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

Proceeding	91184213
Party	Plaintiff Galaxy Metal Gear, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 78914975

Filed: 6/22/2006

Mark: Metal Gear

GALAXY Metal Gear, INC., )  
 )  
 Opposer, )  
 )  
 vs. )Opposition No. 91184213  
 )  
 DIRECT ACCESS TECHNOLOGY, INC., )  
 )Action filed: May 20, 2008  
 Applicant. )  
 )

DEPOSITION OF ANTONIO TAN  
Thursday, July 16, 2009  
Pasadena, California

REPORTED BY: Lyn Corrin Aaker, CSR No. 6228

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

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GALAXY Metal Gear, INC., )  
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 Opposer, )  
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 vs. )Opposition No. 91184213  
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 DIRECT ACCESS TECHNOLOGY, INC., )  
 )Action filed: May 20, 2008  
 Applicant. )  
 )

Deposition of ANTONIO TAN, a Witness, taken on  
behalf of the Opposer, at 80 South Lake Avenue,  
Suite 708, Pasadena, California 91101, commencing  
at the hour of 1:06 p.m., Thursday, July 16,  
2009, before Lyn Corrin Aaker, CSR No. 6228,  
pursuant to Notice of Taking Deposition.

1 APPEARANCES OF COUNSEL:

2

3 For Opposer:

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19 Also Present:

20 PATRICK WANG

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I N D E X

WITNESS	EXAMINATION	PAGE
ANTONIO TAN	By Mr. Tanji	5
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EXHIBITS FOR IDENTIFICATION

Opposer 1	Color copy of photograph	11
Opposer 2	Copy of "Exclusive Sales Agreement"	17

1 THURSDAY, JULY 16, 2009, PASADENA, CALIFORNIA

2 1:06 P.M.

3 \* \* \*

4

5 ANTONIO TAN,

6 the witness herein, having been first duly sworn, was

7 examined and testified as follows:

8

9 EXAMINATION +

10 BY MR. TANJI:

11 Q. Please state your name.

12 A. Antonio Tan.

13 Q. Who are you employed by?

14 A. Galaxy Metal Gear.

15 Q. What's your position with them?

16 A. VP, Vice President. I am in charge of sales and

17 marketing.

18 Q. And how long have you been with Galaxy?

19 A. Ever since the company started.

20 Q. And when was that?

21 A. Somewhere around 2006.

22 Q. 2006?

23 A. (Nods head up and down.)

24 Q. It wasn't earlier?

25 A. It could be earlier.

1 Q. Was Galaxy open in 2004?

2 A. I believe so, yes.

3 MR. OLSON: Move to strike. It's leading.

4 BY MR. TANJI:

5 Q. Well, when was Galaxy formed?

6 A. Well, somewhere around in 2004.

7 Q. What is the business of Galaxy?

8 A. We sell enclosure for hard drives, optical  
9 drives, and multimedia.

10 Q. Regarding the enclosures, under what brand names  
11 has Galaxy sold enclosures?

12 A. Under Galaxy Metal Gear, Metal Gear, and Galaxy.

13 Q. Regarding the enclosures that Galaxy has sold  
14 under the names Galaxy Metal Gear and Metal Gear, where  
15 did Galaxy buy those products to resell?

16 A. We buy those through DataStor. And multimedia  
17 products, we buy those through Mac Power.

18 Q. Do you have multimedia products that are sold  
19 under the name of Metal Gear?

20 A. Galaxy Metal Gear.

21 Q. And was it like that at the beginning when Galaxy  
22 started?

23 A. Correct.

24 Q. Do you know a company called TechDepot?

25 A. Yes.

1 Q. Did TechDepot have any involvement in supplying  
2 products to Galaxy?

3 A. Yes.

4 Q. For what time period was that?

5 A. Around 2004, the beginning. We buy our products  
6 through TechDepot.

7 Q. And what products are those?

8 A. Those were the Metal Gear enclosures.

9 Q. And who owns TechDepot?

10 A. It's owned by three of us.

11 Q. "Three of us" is?

12 A. Me, Garry Ching, and Jeffrey Ching.

13 Q. Who owns Galaxy?

14 A. Me, myself, Jeffrey Ching, and Garry Ching.

15 Q. And for the Metal Gear products that TechDepot  
16 sold to Galaxy, where did TechDepot get those products?

17 A. They get them from DataStor.

18 Q. Do you have any understanding as to why the brand  
19 name -- strike that question. When Galaxy was buying  
20 products from DataStor or TechDepot was buying products  
21 from DataStor, what brand names was DataStor giving to  
22 those enclosures?

23 A. It's under the brand of Metal Gear, and there's  
24 other brands which has the Galaxy Metal Gear.

25 Q. Now, did either TechDepot or Galaxy Metal Gear

1 have any say as to what these brand names are?

2 A. Repeat the question again?

3 Q. Does TechDepot or Galaxy Metal Gear have any say  
4 into what the brand names of the enclosures are that you  
5 are buying from DataStor?

6 A. We buy them from DataStor as a finished product,  
7 so we sell them at that brand.

8 Q. What brand?

9 A. Metal Gear and Galaxy Metal Gear.

10 Q. Is there any difference between what's Metal Gear  
11 and what's Galaxy Metal Gear?

12 A. The Galaxy Metal Gear are the five and a quarter  
13 size. The metal gears are on three and a half size  
14 enclosures.

15 Q. Your company is called Galaxy Metal Gear. Right?

16 A. Yes.

17 Q. So the Galaxy word by itself, is that something  
18 that is used by DataStor in selling products to people or  
19 companies?

20 A. I believe that DataStor sold the Galaxy  
21 Metal Gear brand only to us.

22 Q. So would products under the name of Galaxy  
23 Metal Gear, not just Metal Gear, be sold to Galaxy under  
24 that name at the request of Galaxy Metal Gear?

25 A. Correct.

1 MR. OLSON: I will object; it's leading.

2 BY MR. TANJI:

3 Q. Did Galaxy Metal Gear request that products be  
4 sold to Galaxy using any particular name?

5 A. Galaxy Metal Gear name.

6 Q. Was that accepted by DataStor?

7 A. Yes.

8 Q. Do you have any understanding of what -- if  
9 there's any particular meaning of "metal" in the  
10 Metal Gear enclosures and Galaxy Metal Gear enclosures?

11 A. Metal should be the metal enclosure. The  
12 material of the actual product is made out of metal.

13 Q. So enclosures, what were they made of?

14 A. Metal. Aluminum.

15 Q. Are they still made of metal today?

16 A. Some of them are still made of metal, and some of  
17 them are plastic.

18 Q. Do you have an understanding as to when plastic  
19 enclosures started being sold?

20 A. It started later, much later than the metal  
21 enclosures.

22 Q. Do you have any estimate as to a year?

23 A. I don't.

24 Q. Do you have any understanding of any particular  
25 meaning of the word "Gear" in Galaxy Metal Gear or

1 Metal Gear?

2 A. Probably -- what do you call this? -- just stuff  
3 like enclosure stuff. That's probably gear.

4 MR. OLSON: I will object; calls for speculation.

5 BY MR. TANJI:

6 Q. Have you ever had any communications with anyone  
7 as to why the word "gear" is used?

8 A. No.

9 Q. How about "metal"? Have you ever had any  
10 communications with anyone about the use of the word  
11 "metal"?

12 A. No.

13 Q. Regarding DataStor's sale of Metal Gear  
14 enclosures to companies that are going to sell them in the  
15 United States, do you have an understanding as to who is  
16 allowed to sell them now?

17 A. I believe that anyone is able to sell the  
18 Metal Gear mark right now.

19 Q. Why do you say that?

20 A. Because DataStor is the owner of that trademark.

21 MR. OLSON: I will object. No foundation, calls  
22 for speculation, calls for a legal conclusion, move to  
23 strike.

24 BY MR. TANJI:

25 Q. What's the basis for you saying that DataStor is

1 the owner of the Metal Gear trademark?

2 A. They were the ones selling to most of the  
3 importers, distributors here, including us.

4 Q. And are you aware of DataStor selling Metal Gear  
5 enclosures to other companies?

6 A. Yes.

7 Q. Who are they?

8 A. They sold to DAT, CompUSA, and us.

9 Q. How do you know DataStor sold Metal Gear  
10 enclosures to DAT?

11 A. TechDepot used to buy Metal Gear enclosures  
12 through DAT.

13 Q. How do you know DataStor sold Metal Gear  
14 enclosures to CompUSA?

15 A. I have seen the actual product, and DataStor  
16 actually had sent us a box of Metal Gear, a product box  
17 with the Metal Gear.

18 Q. When did they send you that?

19 A. Somewhere in around 2006.

20 (A copy of the foregoing document was marked  
21 by the court reporter as Opposer Exhibit+ 1 for  
22 identification; attached hereto.)

23 BY MR. TANJI:

24 Q. I am showing you a photo attached as Exhibit 1.  
25 Do you recognize that?

1 A. Yes.

2 Q. And who took that photo?

3 A. We did.

4 Q. "We" is who?

5 A. Garry and me.

6 Q. And what is the photo taken of?

7 A. The actual CompUSA with the Metal Gear mark on

8 the box.

9 Q. That's the box you were referring to before?

10 A. Correct.

11 Q. And why did DataStor send you this CompUSA box?

12 MR. OLSON: I will object; calls for hearsay,

13 calls for speculation.

14 THE WITNESS: Answer?

15 BY MR. TANJI:

16 Q. Yes.

17 A. We were asking for some spare parts sticker to be

18 put on our product, and they sent the stickers inside this

19 box. They used this as a shipping box.

20 Q. "They" is who?

21 A. DataStor.

22 Q. Is there someone in particular at DataStor you

23 were communicating with on this?

24 A. Anderson, Anderson Wang.

25 Q. And why were you having these kind of discussions

1 about stickers that you would receive a box from DataStor?

2 A. We need to -- we ordered an enclosure with some  
3 fans and some spare parts that we need, so they sent us  
4 the spare parts on this box.

5 Q. Using as Exhibit 2 an exclusive sales agreement,  
6 take a look at that.

7 A. (Witness peruses document.)

8 Q. Do you recognize that?

9 A. Yes.

10 Q. What is that?

11 A. This is an exclusive sales agreement between  
12 DataStor and TechDepot.

13 Q. And by this agreement what's supposed to happen?

14 A. We're supposed to get an exclusivity on  
15 DataStor's products.

16 Q. Which products?

17 A. Metal Gear, Galaxy Metal Gear.

18 Q. And when was this agreement made?

19 A. This was made -- it was entered on December 19,  
20 2006.

21 Q. And whose signatures are at the bottom?

22 A. Mine and Anderson Wang's.

23 MR. OLSON: I'll object; no foundation.

24 MR. TANJI: Foundation to Anderson?

25 MR. OLSON: Anderson.

1 BY MR. TANJI:

2 Q. Did you see Anderson Wang sign this agreement?

3 A. Yes.

4 Q. Where did Anderson Wang sign this agreement?

5 A. We signed this at the restaurant when they came  
6 here in the US.

7 Q. So you saw him take the pen to the paper and sign  
8 it?

9 A. Yes. I was there. He signed with us.

10 Q. How long was this exclusive sales agreement in  
11 force, in effect?

12 A. I believe this was for one year.

13 Q. Was it ever renewed?

14 A. No.

15 Q. Do you have an understanding about any patents  
16 that are connected to the Metal Gear enclosures sold by  
17 DataStor?

18 A. Yes.

19 Q. Do you know of any patents?

20 A. I know of the patent that DataStor had. They had  
21 provided us a copy of their patent.

22 Q. And when did they do that?

23 A. I believe it was around 2006, early 2006.

24 Q. Was that sent to TechDepot or Galaxy?

25 A. Sent to TechDepot.

1 Q. Do you have an understanding as to why DataStor  
2 would send you information on their patent?

3 A. As I can remember, we were talking to them about  
4 seeing the same type of enclosure that was sold out in the  
5 market. So what they said is they have a patent on that  
6 design.

7 Q. Do you have an understanding as to why Galaxy is  
8 opposing DAT's efforts to trademark Metal Gear?

9 A. Yes.

10 Q. What is that?

11 A. We are still selling Metal Gear marks. We still  
12 have inventory of the Metal Gear enclosures. And I  
13 believe that DataStor is still the owner of that trademark  
14 Metal Gear.

15 MR. TANJI: Can I hear the answer again.

16 (Answer read.)

17 BY MR. TANJI:

18 Q. So by that you mean DataStor versus DAT?

19 A. Say it again?

20 Q. By your answer you are saying that DataStor owns  
21 the mark and not Metal Gear -- DataStor and not DAT?

22 A. Correct.

23 MR. OLSON: I will object. It's leading.

24 MR. TANJI: Nothing further at this time.

25

EXAMINATION +

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BY MR. OLSON:

Q. Okay. Mr. Tan, you are an officer in Galaxy Metal Gear. Correct?

A. Correct.

Q. And Galaxy Metal Gear was incorporated in 2005. Correct?

A. I believe so.

Q. Okay. And before -- strike that. Garry Ching and Jeffrey Ching are also officers in Galaxy Metal Gear. Correct?

A. Yes.

Q. And the three of you are also officers in TechDepot. Correct?

A. Yes.

Q. TechDepot has been closed by you. Correct? You don't operate under that business name any more. Correct?

A. We don't operate by that business name any more.

Q. And when did you close down the TechDepot name?

A. I couldn't remember the exact date of when we changed the name.

Q. Now you are doing business under TechDeal name. Correct?

A. TechDeal.

Q. Did you change in 2006?

1 A. Could be, yes.

2 Q. Did you file official papers to incorporate  
3 Tech Depo, or it was just a business entity dba of the  
4 three of you?

5 A. We did file a corporation.

6 Q. And you also filed formal papers to dissolve the  
7 corporation?

8 A. Correct.

9 Q. So would it be fair to say that the corporation  
10 was dissolved sometime in the middle of 2006?

11 A. Yes.

12 (A copy of the aforementioned document  
13 was marked by the court reporter as Opposer  
14 Exhibit+ 2 for identification; attached hereto.)

15 BY MR. TANJI:

16 Q. Now, this exclusivity agreement which is marked  
17 as Exhibit 2, you say that that was signed by Mr. Wang in  
18 your presence?

19 A. Correct.

20 Q. At a restaurant?

21 A. Yes.

22 Q. On or about December 19th, 2006?

23 A. Yes.

24 Q. And who prepared that agreement?

25 A. DataStor did.

1 Q. DataStor. Their lawyer prepared the agreement or  
2 someone at DataStor?

3 A. I have no idea who had prepared this. They just  
4 brought this agreement because we used to have a verbal  
5 agreement. We have been asking them to make us a written.  
6 So they brought this agreement when they came to US, and  
7 we had a meeting, and we signed the agreement.

8 Q. So was the meeting scheduled at the restaurant to  
9 sign the papers?

10 A. They came by to visit us in our company, and at  
11 that same time they brought the documents.

12 Q. They came from Asia. Correct?

13 A. Correct.

14 Q. Before they left to come here, did you know they  
15 were going to bring this document with them?

16 A. Yes, I know that they are bringing some -- they  
17 didn't specify that they are going to bring this document,  
18 but they said that they are going to bring some documents  
19 and some other stuff to show us.

20 Q. Okay. Did you have this document before the  
21 meeting? In other words, did they send it to you and say,  
22 "This is what we're going to bring" so that you would have  
23 an opportunity to look at it or talk with your lawyer  
24 about it?

25 A. No.

1 Q. So it was kind of a surprise to you to see this  
2 document at the meeting?

3 A. No; because they told us that they have -- they  
4 are preparing the document for us.

5 Q. Did you tell them, considering that you closed  
6 TechDepot in mid 2006, that you changed business and  
7 changed the agreement so it doesn't show TechDepot's  
8 name?

9 A. No.

10 Q. TechDepot was a nonexistent entity at the time  
11 this agreement was signed. Right?

12 A. We are still operating under TechDepot under dba  
13 of TechDeal because I guess official documents. We're  
14 still waiting for official documents.

15 Q. The reason that you changed the name from  
16 TechDepot was because you got a cease and desist letter  
17 from Office Depot. Correct?

18 A. Yes.

19 Q. So even though you got a cease and desist letter  
20 from Office Depot, you are still doing business as  
21 TechDepot, just not officially; under the table, so to  
22 speak?

23 A. We changed -- what do you call this? Because  
24 customers and other vendors know us under TechDepot.

25 Q. So you wanted to keep doing business so the

1 customers would know you are in business, but you wanted  
2 to do it under the table so Office Depot wouldn't  
3 complain. Correct?

4 A. We wanted to let them know that we have changed  
5 our name already, yes.

6 Q. So you wanted to let Office Depot know you  
7 changed the name, but you didn't want your customers to  
8 know you changed the name. Right?

9 A. Eventually we did let them know that we changed  
10 our name, yes.

11 Q. When was that? When?

12 A. As soon as we get the official documents.

13 Q. You haven't gotten those yet. Right?

14 A. We have already.

15 Q. When did you get them?

16 A. I don't have the exact date.

17 Q. At the time that you signed Exhibit 2, you  
18 weren't officially doing business as TechDepot, Inc., but  
19 you were doing it under the table. Is that right?

20 A. We are doing the name under the table?

21 Q. Right.

22 MR. TANJI: Objection; vague as to "under the  
23 table."

24 THE WITNESS: We were -- we had the TechDeal  
25 name. Yeah, we are doing it under TechDepot, Inc., as

1 well.

2 BY MR. OLSON:

3 Q. Right. So you had the TechDeal name, but you  
4 didn't enter into the agreement with DataStor under the  
5 TechDeal name. Right?

6 A. Yes.

7 Q. Were you trying to keep it secret from DataStor  
8 that you were changing the name to TechDeal?

9 A. No. There's no reason for us keeping it a  
10 secret.

11 Q. Then why wouldn't you have the contract in  
12 TechDeal's name instead of TechDepot?

13 A. Because the contract was made by DataStor, and  
14 they prepared this for us. And when they signed for it,  
15 it never occurred to us that it was under TechDepot, Inc.  
16 I assume that they understand who we are because we are  
17 the same people that they deal with.

18 Q. You thought -- strike that. You had indicated to  
19 Office Depot that you are changing your name, but you  
20 didn't want the people at DataStor to know you were  
21 changing the name. Right?

22 A. It's not that we don't want them to know that we  
23 are changing the name. It's in the process of changing  
24 the name.

25 Q. Okay. Why didn't you tell DataStor, "Oh, we're

1 going to change our name. Just put the contract in  
2 TechDeal's name"?

3 A. Because we don't have the official document that  
4 had it written yet at that time.

5 Q. And you don't know when you got the official  
6 document. Right?

7 A. I can find out.

8 Q. But as you are sitting here today, you don't know  
9 when it was?

10 A. I have no idea when it was.

11 Q. Okay. Now, two of your co-owners of Galaxy  
12 Metal Gear, Garry Ching and Jeff Ching, they used to work  
13 for Direct Access, DAT. Right?

14 A. Right.

15 Q. And then they left and associated with TechDepot  
16 and then with Galaxy Metal Gear. Correct?

17 A. Yes.

18 Q. Now, at one time you tried to -- Galaxy Metal  
19 Gear tried to trademark the Galaxy Metal Gear name.  
20 Correct?

21 A. Correct.

22 Q. And opposition was filed to that by Direct  
23 Access, DAT. Right?

24 A. Right.

25 Q. And you had your deposition taken in those

1 proceedings. Right?

2 A. Right.

3 Q. Did you tell the truth at that deposition as best  
4 as you could?

5 A. Yes.

6 Q. And then in these proceedings you also had your  
7 deposition taken. Right?

8 A. Yes.

9 Q. And you had your deposition taken as the person  
10 most knowledgeable about the grounds for your opposition  
11 to these proceedings. Right?

12 A. Yes.

13 Q. You are the person at Galaxy Metal Gear who is  
14 most knowledgeable about why -- about the facts that  
15 support your opposition. Right?

16 A. Yes.

17 Q. And, again, when you gave your deposition  
18 testimony, you gave the most accurate, truthful testimony  
19 you could. Right?

20 A. Right.

21 Q. Now, referring to Exhibit 1, this was the  
22 photograph of the box that was sent to you by DataStor.  
23 Correct?

24 A. Correct.

25 Q. Okay. There wasn't any enclosure in that box,

1 was there?

2 A. No.

3 Q. It was just being used as a packing box for some  
4 other supplies. Right?

5 A. Correct.

6 Q. And if I recall your testimony from the other  
7 deposition, this is the identical one. The enclosure  
8 that's depicted on the box is the identical one to the one  
9 that you saw one time at CompUSA. Correct?

10 A. Yes.

11 Q. And you don't recall the date that you saw this  
12 enclosure. Correct?

13 A. No.

14 Q. Now, isn't it true that the first enclosures --  
15 strike that. The only -- well, let me set forth a little  
16 foundation first. You are involved in sales on behalf of  
17 Galaxy Metal Gear. Right?

18 A. Yes.

19 Q. And if I recall right, you are responsible for  
20 about 50 percent of the sales of Galaxy Metal Gear.  
21 Right?

22 A. Yes.

23 Q. Galaxy Metal Gear sells only to resellers of the  
24 product. Right?

25 A. Yes.

1 Q. You don't sell directly to the end user.

2 Correct?

3 A. No.

4 Q. That's correct. Right?

5 A. Correct.

6 Q. Now, would you agree that there's probably 40 or  
7 50 different brands of enclosures out in the industry?

8 MR. TANJI: Objection; calls for speculation.

9 THE WITNESS: I would say yes.

10 BY MR. OLSON:

11 Q. The enclosure business has a number of different  
12 suppliers, and some of them have maybe one brand. Some of  
13 them might have two or three brands. Correct?

14 A. Correct.

15 Q. The only companies that ever sold enclosures with  
16 the trademark Metal Gear in the US are Direct Access,  
17 Galaxy Metal Gear, and CompUSA, to your knowledge.  
18 Right?

19 A. Correct.

20 Q. By the way, the patent that was mentioned before  
21 that DataStor has, were you advised by anyone that the  
22 patent was only approved because the only novel point was  
23 the use of thumb screws as an enclosure, as part of the  
24 enclosure?

25 MR. TANJI: Objection; calls for speculation.

1 THE WITNESS: You are asking me if I was aware of  
2 that?

3 BY MR. OLSON:

4 Q. Yes.

5 A. No.

6 Q. Did anyone -- strike that. Did you ever review  
7 the file wrapper on this patent?

8 MR. TANJI: Objection; vague as to "file  
9 wrapper."

10 THE WITNESS: No. This was sent to us in like a  
11 document that was the patent issued and the date.

12 BY MR. OLSON:

13 Q. So you never looked at the reasons why the  
14 examiner allowed the patent. Is that correct?

15 A. Yes.

16 Q. And you don't know if the only reason the  
17 examiner allowed the patent was because the use of thumb  
18 screws to hold the enclosure together was the novel point.  
19 Correct?

20 A. Correct.

21 Q. Nobody ever told you that. Correct?

22 A. No.

23 Q. Did DataStor ever supply you with a trademark  
24 registration for Metal Gear?

25 A. No.

1 Q. So they did supply you with the patent on the  
2 enclosure, but they never supplied you with a registration  
3 showing that they had registered Metal Gear for use on  
4 enclosures. Correct?

5 A. Correct.

6 Q. Now, you are aware that DAT was selling  
7 enclosures with Metal Gear on them at least by 2003.

8 Correct?

9 A. Yes, you could say that.

10 Q. They were selling enclosures with Metal Gear on  
11 them prior to Galaxy Metal Gear selling enclosures.

12 Correct?

13 A. Correct.

14 Q. Now, the initial enclosure that Galaxy -- strike  
15 that. The initial enclosure that Direct Access was  
16 selling, it didn't have any of the lights on it. Correct?  
17 The LED lights?

18 A. They have one with the lights, and they have one  
19 without the lights, yes.

20 Q. The first one that was being sold had no lights.

21 Correct?

22 A. I would say yes.

23 Q. And then the next one they had had a blue light.

24 Correct?

25 A. Yes.

1 Q. To your knowledge, based on the industry, isn't  
2 it true that the enclosures with the three LEDs like  
3 depicted in Exhibit 1 was the third in a line of  
4 enclosures that were sold bearing Metal Gear on it?

5 A. I have no idea.

6 Q. So you don't know if the enclosures with three  
7 LED lights came out before 2005 or after 2005. Correct?

8 A. Correct.

9 Q. Now, the enclosure consists of basically a case  
10 with a PC board inside it. Correct?

11 A. Yes.

12 Q. And it allows the user to install a hard drive  
13 and a cable and connect his hard drive through the  
14 enclosure to his computer. Right?

15 A. Yes.

16 Q. There aren't any moving parts in the enclosure.  
17 Are there?

18 A. No.

19 Q. That's correct. Right?

20 A. Correct.

21 Q. There aren't any gears inside the enclosure. Are  
22 there?

23 A. No.

24 Q. Now, in the first opposition proceeding where  
25 Galaxy was trying to register Galaxy Metal Gear, DAT was

1 opposing those proceedings. Correct?

2 A. Correct.

3 Q. One of the claims that they made was that Galaxy  
4 Metal Gear was not the owner of the trademark. Right?

5 MR. TANJI: Objection; calls for speculation.

6 BY MR. OLSON:

7 Q. Maybe you don't know. You don't know?

8 A. I don't know.

9 Q. Do you know what the claims were of DAT in those  
10 proceedings?

11 A. I can't remember.

12 Q. Didn't they claim that Galaxy Metal Gear was  
13 confusingly similar to Metal Gear?

14 A. I believe so, yes.

15 Q. In those proceedings DAT was claiming that they  
16 owned Metal Gear, and Galaxy Metal Gear is confusingly  
17 similar. Correct?

18 A. Correct.

19 Q. Now, isn't it true that you and Mr. Garry Ching  
20 and Jeff Ching, you made a business decision not to raise  
21 a claim in those proceedings that DAT does not own  
22 Metal Gear?

23 A. DAT does not own Metal Gear?

24 Q. Trademark.

25 A. We made a claim?

1 Q. No. In the first proceeding you made a business  
2 decision not to raise a claim that DAT does not own  
3 Metal Gear?

4 MR. TANJI: Objection; vague as to "claim."

5 BY MR. OLSON:

6 Q. Okay. Let me rephrase it. I don't want you to  
7 answer a question you don't understand. In the prior  
8 proceeding you could have attacked DAT's claim of  
9 ownership, but you made a business decision just to drop  
10 the case. Right?

11 A. Correct.

12 Q. And in the prior proceeding you could have made a  
13 claim that DAT doesn't own the trademark because it's not  
14 a trademark. It's merely descriptive. But you made a  
15 business decision just to drop that claim, too. Right?

16 MR. TANJI: Objection; vague as to "claim," also  
17 calls for legal conclusions.

18 BY MR. OLSON:

19 Q. You can answer if you can. If you don't  
20 understand, I can repeat it.

21 A. Can you rephrase that?

22 Q. Sure. Galaxy Metal Gear made a decision not to  
23 raise a claim that the mark Metal Gear was merely  
24 descriptive in the prior opposition. Correct?

25 MR. TANJI: Objection; vague as to "merely

1 descriptive." Objection; vague as to "claim," calls for a  
2 legal conclusion.

3 THE WITNESS: We did not make a claim for that.

4 BY MR. OLSON:

5 Q. Right. You decided not to raise it as a business  
6 decision. Right?

7 A. Correct.

8 Q. Did you say "Correct"?

9 A. Yes.

10 Q. Now, Galaxy Metal Gear never itself purchased the  
11 product directly from DataStor. Correct?

12 A. Correct.

13 Q. You always bought it either from TechDepot or  
14 TechDeal. Correct?

15 A. Correct.

16 Q. And then TechDepot at one time was buying from  
17 DAT. Correct?

18 A. Yes.

19 Q. Now, have you ever seen the word "Metal Gear"  
20 used by any other company other than Galaxy Metal Gear,  
21 CompUSA, or DAT?

22 MR. TANJI: Objection; vague as to scope of the  
23 product line.

24 BY MR. OLSON:

25 Q. On enclosures.

1           A.    On enclosures?

2           Q.    Right.

3           A.    I couldn't be sure of that, but most likely yes.

4           Q.    Now, DataStor did sell enclosures to another  
5 company but under a different trademark.  Right?

6           MR. TANJI:  Objection; calls for speculation.

7           THE WITNESS:  Which company was that?

8  BY MR. OLSON:

9           Q.    Okay.  Wasn't DataStor selling to a company  
10 called Icydock?  Isn't it true that DataStor was selling  
11 enclosures to Icydock back in --

12          A.    I believe so.

13          Q.    They were selling under a different trademark.  
14 Right?

15          A.    Correct.

16          Q.    You saw the product.  Right?

17          A.    I've seen the product, yes.

18          Q.    There's no mention of Metal Gear on the product  
19 or any of the literature.  Right?

20          A.    No; because I believe that they probably have  
21 their own trademark.

22          Q.    Have you seen enclosures made by -- let me reask  
23 the question.  You don't know when Icydock first started  
24 buying from DataStor.  Correct?

25          A.    Correct.

1 Q. Now, it was your understanding before Exhibit 2  
2 was signed that you had some kind of exclusivity agreement  
3 with DataStor. Right?

4 A. Correct.

5 Q. TechDepot had some kind of exclusivity.  
6 Correct?

7 A. Yes.

8 Q. And did you believe that this oral agreement was  
9 binding?

10 A. I believe.

11 Q. You believe it was binding?

12 A. It was binding.

13 Q. And you believed it was reasonable to rely on  
14 that oral agreement. Right?

15 A. Yes.

16 Q. Now, you don't have any idea who came up first  
17 with the idea for Metal Gear for use on enclosures.  
18 Correct?

19 A. No.

20 Q. That's correct. Right?

21 A. Correct.

22 MR. TANJI: You have to stop asking questions  
23 with double negatives.

24 BY MR. OLSON:

25 Q. You would agree that there's nothing about the

1 trademark Metal Gear that says anything about the quality  
2 of enclosures. Correct?

3 A. Correct.

4 MR. TANJI: Objection; vague as to "quality."

5 BY MR. OLSON:

6 Q. No other manufacturer is using Metal Gear on  
7 enclosures. Are they?

8 MR. TANJI: Objection; calls for speculation.

9 THE WITNESS: I am not certain of that.

10 BY MR. OLSON:

11 Q. Okay. The term "Metal Gear" does not describe  
12 any function of the enclosure. Does it?

13 A. No.

14 Q. The term "Metal Gear" doesn't convey any idea  
15 about the ingredients or the parts of the enclosure. Does  
16 it?

17 A. I am not certain, but metal might be the metal.

18 Q. Right. But the term "Metal Gear" taken together  
19 as one does not. Right?

20 A. No.

21 Q. That's correct. Right?

22 A. Correct.

23 Q. And the term "Metal Gear" does not convey any  
24 idea about any characteristic of the enclosure. Does it?

25 A. No.

1 Q. And the term "Metal Gear" doesn't convey any idea  
2 about a feature of the enclosure. Does it?

3 A. No.

4 Q. There's nothing about the Metal Gear trademark  
5 that makes you think it describes the enclosure. Right?

6 A. Right.

7 Q. When TechDepot first started doing business --  
8 strike that. You worked at a company before you formed  
9 TechDepot. Right?

10 A. Yes.

11 Q. They became involved in the enclosure business  
12 around 2003. Correct?

13 A. Could be.

14 Q. What was the name of that company that you worked  
15 at before TechDepot?

16 A. ASI.

17 Q. ASI. Now, the enclosures that ASI was selling,  
18 they weren't Metal Gear enclosures. Were they?

19 A. No.

20 Q. And the first enclosures your company bought with  
21 Metal Gear on them, that was from DAT. Right?

22 A. Correct.

23 Q. You don't know of anyone -- strike that. Those  
24 enclosures that TechDepot bought in 2003, were those ones  
25 without the blue LED light?

1           A.    Yes.  We had bought the ones without the LED  
2 light, correct.

3           Q.    Now, when your customers order an enclosure, they  
4 order it by your part number.  Right?

5           A.    Yes.

6           Q.    Do your invoices say Metal Gear enclosure or  
7 Galaxy Metal Gear enclosure, or do they just say the part  
8 number?

9           A.    It will say the part number and then the  
10 description.

11          Q.    Did you ask DataStor to send out a cease and  
12 desist letter with regard to infringement of their patent?

13          A.    Did I ask DataStor to send out a cease and  
14 desist?  No.

15          Q.    You complained to DataStor that other people were  
16 selling enclosures that looked like they were covered by  
17 that patent?  Did you do that?

18          A.    Similar patent?  We have mentioned to them that  
19 we have seen the same exact design.

20          Q.    Did you ask them to send a cease and desist  
21 letter or bring a lawsuit against those people?

22          A.    No.

23          Q.    When is the last time you ordered Metal Gear  
24 enclosures?

25          A.    Metal Gear enclosure?

1 Q. Right.

2 A. Metal Gear?

3 Q. Metal Gear enclosures.

4 A. I can't remember the date.

5 Q. 2009?

6 A. No.

7 Q. 2008?

8 A. No.

9 Q. 2007?

10 A. Probably around 2007 or late 2006, say.

11 Q. You agreed to abandon with prejudice your  
12 application for Galaxy Metal Gear as a trademark for  
13 enclosures. Right?

14 MR. TANJI: Objection; vague as to his  
15 understanding of legal terms.

16 THE WITNESS: Can you rephrase that?

17 BY MR. OLSON:

18 Q. Sure. You filed an application -- well, Galaxy  
19 Metal Gear filed an application to register the trademark  
20 Galaxy Metal Gear for use on enclosures. Right?

21 A. Correct.

22 Q. And that application was opposed by Direct  
23 Access. Right?

24 A. Correct.

25 Q. You agreed that the action be terminated with

1 Galaxy Metal Gear dropping or abandoning its application  
2 to register the trademark. Right?

3 A. Yes. To register the trademark, yes.

4 Q. And that occurred late 2007. Right?

5 A. I believe so.

6 Q. And Galaxy Metal Gear agreed to change its  
7 trademark, right, as part of that settlement process.

8 Right?

9 A. We changed the name.

10 Q. Right. Of the trademark on the enclosure.

11 Right?

12 A. Yes.

13 Q. And you changed it to what?

14 A. Galaxy.

15 Q. Now, when is the last time that you ordered

16 Galaxy Metal Gear enclosures?

17 A. Galaxy Metal Gear enclosures? Probably 2007.

18 Q. After you agreed to change or before you agreed  
19 to change?

20 A. Before. It should be before.

21 Q. And the same with Metal Gear. Before you agreed  
22 to change or after?

23 A. It should be before.

24 Q. So since the underlying -- strike that. Since  
25 you dropped the application to register Galaxy Metal Gear,

1 you have only ordered Galaxy enclosures. Correct?

2 A. Yeah. We ordered enclosures with just the Galaxy  
3 mark. We were going to do it that way.

4 Q. And the reason that you only ordered Galaxy  
5 enclosures was because you agreed to change your  
6 trademark. Right?

7 A. Yeah.

8 Q. And that's why you didn't order any Metal Gear or  
9 Galaxy Metal Gear enclosures. Correct?

10 A. Yes.

11 MR. OLSON: Okay. I don't have anything further.

12

13 FURTHER EXAMINATION +

14 BY MR. TANJI:

15 Q. You mentioned you saw some other products with  
16 similar design?

17 A. Correct.

18 Q. What was that?

19 A. It was the same design as the Metal Gear  
20 enclosure that we sell. It's from DataStor.

21 Q. Different brand name?

22 A. Different brand name.

23 MR. TANJI: Nothing further.

24 MR. OLSON: Nothing further.

25 MR. TANJI: All right. I don't know what kind of

1 stipulation you had. I assume it's okay. But if you guys  
2 are going to keep the original, if I need it for  
3 impeachment purposes, you guys will provide that for me?

4 MR. OLSON: Yes, sure.

5 MR. TANJI: Okay. Same stipulation otherwise,  
6 then?

7 MR. OLSON: Same.

8 MR. TANJI: Okay. We will submit today's  
9 deposition and all the exhibits into evidence. We will  
10 stipulate that the court reporter be relieved under the  
11 Code, and I will receive the original transcript and  
12 maintain custody and possession for deponent's review; the  
13 deponent will have 20 days to read, review, and sign the  
14 deposition transcript; if the original is lost or  
15 unavailable, then a certified copy can be used for all  
16 purposes.

17 MR. OLSON: We will order a copy of this one  
18 only.

19 (Proceedings concluded at 2:07 p.m.)

20 \* \* \*

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REPORTER'S CERTIFICATE

I, Lyn Corrin Aaker, a Certified Shorthand Reporter, holding a valid and current license issued by the State of California, CSR No. 6228, do hereby certify:

That said proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed into typewriting under my direction and supervision.

I further certify that I am neither counsel for nor related to any party to said action, nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this 22nd day of July, 2009.

Certified Shorthand Reporter



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Opposer EXHIBIT 1  
FOR IDENTIFICATION  
LYN CORRIN AAKER, CSR  
7/16/09  
WITNESS: Tan



Better Technology, Better Life.

基澤電子股份有限公司  
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An Investment Technology Company  
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REGISTRATION: http://www.datastor.com.tw E-mail: service@datastor.com.tw

### EXCLUSIVE SALES AGREEMENT

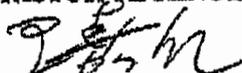
An exclusive sales agreement has been entered into on December 19, 2006 between DataStor Technology Co., Ltd. (hereafter to be referred as "DataStor"), having its principal place of business at 9th Floor, #10, Sec. 1, Chung-Shing Road, Wu-Ku, Taipei Hsien 248, Taiwan; and TechDepot, Inc. (hereafter to be referred to as "TechDepot"), having its principal place of business at 1300 Pioneer St. #B Brea, CA 92821 U.S.A., agreeing on the following terms and conditions.

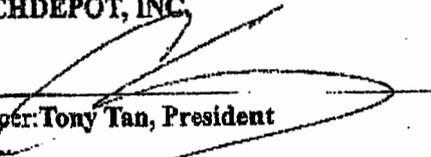
1. DataStor grants to TechDepot the right of sole distributorship for the sale of products, as mutually agreed and separately specified in other documents, in the territory of the United States.
2. TechDepot will work to the best of the ability in order to introduce and establish the largest possible sales of the aforementioned products in the territory. The sales target will also be mutual agreed and separately specified in other documents.
3. DataStor shall not offer the aforementioned products to the above mentioned territory either through their branch or any other organization, and like-wise TechDepot shall not import the same article from any other vendors of such items.
4. This agreement shall be valid until the end of December 19, 2007 and can be renewed on an yearly basis if such intention is conveyed to the other party at least three months before the expiry of the contract.
5. The general agreements regarding the transactions between DataStor and TechDepot, including payment terms, shall also apply to the transactions of the aforementioned products.
6. This agreement shall be automatically invalid if any issues relating to the exclusive authorization, including sales target, do not come to agreement hereafter.
7. This contract is made and typed in two copies, given to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

DATASTOR TECHNOLOGY CO., LTD.

TECHDEPOT, INC.

By: 

By: 

Officer: Anderson Wang, General Manager

Officer: Tony Tan, President

Date:

Date:

9th Floor, #10, Sec. 1, Chung-Shing Road  
Wu-Ku, Taipei Hsien 248, Taiwan

1300 Pioneer St. #B Brea,  
CA 92821 U.S.A.

Opposite EXHIBIT 2  
FOR IDENTIFICATION  
LYN CORRIN AAKER, CSR  
7/16/05  
WITNESS: Tan