

EXPRESS MAIL LABEL NO.: EV389459323US

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

IN THE MATTER OF APPLICATION

Mark : DROP GYRO
Applicant: : Gyrodata, Inc.
Serial No. : 76/481,141
Filing Date : January 9, 2003
Published in the *Official Gazette* of January 27, 2004



02-06-2004

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

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SCIENTIFIC DRILLING
INTERNATIONAL, INC.,:

Opposer, : Opposition No.:

v. :

GYRODATA, INC., :

Applicant. :

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NOTICE OF OPPOSITION

Opposer, Scientific Drilling International, Inc., a Texas corporation having a place of business at 1100 Rankin Road, Houston, Texas 77073 (hereinafter "Opposer") believes it will be damaged by the issuance of a registration to Gyrodata, Inc., a Texas corporation having a place of business at 1682 W. Sam Houston Parkway North, Houston, Texas 77043 (hereinafter "Applicant"), upon its application Serial No. 76/481,141 for the term DROP GYRO in International Class 42 for "oil and gas well surveying services."

As grounds for this opposition, Opposer alleges that:

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1. On January 9, 2003, Applicant filed Application Serial No. 76/481,141 to register the mark DROP GYRO on the Principal Register for “oil and gas well surveying services” in International Class 42.

2. On information and belief, Applicant’s alleged mark consists of a term that when applied to the services recited in Applicant’s application is inherently generic or, alternatively, merely descriptive in that the term “drop gyro” is an apt and common term used to describe products or services of the nature involved herein.

3. Opposer is engaged in the business of providing products and services in the oil and gas well drilling business that are related to Applicant’s recited services, and Opposer has a valid and legal right to describe those products or services by use of the term sought to be registered by Applicant.

4. Opposer is likely to be damaged by registration of the term DROP GYRO in that the *prima facie* effect of such registration will tend to impair Opposer’s right to descriptive use of that term.

5. In view of the above allegations, Applicant is not entitled to federal registration of its alleged mark DROP GYRO in that Applicant is not entitled to exclusive use of said term in commerce in connection with the recited services.

6. Applicant’s alleged mark does not function to identify Applicant’s services and distinguish them from those offered by others.

7. Upon information and belief, Applicant’s alleged mark has not become distinctive of the recited services in commerce and no customer recognition of said term as a valid mark identifying only Applicant’s services has been achieved.

8. In view of the foregoing, Opposer, along with others in the oil and gas well drilling business, should be entitled to use the term “drop gyro” equally with Applicant to identify or describe their products and services related to the services recited in Applicant’s application.

9. If Applicant’s mark matures to registration, Opposer and others in the oil and gas well drilling business would be precluded from accurately describing, advertising or marketing products and services associated therewith. Furthermore, if Applicant’s mark matures to registration, use of the term “drop gyro” by Opposer and others in the oil and gas well drilling business could be impaired and subject to unwarranted attack or suffer a threat of interference that is inappropriate.

10. As additional grounds for the opposition, Applicant’s application for the alleged mark DROP GYRO fails to show use of the mark in connection with the recited services and therefore is not entitled to registration.

11. Lastly, *res judicata* or collateral estoppel bar Applicant from asserting that the term “drop gyro” is not inherently generic or, alternatively, not merely descriptive of the recited services, that it has acquired distinctiveness in connection with the Applicant’s services, or that Applicant’s application shows use of the alleged mark DROP GYRO in connection with the recited services. Opposer in a separate federal court proceeding in which Applicant counterclaimed against Opposer for trademark infringement based on rights in the alleged mark DROP GYRO at issue in this opposition moved for summary judgment on all of the grounds cited in support of this opposition. In response, Applicant on its own motion dismissed the trademark counterclaim with prejudice.

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12. The filing of Opposer's motion for summary judgment and Applicant's dismissal of its trademark counterclaim both occurred *before* October 30, 2003, the date Applicant filed an alleged claim with the Trademark Office that its mark DROP GYRO had acquired distinctiveness under Section 2(f) of the Trademark Act, and *after* September 2002, the date on which Applicant allegedly claimed its mark had acquired distinctiveness under Section 2(f) of the Trademark Act.

13. In view of the foregoing, Opposer would be damaged by the registration of Applicant's claimed mark within the meaning of 15 U.S.C. § 1063.

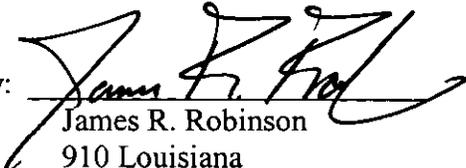
14. The original and one copy of this Notice of Opposition are enclosed herewith and the Commissioner is hereby authorized to withdraw the appropriate filing fee from Opposer's undersigned attorney's Deposit Account No. 50-1994.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied to Applicant on its Application Serial No. 76/481,141.

Respectfully submitted,

BAKER BOTTS LLP

Dated: February 6, 2004

By: 

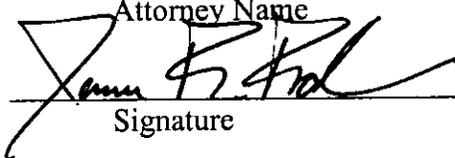
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Attorneys for Opposer,
SCIENTIFIC DRILLING INTERNATIONAL, INC.

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CERTIFICATE OF MAILING
UNDER 37 C.F.R. §1.10

I hereby certify that this Notice of Opposition and one copy thereof are being deposited with the United States Postal Service on the date below, in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EV389459323US addressed to the Commissioner for Trademarks, Box TTAB/Fee, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

<u>James R. Robinson</u>	<u>February 6, 2004</u>
Attorney Name	Date of Deposit
	<u>February 6, 2004</u>
Signature	Date of Signature

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February 6, 2004

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U.S. Patent & TMOtc/TM Mail Rept Dt. #22

Re: *Scientific Drilling International, Inc. v. Gyrodata, Inc.*
Trademark: **DROP GYRO**
Application Serial No.: 76/481,141

Dear Sir/Madame:

Enclosed please find a Notice of Opposition and one copy thereof for the above-captioned mark.

The Commissioner is hereby authorized to charge Deposit Account No. 50-1994 of Baker Botts L.L.P. for the filing fee.

Please date stamp and return the enclosed postcard in acknowledgement of receipt.

Respectfully submitted,

James R. Robinson

JRR:197
Enclosures