

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: May 28, 2010

Opposition No. 91179090

ELGO, INC.

v.

SIMPLYWELL, LLC

Frances S. Wolfson, Interlocutory Attorney:

Opposer's contested motion (filed February 19, 2010) to strike applicant's brief as untimely filed is hereby denied.

Applicant filed its brief late because of its misapplication of Trademark Rule 2.119(c), but applicant has shown excusable neglect for the late filing.¹ Applicant's delay has not caused prejudice to opposer as opposer's time to file a rebuttal trial brief will be reset; applicant reasonably believed it had an additional 5-days to file its brief, partly in reliance upon information received from a Board representative; and applicant's delay has not been in bad faith. See Fed. R. Civ. P. 6(b); and *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993), as discussed by the Board

¹ Trademark Rule 2.119(c) does not apply to briefing dates, which are set to run by operation of Trademark Rule 2.128(a) from the date set for the close of plaintiff's rebuttal period.

in *Pumpkin, Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997).

Accordingly, opposer's motion is denied and opposer's reply brief is due June 15, 2010. An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.