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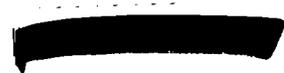
March 12, 2004
Date

Annette L. Baca
Annette L. Baca

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

MICROSOFT CORPORATION,)
)
)
)
Opposer,)
)
v.)
)
VALVERDE INVESTMENTS, INC.,)
)
Applicant.)
_____)

OPPOSITION NO. 91/154,797
Serial No. 76/156,933
Docket No. 669005.828



Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

03-15-2004
U.S. Patent & TMO/TM Mail Rcpt Dt. #22

**OPPOSER MICROSOFT CORPORATION'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Opposer Microsoft Corporation ("Microsoft") hereby moves for summary judgment voiding the application by Valverde Investments, Inc. ("Applicant") to register the mark "BACKPAGE" and refusing registration to that mark.

The motion for summary judgment is brought on grounds for which there are no disputed material facts. Applicant assigned its intent-to-use application and BACKPAGE mark without

complying with the requirements of 15 U.S.C. § 1060. This violation is sufficient to invalidate the present application and to support summary judgment in Microsoft's favor. As a matter of law, therefore, Microsoft is entitled to judgment in its favor sustaining the opposition and refusing registration.

This motion is based on the pleadings filed in this action and on the supporting declaration of Katherine J. Drakos and the "Memorandum in Support of Opposer Microsoft Corporation's Motion to Amend the Notice of Opposition and Motion for Summary Judgment" submitted herewith.

Opposer is submitting concurrently herewith a Motion to Amend the Notice of Opposition, based on the same grounds as its motion for summary judgment, together with an Amended Notice of Opposition.

DATED this 12th day of March, 2004.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



William O. Ferron, Jr.
Katherine J. Drakos
701 Fifth Avenue, Suite 6300
Seattle, Washington 98104
Phone: (206) 622-4900
Fax: (206) 682-6031

Attorneys for Opposer
MICROSOFT CORPORATION

CERTIFICATE OF SERVICE

I, Annette Baca, hereby certify that the above **OPPOSER MICROSOFT CORPORATION'S MOTION FOR SUMMARY JUDGMENT** was served on Applicant's counsel by depositing same with the U.S. Postal Service, first-class postage prepaid, on March 12, 2004, addressed as follows:

Barry L. Haley, Esq.
MALIN, HALEY & DIMAGGIO, P.A.
1936 S. Andrews Avenue
Fort Lauderdale, Florida 33316



Annette Baca

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MICROSOFT CORPORATION,)
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03-15-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

**MEMORANDUM IN SUPPORT OF OPPOSER
MICROSOFT CORPORATION'S MOTION TO AMEND
THE NOTICE OF OPPOSITION AND MOTION FOR
SUMMARY JUDGMENT**

Opposer Microsoft Corporation ("Microsoft") hereby submits this memorandum in support of its (1) Motion to Amend the Notice of Opposition and its (2) Motion for Summary Judgment voiding the application by Valverde Investments, Inc. ("Applicant") to register the mark "BACKPAGE" and refusing registration to that mark.

Microsoft's motion for summary judgment should be granted and the registration refused due to a fatal defect in Applicant's recently recorded assignment for which there are no material facts in dispute. Specifically, Applicant assigned the present intent-to-use application and mark without complying with the requirements of 15 U.S.C. § 1060. This violation renders the assignment invalid and the application void. *Clorox Co. v. Chemical Bank*, 40 U.S.P.Q.2d 1098, 1104-06 (T.T.A.B. 1996).

As a matter of law, Microsoft is entitled to judgment in its favor sustaining the opposition and refusing registration. Therefore, Microsoft's motion for summary judgment voiding Applicant's application should be granted.

The motion for leave to amend should be granted because Microsoft only recently learned facts in discovery establishing that Applicant improperly assigned the rights in its intent-to-use application. Applicant suffers no prejudice in its defense as the present proceeding is still in pre-trial stage.

I. SUMMARY JUDGMENT IS ENCOURAGED AND APPROPRIATE WHERE, AS HERE, THERE ARE NO MATERIAL FACTS IN DISPUTE

Summary judgments are encouraged in *inter partes* trademark proceedings before the Board, *Phoenix Closures Inc. v. Yen Shaing Corp.*, 9 U.S.P.Q.2d 1891, 1892 (T.T.A.B. 1988), because the issues are limited to registrability and are therefore "particularly suitable" for disposition by summary judgment. *Pure Gold, Inc. v. Syntex (U.S.A.) Inc.*, 222 U.S.P.Q. 741, 744 n.2 (Fed. Cir. 1984).

Summary judgment is appropriate where, as here, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 U.S.P.Q. 955, 961 (T.T.A.B. 1986). The aim of summary judgment is judicial economy, that is, to save the time and expense of trial where no genuine issue of material fact remains, and where no evidence beyond that which is already available in support of the summary judgment motion could reasonably be expected to change the result.

United Rum Merchants, Ltd. v. Distiller's Corp., 9 U.S.P.Q.2d 1481, 1482 (T.T.A.B. 1988); *Pure Gold*, 222 U.S.P.Q. at 626.

No genuine issue for trial exists where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party. *Matsushita Electric Industrial Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1987). A dispute is genuine only if, on the entirety of the record, a reasonable trier of fact could resolve a factual matter in favor of the non-moving party. *Sweats Fashion, Inc. v. Pannill Knitting Co.*, 4 U.S.P.Q.2d 1793 (Fed. Cir. 1987), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Disputes over facts which will not affect the outcome under the governing law are immaterial and do not preclude the entry of summary judgment.

II. UNDISPUTED FACTS

The following undisputed facts support Applicant's motion for summary judgment.

1. At the time of publication and opposition, the present application (Serial No. 76/156,933, filed October 31, 2000 for "BACKPAGE") was an intent-to-use application owned by Valverde Investments Inc., Applicant and party to this proceeding. Official Gazette (Trademark), September 17, 2002 at TM-404. Drakos Decl., ¶2.

2. On January 16, 2004, Applicant recorded its assignment of the present application to Conectron, Inc. ("Conectron"), (the "Conectron Assignment"). Applicant's January 26, 2004 Motion to Join Assignee As A Party Defendant; Conectron Assignment as recorded in the United States Patent and Trademark Office on January 16, 2004, at reel/frame 2780/0790. *See also* Drakos Decl., ¶¶ 3, 4.

3. No Statement of Use has been filed in the present application. Drakos Decl., ¶ 5.

4. The Conectron Assignment does not sell or otherwise transfer any portion of Applicant's business associated with the BACKPAGE mark to Conectron. Drakos Decl., ¶ 6.

5. Applicant has moved to join Conectron as a party to this proceeding. Applicant's January 26, 2004 Motion to Join Assignee As A Party Defendant, Drakos Decl., ¶ 7.

6. Opposer first learned the contents of the Conectron Assignment on January 27, 2004, when it received a copy with Applicant's motion to join Conectron. Opposer timely requested copies of all assignments in its first set of discovery requests served on Applicant on September 10, 2003. Drakos Decl., ¶ 8.

7. On February 10, 2004, Applicant's counsel confirmed that Applicant has produced all documents relevant to this proceeding, including those that relate to the Conectron Assignment. Drakos Decl., ¶¶ 9-10.

8. Applicant intended to assign its BACKPAGE mark to Conectron. Applicant's Response to Interrogatory No. 19 ("The BACKPAGE trademark is currently being assigned to Conectron, Inc. from Applicant."). *See also* Drakos Decl., ¶ 11.

9. Applicant and Conectron are separate legal entities. Drakos Decl., ¶¶ 12-14.

III. THE LAW

A. An Invalid Assignment Voids An Intent-To-Use Application

Section 10 of the Trademark Act, 15 U.S.C. § 1060, permits an intent-to-use application such as the one at issue here to be assigned only in connection with the sale of the business to which the mark pertains. It provides, in relevant part:

...[N]o application to register a mark under section 1(b) shall be assignable prior to the filing of an amendment under section 1(c) to bring the application into conformity with section 1(a) or the filing of the verified statement of use under section 1(d), except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing...

Id.

Any assignment of an intent-to-use application in violation of Section 1060 is invalid and renders the application or resulting registration void. *Clorox Co. v. Chemical Bank*, 40 U.S.P.Q.2d 1098, 1104-06 (T.T.A.B. 1996).

In *Clorox*, USA Detergents Inc. ("USA") filed an intent-to-use application for the mark SUPER SCRUB, began use of the mark, and then assigned the intent-to-use application to

Chemical Bank (“Chemical”). The assignment to Chemical was executed prior to filing a Statement of Use and did not sell the business associated with the SUPER SCRUB mark to Chemical. *Id.* at 1100-1101. Thus, after the registration issued, the validity of the application was challenged under Section 1060 on grounds that USA failed to transfer to Chemical a portion of USA’s business to which the mark pertained.

Finding that the intent of the parties was to execute an assignment, the Board in *Clorox* concluded that there was no genuine issue of material fact. It examined the language on the face of the assignment and refused to look at extrinsic or parol evidence. *Id.* at 1102.

The relevant language in the assignment from USA to Chemical Bank stated:

The Assignor...hereby assigns and transfers to the Assignee all of the Assignor’s right, title and interest in and to all of the Assignor’s Tradenames [sic] and/or Trademarks..., together with the goodwill of the business connected with the use of and symbolized by these respective Trademarks...

Id. at 1102-1103.

While the USA to Chemical assignment transferred the goodwill of the business, it did not transfer to Chemical the portion of USA’s business to which the mark pertained. The Board explicitly stated “it is plain that [Chemical] was not a successor to the business of USA Detergents Inc. since no transfer was made to [Chemical] of the ongoing and existing business to which the mark pertained.” *Id.* at 1104. Finding that the assignment of USA’s intent-to-use application was invalid for failing to comply with Section 1060 of the Trademark Act, the Board then looked to Congressional intent to determine the legal effect of such invalidity. It ruled that, as a matter of law, invalid assignments of intent-to-use applications render the application or resulting registration void. *Id.* at 1105-1106.

B. Restrictions on Intent-To-Use Application Assignment Under Section 1060 Apply to Assignments Between Related Companies

The restrictions on intent-to-use applications under Section 1060 apply to assignments between related companies. *See In re Circuit City Stores West Coast Inc.*, 40 U.S.P.Q.2d 1536, (Comm’r Pat. & Trademarks 1996).

In *Circuit City*, applicant Circuit City Stores West was a separate legal entity and wholly-owned by Circuit City Stores. It wanted to transfer its intent-to-use applications to its parent company, but could not do so without violating Section 1060 of the Trademark Act because no other assets of Circuit City Stores West to which the marks pertained were being transferred. *Id.* at 1537, n. 1.

IV. APPLICANT'S CONECTRON ASSIGNMENT IS INVALID, THUS THE APPLICATION IS VOID

A. Applicant's Conectron Assignment Is a Clear Violation of Section 1060

The present proceeding involves Applicant's intent-to-use application for the mark BACKPAGE. No Statement of Use has been filed in this application. Applicant has assigned the application to Conectron without transferring the business associated with the BACKPAGE mark to Conectron. The facts clearly show that Applicant intended to assign its application to Conectron. Further, it is undisputed that Applicant and Conectron are separate legal entities.

B. The Facts Here Are Similar to Those in *Clorox* and, as in *Clorox*, the Conectron Assignment Is Invalid and the Application Is Void

The facts in the present proceeding parallel those found in *Clorox*. As with *Clorox*, the mark was already in use prior to Applicant's unlawful assignment but no Statement of Use had been filed. Also as with *Clorox*, the facts clearly establish that Applicant intended to assign its application to Conectron, but did not comply with Section 1060.

All assignments of intent-to-use applications must meet the requirements of Section 1060, and must therefore transfer the business to which the mark relates to the assignee. As shown in *Circuit City*, this requirement is true even when the assignment is between two related companies. Thus, even though Applicant's sole shareholder and officer is also one of the officers of Conectron, Applicant must still meet Section 1060 requirements.¹

¹ Dr. Fernando Valverde is the sole officer and the only shareholder of Applicant Valverde Investments, Inc., and Dr. Valverde is an officer of Conectron, Inc. See Drakos Decl., ¶¶11-13.

As with *Clorox*, this proceeding has no genuine issues of material fact. The only question is whether the Applicant's Conectron Assignment falls within the exception to the general prohibition against the assignment of intent-to-use applications. The answer is no.

Applicant's Conectron Assignment makes the same fatal flaw as that in *Clorox*. The operative language in the Conectron Assignment states:

...Valverde Investments, Inc. hereby sells, assigns and transfers to Conectron, Inc. all right, title, interest and good will in and to the Mark and the pending Application therefore, together with the goodwill of that portion of Valverde Investments, Inc.'s business in connection with which it has a *bona fide* intent to use the Mark.

See Conectron Assignment, Exhibits B and C to Drakos Decl.

Therefore, Applicant's Conectron Assignment fails to transfer to Conectron the portion of Applicant's business to which the mark relates. As a result, Applicant's Conectron Assignment violates Section 1060 of the Trademark Act, is invalid, and renders the application void.

V. MICROSOFT'S MOTION FOR LEAVE TO AMEND THE NOTICE OF OPPOSITION SHOULD BE GRANTED

Microsoft seeks leave to amend to assert as an additional ground for opposition Applicant's assignment of the rights in its intent-to-use application in violation of 15 U.S.C. § 1060.

On September 10, 2003, Microsoft served on Applicant a first set of discovery requests, requesting, *inter alia*, copies of all assignments of the BACKPAGE application. Applicant's Conectron Assignment, recorded with the PTO on January 16, 2004, was first provided to Microsoft on January 27, 2004 together with the service copy of Applicant's motion to add Conectron as a party to this proceeding. At that time Microsoft learned of Applicant's violation of Section 1060. Drakos Decl., ¶ 7.

Applicant will not be prejudiced by the granting of this motion. The present proceeding is still in the pretrial stage and Microsoft has not delayed in bringing the instant motion to amend. See *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503 (T.T.A.B. 1993); *United States Olympic Committee v. O-M Bread Inc.*, 26 U.S.P.Q.2d 1221 (T.T.A.B. 1993); *Focus 21 International Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 U.S.P.Q.2d 1316 (T.T.A.B. 1992). See also TBMP §507.02. Moreover, Microsoft's first set of discovery requests provided Applicant with notice that ownership of the rights to the BACKPAGE mark and any transfer of those rights were at issue in this proceeding, and Applicant has had an opportunity to take any discovery that it might need for its defense to allegations concerning that issue.

Fed. R. Civ. P. 15(a) provides that leave to amend pleadings shall be freely given when justice so requires. As stated by the Board in *Boral Ltd. v. FMC Corp.*, 59 U.S.P.Q.2d 1701, 1702 (T.T.A.B. 2000) "Consistent therewith, the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the parties." See also TBMP §507.02(a).

Accordingly, the Board should grant Applicant leave to file the proposed Amended Notice of Opposition submitted concurrently with its motion.

V. CONCLUSION

Microsoft's Motion for Leave to Amend should be granted because Microsoft only recently learned of the additional grounds for opposing Applicant's application during discovery. Further, the present proceeding is still in pre-trial stage and thus Applicant suffers no prejudice.

Microsoft's Motion for Summary Judgment should also be granted. Applicant assigned the rights to the present intent-to-use application in violation of Section 1060 and such action, as

a matter of law, renders the application void. Accordingly, judgment should be entered in Microsoft's favor sustaining the opposition and refusing Applicant's application.

DATED this 12th day of March, 2004.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



William O. Ferron, Jr.

Katherine J. Drakos

701 Fifth Avenue, Suite 6300

Seattle, Washington 98104

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Attorney for Opposer

MICROSOFT CORPORATION

454176_1

CERTIFICATE OF SERVICE

I, Annette Baca, hereby certify that the above **MEMORANDUM IN SUPPORT OF OPPOSER MICROSOFT CORPORATION'S MOTION TO AMEND THE NOTICE OF OPPOSITION AND MOTION FOR SUMMARY JUDGMENT** was served on Applicant's counsel by depositing same with the U.S. Postal Service, first-class postage prepaid on March 12, 2004, addressed as follows:

Barry L. Haley, Esq.
MALIN, HALEY & DIMAGGIO, P.A.
1936 S. Andrews Ave.
Fort Lauderdale, Florida 33316



Annette Baca

669005.828/454176_1

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03-15-2004
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**DECLARATION OF KATHERINE J. DRAKOS IN SUPPORT
OF OPPOSER MICROSOFT CORPORATION'S MOTION
TO AMEND THE NOTICE OF OPPOSITION AND
MOTION FOR SUMMARY JUDGMENT**

Katherine J. Drakos makes the following declaration on personal knowledge:

1. I am an associate at the Seed Intellectual Property Law Group and counsel for Opposer Microsoft Corporation ("Microsoft") in this proceeding. The following facts are true of my own knowledge unless otherwise stated.

2. Attached hereto as Exhibit A is a true and correct copy of Applicant's notice of publication for its intent-to-use application (Serial No. 76/156,933) for the mark BACKPAGE. The publication shows that the application was filed on October 31, 2000 and is owned by Valverde Investments Inc., Applicant and party to this proceeding.

3. Attached hereto as Exhibit B is a true and correct copy of Applicant's assignment of its mark and intent-to-use application for BACKPAGE to Conectron, Inc. ("Conectron"), attached to Applicant's Motion To Join Assignee As A Party Defendant (the "Conectron Assignment").

4. Attached hereto as Exhibit C is a true and correct copy of the Conectron Assignment as recorded in the United States Patent and Trademark Office on January 16, 2004 at reel/frame 2780/0790.

5. The PTO's records reflect that, as of March 1, 2004, Applicant had not brought the application into compliance with the requirements of Section 1(a) of the Act nor filed the certification required under Section 1(d) of the Act.

6. The Conectron Assignment does not sell or otherwise transfer any portion of Applicant's business associated with the BACKPAGE mark to Conectron. The operative language in the Conectron Assignment states:

...Valverde Investments, Inc. hereby sells, assigns and transfers to Conectron, Inc. all right, title, interest and good will in and to the Mark and the pending Application therefore, together with the goodwill of that portion of Valverde Investments, Inc.'s business in connection with which it has a *bona fide* intent to use the Mark.

See Conectron Assignment provided in Exhibit B, and attached to Applicant's Motion To Join Assignee As A Party Defendant. See also Conectron Assignment provided in Exhibit C, which shows recordation with the PTO at reel/frame 2780/0790.

7. On January 23, 2004, Applicant filed a motion to join Conectron as a party to this proceeding. Exhibit B further includes a true and correct copy of Applicant's motion.

8. Opposer first learned of the contents of the Conectron Assignment on January 27, 2004, the date Opposer received service of Applicant's motion to join Conectron as a party to this proceeding. Opposer had asked for copies of all assignments in its first set of discovery requests, which were served upon Applicant on September 10, 2003.

9. On February 10, 2004, Applicant officially produced the Conectron Assignment and Applicant's counsel confirmed that Applicant has produced all documents relevant to this proceeding, including those that relate to the Conectron Assignment. Attached hereto is a Exhibit D is a true and correct copy of Applicant's February 10, 2004 Supplemental Response to Opposer's Request for Production of Documents No. 14 and 24, which includes a copy of the Conectron Assignment Bates stamped 000311-000312.

10. The only document that Applicant has produced relevant to the Conectron Assignment is a copy of the recorded Conectron Assignment.

11. Attached hereto as Exhibit E is a true and correct copy of Applicant's Response to Interrogatory No. 19, in which Applicant states: "The BACKPAGE trademark is currently being assigned to Conectron, Inc. from Applicant."

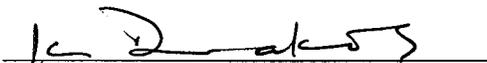
12. Attached hereto as Exhibit F is a true and correct copy of Applicant's Response to Interrogatory No. 20, in which Applicant states: "Dr. Valverde is the owner/shareholder of Valverde Investments, Inc."

13. Attached hereto as Exhibit G is a true and correct copy of Applicant's Reply in Support of Motion to Opposer's Opposition To Applicant's Motion To Join Assignee As A Party Defendant, in which Applicant states: "a person authorized to act on behalf of the assignee [Conectron], [is] namely the president of Conectron, Inc., Dr. Valverde."

14. Attached hereto as Exhibit H is a true and correct copy of Applicant's January 16, 2004 letter supplementing Applicant's responses to Opposer's initial discovery requests. Therein, Applicant states: "Mr. Ibarra is an officer of Conectron."

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

DATED this 12 day of March, 2004.


Katherine J. Drakos

455334_1.DOC

CERTIFICATE OF SERVICE

I, Annette Baca, hereby certify that the above **DECLARATION OF KATHERINE J. DRAKOS IN SUPPORT OF OPPOSER MICROSOFT CORPORATION'S MOTION TO AMEND THE NOTICE OF OPPOSITION AND MOTION FOR SUMMARY JUDGMENT** was served on Applicant's counsel by depositing same with the U.S. Postal Service, first-class postage prepaid, on March 12, 2004, addressed as follows:

Barry L. Haley, Esq.
MALIN, HALEY & DiMAGGIO, P.A.
1936 S. Andrews Ave.
Fort Lauderdale, Florida 33316



Annette Baca

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A

CLASS 9—(Continued).

SN 76-156,933. VALVERDE INVESTMENTS, INC., CORAL GABLES, FL. BY ASSIGNMENT IBARRA, RODOLFO, MIAMI, FL. AND VALVERDE, FERNANDO, CORAL GABLES, FL. FILED 10-31-2000.

BACKPAGE

FOR COMPUTER SOFTWARE USED TO ASSIST IN THE DESIGN AND DEPLOYMENT OF SOFTWARE APPLICATIONS ON THE INTERNET; COMPUTER SOFTWARE USED TO PAIR OR JOIN TWO OR MORE EXISTING WEB PAGES SUCH THAT THEY TRAVEL THROUGHOUT THE INTERNET AS ONE ENTITY (U.S. CLS. 21, 23, 26, 36 AND 38).

SN 76-157,376. O'BRIEN, WILLIAM KEISTER, COLUMBUS, OH. FILED 10-30-2000.

PC FLYER

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PC", APART FROM THE MARK AS SHOWN.

FOR DESKTOP COMPUTERS, LAPTOP COMPUTERS, COMPUTER SOFTWARE THAT IS USED TO ENHANCE THE PERFORMANCE OF SOFTWARE APPLICATIONS AND COMPUTER SYSTEMS AND COMPUTER SOFTWARE THAT IS USED FOR SYSTEM SETUPS (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 9-1-2000; IN COMMERCE 9-1-2000.

SN 76-159,449. ITT INDUSTRIES, INC., WHITE PLAINS, NY. FILED 11-6-2000.

UNILOGIC 3

OWNER OF U.S. REG. NO. 1,456,318.
FOR PUMP MICROCONTROLLERS FOR USE IN AND WITH PUMPS IN THE FIELDS OF FLUID TECHNOLOGY, CONTROL AND HANDLING (U.S. CLS. 21, 23, 26, 36 AND 38).

SN 76-162,956. SURF COMMUNICATIONS SOLUTIONS LTD., YOKNEAM, ISRAEL, FILED 11-10-2000.

SURF
Communication Solutions

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMMUNICATION SOLUTIONS", APART FROM THE MARK AS SHOWN.

FOR SOFTWARE FOR USE IN TRANSMISSION OF VOICE, FACSIMILES AND DATA BY TELECOMMUNICATION EQUIPMENT (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 3-0-1997; IN COMMERCE 10-0-1997.

CLASS 9—(Continued).

SN 76-163,045. DOLAN-JENNER INDUSTRIES, INC., LAWRENCE, MA. FILED 11-9-2000.

DOLAN-JENNER

FOR FIBER OPTIC ILLUMINATORS FOR NON-MEDICAL APPLICATIONS; ILLUMINATOR POWER SUPPLIES; FIBER OPTIC LIGHT SOURCES FOR NON-MEDICAL APPLICATIONS; FIBER OPTIC LIGHT GUIDES FOR NON-MEDICAL APPLICATIONS; FIBER OPTIC STROBES FOR NON-MEDICAL APPLICATIONS; QUARTZ HALOGEN ILLUMINATORS FOR NON-MEDICAL APPLICATIONS; FIBER OPTIC ILLUMINATION PLATFORMS FOR NON-MEDICAL APPLICATIONS, COMPRISING, GANTRY TYPE BASE, CAMERA MOUNTS, FLEXIBLE ARM TARGET/ACCESSORY HOLDERS, FIBER OPTIC FLOODS, FIBER OPTIC RING LIGHTS, FIBER OPTIC LINE LIGHTS, FIBER OPTIC BACKLIGHTS, LENSES, POLARIZERS, FILTERS AND FIBER OPTIC ILLUMINATORS FOR USE IN MACHINE VISION AND MICROSCOPY APPLICATIONS; LINE LIGHTS FOR NON-MEDICAL APPLICATIONS, COMPRISING, FIBER OPTIC LIGHT GUIDES, CONNECTORS, LIGHT SPLITTERS, AND LINE LIGHT HEADS FOR REFLECTING AND DIRECTING THE LIGHT SOURCE INTO THE SHAPE OF A LINE FOR USE IN MACHINE VISION AND MICROSCOPY APPLICATIONS; RINGLIGHTS FOR NON-MEDICAL APPLICATIONS, COMPRISING, FIBER OPTIC LIGHT GUIDES, CONNECTORS, AND RING LIGHT HEADS FOR REFLECTING AND DIRECTING THE LIGHT SOURCE INTO THE SHAPE OF A RING FOR USE IN MACHINE VISION AND MICROSCOPY APPLICATIONS; AND BACKLIGHTS FOR NON-MEDICAL APPLICATIONS, COMPRISING, FIBER OPTIC LIGHT GUIDES, CONNECTORS, HOUSING, AND DIFFUSERS FOR USE IN MACHINE VISION AND MICROSCOPY APPLICATIONS (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 0-0-1966; IN COMMERCE 0-0-1966.

SN 76-164,451. K-2 CORPORATION, VASHON, WA. FILED 11-13-2000.

AVALANCHE BALL

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AVALANCHE", APART FROM THE MARK AS SHOWN.

FOR LIFE-SAVING APPARATUS FOR SKIERS AND SNOWBOARDERS COMPRISED OF A FLAG AND TETHER FOR LOCATING A USER IN AN AVALANCHE (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-25-2001; IN COMMERCE 1-25-2001.

B

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

Dist: WAF-KJO AB
Orig: RM+1
66909.828

In the matter of Application
Serial No. 76/156,933

RECEIVED

Published in the Official Gazette
on September 17, 2002

JAN 27 2004

SEED INTELLECTUAL PROPERTY
LAW GROUP-LITIGATION

MICROSOFT CORPORATION,)
)
 Opposer,)
)
 v.)
)
 VALVERDE INVESTMENTS, INC.,)
)
 Applicant.)
 _____)

Opposition No. 91154797

APPLICANT'S MOTION TO JOIN ASSIGNEE AS A PARTY DEFENDANT

Applicant moves to join Conectron, Inc. with Valverdes Investment, Inc. as joint Applicants, in the above proceeding and that the caption of this proceeding be amended accordingly.

BRIEF IN SUPPORT OF MOTION

Valverdes Investment, Inc. assigned all right title and interest together with the goodwill in the mark sought to be cancelled in this proceeding to Conectron, Inc. A copy of such assignment is attached hereto. The electronically filed original of the attached assignment was filed in the United States Patent and Trademark Office on January 16, 2004.

EXHIBIT B

COPY TO CLIENT
Date Sent 1/27/04

A motion to join a party, based on transfer of title, is routinely granted under the provisions of Fed. R. Civ. P. 17 and 25; 37 C.F.R. §§2.113, 3.71 & 3.73(b); Pro-Cuts v. Schilz-Price Enterprises, Inc., 27 USPQD 1224 (TTAB 1993); Western Worldwide Enterprises Group Inc. v. Qinqdao Brewery, 17 USPQ2d 1137, 1138 n.4 (TTAB 1990); and Tonka Corp. v. Tonka Tools, Inc., 229 USPQ 857, 857 n. 1 (TTAB 1986); See also TBMP §512.01.

WHEREFORE, it is respectfully requested that this motion be granted.

Respectfully submitted,

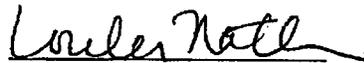
Date: 1-23-04



Barry L. Haley, Reg. No. 25,339
MALIN, HALEY & DIMAGGIO, P.A.
1936 South Andrews Ave.
Ft. Lauderdale, FL 33316
Tel: (954) 763-3303
Fax: (954) 522-6507

CERTIFICATE OF MAILING

I HEREBY CERTIFY that this MOTION TO JOIN ASSIGNEE AS A PARTY DEFENDANT is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Assistant Commissioner for Trademarks, Attn: Box TTAB, 2900 Crystal Drive, Arlington, Virginia 22202, this 23 day of January, 2004.



Lorelei Nathan, Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing MOTION TO JOIN ASSIGNEE AS A PARTY DEFENDANT in Opposition No. 91154797 is being deposited

as First Class mail with the United States Postal Service in a postage-paid envelope
addressed to: Assistant Commissioner for Trademarks, Attn: Box TTAB, 2900 Crystal
Drive, Arlington, Virginia 22202; and a true and correct copy of same deposited with the
United States Postal Service in a postage-paid envelope addressed to attorneys for Opposer:

William O. Ferron, Jr., Esq.
SEED Intellectual Property Law Group PLLC
701 Fifth Avenue, Suite 6300
Seattle, WA 98104-7092
Tel: (206) 622-4900
Fax: (206) 682-6031

this 23rd day of January, 2003.



Barry L. Haley, Reg. No. 25,339
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1936 South Andrews Ave.
Ft. Lauderdale, FL 33316
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Fax: (954) 522-6507

TRADEMARK ASSIGNMENT

WHEREAS, Valverde Investments, Inc., with its principal place of business at 8475 S.W. 53rd Ave, Miami, Florida 33143, owns and has a *bona fide* intent to use the below listed mark:

BACKPAGE Application Serial No. 76/156,933

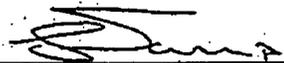
in connection with the following goods: Computer software used to assist in the design and deployment of software applications on the Internet; Computer software used to pair or join two or more existing web pages such that they travel throughout the Internet as one entity and

WHEREAS, Valverde Investments, Inc. has applied to register the above referenced Mark on the Principal Register of the United States Patent and Trademark Office based on their *bona fide* intent to use the Mark in commerce in connection with the above described goods and;

WHEREAS, Conectron, Inc. a Florida Corporation, with its principal place of business at 1414 NW 107th Avenue, Suite 201, Miami, Florida 33172, desires to acquire the business of Valverde Investments, Inc. in connection with which Valverde Investments, Inc. has a *bona fide* intent to use the Mark and the pending Applications;

NOW, THEREFORE, in consideration of the sum of ten dollars (\$10.00) for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Valverde Investments, Inc. hereby sells, assigns and transfers to Conectron, Inc. all right, title, interest and goodwill in and to the Mark and the pending Application therefor, together with the goodwill of that portion of Valverde Investments, Inc.'s business in connection with which it has a *bona fide* intent to use the Mark.

Valverde Investments, Inc.



**Fernando Valverde
President**

1/15/03
Date

LV10195/FRM/3705CONECTRONASSIGNMENT

Mar 11 04 06:16p

www.capitolpatent.com

703-671-1193

p.2

TRADEMARK ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Valverde Investments, Inc.		01/15/2004	CORPORATION: FLORIDA

RECEIVING PARTY DATA

Name:	Conectron, Inc.
Street Address:	1414 N.W. 107th Avenue, Suite 201
City:	Miami
State/Country:	FLORIDA
Postal Code:	33172
Entity Type:	CORPORATION: FLORIDA

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Serial Number:	76156933	BACKPAGE

CORRESPONDENCE DATA

Fax Number: (954)522-6507
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 954-763-3303
 Email: info@patents.com
 Correspondent Name: Barry L. Haley
 Address Line 1: 1936 South Andrews Aveune
 Address Line 4: Fort Lauderdale, FLORIDA 33316

ATTORNEY DOCKET NUMBER:	10195.3705
NAME OF SUBMITTER:	Barry L. Haley

Total Attachments: 2
 source=10195.backpage.assignment#page1.tif
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CH \$40.00 76156933

900004430

TRADEMARK
REEL: 002780 FRAME: 0790

EXHIBIT C

Mar 11 04 06:17p

www.capitolpatent.com

703-671-1193

p. 3

TRADEMARK ASSIGNMENT

WHEREAS, Valverde Investments, Inc., a Florida Corporation with its principal place of business at 8475 S.W. 53rd Ave, Miami, Florida 33143, owns and has a *bona fide* intent to use the below listed mark:

BACKPAGE Application Serial No. 76/156,933

in connection with the following goods: Computer software used to assist in the design and deployment of software applications on the Internet; Computer software used to pair or join two or more existing web pages such that they travel throughout the Internet as one entity and

WHEREAS, Valverde Investments, Inc. has applied to register the above referenced Mark on the Principal Register of the United States Patent and Trademark Office based on their *bona fide* intent to use the Mark in commerce in connection with the above described goods and;

WHEREAS, Conectron, Inc. a Florida Corporation, with its principal place of business at 1414 NW 107th Avenue, Suite 201, Miami, Florida 33172, desires to acquire the business of Valverde Investments, Inc. in connection with which Valverde Investments, Inc. has a *bona fide* intent to use the Mark and the pending Applications;

**TRADEMARK
REEL: 002780 FRAME: 0791**

Mar 11 04 06:17p

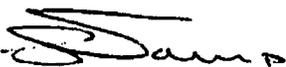
www.capitolpatent.com

703-671-1193

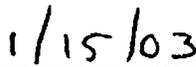
p. 4

NOW, THEREFORE, in consideration of the sum of ten dollars (\$10.00) for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Valverde Investments, Inc. hereby sells, assigns and transfers to Conectron, Inc. all right, title, interest and goodwill in and to the Mark and the pending Application therefor, together with the goodwill of that portion of Valverde Investments, Inc.'s business in connection with which it has a *bona fide* intent to use the Mark.

Valverde Investments, Inc.



Fernando Valverde
President



Date

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RECORDED: 01/16/2004

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

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P

In the matter of Application
Serial No. 76/156,933

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FEB 17 2004

SEED INTELLECTUAL PROPERTY
LAW GROUP-LITIGATION

MICROSOFT CORPORATION,)	Opposition No. 91154797
)	
Opposer,)	
)	
v.)	
)	
VALVERDE INVESTMENTS, INC.,)	
)	
Applicant.)	
_____)	

APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S
REQUEST FOR PRODUCTION OF DOCUMENTS NO. 14 AND 24.

Applicant, Valverde Investments, Inc., by and through undersigned counsel, gives notice of its filing Applicant's Supplemental Response to Opposer's Request for Production of Documents No. 14 and 24.

Applicant's responses are made without waiving or intending to waive any objections as to relevancy, privilege, or admissibility of any information provided in response to Opposer's request for documents in any subsequent proceeding or at the trial of this or any other action, on any ground. A partial answer to

COPY TO CLIENT
Date Sent _____

EXHIBIT D

any request which has been objected to, in whole or in part, is not intended to be a waiver of the objection.

GENERAL OBJECTIONS

1. Applicant objects to any request for documents which seeks the discovery of information subject to the attorney-client privilege and/or work product immunity.

2. Applicant objects to Opposer's Requests for Documents to the extent that they seek information or documents which are privileged, confidential, highly proprietary, and/or trade secret information or documents of Applicant.

3. Applicant objects to Opposer's Requests for Documents to the extent that they seek information and/or documents which is neither relevant to the issues raised in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence.

4. To the extent that Applicant responds to a request for documents, this should not be construed as a representation or admission that the responses are admissible at trial.

Applicant's responses and further objections to Opposer's Requests for Production of Documents follows; each is deemed to incorporate the foregoing general objections.

REQUEST NO. 14:

Produce all documents referring or relating to any license, assignment, or transfer of any claimed rights in Applicant's BACKPAGE mark.

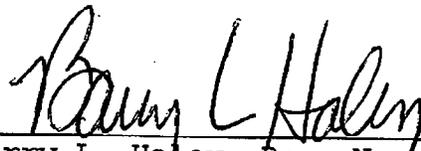
RESPONSE: See General Objections. Subject to those objections and without waving same, Applicant responds that it will provide the following documents: Written license agreement between Applicant and Terremark Worldwide, Inc. Bates Stamped 000303-000310.

REQUEST NO. 24:

Produce all documents evidencing a license agreement or other authorization between Valverde Investments, Inc. and Conectron, Inc. relating to the BACKPAGE products or services.

RESPONSE: See General Objections. Subject to those objections and without waiving the same, Applicant responds that it will provide the following documents: Written trademark assignment between Valverde Investments, Inc. and Conectron, Inc. Bates Stamped 000311-000312.

Date: February 10th, 2004



Barry L. Haley, Reg. No. 25,339
MALIN, HALEY & DIMAGGIO, P.A.
1936 South Andrews Ave.

Ft. Lauderdale, FL 33316
Tel: (954) 763-3303
Fax: (954) 522-6507

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing
APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S REQUEST FOR
PRODUCTION OF DOCUMENTS NO. 14 AND 24, in Opposition No. 91154797
is being deposited as First Class mail with the United States
Postal Service in a postage-paid envelope addressed to attorneys
for Opposer:

William O. Ferron, Jr., Esq.
SEED Intellectual Property Law Group PLLC
701 Fifth Avenue, Suite 6300
Seattle, WA 98104-7092
Tel: (206) 622-4900
Fax: (206) 682-6031

this 10th day of February, 2004.



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TRADEMARK ASSIGNMENT

WHEREAS, Valverde Investments, Inc., with its principal place of business at 8475 S.W. 53rd Ave, Miami, Florida 33143, owns and has a *bona fide* intent to use the below listed mark:

BACKPAGE Application Serial No. 76/156,933

in connection with the following goods: Computer software used to assist in the design and deployment of software applications on the Internet; Computer software used to pair or join two or more existing web pages such that they travel throughout the Internet as one entity and

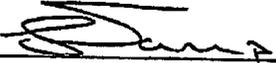
WHEREAS, Valverde Investments, Inc. has applied to register the above referenced Mark on the Principal Register of the United States Patent and Trademark Office based on their *bona fide* intent to use the Mark in commerce in connection with the above described goods and;

WHEREAS, Conectron, Inc. a Florida Corporation, with its principal place of business at 1414 NW 107th Avenue, Suite 201, Miami, Florida 33172, desires to acquire the business of Valverde Investments, Inc. in connection with which Valverde Investments, Inc. has a *bona fide* intent to use the Mark and the pending Applications;

000311

NOW, THEREFORE, in consideration of the sum of ten dollars (\$10.00) for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Valverde Investments, Inc. hereby sells, assigns and transfers to Conectron, Inc. all right, title, interest and goodwill in and to the Mark and the pending Application therefor, together with the goodwill of that portion of Valverde Investments, Inc.'s business in connection with which it has a *bona fide* intent to use the Mark.

Valverde Investments, Inc.



Fernando Valverde
President

1/15/03

Date

LA10195/FRM/3705CONECTRONASSIGNMENT

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

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OCT 17 2003

In the matter of Application
Serial No. 76/156,933

SEED INTELLECTUAL PROPERTY
LAW GROUP-LITIGATION

Published in the Official Gazette
on September 17, 2002

Dkt: WIF, AB, RM
Ctg: Jw+1

MICROSOFT CORPORATION,)	Opposition No. 91154797
)	
Opposer,)	
)	
v.)	
)	
VALVERDE INVESTMENTS, INC.,)	
)	
Applicant.)	
_____)	

APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF INTERROGATORIES

COMES NOW Applicant, Valverde Investments, Inc. ("Applicant"), pursuant to Rule 33, Fed.R.Civ.P., and 37 C.F.R. § 2.120, and hereby responds to Opposer, Microsoft Corporation's ("Opposer") Interrogatories numbered 1 through 26 by submitting the following answers and objections.

Applicant's responses are made without waiving or intending to waive any objections as to relevancy, privilege, or admissibility of any information provided in response to Opposer's Interrogatories in any subsequent proceeding or at the trial of this or any other action, on any ground. A partial answer to any

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EXHIBIT E

INTERROGATORY NO. 18

(a) Has any person licensed, assigned, or transferred to Applicant, any rights Applicant claims to have in the BACKPAGE mark?

(b) If the answer to subpart (a) is anything other than an unqualified no, identify each such person, the dates of commencement and termination of each license, assignment or transfer, the specific goods or services involved, and the person most knowledgeable of each transfer.

RESPONSE:

(a) Dr. Fernando Valverde and Rudy Ibarra assigned the BACKPAGE trademark to Applicant.

(b) Applicant is currently in the process of assigning the trademark to Conectron, Inc.

INTERROGATORY NO. 19

Identify each person or entity that Applicant has authorized to use its BACKPAGE mark.

RESPONSE:

Conectron, Inc. is the licensee of Applicant. The BACKPAGE trademark is currently being assigned to Conectron, Inc. from Applicant.

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

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OCT 17 2003

In the matter of Application
Serial No. 76/156,933

SEED INTELLECTUAL PROPERTY
LAW GROUP-LITIGATION

Published in the Official Gazette
on September 17, 2002

Dist WNF, AB, RM
Orig JWP

MICROSOFT CORPORATION,)	Opposition No. 91154797
)	
Opposer,)	
)	
v.)	
)	
VALVERDE INVESTMENTS, INC.,)	
)	
Applicant.)	

APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF INTERROGATORIES

COMES NOW Applicant, Valverde Investments, Inc. ("Applicant"), pursuant to Rule 33, Fed.R.Civ.P., and 37 C.F.R. § 2.120, and hereby responds to Opposer, Microsoft Corporation's ("Opposer") Interrogatories numbered 1 through 26 by submitting the following answers and objections.

Applicant's responses are made without waiving or intending to waive any objections as to relevancy, privilege, or admissibility of any information provided in response to Opposer's Interrogatories in any subsequent proceeding or at the trial of this or any other action, on any ground. A partial answer to any

COPY TO CLIENT
Date Sent 10/17/03

EXHIBIT F

INTERROGATORY NO. 20

If Applicant claims that it has established rights in the mark BACKPAGE through use of the mark by any entity other than Applicant,

- (a) Identify each such entity;
- (b) Describe its relationship to Applicant;
- (c) Identify the products and services marketed or sold by such entity in association with the BACKPAGE mark;
- (d) Identify when such entity's use of the mark commenced and, if applicable, ceased.

RESPONSE:

- (a) Applicant was assigned the trademark from Dr. Fernando Valverde and Rudy Ibarra.
- (b) Dr. Valverde is the owner/shareholder of Valverde Investments, Inc.
- (c) The trademark was filed as an intent-to-use.
- (d) The trademark was filed as an intent-to-use.

INTERROGATORY NO. 21

Describe in detail the nature of the relationship between Valverde Investments, Inc. and Conectron, Inc., including with respect to Conectron's activities relating to BACKPAGE products and services.

RESPONSE:

Conectron, Inc. is the licensee of Valverde Investments, Inc. Valverde Investments, Inc. is currently assigning all

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

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In the matter of Application
Serial No. 76/156,933

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Published in the Official Gazette
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SEED INTELLECTUAL PROPERTY
LAW GROUP-LITIGATION

MICROSOFT CORPORATION,)
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 Opposer,)
)
 v.)
)
 VALVERDE INVESTMENTS, INC.,)
)
 Applicant.)
 _____)

Opposition No. 91154797

**APPLICANT'S REPLY IN SUPPORT OF MOTION
TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO JOIN
ASSIGNEE AS A PARTY DEFENDANT**

Applicant hereby replies to Opposer, Microsoft Corporation's Opposition to Applicant's, Valverde Investments, Inc. ("Assignor"), motion to join Conectron, Inc. ("Assignee") as joint Applicants, in the above proceeding. The Applicant's motion to join the assignee as a party defendant was requested on the basis of the Applicant's assignment of all right title and interest together with the goodwill in the mark opposed in this proceeding to the Assignee, Conectron, Inc.

The Opposer thereafter opposed this Motion to Join on the grounds that the Motion was submitted without the signature of the assignee, Conectron, Inc., or by a

COPY TO CLIENT
Date Sent 8/1/04

party authorized to act on behalf of the assignee, in accordance with 37 C.F.R. 3.73(b)(2). The Opposer further requested that prior to joining the Assignee as a party defendant in this proceeding the requirements of 37 C.F.R. 3.73(b)(2) be met.

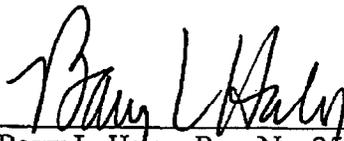
Therefore, in reply to the Opposer's request, the Applicant hereby submits a signed declaration, which includes a statement that the person signing the submission is a person authorized to act on behalf of the assignee, namely the president of Conectron, Inc., Dr. Fernando Valverde. (Please see attached declaration, Exhibit A).

The Applicant further requests that the Trademark Trial and Appeal Board, in its discretion, consider this reply brief in support of the Applicant's motion, in that this reply is submitted in an effort to clarify the issues under consideration, in accordance with 37 C.F.R. §2.127(a); See also *Seculus da Amazonia S/s v. Toyota Jidosha Kabushiki Kaisha*, 66 USPQ2d 1154, n.4 (TTAB 2003).

WHEREFORE, it is respectfully requested that this motion be granted.

Respectfully submitted,

Date: 2/27/04



Barry L. Haley, Reg. No. 23,339
MALIN, HALEY & DIMAGGIO, P.A.
1936 South Andrews Ave.
Ft. Lauderdale, FL 33316
Tel: (954) 763-3303
Fax: (954) 522-6507

CERTIFICATE OF MAILING

I HEREBY CERTIFY that this REPLY TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO JOIN ASSIGNEE AS A PARTY DEFENDANT is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Assistant

Commissioner for Trademarks, Attn: Box TTAB, 2900 Crystal Drive, Arlington, Virginia 22202, this
27th day of February, 2004.

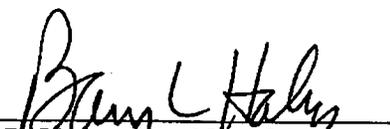

Lorelei Nathan, Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing REPLY TO OPPOSER'S
OPPOSITION TO APPLICANT'S MOTION TO JOIN ASSIGNEE AS A PARTY
DEFENDANT in Opposition No. 91154797 is being deposited as First Class mail with the
United States Postal Service in a postage-paid envelope addressed to: Assistant
Commissioner for Trademarks, Attn: Box TTAB, 2900 Crystal Drive, Arlington, Virginia
22202; and a true and correct copy of same deposited with the United States Postal Service
in a postage-paid envelope addressed to attorneys for Opposer:

William O. Ferron, Jr., Esq.
SEED Intellectual Property Law Group PLLC
701 Fifth Avenue, Suite 6300
Seattle, WA 98104-7092
Tel: (206) 622-4900
Fax: (206) 682-6031

this 27th day of February, 2003.


Barry L. Haley, Reg. No. 25,339
MALIN, HALEY & DiMAGGIO, P.A.
1936 South Andrews Ave.
Ft. Lauderdale, FL 33316
Tel: (954) 763-3303
Fax: (954) 522-6507

MALIN, HALEY & DiMAGGIO, P.A.
PATENT, TRADEMARK & COPYRIGHT ATTORNEYS

EUGENE F. MALIN (1936-1990)

BARRY L. HALEY
DALE PAUL DiMAGGIO
DANIEL STEVEN POLLEY

JOSEPH R. ENGLANDER
JACQUELYN S. PICKENS
JERRY D. HAYNES**

JOHN C. BLACK*
OF COUNSEL

* ILLINOIS BAR ONLY
** NEW YORK BAR ONLY



January 16, 2004

Dist: Wof KJO 007
Orig: Rm
65 9005.828

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MIAMI OFFICE:

MIAMI CENTER, 28TH FLOOR

201 S. BISCAYNE BOULEVARD

TELEPHONE (305) 374-4082

WEST PALM BEACH OFFICE:

1601 FORUM PLACE, SUITE 701

TELEPHONE (561) 832-6341

E-MAIL: mhd@mhdpatents.com

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JAN 21 2004

SEED INTELLECTUAL PROPERTY
LAW GROUP-LITIGATION

Katherine J. Drakos, Esq.
SEED Intellectual Property Law Group PLLC
701 Fifth Avenue, Suite 6300
Seattle, WA 98104-7092

Re: *Microsoft Corporation v. Valverde Investments, Inc.*
Opposition No. 154,797 to US Ser. No. 76/156,933 for BACKPAGE
Your File No. 669005.828
Our File No. 10195.3917

Dear Ms. Drakos:

This is in response to your letter of November 6, 2003 concerning Valverde's responses to Microsoft's discovery requests. You have stated that you believe the responses are inadequate for reasons discussed in that letter. This letter is in response to your letter of November 6, 2003.

Signatory to Request for Admissions and Interrogatories

BACKPAGE, the Applicant has been assigned to Conectron, Inc. Mr. Ibarra is an officer of Conectron.

Interrogatory No. 4

Valverde has responded completely to this Interrogatory. The Interrogatory specifically states identify "customers or classes of customers". In the Valverde response, Valverde identified actual customers in full compliance with the Interrogatory. We are not required to identify classes of customers.

Interrogatory No. 5

The Interrogatory requires the features and functions of applicant's BACKPAGE product. We believe that US Patent No. 6539406 adequately certainly describes the function of the

Mr. Fernando Valverde
January 16, 2004
Page 2

BACKPAGE product. Valverde shall provide supplementary responses including additional descriptions for Interrogatory No. 5 under separate cover.

Interrogatory No. 7

Interrogatory No. 7 says "state the dollar value of gross sales on a yearly basis of BACKPAGE products and services". The answer is that the BACKPAGE product has not generated any dollars or any gross sales. This includes licensees such as Terramark which stopped doing business with Valverde Investments because of Microsoft's cease and desist letter. The product has been offered for sale but has not generated any gross dollars or any sales. The supplemental response addresses this.

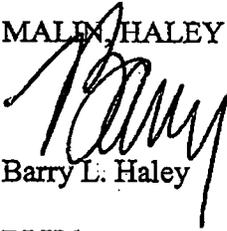
Interrogatory No. 14

Applicant has supplemented Interrogatory No. 14 to include the response that Applicant in 2000, had a Thompson & Thompson search done for the mark BACKPAGE prior to filing for a Federal Trademark Application. Applicant's attorney prepared an opinion to Applicant based on the Thompson & Thompson search. Opposer's mark was never mentioned nor considered. The Opposer's mark was listed, along with hundreds of other marks in the Thompson & Thompson search.

In conclusion, Applicant believes that it has sufficiently answered Opposer's Interrogatories. However, Applicant shall submit supplementary responses to the Interrogatories under separate cover.

Very truly yours,

MALIN, HALEY & DIMAGGIO, P.A.



Barry L. Haley

BLH:ltm

EA10195LTR3917-Drakos

I hereby certify that on the date specified below, this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Trademark Trial and Appeal Board, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

March 12, 2004
Date

Annette Baca
Annette Baca

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

MICROSOFT CORPORATION,)
)
)
)
Opposer,)
)
v.)
)
VALVERDE INVESTMENTS, INC.,)
)
Applicant.)
_____)

OPPOSITION NO. 91/154,797

Serial No. 76/156,933

Docket No. 669005.828



Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

03-15-2004

U.S. Patent & TMOfc/TM Mail RcptDt. #22

**OPPOSER MICROSOFT CORPORATION'S MOTION TO
AMEND THE NOTICE OF OPPOSITION**

Opposer Microsoft Corporation ("Microsoft") hereby moves for leave to amend the notice of opposition to the application by Valverde Investments, Inc. ("Applicant") to register the mark BACKPAGE.

Microsoft requests leave to assert as an additional ground for opposition Applicant's failure to comply with the requirements of 15 U.S.C. § 1060 in assigning the present intent-to-use application and BACKPAGE mark to Conectron Inc., (the "Conectron Assignment").

Microsoft learned of the factual basis for this additional ground for opposition after reviewing a copy of the Conectron Assignment first received on January 27, 2004, and officially produced on February 10, 2004.

This motion is based on the pleadings filed in this action and on the supporting declaration of Katherine J. Drakos and the "Memorandum in Support of Opposer Microsoft Corporation's Motion to Amend the Notice of Opposition and Motion for Summary Judgment" submitted herewith.

Opposer submits concurrently herewith a proposed Amended Notice of Opposition adding a new paragraph 15 to address this issue and a Motion for Summary Judgment based on the same grounds as the instant Motion to Amend.

DATED this 12th day of March, 2004.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



William O. Ferron, Jr.
Katherine J. Drakos
701 Fifth Avenue, Suite 6300
Seattle, Washington 98104
Phone: (206) 622-4900
Fax: (206) 682-6031

Attorneys for Opposer
MICROSOFT CORPORATION

CERTIFICATE OF SERVICE

I, Annette Baca, hereby certify that the above **OPPOSER MICROSOFT CORPORATION'S MOTION TO AMEND THE NOTICE OF OPPOSITION** was served on Applicant's counsel by depositing same with the U.S. Postal Service, first-class postage prepaid, on March 12, 2004, addressed as follows:

Barry L. Haley, Esq.
MALIN, HALEY & DiMAGGIO, P.A.
1936 S. Andrews Avenue
Fort Lauderdale, Florida 33316



Annette Baca

460775_1.DOC

TTAB

I hereby certify that on the date specified below, this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Trademark Trial and Appeal Board, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

March 12, 2004
Date

Annette Baca
Annette Baca

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

MICROSOFT CORPORATION,)	
)	OPPOSITION NO. 91/154,797
Opposer,)	
)	Serial No. 76/156,933
v.)	
)	
VALVERDE INVESTMENTS, INC.,)	Docket No. 669005.828
)	
Applicant.)	
_____)	



03-15-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

[PROPOSED]
AMENDED NOTICE OF OPPOSITION

Opposer Microsoft Corporation (hereinafter "Opposer" or "Microsoft"), which has its principal place of business at One Microsoft Way, Redmond, Washington 98052, believes that it would be damaged by registration of the BACKPAGE mark shown in United States Trademark Application Serial No. 76/156,933 filed by Rodolfo Ibarra and Fernando Valverde and assigned to Valverde Investments, Inc. (hereinafter "Applicant"), published for opposition on September 17, 2002, for which application an extension of time to oppose was timely filed, and therefore Opposer opposes that registration. The application may be summarized as follows:

In re trademark application: 76/156,933
Filed: October 31, 2000
Applicant: Valverde Investments, Inc. by assignment from Rodolfo Ibarra and Fernando Valverde
Mark: BACKPAGE
For: Computer software used to assist in the design and deployment of software applications on the Internet; computer software used to pair or join two or more existing web pages such that they travel throughout the Internet as one entity
International Class: 9
Published: September 17, 2002

A copy of the publication notice is attached to this Notice of Opposition as Exhibit 1 - *Official Gazette (Trademark)*, September 17, 2002 at TM-404.

The grounds for this Opposition are as follows:

1. Opposer is in the business, *inter alia*, of developing and marketing a wide variety of computer software and related products and services, including software for designing and deployment of software applications on the Internet and numerous Internet-related products and services.
2. Beginning as early as October 11, 1995, and well prior to the October 31, 2000 filing date of Applicant's intent-to-use application, Opposer and its predecessor-in-interest have used the mark FRONTPAGE in connection with computer software for the design and development of Internet applications.
3. Opposer's predecessor Vermeer Technologies, Inc. ("Vermeer") applied for and received United States Trademark Registration No. 2,046,526 for the mark FRONTPAGE for computer authoring software for use on computer communication networks, namely, software for creating, editing and delivering textual and graphic information, locally and remotely, and instruction manuals sold as a unit. Said registration and all rights in the registered FRONTPAGE mark were assigned to Opposer by virtue of Articles of Merger recorded by the United States Patent

and Trademark Office at reel 1809, frame 0552. Opposer continues to maintain said registration, which is valid and subsisting. A copy of the registration is annexed hereto as Exhibit 2.

4. Opposer's mark FRONTPAGE symbolizes extensive good will and consumer recognition which have been developed by Opposer and its predecessor through substantial sales of goods under the mark and through substantial and extensive advertising, promoting and popularizing of the FRONTPAGE mark in the United States. This use and promotion includes Opposer's FRONTPAGE Logo program, under which software developers who designed and deployed their Internet applications and web sites using Opposer's FRONTPAGE product displayed FRONTPAGE logos on their website to promote that their sites were created and managed using Opposer's FRONTPAGE software.

5. As a result of Opposer's and consumers' use and advertising of Opposer's FRONTPAGE trademark, the mark is well known in the United States and is recognized as identifying the high-quality goods of Opposer. The FRONTPAGE mark and the associated goodwill are valuable assets of Opposer.

6. Applicant's BACKPAGE mark and Opposer's FRONTPAGE mark share the root word "PAGE." The term "BACK," shown in Applicant's mark, and the term "FRONT," shown in Opposer's mark, are associative terms. The mark BACKPAGE will be immediately associated with FRONTPAGE in the minds of relevant consumers. *See Bose Corp. v. QSC Audio Prods., Inc.*, 293 F.3d 1367 (Fed. Cir. 2002) (confusion likely between Applicant's POWERWAVE and Opposer's ACOUSTIC WAVE and WAVE marks); *The Downtowner Corp. v. Uptowner Inns, Inc.*, 178 U.S.P.Q. 105 (T.T.A.B. 1973) (the marks UPTOWNER and DOWNTOWNER found to be "associative" in nature and confusingly similar), and *National Ass'n of Blue Shield Plans v. United Bankers Life Ins. Co.*, 362 F.2d 374 (5th Cir. 1966) (likelihood of confusion between the BLUE SHIELD and RED SHIELD marks).

7. Applicant's BACKPAGE mark for "computer software used to assist in the design and deployment of software applications on the Internet; computer software used to pair or join two or more existing web pages such that they travel throughout the Internet as one entity," as described

in the subject application, is confusingly and deceptively similar to Opposer's FRONTPAGE mark and registration and Opposer's goods and services associated therewith, such that the trade and purchasing public will be confused by and deceived into believing that Applicant's goods and services originate with or are otherwise authorized by, sponsored by, licensed by, or associated with Opposer.

8. In view of the similarity of the respective marks and the related nature of the goods or services of the respective parties, Applicant's BACKPAGE mark so resembles the FRONTPAGE mark registered and used by and associated with Opposer in the United States, and not at any time abandoned, that Applicant's use of its proposed mark is likely to cause confusion, or to cause mistake or to deceive.

9. The goods and services of Opposer and Applicant are so closely related that if the parties' respective goods and/or services are marketed and sold under the same or confusingly similar marks, a likelihood of confusion will result.

10. Applicant selected its BACKPAGE mark knowledge of Opposer's FRONTPAGE mark.

11. Applicant filed the present application with knowledge of Opposer's FRONTPAGE mark.

12. Upon information and belief, neither Applicant nor any predecessor-in-interest of Applicant has made use of Applicant's BACKPAGE as a trademark or service mark prior to October 31, 2000, the filing date of Applicant's intent-to-use application.

13. Upon information and belief, Applicant's BACKPAGE mark merely describes its product, has not acquired secondary meaning and therefore is an unregistrable mark.

14. Opposer's FRONTPAGE mark was a famous mark at the time Applicant filed its application and will be diluted by the registration Applicant seeks here.

15. Upon information and belief, subsequent to the filing of Opposer's Notice of Opposition, Applicant assigned its intent-to-use application and all rights in the BACKPAGE mark

to Conectron, Inc. in violation of the provisions of 15 U.S.C. § 1060. Applicant's application is thus void as a matter of law and should not be allowed to issue as a registration.

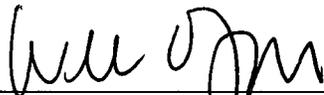
16. By reason of all of the foregoing, Opposer would be greatly damaged by the registration of Applicant's BACKPAGE mark.

WHEREFORE, Opposer prays that this Opposition be sustained and the application be denied and the mark refused registration.

DATED this 12th day of March, 2004.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



William O. Ferron, Jr.
Katherine J. Drakos
701 Fifth Avenue, Suite 6300
Seattle, Washington 98104-7092
(206) 622-4900
Fax: (206) 682-6031

Attorneys for Opposer
MICROSOFT CORPORATION

Enclosures:
Exhibits 1 and 2

669005.828/455769_1.DOC

CERTIFICATE OF SERVICE

I, Annette Baca, hereby certify that the above [PROPOSED] AMENDED NOTICE OF OPPOSITION was served on Applicant's counsel by depositing same with the U.S. Postal Service, first-class postage prepaid, on March 12, 2004, addressed as follows:

Barry L. Haley, Esq.
MALIN, HALEY & DIMAGGIO, P.A.
1936 S. Andrews Avenue
Fort Lauderdale, Florida 33316


Annette Baca

CLASS 9—(Continued).

SN 76-156,933. VALVERDE INVESTMENTS, INC., CORAL GABLES, FL. BY ASSIGNMENT IBARRA, RODOLFO, MIAMI, FL. AND VALVERDE, FERNANDO, CORAL GABLES, FL. FILED 10-31-2000.

BACKPAGE

FOR COMPUTER SOFTWARE USED TO ASSIST IN THE DESIGN AND DEPLOYMENT OF SOFTWARE APPLICATIONS ON THE INTERNET; COMPUTER SOFTWARE USED TO PAIR OR JOIN TWO OR MORE EXISTING WEB PAGES SUCH THAT THEY TRAVEL THROUGHOUT THE INTERNET AS ONE ENTITY (U.S. CLS. 21, 23, 26, 36 AND 38).

SN 76-157,376. O'BRIEN, WILLIAM KEISTER, COLUMBUS, OH. FILED 10-30-2000.

PC FLYER

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PC", APART FROM THE MARK AS SHOWN.

FOR DESKTOP COMPUTERS, LAPTOP COMPUTERS, COMPUTER SOFTWARE THAT IS USED TO ENHANCE THE PERFORMANCE OF SOFTWARE APPLICATIONS AND COMPUTER SYSTEMS AND COMPUTER SOFTWARE THAT IS USED FOR SYSTEM SETUPS (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 9-1-2000; IN COMMERCE 9-1-2000.

SN 76-159,449. ITT INDUSTRIES, INC., WHITE PLAINS, NY. FILED 11-6-2000.

UNILOGIC 3

OWNER OF U.S. REG. NO. 1,456,318.
FOR PUMP MICROCONTROLLERS FOR USE IN AND WITH PUMPS IN THE FIELDS OF FLUID TECHNOLOGY, CONTROL AND HANDLING (U.S. CLS. 21, 23, 26, 36 AND 38).

SN 76-162,956. SURF COMMUNICATIONS SOLUTIONS LTD., YOKNEAM, ISRAEL, FILED 11-10-2000.

SURF
Communication Solutions

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMMUNICATION SOLUTIONS", APART FROM THE MARK AS SHOWN.

FOR SOFTWARE FOR USE IN TRANSMISSION OF VOICE, FACSIMILES AND DATA BY TELECOMMUNICATION EQUIPMENT (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 3-0-1997; IN COMMERCE 10-0-1997.

CLASS 9—(Continued).

SN 76-163,045. DOLAN-JENNER INDUSTRIES, INC., LAWRENCE, MA. FILED 11-9-2000.

DOLAN-JENNER

FOR FIBER OPTIC ILLUMINATORS FOR NON-MEDICAL APPLICATIONS; ILLUMINATOR POWER SUPPLIES; FIBER OPTIC LIGHT SOURCES FOR NON-MEDICAL APPLICATIONS; FIBER OPTIC LIGHT GUIDES FOR NON-MEDICAL APPLICATIONS; FIBER OPTIC STROBES FOR NON-MEDICAL APPLICATIONS; QUARTZ HALOGEN ILLUMINATORS FOR NON-MEDICAL APPLICATIONS; FIBER OPTIC ILLUMINATION PLATFORMS FOR NON-MEDICAL APPLICATIONS, COMPRISING, GANTRY TYPE BASE, CAMERA MOUNTS, FLEXIBLE ARM TARGET/ACCESSORY HOLDERS, FIBER OPTIC FLOODS, FIBER OPTIC RING LIGHTS, FIBER OPTIC LINE LIGHTS, FIBER OPTIC BACKLIGHTS, LENSES, POLARIZERS, FILTERS AND FIBER OPTIC ILLUMINATORS FOR USE IN MACHINE VISION AND MICROSCOPY APPLICATIONS; LINE LIGHTS FOR NON-MEDICAL APPLICATIONS, COMPRISING, FIBER OPTIC LIGHT GUIDES, CONNECTORS, LIGHT SPLITTERS, AND LINE LIGHT HEADS FOR REFLECTING AND DIRECTING THE LIGHT SOURCE INTO THE SHAPE OF A LINE FOR USE IN MACHINE VISION AND MICROSCOPY APPLICATIONS; RINGLIGHTS FOR NON-MEDICAL APPLICATIONS, COMPRISING, FIBER OPTIC LIGHT GUIDES, CONNECTORS, AND RING LIGHT HEADS FOR REFLECTING AND DIRECTING THE LIGHT SOURCE INTO THE SHAPE OF A RING FOR USE IN MACHINE VISION AND MICROSCOPY APPLICATIONS; AND BACKLIGHTS FOR NON-MEDICAL APPLICATIONS, COMPRISING, FIBER OPTIC LIGHT GUIDES, CONNECTORS, HOUSING, AND DIFFUSERS FOR USE IN MACHINE VISION AND MICROSCOPY APPLICATIONS (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 0-0-1966; IN COMMERCE 0-0-1966.

SN 76-164,451. K-2 CORPORATION, VASHON, WA. FILED 11-13-2000.

AVALANCHE BALL

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AVALANCHE", APART FROM THE MARK AS SHOWN.

FOR LIFE-SAVING APPARATUS FOR SKIERS AND SNOWBOARDERS COMPRISED OF A FLAG AND TETHER FOR LOCATING A USER IN AN AVALANCHE (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-25-2001; IN COMMERCE 1-25-2001.

2

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,046,526

United States Patent and Trademark Office

Registered Mar. 18, 1997

**TRADEMARK
PRINCIPAL REGISTER**

FRONTPAGE

VERMEER TECHNOLOGIES, INC. (DELA-
WARE CORPORATION)
725 CONCORD AVENUE
CAMBRIDGE, MA 02138

FOR: COMPUTER AUTHORING SOFTWARE
FOR USE ON COMPUTER COMMUNICATION
NETWORKS, NAMELY, SOFTWARE FOR CRE-
ATING, EDITING AND DELIVERING TEXTU-
AL AND GRAPHIC INFORMATION, LOCALLY

AND REMOTELY, AND INSTRUCTION
MANUALS SOLD AS A UNIT, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).

FIRST USE 10-11-1995; IN COMMERCE
10-11-1995.

SN 74-684,587, FILED 6-5-1995.

ELIZABETH A. DUNN, EXAMINING ATTOR-
NEY