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Filing date: **10/28/2010**

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

Proceeding	91188993
Party	Defendant AFP Imaging Corporation
Correspondence Address	Norman H. Zivin Cooper & Dunham LLP 30 Rockefeller Plaza, 20th Floor New York, NY 10112 UNITED STATES nzivin@cooperdunham.com,hdym@cooperdunham.com
Submission	Defendant's Notice of Reliance
Filer's Name	Norman H. Zivin
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Date	10/28/2010
Attachments	First_Notice_Reliance.pdf (16 pages)(347698 bytes)

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

ROLEX WATCH U.S.A., INC.	X		
	:		
Opposer,	:		
	:		
v.	:		Opposition No. 91188993
	:		Serial No. 77/492,131
AFP IMAGING CORPORATION	:		
	:		
Applicant.	:		
	X		

FIRST NOTICE OF RELIANCE OF APPLICANT

Applicant, AFP IMAGING CORPORATION (“Applicant” or “AFP”), pursuant to Trademark Rules 2.120 and 2.122 (37 C.F.R. §2.120 and §2.122), hereby relies upon the following evidence.

Registration

Pursuant to 37 C.F.R. §2.122(d), Applicant hereby introduces into evidence a United States Trademark Registration owned by Applicant. The registration is valid and subsisting.

Applicant introduces into evidence the following registration:

1. Reg. No. 2,000,578, issued September 17, 1996, for the trademark DENT-X for film processors for developing X-ray and photographic films and parts therefore and X-ray machines, namely X-ray sources and controls.

Transcript of Deposition of David Vozick

Pursuant to 37 C.F.R. §2.120(j)(4), Applicant hereby introduces into evidence excerpted portions of the transcript of the discovery deposition of David Vozick, taken by Opposer in this matter which should in fairness be considered.

2. Excerpted portions of discovery deposition transcript of David Vozick, taken by Opposer on March 3, 2010:

Page 10, line 14 – page 11, line 2;

Page 15, line 23 – page 17, line 3;

Page 26, line 5 – page 27, line 5; and

Page 32, lines 7-15.

Page 10, line 14 – page 11, line 2, are relevant to show that Applicant's products are sold to veterinarian offices, animal hospitals, emergency clinics, private practices and veterinary schools.

Page 15, line 23 – page 17, line 3, are relevant to show that Applicant promotes and advertises its other imaging products and has used the mark DENT-X for its human dental business.

Page 26, line 5 – page 27, line 5, are relevant to show that Applicant previously used the ROLL-X mark for a portable rolling x-ray table.

Page 32, lines 7-15, are relevant to show that Applicant suspended its promotional activities in connection with the ROLL-X mark once the opposition to the application for the mark was filed.

Copies of Exhibits 1 – 2 are attached hereto. This First Notice of Reliance is being filed during Applicant's testimony period and forms a part of Applicant's evidence.

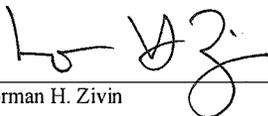
Respectfully,

COOPER & DUNHAM, LLP

Dated: 10/28, 2010

By: 

Norman H. Zivin
30 Rockefeller Plaza
New York, New York 10112
(212) 278-0400
Attorney for Applicant AFP Imaging Corporation

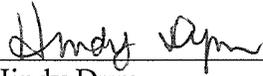
Certificate of Transmission	
I hereby certify that this correspondence is being transmitted via the Electronic System for Trademark Trials and Appeals (ESTTA).	
<u></u>	<u>10/28/10</u>
Norman H. Zivin	Date

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing FIRST NOTICE OF RELIANCE OF APPLICANT was served on this 28 day of October 2010, by first class mail, postage pre-paid, addressed to the following attorney for Applicant:

Peter Cousins
Brian W. Brokate
Beth Frenchman
GIBNEY, ANTHONY & FLAHERTY, LLP
665 Fifth Avenue
New York, NY 10022

Attorneys for Opposer



Hindy Dym

Exhibit 1

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2010-10-26 12:14:19 ET

Serial Number: 74531753 Assignment Information Trademark Document Retrieval

Registration Number: 2000578

Mark (words only): DENT-X

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2006-07-26

Filing Date: 1994-05-31

Transformed into a National Application: No

Registration Date: 1996-09-17

Register: Principal

Law Office Assigned: LAW OFFICE 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2006-07-26

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. AFP Imaging Corporation

Address:

AFP Imaging Corporation
250 Clearbrook Road
Elmsford, NY 10523
United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 001**Class Status:** Active

photographic chemicals

Basis: 1(a)**First Use Date:** 1993-06-24**First Use in Commerce Date:** 1993-06-24**International Class:** 009**Class Status:** Active

film processors for developing X-ray and photographic films and parts therefore; and X-ray machines, namely X-ray sources and controls

Basis: 1(a)**First Use Date:** 1993-06-24**First Use in Commerce Date:** 1993-06-24

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-07-26 - First renewal 10 year

2006-07-26 - Section 8 (10-year) accepted/ Section 9 granted

2006-07-17 - Assigned To Paralegal

2006-04-03 - Combined Section 8 (10-year)/Section 9 filed

2006-06-29 - Case File In TICRS

2006-04-03 - PAPER RECEIVED

2002-06-05 - Section 8 (6-year) accepted & Section 15 acknowledged

2002-04-11 - Section 8 (6-year) and Section 15 Filed

2002-04-11 - PAPER RECEIVED

1996-09-17 - Registered - Principal Register

1996-06-25 - Published for opposition

1996-05-24 - Notice of publication

1996-04-01 - Approved for Pub - Principal Register (Initial exam)

1994-11-23 - Non-final action mailed

1994-10-31 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Norman H. Zivin

Correspondent

Norman H. Zivin

COOPER & DUNHAM

1185 AVENUE OF THE AMERICAS

NEW YORK, NY 10036

Exhibit 2

23 A. We make a sensor for dental -- an
24 x-ray sensitive sensor for veterinary dental
25 x-rays, examination of the teeth and the gums

□

10

1 Vozick
2 of dogs, cats and other animals and similarly
3 in the human market a different product but
4 the same technology.

5 Q. For human dental?

6 A. For human dental, yes.

7 Q. What about veterinary imaging
8 products non-dental?

9 A. Non? well, we manufacture or
10 distribute what's called a whole body x-ray
11 machine, where a whole dog or cat can be
12 placed on the table and can be properly
13 x-rayed for diagnostic purposes.

14 Q. And so these veterinary imaging
15 products would be sold obviously to
16 veterinarian offices; is that right?

17 A. Clearly.

18 Q. And where else? Labs?

19 A. Well, we sell -- we distribute
20 through dealers, so I'm not always privileged
21 to know where the end user is, but I think
22 that's a reasonable -- animal hospitals, 24/7
23 emergency clinics or private practices.

24 Q. Veterinary schools also?

25 A. It could be. I've been doing this

□

1 vozick
2 for 30 years, so I don't have every single --
3 Q. Okay. What's the Vet Tek system?
4 A. That's an x-ray table that is used.
5 It's a trademark. Trade name I should say.
6 I don't know if it's a trademark.
7 Q. And so the Vet Tek system, again,
8 that would be sold through the same types
9 of --
10 A. Yes.
11 Q. -- of end users?
12 A. That's correct.
13 Q. That's hospital, animal hospitals
14 and so on?
15 A. Correct.
16 Q. And with respect to the
17 non-veterinary dental imaging products, in
18 other words, human dental imaging products,
19 describe those products for me, please.
20 A. Well, similar to the veterinary
21 dental x-ray, humans, you have a similar
22 process, where a dentist will diagnose your
23 anatomy and your caries or whatever, and the
24 sensor is placed in the mouth, the x-ray tube
25 is used to expose the sensor, and the image

□

- 13 A. I don't remember the names.
14 Q. Do you remember any of them?
15 A. Not off the top of my head.
16 Q. Do you exhibit at trade shows or
17 professional shows?
18 A. Absolutely.
19 Q. And which ones do you exhibit at?
20 A. New York Dental Society.
21 Radiological Society of North America is
22 human. Dental is obviously dental.
23 Veterinary trade shows. There's dozens of
24 each.
25 Q. And you have exhibits at those

□

17

- 1 Vozick
2 things?
3 A. Absolutely.
4 Q. Can you estimate -- and I'm not
5 asking for a precise number, just a ballpark
6 number -- in terms of the AFP digital imaging
7 products, well, not digital imaging, but
8 imaging products, would you say the
9 percentage of the products that would be for
10 veterinary use as opposed to human use, is it
11 the majority of your volume?
12 A. No.
13 Q. Is it half?
14 Can you give me a ballpark?
15 A. I would say less than 20 percent of

8 Q. You were the one that created it or
9 came up with it?

10 A. It's true.

11 Q. And how did you come to pick that
12 mark?

13 A. The product that it's being applied
14 to is a movable stretcher, radiolucent, so
15 that it's good for the x-ray application. It
16 can roll on four castors, and therefore
17 there's commonality of name and intention
18 between the rolling stretcher, X for x-ray,
19 and the fact that I had used that term some
20 time before.

21 Q. So the Roll portion refers to the
22 portability it.

23 A. Correct, and the X to the x-ray.

24 Q. And the X to the x-ray, okay.

25 And did you consider other

□

26

1 Vozick
2 trademarks in your decision to come up with
3 Roll-X?

4 A. I don't recall.

5 Q. You had said when you came up with
6 the Roll hyphen X mark that you had used it
7 some time before.

8 A. That's correct.

9 Q. Explain what you're talking about.

10 A. Approximately 1973 we had a

14917 vozick david 030310.txt
11 stretcher design that I had designed that was
12 used in the human market or in the veterinary
13 market that had an application to x-ray
14 examination, and the identification of the
15 product as a portable rolling device was
16 Roll-X. I don't believe we trademarked it at
17 the time.

18 Q. And how long did you use that term
19 at that time, from 1973 till when?

20 A. Well, I left the company -- the
21 company got acquired by Raytheon, and I left
22 the company in 1978, so after 1978 we were
23 not using it. I wasn't part of the company.

24 Q. So in 1973 it wasn't. AFP didn't
25 come into existence until '78.

□

27

1 vozick

2 A. That's correct. This is a
3 predecessor, a family-owned business at one
4 time.

5 Q. Yes.

6 The intended product to be sold
7 under the Roll hyphen X mark, you had said
8 it's going to be a portable, movable
9 stretcher. Just elaborate on what that
10 product is. Is that going to be primarily
11 for veterinary use?

12 A. Primarily it's intended for
13 veterinary use, although obviously other

1 Vozick

2 Q. With respect to the interrogatory
3 number 13 and the response to interrogatory
4 number 13, is that response accurate, to the
5 best of your knowledge?

6 A. (Reading) That's correct.

7 Q. And there are no documents
8 reflecting promotion expenditures, because
9 that product hasn't been used yet; is that
10 correct?

11 A. No, there's been no documents,
12 because upon receiving an objection to our
13 filing for a trademark, we suspended creating
14 any brochures or literature until we know
15 that we could properly use the mark.

16 Q. But the Roll-X product hasn't been
17 used on any x-ray table as of the present
18 time; is that correct?

19 A. Correct.

20 MR. ZIVIN: I assume your question
21 refers to a mark and not the product.

22 Q. I'm referring to a product under
23 the Roll-X brand or the Roll-X trademark.
24 Correct? There's been no promotion or
25 advertising under any product under the