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

Proceeding	91199405
Party	Defendant Brown Machine, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Engineered Products Company,

Opposer,

Opposition No.:91199405
Applicant: Brown Machine, LLC
Application No. 77/934,320
Trademark: EPCO
Published: December 14, 2010

v.

Brown Machine, LLC,

Applicant

APPLICANT'S BRIEF IN REPLY TO OPPOSER'S BRIEF IN OPPOSITION TO
MOTION TO STRIKE

Opposer asserts that the question of Applicant's use of the mark prior to the date of Opposer's prior registration is at issue in this opposition.

However, Paragraph 2 of the Petition does not allege that the first use of the mark by Applicant was after the date of Opposer's prior registration, but only that first use of the mark by the Applicant was long after the August 2, 1961 date alleged by the Applicant in its application.

Thus, Paragraph 2 only alleges that there is a discrepancy between what Applicant alleges was the first use date and the actual date of Applicant's first use of the mark.

Even if Applicant's date of first use was at issue, the fact that an alleged use was later than alleged is not relevant to the issue of when first use by the Applicant occurred.

More importantly the date of Applicant's first use is not directly at issue since Opposer relies on its prior registration in opposing Applicant's registration of the mark. The case cited by the Opposer, *Life Zone, Inc. v Middleman Group Inc.* 87 USPD2d 1953 1959, did not involve a prior registration by the Opposer, but only a prior use by the Opposer.

