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

Proceeding	91179090
Party	Defendant SIMPLYWELL, LLC
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Attachments	SimplyQuit-Answer.pdf (5 pages)(37410 bytes)

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

APPLICANT'S ANSWER

SimplyWell LLC, a limited liability company organized under the laws of the State of Nebraska ("Applicant"), in Answer to a Notice of Opposition filed by Elgo, Inc. ("Opposer") against Applicant's U.S. Application Serial No. 77/090,694 for the mark, SIMPLYQUIT (the "Application") states:

1. Applicant admits that Opposer was incorporated on August 25, 2000 in the State of California, but is without knowledge or information sufficient to form a belief as to the remaining allegations asserted in paragraph 1 of the Notice of Opposition, and therefore denies those remaining allegations in paragraph 1 of the Notice of Opposition.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 2 of the Notice of Opposition, and therefore denies the same.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 3 of the Notice of Opposition, and therefore denies the same.
4. Applicant admits the allegations in paragraph 4 of the Notice of Opposition only to the extent that the United States Patent and Trademark Office (“USPTO”) TARR database shows that Ely Gold was the owner of record of Application Serial No. 78/085086. Applicant denies the remaining allegations of paragraph 4 of the Notice of Opposition.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 5 of the Notice of Opposition, and therefore denies the same.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 6 of the Notice of Opposition, and therefore denies the same.
7. Applicant admits the allegations in paragraph 7 of the Notice of Opposition to the extent that Applicant has filed for registration on the USPTO Principal Register for the mark, “SIMPLYQUIT.” Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in paragraph 7 of the Notice of Opposition, and therefore denies the same.

8. Applicant admits the allegations in paragraph 8 of the Notice of Opposition to the extent that Applicant filed the Application on January 25, 2007. Applicant denies the remaining allegations of paragraph 8 of the Notice of Opposition.
9. Applicant denies the allegations in paragraph 9 of the Notice of Opposition.
10. Applicant denies the allegations in paragraph 10 of the Notice of Opposition.
11. Applicant admits the allegations in paragraph 11 of the Notice of Opposition only to the extent that Applicant seeks to register the mark, "SIMPLYQUIT" on the USPTO Principal Register, but Applicant denies the remaining allegations of paragraph 11 of the Notice of Opposition.
12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 12 of the Notice of Opposition, and therefore denies the same.
13. Applicant denies the allegations in paragraph 13 of the Notice of Opposition.
14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 14 of the Notice of Opposition, and therefore denies the same.
15. Applicant denies the allegations in paragraph 15 of the Notice of Opposition.
16. Applicant denies the allegations in paragraph 16 of the Notice of Opposition.
17. Applicant denies the allegations in paragraph 17 of the Notice of Opposition.
18. Applicant denies the allegations in paragraph 18 of the Notice of Opposition.

First Affirmative Defense

19. The Notice of Opposition fails to state any basis under the Lanham Act to sustain an Opposition of the Applicant's Application.

Second Affirmative Defense

20. Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposer's alleged goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.

Third Affirmative Defense

21. Applicant's mark, when used in connection with Applicant's services, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer or Opposer's alleged goods, or as to the origin, sponsorship or approval of Applicant's services by Opposer.

Fourth Affirmative Defense

22. Applicant has abandoned its rights in SIMPLYQUIT in any style, font, or format.

WHEREFORE, Applicant prays that:

- A. The Board refuses to sustain the Opposition of the Opposer;
- B. The Board finds that there is no basis in fact to support the Opposition of the Opposer;
- C. The Board dismiss this Opposition; and
- D. The Board grant such other and further relief as may be appropriate.

Dated this 1st day of October 2007.

SIMPLYWELL LLC

By: /Christopher M. Bikus/

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ATTORNEYS FOR APPLICANT

CERTIFICATION UNDER 37 C.F.R. § 1.8

I hereby certify that APPLICANT'S ANSWER is being filed electronically with the United States Patent and Trademark Office utilizing the *Electronic System for Trademark Trials and Appeals* this 1st day of October, 2007.

/Christopher M. Bikus/

CHRISTOPHER M. BIKUS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing APPLICANT'S ANSWER was sent by first-class United States mail, postage prepaid, on this 1st day of October 2007, to the following:

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

/Christopher M. Bikus/

CHRISTOPHER M. BIKUS