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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., Applicant.	Action filed: May 20, 2008

DEPOSITION OF PATRICK WANG

Thursday, July 16, 2009

Pasadena, California

REPORTED BY: Lyn Corrin Aaker, CSR No. 6228

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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

Deposition of PATRICK WANG, an Applicant, taken on behalf of the Opposer, at 80 South Lake Avenue, Suite 708, Pasadena, California 91101, commencing at the hour of 10:10 a.m., Thursday, July 16, 2009, before Lyn Corrin Aaker, CSR No. 6228, pursuant to Notice of Taking Deposition.

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I N D E X

EXHIBITS FOR IDENTIFICATION

WITNESS INSTRUCTED NOT TO ANSWER

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THURSDAY, JULY 16, 2009, PASADENA, CALIFORNIA

10:10 A.M.

* * *

PATRICK WANG,

the witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION +

MR. LEE: Thank you. We will mark this as Exhibit No. 1. It's the deposition notice today.

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

BY MR. LEE:

Q. Mr. Wang, can you state your full name for the record.

A. Patrick Wang, W-a-n-g.

Q. Today is a trial deposition for the TTAB proceeding, although it's a deposition, but we are in trial. Do you understand that?

A. Yes.

Q. And all the rules in the deposition would apply. So we've been doing this for a few times, so at any point in time you need me to clarify, feel free to go ahead.

A. Okay.

Q. All right. Your company is Direct Access Technology. We will refer to that as DAT during this deposition.

A. Okay.

Q. What's DAT's current address?

A. 19957 East Harrison Avenue, City of Industry, California 91789.

Q. All right, thank you. When was DAT incorporated?

A. 1994.

Q. And who incorporated DAT?

A. Lucy Yee, Y-e-e.

Q. That's your wife?

A. Yes.

Q. And the ownership of DAT would be?

A. 99 percent owned by Lucy.

Q. And you own one percent?

A. Yes.

Q. And that percentage is maintained that way throughout the whole period of time?

A. Yes. I might increase to 5 percent now, so I am not sure.

Q. Okay. But for your increase to 5 percent, is that taking effect now, or is it sometime --

A. Sometime before.

Q. Roughly how long ago?

A. '96. 1996.

Q. Oh, okay. For your percentage increase in the ownership, does that affect the operation of DAT?

A. No.

Q. Thank you. What's DAT's general line of business?

A. Do you refer before or now?

Q. Starting from 1994.

A. We sell parts, computer parts.

Q. And what are the parts you talked about?

A. CPUs, memories, CD ROMs, floppy drive, keyboard, mouse, motherboard.

Q. And computer enclosures, I would suppose?

A. Not at that time.

Q. Not in 1994?

A. Right.

Q. Okay. Then that kind of business pattern from 1994 to -- how long did that kind of business pattern last?

A. To 1998, '99.

Q. And currently does DAT still do that kind of business you just mentioned?

A. We still sell some keyboard, mouse if client require. Other than that, no.

Q. So after 1999 what would be the business items DAT was doing?

A. USB 2.0 accessories, notebook accessories, PC accessories.

Q. And that kind of business activity continues until today?

A. Yes.

Q. So for the computer enclosures, that would be part of the PC or notebook accessories?

A. Yes.

Q. Does DAT have any parent company?

A. No.

Q. Does DAT have any subsidiary?

A. No.

Q. Does DAT have any child company?

MR. OLSON: I will object; vague.

THE WITNESS: What is a trial company?

BY MR. LEE:

Q. Does DAT own any stocks and interest in other company?

A. No.

Q. At the business location you just said on 19957 East Harrison, is there other business located in the same business address?

A. Yeah. PPA.

Q. PPA. How do you spell the whole name of PPA?
A. Parts Peripheral and Accessory.
Q. Who owns PPA?
A. Lucy Yee and myself.
Q. What's the ownership interest on that?
A. 95/5.
Q. Lucy would be 95?
A. Yes.
Q. When was PPA incorporated?
A. I don't remember that.
Q. Roughly do you know a time period?
A. '96?
Q. So around 1996?
A. Yeah.
Q. Other than PPA?
A. No.
Q. No other business in the same location.
When did DAT start doing business in the enclosure line of business?
A. 1998.
Q. And can you tell me what is an enclosure?
A. It's a plastic box with circuit board built inside with a fan where you mount your hard drive or your CD ROM to become external devices for your computers.
Q. Does an enclosure have to have a fan?

A. At that time, yes, because the plastic is enclosed, and hard drive CD ROM generate a lot of heat. Otherwise the hard drive will crash.

Q. And to your knowledge, do all enclosures sold today in the market have a fan in it?

A. Some have; some doesn't have. Depends on the materials.

Q. Okay. And you just said it's a plastic box. Is plastic the only material?

A. At that time, yes.

Q. Okay. And was metal also used as a material for enclosure, whether by your product or other companies' product?

A. What year are you talking about?

Q. Throughout all period of time.

A. Yeah. Metal was introduced. Aluminum was introduced.

Q. Around what year?

A. 2002, later part or middle 2002.

Q. And was that your enclosure or other enclosures you saw on the market?

A. Under development. It's not in the market yet.

Q. And when did you first find out that the metal enclosure was already on the market?

A. About 2003. Later part of 2002. Let me clarify.

When you say "in the market," do you mean mom and pop shop, or do you mean the chain store?

Q. Any place consumers can buy enclosures.

A. Later part of 2002.

MR. LEE: I am going to mark this as Exhibit No. 2.

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

THE WITNESS: (Peruses document.)

BY MR. LEE:

Q. Are you done looking at Exhibit No. 2?

A. Yes.

Q. This is a printout that contains some information on it. I just want to confirm with you that when we talk about enclosures, we're talking about enclosures for external computer hard drives as stated on Exhibit No. 2.

A. Okay.

Q. And do you believe the date of first use to be correct?

A. You mean we applied?

Q. Yes.

A. We applied the trademark on that?

Q. That's right.

A. Yes. That's the date we filed.

Q. So it's around 2003, May 14th?

MR. OLSON: I think there's some confusion in the record. I'll object. It's vague and ambiguous. He said date we applied for trademark. You said first use.

BY MR. LEE:

Q. Okay. So according to Exhibit No. 2, the filing date would be June 22nd, 2006?

A. Right.

Q. And the question I asked previously was on first use, and so far we're clear on that. I was asking for first use, 2003, May 14.

MR. OLSON: You are looking at this here (indicating)?

MR. LEE: Yes.

THE WITNESS: Okay. Yes. According to Exhibit No. 2, yes.

BY MR. LEE:

Q. And DAT is claiming trademark right to Metal Gear for use on enclosures for external computer hard drives. Is that correct?

A. Yes.

Q. So if any other business that put Metal Gear on their enclosures, DAT would consider that to be infringement?

A. Yes.

MR. OLSON: I'll object; it's irrelevant, calls for a legal conclusion.

MR. LEE: This will be Exhibit No. 3.

(A copy of the aforementioned document was marked by the court reporter as Opposer Exhibit+ 3 for identification; attached hereto.)

BY MR. LEE:

Q. I'm not going to have you read all this stuff. That's not what I'm going to do. I just want you to look at the drawings on these pages.

A. (Witness peruses document.)

Okay.

Q. All right. Let's look at the top page of Exhibit No. 3.

A. Okay.

Q. This appears to be a patent issued by the United States Patent and Trademark Office. Can you look at on the left column it says "Assignee: DataStor Technology." Do you see that part?

A. Yes.

Q. And are you aware of this entity, DataStor Technology?

A. Yes.

Q. From looking at this patent, we will call it 885 patent. It's No. 6,992,885, but we'll just call it 885

patent. From looking at this 885 patent, do you think this relates to the enclosures? Do you think this has some relationship to the enclosures?

A. Yes.

MR. OLSON: I'll object; calls for a legal conclusion.

BY MR. LEE:

Q. All right. Looking at the left column on the very top it says -- there is a 54 in parentheses. It says "external connection device for a storage device."

A. Okay.

Q. And then in looking at the abstract that's on the right side, still on the first page, it says "An external connection device for placing and connecting a storage device has a housing, a power output port and a second signal I/O port."

A. Okay.

Q. So do you think this patent from the drawings you just reviewed generally depicts an enclosure?

MR. OLSON: I will object; calls for a conclusion.

THE WITNESS: Yes.

BY MR. LEE:

Q. Okay. Have you ever seen this patent before?

A. Yes.

Q. When was the first time you saw this patent?
A. When DataStor showed me the patent when I asked them to file the patent.
Q. Around what year?
A. Since 2003. Yes, 2003.
Q. So in 2003 you asked DataStor to file this patent?
A. Of course.
Q. Why did you ask DataStor to file this patent?
A. To protect this product selling in the United States without any copying people for the enclosures.
Q. Did you see the drawings before the filing date?
A. Yes.
Q. And on this Exhibit No. 3 it shows filing date October 26, 2003. Did you see that?
A. Yes.
Q. To your knowledge, who is the inventor of this patent?
MR. OLSON: I'm going to object; improperly phrased question, calls for a legal conclusion. Also, I don't know from your question if you are talking who invented the patent or who invented the patented product.
BY MR. LEE:
Q. Can you answer?
MR. OLSON: It's vague.

THE WITNESS: From the papers it's saying Anderson, Chia-Jen Wang.

BY MR. LEE:

Q. That would be Anderson Wang's Chinese name?

A. Yes.

Q. To your knowledge, when did Chia-Jen Wang, aka Anderson Wang, when did Anderson Wang invent the substance of this leading up to the application for patent?

A. He didn't invent this. I gave him the idea.

Q. Are you saying you should be the inventor for this enclosure?

A. I should be part of the inventor for this enclosure.

Q. Between you and Anderson Wang, who contributed more to the invention as embodied by this 885 patent?

MR. OLSON: I will object; assumes facts not in evidence.

THE WITNESS: The idea was given by me to Anderson back in 2001.

BY MR. LEE:

Q. Were you able to estimate who contributed more to the invention?

MR. OLSON: I will object; calls for a legal conclusion, calls for speculation.

THE WITNESS: I have no idea how to answer your

question on that.

BY MR. LEE:

Q. Okay. What are the ideas you gave to Anderson Wang leading up to the filing of this patent application?

A. Top and bottom clip, without making the whole enclosure by aluminum with round edges. Where you see the mesh are (indicating), at that time you cannot make a perfectly rectangular round shape on the side of the enclosure perfectly align. The yield rate for that is around 50 percent.

Q. What is the yield rate that you just talked about?

A. Finished product of this raw material.

Q. Why was the yield rate only about 50 percent?

A. Because you have to squeeze the aluminum through a tube and pour it out from the tube to form an enclosure housing. In this picture it's two metal plates, top and bottom, surrounded by mesh. This is a lot easier to form than forming the whole enclosure by aluminum. Because when you start putting color on the aluminum or silkscreen the name on top of that, when you go through this chemical process, it will decay or lopside the enclosure. Therefore, the enclosure will not be a perfect rigid body. It will bend or out of shape because the chemical they

have to use to make color on the aluminum.

Q. So your contribution to the invention would make this aluminum box easier to form on the round corner?

A. Because right now it's using mesh, I mean all you do is stamp the mesh and put top plate and bottom plate, four posts, screw, and you are done.

Q. And that's your contribution?

A. Yes. Well, not the mesh. The top and bottom plate of the aluminum.

Q. And that idea, did you give the idea to Anderson Wang in a short period of time, or it was an extended period of time you worked with him?

A. Since the second meeting back in 2001.

Q. And did you know DataStor started to manufacture enclosure according to this kind of invention?

A. Yes.

Q. About when?

A. 2002.

Q. Starting May of 2003, your enclosure had the brand name or the trademark of Metal Gear. Is that correct?

A. Yes.

Q. But before that what was the brand name you used on your enclosure?

A. We did not have a brand name. It's just a plain

box, plain closet box. On the gift box, the packaging, you will have PP International by Idotconnect, I-d-o-t-c-o-n-n-e-c-t.

Q. And who sold you the enclosures before DataStor?

A. Welland, W-e-l-l-a-n-d, Computer.

Q. When did Welland Computer start selling enclosures to you, and when did it end?

A. Later part of '98 all the way to -- you mean when did we end?

Q. Yes.

A. Start and end?

Q. Yes.

A. End will be early part of 2003.

Q. Is it fair to say that whatever your enclosure business with Welland Computer was then replaced by your business relationship with DataStor for the enclosure?

A. 80 percent.

Q. What about the other 20 percent?

A. They don't have the five and a quarter inch. And Welland enclosure is very popular. Because we introduce a new product, it takes time to develop that product. It is something that you can't put on the market and say, "I will sell." You can't do that. You've got to market that product. At that time people are accustomed to plastic. They are not sure how the aluminum do the heat, how to

dissipate the heat for the enclosures. End user is very concerned on the heat problem generated by the hard drive.

Q. Is Welland Computer still around today?

A. Yes.

Q. Does DAT still do business with Welland?

A. No.

Q. So after 2003 DAT no longer had a business relationship with Welland?

A. Yes.

Q. Is it fair to say that the 885 patent in Exhibit 3 would be to use aluminum to be the material for the enclosure?

MR. OLSON: Wait. Can you repeat the question?

(Question read.)

MR. OLSON: I will object. Calls for -- well, it's vague first off and also calls for a legal conclusion as to what this patent covers.

THE WITNESS: No.

BY MR. LEE:

Q. For 885 patent, is there a preferred material to make the enclosure?

MR. OLSON: Calls for speculation.

THE WITNESS: At this particular time, back then when they filed the patent, yes. Now, no.

BY MR. LEE:

Q. Yes for using aluminum?

A. Yes, using aluminum at that time, 2003, 2002, at that time. Now we have new material that you can use in place of the aluminum top and bottom plate.

Q. And what's the new material now?

A. Acrylic.

Q. Acrylic, okay. From 1998 to 2003 when you were doing enclosure business, you bought from Welland Computer. Did you make your own -- did DAT make its own enclosures for sale?

A. Not from Welland.

Q. After Welland then it's DataStor that's supplying your enclosure?

A. Yes.

Q. And that's when DAT started using the Metal Gear trademark?

A. Yes.

Q. How did the Metal Gear trademark come into existence?

A. I played around with several names, and that's how I came up with the products.

Q. Around what time?

A. 2001.

Q. 2001 you played around with several names?

A. Late part of 2001, yes. We have to put a brand name onto a product. We don't want to sell certain product out. Without brand name people doesn't know who we are. Then people can start importing this product everywhere and just sell it out.

Q. Is that because previously you were selling Welland Computer supplied enclosure without brand? Is that the reason why you want to put a brand on it?

A. We always had a brand on the gift box. We just never placed the brand name onto the enclosure. Didn't have enough time to do that. It was selling very well.

Q. Okay. When you say you played around with several names in 2001, late part, did you have a discussion with anyone?

A. Not until after I come up with all those names.

MR. OLSON: Well, I am going to object to the question as vague.

BY MR. LEE:

Q. When did you decide to put Metal Gear on your enclosure?

A. 2002.

Q. When did you actually put Metal Gear on your enclosure and sell it, offer it to sell?

A. 2003, when the shipment arrived.

Q. That would be around May?

A. Earlier than that because we also have samples that we have to sell out to the customer to show the product. Those are for evaluation products, so I would say it's a lot sooner than May of 2003.

Q. And who supplied the evaluation products to DAT?

A. DataStor under my spec, my artwork, my mark.

Q. So did you have any discussion about picking Metal Gear as the trademark with anyone?

A. Before or after?

Q. Before May of 2003.

A. I have discussion with Anderson to tell him to put Metal Gear on it. He also saw Idotconnect, You Storage, and some other funky name that I don't remember what it was.

Q. How many times did you discuss with Anderson Wang regarding the Metal Gear trademark name?

A. Many, many times.

Q. The discussions span a period of roughly how many months?

A. Once we decide -- once I decide to use Metal Gear on our mark, that will be it. The only discussion I have with Anderson is how -- what kind of fonts to use, how big it is, how it looks on the enclosure when you put the Metal Gear word on it. We come up with Metal Gear box, Metal Gear enclosure. We have Metal Gear box by PPA, all

these possible names that we have. And finally we did a Metal Gear box. I'm sorry. Metal Gear substance.

Q. In the discussion did you come up with the Metal Gear name, or did Anderson Wang come up with the Metal Gear name?

A. I come up with the Metal Gear name on it.

Q. And Anderson Wang is willing to go along with it?

A. Yes.

Q. You said many, many discussions. Around what time?

A. After I tell them to use Metal Gear.

Q. So that would be late part of 2001?

A. Yes. Actually, when we start having the samples printing, then back and forth almost every day talking to him on the phone.

Q. When you talked to him on the phone, were you here in the United States?

A. Yes.

Q. And Anderson Wang was in Taiwan?

A. Taiwan or China.

Q. So you talked almost every day. That period of time how long did it last?

A. Until the product printing is correct.

Q. Roughly from what time, what date to what date?

A. A couple months.

Q. So we're talking about late part of 2001?

A. No. 2002 or so.

Q. A couple of months in 2002?

A. Yeah. Because once you finish the printing and then maybe sometime they delay for a couple weeks, then I got to go on business trip. You know, product waiting for me in the office. Or when I travel to China, he would travel from Taiwan to China to meet me and show me the products.

Q. Did you ever meet Anderson Wang in a hotel someplace?

A. Yes.

Q. How many times?

A. Many, many times.

Q. Is it the hotel in the United States or in Taiwan?

A. In Taiwan and China.

Q. And roughly how many times?

A. Ten times.

Q. And the ten times were from about what time to what time?

A. You mean the date?

Q. Yes.

A. Starting in 2001, when he needed help on making the enclosures.

Q. And when was the last time you met him in a hotel?

A. Last time I met him, he was in United States with Gary, his sales from DataStor. Late part 2004. Late part 2004.

Q. And his sales Gary, you are talking about Gary Chen?

A. Yes. C-h-e-n.

Q. In all these discussions with Anderson Wang, there is an understanding that DAT will be the trademark owner of Metal Gear mark on enclosures?

A. Yes.

Q. Is there any agreement in writing to the effect that DAT will be the trademark owner of Metal Gear mark on enclosures?

A. Back in 2001, 2002, no. Everything is verbal.

Q. Not just in 2001, 2002. I'm asking is there any agreement in writing?

A. The e-mail sent by Gary Chen, which you should have a copy of it.

Q. Okay. So that will be the only one in writing you will point to?

A. Yes.

Q. We will get to that later. DAT's business relationship with DataStor started in that period of 2001

to 2002?

A. We talked about it. We hadn't started business yet.

Q. And you started business around what time?

A. 2002 -- late part 2002 when we start putting our PO in. The first few got in it was delay after delay because it's a first shipment coming to us, and many materials they can't get or being delayed. And, also, IC is hard to get because of the enclosure selling very well all over the world.

Q. So the PO, the first PO was about enclosure?

A. Yes.

Q. And when did DAT's business relationship with DataStor end?

A. 2005.

Q. What's the reason DAT ended the business relationship with DataStor?

A. Many, many reasons. No. 1, they selling to our customers. No. 2, many issues with the power supply. It will melt, malfunction. No. 3 is the quality of the product not to my spec. They change parts, internal component to make the products without letting us know, which is a safety hazard for me, especially when you use power. Certain products that I questioned: Do they have UL standing? They have UL sticker on the power supply,

but they cannot provide me the UL certifications some of the time. So we have to return those products back to them. I can't jeopardize PPA on the general public and got sued by end user if a power supply burned down somebody's house or a loss of life. I can't do that.

MR. OLSON: Just answer the question. Otherwise we will be here two days.

THE WITNESS: That's okay. I've got time.

MR. LEE: I can let him talk two days. We've got time.

MR. OLSON: Yeah.

MR. LEE: You won't be too long.

Q. During the time DAT had business relationship with DataStor, was DataStor the only one supplying enclosures to DAT?

A. No.

Q. Who else supplied enclosures to DAT?

A. We have Welland. We have Maxnice, M-a-x-n-i-c-e. We have Jetyo, J-e-t-y-o. We have EMEC.

Q. So all of these other suppliers coexisted with DataStor for supplying enclosures?

A. Not at the same time. You have replacement period.

Q. But generally during the time when DataStor was supplying enclosures to DAT, are these other suppliers

also there?

A. Welland and Maxnice.

Q. So are you saying gradually DataStor went out of picture, and then other suppliers gradually coming in?

MR. OLSON: Objection; mischaracterization of the testimony.

THE WITNESS: It's not other suppliers. It's contractor that build product for us under our trademark. Build product for us under my spec, my artwork, that kind of stuff.

BY MR. LEE:

Q. So you say contractors. You refer to Maxnice, EMEC. These parties are contractors that build products to your spec?

A. OEM, better word for it.

Q. These are OEM?

A. Yes. They OEM product for us under my specs.

Q. When you say spec, what kind of -- what do you mean by spec?

A. The size of the enclosure, what product of the enclosure such as USB 2.0 or combo 2.0 plus FireWire or SATA plus FireWire combination of the product. And, also, we specifically tell them where to put what feature into the enclosures, where to print the logos, how to package, that kind of stuff.

Q. Did you ever have any ownership interest in DataStor?

A. Beginning we agreed on with Anderson that if I can help them to get big volume into United States, I will own 20 percent of DataStor. And that's why I helped them or gave them information on how to make enclosures because they are not in the enclosure business.

Q. Did that 20 percent interest ever happen?

A. No.

Q. So is it fair to say that you never owned any interest in DataStor?

A. Yes.

Q. To your knowledge, did you know DataStor sell enclosures to any other parties?

MR. OLSON: At any time?

MR. LEE: At any time.

MR. OLSON: Even after they stopped doing business?

MR. LEE: Yes.

THE WITNESS: Yes.

BY MR. LEE:

Q. Okay. Tell me what other parties you know that DataStor sold enclosures to.

A. In the United States or in Europe?

Q. Let's talk about United States.

A. TechDepot which means also Galaxy Metal Gear, Inc.

Q. Who else?

A. Do you want the broker in Asia, or you want directly from DataStor to them?

Q. Directly from DataStor.

A. That's the only one they sell directly.

Q. What about brokers you mentioned?

A. They sell to several brokers because they can't finance direct account. Broker pay them, you know, FOB cash or, you know, in five-day terms or seven-day terms.

Q. Who are these brokers?

A. Don't know the names. One of them I know is called Worldwide Marketing. The second one is called Leadertek, L-e-a-d-e-r-t-e-k.

Q. What's the period when DataStor was selling enclosures to Worldwide Marketing?

A. Late part of 2004.

Q. And they were selling --

A. Let me correct. Late part 2004 when the PO was sent. They did not get any shipment until 2005.

Q. And this is enclosure with Metal Gear trademark on it?

A. Yes.

Q. How did you know about this?

A. From Gary Chen and also from the store that I went to see in CompUSA.

Q. When did you go to CompUSA store to see this?

A. 2005. Early part 2005.

Q. So you saw CompUSA selling Metal Gear enclosures?

A. I remember the box saying "CompUSA." I remember the enclosure, but I don't remember the Metal Gear. 50/50.

Q. What do you mean by 50/50?

A. Because I am so mad I see it, went back to office, called Anderson in the middle of the night in Taiwan.

Q. And what was his response?

A. "Oh, I didn't know. Let me check."

Q. And then what happened after that?

A. He started to ignore my phone calls.

Q. Did you talk to him after that?

A. He ignored my phone calls.

Q. So you never get to talk to him?

A. I fly over there and talk to him.

Q. And when did that flight happen? When did you fly over?

A. Two weeks after I saw that. To be exact, I really don't remember. I think it's Q1, which is March.

Q. Of 2006?

A. 2005.

Q. So first half of 2005 --

A. Yes.

Q. -- you talked to Anderson? What happened in that talk?

A. He says CompUSA. He said Metal Gear they will not use. They will have CompUSA logo on it. But, actually, what I refer to is Worldwide Marketing because that's the PO given by Worldwide Marketing in Taiwan to DataStor. Worldwide Marketing never put a second PO in to DataStor because it wasn't selling well for them.

Q. What about this other broker, Leadertek?

A. Leadertek sold to Evertek, E-v-e-r-t-e-k.

Q. And they sold Metal Gear enclosure to Evertek?

A. Yes.

Q. How did you find out?

A. From Evertek.

Q. You talked to Evertek people?

A. From the web site.

Q. And the web site gave you information that their Metal Gear enclosure was from Leadertek?

A. I asked around.

Q. Who did you ask?

A. People from Evertek.

Q. And they told you they got the Metal Gear enclosure from Leadertek?

A. Yes.

Q. What time period is that?

A. 2004.

Q. What happened? After you found out and you asked around, what happened next?

A. I told the sales in DataStor to stop doing that.

Q. Who did you talk to in DataStor?

A. Gary Chen.

Q. So Gary Chen told you --

A. And Anderson.

Q. So Gary Chen and Anderson told you that the Metal Gear enclosure sold by Leadertek to Evertek were actually from DataStor?

A. They said they can't control where broker sell the product. They told them product need to go to Europe, but broker send whatever product out. They cannot control because there's no way to know where the product goes once they sell to broker.

MR. LEE: All right. Exhibit No. 4.

(A copy of the aforementioned document was marked by the court reporter as Opposer Exhibit+ 4 for identification; attached hereto.)

BY MR. LEE:

Q. Exhibit No. 4 has a Bates label at the bottom. It says Direct 00710 because there are multiple writings on it. So sometimes to avoid confusion, I may refer to this as Direct 710. Is that okay with you?

A. Yes.

Q. All right. Have you seen this e-mail before?

A. Yes.

Q. When did you -- when was the first time you saw this e-mail?

A. As stated, July 9th, 2004.

Q. Okay. And this is the Gary Chen you talked about previously?

A. Yes.

Q. Why did Gary Chen send you this e-mail?

A. Because I did not put PO into DataStor.

Q. And DataStor wanted DAT to buy more?

A. Yes.

Q. Now, I would like to direct your attention to somewhere in the middle starting from "Frankly speaking."

A. All right.

Q. Near the end it says, the last part "But it shouldn't be that small especially you are exclusive in the US market."

A. Okay.

Q. What's your understanding when Gary said that?

A. We are the sole people that DataStor can sell into the United States. We are the only company that can buy from DataStor on these metal enclosures.

Q. Are you saying DAT will be the only business that can sell enclosures sold by DataStor to the United States?

A. Yes.

Q. But if DataStor at that time sold enclosures to other people bearing different trademark, would that violate the exclusive agreement, to your understanding?

A. Yes.

Q. So to your understanding, this exclusive arrangement is not just on the trademark. It's exclusive in the enclosure line of business.

A. The product, yes.

Q. If DataStor sell other computer accessories, then, to your understanding, that would not violate the exclusive arrangement. Let's say DataStor sell mouse to Galaxy. Would that violate this exclusive arrangement, to your understanding?

A. Without the Metal Gear name or any of my trademark.

Q. Okay. Is there an understanding between DAT and DataStor about what would happen if this exclusive arrangement is not followed?

A. Yes. No. 1, we will stop buying from them. No. 2, we will hold payments. No. 3, possible lawsuit.

Q. The three things that you just talked about, do you have any writings?

A. No.

Q. Those are all verbal?

A. Yes.

Q. All right. When you say "possible lawsuit," were you planning on suing other people for infringement if other businesses were selling enclosures with Metal Gear trademark?

A. Yes.

Q. Will you also consider suing for breach of contract?

A. Yes.

Q. And the breach of contract you will be suing against, you will be suing DataStor?

A. DataStor, yes.

MR. OLSON: Do you mind if we take a break?

MR. LEE: Sure. Let's get off record.

(A recess was taken.)

MR. LEE: This one is Exhibit No. 5.

(A copy of the aforementioned document was marked by the court reporter as Opposer Exhibit+ 5 for identification; attached hereto.)

BY MR. LEE:

Q. Mr. Wang, have you seen this Exhibit No. 5 before?

A. Yes.

Q. When was the first time you saw this?

A. The day it was drafted.

Q. That would be around February this year?

A. Yeah. I know it was this year, but I don't remember the month, though.

Q. Okay. Is this the same Gary Chen that was referred to in Exhibit 4, Direct 710?

A. Yes.

Q. Do you believe what Gary Chen declared in Exhibit 5 to be true?

A. Of course.

Q. And the Exhibit A mentioned in Item No. 3 of Exhibit 5 is the Exhibit 4 here we've just identified?

A. Can you repeat the question? I kind of lost you.

Q. Yes. In Exhibit No. 5 there are four paragraphs.

A. Right.

Q. In Paragraph No. 3 near the end there is a statement saying that "Exhibit A is a copy of the e-mail I sent to Patrick at Direct Access Technology, which confirmed the arrangement." Is that the e-mail we just marked as Exhibit No. 4?

A. Yes.

MR. LEE: Okay. This will be Exhibit No. 6.

(A copy of the aforementioned document was marked by the court reporter as Opposer Exhibit+ 6 for identification; attached hereto.)

BY MR. LEE:

Q. Can you take a minute to look at this.

A. (Witness peruses document.)

Okay.

Q. Have you seen Exhibit No. 6 before?

A. From the deposition before, I believe.

Q. Exhibit No. 6 says "Exclusive Sales Agreement." Do you see the top portion of it?

A. Yes.

Q. In your knowledge, do you think this is the same exclusive arrangement that DataStor had with DAT?

MR. OLSON: I will object. It calls for a legal conclusion.

THE WITNESS: No.

BY MR. LEE:

Q. Why is that?

A. All exclusive agreement involve to own part of DataStor. Theirs doesn't.

Q. I'm sorry. Say that again.

A. Our arrangement with DataStor was that we own a

part of DataStor, 20 percent of it. This does not say that, so it's different than what we have in DAT.

Q. Your arrangement with DataStor about owning 20 percent would be the same arrangement referred in Exhibit 4, the Gary Chen e-mail?

A. Yes. To be exclusive, yes.

Q. As far as I can tell, there's nothing about 20 percent mentioned in Exhibit 4.

A. Right, but it was verbally mentioned. You asked me the question on that exclusive sales agreement between DataStor and TechDepot as stated in this case.

Q. Yes.

A. And I just told you it's different arrangement.

Q. Okay.

MR. OLSON: I will object on relevancy.

BY MR. LEE:

Q. Other than the 20 percent, in your knowledge, what's the difference between the exclusive arrangement from DataStor to TechDepot and the exclusive arrangement from DataStor to DAT?

MR. OLSON: I object on relevancy, calls for a legal conclusion.

THE WITNESS: For example, No. 4, "This agreement shall be valid until the end of December 19, 2007, and can be renewed on a yearly basis." We don't need to renew on

yearly basis. It was exclusive all the way through. We are the only company that can sell the product from DataStor. Theirs has to renew every year, and with this if somebody else come in and have a bigger PO, they cancel this and give it to somebody else.

BY MR. LEE:

Q. So according to that, would you agree that this exclusive agreement actually violated DataStor's exclusive agreement with DAT?

A. No.

MR. OLSON: I will object; calls for a legal conclusion.

BY MR. LEE:

Q. Why is that?

A. Because we are the original company that tell DataStor what to do, what kind of product. This is totally different. TechDepot is only want to sell the product. They did not help to invent the product or to make the product better. All they do here is just want to buy the product, sell the product, using our marketing dollars that we spent before.

MR. OLSON: I will object; calls for a legal conclusion.

BY MR. LEE:

Q. When did DAT start to have its own tooling? You

previously mentioned about this. Not today. Previously.

A. On what items?

Q. On enclosures.

A. 2002.

Q. Did you mean start to develop DAT's own tooling, or in 2002 DAT's tooling ready for production was already there?

A. Later part of 2002 we started the second tooling with Maxnice.

Q. Second tooling. So was there a first tooling?

A. DataStor.

Q. When was the date around which you had the first tooling with DataStor?

A. When we asked DataStor to start producing the product or to make prototype, you have to make a stamping or tooling in order to stamp the plate out. The mesh has to have tooling for it. The posts, you have to do tooling for that.

Q. So that was around what time?

A. 2002.

Q. So not that far away from the second tooling?

MR. OLSON: I object; vague and ambiguous.

THE WITNESS: About six to eight months maybe.

BY MR. LEE:

Q. Six to eight months?

A. Yes.

Q. So is it fair to say that DAT had first tooling with DataStor, then after six to eight months then DAT had the second tooling with Maxnice?

A. Yes.

Q. And DAT continues to own those toolings as of today?

A. Yes.

Q. And those toolings are used by DAT for other OEM contractors to make enclosures as of today?

A. Different than what you refer to this patent or the diagram you show on Exhibit No. 3.

Q. Other than Exhibit No. 4, the Gary Chen statement, the e-mail of you are exclusive, do you have any recognition from DataStor that DAT owns the Metal Gear mark on the enclosure?

A. Metal Gear mark is our brand name, so, obviously, we own the Metal Gear mark.

Q. Do you have any documents or writings from DataStor acknowledging this fact that yeah, DAT owns that product?

A. Sample. We gave them what to print on the face of enclosure. We gave them the artwork for the packaging. I mean, that's pretty much enough.

Q. And those samples, those hours were in the time

frame of 2002?

A. 2002, yes.

Q. If DataStor sells enclosures with Metal Gear mark on it to other parties such as TechDepot, would you consider DataStor to be an infringer?

MR. OLSON: I'll object as relevancy, calls for a legal conclusion.

THE WITNESS: Yes.

BY MR. LEE:

Q. If anyone selling enclosures in the United States bearing the trademark of Metal Gear, would you consider that party to be an infringer?

MR. OLSON: I will object; irrelevant and calls for a legal conclusion.

THE WITNESS: Yes.

MR. LEE: This will be No. 7.

(A copy of the aforementioned document was marked by the court reporter as Opposer Exhibit+ 7 for identification; attached hereto.)

BY MR. LEE:

Q. We are at the final stretch.

A. (Witness peruses document.)

All right.

Q. Have you seen this letter before?

A. In previous deposition and, also, when Mr. Olson

drafted the letter.

Q. This letter we refer to as the Olson letter, does this letter, Exhibit 7, support your contention that if other people are using Metal Gear mark on enclosure you would consider that to be infringement?

MR. OLSON: I will object; it's irrelevant.

THE WITNESS: Yes.

BY MR. LEE:

Q. And you approved Mr. Olson for sending out the letter before the letter was sent out. Is that correct?

A. Yes.

Q. As of today do you have a pretty good idea of how trademark is used in commerce?

A. On today, yes.

Q. So as of today, you would have a clear idea. I know you are not an attorney. You are not an expert. But as of today you would have a good idea of infringement if other people are infringing on your trademark?

MR. OLSON: I will object. The question is vague.

THE WITNESS: Generally.

BY MR. LEE:

Q. Okay. For the recipients of the Olson letter, did DAT find those recipients, the identities of those recipients then gave it to Mr. Olson, or Mr. Olson came up

with those identities?

+MR. OLSON: I'll object; it's irrelevant and calls for attorney-client privilege. Instruct the witness not to answer.

BY MR. LEE:

Q. Did you give New Egg information to Mr. Olson?

+MR. OLSON: I'll object; vague, calls for information that's irrelevant. Instruct the witness not to answer any communications between the witness and his attorney.

BY MR. LEE:

Q. What's the purpose of sending out this Olson letter?

MR. OLSON: I'll object. Calls for speculation on his part as to why the letter was sent out by me. Also, it's irrelevant.

THE WITNESS: Can you repeat that again?

BY MR. LEE:

Q. What's the purpose of sending out this Olson letter?

A. I want to find out where they get the product from to find out who else is selling Metal Gear enclosures.

Q. Anything else?

A. No.

Q. As of today would you have any concern about Konami's, K-o-n-a-m-i's, Metal Gear trademark claim on computer video games?

+MR. OLSON: I'll object; it's irrelevant. Instruct the witness not to answer.

MR. LEE: You instruct the witness not to answer?

MR. OLSON: Yeah.

MR. LEE: There is no privilege.

MR. OLSON: It doesn't matter. It's not relevant. What his concerns are is irrelevant about some other goods in another classification. It's not an issue that's raised in these proceedings.

MR. LEE: All right. Okay. Do you have anything?

MR. OLSON: Yes, I do.

MR. LEE: All right.

MR. OLSON: Why don't we take a break first.

MR. LEE: Sure.

(A recess was taken.)

MR. LEE: We are back on the record.

MR. OLSON: By the way, if you can explain the relevancy of that last question about Konami, I will let him answer.

MR. LEE: No. That's fine.

MR. OLSON: Okay.

EXAMINATION +

BY MR. OLSON:

Q. Mr. Wang, I think you testified before that you first met with DataStor around 2001. Is that correct?

A. Yes.

Q. At the time you first met with DataStor, what kind of products were they selling?

A. Brokering ICs, something that's not even really computer accessories. Basically, they tell me it's ICs.

Q. Were they selling enclosures for computers at the time you first met them?

A. No.

Q. How did you and the people at DataStor meet?

A. Through a guy named Gary Pai, P-a-i.

Q. And when you first met with DataStor, what did they tell you they were looking for?

A. They asked me what to do, what to produce to help them to maintain the business of DataStor because they are actually looking for a new product, new idea.

Q. Now, prior to the meeting with DataStor, was DAT, or Direct Access Technology, in the hard drive enclosure business?

A. Yes.

Q. And how long had it been in that business?

A. A year and a half.

Q. And you were buying -- DAT was buying enclosures from whom?

A. Welland.

Q. And after you started buying enclosures from DataStor or for a short period, were you also buying enclosures from Welland?

A. Yes.

Q. And during the time that you were buying product from DataStor, were you also buying hard drive enclosures from other manufacturers?

A. Yes.

Q. Were those hard drive enclosures marked with a trademark?

A. Yes.

Q. Which trademark?

A. Metal Gear.

Q. So is it true that DataStor was not the sole supplier of Metal Gear enclosures to DAT?

A. True.

Q. Let me show you what was marked as Exhibit 4, which was the e-mail.

A. Okay.

Q. This e-mail, Exhibit 4, has a date on it of July 9, 2004. Do you see that?

A. Yes.

Q. Do you recall receiving this e-mail?
A. Yes.
Q. And when did you receive it?
A. July 9.
Q. 2004?
A. Yes.
Q. And it says it's from Gary Chen at the top. Do you see that?
A. Yes.
Q. And then there is an automatic signature at the bottom, DataStor Technology. Do you see that?
A. Yes.
Q. It has a telephone number on it. Do you see that?
A. Yes.
Q. Whose telephone number is that?
A. That is Gary Chen's cell phone.
Q. His cell phone?
A. Yes.
Q. Extension 241?
A. Oh, I'm sorry. I was looking at the content of the e-mail. But on the bottom that is his office number. Extension 241 is where his desk is.
Q. The paragraph that begins "Awaiting your answer, e-mail me or phone me" -- it's actually a one-sentence

paragraph -- there is a phone number. Right?

A. Yes.

Q. And whose phone number is that?

A. That's Gary's.

Q. That's his cell phone number?

A. Yes.

Q. After receiving this e-mail, did you ever have a discussion with Gary Chen about the contents of this e-mail?

A. Yes.

Q. So he confirmed to you that he had sent this e-mail?

A. Yes.

MR. OLSON: I am going to move Exhibit 4 into evidence.

Q. Now, when you say you had an exclusivity agreement with DataStor, can you tell me what your understanding of the agreement was?

A. The understanding of the agreement is that we are the sole seller or importer for this enclosure, metal enclosure with mesh. At the same time it bears our Metal Gear marks that we can sell under PPA.

Q. Was it your understanding that Direct Access was to be the exclusive seller of the Metal Gear enclosures that are the subject of the patent that was previously

discussed?

A. Yes.

MR. LEE: I'm sorry. I didn't get that question.

MR. OLSON: The subject of the patent that was previously discussed in your testimony.

MR. LEE: No. The whole question.

MR. OLSON: Let me repeat the question. I will rephrase it.

Q. Was it your understanding that DAT was to be the sole seller of the enclosures in the US that were being manufactured by DataStor?

A. Yes.

Q. Okay. Was it your understanding, then, that DataStor had no right to sell enclosures to anyone in the US?

A. Yes.

Q. And how about goods with the mark Metal Gear? What was your understanding with regard to your agreement with DataStor?

A. That is exclusive for DAT. That's our mark.

Q. They can't sell any product with Metal Gear. Correct?

A. Yes.

Q. Now, you testified, I think, that you created the mark Metal Gear. Is that correct?

A. Yes.

Q. And you came up with how many names before you decided on Metal Gear?

A. Five or six.

Q. So if I understand correctly, you prepared maybe a list of four or five, six names and from that list picked Metal Gear?

A. Yes.

Q. Who supplied the artwork for the gift box to DataStor?

A. Originally it's Gary Chen.

Q. Gary Chen sent you the artwork?

A. He was working for me at that time.

Q. He was working for you at the time?

A. Yes. Let me do this. Gary Chen's brother-in-law does the artwork for us.

Q. Are you saying Garry Ching?

A. Garry Ching, yes.

Q. One of the owners of --

A. -- Galaxy Metal Gear.

Q. He was actually one of your employees at one time?

A. Yes.

Q. And he prepared the artwork for DAT?

A. I told him what to do. Then he take that

information and give it to his brother-in-law. When his brother-in-law finish the artwork, he would bring it back to the office in a CD and show it to me. And I will tell him what to correct and what's not right, and I also give him all the sizes.

Q. Once you finally approved the artwork, would you then send it to DataStor?

A. Yes.

Q. Now, the artwork that you sent to DataStor, it was for the box that the enclosure goes in. Right?

A. Yes.

Q. And on the box is there a picture of the enclosure?

A. Yes.

Q. And what -- is there a trademark on the product that's shown on the box?

A. Do you refer to Metal Gear?

Q. Is there a picture of the Metal Gear enclosure on the box?

A. Yes.

Q. The enclosure that's pictured on the box, does it say Metal Gear on it?

A. Yes.

Q. You sent that to DataStor?

A. Yes.

Q. Did they then prepare the box and ship it to you?
A. Yes.
Q. Now, DataStor, did it manufacture the product itself, or does it have a relationship with another supplier?
A. They use a subcontractor to make the products.
Q. How many employees did DataStor have at the time that you met with them originally?
A. When I get to the office, I see office desks, about 10, 15, yeah.
Q. So when you went to their facility, did you get a tour of their facility?
A. I got a tour of the meeting room, and the meeting was right next to the other people sitting there.
Q. Was it your understanding that the product was made at another location than where you visited?
A. Yes.
Q. Based on the facilities that you were shown, would they have the capability to manufacture product in those facilities?
A. No.
Q. You said that DAT owned its own tooling for enclosures?
A. Yes.
Q. Does that tooling have any kind of like lifespan;

so many units can be made, and then it has to be replaced?

A. Yes.

Q. Has DAT replaced the tooling over the years?

A. Yes.

Q. Do you know about how many times you have replaced the tooling?

A. Three, four times at least.

Q. Now, you said that -- strike that. When DAT was buying product from DataStor, who supplied the specifications for the product?

A. I do.

Q. And did you ever complain to DataStor about the quality of the product?

A. Yes.

Q. And is that one of the reasons that you ended up cancelling -- strike that. Is the quality of the product one of the reasons that DAT stopped buying from DataStor?

A. Yes.

Q. And what was the quality issue that arose?

A. The main one is the power supply issue. It melt. No. 2 is the fingerprint on the unit when they packing the product. No. 3 is the testing. The way they test did not meet my specifications.

Q. Had you complained to DataStor about these problems on a number of occasions?

A. Since day one when we received our first shipment.

Q. So I take it eventually you decided not to buy from DataStor any more.

A. Yes.

Q. By the way, on the gift box is your company name -- strike that. Whose name is printed on the gift box?

A. PPA.

Q. And have there ever been occasions where a customer has returned a product because they claimed it was defective or wasn't working properly?

A. Yes.

Q. And who did they return the product to?

A. To PPA.

Q. If a customer has a complaint, they would call PPA and request an RMA number?

A. Yes.

Q. What is an RMA?

A. Return merchandise authorization.

Q. Does PPA do repairs of product itself?

A. Not repair.

Q. So if a customer sent a product in and claimed it didn't work, would it be tested by PPA?

A. Yes.

Q. If it didn't work properly, what would PPA do?

A. Send it back to DAT.

Q. What about for the customer? Send them a new product or repair it?

A. We send them a refurbished repaired product that we have a pool of.

Q. And how about a refund? Did you do that, too?

A. Yes. But most of the time they ask for a new product or replacement.

Q. Is DataStor's name on the gift box?

A. No.

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

FURTHER EXAMINATION +

BY MR. LEE:

Q. I just have a little bit of follow-up. When you say PPA would test the product if a customer complains, to the extent PPA send back to DAT, that kind of testing and requesting and getting RMA, that kind of service starting from when?

A. Starting from day one when DAT sell to PPA.

Q. And day one would be around what time?

A. 2003.

Q. That would coincide with your claimed first year of Metal Gear trademark?

A. Yes. It was DAT's sell to reseller first. Then DAT sell to PPA, then PPA sell to all the large retail chain.

MR. OLSON: That's it.

MR. LEE: We will submit today's deposition and all the exhibits into evidence. We will stipulate that the court reporter be relieved under the Code, and counsel for deponent will receive the original transcript and keep custody and possession for deponent's review. And how many days do you need? And then it's you guys' case in chief, and then we submit the brief. So how many days do you need? Have you set your depo?

MR. OLSON: No. It's too early.

MR. LEE: Yeah, I know. It's 30 days after that, so you have not set. Because I don't remember receiving anything from you guys.

MR. OLSON: No. The deadline didn't start yet.

MR. LEE: Yes, all right. So then 20 days?

MR. OLSON: That's fine.

MR. LEE: Okay. And then if the original is lost or unavailable, then a certified copy can be used for all purposes.

MR. OLSON: That's fine.

(Proceedings concluded at 11:55 a.m.)

* * *

DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this day of ,
200 , at , California.

PATRICK WANG

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

THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

tter of Application Serial No.: 78914975
6/22/2006
METAL GEAR

XY METAL GEAR, INC., Opposer, vs. CT ACCESS TECHNOLOGY, INC. Applicant.	Opposition No.: 91184213 Action filed: May 20, 2008

NOTICE OF TESTIMONY DEPOSITION OF PATRICK WANG

PLEASE TAKE NOTICE that pursuant to TBMP §703, Opposer Galaxy Metal Gear, c., will take the oral testimony deposition of Patrick Wang of Applicant, Direct Access echnology, Inc., at the following date, time, and site:

Date: July 16, 2009

Time: 10:00 a.m.

Site: WorldEsquire Law Firm LLP
80 South Lake Avenue, #708
Pasadena, CA 91101

Opposer EXHIBIT 1
FOR INDENTIFICATION
LYN CORRIN AAKER, CSR
WITNESS: 7/16/09 P Wang

1-17

OPPOSER 2
OPPOSER 3
OPPOSER 4
OPPOSER 5
OPPOSER 6
OPPOSER 7
CD ROM Enclosed

This deposition will be taken upon oral examination before a certified court reporter in or the County of Los Angeles. This deposition will continue day to day until completed, days and holidays excluded and upon counsels' agreement to schedule further sessions.

Respectfully submitted,

ted: June 30, 2009

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CERTIFICATE OF SERVICE

The undersigned Attorney hereby certifies that a copy of the foregoing Notice of estimony Deposition of Patrick Wang was served on the Opposer by mailing a true copy hereof by first class mail, postage prepaid to the following address on

JUNE 30/2009.

Michael Olson, Esq.
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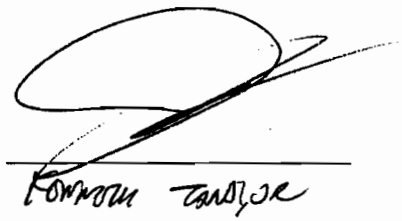

1-36

metal gear

d Mark	METAL GEAR
ds and Services	IC 009. US 021 023 026 036 038. G & S: enclosures for external computer hard drives. FIRST USE: 20030514. FIRST USE IN COMMERCE: 20030514
ndard Characters imed	
k Drawing Code	(4) STANDARD CHARACTER MARK
ial Number	78914975
ng Date	June 22, 2006
rrent Filing Basis	1A
iginal Filing Basis	1A
blished for position	January 22, 2008
wner	(APPLICANT) Direct Access Technology Inc CORPORATION CALIFORNIA 19957 East Harrison City of Industry CALIFORNIA 91789
torney of Record	Michael C. Olson
sclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "METAL" APART FROM THE MARK AS SHOWN
ype of Mark	TRADEMARK
egister	PRINCIPAL
ive/Dead Indicator	LIVE

OPPOSER 3
OPPOSER 4
OPPOSER 5
OPPOSER 6
OPPOSER 7
Enclosed

Opposer EXHIBIT 2
FOR INDENTIFICATION
LYN CORRIN AAKER, CSR
WITNESS: 7/16/09

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US006992885B2

(12) **United States Patent**
Wang

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(45) **Date of Patent: Jan. 31, 2006**

(54) **EXTERNAL CONNECTION DEVICE FOR A STORAGE DEVICE**

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(73) Assignee: **DataStor Technology Co., Ltd.**, Taipei Hsien (TW)

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G06F 1/16 (2006.01)

(52) **U.S. Cl.** **361/685**; 361/679; 361/816; 312/107

(58) **Field of Classification Search** ..... 361/679–685, 361/695, 724–727, 800–818; 312/107, 107.5, 312/111, 223.1, 223.2, 265.6, 332.1; 220/23.2, 220/23.4, 23.6; 206/509, 511; 710/36; 174/35 GC, 174/35 R; 454/184
See application file for complete search history.

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(74) *Attorney, Agent, or Firm*—Winston Hsu

(57) **ABSTRACT**

An external connection device for placing and connecting a storage device has a housing, a power output port, and a second signal I/O port. A chamber for placing the storage device is formed in the housing. The housing has a mesh area having a plurality of meshes that allow air to freely pass in and out of the chamber. The power output port is electrically connected to a power input port of the storage device for providing electric energy to the storage device. The second signal I/O port is electrically connected to a first signal I/O port of the storage device for delivering data recorded in the storage device to an electric device.

20 Claims, 8 Drawing Sheets

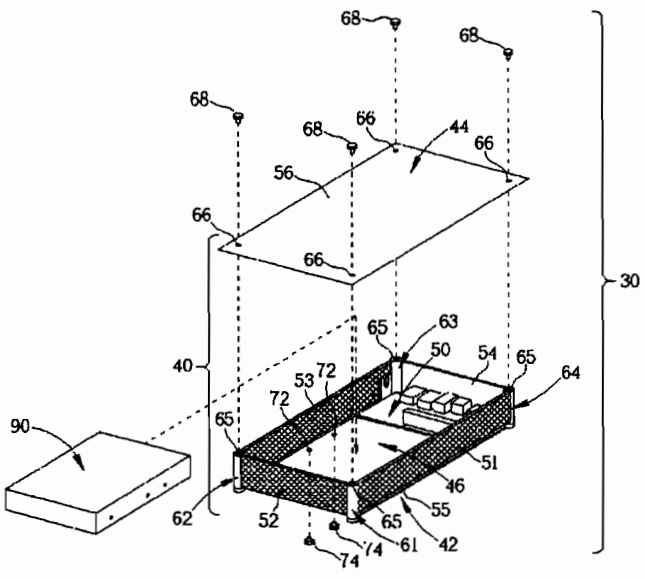

EXHIBIT 3
FOR INDENTIFICATION
LYN CORRIN AAKER, CSR
2/16/05
WITNESS: Wang

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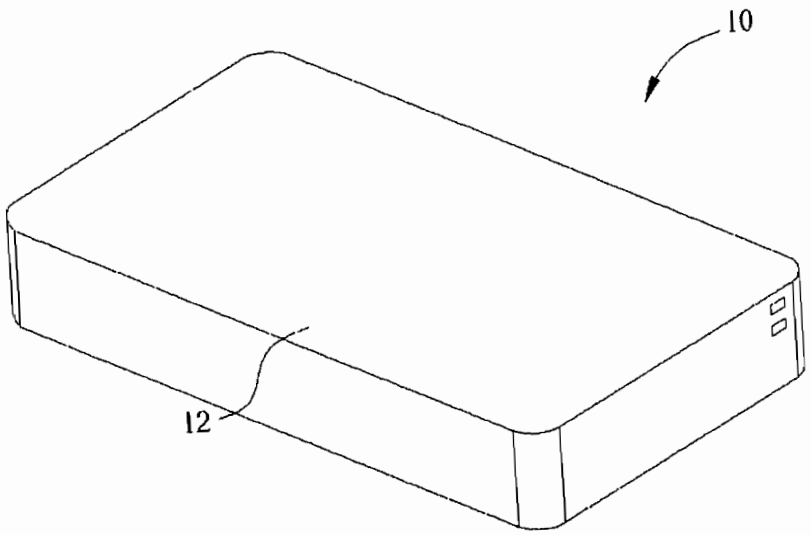

Fig.1 Prior Art

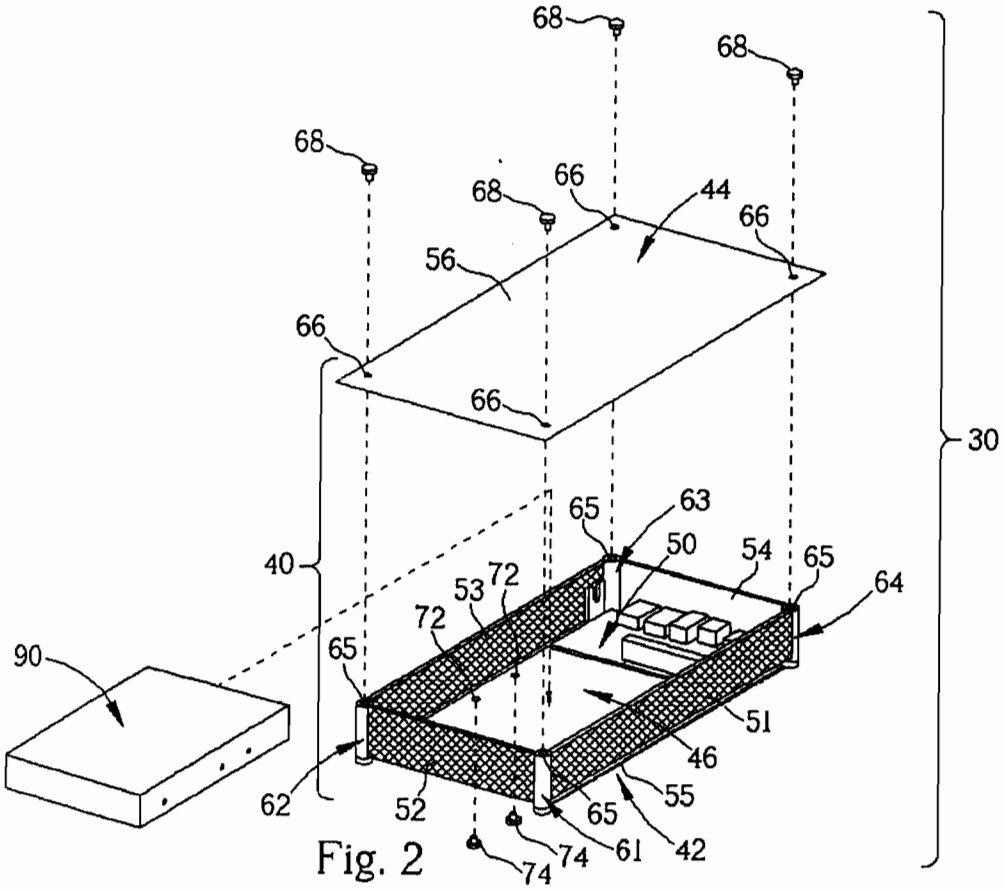
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Fig. 2

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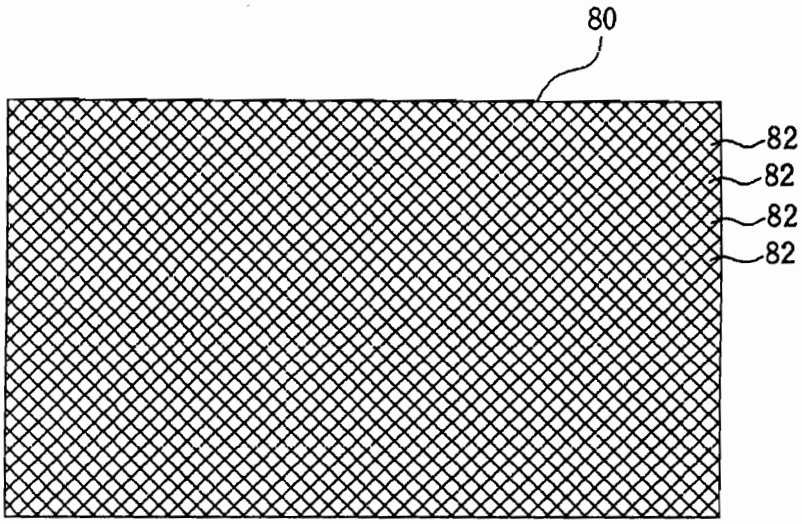

Fig. 3

3-4 hr

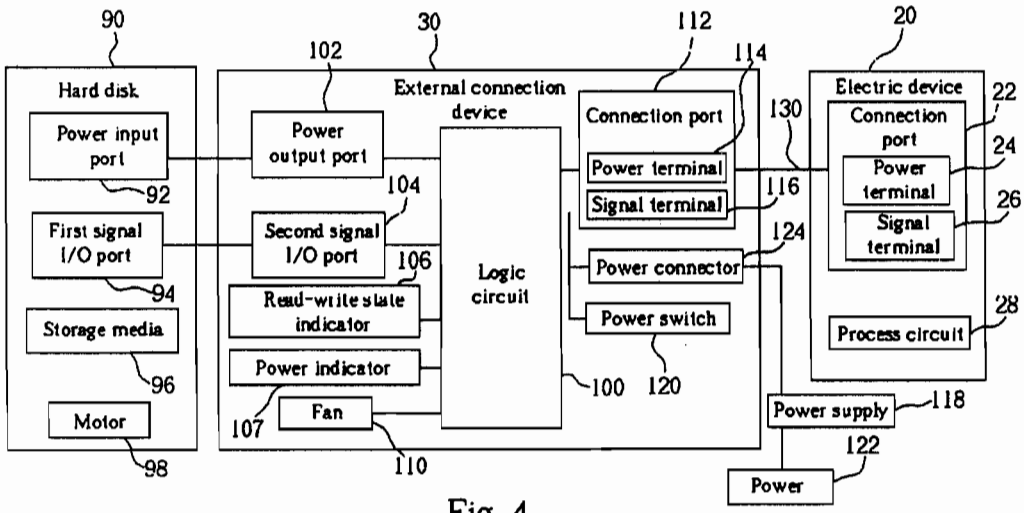
90
30
112
20
102
114
Hard disk
External connection device
Connection port
Electric device
22
130
Power input port
Power output port
Connection port
24
Power terminal
Power terminal
92
104
116
Signal terminal
26
First signal I/O port
Second signal I/O port
Signal terminal
124
106
Power connector
Logic circuit
94
Read-write state indicator
Power switch
28
Storage media
Process circuit
Power indicator
96
100
120
Motor
Power supply
118
107
Fan
122
98
110
Power

Fig. 4

3-5 n

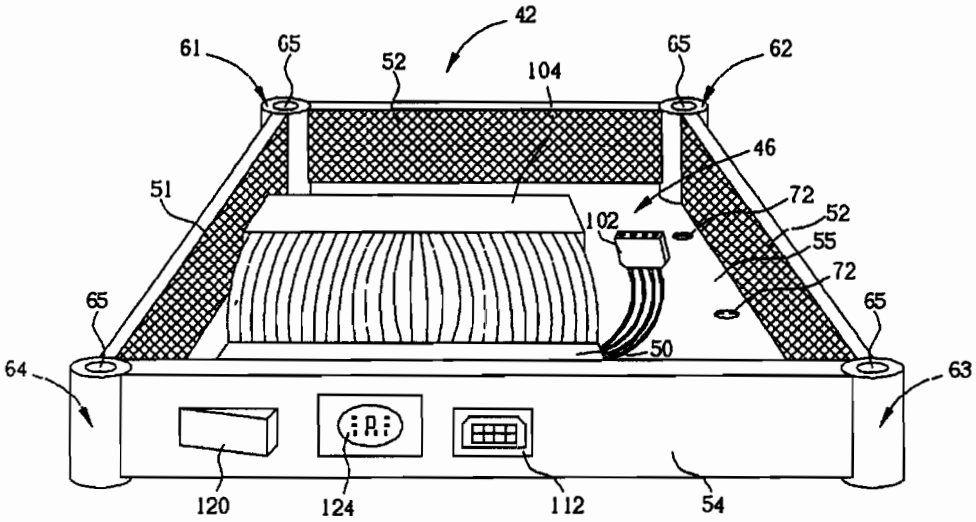
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Fig. 5

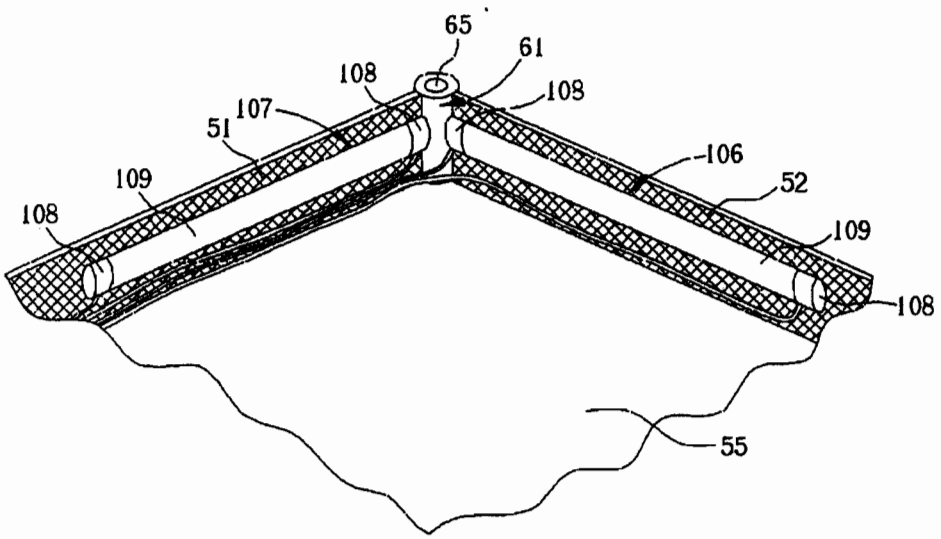

Fig. 6

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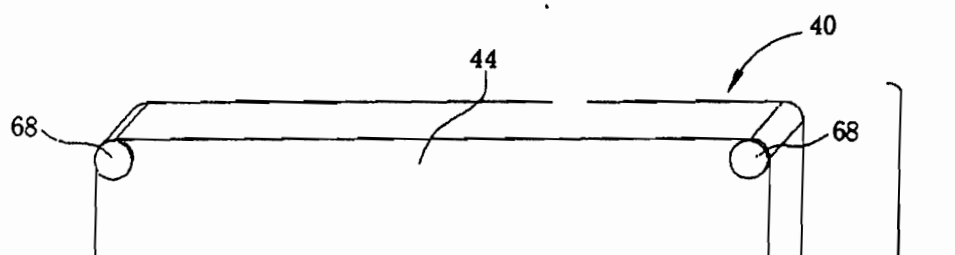

Fig. 8

3-9-b

EXTERNAL CONNECTION DEVICE FOR A STORAGE DEVICE

BACKGROUND OF INVENTION

1. Field of the Invention

The invention relates to an external connection device for placing and connecting a storage device, and more particularly, to an external connection device with a mesh area that is formed with a plurality of meshes to lower the temperature of the storage device.

2. Description of the Prior Art

Data is recorded in digital form for rapid and convenient transmission. As quantities of digital data increase, kinds of digital data storage devices (such as hard disks, CD-ROM drives, or memory cards) appear continually. External connection devices provide an interface for conveniently replacing and installing the storage devices.

Please refer to FIG. 1, which is a diagram showing an external connection device **10** according to prior art. The external connection device **10** holds a hard disk and provides electric energy and a transmission interface to the hard disk. The external connection device **10** comprises a housing **12** and the hard disk is installed in the housing **12**. The external connection device **10** further comprises a transmission interface for controlling data access to and from the hard disk, and a DC power input terminal electrically connected to a power supply for providing electric energy. Besides having a data I/O port and a DC power input terminal at the rear side, the housing **12** is airtight. When operating, redundant heat generated by the hard disk will reduce stability and lifetime of the hard disk.

SUMMARY OF INVENTION

It is therefore a primary objective of the claimed invention to provide an external connection device with effective temperature dissipation to solve the above-mentioned problem.

The external connection device is used for installing a storage device. The storage device has a storage media for storing data, a power input port for receiving power and a first signal I/O port for transmitting signals. The external connection device has a housing, at least one power terminal, at least one signal terminal, a power output port, and a second signal I/O port. A chamber for placing the storage device is formed in the housing. The housing has at least one cover and a mesh area. The cover covers the chamber and can be bare-handedly disassembled, and the mesh area has a plurality of meshes that allow air to pass in and out of the chamber. The power output port is electrically connected between the power terminal and the power input port for providing electric energy to the hard disk. The signal terminal delivers data recorded in the storage media to an electric device. The second signal I/O port is electrically connected between the first signal I/O port and the signal terminal such that the data recorded in the storage media can be delivered to the electric device through the second signal I/O port and the signal terminal.

It is an advantage of the claimed invention that the housing has a mesh area so that the meshes allow air to pass in and out of the chamber. The external connection device of the present invention has more effective temperature dissipation than conventional one.

It is a further advantage of the claimed invention that the cover covers the chamber and can be bare-handedly disassembled. Users can install and disassemble the hard disk without tools.

These and other objectives of the present invention will no doubt become obvious to those of ordinary skill in the art after reading the following detailed description of the preferred embodiment that is illustrated in the various figures and drawings.

BRIEF DESCRIPTION OF DRAWINGS

FIG. **1** is a diagram of an external connection device according to prior art.

FIG. **2** is a diagram of an external connection device according to present invention.

FIG. **3** is a diagram of the mesh area.

FIG. **4** is a functional block diagram showing the hard disk and the external connection device shown in FIG. **2** connected an electric device.

FIG. **5** is a three-dimensional rear view of the base of the housing.

FIG. **6** is a magnified diagram of part of the base of the external connection device.

FIG. **7** is a diagram of the support of the external connection device.

FIG. **8** is a diagram showing the housing placed on the support shown in FIG. **7**.

DETAILED DESCRIPTION

FIG. **2** is a diagram of the external connection device **30** according to the present invention. In this embodiment, a storage device **90** installed in the external connection device **30** is a hard disk, but storage devices installed in the external connection device **30** can also be CD-ROM drives, floppy disk drives, ZIP drives, and so on. The external connection device **30** comprises a housing **40** in which a chamber **46** is fashioned for placing the hard disk **90**. The housing **40** is formed by a base **42** and a cover **44**. The base **42** comprises a first surface **51**, a second surface **52**, a third surface **53**, a fourth surface **54**, and a fifth surface **55**, and the cover **44** comprises a sixth surface **56**. The chamber **46** is surrounded by the six surfaces **51–56**. The first surface **51**, the second surface **52**, and the third surface **53** comprise a mesh area **80** shown in FIG. **3**. The mesh area **80** has a plurality of meshes **82** and allows air to pass in and out of the chamber **46**. Additionally, the housing **40** is made with metallic material and has effective temperature dissipation.

When installing the hard disk **90** into the chamber **46**, the hard disk **90** is screwed in the chamber **46** by two screws **74** to secure the hard disk **90**. As FIG. **2** shows, two holes **72** are designed on the fifth surface **55** of the base **42**, and the screws **74** can be screwed into bottom of the hard disk **90** through the holes **72**. After installing the hard disk **90** into the chamber **46**, the cover **44** of the housing **40** covers the chamber **46** to protect the hard disk **90**. In this embodiment, the base **42** of the housing **40** further comprises four transparent pillars **61**, **62**, **63**, and **64**. Each of the pillars **61**, **62**, **63**, or **64** is set between two surfaces among the first surface **51**, the second surface **52**, the third surface **53**, and the fourth surface **54**, and connects the four surfaces **51–54** of the base **42**. Each of the pillars **61**, **62**, **63**, or **64** is designed with a screw hole **65** to fix the screws **68**. In addition, four holes **66** are formed on the cover **44**, and four screws **68** can be screwed into the screw holes **65** of the pillars **61–64** through the holes **66** to tightly fix the cover **44**

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to the base 42. The screws 68 and 74 can be bare-handedly disassembled without tools. The screw nuts are large in circumference, and users can twist the screw nuts of the screws 68 and 74 to disassemble the screws 68 and 74.

Please refer to FIG. 4 and FIG. 5 for a further explanation of the functions of the external connection device 30. FIG. 4 is a functional block diagram showing the hard disk 90 and the external connection device 30 shown in FIG. 2 connected to an electric device 20. FIG. 5 is a three-dimensional rear view of the base 42 of the housing 40 in FIG. 2. A matter needing attention is that FIG. 4 shows connection of the signal line and the power line between the hard disk 90, the external connection device 30, and the electric device 20, and it seems the hard disk 90 is placed outside the external connection device 30 in FIG. 4, but actually the hard disk 90 is installed in the chamber 46 of the external connection device 30.

In this embodiment, the electric device 20 is a personal computer including a connection port 22 and a process circuit 28. The connection port 22 can be a universal serial bus port (USB port), an IEEE 1394 connection port, or a serial advanced technology attachment (serial ATA) connection port, and the connection port 22 includes at least one power terminal 24 for outputting power energy and at least one signal terminal 26 for transmitting signals. The process circuit 28 is a central processing unit (CPU) for processing data and signals of the electric device 20. Corresponding to the connection port 22 of the electric device 20, the external connection device 30 includes a connection port 112 of the same protocol standard as the connection port 22, which means that the connection port 112 can be a USB port, a IEEE 1394 connection port, or a serial ATA connection port. A transmission cable 130 connects the connection port 22 and the connection port 112.

Additionally, the connection port 112 also includes a power terminal 114 and a signal terminal 116. The power terminal 114 is electrically connected to the power terminal 24 of the connection port 22 for receiving power energy, and the signal terminal 116 is electrically connected to the signal terminal 26 of the connection port 22 for exchanging data with the signal terminal 26. Therefore, by connecting the connection port 22 and the connection port 112, the electric device 20 can output power energy to the external connection device 30 through the power terminal 24 and 114, and can receive and transmit signals to the external connection device 30 through the signal terminals 26 and 116. In addition, the primary objective of the external connection device 30 is placing the hard disk 90 and being an interface for power supply and data transmission between the hard disk 90 and the electric device 20, and is described in detail below.

Please refer to FIG. 4 and FIG. 5, the hard disk 90 includes a power input port 92, a first signal I/O port 94, a storage media 96, and a motor 98. The power input port 92 is electrically connected to a power output port 102 of the external connection device 30 for receiving power energy. The first signal I/O port 94 is electrically connected to a second signal I/O port 104 of the external connection device 30 for transmitting data to the second signal I/O port 104 and receiving control signals from the second signal I/O port 104. The storage media 96 is a magnetic disk that utilizes magnetism to record digital data in "0" and "1". The motor 98 drives the storage media 96 to rotate, and allows the magnetic head of the hard disk 90 to access data stored in the storage media 96. In addition, as mentioned above, the storage device 90 can be another type of data storage devices, such as a CD-ROM drive. If the storage device 90 is a CD-ROM drive, the storage media 96 means a compact disc (CD) that utilizes different reflection ratios to record data.

Moreover, the external connection device 30 further comprises a logic circuit 100, a power connector 124, and a power switch 120. The power output port 102, the second signal output port 104, and the connection port 112 are electrically connected to the logic circuit 100. The logic circuit 100 controls the signal transmission between the signal terminal 116 and the second signal I/O port 104, and allows the electric device 20 to access data stored in the storage media 96 of the hard disk 90. When the electric device 20 reads data stored in the storage media 96, the electric device 20 will send a read control signal. The read control signal is sequentially sent through the signal terminal 26 of the connection port 22, the signal terminal 116 of the connection port 112, the logic circuit 100, the second signal I/O port 104, the first signal I/O port 94, and to the hard disk 90. After receiving the read control signal, the hard disk 90 will read out corresponding data from the storage media 96. The corresponding data is sequentially sent through the first signal I/O port 94, the second signal I/O port 104, the logic circuit 100, the signal terminal 116, the signal terminal 26, and to the electric device 20. In addition, when data is transmitted from the electric device 20 to the hard disk 90 for storage, the transmission route is also sequentially through the signal terminal 26, the signal terminal 116, the logic circuit 100, the second signal I/O port 104, the first signal I/O port 94, and to the hard disk 90.

In addition, the external connection device 30 is electrically connected to an external power supply 118 through the power connector 124, and the power supply 118 is electrically connected to an external power 122 for transforming the AC voltage of the power 122 to a stable DC voltage that is provided to the external connection device 30. A portion of power energy supplied to the hard disk 90 is provided by the power terminal 114 and the other portion is provided by the power supply 118. If the power energy supplied to the external connection device 30 from the power terminal 24 and 114 is sufficient, it is not necessary to provide the power connector 124 and the power supply 118 in this embodiment.

Furthermore, the power switch 120 controls power energy of the external connection device 30 to close and open. When users need to separate the external connection device 30 from the electric device 20, users can close the external connection device 30 with the power switch 120 and then remove the transmission cable 130 from the connection port 112. Similarly, when users need to connect the external connection device 30 to the electric device 20, users can connect the transmission cable 130 to the connection port 112 and open the power switch 120.

In addition, as FIG. 5 shows, the external connection device further comprises a circuit board 50. The circuit board 50 is placed at a flank of the chamber 46 and is next to the fourth surface 54 of the base 42. The logic circuit 100 is formed on the circuit board 50, and the power output port 102, the second signal I/O port 104, the connection port 112, and the power switch 120 are all connected to the circuit board 50. The power connector 124, the power switch 120, and the connection port 112 are exposed on the fourth surface 54 of the base 42 for convenient operation. Besides, as FIG. 2 shows, when the hard disk 90 is installed in the chamber 46, the hard disk 90 is next to the circuit board 50 without overlapping. This type of installation can reduce thickness of the external connection device 30. Certainly, the circuit board 50 can be also placed on bottom of the chamber 46 and when the hard disk 90 is installed in the chamber 46,

the hard disk **90** is above and overlaps the circuit board **50**. This type of installation can reduce length of the external connection device **30**.

Please refer to FIG. **6**, which is a magnified diagram near the transparent pillars **61** of the base **42** of the external connection device **30** in FIG. **2**. As FIG. **4** and FIG. **6** show, the external connection device **30** further comprises a read-write state indicator **106** and a power indicator **107** respectively installed on the second surface **52** and the first surface **51**. The read-write state indicator **106** and the power indicator **107** are electrically connected to the logic circuit **100**. The read-write state indicator **106** indicates read and write states of the hard disk **90**, and the power indicator **107** indicates power supply state of the hard disk **90**. When power energy is supplied to the hard disk **90**, the power indicator **107** will illuminate. The logic circuit **100** controls the read-write state indicator **106** in accordance with the operation mode of the hard disk **90** to show the read-write state of the hard disk **90**.

In this embodiment, the read-write state indicator **106** and the power indicator **107** respectively include a light guide tube **109** and two illuminants **108**. These two illuminants **108** are placed at two ends of the light guide tube **109**, and the light guide tube **109** can guide light from the illuminants **108** and uniformly disperse the light. Since the logic circuit **100** controls the illuminants **108** of the read-write state indicator **106** in accordance with the operation mode of the hard disk **90**, the illuminants **108** of the read-write state indicator **106** illuminate in accordance with the read-write state of the hard disk **90**.

For convenient placement of the external connection device **30**, the external connection device **30** further includes a support **140** for fixing the housing **40** of the external connection device **30**. Please refer to FIG. **7** and FIG. **8**. FIG. **7** is a diagram showing the support **140** of the external connection device **30** and FIG. **8** is a diagram showing the housing **40** placed on the support **140**. As FIG. **7** shows, the support **140** comprises two ridges **142** and **144**. The ridges **142** and **144** respectively have a plane **146** and another plane **148**, and the planes **146** and **148** are opposite. Between the planes **146** and **148**, a fillister **150** is formed, and the housing **40** can be placed in the fillister **150**. When the housing **40** is placed in the fillister **150**, the fillister **150** will fix the two surfaces **55** and **56** of the housing **40** and support the housing **30**.

For improving the temperature dissipation of the external connection device **30**, the external connection device **30** further comprises a fan **110** (as FIG. **4** shows) for circulating air passing in and out of the chamber **46**. When the hard disk **90** is operating, the redundant heat generated by the hard disk **90** can be effectively dissipated.

In contrast to the prior art, the external connection device of present invention has a mesh area. The mesh area allows air to pass in and out of the chamber so that the redundant heat of the hard disk can be effectively dissipated when operating. The temperature of the storage device placed in the chamber can be effectively controlled. The stability and lifetime of the external connection device are successfully improved.

Those skilled in the art will readily observe that numerous modifications and alterations of the device may be made while retaining the teachings of the invention. Accordingly, the above disclosure should be construed as limited only by the metes and bounds of the appended claims.

What is claimed is:

1. An external connection device for placing and connecting a hard disk, the hard disk comprising:

a storage media for storing data;

a power input port for receiving power; and

a first signal I/O port for transmitting signals;

the external connection device comprising:

a housing having at least one cover and a mesh area and forming a chamber for placing the hard disk, wherein the cover covers the chamber and is fastened to the housing utilizing a plurality of thumb screws, and the mesh area has a plurality of meshes that allow air to pass in and out of the chamber;

at least one power terminal electrically connected to a power;

at least one signal terminal for delivering data recorded in the storage media to an electric device;

a power output port electrically connected between the power terminal and the power input port for providing electric energy to the hard disk; and

a second signal I/O port electrically connected between the first signal I/O port and the signal terminal, wherein the data recorded in the storage media can be delivered to the electric device through the second signal I/O port and the signal terminal.

2. The external connection device of claim **1** wherein the housing further comprises a plurality of screw holes for installing the plurality of thumb screws to fasten the cover.

3. The external connection device of claim **1** wherein the housing is made with metallic material, the housing has six surfaces, and at least two surfaces are composed of the mesh area.

4. The external connection device of claim **1** wherein the power terminal and the signal terminal respectively are a universal serial bus port (USB port), an IEEE 1394 connection port, or a serial advanced technology attachment (serial ATA) connection port.

5. The external connection device of claim **1** further comprising a power switch electrically connected to the power terminal for turning on/off the external connection device, and the power terminal is connected to a power supply for providing extra electric energy to the external connection device.

6. The external connection device of claim **1** further comprising a read-write state indicator placed in the chamber for indicating state of the hard disk, the read-write state indicator comprises at least one illuminant illuminating in accordance with the read-write state of the hard disk and at least one light guide tube for guiding and distributing light of the illuminant.

7. The external connection device of claim **1** further comprising a circuit board in which a logic circuit is formed for controlling signal transmission at the signal terminal and the second signal I/O port.

8. The external connection device of claim **7** wherein the circuit board is placed in the chamber, and the hard disk is above and overlaps the circuit board when the hard disk is installed in the chamber.

9. The external connection device of claim **7** wherein the circuit board is placed at a flank of the chamber, and the hard disk is next to the circuit board when the hard disk is installed in the chamber.

10. The external connection device of claim **1** further comprising a fan for circulating air passing in and out of the chamber.

11. The external connection device of claim **1** further comprising a support for fixing the housing.

12. An external connection device for placing and connecting a storage device, the storage device comprising:

a storage media for storing data;

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a power input port for receiving power; and

a first signal I/O port for transmitting signals;

the external connection device comprising:

a housing having at least one mesh area and forming a chamber for placing the storage device, wherein the mesh area has a plurality of meshes that allow air to pass in and out of the chamber;

a read-write state indicator placed in the chamber for indicating state of the storage media, the read-write state indicator comprises at least one illuminant illuminating in accordance with the read-write state of the storage media and at least one light guide tube for guiding and distributing light of the illuminant;

a power output port electrically connected to the power input port for providing electric energy to the storage device; and

a second signal I/O port electrically connected to the first signal I/O port, wherein the data recorded in the storage media can be delivered to an electric device.

13. The external connection device of claim 12 wherein the housing further comprises a cover and a plurality of screw holes, the cover is fixed on the housing with a plurality of thumb screws and the cover can be disassembled from the housing without the use of tools.

14. The external connection device of claim 12 wherein the housing has six surfaces and at least two surfaces are composed of the mesh area.

15. The external connection device of claim 12 wherein the housing is made with metallic material.

16. The external connection device of claim 12 further comprising:

at least one power terminal for providing electric energy to the external connection device and making the power output port provide electric energy to the storage device; and

at least one signal terminal electrically connected between the second signal I/O port and an electric device for delivering data recorded in the storage media to the electric device.

17. The external connection device of claim 16 wherein the power terminal and the signal terminal respectively are a universal serial bus port (USB port), an IEEE 1394 connection port, or a serial advanced technology attachment (serial ATA) connection port.

18. The external connection device of claim 16 further comprising a power switch electrically connected to the power terminal for turning on/off the external connection device, and the power terminal is connected to a power supply for providing extra electric energy to the external connection device.

19. The external connection device of claim 12 further comprising a circuit board in which a logic circuit is formed for controlling signal transmitting at the second signal I/O port.

20. The external connection device of claim 19 wherein the circuit board is placed in the chamber and the storage device is above and overlaps the circuit board when the storage device is installed in the chamber.

* * * * *

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UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,992,885 B2
APPLICATION NO. : 10/605780
DATED : January 21, 2006
INVENTOR(S) : Chia-Jen Wang et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

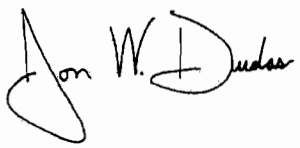
On the Title page:

After item (65), insert -- (30) Foreign Application Priority Data

July 21, 2003 [TW] Taiwan.....092119871 U --.

Signed and Sealed this

Fifth Day of September, 2006



JON W. DUDAS
Director of the United States Patent and Trademark Office

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UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,992,885 B2
APPLICATION NO. : 10/605780
DATED : January 31, 2006
INVENTOR(S) : Chia-Jen Wang et al.

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On the Title page:

After item (65), insert -- (30) Foreign Application Priority Data

July 21, 2003 [TW] Taiwan.....092119871 U --.

This certificate supersedes Certificate of Correction issued September 5, 2006.

Signed and Sealed this

Seventh Day of November, 2006

JON W. DUDAS
Director of the United States Patent and Trademark Office

3-15 n

DAT Inc.

From: "garychen" <garychen@datastor.com.tw>
To: "Patrick (DAT)" <pwdat65@verizon.net>
Sent: Friday, July 09, 2004 11:51 AM
Subject: About the order for 3.5" & 5.25" order

Hi, Patrick
Thank you for your attention.

I tried to call you, but it forward to the voice mail box.

How I can help you on the issue of 3.5" & 5.25" enclosure? Please let me know, otherwise, Anderson keep asking me about the order these days.

Frankly speaking, the order quantity from April until today is very few, we could understand the sales season is kind of weak during this period of time in the world, but it shouldn't be that small especially you are exclusive in the US market.

Patrick, let me help, tell me how to do, I can talk to Anderson, but I need to know how you are going to operate.

Awaiting your answer, email me or phone me +886-952-00-11-55.

White enclosure sample will deliver to you next week, please kindly note.

Best regards,
Gary Chen

Datastor Technology Co., Ltd.
IC website: www.datastor.com.tw
External enclosure: www.datastortech.com
Tel: +886-2-8976-9100 Ext. 241
Fax: +886-2-8976-9108

Opposer EXHIBIT 4
FOR INDENTIFICATION
LYN CORRIN AAKER, CSR
WITNESS: 7/16/09

APP'S EXHIBIT 3
FOR IDENTIFICATION
JAMIE B. SNYDER, CSR 5159
Nov. 13, 2008
WITNESS M. Chen

CD ROM enclosed

Ex-2

DIRECT - 00710

4

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	
vs.	
Direct Access Technology, Inc.	
Applicant	

DECLARATION OF GARY CHEN

I, Gary Chen, declare as follows:

1. I have personal knowledge of the matters set forth in this declaration and, if called as a witness, would truthfully and competently testify to the following.

2. I was formerly employed by Datastor Technology Company, Ltd. (hereinafter called "DATASTOR")in Taiwan. DATASTOR manufactured external hard drive enclosures under several

Opposer EXHIBIT 5
FOR INDENTIFICATION
LYN CORRIN AAKER, CSR
WITNESS: 2/16/09

5-1

brand names for different customers. While employed at DATASTOR my job duties included sales of hard drive enclosures to customers of DATASTOR.

3. At the time I started working for DATASTOR, that company was already selling hard drive enclosures to Direct Access Technology under the trademark METAL GEAR. At the time I started working for DATASTOR, I understood that Direct Access Technology had the exclusive right to sell METAL GEAR enclosures in the United States. Exhibit "A" is a copy of the email I sent to Patrick at Direct Access Technology, which confirms the arrangement.

4. I am familiar with CompUSA. That company is now bankrupt, but it used to buy its product from a company in Asia called Worldwide Marketing. Worldwide Marketing was a customer of mine while I was employed at DATASTOR. I was the first person at DATASTOR to sell hard drive enclosures to Worldwide Marketing. The first sale of hard drive enclosures bearing the METAL GEAR mark were made to Worldwide Marketing in 2004. Direct Access Technology was the first company to sell METAL GEAR hard drive enclosures manufactured by DATASTOR in the United States.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on February 20, 2009 at Taipei, Taiwan

Gary Chen

Gary Chen

DataStor 益華電子股份有限公司
DATASTOR TECHNOLOGY
An Information Technology Company
248 台北縣五股鄉中興路一段10號9樓
TEL:886-2-8978-9100 FAX:886-2-8978-9102
9F, NO.10, SEC1. CHUNG HSING RD., WU-KU, TAIPEI HSIEN, TAIWAN, R.O.C.
HOMEPAGE: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.

By: _____
Officer: **Anderson Wang, General Manager**
Date:
9th Floor, #10, Sec. 1, Chung-Shing Road
Wu-Ku, Taipei Hsien 248, Taiwan

TECHDEPOT, INC.

By: _____
Officer: **Tony Tan, President**
Date:
1300 Pioneer St. #B Brea,
CA 92821 U.S.A.

Opposer EXHIBIT 6
FOR INDENTIFICATION
LYN CORRIN AAKER, CSR
7/14/09
WITNESS: Wang

6

LAW OFFICE OF MICHAEL C. OLSON

A Professional Corporation

1400 Bristol Street N.
Suite 270
Newport Beach, California 92660
(949) 442-8940
Fax: (949) 442-8935
email: molson@lawyer.com

November 19, 2007

NewEgg Inc.
16839 E. Gale Ave.
City of Industry, CA 91748

Re: Sale of infringing products/ Metal Gear trademark

Dear Sirs:

Please be advised that our firm represents Direct Access Technology, the owner of the Metal Gear trademark for external hard drive enclosures. Recently, Direct Access Technology was involved in proceedings before the Trademark Trial and Appeal Board of the United States Patent and Trademark office with Galaxy Metal Gear, Inc. Those proceedings terminated with Galaxy Metal Gear agreeing to abandon any claim to the Galaxy Metal Gear mark.

It has come to our attention that your company is selling or advertising for sale, on the newegg.com website, external hard drive enclosures bearing the Metal Gear mark or the Galaxy Metal Gear mark which did not originate with Direct Access Technology. We are demanding that you immediately cease and desist from selling or offering for sale these products as they are either confusingly similar to the mark owned by Direct Access Technology or are counterfeit products. If you have any questions about the authenticity of products bearing the Metal Gear mark, please do not hesitate to contact us.

Sincerely,

Michael C. Olson

MCO:so

Proposed EXHIBIT 7
FOR INDENTIFICATION
LYN CORRIN AAKER, CSR
7/16/08
WITNESS: