

ESTTA Tracking number: **ESTTA1328674**Filing date: **12/14/2023**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	92083014
Party	Plaintiff Mprezas, Inc.
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Attachments	Enlarge ReplyTime Reply.pdf(91826 bytes)

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

Mprezas, Inc., a California
corporation

Petitioner,

v.

Armstrong Laboratorios de
México S.A. de C.V.,

Registrant.

Cancellation No. 92083014

**REPLY IN SUPPORT OF
CONDITIONAL MOTION TO EXTEND
TIME TO FILE SUSPENSION REPLY
BRIEF DUE TO POSSIBLE
TECHNICAL ISSUE**

Registration No. 5541254
Mark: HERKLIN

Registration No. 5541255
Mark:



1 Petitioner Mprezas, Inc, a California corporation (“Petitioner” or
2 “Mprezas”) submits this reply brief in support of its conditional motion to extend
3 time to file its reply brief [10 TTABVUE] on its related motion to suspend [4
4 TTABVUE].

5 Petitioner Mprezas had no choice but to request the Board for a one day
6 extension to file its reply brief [10 TTABVUE].

7 Armstrong¹ states that it “does not outright contest Petitioner’s Motion to
8 Extend.” [13 TTABVUE at 2].

9 Armstrong even states that it “would have been prepared to extend
10 Armstrong (sic) [Petitioner] the professional courtesy of a consented one-day
11 extension should Petitioner had asked rather than now be in a situation where
12 Armstrong must expend resources responding to yet another unnecessary motion
13 and the Board must use its valuable resources to rule on it.” [13 TTABVUE at 3].
14 Unfortunately, Armstrong does not have the power to stipulate to the reply brief
15 extension. *See* TBMP 509.01(a) (“The time for filing a reply brief on a motion
16 will not be extended, even upon the parties’ consent.”).

17 The Board has repeatedly considered a late brief when the delay was
18 inconsequential or negligible. The Board has found with respect to a brief “*filed*
19 *two days late*” that length of delay was “*inconsequential.*” *Wright & McGill Co.*
20 *v. Basden*, 2015 TTAB LEXIS 409, *4 (Trademark Trial & App. Bd. September
21 28, 2015) (emphasis added). Other cases have held that a one-day delay is
22 negligible. *Plant Food Sys. v. EarthRenew, Inc.*, 2012 TTAB LEXIS 520, *4-5
23 (Trademark Trial & App. Bd. January 6, 2012) (“the impact of the one-day delay
24 upon these proceedings is negligible”); *Fossil, Inc. v. Foster*, 2011 TTAB LEXIS
25 310, *4 (Trademark Trial & App. Bd. September 12, 2011) (“We agree that
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27 ¹ “Armstrong” refers to Registrant Armstrong Laboratorios de Mexico, S.A. de
28 C.V.

1 applicant's brief was filed one day late, but under the circumstances (very brief
2 delay, no prejudice to opposer or burden to the Board, no objection from opposer,
3 no intent to delay or bad faith, we find that the delay was the result of excusable
4 neglect, and consider applicant's brief.”). Even a five day delay has been held to
5 be “minimal.” *Nestle Prepared Foods Co. v. V & V Enters.*, 2011 TTAB LEXIS
6 68, *2-4 (Trademark Trial & App. Bd. March 10, 2011) (“Here, the five day delay
7 in filing is minimal and has had no impact on the proceedings.”).

8 In the instant case, Armstrong can claim no prejudice because it was timely
9 served with the reply brief [10 TTABVUE] on November 2, 2023. Further,
10 Armstrong cannot claim prejudice because it was not entitled to respond to the
11 reply brief [10 TTABVUE].

12 Given prior electronic filing issues, it’s not clear that a technical issue
13 prevented the Petitioner’s reply brief from being timely filed on November 2,
14 2023. [6 TTABVUE 2 (“Due to a technical issue, however, the submission was not
15 available for viewing on TTABVUE. The Board regrets any confusion this may
16 have caused.”).

17 Even if Petitioner had a technical error or an inadvertent error in pressing
18 the submit button caused the reply brief not to be timely filed on November 2,
19 2023, the reply brief was filed hours later on November 3, 2023. The Board
20 always has the power under Fed. R. Civ. P. 6(b)(1)(B) to consider an untimely
21 reply brief as set forth in the case law above.

22 Finally, the Board should completely disregard Armstrong’s attempt to
23 malign Petitioner’s counsel or prevent Petitioner from seeking any relief
24 authorized under the law. Petitioner’s counsel rejects Armstrong’s invective,
25 including Armstrong’s characterization that Petitioner’s counsel has “repeatedly
26 side-stepped the rules.” [13 TTABVUE 2]. Petitioner’s counsel is happy to
27 respond to any of Armstrong’s invective that the Board deems relevant.
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Dated: December 14, 2023

Respectfully submitted by:
LAW OFFICES OF DARREN J. QUINN
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s/s Darren J. Quinn
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Certificate of Service

I hereby certify that a true and complete copy of the foregoing REPLY IN SUPPORT OF CONDITIONAL MOTION TO EXTEND TIME TO FILE SUSPENSION REPLY BRIEF DUE TO POSSIBLE TECHNICAL ISSUE has been served on counsel for Applicant on December 14, 2023, by e-mail.

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