

TTAB

  
**Moss & Barnett**  
A Professional Association

May 3, 2007

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Re: Opposer: Digi International Inc.  
Applicant: DigiPos Systems Inc.  
Opposition No.: 91163719  
Serial No.: 76/561,585  
Our File No.: 51307-469997

CERTIFICATE OF MAILING  
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451, on the date below:

5-3-07  
Date

  
Signature

Dear Sir/Madam:

Enclosed for filing please find the following:

1. Certified original signed testimony deposition of Joel Young, Volume II, taken March 22, 2007, along with Exhibit Nos. 55 through 57, submitted under seal and marked "Confidential – Attorneys' Eyes Only.
2. A fully executed Stipulated Protective Order.
3. A copy of the Notice of Filing Certified Deposition of Joel Young, Volume II, which was served upon Applicant's counsel on today's date.

If any fees are necessary to secure the filing of this document, the undersigned authorizes that they may be charged to Deposit Account No. 502442, making reference to our file number 51307-469997.

Please acknowledge receipt on the enclosed self-addressed, stamped postcard.

Very truly yours,



**Marsha Stolt**  
Attorney At Law  
(612) 877-5443  
StoltM@moss-barnett.com

MS/mis  
Enclosures  
986898v1

cc: Serge Anissimoff, Esq.

  
05-07-2007

U.S. Patent & TMO/TM Mail Rcpt Dt. #34

May 3, 2007

**VIA FACSIMILE and U.S. MAIL**

Serge Anissimoff, Esq.  
Anissimoff & Associates  
Richmond North Office Centre  
Suite 201, 235 North Centre Road  
London, Ontario N5X 4E7  
**CANADA**

Re: Opposition No. 91163719 Between Digi International Inc. and DigiPos Systems Inc.  
Our File No.: 51307.469997  
Your Ref.: 942327

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**NOTICE**

Notice is hereby given that a certified copy of the Deposition Transcript of Joel Young, Volume II, with attached Exhibit Nos. 53 through 55, will be filed with the United States Patent & Trademark Office, Trademark Trial and Appeal Board on today's date, May 3, 2007.

A copy of our letter to the Trademark Trial and Appeal Board is attached hereto.

Very truly yours,



**Marsha Stolt**  
Attorney At Law  
(612) 877-5443  
StoltM@moss-barnett.com

MS/mis  
Enclosure  
986917v1

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

DIGI INTERNATIONAL INC.,

Opposer,

v.

DIGIPOS SYSTEMS INC.,

Applicant.

Opposition No. 91163719

Mark: DIGIPOS

Serial No. 76/561,585

**STIPULATED PROTECTIVE ORDER**

Opposer Digi International Inc. (hereinafter "Digi") and Applicant DigiPos Systems Inc. (hereinafter "DigiPos"), through their respective attorneys, stipulate that certain information disclosed by any party hereto during discovery or testimony periods in this proceeding, or during subsequent appeals, may contain items constituting confidential information or trade secrets of the disclosing party. To preserve the confidentiality of information so disclosed, the parties have agreed to be bound by the terms of this Stipulated Protective Order (hereinafter the "Order") in this proceeding, in any subsequent appeals, and thereafter. Accordingly, the Board orders the parties to be bound by the provisions within this Order. By execution of this Order the parties intend to create, and have created a binding contract effective from the date of the parties' respective signatures.

**TERMS OF THE ORDER**

In order to preserve the status of the material and information so disclosed, the parties agree and the Board orders that:

1. **“Confidential” and “Attorneys Eyes Only” Information and Unprotected Information.** Any party to this action, or any nonparty who elects to be covered by this Order, who, in discovery, produces or discloses any item of discovery may designate the same as “Confidential” or “Attorneys Eyes Only” information.

a. **Definition of “Confidential” Information.** For purposes of this Order, “Confidential” information shall mean all information and material which is produced for or disclosed to a receiving party, and which a producing party in good faith considers to constitute or to contain proprietary or confidential material or information which the designating party desires not to be made public, whether embodied in physical objects, documents, or the factual knowledge of persons, and which has been so designated in good faith by the producing party in the manner set forth hereafter. The party or nonparty who produces or discloses its own Confidential information is not precluded by this Order from disclosing or using that Confidential information in any manner as it may deem fit.

b. **Definition of “Attorneys Eyes Only” Information.** For purposes of this Order, “Attorneys Eyes Only” information shall mean all information and material, which is produced for or disclosed to a receiving party, and which a producing party in good faith considers to constitute or to contain trade secrets or other confidential research, development, design, financial data, business plans, or commercial information, whether embodied in physical objects, documents, or the factual knowledge of persons, and which is of a sensitive nature that could cause competitive harm if disclosed to a receiving party; and which has been so designated in good faith by the producing party in the manner set forth hereafter. The party or nonparty who produces or discloses its own

“Attorneys Eyes Only” information is not precluded by this Order from disclosing or using that Attorneys Eyes Only information in any manner as it may deem fit.

c. **Categories of Unprotected Information.** Testimony, documents, and other information shall not be considered Confidential or Attorneys Eyes Only to the extent the content or substance thereof:

- i. is, at the time of disclosure, in the public domain by publication or otherwise;
- ii. becomes at any time, through no act or failure to act on the part of the receiving party, part of the public domain by publication or otherwise;
- iii. is already in the possession of a party at the time of disclosure and was not acquired directly or indirectly from the producing party;
- iv. is made available to a party by a nonparty who obtained the same by legal means and without any obligation or confidence to the party claiming its confidential nature; or
- v. contains any information which a receiving party can show was independently and lawfully developed by it.

For purposes of this Order, specific disclosures of documents or information, including, but not limited to, disclosures as to marketing practices and techniques, advertising, design specifications, operating procedures, operating conditions, financial data, and the like, shall not be deemed to fall within one of the exclusions listed above merely because such specific disclosures are embraced by more general information in the public domain or in the possession of the receiving party. Further, any combination of features shall not be deemed to be within one of the foregoing exclusions merely because individual features are in the public domain or in the possession of the receiving party, but only if the combination itself is in the public domain or in the receiving party's possession.

2. **Methods of Designating Confidential and Attorneys Eyes Only Information**

a. **Designation of "Confidential" Information.** For the purposes of this Order, Confidential information contained in physical objects or documents, including any transcripts, exhibits, answers to interrogatories, responses to requests for admission, etc., or copies thereof, shall be designated by stamping or affixing thereto a legend substantially as follows: CONFIDENTIAL.

b. **Designation of "Attorneys Eyes Only" Information.** For the purposes of this Order, "Attorneys Eyes Only" information contained in physical objects or documents, including any transcripts, exhibits, answers to interrogatories, responses to requests for admissions, etc., or copies thereof, shall be designated by stamping or affixing thereto the legend: ATTORNEYS EYES ONLY.

c. **Designation of Oral Deposition Testimony.** Oral deposition testimony of any party, nonparty or any person employed by, formerly employed by or acting on behalf of a party to this action may be designated Confidential or Attorneys Eyes Only by asking the reporter to insert a statement regarding the confidentiality of the information into the deposition transcript or by giving written notice to all other parties of the portions of the transcribed testimony designated Confidential or Attorneys Eyes Only information within thirty (30) days of the date that the deposition transcript is received by counsel. No such deposition transcript shall be disclosed to any person other than the persons described in Section 6.a. below and the deponent (and the deponent's counsel in the case of a separately represented nonparty) during those thirty (30) days, and no person attending such a deposition shall disclose the contents of the deposition to any person

other than those qualified to receive such information pursuant to this Order during the said thirty (30) days.

3. **Designation of Information Produced for Inspection.** In the event the producing party elects to produce files and records for inspection and the inspecting party desires to inspect these files and records, no marking need be made by the producing party in advance of initial inspection, although the producing party may do so at its discretion. For purposes of the initial inspection, all documents within the produced files and records shall be considered as marked "ATTORNEYS EYES ONLY" in accordance with this Order. Thereafter, upon selection of specified documents for copying by the inspecting party, the producing party shall mark the copies of such documents as may contain Confidential information as "CONFIDENTIAL" and documents as may contain Attorneys Eyes Only information as "ATTORNEYS EYES ONLY" in accordance with this Order prior to producing the copies.

4. **Challenges to Designations.** A party shall not be obligated to challenge the propriety of a designation at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that any party challenges in writing at any stage in this action the designation of information, the designating party shall, within seven (7) business days following receipt of such challenge, substantiate the basis for such designation in writing. If no substantiation is proffered, the information shall not thereafter be deemed designated under this Protective Order. If substantiation is provided, the parties shall try first to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the party challenging the claim of confidentiality may seek appropriate relief from the Board.

## 5. Inadvertent Disclosure

### a. Inadvertent Disclosure of "Confidential" or "Attorneys Eyes Only"

**Information.** If a furnishing party inadvertently discloses to a receiving party any document, thing, or information containing information that the furnishing party deems Confidential without designating it as CONFIDENTIAL information or Attorneys Eyes Only information without designating it as ATTORNEYS EYES ONLY, the furnishing party shall promptly upon discovery of such inadvertent disclosure inform the receiving party in writing and the receiving party shall thereafter treat the document, thing, or information as CONFIDENTIAL or ATTORNEYS EYES ONLY as specified by the furnishing party under this Order. To the extent such document, thing, or information may have been disclosed to persons other than authorized persons described in this document, the receiving party shall make every reasonable effort to retrieve the document, thing or information promptly from such persons and to limit any further disclosure to authorized persons.

### b. Inadvertent Disclosure of Information That is Privileged or Otherwise

**Immune From Discovery.** If a producing party inadvertently discloses to a receiving party information that is privileged or otherwise immune from discovery, said producing party shall promptly upon discovery of such disclosure so advise the receiving party in writing and request that the item or items of information be returned, and no party to this action shall thereafter assert that such disclosure waived any privilege or immunity. It is further agreed that the receiving party will return such inadvertently produced item or items of information and all copies thereof within ten (10) days of receiving a written request for the return of such item or items of information from the producing party. The

party having returned such inadvertently produced item or items of information may thereafter, without asserting waiver because of inadvertent production, seek production of any such documents in accordance with the Federal Rules of Civil Procedure.

6. **Restrictions on Disclosure of Protected Information.** Confidential or Attorneys Eyes Only information shall be held in confidence by each authorized person to whom it is disclosed, shall be carefully maintained so as to preclude access by persons who are not authorized under this Order to receive such information, and shall be used in accordance with the terms of this Order solely for the limited purposes of preparing for and conducting the trial and pretrial proceedings of this action, or in any related action in which Digi and DigiPos are parties. Any Confidential or Attorneys Eyes Only information designated as set forth in Section 2 of this Order shall be handled by a receiving party in accordance with this Order.

a. **Restrictions on Disclosure of Attorneys Eyes Only Information.**

Attorneys Eyes Only information shall not be disclosed to any person other than:

- i. outside counsel of record selected by each party in this action, other attorneys at outside counsel's firm assisting such counsel, and paralegal, secretarial, and clerical personnel assisting such counsel;
- ii. court reporters and their necessary stenographic and clerical personnel;
- iii. photocopy services employed or retained by the receiving party's outside counsel;
- iv. data entry or data processing staff who are employed or retained by the receiving party or its attorneys who are assisting in the development or use of data retrieval systems in connection with this action;
- v. staff of drafting or graphics firms employed or retained by the receiving party's attorneys;
- vi. independent outside experts or consultants (an independent outside expert or consultant being a person not employed by a party except

to serve as an expert or consultant in this case) together with secretarial, clerical, and support personnel (collectively "the expert support staff") normally employed by such experts or consultants in the course of their activities; and

vii. this Board and Its personnel.

**b. Restrictions on Disclosure of Confidential Information.** Confidential

information shall not be disclosed to any person other than:

- i. outside counsel of record selected by each party in this action, other attorneys at outside counsel's firm assisting such counsel, and paralegal, secretarial, and clerical personnel assisting such counsel;
- ii. court reporters and their necessary stenographic and clerical personnel;
- iii. photocopy services employed or retained by the receiving party's outside counsel;
- iv. data entry or data processing staff who are employed or retained by the receiving party or its attorneys who are assisting in the development or use of data retrieval systems in connection with this action;
- v. staff of drafting or graphics firms employed or retained by the receiving party's attorneys;
- vi. independent outside experts or consultants (an independent outside expert or consultant being a person not employed by a party except to serve as an expert or consultant in this case) together with secretarial, clerical, and support personnel (collectively "the expert support staff") normally employed by such experts or consultants in the course of their activities;
- vii. employees of a party, and their support staff, who have agreed on their own behalf and on behalf of their support staff to be bound by the provisions of the Undertaking set forth in the accompanying Exhibit A; and
- viii. this Board and Its personnel.

In the event that an employee identified under the preceding paragraph is no longer employed by a party to this action or undergoes a change in position within the party by virtue of

which that individual is no longer performing duties in connection with this action, then that individual shall continue to be bound by this Order.

c. **Qualification for Access to Confidential or Attorneys Eyes Only**

**Information.** Before any disclosure of Confidential or Attorneys Eyes Only information of another party is made to an outside independent individual or business (such as an independent outside expert or consultant) employed by counsel for assistance in the preparation, prosecution, or trial of this action, such individual or business shall sign an Undertaking in the form attached as Exhibit A to this Order. Notice of the signing of an Undertaking must be made to the other side by providing a copy of the completed Undertaking prior to the disclosure of Confidential or Attorneys Eyes Only information to the party signing the Undertaking. The opposing party will then have five business days following receipt of the notice to make any objection in writing to the other side. If an objection is made, the objecting party must file a motion within thirty days explaining why the person or business should not be permitted to see Confidential or Attorneys Eyes Only information. No Confidential or Attorneys Eyes Only information may be disclosed to the party signing the Undertaking until the Board rules on the motion, if filed, or the time for objecting has passed without objection, or the time for moving has passed without a motion being filed. Counsel for each party signing an Undertaking shall retain the original signed Undertaking.

7. **Filing Under Seal.** Confidential information or Attorneys Eyes Only information identified and marked in accordance with Section 2 hereof shall not be filed with the Board or included in whole or in part in pleadings, motions, or briefs, except under seal marked with the caption of this action and the following notation, or in the form designated by the Board:

CONTAINS CONFIDENTIAL INFORMATION  
SUBJECT TO PROTECTIVE ORDER

THIS ENVELOPE IS NOT TO BE OPENED, OR THE CONTENTS THEREOF  
DISPLAYED, COPIED OR REVEALED, EXCEPT BY TRADEMARK TRIAL AND  
APPEAL BOARD ORDER OR BY AGREEMENT OF THE PARTIES

To the extent such materials are so filed under seal, they shall be maintained by the Board in sealed envelopes and opened only by personnel authorized by the Board or by agreement of the parties.

8. **Relief From Order, Additional Orders, Modification of Order.** This Order shall not prevent either the Digi or DigiPos from (a) applying to the Board for relief therefrom or to permit access to additional persons or categories of persons; (b) applying to the Board for further or additional protective orders; or (c) agreeing to modification of this Order, subject to the approval of the Board.

9. **Return or Destruction of "Confidential" and "Attorneys Eyes Only" Information.** Within sixty days after final termination of this action, receiving counsel shall either return all materials containing or constituting Confidential information or Attorneys Eyes Only information in their possession, custody or control, and all copies, summaries, abstracts, or indices thereof (except to the extent that any of the foregoing includes or reflects receiving counsel's work product), to counsel for the party who provided them in discovery or shall certify that all such materials have been destroyed. This provision shall not apply to evidence admitted by the Board, whether through documents or testimony.

10. **Permissible Disclosure and Use of "Confidential" or "Attorneys Eyes Only" Information.** Nothing herein shall prevent disclosure if each party designating information as CONFIDENTIAL or ATTORNEYS EYES ONLY consents to such disclosure. Nor shall anything herein prevent any counsel of the parties from utilizing CONFIDENTIAL or

ATTORNEYS EYES ONLY information in the examination of any person who is reasonably alleged to be the author, source, or recipient of the information, or who is an employee or agent thereof.

11. **Rendering Advice to Client.** Nothing in this Order shall bar or otherwise restrict any attorney from rendering advice to his/her client with respect to this litigation and, in the course thereof, referring to or relying generally upon his/her examination of documents or information designated CONFIDENTIAL or ATTORNEYS EYES ONLY provided, however, that in rendering such advice and in otherwise communicating with his/her client, the attorney shall not disclose the content or the source of such information or documents contrary to the terms of this Protective Order.

12. **Order Survives Termination of Action.** The obligations of this Order, to the extent applicable, shall survive the termination of the action and continue to bind the parties.

13. **Reasonable and Appropriate Care.** Each of the firms signing below and the parties named above, by executing a copy of this Order, undertake to abide by and be bound by its provisions and to use reasonable and appropriate care to see that its provisions are known and adhered to by those under its supervision or control.

14. **Remedies for Breach of Agreement.** In the event that a party breaches any term of this Order, the parties agree that the non-breaching party will have the right to pursue any civil remedies for breach of contract that may be available in addition to the appropriate remedies available with the Trademark Trial and Appeal Board, or the relevant court, in connection with the above-captioned action.

By Agreement of the Following,

DIGI INTERNATIONAL INC.

MOSS & BARNETT, A Professional Association

Dated: Steve Maurer

Dated: March 29, 2007

By: STEVE MAURER

By: Marsha Stolt

Its: CORPORATE COUNSEL

Marsha Stolt  
Moss & Barnett, A Professional Association  
4800 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-4129  
Telephone: (612) 877-5443

ATTORNEYS FOR OPPOSER

DIGIPOS SYSTEMS, INC.

ANISSIMOFF & ASSOCIATES

Dated: MARCH 1, 2007

Dated: MARCH 14, 2007

By: [Signature]

By: [Signature]

Its: PRESIDENT

Serge Anissimoff  
Anissimoff & Associates  
Richmond Office Centre, Suite 201  
235 North Centre Road  
London, Ontario N5X 4E7  
Telephone: (519) 673-5591

ATTORNEYS FOR APPLICANT

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2007:

Administrative Law Judge  
Trademark Trial and Appeal Board

EXHIBIT A

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

DIGI INTERNATIONAL INC.,  Opposer,  v.  DIGIPOS SYSTEMS, INC,  Applicant.
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Opposition No. 91163719

Mark: DIGIPOS

Serial No. 76/561,585

Filed: \_\_\_\_\_

UNDERTAKING OF [AFFIANT]

STATE OF \_\_\_\_\_ )  
) ss.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, being duly sworn, state that:

1. My present address is \_\_\_\_\_.
2. My present employer is \_\_\_\_\_.
3. My present occupation or job description is \_\_\_\_\_.
4. I have received a copy of the Stipulated Protective Order (hereinafter the "Order")

in this case signed by \_\_\_\_\_ on \_\_\_\_\_, 2003.

5. I have carefully read and understand the provisions of the Order.

6. I will hold in confidence and not disclose to anyone not qualified under the Order,

any Confidential or Attorneys Eyes Only information or any portion or substance thereof provided to me in the course of this litigation.

7. I will return all materials containing Confidential or Attorneys Eyes Only information or any portions or copies, summaries, abstracts or indices thereof, which come into my possession and documents or things which I have prepared relating thereto and containing such Confidential or Attorneys Eyes Only information, to counsel for the party by whom I am retained or employed, or to counsel by whom I am retained or employed, when my services in this matter have been concluded.

8. I understand that if I violate the provisions of this Order that I may be subject to, among other things, sanctions by the Board.

9. I hereby submit to the jurisdiction of this Board for the purpose of enforcing this Order against me.

Dated: \_\_\_\_\_

\_\_\_\_\_

[AFFIANT]