

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

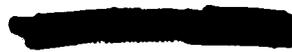
_____)	
EXXON MOBIL CORPORATION,)	
)	
Opposer,)	
)	Opposition No. 91120519
v.)	
)	
DATAWORX, R.V.)	
)	
Applicant.)	
_____)	

**APPLICANT’S MOTION IN RESPONSE TO OPPOSER’S MOTION TO
SUSPEND PROCEEDING PENDING CIVIL ACTION**

Applicant hereby opposes Opposer’s Motion to Suspend Proceeding Pending Civil Litigation and seeks that the Board continue to move the Opposition Proceeding forward. Applicant seeks the continuation of the Opposition Proceedings as the Opposer has failed to provide sufficient evidence of pending civil action. Applicant has not been served with a Complaint and the attachment provided by Opposer does not include a Civil Action Number nor a “Filed” stamp from the Court.

BACKGROUND

Applicant applied for a registration of the trademark DEXXON (U.S. Application Serial No. 75/511,805) for computers and computer peripherals in International Class 9. See Exhibit A for a full identification of goods under the DEXXON mark. On September 28, 2000, Exxon Mobil Corporation (“Opposer”) filed a Notice of Opposition against Applicant Dataworx, R.V. (“Applicant” or “Dataworx”) over the DEXXON. On January



2, 2001, Applicant filed an Answer. There have been numerous extensions in this Opposition Proceeding. On May 5, 2005, Opposer filed a Motion to Suspend Proceeding Pending Civil Action. Included in Opposer's Motion is a copy of a civil action allegedly filed with the United States District Court for the Northern District of Texas, Dallas Division. Opposer contends that the Board should suspend the Opposition Proceeding pending the civil action. Applicant opposes on the grounds that Opposer has failed to produce substantive evidence of the pending civil action and therefore, a motion to suspend is not warranted.

**OPPOSER'S REQUEST TO SUSPEND THE OPPOSITION PROCEEDINGS
SHOULD BE DENIED FOR OPPOSER'S FAILURE TO PROVIDE SUFFICIENT
PROOF OF A PENDING CIVIL ACTION.**

On May 5, Opposer moved to Board to suspend the Opposition due to a pending civil action. See Exhibit B. Opposer's Motion dated May 5, 2005 also included a copy of a complaint. However, the Exhibit raises questions as to whether there is a pending civil action. First, and foremost, Applicant has not been served with a copy of any complaint. Applicant has never been put on notice and is unaware of any pending civil action.

The complaint attached to the Opposer's Motion does not have a "filed" stamp or any indication that the Court has received this Complaint. There is no proof up to this point that a complaint has been filed.

In its current state, there is no indication that this complaint attached to the motion to suspend is anything more than a signed draft.

Applicant asserts that due to a lack of information or proof that there is a pending civil action, that the Board should continue its course in the Opposition proceedings. No harm will result if the Board does not suspend the proceedings

Respectfully submitted,



Jess M. Collen *Thomas Colic*
COLLEN IP
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80 South Highland Avenue
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Attorney for Applicant
Dataworx, R.V.

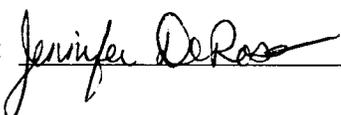
JMC/TPG
Encl – Exhibits A & B
DATE: May 13, 2005

COLLEN IP
THE HOLYOKE-MANHATTAN BUILDING
80 SOUTH HIGHLAND AVENUE
TOWN OF OSSINING
WESTCHESTER COUNTY, NEW YORK 10562

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS EXPRESS MAIL IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER FOR TRADEMARKS, P.O. BOX 1451, ALEXANDRIA, VIRGINIA 22313-1451,

COLLEN IP

BY:  _____ DATE: May 13, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of Applicant's Motion In Response To Opposer's Motion To Suspend Proceeding Pending Civil Action was served upon:

Louis T. Pirkey
William G. Barber
Stephen P. Meleen
Fulbright & Jaworski
600 Congress Avenue, Suite 2400
Austin, TX 78701

This 13th day of May, 2005, by First Class Mail postage prepaid.

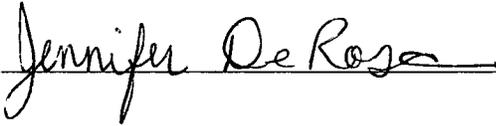


EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-05-13 11:10:02 ET

Serial Number: 75511805 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark (words only): DEXXON

Standard Character claim: No

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2000-10-17

Filing Date: 1998-07-01

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 112

Attorney Assigned:
BALDWIN SCOTT Employee Location

Current Location: M3D -TMO Law Office 112 - Docket Clerk

Date In Location: 2005-01-05

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Dataworx R.V.

Address:

Dataworx R.V.
Broekveldselaan 7a
2411 NL Bodegraven
Netherlands

Legal Entity Type: Corporation

State or Country of Incorporation: Netherlands

GOODS AND/OR SERVICES

International Class: 009

computers and computer peripherals; optical appliances and instruments, namely, optical disk readers;

computer storage devices and media, namely, blank optical disks; blank audio disks; blank audio cassette tapes; blank re-writeable CD-ROM disks; head cleaning cartridges for computer storage devices and data storage equipment; blank computer hard disks; removable disks and tape backup drives for computers; blank digital linear tape cartridges; blank 4 mm and 8 mm computer storage tapes; blank removable three and half inch and five and quarter inch floppy disks

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

Basis: 1(b), 44(e)

ADDITIONAL INFORMATION

Foreign Application Number: 908013

Foreign Registration Number: 623636

Foreign Registration Date: 1998-01-12

Country: BX - COUNTRY NOT FOUND

Foreign Filing Date: 1998-01-12

Foreign Expiration Date: 2008-01-12

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2000-10-17 - Opposition instituted for Proceeding

2000-03-06 - Extension Of Time To Oppose Received

2000-02-01 - Published for opposition

1999-12-30 - Notice of publication

1999-11-17 - Approved for Pub - Principal Register (Initial exam)

1999-11-10 - Examiner's amendment mailed

1999-07-22 - Communication received from applicant

1999-02-23 - Non-final action mailed

1999-02-08 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

JESS M COLLEN (Attorney of record)

JESS M. COLLEN & JULIAN BURKE
COLLEN LAW ASSOCIATES, P.C.
THE HOLYOKE-MANHATTAN BLDG
80 SOUTH HIGHLAND AVENUE
OSSINING, NY 10562

Domestic Representative
McGLEW AND TUTTLE, P.C.

EXHIBIT B



United States Patent and Trademark Office

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Your submission has been received by the USPTO.
The content of your submission is listed below.
You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA32267**Filing date: **05/05/2005**

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

Proceeding	91120519
Party	Plaintiff EXXON MOBIL CORPORATION
Correspondence Address	STEPHEN P. MELEEN & LOUIS T. PIRKEY FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVENUE, SUITE 2400 AUSTIN, TX 78701
Submission	Motion to Suspend for Civil Action
Filer's Name	Stephen P. Meleen
Filer's e-mail	smeleen@fulbright.com, aotrademark@fulbright.com, eolson@fulbright.com
Signature	/spm/
Date	05/05/2005
Attachments	DEXXON request to suspend.pdf (3 pages) DEXXON Complaint.pdf (23 pages)

Return to ESTTA home page Start another ESTTA filing

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RECVD 5/9/05
DKT 1
DKT 2

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

EXXON MOBIL CORPORATION,

Opposer,

v.

DATAWORX, R.V.

Applicant.

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Opposition No. 91120519

MOTION TO SUSPEND PROCEEDING PENDING CIVIL ACTION

In accordance with 37 C.F.R. § 2.117(a) and TBMP § 510.02, Opposer respectfully requests that the Trademark Trial and Appeal Board suspend the above proceeding pending final resolution of a civil action captioned Exxon Mobil Corporation v. Dexxon Digital Storage, Inc. and Dataworx, R.V. ("the Civil Action"). Opposer filed its complaint in the Civil Action on May 5, 2005 in the United States District Court for the Northern District of Texas, Dallas Division. A copy of the complaint in the Civil Action is attached as **Exhibit A**.

Applicant in the present proceeding filed U.S. Application Serial Nos. 75/511,805 seeking to obtain a federal registration for the trademark DEXXON. Final disposition of the Civil Action will determine Applicant's right to use and register the trademark DEXXON, which obviously "may have a bearing on this case;" thus this Opposition should be suspended pending final determination of the Civil Action. 37 C.F.R. § 2.117(a), TBMP 510.02(a). Opposer alleges in the Civil Action that Applicant's mark DEXXON dilutes and is likely to cause confusion with ExxonMobil's EXXON Marks, and that registration should therefore be refused, the same relief

requested by the Opposer in the Opposition proceeding. Exhibit A. Further, in paragraph (h) of Opposer's Request for Relief in the amended complaint, Opposer requests that the Court "enter an Order pursuant to 15 U.S.C. § 1119, certified to the United States Patent and Trademark Office, directing that U.S. Application Serial Nos. 75/511,805 be refused with prejudice." Exhibit A, at 11-12. Thus, the Opposition proceeding and the Lawsuit have issues in common.

Accordingly, Opposer respectfully requests that all further proceedings in Opposition No. 91120519 be suspended by the Board pending the outcome of the Civil Action. Opposer requests that if and when this Opposition is removed from suspended status, or if this Request for Suspension is denied, that the Board reset all trial dates.

This motion is being filed electronically, and no fee is believed to be due in connection with the filing of this document. However, should any fee under 37 C.F.R. § 2.6 be deemed necessary for any reason relating to this document, the Commissioner for Trademarks is hereby authorized to deduct said fee from Fulbright & Jaworski Account No.: 50-1212/EXCO:078/SPM.

Respectfully submitted,



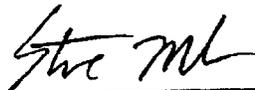
Louis T. Pirkey
William G. Barber
Stephen P. Meleen
FULBRIGHT & JAWORSKI
600 Congress Ave., Suite 2400
Austin, Texas 78701
Tel: (512) 474-5201
Fax: (512) 536-4598

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I certify that on May 5, 2005, I caused to be served the foregoing MOTION TO SUSPEND PROCEEDING PENDING CIVIL ACTION by first class mail, postage pre-paid, to the following attorney for Applicant:

Jess M. Collen
COLLEN IP Intellectual Property Law, P.C.
80 South Highland Avenue
Ossining, New York 10562



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EXXON MOBIL CORPORATION,

Plaintiff,

v.

DEXXON DIGITAL STORAGE, INC. and
DATAWORX, R.V.

Defendants.

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CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

**EXXONMOBIL'S COMPLAINT
FOR TRADEMARK INFRINGEMENT, DILUTION,
UNFAIR COMPETITION, AND REFUSAL OF REGISTRATION**

For its complaint, Exxon Mobil Corporation, appearing through the undersigned counsel, alleges as follows based on present knowledge, information and belief:

PARTIES

1. Exxon Mobil Corporation ("ExxonMobil") is a New Jersey corporation having its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas 75039.
2. Defendant D Exxon Digital Storage, Inc. is a Delaware corporation with a business address of 7611 Green Meadows Drive, Lewis Center, Ohio 43035.
3. Defendant Dataworx R.V. is a Netherlands corporation with a business address of Broekveldselaan 7a, 2411 NL Bodegraven, Netherlands.
4. On information and belief, Defendants D Exxon Digital Storage, Inc. and Dataworx R.V. share the same ownership and control, and operate in cooperation with each other. Except

where identified individually, defendants are hereinafter collectively referred to as the "Dexxon Defendants."

NATURE OF ACTION AND JURISDICTION

5. This is an action for trademark infringement, dilution, and unfair competition under the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.* ("Lanham Act"), and the laws of the State of Texas and other states.

6. This Court has jurisdiction over this action under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and Title 28 of the United States Code, §§ 1331 and 1338, and supplemental jurisdiction over ExxonMobil's state law claims under 28 U.S.C. § 1367(a). The matter in controversy in this action exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states and a foreign state, so this Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

A. ExxonMobil and Its EXXON Marks

7. Since at least as early as 1967, ExxonMobil has continuously used the mark EXXON in commerce in connection with a wide variety of products and services, including the sale and promotion of gasoline, motor oil, and other petroleum products, chemical products, and various other products and services.

8. EXXON stations are among the most widespread and recognizable gasoline stations in the United States. There are thousands of EXXON branded retail gasoline stations in the United States with billions of dollars in annual sales. Over the years, ExxonMobil has invested great effort and resources promoting its EXXON stations and spent many millions of dollars advertising them.

9. Since at least 1971, ExxonMobil has presented its mark EXXON in a stylized format that includes a distinctive Interlocking X Device ("IXD"), such as in the famous EXXON Emblem shown immediately below.



10. ExxonMobil has also for many years used the IXD as mark standing alone, as shown below, to promote its sale of motor fuels and other products and services.



11. In 1999 Exxon Corporation, in connection with its acquisition of Mobil Corporation and its subsidiaries, adopted the corporate and trade name Exxon Mobil Corporation and the mark EXXONMOBIL, both of which incorporate the mark EXXON. ExxonMobil has come to sell a number of its products, including its various chemical products, in commerce under the mark EXXONMOBIL, and uses that mark in both plain text and in a stylized format that incorporates the IXD, as shown immediately below.

ExxonMobil

12. ExxonMobil's marks EXXON, EXXONMOBIL, and the IXD (hereinafter collectively identified as the "EXXON Marks") constitute a family of marks, and relevant consumers recognize and rely upon ExxonMobil's family of EXXON Marks as an indicator of origin.

13. In addition to its extensive common-law rights, ExxonMobil owns numerous federal trademark registrations for its EXXON Marks, including U.S. Reg. No. 902,044 for the mark EXXON, U.S. Reg. No. 968,512 for the mark EXXON & Design (the EXXON Emblem), U.S. Reg. No. No. 2,305,494 for its mark IXD, U.S. Reg. No. 2,791,743 for the mark EXXONMOBIL (Stylized), and U.S. Reg. No. 1,970,069 for the mark EXXON CHEMICAL & Design. Each of these registrations is valid and subsisting, and some are now incontestable. Copies of pages from the U.S. Patent & Trademark Office's Trademark Electronic Service System (TESS) for these registrations are attached hereto as Exhibit A.

14. ExxonMobil's EXXON Marks are inherently distinctive, serving to identify and indicate the source of ExxonMobil's products and services to the consuming public, and to distinguish ExxonMobil's products and services from those of others.

15. Additionally, as a result of ExxonMobil's extensive use and promotion of its EXXON Marks, they have become distinctive to designate ExxonMobil, and are well-known and widely recognized by consumers in Texas and throughout the United States. ExxonMobil has invested millions of dollars in advertising and promoting its EXXON Marks and the goods and services sold under those marks, and has developed great and valuable goodwill in its EXXON Marks.

16. The EXXON Marks are famous and consumers have come to associate those marks uniquely with ExxonMobil and its goods and services.

17. ExxonMobil has developed and now owns strong common-law rights in its EXXON Marks in Texas and throughout the United States.

B. Defendants' Activities

18. Dataworx R.V. filed Application Serial No. 75/511,805 in the United States Patent and Trademark Office to register the mark DEXXON for the following goods in International Class 9: "computers and computer peripherals; optical appliances and instruments, namely, optical disk readers; computer storage devices and media, namely, blank optical disks; blank audio disks; blank audio cassette tapes; blank re-writeable CD-ROM disks; head cleaning cartridges for computer storage devices and data storage equipment; blank computer hard disks; removable disks and tape backup drives for computers; blank digital linear tape cartridges; blank 4 mm and 8 mm computer storage tapes; blank removable three and half inch and five and quarter inch floppy disks." In doing so, Dataworx R.V. declared under oath its intent to use the mark DEXXON in connection with such goods in United States commerce.

19. In a transaction that was subject to the jurisdiction of the Bankruptcy Court for the Northern District of Texas and was approved by that court, Defendant Dexion Digital Storage, Inc. acquired substantially all of the assets of Digital Storage, Inc.

20. Since the acquisition of assets via the bankruptcy court in this district, the Dexion Defendants have used the mark DEXXON in United States commerce. Specifically, the Dexion Defendants have sold and are selling products and services under the mark DEXXON in commerce in this district and throughout the United States.

21. The Dexion Defendants operate Internet websites at www.dexion.com and www.dititalstorage.com. The Dexion Defendants use the mark DEXXON on both of these websites.

22. The Dexion Defendants use the mark DEXXON in a design format in which the "XX" portion of the mark is presented in an interlocking manner similar to ExxonMobil's famous mark IXD, as shown immediately below:



23. The Dexion Defendants also use a standalone interlocking X design mark in connection with the sale of their goods and services.

24. ExxonMobil has priority based on its use and registration of its EXXON Marks in the United States for many years prior to the Dexion Defendants' use or application to register the mark DEXXON.

25. The Dexion Defendants' use of the mark DEXXON began after ExxonMobil's EXXON Marks became famous.

C. Effect of Defendants' Activities on ExxonMobil and the Consuming Public

26. The Dexion Defendants' mark DEXXON is confusingly similar to ExxonMobil's EXXON Marks. The mark DEXXON is virtually identical to and incorporates entirely ExxonMobil's mark EXXON.

27. ExxonMobil's EXXON Marks are of sufficient fame and reputation among consumers such that when the mark DEXXON is used for the Dexion Defendants' products and services, consumers would presume a connection with ExxonMobil.

28. The Dexas Defendants' unauthorized use of the mark DEXXON is likely to cause confusion, to cause mistake, and to deceive customers and potential customers of the parties as to some affiliation, connection or association of the Dexas Defendants and their products or services with ExxonMobil, or as to the origin, sponsorship, or approval of the Dexas Defendants' products or services by ExxonMobil.

29. The Dexas Defendants' unauthorized use of the mark DEXXON falsely indicates to the purchasing public that the Dexas Defendants, their business, and their products or services originate with ExxonMobil, or are affiliated, connected, or associated with ExxonMobil, or are sponsored, endorsed, or approved by ExxonMobil, or are in some manner related to ExxonMobil or its goods or services.

30. The Dexas Defendants' mark DEXXON, when used in connection with the Dexas Defendants' products and services, causes and is likely to cause dilution of ExxonMobil's famous and distinctive EXXON Marks, individually and collectively.

31. The Dexas Defendants' unauthorized use of the confusingly similar mark DEXXON places the valuable reputation and goodwill of ExxonMobil in the hands of the Dexas Defendants, over whom ExxonMobil has no control.

32. As a result of the Dexas Defendants' unauthorized use of the mark DEXXON, the Dexas Defendants are being unjustly enriched at ExxonMobil's expense.

33. ExxonMobil has informed the Dexas Defendants of its objections to the Dexas Defendants' use and attempted registration of the mark DEXXON, and timely filed an opposition (Opposition No. 91-120,519) in the U. S. Patent & Trademark Office against Dataworx R.V.'s Application Serial No. 75/511,805.

34. The DEXXON Defendants' use of the mark DEXXON is without the permission or authority of ExxonMobil.

35. Unless these infringing and diluting acts by the DEXXON Defendants are restrained by this Court, they will cause irreparable injury to ExxonMobil and to the public, for which there is no adequate remedy at law.

D. Willful Nature of Defendants' Infringement, Dilution, and Unfair Competition

36. The DEXXON Defendants' acts of infringement, dilution, and unfair competition complained of herein have been malicious, fraudulent, deliberate, willful, intentional, and in bad faith, with full knowledge and conscious disregard of ExxonMobil's rights. In view of the egregious nature of the DEXXON Defendants' actions, this is an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

COUNT 1: DILUTION UNDER TEXAS LAW

37. ExxonMobil repeats the above allegations as if fully set forth herein.

38. The acts of the DEXXON Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the Texas anti-dilution statute, Tex. Bus. & Com. Code § 16.29.

**COUNT 2: TRADEMARK INFRINGEMENT
UNDER THE COMMON LAW OF TEXAS**

39. ExxonMobil repeats the above allegations as if fully set forth herein.

40. The acts of the DEXXON Defendants complained of herein constitute trademark infringement in violation of the common law of Texas

**COUNT 3: UNFAIR COMPETITION UNDER THE
COMMON LAW OF TEXAS**

41. ExxonMobil repeats the above allegations as if fully set forth herein.

42. The acts of the Dexxon Defendants complained of herein constitute unfair competition in violation of the common law of Texas.

COUNT 4: FEDERAL TRADEMARK INFRINGEMENT

43. ExxonMobil repeats the above allegations as if fully set forth herein.

44. The acts of the Dexxon Defendants complained of herein constitute infringement of ExxonMobil's registered marks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

COUNT 5: FEDERAL UNFAIR COMPETITION

45. ExxonMobil repeats the above allegations as if fully set forth herein.

46. The acts of the Dexxon Defendants complained of herein constitute trademark infringement and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT 6: FEDERAL DILUTION

47. ExxonMobil repeats the above allegations as if fully set forth herein.

48. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's famous marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

49. The Dexxon Defendants willfully intended to trade on ExxonMobil's reputation and to cause such dilution.

COUNT 7: DILUTION UNDER THE LAWS OF OTHER STATES

50. ExxonMobil repeats the above allegations as if fully set forth herein.

51. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the Alabama anti-dilution statute, Ala. Code § 8-12-18.

52. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the California anti-dilution statute, Cal. Bus. & Prof. Code § 14330.

53. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the Delaware anti-dilution statute, Del. Code Ann. tit. 6, § 3313.

54. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the Florida anti-dilution statute, Fla. Stat. § 495.151.

55. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the Georgia anti-dilution statute, O.C.G.A. § 10-1-451(b).

56. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the Louisiana anti-dilution statute, La. Rev. Stat. Ann. 51:223.1.

57. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the Maine anti-dilution statute, 10 M.R.S.A. § 1530.

58. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the Massachusetts anti-dilution statute, MA ST 110B, § 12.

59. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the New Hampshire anti-dilution statute, RSA 350-A:12.

60. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the New York anti-dilution statute, New York General Business Law § 360-1.

61. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the common law of Ohio.

62. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the Oregon anti-dilution statute, ORS 647.107.

63. The acts of the Dexxon Defendants complained of herein constitute dilution of ExxonMobil's EXXON Marks in violation of the Rhode Island anti-dilution statute, R.I. Gen. Laws § 6-2-12.

COUNT 8: REFUSAL OF APPLICATION FOR REGISTRATION

64. ExxonMobil repeats the above allegations as if fully set forth herein.

65. This Court has the power under 15 U.S.C. § 1119 to determine Dataworx R.V.'s right to registration of the mark DEXXON.

66. Dataworx R.V.'s mark DEXXON, the subject of Application Serial No. 75/511,805, so resembles ExxonMobil's EXXON Marks as to be likely to cause confusion, or to cause mistake, or to deceive, and/or to cause dilution of its famous EXXON Marks, individually and collectively. Registration should therefore be refused under 15 U.S.C. § 1052.

WHEREFORE, ExxonMobil prays that:

- a) The DEXXON Defendants, their officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with them, be permanently enjoined from using the mark DEXXON, any mark featuring an interlocking X design, and any other mark that is confusingly similar to or diluting of any of ExxonMobil's EXXON Marks;
- b) The DEXXON Defendants, their officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with them, be required to modify all products, packaging, and promotional material, including all Internet and other electronic communications or representations, to eliminate the mark DEXXON and any interlocking X design mark;
- (c) The DEXXON Defendants, their officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with them, be required to deliver to the Court for destruction, or show proof of destruction of, any and all products, labels, signs, prints, packages, wrappers, receptacles, and

advertisements, and any other materials in the DEXXON Defendants' possession or control that use mark DEXXON or any interlocking X design mark in any manner whatsoever;

- d) The DEXXON Defendants be ordered to file with this Court and to serve upon ExxonMobil, within 30 days after the entry and service on the DEXXON Defendants of an injunction, a report in writing and under oath setting forth in detail the manner and form in which the DEXXON Defendants have complied with the injunction;
- f) ExxonMobil recover all damages it sustains as a result of the DEXXON Defendants' infringement, dilution, and unfair competition, and that said damages be trebled;
- g) An accounting be directed to determine the DEXXON Defendants' profits resulting from their activities complained of herein, and that such profits be paid over to ExxonMobil, increased as the Court finds to be just under the circumstances of this case;
- h) The Court enter an Order pursuant to 15 U.S.C. § 1119, certified to the United States Patent and Trademark Office, directing that U.S. Application Serial No. 75/511,805 be refused with prejudice;
- i) ExxonMobil recover its reasonable attorney fees;
- j) ExxonMobil recover its costs of this action and prejudgment and post-judgment interest; and
- k) ExxonMobil recover such other relief as the Court may deem appropriate.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), ExxonMobil demands a trial by jury on all issues triable of right by a jury.

Date: May 5, 2005

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF EXXON MOBIL CORPORATION

Exhibit A



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Typed Drawing

Word Mark EXXON

Goods and Services IC 004. US 015. G & S: PETROLEUM AND PETROLEUM PRODUCTS-NAMELY, INDUSTRIAL OILS AND GREASES, PETROLEUM AND MINERAL WAXES, LUBRICANTS, HYDROCARBON FUELS, PETROLEUM ILLUMINANTS AND CRUDE OIL. FIRST USE: 19671205. FIRST USE IN COMMERCE: 19671205

Mark Drawing Code (1) TYPED DRAWING

Serial Number 72296761

Filing Date April 29, 1968

Current Filing Basis 1A

Original Filing Basis 1A

Registration Number 0902044

Registration Date November 10, 1970

Owner (REGISTRANT) STANDARD OIL COMPANY CORPORATION NEW JERSEY 117 MAIN ST. FLEMINGTON NEW JERSEY 08822

(LAST LISTED OWNER) EXXON MOBIL CORPORATION CORPORATION BY CHANGE OF NAME NEW JERSEY 5959 LAS COLINAS BOULEVARD IRVING TEXAS 750392298

Assignment Recorded ASSIGNMENT RECORDED

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20010726.

Renewal 2ND RENEWAL 20010726

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Word Mark	EXXON
Goods and services	IC 004. US 015. G & S: PETROLEUM AND PETROLEUM PRODUCTS-NAMELY, INDUSTRIAL OILS AND GREASES, PETROLEUM AND [MINERAL WAXES], LUBRICANTS, HYDROCARBON FUELS, PETROLEUM ILLUMINANTS AND [CRUDE OIL]. FIRST USE: 19711004. FIRST USE IN COMMERCE: 19711004
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	261112 261121
Serial Number	72407854
Filing Date	November 16, 1971
Current Filing Basis	1A
Original Filing Basis	1A
Registration Number	0968512
Registration Date	September 18, 1973
Owner	(REGISTRANT) EXXON CORPORATION CORPORATION NEW JERSEY 5959 Las Colinas Boulevard Irving TEXAS 750392298 (LAST LISTED OWNER) EXXON MOBIL CORPORATION CORPORATION NEW JERSEY 5959 LAS COLINAS BOULEVARD IRVING TEXAS 750392298
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	ROBERT D. RIPPE, JR.
Prior	0902044;AND OTHERS

Registrations
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040221.
Renewal 2ND RENEWAL 20040221
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Word Mark XX

Goods and Services IC 004. US 001 006 015. G & S: GASOLINE. FIRST USE: 19870619. FIRST USE IN COMMERCE: 19870619

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 75474257

Filing Date April 24, 1998

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition October 12, 1999

Registration Number 2305494

Registration Date January 4, 2000

Owner (REGISTRANT) Exxon Corporation CORPORATION NEW JERSEY 5959 Las Colinas Boulevard Irving TEXAS 750392298

(LAST LISTED OWNER) Exxon Mobil Corporation CORPORATION NEW JERSEY 5959 Las Colinas Boulevard Irving TEXAS 750392298

Assignment Recorded ASSIGNMENT RECORDED

Prior Registrations 1384919;1412809;2149419

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

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ExxonMobil

Word Mark
Goods and
Services

EXXONMOBIL

IC 017. US 001 005 012 013 035 050. G & S: polyolefin films made from polyethylene and polypropylene polymer or derivatives for use in the packaging industry; polyolefin in bars, blocks pellets, rods, sheets and tubes for use in the manufacture of packages and labels; synthetic rubber and rubber substitutes for use in the industrial arts, for use in the manufacture of tires, tubes, vehicle body sealing; belts, hoses, seals, glass run channels, mechanical goods, electrical cable jacketing, roof sheeting, garden hoses, materials for sound deadening, adhesives, bumpers, dashboard parts, computer housing, electronic components, ski boots, was blends, chewing gum base and in engineering themoplastics. FIRST USE: 20000630. FIRST USE IN COMMERCE: 20000630

IC 016. US 002 005 022 023 029 037 038 050. G & S: periodical publications, namely, reports, booklets, brochures, pamphlets and newsletters and all kinds of printed matters concerning items of interest about products, services, events and personnel of applicant and about the chemical and petroleum industry; company stationery, business cards and posters. FIRST USE: 19991200. FIRST USE IN COMMERCE: 19991200

IC 004. US 001 006 015. G & S: aviation fuels, lubricating oils for marine, applications. FIRST USE: 20020000. FIRST USE IN COMMERCE: 20020000

IC 001. US 001 005 006 010 026 046. G & S: olefins, aromatic hydrocarbons, and solvents for use with paints, lacquers and similar products, for manufacture of inks and toners, for use in non-impact printing applications and for use in the industrial arts; solvents used as a component in adhesives, pharmaceuticals, fragrances, metal working fluids, pesticides, sealants, lubricants; polymers for use in the manufacture of adhesives and in the plastic industry; hydrocarbon polymers, namely resins, plastomers and elastomers in solid, semi-solid, liquid and powdered form for general use in the industrial arts in lieu of or in combination with natural or synthetic rubber and rubber-like materials. FIRST USE: 20000630. FIRST USE IN COMMERCE: 20000630

Mark Drawing
Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number

75983349

Filing Date

November 29, 1999

Current Filing
Class

1A



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Word Mark	EXXON CHEMICAL
Goods and services	IC 009. US 021 023 026 036 038. G & S: computer program for calculating and comparing compound costs for polyvinyl chloride formulations. FIRST USE: 19891231. FIRST USE IN COMMERCE: 19891231
Mark Drawing code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search code	261713
Serial Number	74683280
Filing Date	May 31, 1995
Current Filing class	1A
Original Filing class	1A
Published for opposition	January 30, 1996
Registration number	1970069
Registration Date	April 23, 1996
Owner	(REGISTRANT) EXXON CORPORATION CORPORATION NEW JERSEY 225 E. John W. Carpenter Freeway Irving TEXAS 750622298 (LAST LISTED OWNER) EXXON MOBIL CORPORATION CORPORATION BY CHANGE OF NAME NEW JERSEY 5959 LAS COLINAS BLD IRVING TEXAS 75039-229
Assignment recorded	ASSIGNMENT RECORDED
Attorney of record	MELODY L. SCHOTTLE
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CHEMICAL" APART FROM THE MARK AS SHOWN

Type of Mark: TRADEMARK
 Registration: PRINCIPAL
 Affidavit Text: SECT 15. SECT 8 (6-YR).
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