLICANT’S BRIEF IN OPPOSITION TO
OPPOSER’S MOTION FOR SUMMARY JUDGMENT AND APPLICANT’S BRIEF IN
SUPPORT OF ITS MOTION TO STRIKE**

TO: Elgo, Inc. by and through its attorney Cynthia R. Moore, Moore Patents, 794 Los Robles Avenue, Palo Alto, CA 94306.

I. FACTS

A. Applicant’s Opposition to Opposer’s Statement of Facts

In its brief in support of its motion for summary judgment, Opposer provides 35 statements of fact that it labels as “Opposer’s Statement of Uncontroverted Material Facts” (“Statements”). In contrast, there exists a genuine issue as to several material facts in the Statements, including Nos. 5, 14-18, 21, and 26.

In statement no. 5, Opposer asserts that the brochure submitted as a specimen of use with Applicant’s application “is clearly directed at individual smokers.” In contrast, the intended users of Applicant’s services are individual employees of companies that are subscribers to

SimplyWell's Integrated Health Solutions program. (Opposer's Mot. Summ. J. Ex. 11 , Nos. 1, 8; Demman Aff. ¶¶ 2-6)¹. Applicant does not offer its services directly to the general public; rather, services are offered through member employer subscribers. (Opposer's Mot. Summ. J. Ex. 11, Nos. 8, 14; Demman Aff. ¶¶ 6, 8).

In statement no. 26, Opposer states that it is the owner of U.S. Trademark Application No. 78/085,086 for the trademark, SIMPLYQUIT. (Statements, ¶ 26.) Opposer's Application File indicates that Opposer was not and is not the owner of such application. (Opposer's Application File; Notice of Opposition, ¶ 4) Instead, Opposer's Application File indicates that an individual named Ely Gold is the owner. (Opposer's Application File.) Opposer's Application File contains no assignment of the application from Ely Gold to Opposer.

B. Applicant's Supplemental Statement of Facts

Applicant has been offering its corporate customers the SIMPLYQUIT smoking cessation program in connection with SimplyWell's Integrated Health Solutions continuously since as early as September 2006. (Opposer's Mot. Summ. J. Ex. 11 , No. 14.) Applicant's services are marketed directly through sales representatives or account managers on a nationwide basis. (Opposer's Mot. Summ. J. Ex. 11, No. 12; Demman Aff. ¶¶ 2-4). Applicant is unaware of any instances of actual confusion between Opposer's SIMPLYQUIT-branded simulated cigarette and SimplyWell's SIMPLYQUIT-branded counseling services. (Demman Aff. ¶ 10).

II. ARGUMENT

A. Introduction

"The Federal Rules of Civil Procedure generally apply to proceedings before the Trademark Trial and Appeal Board." Opryland USA Inc. v. The Great Am. Music Show, Inc.,

¹ A copy of the Demman Affidavit is attached hereto as Exhibit A.

23 U.S.P.Q.2d 1471, 970 F.2d 847, 850 (citing 37 C.F.R. § 2.116(a) and stating that non-movant is not required to present its entire case in response to a motion for summary judgment). Thus on motion for summary judgment the Board must first ascertain whether there is a genuine issue as to any material fact. Opryland USA Inc., 970 F.2d at 850 (citing Fed.R.Civ.P. 56(c)).

“[S]ummary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the non-moving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). “The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” Id. at 255 (internal citations omitted). See Olde Tyme Foods, Inc. v. Roundy’s, Inc., 961 F.2d 200, 205 (“The Board failed to view the evidence in a light most favorable to [the non-moving party] and to draw all reasonable inferences in its favor. A reasonable fact finder could have found for [the non-moving party] on a number of DuPont factors.”).

B. Applicant’s services and Opposer’s goods are dissimilar

Stated simply, Opposer offers for sale a simulated cigarette to individuals that want to stop smoking. The simulated cigarette is intended to replace the smoker’s oral addiction to cigarettes. See Opposer’s Exhibit 5. In sharp contrast, Applicant offers personalized counseling services to employee/participants of Applicant’s corporate clients. Applicant’s services are offered through an eight step counseling program by which a counselor is appointed to the employee/participant. There are no actual goods or products offered by Applicant under the SIMPLYQUIT mark. See Demman Aff. ¶ 8.

It is well settled that “where goods and services are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are

identical, confusion is not likely.” TMEP §1207.01(a)(i). See also Shen Manuf. Co. v. Ritz Hotel. Ltd., 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004) (cooking classes and kitchen textiles not related); Slimmery International Inc. v. Stauffer-Meiji, Inc., 6 USPQ2d 1671 (E.D. MO. 1987) (SKINNY DIP for ice cream milk bars is not confusingly similar to SKINNY DIPPERS for chocolate sauce and cracker sticks, in part because the two products were not in the same product class).

In the present case, Applicant is offering highly personalized counseling services solely to participants enrolled in one of Applicant’s comprehensive integrated health solutions. In contrast, Opposer sells simulated plastic cigarettes to the public via the Internet. The parties respective goods and services can be found in different international classes, further highlighting the difference between Opposer’s goods and Applicant’s services.

Moreover, the cases cited by Opposer in support of its argument are clearly distinguishable. Each case cited by Opposer reflects a clear relationship between the goods and services at issue in the case. For example, In re H. J. Seiler Co., 289 F.2d 674, 129 USPQ 347 (C.C.P.A. 1961) involved catering services and meat, clearly complementary goods and services. Similarly, In re Hyper Shoppes Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) involved a general merchandise store and furniture. It is easy to conceive of a general merchandise store selling furniture.

In this case, Applicant does not sell any goods or products. Instead, Applicant offers counseling services and these services are only offered to employees of companies that sign up to receive Applicant’s integrated health solution services. Opposer, on the other hand, sells simulated plastic cigarettes to the general public. At a minimum, there exists a genuine

issue of material fact as to whether the dissimilarity between the goods and services prevents any likelihood of confusion – and accordingly Opposer’s motion is due to be denied.

C. Applicant’s services and Opposer’s goods are rendered and sold through distinct channels of trade and marketed to different customers

Stated plainly, if the goods of one seller are sold to one class of buyers in a different marketing context than the goods or services of another seller, the likelihood that a single source of buyers will be confused is lower than if both parties sell through the same channel of distribution. See McCarthy at §24:51.

In the present case, Applicant’s target customers are comprised of companies that offer health insurance benefits to their employees. See Demman Aff. ¶ 9. Opposer, on the other hand, offers its simulated plastic cigarettes to a starkly different group of consumers: smokers who are looking to purchase a product that might assist with smoking cessation. The circumstances in this case are analogous to cases in which one seller offers its goods to commercial buyers, while the other seller offers its goods at the retail level. See Trade Publications, Inc. v. Big Bear of North Carolina, Inc., 191 USPQ 477 (M.D.N.C. 1976) (FOOD WORLD trade journal would be unknown to consumers shopping at FOOD WORLD grocery store); Local Trademarks, Inc. v. Handy Boys, Inc., 16 USPQ2d 1156 (TTAB 1990) (applicant’s LITTLE PLUMBER liquid drain opener sold to consumers will not likely cause confusion with Opposer’s LITTLE PLUMBER advertising agency services for professional plumbing contractors because the goods and services are sold through different channels).

In this case, Opposer suggests that one of its consumers, an individual who might order Opposer’s simulated plastic cigarette product through the Internet or through a late night television advertisement, is the same as a corporate benefits administrator analyzing Applicant’s sophisticated health solutions. Stated differently, Opposer’s intended purchasers pick up the

phone and order Opposer's product or purchase the product directly from an internet site. In contrast, Applicant's service is only one service among a suite of health benefit services that are presented to a benefits administrator through a corporate sales representative.

Simply put, there is no overlap at all between Applicant's purchasers and Opposer's purchasers. In fact, Applicant's purchasers may not even be smokers; instead, he or she is making a purchasing decision on behalf of a company in order to assist certain company employees who are smokers. Accordingly, the difference in the respective channels of trade is sufficiently different that there is simply no likelihood of confusion. At a minimum, there is a genuine issue of material fact as to whether a likelihood of confusion exists.

D. There have been no instances of actual confusion

The Court in In re: E.I. DuPont DeNemours & Co., 476 F.2d 1357, 177 U.S.P.Q. 563 (CCPA 1973), stated that one of the factors in the likelihood of confusion analysis was the nature and extent of any actual confusion. Courts also consider the length of time during and the conditions under which there has been concurrent use without evidence of actual confusion. Id. That length of time and those conditions are important in weighing the actual confusion factor and determining whether opportunity even existed for actual confusion. In this case, the parties' marks have co-existed in the marketplace since September 2006. (Opposer's Mot. Summ. J. Ex. 11, No. 14.) Opposer markets its goods, and Applicant markets its services on a nationwide basis. (Opposer's Mot. Summ. J. Ex. 11, No. 12; Demman Aff. ¶¶ 2-4). While the geographic extent of the use of the parties' marks overlap, there have been instances of actual confusion in this case. (Demman Aff. ¶10). This factor weighs in favor of Applicant.

E. The Board should strike Applicant's Exhibit 8 and the statements allegedly supported by Exhibit 8

Exhibit 8 attached to Opposer's Brief in Support of its Motion for Summary Judgment contains several printouts of Web pages allegedly from the Web site found at <http://www.simplyquit.com>. Exhibit 7 is a declaration signed by Opposer's attorney, Cynthia Moore, in which Moore declares that she printed those Web pages when accessing the Web site archive "The Wayback Machine" at the Web site, archive.org." Moore declares that she saved and printed out a record of Opposer's [simplyquit.com](http://www.simplyquit.com) Web site activities from "The Wayback Machine," which Moore declares demonstrates the continuous use of...the mark SIMPLYQUIT in the sale and marketing of Opposer's simulated cigarettes and smoking cessation program." These Web pages allegedly are attached as the Exhibit 8.

In Raccioppi v. Apogee, Inc., 47 U.S.P.Q.2d 1368 (TTAB 1998), the Board was clear that the element of self-authentication cannot be presumed to be capable of being satisfied by information obtained and printed out from the Internet. See also TBMP ¶ 528.05(e). The Board said that such materials could be introduced on a motion for summary judgment, but only by way of an affidavit or declaration of a person who can clearly and properly authenticate and identify the materials, including identifying the nature, source and date of the materials." Id. In Paris Glove of Canada, Ltd. v. SBC Sporto Corp., No. 92044132 (TTAB Aug. 22, 2007), the Board discussed Novak v. Tucows, Inc., No. 06-CV-1909, 2007 WL 922306, at *5 (E.D.N.Y. March 26, 2007), in which even a declaration was found to be insufficient to authenticate Internet printouts, including exhibits from the Internet Archive and its "Wayback Machine" feature because the declarant lacked the requisite personal knowledge to establish that the documents were what he 'proclaimed them to be.'"

As in Novak, Moore offers no testimony or sworn statements by any principal or employee of Opposer attesting to the authenticity of the Web pages found at Exhibit 8. There is no evidence that the Web pages included in Exhibit 8 were indeed Web pages of the site found at <http://www.simplyquit.com> at the times stated in the declaration. Furthermore, Moore offers no sworn statements that she has personal knowledge of how the site at <http://www.simplyquit.com> appeared on the dates listed in her declaration. Therefore, in the absence of any authentication of Opposer's Internet printouts, "combined with the lack of any assertion that such printouts fall under a viable exception to the hearsay rule," the Board should strike Exhibit 8 to Opposer's Motion for Summary Judgment.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Board deny Opposer's Motion for Summary Judgment. Applicant further moves the Board to strike Exhibit 8 from the record.

DATED this 9th day of June, 2008.

Respectfully submitted,

SIMPLYWELL LLC, Applicant

By: /s/ Christopher M. Bikus/
Christopher M. Bikus
Tracy L. Deutmeyer
MCGRATH, NORTH, MULLIN & KRATZ, PC LLO
Suite 3700 First National Tower
1601 Dodge Street
Omaha, NE 68102
(402)341-3070
(402)341-0216 (fax)

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND APPLICANT'S BRIEF IN SUPPORT OF ITS MOTION TO STRIKE** was served on this 9th day of June, 2008, by sending the same, via first class mail, postage prepaid to:

Cynthia R. Moore
Moore Patents
794 Los Robles Avenue
Palo Alto, CA 94306
Tel: (650) 565-8185

/s/ Christopher M. Bikus/ _____
Christopher M. Bikus

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

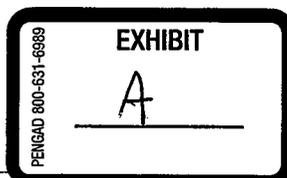
In The Matter of Application Serial No. 77/090,694
Published in the *Official Gazette* on August 7, 2007

_____)	
ELGO, INC.,	)	Opposition No. 91179090
)	
)	
Opposer,)	
)	
v.)	
)	
SIMPLYWELL, LLC,)	
)	
)	
Applicant.)	
_____)	

AFFIDAVIT OF MICHAEL DEMMAN

I, Michael Demman, being first duly sworn do hereby state and depose as follows:

1. My name is Michael Demman and I am the Chief Executive Officer of SimplyWell LLC. ("SimplyWell").
2. SimplyWell offers companies throughout the country a range of comprehensive integrated health solutions for employees.
3. SimplyWell's targeted purchasers/customers are comprised of companies throughout the country that are interested in using SimplyWell's integrated health solutions to reduce health care costs.
4. SimplyWell's services are offered to corporate clients directly through sales representatives and account managers. SimplyWell's services are not sold through the internet or through retail establishments.
5. SimplyWell's SimplyQuit service is offered as a smoking cessation counseling service to participants of SimplyWell's corporate customers.



6. SimplyWell only offers its services to companies that sign up to receive SimplyWell's integrated health solution programs. SimplyWell does not sell any goods, nor does SimplyWell offer services directly to the general public.

7. SimplyWell's SimplyQuit counseling service is comprised of an eight step counseling program through which participants work directly with individually designated counselors to achieve an end to tobacco addiction.

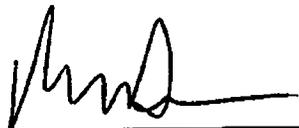
8. Participants who sign up to receive the SimplyQuit counseling service are not required to purchase any goods whatsoever.

9. While the SimplyQuit counseling service is ultimately utilized by employee/participants, SimplyWell offers this service along with a range of other health-based solutions to companies that offer health insurance to their employees.

10. I am not aware of any instances of confusion between Elgo's SimplyQuit simulated cigarette and SimplyWell's SimplyQuit counseling services.

* * *

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the patent under examination.



Michael Demman

6-9-08

Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090,694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.: 91179090

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

SIXTH NOTICE OF RELIANCE

To: Christopher M. Bikus, Esq.
HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, Suite 2100
Omaha, Nebraska 68102

PLEASE TAKE NOTICE, pursuant to TBMP § 704.08 and 37 C.F.R. § 2.122(e),
Opposer submits that they will rely upon the following documents and materials as indicated
below:

1. The attached advertising material entitled "According to Medical Studies."
(EXHIBIT L)

Basis of Reliance

The exhibits identified above are relevant to the issues of:

1. Priority of use

2. Likelihood of confusion

Respectfully submitted,

ELGO, INC., Opposer

Dated this 30th day of April, 2009

By: /Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF ESTTA FILING

The undersigned hereby certify that a copy of the foregoing papers and all exhibits thereto was filed electronically with the Trademark Trial and Appeal Board via the ESTTA on the 30th day of April, 2009.

/Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing papers and all exhibits thereto was served on Christopher Bikus, the attorney for Applicant SimplyWell, LLC, by first class mail postage prepaid this 30th day of April, 2009, addressed as follows:

HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, suite 2100
Omaha, Nebraska 68102
Attention: Christopher M. Bikus, Esq.

/Cynthia R. Moore/
Cynthia R. Moore
Attorney for Opposer

EXHIBIT L

TRADEMARK OPPOSITION NO. 91179090



English



Spanish



Russian

According to Medical Studies

At 20 minutes after quitting:

- blood pressure decreases
- pulse rate drops
- body temperature of hands and feet increases

At 8 hours:

- carbon monoxide level in blood drops to normal
- oxygen level in blood increases to normal

At 24 hours:

- chance of a heart attack decreases

At 48 hours:

- nerve endings start regrowing
- ability to smell and taste is enhanced

The first year after quitting:

At 2 weeks to 3 months:

- circulation improves
- walking becomes easier
- lung function increases

1 to 9 months:

- coughing, sinus congestion, fatigue, shortness of breath decreases

1 year:

- excess risk of coronary heart disease is decreased to half that of a smoker

Long-term Benefits of Quitting**At 5 years:**

- from 5 to 15 years after quitting, stroke risk is reduced to that of people who have never smoked.

At 10 years:

- risk of lung cancer drops to as little as one-half that of continuing smokers
- risk of cancer of the mouth, throat, esophagus, bladder, kidney, and pancreas decreases
- risk of ulcer decreases

At 15 years:

- risk of coronary heart disease is now similar to that of people who have never smoked
- risk of death returns to nearly the level of people who have never smoked

THE OTHER SERVICES

There are more than eight million websites with products and services that offer to help you stop smoking. These programs come with price tags ranging from \$15 to \$2,500. Most of the time their goal is to profit from your cigarette addiction and not really help you quit.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090,694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.: 91179090

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

SEVENTH NOTICE OF RELIANCE

To: Christopher M. Bikus, Esq.
HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, Suite 2100
Omaha, Nebraska 68102

PLEASE TAKE NOTICE, pursuant to TBMP § 704.07 and 37 C.F.R. § 2.122(e), and F.R.E. 803 Opposer submits that they will rely upon the following documents and materials as indicated below:

1. The attached assignment cover sheet dated April 23, 2009 signed by Ely Gold.
(EXHIBIT M)
2. The attached assignment for the Trademark Application No. 78/085086 executed by Ely Gold on April 27, 2009. (EXHIBIT N)

Basis of Reliance

The exhibits identified above are relevant to the issues of:

1. Standing

Respectfully submitted,

ELGO, INC., Opposer

Dated this 30th day of April, 2009

By: /Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF ESTTA FILING

The undersigned hereby certify that a copy of the foregoing papers and all exhibits thereto was filed electronically with the Trademark Trial and Appeal Board via the ESTTA on the 30th day of April, 2009.

/Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing papers and all exhibits thereto was served on Christopher Bikus, the attorney for Applicant SimplyWell, LLC, by first class mail postage prepaid this 30th day of April, 2009, addressed as follows:

HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, suite 2100
Omaha, Nebraska 68102
Attention: Christopher M. Bikus, Esq.

/Cynthia R. Moore/
Cynthia R. Moore
Attorney for Opposer

EXHIBIT M

TRADEMARK OPPOSITION NO. 91179090

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

04/23/2009
900132550

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Ely Gold		04/23/2009	INDIVIDUAL: UNITED STATES
RECEIVING PARTY DATA			
Name:	Elgo Inc		
Street Address:	23879 Calabasas Rd. #216		
City:	Calabasas		
State/Country:	CALIFORNIA		
Postal Code:	91302		
Entity Type:	CORPORATION: CALIFORNIA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	78085086	SIMPLYQUIT	
CORRESPONDENCE DATA			
Fax Number:	(818)224-3792		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:	818-705-9825		
Email:	info@simplyquit.com		
Correspondent Name:	Ely Gold		
Address Line 1:	23879 Calabasas Rd. #216		
Address Line 4:	Calabasas, CALIFORNIA 91302		
NAME OF SUBMITTER:	Ely Gold		
Signature:	/ely gold/		
Date:	04/23/2009		
Total Attachments: 1 source=simplyquit#page1.tif			

OP \$10.00 78085086

EXHIBIT N

TRADEMARK OPPOSITION NO. 91179090

To : United States Patent and Trademark
Office

From: Ely Gold
23679 Calabasas Rd #216,
Calabasas, CA 91302

I, Ely Gold, assign the entire
interest and goodwill of
trademark, Simply Quit
(serial #: 78085086), to

Elgo Inc.

23679 Calabasas Rd #216,
Calabasas, CA 91302

04/27/09


Ely Gold

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090,694
Published in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.: 91179090

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

EIGHTH NOTICE OF RELIANCE

To: Christopher M. Bikus, Esq.
HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, Suite 2100
Omaha, Nebraska 68102

PLEASE TAKE NOTICE, pursuant to TBMP § 704.03(b)(1)(B) and 37 C.F.R. § 2.122(e), 803 Opposer submits that they will rely upon the following documents and materials as indicated below:

1. The attached printout of the WHOIS database showing the owner of the domain name simplyquit.com. (EXHIBIT O)

Basis of Reliance

The exhibit identified above is relevant to the issues of:

1. Standing to oppose
2. Priority of use
3. Likelihood of confusion

Respectfully submitted,

ELGO, INC., Opposer

Dated this 30th day of April, 2009

By: /Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF ESTTA FILING

The undersigned hereby certify that a copy of the foregoing papers and all exhibits thereto was filed electronically with the Trademark Trial and Appeal Board via the ESTTA on the 30th day of April, 2009.

/Cynthia R. Moore/
Cynthia R. Moore
794 Los Robles Ave.
Palo Alto, CA 94306
(650) 565-8185 (office)
(650) 493-1993 (fax)
ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing papers and all exhibits thereto was served on Christopher Bikus, the attorney for Applicant SimplyWell, LLC, by first class mail postage prepaid this 30th day of April, 2009, addressed as follows:

HUSCH BLACKWELL SANDERS LLP
1620 Dodge Street, suite 2100
Omaha, Nebraska 68102
Attention: Christopher M. Bikus, Esq.

/Cynthia R. Moore/
Cynthia R. Moore
Attorney for Opposer

EXHIBIT O

TRADEMARK OPPOSITION NO. 91179090

24/7 Sales & Support (480)505-8877

Create Account **Log in to Account:** Username/Customer # PasswordUSD [Home](#)[Auctions](#)[Marketplace](#)[Videos](#)[Support](#)[Bob's Video Blog](#)[Domains](#)[Hosting](#)[Email](#)[Site Builders](#)[Business](#)[SSL Certificates](#)[Resellers](#)[WHOIS Domain Check](#)[Show All My Products](#)Check to add these alternate **SIMPLYQUIT** domain names.[Select All](#)

- .NET** \$7.99*/yr **SAVE!**
 .ME \$9.99*/yr **SAVE!**
 .INFO \$0.99*/yr **SAVE!**
 .ORG \$14.99*/yr
 .MOBI \$7.99*/yr **SAVE!**
 .US \$8.99*/yr **SAVE!**

Check to add these similar **SIMPLYQUIT.COM** domain names.[Select All](#)

- THESIMPLYQUIT.COM** \$9.99*/yr **SAVE!**
 MYSIMPLYQUIT.COM \$9.99*/yr **SAVE!**
 NEWSIMPLYQUIT.COM \$9.99*/yr **SAVE!**
- FREESIMPLYQUIT.COM** \$9.99*/yr **SAVE!**
 BESTSIMPLYQUIT.COM \$9.99*/yr **SAVE!**
 SIMPLYQUITSITE.COM \$9.99*/yr **SAVE!**
- SITESIMPLYQUIT.COM** \$9.99*/yr **SAVE!**
 SIMPLYQUITONLINE.COM \$9.99*/yr **SAVE!**
 ONLINESIMPLYQUIT.COM \$9.99*/yr **SAVE!**
- SIMPLYQUITSTORE.COM** \$9.99*/yr **SAVE!**
 STORESIMPLYQUIT.COM \$9.99*/yr **SAVE!**
 SIMPLYQUITNOW.COM \$9.99*/yr **SAVE!**

Check to add these Premium domain names.

[Select All](#)

- QuitClub.com** \$2,488.00
 QuitDebt.com \$2,588.00
 QuiteALot.com \$688.00
- SmokingQuitting.com** \$1,899.00
 Quitting-Tobacco.com \$100.00
 QuitSmokingPrograms.com \$1,449.00

[ADD TO CART](#)

*Plus ICANN fee of \$0.20 per domain name year.

**CA domain names will be registered through Go Daddy Domains Canada, Inc., a CIRA certified registrar.

The data contained in GoDaddy.com, Inc.'s WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records.

Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any

Interested in this domain name?

[Let our Domain Buy Service help you get it.](#)

\$1.99 Domain Names

[Register a domain name for only \\$1.99 with each new, non-domain product.](#)

Think YOU KNOW the BASICS?
"The BEST 5 minute business lesson you'll ever get!"

"You're resourceful and informative." - Leah E.

\$1.99* DOMAINS

No quantity limit! With every new, non-domain product you buy**

purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant:
elgo inc

23679 calabasas rd.#216
calabasas, ca 91302
United States

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
Domain Name: SIMPLYQUIT.COM
Created on: 15-Aug-01
Expires on: 15-Aug-11
Last Updated on: 17-Jul-08

Administrative Contact:
gold, sam sago2000@hotmail.com
elgo inc
23679 calabasas rd.#216
calabasas, ca 91302
United States
(818) 989-8586 Fax -- (818) 224-3792

Technical Contact:
gold, sam sago2000@hotmail.com
elgo inc
23679 calabasas rd.#216
calabasas, ca 91302
United States
(818) 989-8586 Fax -- (818) 224-3792

Domain servers in listed order:
NS01.DOMAINCONTROL.COM
NS02.DOMAINCONTROL.COM

Registry Status: clientDeleteProhibited
Registry Status: clientRenewProhibited
Registry Status: clientTransferProhibited
Registry Status: clientUpdateProhibited

World-Class Web Hosting

[Fast, secure, reliable hosting](#)
[featuring 99.9% uptime, free setup,](#)
[24/7 support & more!](#)

Safe, Personalized Email

[Get an easy-to-remember](#)
[email address with built-in](#)
[Fraud, Spam & Virus Protection.](#)

[See Underlying Registry Data](#)
[Report Invalid Whois](#)

Help and Support

Telephone Support & Sales
Billing Support
Email Our Support Team
Frequently Asked Questions
User's Guides
Report Spam
Test Our Products

Account Manager

My Account
My Renewals
My Upgrades
Account Settings
Customer Information
Order History
Create Account

Shopping

* Offer Disclaimers
Domain Search
Catalog
Product Advisor
View Shopping Cart
Gift Cards
Go Daddy Mobile
Today's Offers
Go Daddy Marketplace™

Resources

WHOIS search
ICANN Confirmation
Web Mail
Affiliates
Link to Us
Gadgets/Widgets
Add browser domain search
Site Map
Radio Go Daddy

About Go Daddy

Careers
Security Center
Company Info
News Center
Customer Testimonials
What's New
View our Commercials
Legal
Marketing Proposals

GoDaddy.com is the world's No. 1 ICANN-accredited domain name registrar for .COM, .NET, .ORG, .INFO, .BIZ and .US domain extensions. Source: Name Intelligence, Inc. 2006

Copyright © 1999 - 2009 GoDaddy.com, Inc. All rights reserved.

