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

Proceeding	91195064
Party	Plaintiff Datalogic S.p.A.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>Datalogic S.p.A.,</b>	)	Application No. 77/776085
	)	Published on December 1, 2009
	)	
	)	For the mark DATALOGIC 3000
v.	)	
	)	
	)	
<b>Stevens Water Monitoring Systems, Inc.</b>	)	
	)	
Applicant.	)	

**[CORRECTED] NOTICE OF OPPOSITION**

**I. PARTIES**

1. Opposer Datalogic S.p.A. (“Datalogic” or “Opposer”) is an Italian joint stock company located and doing business at Via Candini, 2, 40012 Lippo di Calderara di Reno, Bologna, Italy.

2. Applicant Stevens Water Monitoring Systems, Inc. (“Stevens” or “Applicant”), is, on information and belief, an Oregon corporation located and doing business at 12067 NE Glenn Widing Drive, Suite #106, Portland, OR 97220-9894.

**II. NOTICE OF OPPOSITION**

3. In the matter of application for trademark registration, Serial No. 77/776085, filed July 7, 2009 by Applicant, which application was published in the Official Gazette of the United States Patent and Trademark Office on December 1, 2009, Opposer believes that it would be damaged by the grant of registration of such application, and hereby opposes the registration of such mark under the provisions of Section 13 of the Trademark Act, (15 U.S.C. § 1063).

Pursuant to Section 13(a) of the Trademark Act, (15 U.S.C. § 1063(a)) and Trademark Rule 2.102 (37 C.F.R. 2.102), Opposer’s time to oppose has been previously extended to May 30, 2010.

4. Opposer is the owner of the mark DATALOGIC for goods and services, including without limitation electronic equipment and apparatus for sensing and reading objects, environmental conditions, and coded information.

5. Opposer and its affiliates and licensees have used the DATALOGIC mark in the United States since at least October 23, 1973.

6. Opposer owns federal Registration No. 3012448 for DATALOGIC (and design) in connection with the following goods and services:

IC 009. US 021 023 026 036 038. G & S: Equipment, apparatus and systems, namely, fixed, manual and portable instruments and apparatus for the automatic decoding and reading of coded information recorded on paper, electronic, optical and magnetic media and on body surfaces, namely, bar code readers, two-dimensional code readers, color code readers, optical code readers, magnetic card readers, contact and radio frequency electronic memory readers; dispensers for portable readers and/or portable computers for use in storing and downloading information and recharging the portable readers and/or computers; scanning systems comprising coded data readers, transmitters, computer monitors, touch screening monitors, plasma display monitors and multimedia information kiosks for communicating and/or displaying and/or printing promotional messages, service communications, advertisements; reading stations comprising coded data readers and decoders for reading bar codes, cameras, decoders and transmitters all for the detection and/or identification and/or measurement of objects; data switches, namely, multiplexers for readers of coded information; electric or electronic background suppression sensors; electric or electronic proximity sensors; electric or electronic linear image sensors; electric or electronic temperature sensors; electric or electronic flame-proof sensors for anti-deflagrating; electric or electronic object position and measurement sensors; electric or electronic color sensors; electric or electronic luminescence detectors for use in tracking items in the transportation, manufacturing, logistics and distribution industries; thermocouples; resistance temperature detectors; temperature controllers for non-medical purposes; light reflectors not being lamp reflectors, laser beam reflectors and electromagnetic wave reflectors for use in object detection. instruments, equipment and apparatus, namely, light curtains and/or photo-electric sensors and/or electric sensors and/or photo-cells and/or control units for the formation of photo-electric and laser security gates and parts and accessories therefor, namely supports, brackets, cradles, cables and connectors, all sold together as a unit; computer programs for the reading, decoding and processing of coded information and automatic identification recorded on paper, optical, magnetic, or electronic media for use in transportation, logistics, manufacturing, distribution, and retail markets; computer programs for controlling photo-electric sensors, heat regulators and security gates recorded on medium, namely, paper, optical, or electronic; screens and plasma viewing instruments, namely, computer monitors, touch-screen monitors and plasma display panels; computer programs for automatic identification of computer servers; computer programs for automatic identification of network and back office computers; computer programs for automatic identification of computer terminals; computer programs for automatic identification of wireless computer terminals; devices and systems equipment, comprising coded data readers and/or decoders and/or transmitters and/or multiplexers for the identification, handling, sorting and management of objects provided with coded information, all for use in the fields of automatic identification, data collection and industrial automation; devices and systems equipment comprising coded data readers and/or decoders and/or transmitters and/or multiplexers for the measurement and/or detection of objects, all for use in the fields of automatic identification, data collection and industrial automation; bar code pens and guns, with or without a display, for the reading and decoding of coded information. portable computer display terminals with or without readers of coded information; computer

terminals for the collection of data from coded information readers; vision systems and instruments, namely, fixed, portable or manual readers or cameras, with or without lighting devices and/or light reflectors and/or brackets and/or supports for the detection of images, all sold together as a unit; photo-electric sensors; fiber optic sensors and relative optic fibers of plastic and glass sold as a component of fiber optical cables; electric or electronic forked sensors for detection of objects on supports; computer programs for the system/user interface, namely, computer programs for configuring and/or programming and/or controlling coded information readers, scanning systems, reading stations, vision systems; computer programs for automatic identification of direct marketing materials, namely, computer programs for printing and customizing fliers; computer programs for performing market and/or statistical analysis; computer programs for managing relations with clients, namely, computer programs for printing promotional offers, advertisements, and discount coupons; computer programs for marketing specifically directed to the clients, namely, computer programs for performing market and/or statistical and/or cost analysis of advertising campaigns; computer programs for marketing, namely computer programs for identifying and tracking the purchases of customers; computer programs for printing personalized advertising coupons; computer programs for multimedia information kiosks for communicating and/or displaying and/or printing promotional messages, service communications, advertisements; computer programs for home selling and buying

IC 016. US 002 005 022 023 029 037 038 050. G & S: instruction manuals, installation and maintenance manuals for computer programs for the reading, decoding and processing of coded information and automatic identification recorded on any medium, whether optical, magnetic or circuital; instruction manuals, installation and maintenance manuals for equipment, apparatus and systems for automatic identification, the collection of data, industrial automation; instructions; installation, maintenance manuals and user manuals for computer programs for photo-electric sensors, heat regulators, security gates

IC 037. US 100 103 106. G & S: Installation and maintenance services for fixed readers, portable readers, dispensers of portable computers and portable readers for use in storing and downloading information and recharging the portable computers and readers, devices and system equipment, comprising coded data readers and/or decoders and/or transmitters and/or multiplexers, all for reading and processing coded information; installation and maintenance services for photo-electric sensors, heat regulators and security gates and relative systems, namely, electric sensors, photo-cells, control units and light curtains

7. Opposer's federal Registration No. 3012448 issued on the basis of Section 44E of the Lanham Act on November 8, 2005, and has a priority date of February 2, 2001.

8. Opposer owns federal application Serial No. 78/839747 for **DATALOGIC** (standard character) in connection with the following goods and services:

IC 009. US 021 023 026 036 038. G & S: (Based on Use) Equipment, apparatus and systems, namely, fixed, manual and portable instruments and apparatus for the automatic decoding and reading of coded information recorded on paper, electronic, optical and magnetic media and on body surfaces, namely, bar code readers, two-dimensional code readers, color code readers, optical code readers, magnetic card readers, contact and radio frequency electronic memory readers; dispensers for portable readers and portable computers for use in storing and downloading information and recharging the portable readers and computers; scanning systems comprising of coded data readers, transmitters, computer monitors, touch screening monitors, plasma display monitors and multimedia information kiosks for communicating, displaying, and printing promotional messages, service communications, advertisements; reading stations comprising of coded data readers and decoders for reading bar codes, cameras, decoders and transmitters all for the detection and identification of objects; reading stations comprised of coded data readers and decoders for reading bar codes, cameras, decoders and transmitters all for the detection and identification and measurement of objects;

data switches, namely, multiplexers for readers of coded information; computer programs for the reading, decoding and processing of coded information recorded on paper, optical, magnetic, or electronic media for use in transportation, logistics, manufacturing, distribution, and retail markets; screens and plasma viewing instruments, namely, computer monitors, touch-screen monitors and plasma display panels; computer programs for automatic identification of computer servers; computer programs for automatic identification of network and back office computers; computer programs for automatic identification of computer terminals. computer programs for automatic identification of wireless computer terminals. devices and systems equipment, comprising of coded data readers, decoders, transmitters and multiplexers for the identification, handling, sorting and management of objects provided with coded information, all for use in the fields of automatic identification, data collection and industrial automation; devices and systems equipment comprising of coded data readers, decoders, transmitters and multiplexers for the measurement of objects, all for use in the fields of automatic identification, data collection and industrial automation; devices and systems equipment comprised of coded data readers, decoders, transmitters and multiplexers for the detection of objects, all for use in the fields of automatic identification, data collection and industrial automation; bar code pens and guns, with or without a display, for the reading and decoding of coded information; portable computer display terminals with or without readers of coded information; computer terminals for the collection of data from coded information readers; vision systems and instruments, namely, fixed, portable or manual readers or cameras, with or without lighting devices and light reflectors, brackets and supports for the detection of images, all sold together as a unit; computer programs for the system/user interface, namely, computer programs for configuring, programming, and controlling coded information readers, scanning systems, reading stations, vision systems; computer programs for automatic identification of direct marketing materials, namely, computer programs for printing and customizing fliers; computer programs for performing market and statistical analysis; computer programs for managing relations with clients, namely, computer programs for printing promotional offers, advertisements, and discount coupons. computer programs for marketing specifically directed to the clients, namely, computer programs for performing market, statistical and cost analysis of advertising campaigns. computer programs for marketing, namely, computer programs for identifying and tracking the purchases of customers; computer programs for printing personalized advertising coupons; computer programs for multimedia information kiosks for communicating, displaying and printing promotional messages, service communications, advertisements; computer programs for home selling and buying; (Based on Intent to Use) Electric and electronic background suppression sensors; electric and electronic proximity sensors; electric and electronic linear image sensors; electric and electronic temperature sensors; electric and electronic flame-proof sensors for anti-deflagrating; electric and electronic object position and measurement sensors; electric and electronic color sensors; electric and electronic luminescence detectors for use in tracking items in the transportation, manufacturing, logistics and distribution industries; thermocouples; resistance temperature detectors; temperature controllers for non-medical purposes; laser beam reflectors and electromagnetic wave reflectors for use in object detection; instruments, equipment and apparatus, namely, light curtains, photo-electric sensors, electric sensors, photo-cells and control units for the formation of photo-electric and laser security gates and parts and accessories therefor, namely, supports, brackets, cradles, cables and connectors, all sold together as a unit; computer programs for controlling photo-electric sensors, heat regulators and security gates recorded on medium, namely, paper, optical, or electronic; photo-electric sensors; fiber optic sensors and relative optic fibers of plastic and glass sold as a component of fiber optical cables; electric or electronic forked sensors for detection of objects on supports; Integrated laser systems for cutting, welding, drilling, trimming, scribing and engraving applications and components therefore; computer software for integrated laser systems. FIRST USE: 19731023. FIRST USE IN COMMERCE: 19770531

IC 016. US 002 005 022 023 029 037 038 050. G & S: (Based on Use) Instruction, installation and maintenance manuals for computer programs in the field of data and industrial automation for the reading, decoding and processing of coded information and automatic identification recorded on any medium, whether optical, magnetic or circuital; instruction, installation and maintenance manuals for equipment, apparatus and systems in the field of automatic identification, data collection, and industrial automation; (Based on Intent to Use) Instruction, installation, and maintenance manuals and user manuals for computer programs in the field of photo-electric sensors, heat regulators, and security gates. FIRST USE: 19731023. FIRST USE IN COMMERCE: 19770531

IC 037. US 100 103 106. G & S: (Based on Use) Installation and maintenance services for fixed readers, portable readers, dispensers of portable computers and portable readers for use in storing and downloading information and recharging the portable computers and readers, devices and system equipment, comprising of coded data readers, decoders, transmitters and multiplexers, all for reading and processing coded information; (Based on Intent to Use) Installation and maintenance services for photo-electric sensors, heat regulators and security gates and relative systems, namely, electric sensors, photo-cells, control units and light curtains. FIRST USE: 19731023. FIRST USE IN COMMERCE: 19770531

9. Opposer's federal application Serial No. 78/839747 has a filing date of March 17, 2006.
10. Applicant seeks registration of DATALOGIC 3000 in application Serial No. 77/776085 for "Computer hardware and software system for remotely monitoring environmental conditions and controlling devices within a building, facility, grounds, or designated spatial area" in International Class 9.
11. Applicant claims a date of first use in commerce of September 4, 2007.
12. The registration to Applicant of the mark sought in application Serial No. 77/776085 should be denied on the ground that the mark is confusingly similar to Opposer's mark.
13. Use of the mark sought to be registered by Applicant is likely to cause confusion, mistake, and/or deception in the minds of the public and to lead the public and prospective purchasers to believe that Applicant's goods are related to the goods of the Opposer or in some way backed by the name and reputation of Opposer, to the damage and injury of the purchasing public and to the damage and injury of Opposer.

WHEREFORE, Opposer prays that this Notice of Opposition be sustained, that application Serial No. 77/776085 be refused registration, and for such other and further relief as may be deemed to be just and proper.

Dated: May 28, 2010

Respectfully submitted,

/s Steven E. Klein/

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Portland, Oregon 97204-1268

Attorneys for Opposer

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **[CORRECTED] NOTICE OF OPPOSITION** on the following named person on the date indicated below by:

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- overnight delivery
- e-mail attachment in PDF format

to said person a true copy thereof, contained in a sealed envelope, addressed to said person at his last-known address indicated below.

ADAM KRUMBEIN  
STEVENS WATER MONITORING SYSTEMS, INC.  
12067 NE GLENN WIDING DR STE 106  
PORTLAND, OR 97220-9109  
akrumbein@stevenswater.com

DATED: May 28, 2009.

STOEL RIVES LLP

/s Steven E Klein/

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