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

Proceeding	91163719
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Digi International Inc.,)	
Opposer)	Opposition No 91163719
)	Ser No 76/561,585
v)	
)	
DigiPos Systems Inc.,)	
Applicant)	
)	

BRIEF FOR APPLICANT

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FACTS RELATING TO THE OPPOSITION

The applicant refers to the Statement of Facts on page 2 and 3 of the Opposer's Brief and confirms that they are substantially correct. The applicant objects that the second deposition of Mr. Young on the grounds that it was not in respect of rebuttal statements made by Mr. Leaper.

The applicant will follow the concordance adopted by the Opposer, namely the references to JY JM, BM and DX.

Herein the applicant will refer to the evidence Mark Walter Leaper, President and CEO of Digipos Systems Inc. as ML

The applicant's exhibits (exhibits to the Deposition of Mark Leaper) will be referred to as AX.

The Applicant's exhibits filed pursuant to Rule 122(e) and listed in the Applicant's Notice of Reliance will be referred to as NRAX.

STATEMENT OF ISSUE

The issue presented in this Opposition is:

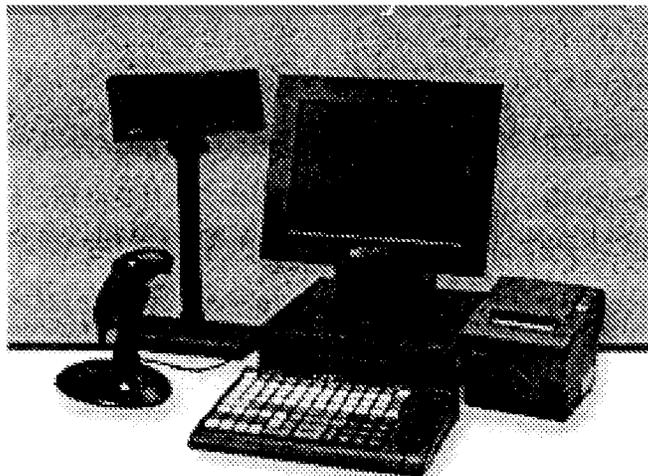
Whether Applicant's DIGIPOS mark is likely to be confused with Opposer's use of prefix DIGI on goods that are traded in a marketplace of careful sophisticated purchasers?

STATEMENT OF FACTS

A. GENERAL

1. The Applicant is the North American member of the DIGIPOS SYSTEMS GROUP established in 1994 with offices in the United Kingdom, Denmark, North America, Australia, China, Norway and South Africa. The Applicant is based in Burlington (near Toronto), Ontario, Canada and has carried on business in the United States since August 2002 for the past 5 years. (AX26)

2. The Applicant is a retail point-of-sale technology company which seeks to address the specific needs of retailers. The Applicant manufactures and sells point-of-sale terminals and store systems. The core product is an Intel based computer terminal which is preferably sold as a turnkey installation alongside peripheral equipment such as is illustrated below by way of example. (ML 15-17)



3. The annual world-wide sales of the Digipos Systems Group for 2006 are 135 million USD (ML 11), which roughly equals the annual world-wide sales (2005) of 125 million USD relied upon by Opposer. (Dx 53, see also AX28).

4. The evidentiary record is consistent with the fact that the parties commercially coexist peacefully in the United States marketplace (as well as worldwide) in association with their respective trade-marks without any trade-mark conflict in the nature of confusion, mistake or deception...and have done so for the past 5 years. The parties operate in "two very, very different worlds". (ML38)

5. The goods of the parties are specialized and are entirely distinguishable. The channels of trade for each parties' goods are different. Each parties' competitors are different. The parties sell to different customers. Each and every possible comparator points clearly away from a likelihood of confusion, mistake or deception. The Opposer's allegations are theoretical at best and have no factual or practical basis.

6. The US consumer, however defined, cannot purchase the Applicant's specialized goods from the Opposer (or vice versa) in any commercial sense of the word.

7. The Applicant's mark DIGIPOS is one of in excess of a thousand (1000+) marks on the United States Trade-mark register having a "digi" component. (NRAX 3-1210) The Applicant claims a legal ability to coexist on the register alongside all the other marks having the "digi" component on the basis that there is no likelihood of confusion,

mistake or deception with any of those prior registered marks including those of the Opposer.

8. The Opponent, Digi International, pointedly and aggressively refers to itself as "DIGI" throughout these proceedings, claiming as well to have a "family" of DIGI marks. This is most unfortunate because it masks and confuses the real issue in these proceedings which requires, broadly speaking, a legal comparison between a registered mark and the mark applied for. In the context of the Trademark Register, the claim to a family of "digi" marks is a meaningless statement. In any event the Opposer fails to precisely identify the criteria or characteristics of what digi "family" is being referred to...as otherwise it belongs, like everyone else in Class 9, to the entire family of all marks containing a "digi" component.

9. The Opposer's registered marks claim goods which are used to connect computers to peripherals referred to as "connectivity" devices. Significantly there is no analysis (or acceptance) by the Opposer of its registered trade-marks or goods. The Opposer styles itself as "DIGI for computer hardware and software" which cannot be true on any view of the Opposer's marks or website evidence.

10. The inescapable fact is that the Opposer's specialized goods are non-point-of-sale specific and are non-analogous. They function to generically connect a computer to a peripheral device.

B. GOODS

11. The trade-mark applied for is the word mark DIGIPOS in Class 009 filed November 21, 2003. (AX39) The goods claimed in the application are described as

Computer hardware, peripheral equipment and software for use in controlling point-of-sale transactions, and managing point-of-sale information and all retail store management procedures

12. The Applicant's goods are specialized and point-of-sale specific as described. Practically the goods relate to a point-of-sale computer terminal together with the usual peripheral equipment necessary for conducting retail store operations such as

1. Computer screens including touch screens
2. Keyboards
3. Scanners
4. Magnetic card readers
5. Printers
6. Customer displays
7. Cash box
8. Global Systems Manager Software (AX4, ML24ff)

Reference is made to the following relevant Exhibits:

- Digipos product range profiler;
- AX30 – Retail Blade
- AX35 – promotional Items, packaging, cash box, printer, computer monitor
- AX23 – Product Brochures sequentially showing
 - i. C1 – Digipos iBox, IBM compatible (ML-71)
 - ii. C3 – Digipos Power POS (ML-72)
 - iii. C4 – Digipos POS in a Box (ML-72)

- iv. C5 – Digipos LCD monitors both touch screen and non-touch screen including mag stripe readers (ML-72, 73)
- v. C7 – Digipos keyboards including standard keyboards, mini keyboards, keyboards with mag stripe readers and programmable keyboards (ML-73)
- vi. C8 – Digipos monitors and customer displays. (ML- 73, 74)
- vii. C9 – Digipos cash drawer (ML- 74)
- viii. C10 – Mounting options for Digipos monitors and point-of-sale terminals (ML-74)
- ix. C11 – Digipos millennium Intel based processor
 - AX5 – Utopia product line;
 - AX6 – Digipos IT 1500 product
 - AX7 – Digipos PH6000 product
 - AX8 – Retail Blade – Next Generation Power document
 - AX21 – Company overview of Digipos Systems (ML-69)
 - AX22 – Picture of Head Office (ML-70)
 - AX24 – Digipos Retail Blade

13. The Applicant offers its goods for sale as a turnkey retail solution. Optionally, some customers, as for example Circuit City, do not require all of the peripheral equipment. In those cases Applicant supplies the point-of-sale terminal and the customer supplies and/or specifies its own peripheral equipment.

14. The Applicant marks its goods with the DIGIPOS trade-mark. The goods are sold and delivered in packaging which displays the DIGIPOS trade-mark on the box. In some cases the Applicant supplies third party branded peripheral equipment such as EPSON printers. (ML23) The applicant's core product is a point-of-sale terminal which bears the DIGIPOS trade-mark marked alongside the different model designations including the award winning RETAIL BLADE product. (ML 72,76,77)

C. OPPOSER'S REGISTERED TRADE-MARKS

15. Although the Opposer lists its various trade-mark registrations in its brief, it fails to precisely identify the registered goods which are at issue or conduct any appropriate analysis of those goods.

16. In the circumstances, the Applicant makes reference to the first listed DIGI mark registration No. 2,630,891 registered in 2002 for the following goods registered in International Class 9:

Computer network connectivity hardware and computer network connectivity software, namely, multi-modem communication adapters, multiport serial adapters, USB-to serial converters, USB expansion hubs, USB remote access servers, terminal servers, printer servers, device servers, and network serial concentrators, all used to provide wired and wireless connectivity between local and wide area networks, to provide Universal Serial Bus (USB) connectivity, to provide remote access to local and wide area networks, to provide firewall security, and to provide Internet access.

17. Consistent with the website evidence led, the registered goods are specialized and relate to devices used to connect computers to peripheral devices as claimed.

18. There is also a great deal of imprecision in terms of what registered trade-mark(s) the Opposer is relying on these proceedings. Referring variously to portions of the Opposer's Brief, the following trade-marks are put forward by the Opposer (Brief for Opposer, Pages 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15 & 16) as being ostensibly involved, namely,

1. DIGIBOARD

2. DIGI INTERNATIONAL
3. DIGI CLASSICBOARD
4. DIGI CONNECTS & DESIGN
5. DIGI CONNECT
6. DIGI ONE
7. DIG NEO
8. DIGI CONNECTWARE
9. DIGI ONE REALPORT
10. DIGI ONE IA REALPORT
11. WWW.DIGI.COM
12. INSIDE OUT NETWORKS, A DIGI INTERNATIONAL COMPANY & DESIGN
13. NETSILICON A DIGI INTERNATIONAL COMPANY & DESIGN
14. HUB PORT
15. ANYWHEREUSB
16. PORTSERVER,
17. ACCELEPORT
18. WATCHPORT
19. CLASSIC BOARD
20. DIGI ETHERLITE
21. DIGI ONE REALPORT
22. DIGI ONE SP
23. EDGEPORT
24. CONNECTPORT WAN VPN
25. CONNECTPORT DISPLAY

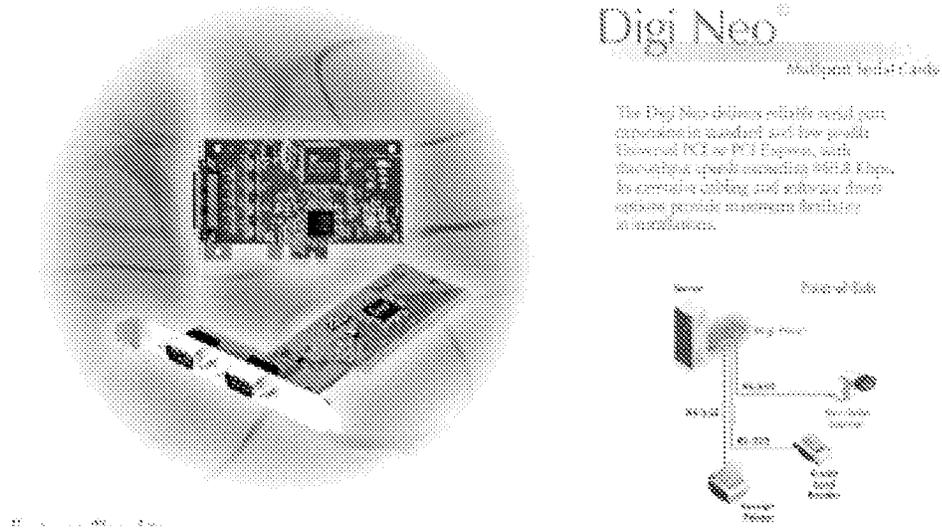
19. The Opposer claims that all of these marks are somehow together relevant which obviously cannot be true since each is different from the next one.

20. Giving the Opposer its due, it is clear that common to all of its connectivity goods is the display and use of its house design mark which comprises the word DIGI framed within an angled green rectangle. Reference is accordingly made by way of random example to Registration No. 2,200,945 registered in 1998 in, inter alia, Class 9 for *"computer network connectivity, hardware and software"*.



21. Beyond a doubt the Opposer's goods are specialized "connectivity" goods which are not point-of-sale specific in any practical or commercial sense of the word. The claimed goods do not indicate any coverage whatsoever for point-of-sale terminals, computer screens, keyboards, scanners, magnetic card readers, printers, customer displays, cash box.

22. By way of a further illustrative example, the Applicant refers to a product sheet for the DIGI NEO product selected for discussion in the evidence of Joel Young (DX13, JY36) as illustrated hereunder:



23. As can be seen from the product sheet (DX36), this product is intended to be installed by a skilled person inside a computer to enable a connection between a server and various generic peripheral equipment as shown in the illustration. The peripheral equipment shown includes a bar code scanner, a credit card reader and a receipt printer, none of which equipment the Opposer manufactures and/or sells in association with any trade-mark.

24. The only technical explanation of why its generic connectivity products are "point-of-sale specific" is the example of providing a connectivity device with a power supply (JM 89,90), which does not change the nature of the connectivity device.

25. Finally, there was a great deal of discussion by the Opposer concerning its allegedly competing Zero-Client product which in plain terms permits peripheral equipment such as a keyboard or screen to be remotely connected to a computer. There is nothing point-of-sale specific about the Zero-Client product and it functions precisely as a connectivity device.

D. COMPETITORS

26. The Applicant's competitors for its point-of-sale terminals include IBM, NCR, HP, WINCOR NIXDORF and FUJITSU described by the Applicant's President, Mr. Leaper, as the usual suspects. (ML 31,32)

27. The Applicant typically competes against these very large sophisticated and well known companies who precisely offer their own competing point-of-sale terminals and system solutions and peripheral equipment to their customers under their trade-marks.

28. The Opposer is in no earthly sense the Applicant's competitor. (ML36) The Opposer has never lost a sale to the Applicant. (JM99) On the facts of this case this is factually impossible.

29. The Opposer's main competition are companies such as Landtronics, Moxa, ControlComptol and Avocent (JM67), who presumably compete against the Opposer in "connectivity" goods but are unknown as competitors to the Applicant. This means that a reseller has a choice of buying a connectivity device from any of the above companies when manufacturing its solutions for its customer. The Opposer's connectivity goods are not intimately related to a computer in any specific sense given the presence of competitive "connectivity" goods in the marketplace.

30. Despite the objective evidence, the Opposer subjectively claims to be the Applicant's competitor because it makes products that applications in the point-of-sale field (JM67). The Opposer markets but does not sell to the end user (JM74). Frankly, this represents a misuse of the term "competitor" because the "end user" never purchases anything from the Opposer.

E. SALES

31. The Applicant's sales for the United States are accurately estimated to be 80% of its North American sales, \$5 million for 2002/2003, \$11 million for 2003/2004, \$10 million for 2004/2005, \$16 million for 2005/2006 and \$24 million forecasted for 2006/2007 (ML 46,47,125).

32. For greater certainty, when multiplied by .8, the U.S. sales figures for the Applicant's goods stands at \$4 million for 2002/2003, \$8.8 million for 2003/2004, \$8 million for 2004/2005, \$12.8 million for 2005/2006 and \$19.2 million forecasted for 2006/2007 for a 5 year total of \$52.8 million, a substantial and not insignificant amount.

33. By comparison, the Opposer's U.S. sales are \$72 million for 2005, which however one calculates are roughly 9 times larger (using Applicant's 8 million) or 5.6 times larger (using Applicant's \$12.8 million figure). The Opposer is not a billion dollar company and it's sales do not dwarf the Applicant. (DX 53,54) In any event, the Opposer does not really know whether it is a large or small company. (JY124)

34. Importantly, the Opposer relies on both its U.S. and international sales for its calculations in its brief. (Brief for Opposer, Pages 9,10.) Using 2005 by way of example, U.S. sales of \$72 million represent 57% of the Opposer's sales of \$125 million while International sales of \$53 million round out the other 43%. (DX 53,54)

35. Comparing worldwide total sales of the Opposer (\$125 million for 2005) and the Digipos Systems Group (of which the Applicant is a member) sales (\$135 million for 2006) suggests that the parties are roughly of equal size and each has its distinct place in the marketplace.

F. PROMOTION, ADVERTISING PROMOTION AND TRADESHOWS

36. The Applicant spends some 800 thousand dollars on promotion primarily targeted at the United States. (ML49) The Applicant has been involved in highly visible promotion such as the MSNBC Winners Circle hosted by Terry Bradshaw. (AX2) In this case, the Applicant was selected first (based on categories) as amongst the following point-of-sale competitors, namely, Ultimate Technology, HP, Dell, IBM, NCR, Wincor Nixdorf, Fugjitsu. (AX2, ML 17-20).

37. The categories tested included product features, technology innovation, support service, price value, product reliability, and overall performance in the point-of-sale sector.

38. As well, the Applicant won the 2005 Technology Innovator award from Microsoft and was named Microsoft's global partner of the year. Included in Exhibit AX2 is a reference to the European Retail Solutions Award event in Birmingham U.K. where the Applicant was named "Supplier of the Year". (See also AX31)

39. In terms of trade shows, the Applicant has been an exhibitor for the past 5 years at the important National Retail Federation Show (NRF) in January in New York City (including the show in 2007). (ML 50,51) In North America, the Applicant has attended the Retail Systems Show which rotates cities (Chicago, Boston) which it considers of less importance than the NRF.

G. CHANNELS OF TRADE

40. The Applicant's customer is a retailer that requires a point-of-sale terminal solution for its checkout lane and operations.

41. Two significant examples of the Applicant's sale successes in the United States are Circuit City (AX36) and the Army & Air Force Exchange Service. (AX10, ML 48,52,53)

42. The Applicant identifies its target retailer as "large", being either a tier 1 or tier 2 customer. (ML40) A Fortune 1000 type customer would be tier 1 which would include Circuit City which bought 10,000 point-of-sale terminals. The Applicant does not sell to "mom and pop" operations.

43. Most recently the Applicant was selected by the Army and Air Force Exchange Service to supply its point-of-sale terminals along with a full suite of peripherals, the value of which is estimated at 25 million dollars. Delivery has started and approximately 45% of the installation is complete. (AX10, ML53).

44. The Applicant's customers are large sophisticated retail entities who know what they want and have the wherewithal to compare prices and features and select their point-of-sale solution as between, for example, IBM, NCR, HP, Wincor Nixdorf and

Fujitsu. The retailer is looking for a complete retail solution and the Applicant seeks to flexibly provide this solution depending on its customers' needs.

45. In the evidence, there are international examples of the Applicant's sales to retailers such as

1. HARRODS (AX12, ML56)
2. COLORADO GROUP (AX11, ML55)
3. HARVEY NICHOLS (AX14, ML58)
4. GERMAN GROCERY (AX14, ML60)
5. NEXT (AX13, ML56)
6. LIQUIDATION WORLD (AX16, ML62)
7. LAURA SECORD (AX17, ML64)

The above sales are obviously not in the United States but are provided to illustrate and corroborate the size, sophistication and identity of the Applicant's target customer, namely, a larger retailer that needs to equip its checkout lanes with the Applicant's point-of-sale terminals. Also, significantly Majestic Wine, Oasis, W.H. Smith, Claire's, GAME, Benny's. (AX36)

46. The Applicant sells its goods in three basic ways, (ML 33,34,35), namely:

- a) direct, meaning that its sales people call and knock directly on the retailer's door to solicit a sale in 70% of the cases,
- b) value added resellers (VAR), who is an independent software vendor. In those cases, the Applicant and the VAR jointly service a retailer customer. In all cases,

the Applicant's goods are sold with the DIGIPOS trade-mark marked thereon.
(ML 30-35)

c) Distributors who simply re-sell Applicant's goods.

47. According to the Applicant's President, Mr. Mark Leaper, who has extensive retail experience since the mid 1980s, (ML 8-12) the Applicant has never knowingly sold (ML30) against the Opposer with reference to any channel of trade and the parties have never commercially clashed.

H. DIGI INTERNATIONAL

48. The Opposer does not sell to "end users" let alone to a retailer. (JM74) Neither is there any evidence or suggestion that any purchaser of the Opposer's goods would also buy from the Applicant (or vice versa).

49. The Opposer sells to distributors, resellers and OEMS. As explained, the Opposer's distributor sells to resellers and it is the resellers who have the particular relationship with their customers whatever the particular project. The reseller's solution for their customer, whatever that is, may include the Opposer's specialized connectivity goods. There is another category called OEM (Original Equipment Manufacturer), where the Opposer's products are included as part of a solution which is being manufactured and would be inside the OEM product. (JM 28,29,30,31,70-74)

50. Importantly the Opposer claims to only market (an undefined term) to the end user but does not sell to the end user. It follows that the end user never buys from the Opposer.

I. OBJECTION TO REPLY TESTIMONY

51. The Opposer's witness Jan McBride is the Director of Worldwide Communications since 2003. She joined the Opposer in about 2000 with the position of Director of Marketing for Europe and Asia. She is generally responsible for worldwide marketing and communications "for most things that you see the Digi logo on". She was asked directly by Opposer's counsel what the channels of trade were and she replied, "distributors, resellers and OEMS". She explained that a distributor would hold large amounts of stock. The resellers would buy the Opposer's products for their specific connectivity needs to complete a particular project for a customer. In the case of the OEM, the Opposer's products may be used as part of a solution which is being manufactured by the OEM. (JM 28, 29,30, 31).

52. In cross-examination by the Applicant's counsel, Ms McBride confirmed these channels of trade and again confirmed that that Opposer does not sell to the end user. (JM74)

53. In reply, and not in answer to any new question posed in cross-examination, counsel for the Opposer incredibly asked the following question, namely,

"Just to clarify on who DIGI sells to, does DIGI also sell on some occasions to end users?" (JM101)

54. Counsel to the Applicant objected to this leading question for which there was no foundation. Moreover the question completely misstated the evidence because McBride previously stated that the Opposer "does not sell to end users". The objection to this Reply testimony and to the further second deposition of Joel Young is made on the ground that such "reply" evidence is not a proper reply. The Opposer is very sensitive to the fact that it does not sell to end users and is trying desperately to patch up this fault with its factual case by any means including suggesting to a witness that the Opposer sells goods to end users when in fact it does not.

J. DISTRIBUTORS

55. On the Opposer's website, there is a list of distributors, namely, Advantage Industrial Automation, Avnet, B & B Electronics, Border States Electric, Braas, DTR Business Systems, Edison Automation, Express Systems Peripherals, Global Wireless Data, ICT Global Inc., Industrial Control, Industrial Networking Solutions, Ingram Micro, Logic Control Sales, McNaughton-McKay Electric Company, Neteon, PCC Systems,

Germantown, Platt Electric, ScanSource, Seneca Data). The Applicant does not have any relationship with any of those distributors. (ML 42-45)

56. The only thing the Opposer can say in response to this important fact is that at one point in time in the past the Applicant did have a relationship with Tech Data. This relationship was cancelled because the distributor was component driven. (ML44)
There is no distributor overlap.

57. It is clear that the parties have no business in common and that there is no overlap in the channels of trade. In terms of the end user, the Applicant is clear that the retailer is its end user and customer. The Opposer does not sell to end users.

K. GENERAL POINTS

58. The parties respective websites are:

Applicant: www.digipos-solutions.com

Opposer, www.digi.com

59. The NASDAQ Symbol, DGII, for Opposer.

60. For the purposes of these proceedings, the Applicant's corporate name is Digipos Systems Inc., which was changed in about February 7, 2007 to Digipos Store Solutions Inc. (not in evidence, but Opposer's counsel previously informed).

ARGUMENT

L. THE DuPONT FACTORS

61. The test with which we are concerned is whether a likelihood of confusion exists as a question of law, based on underlying factual determinations, namely, Is the Applicant's Mark, "likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive?"

62. The question is determined on a case-specific basis, using the factors set forth in E.I. DuPont DeNemours & Co., 476 F.2d 1357, 1361, 177 U.S.P.Q. (BNA) 563, 567 (CCPA 1973) [hereinafter referred to as "DuPont"], based on the Court's decision in Witco Chemical Company, Inc. v. Whitfield Chemical Company, Inc., 418 F.2d 1403, 57 C.C.P.A. 804, 1969 CCPA LEXIS 218, 164 U.S.P.Q. (BNA) 43 (C.C.P.A. 1969), which provides:

This requires, of course, that we consider not only the marks but the goods and the whole situation, as revealed by the record, as it bears on their distribution in the market. When this situation has been absorbed, we then have to form a judgment as to whether there is a practical likelihood of such confusion, mistake, or deception as would damage the opposer or petitioner to cancel. We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with *de minimis* situations but with the practicalities of the commercial world, with which the trademark laws deal.

63. In particular, the DuPont analysis requires consideration of some thirteen (13) factors, analyzed practically and substantively which are given varying weight having regard for the overriding mandate of determining whether on a whole, the Opposer has

met its burden of establishing 'a practical likelihood of confusion, mistake or deception as would cause it damage'.

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.

64. The Applicant avoids placing any of its registered marks directly in issue and appears to be confusingly and erroneously proceeding on the basis that it owns DIGI for any computer related good.

65. In its entirety, the Applicant's Mark is dissimilar in appearance, sound and connotation, and therefore distinguishable, from any of the Opposer's marks. Indeed the only similarity is the DIGI component in DIGIPOS which is common to over a thousand other registered trademarks in the United States in Class 9...an astonishing number. The acronym dictionary defines Digi as the equivalent of digital (NRAX 1214).

66. As a consequence of the state of the Trademark Register, each mark having a digi component must be taken to be distinguishable from any other by (1) either added subject matter such as POS and/or (2) differences in goods. In any event, little weight should be given to this common element. (See Appendix A, Summary of NRAX 58,159,172,243,328,342,343,355,412,31)

67. In Re National Data Corp., 753 F.2d 1056, 1058, 224 U.S.P.Q. (BNA) 749, 751 (Fed. Cir. 1985), the Court noted, "That a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark..."

68. In The May Department Stores Co. v. Schloss Bros. & Co., Inc., 234 F.2d 879, 43 C.C.P.A. 980, 1956 CCPA LEXIS 114, 1956 Dec. Comm'r Pat. 360, 110 U.S.P.Q. (BNA) 282 (C.C.P.A. 1956), the court stated:

It is obvious that the only similarity between the marks resides in the word "Duro". That word suggests durability, and there are recorded copies of registrations of over thirty trademarks for fabrics or wearing apparel which either consist solely of the word "Duro," or contain it as a part of the mark. Essentially, combinations of letters which are descriptive of the goods or properties thereof will not be accorded as great weight in considering whether marks are confusingly similar, as words or combinations of letters which are purely arbitrary.

69. The consuming public may be taken to be able to distinguish between various marks containing a "digi" component. Plainly the Opposer is going outside the ambit of its mark in trying to draw an operative equivalency between DIGI and DIGIPOS. On this premise any other "digi component mark would be captured. Neither is the premise defined. Where is the line between the Opposer's DIGI mark and any other "digi" component mark.

70. The second syllable POS cannot accordingly be ignored in any proper and meaningful comparison. Digipos should not be dissected. The meaning suggested by the mark is plain, namely, a digital cash register.

71. Visually the marks look different and again there are many visual differences when comparing the logo versions.



72. Given that the goods are not identical or even related, the differences in trade-marks is emphasized.

73. Looking at Applicant's mark in its entirety, namely, DIGIPOS, it consists of two syllables, DIGI and POS and pronounced as one word and which meaning is suggestive of – digital point of sale -. As for the Opponent's argument that DIGIPOS is pronounced DIGI-P-O-S (4 syllables), there is no evidence of any such pronunciation and such pronunciation is unknown to the Applicant. In these proceedings both the Applicant and Opposer have consistently referred to the Applicant as DIGIPOS pronounced as a two syllable word.

2. The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.

The "law is clear that, in determining likelihood of confusion, the Board must look to the description of the goods contained in the opposer's registration and the applicant's application rather than to the goods' actual use," Royal Appliance Mfg. Co. v. Minuteman Int'l, Inc., No. 01-1555, 2002 U.S. App. LEXIS 4381, at 1 (Fed. Cir. Mar. 7, 2002). See also, CBS Inc. v. Morrow, 708 F.2d 1579, 1581, 218 U.S.P.Q. (BNA) 198, 199 (Fed. Cir. 1983), where the court said, that the relatedness of the goods factor "compares the goods and services in the applicant's application with the goods and services in the opposer's registration".

74. The Opposer has completely avoided any discussion of the specialized "connectivity" goods claimed in its registrations and relies entirely, if not exclusively, on its Website for goods for its extended comparison purposes. The Opposer's registered goods relate to computer network connectivity hardware and software.

75. The Opposer does not have coverage for the goods claimed by the Applicant in its Application, namely, "computer hardware, peripheral equipment and software for use in controlling point-of-sale transactions, and controlling point-of-sale transactions, and managing point-of-sale information and all retail store management procedures".

76. The Applicant's goods are "turnkey" and "ready to use" while the Opposer's goods require installation by skilled technicians.

3. The similarity or dissimilarity of established, likely-to-continue trade channels.

77. In Astra Pharmaceutical Products, Inc. v. Beckman Instruments, Inc., 718 F.2d 1201, 1983 U.S. App. LEXIS 15956, 220 U.S.P.Q. (BNA) 786 (1st Cir. Mass. 1983), Justice Skelton stated:

[A]lthough the two parties conduct business not only in the same fields but also with some of the same companies, the mere purchase of the goods and services of both parties by the same institution does not, by itself, establish similarity of trade channels or overlap of customers.

78. The evidence clearly demonstrates that the trade channels of each of the Opposer and the Applicant are entirely different. The parties do not have any customers in common which is one step removed from the *Astra* example above and thus affords even a greater distinction in this case.

79. The likelihood of confusion with respect to trade channels cannot be theoretical, it must have some practical basis.

80. Just as the goods of the respective parties are entirely distinguishable, their established channels of trade are equally different. Given that the Opposer does not sell to any relevant end users, the Opposer has no reasonable basis for any complaint against the Applicant's mark or any legal theory of remedy.

81. Furthermore, any alleged use of the Opposer's marks in association with point-of-sale components is directed to sophisticated professionals who may

implement the Opposer's goods, and/or the goods of others, to deliver a particular solution to their customer.

82. The Applicant's use of its mark in association with complete point-of-sale systems is directed to retailers which is a crystal clear category to which the Opposer does not sell. The respective channels of trade of the Applicant and Opposer are accordingly different.

4. The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.

83. When products are high-priced and subject to well considered specification based buying, the risk of likelihood of confusion is diminished because purchasers of such products are held to a higher standard of purchasing care. On the evidence the act of purchasing the Applicant's goods is in no sense an "impulse" purchase given to IBM, NCR, etc. alternatives.

84. It is clear that the purchasers of the parties' respective goods are each very sophisticated in their own way if only to take two US examples, namely, Circuit City and the Army & Air Force Exchange Service.

85. Given the clear level of sophistication of the buyers and the necessity for careful consideration and review in connection with any purchase of the parties'

respective goods, it is not reasonable to suggest that a buyer would be confused as to the identity of the respective parties or the origin of their respective wares.

86. Given that the parties' respective purchasers and potential purchasers are substantially different, are usually sophisticated, and since Applicant's and Opposer's goods are different and non-competitive, under a proper analysis of the factors, likelihood of confusion for relevant persons has not been established, even among retail customers. Electronic Design & Dales, Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 1992 U.S. App. LEXIS 137, 21 U.S.P.Q.2d (BNA) 1388 (Fed. Cir. 1992).

5. The fame of the prior mark (sales, advertising, length of use).

87. The Opposer has not established fame of their marks in the sense of some super-added public recognition as for example, Bose Corporation v. QSC Audio Products, Inc., 293 F.3d 1367, 2002 U.S. App. LEXIS 11749, 63 U.S.P.Q.2d (BNA) 1303 (Fed. Cir. 2002). There is no evidence from which to conclude that the Applicant's mark "has extensive public recognition and renown: and/or "casts a long shadow". Kenner Parker Toys Inc. v. Rose Art Industries, Inc., 963 F.2d 350, 1992 U.S. App. LEXIS 6961, 92 D.A.R. 5644, 22 U.S.P.Q.2d (BNA) 1453 (Fed. Cir. 1992) at 1456.

88. The Opposer's mark is not a strong distinctive mark. It incorporates the generic idea of DIGITAL which fact it can never change. The Opposer's trade-mark

position ought to be construed narrowly and literally for the purpose of this opposition.

89. In considering the question of “fame”, courts have looked at both “distinctiveness on the scale of trademarks” and “commercial strength, or marketplace recognition.” Fisons Horticulture, Inc. v. Vigoro Indus., 30 F.3d 466, 1994 U.S. App. LEXIS 18227, 31 U.S.P.Q.2d (BNA) 1592 (3d Cir. Del. 1994).

90. In Versa Products Co., Inc. v. Bifold Co. (Manufacturing) Ltd., 50 F.3d 189, 1995 U.S. App. LEXIS 2838, 33 U.S.P.Q.2d (BNA) 1801 (3d Cir. N.J. 1995) the Court noted that, “a strong trademark is thus one that carries widespread, immediate recognition that one producer (even if unknown) is associated with the mark, and so with the product.”

91. Clearly the problem for the Opposer is that their marks do not carry widespread recognition of a single source. On the contrary, given the thousand “DIGI” marks of the register the obvious inference is that “DIGI”, in and of itself, is commonplace and has come to be understood as describing or relating to computer and digital technology and not with any one source or producer.

92. The evidence is that the Applicant's use of the mark is highly visible, well advertised and successful over the past five years. These sales are significant and

establish a clear and distinct market for its operations in the United States with retail customers in association with its mark DIGIPOS.

6. The number and nature of similar marks in use on similar goods.

93. The Opposer apparently seeks a monopoly for the mark DIGI over any and all computer-related goods. This position is legally untenable and unavailable to the Opposer. The Opposer is an entrant to a trade-mark register that is replete with "DIGI" marks and must accept the entrance of others as a necessary result of have settled on a common, if not generic and descriptive, name.

94. The court in Re: Hub Distributing, Inc., 1983 TTAB LEXIS 129, 218 U.S.P.Q. (BNA) 284 (Trademark Trial & App. Bd. Mar. 31, 1983), would not accept a trade-mark search report as evidence of third party use of the registrations set forth therein. They did, however, allow that soft-copies of the registrations would be acceptable.

Firstly, we do not consider a copy of a search report to be credible evidence of the existence of the registrations and uses listed therein. The minimum we would accept in the case of federal registrations are soft copies of the registrations themselves. In Re: Duofold Inc., 184 U.S.P.Q. (BNA) 638 (Trademark Trial & App. Bd. July 28, 1999).

The evidence of the registrations in Class 9 are clearly admissible and relevant to the state of the register and commonality of the term "digi".

95. Ultimately the Court in Re: Hub Distributing, Inc., was of the view that the third party registrations described in the search report filed as evidence were insufficient to displace a presumption of distinctiveness. By contrast, the evidence here comprises an astonishing 1000+ active registrations for trademarks on the Register having, "digi" as a component, all in Class 9 which should be clearly a probative factor.

96. While evidence of a third party registration may not equate to evidence of use of the mark by the third party, the astonishing number of registered marks bearing the DIGI component is compelling evidence of the common place usage of the term "digi" in Class 9 and in the "computer" field.

97. Indeed the Court in Re: First Citizen's Bancshares, Inc., 1999 TTAB Lexis 367 (Trademark Trial & App. Bd. July 28, 1999), held that third-party registrations may be competent to show that a term has descriptive or suggestive significance as applied to certain goods or services.

98. The state of the Register shows that DIGI is a common term. More importantly The Opposer has done nothing to help clarify where the line exists between the Opposer's DIGI mark and any other "digi" component mark.

7. The nature and extent of any actual confusion. & The length of time during and conditions under which there has been concurrent use without

evidence of actual confusion.

99. In Mushroom Makers, Inc. v. R. G. Barry Corp., 580 F.2d 44, 1978 U.S. App. LEXIS 10223, 199 U.S.P.Q. (BNA) 65 (2d Cir. N.Y. 1978) the court said that,

During the period the parties have used their marks, their sales volume has expanded and hundreds of thousands of units of their respective commodities have been sold, often in the same department stores and specialty shops. It is therefore significant that the defendant failed to offer evidence that a single purchaser was confused, misled or deceived as to the source or origin of the product he or she was buying. Indeed [the opposer's] principal executive, whose functions included visiting stores throughout the country and attending shoe conventions, testified he knew of no such incident. Further, not a single salesperson or retailer was called to testify as to confusion on his or her part or that he or she knew of a single instance of consumer confusion. This omission is underscored by the fact that defendant is a substantial corporation with the means to have undertaken either a survey or an investigation to establish instances of actual consumer confusion.

100. The Applicant submits that an adverse inference should be drawn against the Opposer for failure to conduct a survey showing consumer confusion. In Eagle Snacks, Inc. v. Nabisco Brands, Inc., 625 F. Supp. 571, 1985 U.S. Dist. LEXIS 12481, 228 U.S.P.Q. (BNA) 625 (D.N.J. 1985), the court held that: "Failure of a trademark owner to run a survey to support its claims of brand significance and/or likelihood of confusion, where it has the financial means of doing so, may give rise to the inference that the contents of the survey would be unfavorable, and may result in the court denying relief."

101. In Versa Products Co., Inc. v. Bifold Co. (Manufacturing) Ltd., 50 F.3d 189, 1995 U.S. App. LEXIS 2838, 33 U.S.P.Q.2d (BNA) 1801 (3d Cir. N.J. 1995), the Court stated that, "if a defendant's product has been sold for an appreciable period of time without evidence of actual confusion, one can infer that continued marketing will not lead to consumer confusion in the future. The longer the challenged product has been in use, the stronger this inference will be".

102. Similarly, in Brookfield Communications, Inc. v. West Coast Entertainment Corp., 174 F.3d 1036, 1999 U.S. App. LEXIS 7779, 99 Cal. Daily Op. Service 2899, 99 D.A.R. 3779, 50 U.S.P.Q.2d (BNA) 1545 (9th Cir. Cal. 1999) at 1558, the court stated, "we cannot think of more persuasive evidence that there is no likelihood of confusion between these two marks than the fact that they have been simultaneously used for five years without causing any consumers to be confused as to who makes what." It is to be noted that the goods of the parties have been in the marketplace together for precisely 5 years.

103. There is no actual confusion. More specifically, notwithstanding the parties' five years of co-existence, the Opposer has not led any evidence of confusion anywhere in the world because, obviously, none exists.

8. The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).

104. The proponent of a “family” mark must show by competent evidence: (1) that prior to the entry into the field of any other’s mark, all or many of the marks in the alleged family were used and promoted together in such a way as to create a public perception of the common element as an indication of common source; and (2) that the common element is distinctive.¹

105. Recognition of the family is achieved when the pattern of usage of the common element is sufficient to be indicative of the origin of the family. It is thus necessary to consider the use, advertisement, and distinctiveness of the marks, including assessment of the contribution of the common feature to the recognition of the marks as of common origin.²

106. The Opposer does not have a “family of DIGI marks”. Rather, it has several overlapping registrations for the mark DIGI (and a variety of other marks). The Opposer was an entrant to a Register replete with marks having the “digi” common component. In this sense, the Opposer is no different than the other thousand trade-mark owners with trade-marks comprising the component, digi and, if anything, is a member of that family.

107. In American Novawood Corp. v. U.S. Plywood-Champion Papers Inc., 426 F.2d 823, 57 C.C.P.A. 1276, 1970 CCPA LEXIS 364, 165 U.S.P.Q. (BNA) 613

¹ Marion Laboratories, Inc. v. Biochemical/Diagnostics, Inc., 1988 TTAB LEXIS 24, 6 U.S.P.Q.2d (BNA) 1215 (Trademark Trial & App. Bd. Feb. 2, 1988). Polaroid Corp. v. American Screen Process Equipment Co., 166 U.S.P.Q. (BNA) 151 (trademark Trial & App. Bd. 1970).

(C.C.P.A. 1970), the court found that it is well established that merely adopting, using and registering a group of marks having a feature in common for similar or related goods with possibly the intent to establish a "family of marks" does not afford relief under this theory. It must be established through competent evidence that the party seeking to invoke this theory has utilized the marks said to comprise its "family" or a fair number of them in its promotional material or everyday sales activities in such a manner as to create common exposure and an association of common ownership.

108. The Opposer has entirely failed to adduce compelling evidence that its promotional and sales efforts have been conducted in such a manner as to create common exposure or an association of common ownership. The mark DIGI & Design is its house mark. This is not a family mark. It is a single identifier for the Opposer's goods. It doesn't stand for a group of marks.

9. The extent of potential confusion, i.e., whether de minimus or substantial.

109. There must be shown more than a mere possibility of confusion. Instead, there must be demonstrated a probability or likelihood of confusion.

110. The Court in Electronic Design & Dales, Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 1992 U.S. App. LEXIS 137, 21 U.S.P.Q.2d (BNA) 1388 (Fed.

² J & J Snack Foods Corp. v. McDonald's Corp., 932 F.2d 1460, 1991 U.S. App. Lexis 9905, 18 U.S.P.Q.2d (BNA) 1889 (Fed. Cir. 1991)

Cir. 1992), quoting from Witco Chemical Company, Inc. v. Whitfield Chemical Company, Inc., 418 F.2d 1403, 57 C.C.P.A. 804, 1969 CCPA LEXIS 218, 164 U.S.P.Q. (BNA) 43 (C.C.P.A. 1969) states: "We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with *de minimus* situations but with the practicalities of the commercial world, with which the trademark laws deal."

111. Similarly, the Court in Triumph Machinery Company v. Kentmaster Manufacturing Company Inc., 1987 TTAB LEXIS 94, 1 U.S.P.Q.2d (BNA) 1826 (Trademark Trial & App. Bd. Jan. 8, 1987) states that the Trademark Act does not speak in terms of remote possibilities of confusion, but rather, the likelihood of such confusion occurring in the marketplace.

112. In this case, the evidence is that the parties have coexisted in the marketplace for over five years without any evidence of confusion being adduced by the Opposer. The possibility of confusion is further diminished when one considers the application of the other factors discussed herein, namely, the differences in the parties' respective goods, channels of trade and the sophistication of their respective customers.

10. Any other established fact probative of the effect of use.

113. The Children's Hospital of Philadelphia v. The General Hospital Corporation, 2004 TTAB Lexis 212 (Trademark Trial & App. Bd. Mar. 31, 2004), defines Factor 13 as, "any other established fact probative of the effect of use, applicant asserts that it adopted its mark in good faith" and went on to note that, "There is no evidence that applicant misappropriated or otherwise attempted to ride on Opposer's goodwill through the adoption of its mark."

114. The Opposer complains that the Applicant did not have regard for the Opposer's trade-marks when selecting its mark DIGIPOS.

115. The Applicant is well experienced in the point-of-sale sector and never understood the Opposer to be a relevant factor when selecting its trade-mark for use in the point-of-sale sector. (ML 99,100)

116. What the Applicant had regard for were the thousands of trade-marks having the Digi component in International Class 9 whether by way of prefix, suffix or otherwise. The Applicant determined that the prefix "digi" was common and understood the prefix to mean "digital". The Opposer can point to no egregious conduct or any other factor suggesting wrongdoing or as somehow casting the Applicant's application to be in bad faith.

117. For the purposes of argument, at least the USPTO Trade-marks Examiner believed the mark to be directly registerable. Indeed, the Opposer's marks were not

cited in the prosecution of the subject application. The absence of confusion, post hoc, justifies the choice.

118. There are no objective grounds for which to censure this Applicant and neither is there any evidence that the application was filed ahead of a "national advertising campaign". The evidence is that the Opposer never heard of the Applicant at any time prior to the receipt by Jan McBride of an email circa October 2005 from Europe. Recalling that McBride joined the Opposer around 2000 as Director for Marketing for Europe and Asia (and had not heard about the Applicant until 2005), (JM 99,100) it is passing strange that the Opposer can criticize the Applicant for its selection and adoption of the mark. The parties were and are, commercially speaking, like two ships passing each other in the dark.

119. The Opposer's counsel further states that it subscribes to a watch service to look for "infringing" marks. There is no evidence that this watch service produced anything relevant to this Opposition. Mr. Larry Kraft telephoned the Applicant's President on May 4, 2005 (ML 12,13) and the witness McBride only heard about the Applicant from Marsha Stolt and Steve Maurer (the legal people) sometime after the e-mail (2005). (JM 99,100)

120. The conclusion, which is inescapable, is that there is no objective reason for the opposition. This opposition is theoretical at best and has no merit.

121. It is stated that the Applicant was placed on "notice" of the Opposer's marks. The evidence is that Mr. Larry Kraft, the Corporate Reporting Officer responsible for Sales and Marketing and who did not give evidence in this case, called the Applicant's President, Mr. Mark Leaper, on the telephone out of the blue. He informed Mr. Leaper that his company was going to oppose the trade-mark and that the Applicant didn't have a hope and should be ready to step down. It is to be noted that the Notice of Opposition was filed on December 29th, the year previously. (ML 12,13,104)

122. It is disingenuous in this modern world as between the sophisticated parties to allege that a telephone call out of the blue to engage in settlement discussions constitutes any form of notice. Rather, such phone call would be thought of as "privileged settlement discussions".

123. Finally, the Opposer claims to have expended large sums of money defending its mark. There is no evidence of any court litigation involving the Opposer's marks. The Opposer's "litigious" activity is limited to filing oppositions, which are case specific and in any event not specifically referred to in these proceedings. Most of the oppositions were settled (as is usual). In some cases the application was amended or the application withdrawn. The Opposer has not filed in evidence its expenditures in connection with its opposition efforts which in any event are not probative of any issue in this case. As well, the Opposer did not lead any evidence of infringement and is improperly relying on its answer to Interrogatory 34.

124. Crucially, none of the Opposer's marks have withstood any validity attacks and conversely there is no guidance from the courts on this important aspect of policing. There has been no policing.

CONCLUSION

125. In PC Club v. Primex Techs., Inc., 32 Fed. Appx. 576, 2002 U.S. App. LEXIS 4982 (Fed. Cir. 2002), where the marks were: (1) "ENPOWER", registered for use in association with computers and various computer peripherals; and (2) "EMPOWER", applied for by a company that dealt mainly with power sources for airline passengers' laptop computers, the Federal Court affirmed the Board's decision dismissing the Opposition, having regard for the following *DuPont* factors:

- (i) **the relatedness of the parties' goods** - the court found that "the question that must be considered is whether the goods are so related that they are likely to be connected in the mind of a prospective purchaser." The Board and the Court concluded that the parties' products were not competitive with each another;
- (ii) **the channels of trade** - The Board determined that "there was a dissimilarity in the channels of trade because PC Club sells its products at wholesale or retail to average consumers, whereas Primex's system is not the type of item that would be sold at retail." The court agreed that "there is not more than a theoretical possibility that Primex's goods would be purchased by general consumers at retail." ; and

- (iii) **the conditions under which and to whom sales are made** - The court explained that the risk of likelihood of confusion increases when products are inexpensive and the consumer uses less care in his/her purchase. In this case, the court found that, "given the amount of money it costs to install Primex's EMPOWER system, it is clear that a purchaser of Primex's system will exercise, at a minimum, some degree of care," and "this is also true of PC Club's product." Thus, this factor militated against a finding of a likelihood of confusion. Viewing all of the issues before it, the Federal Circuit affirmed the Board's dismissal of PC Club's oppositions.

126. The current instance is analogous to PC Club v. Primex Techs., Inc.. Simply put, there is no reasonable likelihood of confusion in trade with resultant damage to Opposer given the following distinguishing factors:

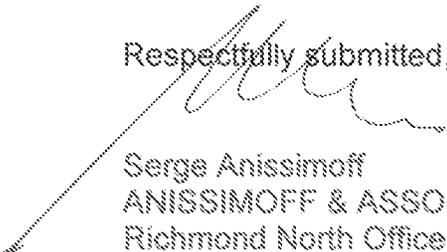
- (i) The generic or descriptive nature of the Opposer's Mark;
 - (ii) The nature and character of the goods of the parties and the lack of competition therebetween;
 - (iii) The parties' respective channels of trade;
 - (iv) The parties' usually intended purchasers;
 - (v) The fact that these goods are ordinarily selected by informed and discriminating persons having a level of technical sophistication;
- and

(vi) The lack of any evidence of actual confusion arising from the contemporaneous use of these marks over the years.

126. For all of which reasons and foregoing arguments the Applicant requests that the Opposition be dismissed and the registration of the Applicant's mark be granted.

22 June 2007

Respectfully submitted,

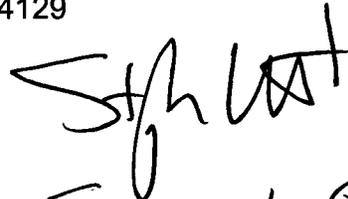


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the BRIEF FOR APPLICANT was served on 22 June 2007, by first class mail, postage prepaid, on the following attorney for Opposer:

Marsha Stolt
MOSS & BARNETT, PA
90 S. 7th St
4800 Wells Fargo Center
Minneapolis, MN 55402-4129



STEPHEN L. GRANT
STANDLEY LAW GROUP LLP
OF COUNSEL

APPENDIX A

VARIOUS DIGI*** MARKS

Exhibit 58

Mark DIGIMAX & Design
Registration No. 2802273

Goods, International Class 9: electrical components for use in the telecommunications and cable television industries, namely, chassis, connectors, RF and L Band signal directional couplers, splitters, custom configured passives and amplifiers for coaxial and fiber optic systems

Owner (REGISTRANT) PCI Technologies, Inc. CORPORATION CANADA 501 Clements Road, West, Suite 1 Ajax, Ontario CANADA L1S 7H4
<http://www.digimax.com.tw/MPEG4/>

Live/Dead Indicator LIVE



Exhibit 159

Mark DIGICAM & Design
Registration No. 2943417

Goods and Services: Class 9: Digital cameras, PC cameras, universal serial bus cameras, video conferencing apparatus used in computers and TV sets, video cassette recorder players, surveillance cameras, multifunction digital transmission apparatus, audio recorders, video recorders, video receives

Owner (REGISTRANT) DigiOn Inc. CORPORATION JAPAN 3-8, Momochihama 2-chome Sawara-ku, Fukuoka-shi Fukuoka JAPAN 814-0001
<http://www.digicam.nl/>

Live/Dead Indicator LIVE



Exhibit 172

Mark DIGI1 & Design
Registration No. 2931427

Goods and Services: Class 9: Batteries; battery chargers

Owner (REGISTRANT) GP Batteries International Limited CORPORATION SINGAPORE 50 Gul Crescent Singapore 629543 SINGAPORE
http://www.gpbatteries.com.hk/html/products/primary_digi1.html

Live/Dead Indicator LIVE



Exhibit 243

Mark DIGIMASK & Design
Registration No. 2835741

Goods and Services: Class 9: Computer software for generating virtual 3-dimensional objects; computer games recorded on discs, tapes and other computer-readable media

Owner (REGISTRANT) Digimask Limited CORPORATION UNITED KINGDOM Diamond House 179 Lower Richmond Road Surrey TW9 4LN UNITED KINGDOM
<http://www.digimask.com/>

Live/Dead Indicator LIVE



Exhibit 328

Word Mark DIGIPATH
Registration No. 2544637

Goods and Services: Class 9: Optical character recognition (OCR) scanner, and computer software for optical character recognition

Owner (REGISTRANT) Xerox Corporation CORPORATION NEW YORK 800 Long Ridge Road P.O. Box 1600 Stamford CONNECTICUT 06904
<http://www.xerox.com/>

Live/Dead Indicator LIVE

DIGIPATH

Exhibit 342

Word Mark DIGI
Registration No. 2583670

Goods and Services: Class 9: Battery Chargers; Batteries

**Owner (REGISTRANT) WU, TEN-DER INDIVIDUAL TAIWAN 4F-8, NO. 20, LANE 50
TIEN MOU E. RD. TAIPEI TAIWAN**

Live/Dead Indicator LIVE

DIGI

Exhibit 343

Word Mark DIGITAX
Registration No. 2759502

Goods and Services: Class 9: Digital codes stored in a computer readable medium, namely, magnetic disks, optical disks, tape, dvd, hard disks, fixed disks, solid state memory, memory cards, network media, and digital codes downloadable from a global computer network, large area network, wide area network or other network, for use in identification, verification or preventing counterfeiting; printers; and digital and printed labels an indicia to identify that a tax has been paid, sold and with the digital codes stored in a computer readable medium

**Owner (REGISTRANT) ASSURE SYSTEMS, INC. CORPORATION CALIFORNIA 750
Montevino Drive Pleasanton CALIFORNIA 94566
<http://www.assuresystems.com>**

Live/Dead Indicator LIVE

DIGITAX

Exhibit 355

Mark DIGIPAD & Design
Registration No.: 2732709

Goods and Services: Class 9: Audio speakers; audio tape players and recorders; audio disc players and recorders; radios; stereo amplifiers; stereo tuners; apparatus for recording, transmission and/or reproduction of sound, namely, audio system stereos as units of all of the above goods; headphones; earphones

Owner (REGISTRANT) Sony Kabushiki Kaisha TA Trading as Sony Corporation
CORPORATION JAPAN 7-35 Kitashinagawa 6-chome Shinagawa-ku Tokyo JAPAN
www.sony.com

Live/Dead Indicator LIVE

digipad

Exhibit 412

Word Mark DIGIMAX
Registration No.: 2348941

Goods and Services: Class 9: Digital cameras for personal use

Owner (REGISTRANT) Samsung Opto-Electronics America, Inc. CORPORATION NEW
JERSEY 40 Seaview Drive Secaucus NEW JERSEY 07094
<http://www.samsungcamera.com/>

Live/Dead Indicator LIVE

DIGIMAX

Exhibit 31

Word Mark: DIGIDENTIST
Registration No. 2833061

Goods and Services: Class 9: Multimedia computer program for educating dental patients featuring instruction about dental procedures

Owner (REGISTRANT) Clark, Carol D. DBA DigiDentist INDIVIDUAL UNITED STATES
P.O. Box 16752 Hattiesburg MISSISSIPPI 39404
<http://www.digidentist.com/>

Live/Dead Indicator LIVE

DIGIDENTIST