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Filing date: **10/28/2009**

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

Proceeding	91184213
Party	Defendant Direct Access Technology, Inc.
Correspondence Address	MICHAEL C. OLSON 1400 BRISTOL STREET N SUITE 270 NEWPORT BEACH, CA 92660 UNITED STATES molson@lawyer.com
Submission	Defendant's Notice of Reliance
Filer's Name	Michael C. Olson
Filer's e-mail	molson@lawyer.com
Signature	/mco/
Date	10/28/2009
Attachments	dat.notice.reliance.001.pdf (27 pages)(728355 bytes)

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

**In the matter of Trademark Application Serial No. 78914975
For the mark, METAL GEAR**

Galaxy Metal Gear, Inc.)	
)	Opposition No. 91184213
Opposer)	
)	
v.)	
)	NOTICE OF RELIANCE
)	
Direct Access Technology, Inc.)	
)	
Applicant)	

**APPLICANT’S NOTICE OF RELIANCE ON
DISCOVERY DEPOSITION OF ANTONIO TAN**

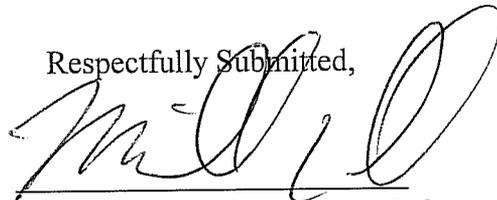
Pursuant to TBMP § 704.09, Applicant, Direct Access Technology, Inc. hereby gives notice of its intent to rely on portions of the discovery deposition of Antonio Tan taken on February

Opposition No. 91184213

13, 2009, a copy of which is attached hereto.

October 28, 2009

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'M. Olson', written over a horizontal line.

Michael C. Olson Reg. No. 45,728

LAW OFFICE OF MICHAEL C. OLSON, P.C.
1400 Bristol Street N., Ste 270
Newport Beach, California 92660
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Attorneys for Applicant
Direct Access Technology, Inc.

Opposition No. 91184213

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **NOTICE OF RELIANCE** with attachments was served on Jen-Feng Lee, counsel for applicant on this 28th day of October, 2009 by depositing a copy of the same in the United States mail, first class postage prepaid, addressed to:

Jen-Feng Lee, Esq.
World Esquire Law Firm, LLP
80 South Lake Avenue, Ste 708
Pasadena, CA 91101
Telephone: (626) 795-5555
Facsimile: (626) 795-5533

A handwritten signature in black ink, appearing to read "M. C. Olson", written over a horizontal line.

Michael C. Olson

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

In the matter of Trademark Application Serial No. 78914975
For the mark, METAL GEAR

Galaxy Metal Gear, Inc.,)
)
 Opposer,)
)
 vs.) Opposition No. 91184213
)
 Direct Access Technology, Inc.,)
)
 Applicant.)

Deposition of ANTONIO TAN, taken on behalf
of the Applicant, at the Law Offices of Michael C.
Olson, 1400 Bristol Street North, Suite 270,
Newport Beach, California, on February 13, 2009,
commencing at 9:54 a.m. and concluding at
11:35 a.m., before Kimberlee Castro, CSR No. 11459,
a Certified Shorthand Reporter for the State of
California, with principal office in the County of
Orange.

A P P E A R A N C E S

FOR THE APPLICANT, DIRECT ACCESS TECHNOLOGY:

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Newport Beach, California

February 13, 2009

9:54 a.m. - 11:35 a.m.

ANTONIO TAN,

called as a witness by and on behalf of the Applicant,
having been first duly sworn by the Certified Shorthand
Reporter, was examined and testified as follows:

EXAMINATION

BY MR. OLSON:

Q Can you state your name for the record.

A Antonio Tan.

Q You've been deposed before, right? You've had
your deposition taken before?

A Yes.

Q So you're familiar with the procedure?

A Yes.

Q Do you need me to clarify or do you have any
questions about the procedure?

A So far, no.

Q Okay. If at any time you don't understand a
question or hear the question, let me know, and I'll repeat
it or rephrase it for you. We don't want you to answer a
question if you don't understand, okay?

1 A Okay.

2 Q You're employed by Galaxy Metal Gear?

3 A Yes.

4 Q And are you an officer in the company?

5 A Yes.

6 Q Okay. What's your position?

7 A Vice-president.

8 Q And the other officers of the company are who?

9 A Garry Ching and Geoffrey Ching.

10 Q And Garry is G-A-R-R-Y; Ching is C-H --

11 A C-H-I-N-G.

12 Q And how about Geoffrey?

13 A G-E-O-F-F-R-E-Y.

14 Q Now, Garry and Geoffrey used to be employed by

15 Direct Access Technology, correct?

16 A Yes.

17 Q Then they went with you to form Galaxy Metal Gear?

18 A Yes.

19 Q Galaxy Metal Gear filed an opposition to the

20 trademark application of Direct Access Technology, right?

21 A Yes.

22 Q Are you the person most knowledgeable at Galaxy

23 Metal Gear for the basis of filing that opposition?

24 A Yes.

25 Q Are you the one who approved or instructed lawyers

1 to file an opposition?

2 A Yes.

3 Q Now, at one time Galaxy Metal Gear -- well, strike
4 that.

5 When did Galaxy Metal Gear first start doing
6 business?

7 MR. LEE: Objection, irrelevant. But the witness
8 can answer.

9 THE WITNESS: Should be around 2005.

10 BY MR. OLSON:

11 Q And in 2005, were you the vice-president?

12 A Yes.

13 Q And Garry and Geoffrey were also working with you
14 at Galaxy Metal Gear?

15 A Yes.

16 Q And what are their positions? What is Garry's
17 position?

18 A He's also an officer; he's president.

19 Q And then Geoffrey is the?

20 A Secretary.

21 Q Secretary. Okay, at one time Galaxy Metal Gear
22 filed its application to register Galaxy Metal Gear as a
23 trademark?

24 A Yes.

25 Q Were you the one who proposed trying to register

1 your attorney and that were not asked for?

2 MR. LEE: Clarification. When you're talking
3 about opposition, you're talking about this opposition?

4 MR. OLSON: Right.

5 THE WITNESS: Repeat the question again.

6 BY MR. OLSON:

7 Q You said you gave the documents that were asked
8 for to your attorney previously. And I want to know, are
9 there documents that you did not give to your attorney
10 because they weren't asked for and those documents are
11 related to this opposition?

12 A Based on my knowledge, everything was given.

13 Q Okay. Now, in the application that Galaxy -- or
14 in the proceedings that Galaxy Metal Gear brought to
15 register its trademark, that application was opposed by
16 Direct Access Technology, correct?

17 A Correct.

18 Q You're familiar with that, right?

19 MR. LEE: Objection, calling for legal conclusion,
20 but witness can answer.

21 THE WITNESS: Yes.

22 BY MR. OLSON:

23 Q And those proceedings ended with agreement that
24 Galaxy Metal Gear would abandon its trademark application
25 with prejudice, right?

1 MR. LEE: Objection, calling for legal conclusion,
2 relevance.

3 Witness can answer.

4 THE WITNESS: Yes.

5 BY MR. OLSON:

6 Q Did you authorize the abandonment of the
7 application?

8 MR. LEE: Same objection.

9 Unless I tell you not to answer, then you can
10 answer.

11 THE WITNESS: Oh. Yes.

12 BY MR. OLSON:

13 Q Okay. Did you agree to change your trademark at
14 the same time you agreed to abandon the application?

15 MR. LEE: Same objection.

16 THE WITNESS: Yes.

17 BY MR. OLSON:

18 Q Have you changed the trademark?

19 MR. LEE: Same objection.

20 THE WITNESS: We did not apply -- we did not
21 proceed further trademark.

22 BY MR. OLSON:

23 Q Are you selling the goods under a new trademark
24 now?

25 MR. LEE: Irrelevant.

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THE WITNESS: Repeat the question.

BY MR. OLSON:

Q Yeah. At this time, are you selling your enclosures under a different trademark?

A No.

Q Now, in the proceedings that DAT had instituted to oppose Galaxy Metal Gear's trademark, was there a reason that Galaxy Metal Gear did not raise a claim that Direct Access Technology did not own the Metal Gear trademark?

A Can you repeat that for me?

Q Sure.

MR. LEE: Objection, calling for legal conclusion, speculation, irrelevant.

BY MR. OLSON:

Q In the proceedings that DAT brought against Galaxy Metal Gear, was there a reason Galaxy Metal Gear did not raise a claim that DAT did not own the Metal Gear trademark?

MR. LEE: Objection, outside the scope of this proceeding.

THE WITNESS: Is there a reason why Galaxy Metal Gear did not raise the proceeding of the trademark?

BY MR. OLSON:

Q Okay.

A Can you rephrase that?

1 Q Sure. Galaxy Metal Gear brought a proceeding or
2 filed an application to register its trademark?

3 A Yes.

4 Q And DAT filed an opposition to that trademark
5 application. You're aware of that, right?

6 A Yes.

7 Q Okay. Is there a reason that Galaxy Metal Gear
8 did not raise a claim in those proceedings that DAT did not
9 own the Metal Gear trademark?

10 MR. LEE: Again, calling for legal conclusion.
11 It's a fact witness.

12 THE WITNESS: I believe that the trademark does
13 not belong to Direct Access. We did not raise that
14 information because purely a business decision. We don't
15 want to be spending anymore money to fight this.

16 BY MR. OLSON:

17 Q So is it correct, then, that Galaxy Metal Gear
18 made a business decision not to raise, in that DAT
19 opposition proceeding, that DAT did not own the mark?

20 A Yes.

21 MR. LEE: Objection, calling for legal conclusion.
22 It's a fact witness.

23 BY MR. OLSON:

24 Q Did you discuss with the other, I'll say partners
25 or officers Geoffrey and Garry Chen, did you discuss

1 whether you should raise that or not in the opposition
2 proceeding?

3 MR. LEE: Same objections.

4 THE WITNESS: Yes.

5 BY MR. OLSON:

6 Q And did all three of you agree, then, not to raise
7 it?

8 A Yes.

9 Q And is the same thing true with regard to the
10 claim that Metal Gear is merely descriptive of the
11 enclosures, you and your partners agreed not to raise that
12 issue for a business decision?

13 MR. LEE: Objection, calling for legal
14 conclusion.

15 THE WITNESS: Metal Gear, I mean, it's merely very
16 descriptive and familiar.

17 BY MR. OLSON:

18 Q That issue was not raised in the opposition
19 proceedings by DAT. Was that also a business decision that
20 you and your partners made not to raise that issue?

21 A Yes.

22 Q When did you -- strike that.

23 When did Galaxy Metal Gear first start selling
24 enclosures with Metal Gear on it?

25 MR. LEE: Objection, vague.

1 companies, not you personally, but one of your companies
2 first bought a product, an enclosure, from DAT with the
3 mark Metal Gear?

4 A I don't recall the date.

5 Q By the way, can you just des, for the record, what
6 an enclosure is?

7 A Enclosure is a metal case that you put a hard
8 drive on to make it an external device for a computer.

9 Q So it's like an external hard drive, but when you
10 sell it, or DAT sells it, or any other retailer sells it,
11 there's no hard drive actually inside yet, correct?

12 A Correct.

13 Q Now, some of them are made of plastic not of
14 metal, correct?

15 A Correct.

16 Q And some are metal, right?

17 A Correct.

18 Q And are there any moving parts inside the
19 enclosure as you guys sell it?

20 A Moving parts?

21 Q Right.

22 A No.

23 Q Is it basically a small circuit board that allows
24 the computer to communicate with the hard drive?

25 A Correct.

1 Q And would it be correct that there are no moving
2 mechanical parts or gears or anything like that inside
3 that?

4 A Correct.

5 Q Correct?

6 A Correct.

7 MR. LEE: A little bit of clarification.

8 When you're asking circuit board, are you
9 referring to what we know commonly known as PCB, that kind
10 of circuit board?

11 MR. OLSON: Sure.

12 BY MR. OLSON:

13 Q That's what you understood, right?

14 A Yes.

15 MR. OLSON: We've been using the old terminology.

16 MR. LEE: Yes, because I don't know what can be in
17 an enclosure, so --

18 MR. OLSON: Okay.

19 BY MR. OLSON:

20 Q Now, going back to the issue of fraud. Was any
21 company that you're affiliated with the first purchaser of
22 Metal Gear enclosures from datastor?

23 A The first purchaser from my company?

24 Q No. Okay. Datastor supplied -- supplies -- well,
25 strike that.

1 regard to Metal Gear enclosures?

2 A Correct.

3 Q By the way, would it be fair to say that you have
4 no personal knowledge of how the Metal Gear mark was
5 created?

6 A No.

7 Q That's true, correct?

8 A That's true.

9 Q Okay. And is it true you have no personal
10 knowledge of the date the Metal Gear mark was created?

11 A That's true.

12 Q Is there anything about the mark Metal Gear that
13 tells you about the quality of the enclosure?

14 MR. LEE: Objection, calling for legal conclusion.

15 THE WITNESS: Is there anything that -- no.

16 BY MR. OLSON:

17 Q Okay. By the way, other than the video game Metal
18 Gear, have you seen Metal Gear used as a trademark on any
19 products other than the enclosures manufactured by
20 datastor?

21 A Metal Gear other than the video game? There's
22 gear and then gear box -- there's game gear, but I have no
23 idea.

24 Q But in the computer field, other than the video
25 game Metal Gear, have you seen it, Metal Gear on anything

1 other than enclosures?

2 A Other than enclosures?

3 Q Right.

4 A I'm not sure.

5 Q Have you seen Metal Gear on enclosures
6 manufactured by someone other than datastor or DAT?

7 A No.

8 Q Does the term -- the -- strike that.

9 Does the mark Metal Gear convey to you some kind
10 of idea about the function of the enclosure?

11 MR. LEE: Objection, calling for legal conclusion.

12 THE WITNESS: No.

13 BY MR. OLSON:

14 Q Does the mark Metal Gear convey some kind of idea
15 about one of the parts or ingredients of the enclosure?

16 MR. LEE: Same objection.

17 THE WITNESS: No.

18 BY MR. OLSON:

19 Q Does the mark Metal Gear convey to you some kind
20 of idea about the characteristic of the enclosure?

21 MR. LEE: Same objection.

22 THE WITNESS: No.

23 BY MR. OLSON:

24 Q Does the mark Metal Gear convey to you some idea
25 about one of the features of the enclosure?

1 A No.

2 MR. LEE: Same objection.

3 BY MR. OLSON:

4 Q What -- what's your job duty at Galaxy Metal Gear?

5 A I sell enclosures to customers. And I do some
6 exports for the customers, too.

7 Q Are you the only one who does sales or other
8 people do sales?

9 A Other people do sales.

10 Q Do the three officers all do sales?

11 A Yes.

12 Q Is the customer list divided somehow or is it just
13 based on who you know?

14 A It's divided, but we help each other out, too.

15 Q Is it divided, like, by territory? Like, some
16 people have East Coast, some people have West Coast?

17 A No. It's just divided to whoever gets to talk to
18 the customers, whoever takes care of the customers.

19 Q Your company is a small company, right?

20 A Correct.

21 Q How many employees total do you have?

22 A Four.

23 Q Four.

24 A Five.

25 Q Five?

1 A Including me.

2 Q Five including you?

3 A Including me.

4 Q Okay. Other than the three owners --

5 A Uh-huh.

6 Q -- are any of the other employees doing sales

7 work?

8 A No.

9 Q Okay. What percentage of the sales do you do?

10 A What percentage of the sales do I do?

11 Q (Nods.)

12 A I'd say about 50.

13 Q Fifty percent?

14 A Uh-huh.

15 Q Okay. Now, when a customer calls you up, is it a

16 distributor or a retailer or both?

17 A When the customer calls me up, both.

18 Q So you have clients or customers who are both

19 distributors and retailers, right?

20 A Yes.

21 Q Do you know the -- well, strike that.

22 Do the distributors sell retail also or just to

23 other retailers?

24 A They also sell to retail.

25 Q They sell, like, to the end user and also to

1 retailers?

2 A Yes.

3 Q Okay. When they call you up, do they call you up
4 and say, "I want a 3.5" enclosure," or, you know, how do
5 they order? Do they order by part number or how do they
6 order?

7 A They order by part number.

8 Q Okay. Would it be fair to say that the customers
9 do not call you up and say, "Send me a metal gear"?

10 A For customers, we usually specify with them of
11 what they want, so we make sure that they know the part
12 number before they order.

13 Q Okay. So basically people -- your customers order
14 by part number?

15 A By part numbers, yes. Before we have them order,
16 we usually give them the specs of the part number and they
17 know what the item is.

18 Q Are the orders usually written or are they verbal
19 orders?

20 A There's written orders and there's verbal orders.

21 Q Okay. Do you sell other products with Galaxy
22 Metal Gear trademark on them?

23 A Yes.

24 Q What other kinds of products do you sell?

25 A We have the dual bay enclosures. We have the

1 multimedia enclosures.

2 Q Do you sell cables with Metal Gear -- or Galaxy
3 Metal Gear on them?

4 A Galaxy mark on the cables.

5 Q Anything other than enclosures and cables?

6 A Not that I know of.

7 Q How did --

8 A Switch. Yeah, there's a switch, HDMI, with
9 Galaxy mark on it.

10 MR. LEE: What kind of switch?

11 THE WITNESS: HDMI switch.

12 BY MR. OLSON:

13 Q And the HDMI switch basically allows you to plug
14 multiple devices into the switch. And then one goes to the
15 TV set so that you can have -- if you only had one HDMI
16 slot on your TV, you can use multiple devices, right?

17 A Correct.

18 Q Any other products you sell with Galaxy Metal Gear
19 on it?

20 A So far, that's it.

21 Q How about with Metal Gear, do you sell anything
22 other than enclosures?

23 A Metal Gear? Just enclosures.

24 Q Is there anything about the trademark Metal Gear
25 that makes you think it describes the enclosure?

1 MR. LEE: Objection, calling for legal conclusion.

2 THE WITNESS: No.

3 MR. OLSON: Okay. I think that's it. Let's go
4 off the record.

5 (Off the record.)

6 MR. OLSON: Back on record.

7 BY MR. OLSON:

8 Q Are you also selling a product, the D-I-V-X, DivX?

9 A That's the multimedia.

10 Q Multimedia?

11 A Yes.

12 Q Can you describe what that is?

13 A It's a device -- it's an enclosure that you can
14 put a hard drive on, you can hook it up directly to your TV
15 and view your pictures, your movies, and play that on the
16 TV.

17 Q Now, DivX, that's a kind of format that's used for
18 movies and things, right?

19 A Correct.

20 Q Okay.

21 A It's a decoding format.

22 Q Right. Like mpeg or something else, correct?

23 A Correct.

24 Q Now, you're not claiming that's a trademark of
25 yours, are you?

1 MR. LEE: Calling for legal conclusion.

2 THE WITNESS: No.

3 MR. OLSON: Okay.

4 BY MR. OLSON:

5 Q Are there any other products that you're selling
6 with either Galaxy Metal Gear or Metal Gear that we haven't
7 talked about?

8 A No.

9 Q Okay.

10 A Enclosure, cables, the switch, and then the
11 multimedia player.

12 Q Okay. Let me ask you a kind of unfair question,
13 but I'm going to ask anyway, okay?

14 Since we started the deposition, and we're at this
15 point now, is there something else you recall about any of
16 your prior answers that you think, you know, you should
17 change or add to or modify in some way?

18 MR. LEE: We will get a chance to review that,
19 right?

20 MR. OLSON: Well, I know. I'm just asking right
21 now if he remembered something. You know, I don't want to
22 take a break and then you talk to you, and then, "Oh, I
23 should have said --

24 THE WITNESS: Oh, no.

25 MR. OLSON: -- this," right?

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MR. LEE: Fair enough.

BY MR. OLSON:

Q There's nothing else?

A Nothing else.

MR. OLSON: Yeah, that's all I have.

MR. LEE: So we're going to conclude?

MR. OLSON: Yeah.

MR. LEE: Okay. You want to do the standard stip?

MR. OLSON: Well, let's go off the record.

(Off the record.)

MR. OLSON: Let me propose the stipulation that the court reporter prepare the transcript and send it to Mr. Lee. And he will have his client read it, review it, make any changes, if necessary, sign it under penalty of perjury within two weeks of when Mr. Lee receives it. And then Mr. Lee can notify us if the witness made any changes within ten days after that. And then I guess Mr. Lee can maintain custody of the original.

Anything else?

MR. LEE: Court reporter be relieved of her duty under the Code, and that's it.

MR. OLSON: Yeah, except the Code don't apply.

MR. LEE: Okay.

/////

1 (Whereupon Applicant's Exhibits 1 and 2 were
2 marked for identification by the Certified Shorthand
3 Reporter, copies of which are attached hereto.)

4 (Whereupon the deposition of Antonio Tan concluded
5 at 11:35 a.m.)

6 (Declaration under penalty of perjury on the
7 following page hereof.)

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I DO SOLEMNLY DECLARE UNDER PENALTY OF PERJURY,
UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE
FOREGOING IS MY DEPOSITION UNDER OATH; THAT THESE ARE THE
QUESTIONS ASKED OF ME AND MY ANSWERS THERETO; THAT I HAVE
READ SAME AND HAVE MADE THE NECESSARY CORRECTIONS,
ADDITIONS, OR CHANGES TO MY ANSWERS THAT I DEEM NECESSARY.

IN WITNESS WHEREOF, I HEREBY SUBSCRIBE MY NAME
THIS _____ DAY OF _____, 20_____.

WITNESS SIGNATURE

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CERTIFICATION

OF

CERTIFIED SHORTHAND REPORTER

I, the undersigned, a Certified Shorthand Reporter of the State of California do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

WITNESS WHEREOF, I have this date subscribed my name



Amberlee D. Castro

Dated: FEB 20 2009

Certificate Number 11459