

ESTTA Tracking number: **ESTTA745629**

Filing date: **05/11/2016**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	IMAX Corporation
Granted to Date of previous extension	05/25/2016
Address	2525 Speakman Drive Sheridan Science and Technology Park Mississauga, ON L5K1B1 CANADA

Correspondence information	Christopher P. Bussert Kilpatrick Townsend & Stockton LLP 1100 Peachtree Street, Suite 2800 Atlanta, GA 30309 UNITED STATES cbussert@ktslaw.com, kteilhaber@ktslaw.com, tmadmin@ktslaw.com
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**Applicant Information**

Application No	86675025	Publication date	01/26/2016
Opposition Filing Date	05/11/2016	Opposition Period Ends	05/25/2016
Applicant	Shenzhen Auto-vox Technology Co. Ltd NO.709, 7/F, Block 5, Jinfanghua Area Shenzhen,Guangdong, CHINA		

**Goods/Services Affected by Opposition**

Class 028. First Use: 2010/08/03 First Use In Commerce: 2010/10/20 All goods and services in the class are opposed, namely: Bite indicators; Bite sensors; Fishing tackle; Game equipment, namely, chips; Gaming devices, namely, gaming machines, slot machines, bingo machines, with or without video output; Mountaineering and rock climbing equipment, namely, climbing cams and anchors made of metal; Radio controlled model vehicles; Skateboards; Skis; Snowboards; Surf boards; Swim fins; Swimming flippers; Swimming jackets; Toy masks; Toy robots; Workout gloves
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	942747	Application Date	04/13/1970
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Registration Date	09/12/1972	Foreign Priority Date	NONE
Word Mark	IMAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U026 (International Class 001, 009, 010). First use: First Use: 0 First Use In Commerce: 0 MOTION PICTURE PROJECTORS, CAMERAS, OPTICAL PRINTERS, FILM EDITING MACHINES ANDMOTION PICTURE SCREENS Class U038 (International Class 009, 016, 028). First use: First Use: 0 First Use In Commerce: 0 [ MOTION PICTURE FILMS ]		

U.S. Registration No.	2857685	Application Date	07/21/2003
Registration Date	06/29/2004	Foreign Priority Date	NONE
Word Mark	IMAX DMR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2002/03/04 First Use In Commerce: 2002/03/04 Motion picture production and post production services, including remastering of films from one film format into another		

U.S. Registration No.	1283679	Application Date	09/23/1982
Registration Date	06/26/1984	Foreign Priority Date	NONE
Word Mark	IMAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1974/02/20 First Use In Commerce: 1974/02/20 Displaying Motion Picture Film and Operating Motion Picture Theatres		

U.S. Registration	2121078	Application Date	07/09/1996
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No.			
Registration Date	12/16/1997	Foreign Priority Date	NONE
Word Mark	IMAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1990/06/01 First Use In Commerce: 1990/06/01 audio and audio visual tapes and compact discs on educational and entertainment subjects; sound systems for use in motion picture theaters and other public performance theaters, halls and auditoriums, namely, digital sound sources, audio processing control subsystems, amplifier subsystems and loudspeakers</p> <p>Class 025. First use: First Use: 1982/12/31 First Use In Commerce: 1982/12/31 clothing, namely, T-shirts, sweatshirts, [ sweatpants ] and caps</p> <p>Class 028. First use: First Use: 1988/04/30 First Use In Commerce: 1988/04/30 [ motion simulator rides ]</p>		

U.S. Registration No.	3965737	Application Date	09/22/2010
Registration Date	05/24/2011	Foreign Priority Date	NONE
Word Mark	IMAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2010/03/30 First Use In Commerce: 2010/03/30 CDs, DVDs, high definition DVDs, optical discs, magneto optical discs and laser-discs in the fields of education and entertainment; downloadable audio-visual content in the fields of education and entertainment; 3D glasses</p>		

U.S. Registration No.	2197111	Application Date	01/24/1997
Registration Date	10/20/1998	Foreign Priority Date	NONE
Word Mark	THE IMAX EXPERIENCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 041. First use: First Use: 1987/01/00 First Use In Commerce: 1987/01/00 motion picture theater services featuring integrating large format, wide angle, low distortion, high resolution, high image stability cinematographic projection equip-</p>		

	ment and film, screen, theater design, seating and sound technology
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U.S. Registration No.	2263032	Application Date	06/08/1998
Registration Date	07/20/1999	Foreign Priority Date	NONE
Word Mark	AN IMAX EXPERIENCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1996/10/11 First Use In Commerce: 1996/10/11 motion picture theater services featuring integrating large format, wide angle, low distortion, high resolution, high image stability cinematographic projection equipment and film, screen, theater design, seating and sound technology		

U.S. Registration No.	3058603	Application Date	03/01/2005
Registration Date	02/14/2006	Foreign Priority Date	NONE
Word Mark	AT THE MAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2004/01/22 First Use In Commerce: 2004/01/22 movie theater services		

U.S. Registration No.	2871953	Application Date	11/04/1999
Registration Date	08/10/2004	Foreign Priority Date	NONE
Word Mark	TO THE MAX		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 041. First use: First Use: 2004/01/22 First Use In Commerce: 2004/01/22 movie theatre services		
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U.S. Registration No.	1655809	Application Date	06/25/1990
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Registration Date	09/03/1991	Foreign Priority Date	NONE
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Word Mark	MOVIES TO THE MAX		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 041. First use: First Use: 1989/01/31 First Use In Commerce: 1989/01/31 movie theater services		
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U.S. Application No.	86741262	Application Date	08/28/2015
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	IMAXSHIFT		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 041. First use: First Use: 0 First Use In Commerce: 0 Providing fitness and exercise facilities		
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Attachments	72356735#TMSN.png( bytes ) 76532215#TMSN.png( bytes ) 85135280#TMSN.png( bytes ) 76632397#TMSN.png( bytes ) 75840741#TMSN.png( bytes ) 86741262#TMSN.png( bytes ) IMAXPLUS and Design Notice of Opposition for Shenzhen Auto-Vox.PDF(2060334 bytes )		
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher P. Bussert/
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Name	Christopher P. Bussert
Date	05/11/2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the matter of Application Serial No. 86/675,025; IMAXPLUS and Design; Published in the Official Gazette of January 26, 2016; TM 1805

IMAX CORPORATION,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.
	)	
Shenzhen Auto-Vox Technology	)	
Co. Ltd.,	)	
	)	
Applicant.	)	

NOTICE OF OPPOSITION

Opposer IMAX Corporation ("Opposer"), a Canadian corporation whose business address is 2525 Speakman Drive, Sheridan Science and Technology Park, Mississauga, Ontario, Canada L5K 1B1, believes that it will be damaged by registration of the mark IMAXPLUS and Design as currently shown in Application Serial No. 86/675,025 and hereby opposes the same pursuant to the provisions of 15 U.S.C. § 1063.

On June 25, 2015, Applicant Shenzhen Auto-Vox Technology Co. Ltd., ("Applicant") filed an application to register the mark IMAXPLUS and Design for bite indicators; bite sensors; fishing tackle; game equipment, namely, chips; gaming

devices, namely, gaming machines, slot machines, bingo machines, with or without video output; mountaineering and rock climbing equipment, namely, climbing cams and anchors made of metal; radio controlled model vehicles; skateboards; skis; snowboards; surf boards; swim fins; swimming flippers; swimming jackets; toy masks; toy robots; work-out gloves in International Class 28 (collectively "Applicant's Goods"). Applicant's mark was published in the *Official Gazette* on January 26, 2016. Opposer obtained an Extension of Time to File a Notice of Opposition through and including May 25, 2016. As grounds for its opposition, Opposer alleges:

1.

Since at least 1972, Opposer has been, and is currently, using the IMAX mark in connection with a wide range of technology and services including projection systems, cameras, sound systems, motion picture conversion and editing equipment, production and post-production services, and screens. Opposer's IMAX mark has also been, and is currently, used in connection with a wide variety of entertainment related services including motion picture films, and the operation of a worldwide system of motion picture theaters. Opposer's IMAX mark has also been and is currently used in connection with a wide variety of

entertainment related goods including DVDs and compact discs. Opposer's use of its IMAX mark has been valid and continuous since the date of first use and has not been abandoned.

2.

Opposer is the owner of the following U.S. trademark registrations:

- a) Registration No. 942,747 of the mark IMAX (in stylized letters) for "motion picture projectors, cameras, optical printers, film editing machines, and motion picture screens," issued September 12, 1972;
- b) Registration No. 2,857,685 of the mark IMAX DMR for "motion picture production and post-production services, including remastering of films from one film format into another," issued June 29, 2004;
- c) Registration No. 1,283,679 of the mark IMAX for "displaying motion picture film and operating motion picture theaters," issued June 26, 1984;

- d) Registration No. 2,121,078 of the mark IMAX for "audio and audio visual tapes and compact discs on educational and entertainment subjects; sound systems for use in motion picture theaters and other public performance theaters, halls and auditoriums, namely, digital sound sources, audio processing control subsystems, amplifier subsystems and loudspeakers," as well as "clothing, namely, T-shirts, sweatshirts and caps," issued December 16, 1997;
- e) Registration No. 3,965,737 of the mark IMAX for "CDs, DVDs, high definition DVDs, optical discs, magneto optical discs and laser discs in the fields of education and entertainment; downloadable audio-visual content in the fields of education and entertainment; 3D glasses," issued May 24, 2011;

- f) Registration No. 2,197,111 of the mark THE IMAX EXPERIENCE for "motion picture theater services featuring . . . large format, wide angle, low distortion, high resolution, high image stability cinematographic projection equipment and film, screen, theater design, seating and sound technology," issued October 20, 1998;
- g) Registration No. 2,263,032 of the mark AN IMAX EXPERIENCE for "Motion picture theater services featuring integrating large format, wide angle, low distortion, high resolution, high image stability cinematographic projection equipment and film, screen, theater design, seating and sound technology," issued July 20, 1999;
- h) Registration No. 3,058,603 of the mark AT THE MAX for "movie theater services," issued February 14, 2006;

- i) Registration No. 2,871,953 of the mark TO THE MAX for "movie theater services," issued August 10, 2004; and
- j) Registration No. 1,655,809 of the mark MOVIES TO THE MAX for "movie theater services," issued September 3, 1991.

(collectively, the "IMAX Family of Marks"). Each of these registrations, except for Registration No. 3,965,737, is incontestable under 15 U.S.C. § 1065 and therefore constitutes conclusive evidence of Opposer's exclusive right to use the IMAX mark in commerce in connection with the goods and services specified in each registration. Registration No. 3,965,737 is valid and subsisting and therefore constitutes evidence of Opposer's exclusive right to use the IMAX mark in commerce in connection with the goods and services specified in that registration.

3.

Opposer is also the owner of Application Serial No. 86/741,262 of the mark IMAXSHIFT for providing fitness and exercise facilities.

4.

Opposer also is the owner of other IMAX marks that are used in connection with various aspects of Opposer's business, including:

- c) IMAX 3D;
- d) IMAX 3D FILM;
- e) AN IMAX 3D EXPERIENCE;
- f) IMAX DOME; and
- g) IMAX NXOS.

Opposer has also used variations of the IMAX mark in association with various publications and other printed materials.

5.

Opposer has a well-recognized reputation for the excellence and technological superiority of the entertainment related goods and services offered under the IMAX mark. The following are representative examples of the awards and recognition that Opposer and its goods and services have received:

## **IMAX Awards And Nominations - Corporate Awards**

### **CineEurope Award for Achievement Through Innovation 2015**

Presented by CineEurope for IMAX's efforts in pioneering entertainment technology, setting the standard of excellence for premium cinematic experiences

### **Outstanding Technical Achievement Award 2013**

Presented by the Academy of Canadian Cinema & Television for Recent Technical Achievements

### **Gold Award 2010**

Presented by International 3D Society for IMAX's significant impact on 3D technology for the Dual 16/65MM & 30 PERF Single Strip 65MM 3D Camera.

### **Academy Award for Scientific and Technical Achievement, 1997**

Academy of Motion Picture Arts and Sciences for the IMAX System.

### **"Best of What's New" Award Winner, 1990**

Popular Science Magazine for IMAX SOLIDO.

### **"Best of What's New" Innovations 2014**

Popular Science Magazine names IMAX's Digital 3D Camera as one of the best of what's new in entertainment.

### **Century Award 2010**

Presented by International 3D Society for IMAX's significant impact on 3D technology for the "Solido" technology.

### **Award for Technical Achievement, 1999**

Cinema Expo International.

### **Award of Excellence, 1991**

Presented by Canada's Minister of Communications for outstanding contribution and achievement in the fields of culture and technology.

### **Canada Export Award, 1988**

Presented by International Trade Development External Affairs Canada, for outstanding export achievement.

**Academy Scientific and Engineering Award, 1986**  
Academy of Motion Picture Arts and Sciences for the IMAX System.

**The Chetwynd Award, 1985**  
Canadian Film and Television Association for entrepreneurial and outstanding contribution.

#### **Selected Individual Awards And Nominations**

**Eileen Campbell, CMO, 2015**  
Named One of Variety's Top Marketing Impact Report Honorees

**Richard L. Gelfond, 2013**  
Recipient of Award from the National Committee on US-China Relations (2013)

**Graeme Ferguson, Roman Kroitor, Robert Kerr (posthumously), Bill Shaw (posthumously) & Bill Breukelman 2010**  
Odyssey Award presented by Canadian Undergraduate Technology Conference for outstanding contribution.

**Graeme Ferguson, 2010**  
Bulls Eye Lifetime Achievement Award presented by Film North.

**Toni Myers, 2007**  
2007 Crystal Award for Outstanding Achievement presented by Women in Film and Television-Toronto.

**Richard L. Gelfond, CEO, 2015**  
Recipient of the Ellis Island Medal of Honor

**Graeme Ferguson & Roman Kroitor, 2011**  
Recipient of the John Grierson International Gold Medal presented by the Society of Motion Picture and Television Engineers for their pioneering work in conceiving the IMAX medium.

**Graeme Ferguson, 2010**  
SFA Silver Snoopy Award presented by NASA Astronauts.

**Toni Myers, 2009**  
SFA Silver Snoopy Award presented by NASA.

**Graeme Ferguson, 2005**  
7<sup>th</sup> Annual Kodak Vision Award presented by The Large Format Cinema Association.

**Graeme Ferguson, 1999**

Doctorate of Sacred Letters  
from the Victoria University at  
the University of Toronto.

**Roman Kroitor, 1994**

Recipient of Honourary Doctoral  
Degree from the University of  
Manitoba.

**Graeme Ferguson, 1993**

Named to the Order of Canada,  
invested by His Excellency the  
Right Honourable Ramon John  
Hnatyshyn, Governor General  
of Canada.

**Barbara Kerr, 1993**

nominated for Best Editor  
(*Fires of Kuwait*) by the  
American Cinema Editors (ACE).

**Graeme Ferguson, 1991**

Environmental Achievement Award  
presented by the Canadian  
Government for outstanding  
communication for  
environmental awareness.

**Roman Kroitor, 1990**

Outstanding Film, EXPO  
category, Osaka, 1990 presented  
for *The Last Buffalo* by the  
Japanese Audiovisual  
Association.

**William Shaw, 1998**

Leonardo Da Vinci Award  
presented by the American  
Society of Mechanical Engineers  
International Design Engineering  
Division.

**Graeme Ferguson, 1993**

Recipient of Honourary Doctoral  
Degree from the University of  
Bradford, England.

**David Keighley, 1993**

Recipient of the Herbert T.  
Kalmus Gold Medal Award  
presented by the Board of  
Governors of the Society of  
Motion Picture and Television  
Engineers (SMPTE) for  
outstanding contributions to  
large format 70mm print quality  
control and his pioneering  
efforts in making high-quality  
large-format 70mm release  
through the interpositive and  
internegative system.

**Graeme Ferguson, 1990**

Specialty Achievement Award  
presented by the Royal Canadian  
Academy of Arts.

**Roman Kroitor, 1990**

Best Film, Social, Environmental  
and Cultural Category, Osaka  
1990, presented for *The Last  
Buffalo* by Japan Industrial -  
Cultural Film and Video  
Festival.

**Roman Kroitor, 1990**

Grand Prize, Osaka, 1990, presented for *Echoes of the Sun* by the Japanese Audiovisual Association.

**Graeme Ferguson, 1986**

Golden Reel, Special Achievement Award presented at the Genie Awards by the Academy of Canadian Cinema and Television.

**William Shaw, 1985**

Recipient of the John Grierson Medal presented by the Society of Motion Picture and Television Engineers.

**William Shaw, 1988**

Winner of the Gold Medal presented by the Association of Professional Engineers of Ontario (APEO).

**Roman Kroitor, 1986**

Nominated by the Academy of Canadian Cinema and Television for Best Short Documentary at the Genie Awards for *Skyward*.

**William Shaw, 1970**

Recipient of ETROG, Canadian Film Award for technical development and achievement.

**Selected Film Awards And Nominations For Films Produced By IMAX**

**Hubble 3D, 2010**

3D Creative Award presented to IMAX Corporation by the International 3D Society for best Documentary.

**Nascar 3D: The IMAX Experience, 2005**

2005 Golden Reel Award for sound editing in a special venue film by the Motion Picture Sound Editors.

**Magnificent Desolation: Walking on the Moon, 2006**

Presented to IMAX Corporation by the Visual Effects Society for Outstanding Visual Effects in a Special Venue Project.

**Harry Potter and the Prisoner of Azkaban, The IMAX Experience, 2005**

Presented to IMAX Corporation and Warner Bros. by the Giant Screen Theater Association for Best Film produced non-exclusively for Giant Screen Theaters.

***Nascar 3D: The IMAX Experience, 2004***

Presented to IMAX Corporation by the Giant Screen Theater Association for Best Marketing Campaign by Distributor and Best Sound.

**Academy Awards® Nominations In the Best Documentary Short Subjects Category, 1997**

*Special Effects and Cosmic Voyage.*

***Fires of Kuwait, 1995***

Gold Special Jury Award in the Short Subject Historical Category at the Worldfest Charleston, an international Film and Video Festival.

***Secret of Life on Earth, 1995***

The Grand Award for Best Film and Video Production at the Worldfest Charleston, an international Film and Video Festival.

***Titanica, 1993***

Nominated by the Academy of Canadian Cinema and Television for Best Documentary at the Genie Awards.

***Mountain Gorilla, 1993***

Recipient of Seventh Annual Genesis Award for Outstanding Film Documentary presented by The Ark Trust Inc.

***Space Station, 2002***

Presented to IMAX Corporation by the Giant Screen Theater Association for Best Film and Best Cinematography.

***To Fly, 1996***

Honored by entrance to America's National Film Registry, and selected for archival preservation '96.

***Titanica, 1995***

Gold Award in the History and Archaeology category at the Worldfest Charleston, an international Film and Video Festival.

***Destiny In Space, 1995***

Gold Award in the Flight/Space Travel category at the Worldfest Charleston, an international Film and Video Festival.

***Fires of Kuwait, 1993***

Nominated for **Academy Award®** for Best Feature, Documentary category by the Academy of Motion Pictures Arts and Sciences.

***Blue Planet, 1991***

Winner of the Prix du Publique for Best Film at the Third International IMAX/OMNIMAX Film Festival in Paris.

***The Dream Is Alive, 1987***

Winner of the Prix du Publique for Best Film at the First International IMAX/OMNIMAX Film Festival in Paris, France.

***The Dream Is Alive, 1985***

Special Jury Award, CFTA '85 presented by the Academy of Canadian Cinema and Television.

***Bill Hilson Trophy, 1985***

Presented to IMAX Corporation by the Canadian Society of Cinematographers for outstanding achievement.

***North of Superior, 1971***

Special Jury Award, Canadian Film Award.

6.

Opposer's IMAX camera technology has also received numerous awards as a result of the superior image quality produced. For example, in 2010 the International 3D Society selected both Opposer's IMAX SOLIDO technology and the "dual 15/65mm and 30 perf single strip 65mm 3D camera" for "Century Awards".

7.

Opposer has also made huge investments in the research and development of a wide variety of technology including its innovative projection technology. The image quality delivered by Opposer's innovative projection technology is superior to the ordinary projection standard.

8.

Opposer's first IMAX movie was released at the EXPO '70 in Osaka, Japan in 1970. Opposer's first permanent IMAX theatre opened in 1971 in Toronto, Ontario.

9.

IMAX theatres combine advanced high-resolution projection systems, sound systems and screens as large as eight stories high that extend to the edge of a viewer's peripheral vision to create highly realistic audio-visual experiences. As a result audiences feel as if they are a part of the on-screen action in a way that is more intense and exciting than in traditional theatres.

10.

The first theatre in the United States was an IMAX Dome theatre which opened in 1973 at the Rubeen H. Fleet Space Theater and Science Center in San Diego, California. IMAX Dome theatre images are projected onto a giant dome screen (up to 88.5 feet), which gives the viewer an even greater sense of being enveloped by the images.

11.

As of March 31, 2005, there were 250 IMAX theatres operating in 36 countries worldwide, 125 of which were located

in the United States. The number of IMAX theatres operating worldwide and in the United States has increased significantly since 2005. As of March 31, 2016 there were 1,066 IMAX theatres (952 commercial multiplexes, 17 commercial destinations and 97 institutions) operating in 68 countries worldwide, 390 of which were located in the United States.

12.

In 2002, Opposer introduced its proprietary IMAX DMR<sup>®</sup> technology, which allows virtually any 35mm live action or digital film to be digitally converted to IMAX's large format at a modest incremental cost, while meeting Opposer's high standards of image and sound quality.

13.

In 2008, Opposer introduced its digital xenon projection system which integrates a suite of Opposer's proprietary intellectual property with commercially available digital projection technology in a way that creates The IMAX Experience<sup>®</sup> in a digital format. This technology, along with proprietary IMAX technology applied to the content, dramatically enhance the image fidelity, light output and contrast in both 2D and 3D to produce a stunningly crisp and bright image on the

big IMAX screen and deliver the unparalleled image and sound quality that consumers have come to recognize and enjoy.

14.

Opposer's IMAX projection system is configured for commercial multiplex operators and is capable of showing Hollywood movies that have been digitally re-mastered using Opposer's proprietary DMR® technology in both IMAX and IMAX® 3D formats. The system is capable of showing original IMAX documentaries that have been converted into digital format. In March 2010, Avatar: An IMAX 3D Experience completed its initial run as the all-time highest grossing IMAX release; the worldwide IMAX box office total for the film climbed to more than \$220 million since the movie's launch in December 2009.

15.

Currently, Opposer together with Barco N.V. has co-developed a laser-based digital projection system to present greater brightness and clarity, a wider color gamut and deeper blacks and will be capable of illuminating the largest screens in the IMAX theatre network. Designed from the ground up for IMAX's largest screens, the dual 4K laser projection system is equipped with a new optical engine and suite of proprietary IMAX technologies capable of projecting an image with up to a 1.43:1

aspect ratio with maximum resolution and sharpness, unparalleled 2D and 3D brightness, industry-leading contrast and an expanded color gamut that will allow filmmakers to present more vivid and exotic colors than ever before. The new system also includes IMAX's next-generation sound technology that delivers even greater power and precision for ultimate audio immersion. It has been upgraded to 12 discrete channels plus sub-bass, and includes additional side channels as well as new overhead channels that will improve the system's ability to position sounds around the audience and further ensure every seat is the best in the house.

16.

There are currently 28 IMAX laser-based digital projection systems in operation, 9 of which are located in the United States in the Airbus IMAX Theater at the Steven F. Udvar-Hazy Center in Chantilly, Virginia, The Boeing IMAX Theater at Pacific Science Center in Seattle, Washington, Tennessee Aquarium in Chattanooga, Tennessee, Lockheed Martin National Air & Space Museum in Washington, DC, Branson's IMAX - Entertainment Complex in Branson, Missouri, Sunbrella IMAX Theatre in Reading, Massachusetts, The TCL Chinese Theatre in Los Angeles, California, Universal Citywalk Stadium 19 (Los Angeles) and AMC

Theatres' Metreon 16 (San Francisco) IMAX locations. Opposer has also contracted for 6 additional IMAX laser-based digital projection systems deals that will be installed in theatres in the United States.

17.

As a result of Opposer's long-standing and extensive use of its IMAX Family of Marks in this country, including specifically use of the IMAX mark since 1972, Opposer's IMAX Family of Marks has become symbolic of the extensive goodwill and customer recognition established by Opposer by virtue of the expenditure of substantial amounts of time and effort in advertising and promoting its goods and services under its trademarks and service marks. In 2000 and 2006, for example, brand equity studies established that three of four consumers in North America recognized IMAX as a brand name. Brand recognition of the IMAX mark has increased in recent years. For example, a brand equity study conducted in 2011 established that over ninety (90) percent of consumers in North America recognized IMAX as a brand name. And another study conducted in 2014 established that 97 percent of consumers in the United State recognized IMAX as a brand name. The IMAX Family of Marks thus identifies Opposer and its goods and services.

Opposer's IMAX mark is famous and distinctive within the meaning of 15 U.S.C. § 1125(c) in that:

- a) the mark possesses both inherent and acquired distinctiveness;
- b) Opposer has made extensive and exclusive use of its IMAX mark for an extended period of time;
- c) Opposer has extensively promoted goods and services provided under the IMAX mark throughout the United States;
- d) Opposer has used, and is currently using, the IMAX mark throughout the United States;
- e) Opposer currently is providing goods and services under the IMAX mark;
- f) Opposer has successfully cultivated a high degree of recognition of the IMAX mark in the trading areas and channels in which both parties are doing business;

- g) on information and belief, there is no significant third party use of the IMAX mark or phonetic equivalents thereof;  
and
- h) the IMAX mark is covered by multiple federal registrations.

19.

On June 25, 2015, Applicant filed an application (Serial No. 86/675,025) to register the mark IMAXPLUS and Design for Applicant's Goods.

GROUND I

Likelihood of Confusion

20.

Opposer hereby incorporates by reference the allegations of Paragraphs 1-19 hereof as if fully set forth herein.

21.

Because of the high degree of distinctiveness of Opposer's IMAX Family of Marks (including, without limitation, IMAX 3D, IMAX 3D FILM, IMAX DMR, IMAX DOME and IMAX NXOS), the length of time Opposer has used its IMAX Family of Marks, the vast advertising and publicity the IMAX Family of Marks has

received, the substantial trading area in which the IMAX Family of Marks is used, and the high degree of consumer recognition of the IMAX Family of Marks, the marks comprising the IMAX Family of Marks are well known, strong, and famous trademarks, deserving of a broad scope of legal protection.

22.

Applicant's mark encompasses Opposer's IMAX mark in its entirety in combination with the term "Plus". Moreover, several of the categories of Applicant's Goods are closely related to the goods and services Opposer provides and intends to provide under its IMAX Family of Marks including, without limitation, the IMAXSHIFT mark.

23.

Applicant's IMAXPLUS and Design mark, when used in connection with Applicant's Goods, so resembles Opposer's previously used IMAX Family of Marks as to be likely to cause confusion, mistake, and/or to deceive consumers concerning an affiliation, connection, association or sponsorship with the source of goods and services sold under the IMAX Family of Marks, in violation of 15 U.S.C. § 1052(d), with consequent injury to Opposer, the public and the trade.

24.

Opposer will be damaged by registration of Applicant's IMAXPLUS and Design mark because the mark in its entirety so resembles Opposer's IMAX Family of Marks previously used in the United States, and not abandoned, as to be likely to cause customer confusion, mistake and deception, particularly in view of the high degree of similarity of the respective marks and closely related nature of the respective parties' goods and/or services. Persons familiar with Opposer's IMAX Family of Marks would be likely to believe erroneously that Applicant's Goods are offered by Opposer or endorsed and sponsored by Opposer, and registration of Applicant's mark on the Principal Register would be inconsistent with Opposer's rights in its federally registered and common law rights in its IMAX Family of Marks.

GROUND II

Dilution of the Famous IMAX Mark

25.

Opposer hereby incorporates by reference the allegations of Paragraphs 1-24 hereof as if fully set forth herein.

26.

Because of the high degree of inherent and acquired distinctiveness of the IMAX mark, the length of time and extent to which Opposer has used the IMAX mark, the vast advertising and publicity the IMAX mark has received, the substantial trading area in which the IMAX mark is used, and the high degree of consumer recognition of the IMAX mark, the IMAX mark is a famous trademark pursuant to 15 U.S.C. § 1125(c)(1).

27.

The IMAX mark became famous long before Applicant's first use, actual or constructive, of the IMAXPLUS and Design mark in the United States.

28.

The IMAXPLUS and Design mark, when used on or in connection with Applicant's Goods, would lessen the capacity of the IMAX mark to identify and distinguish Opposer's goods and services sold thereunder and, as such, would cause dilution of the IMAX mark in violation of 15 U.S.C. § 1052.

29.

Pursuant to 15 U.S.C. § 1063(a), Opposer believes it will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the use

of the IMAXPLUS and Design mark, and would give color and exclusive statutory right to Applicant in violation and derogation of prior and superior statutory and common law rights of Opposer.

30.

Opposer therefore requests that Application Serial No. 86/675,025 be refused registration, and that this opposition be sustained in favor of Opposer.

31.

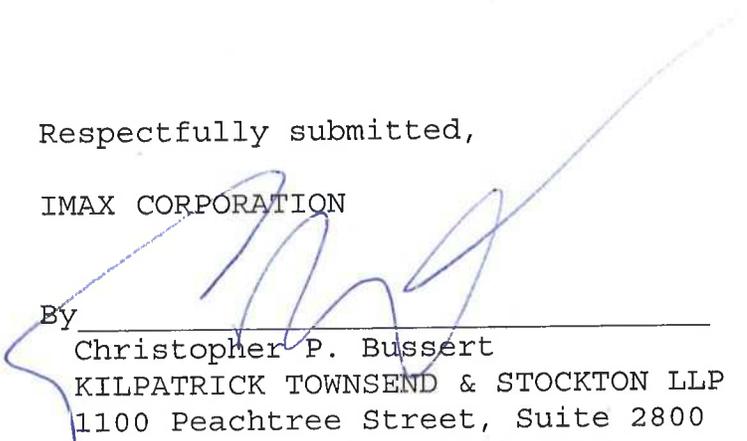
The Commissioner is authorized to charge Kilpatrick Stockton LLP's Deposit Account No. 11-0855 if there is a deficiency in the filing fee as paid with submission of the opposition.

Dated: May 11, 2016

Respectfully submitted,

IMAX CORPORATION

By



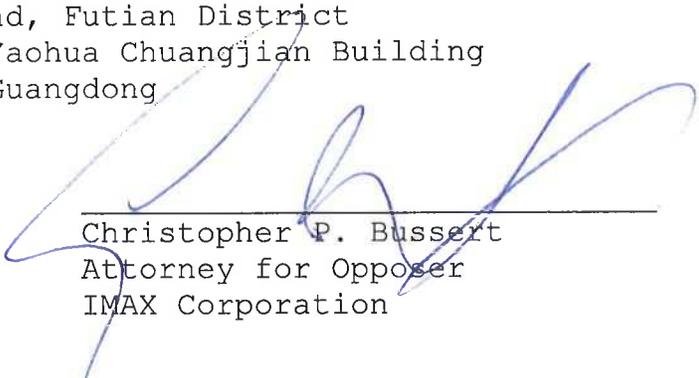
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Attorneys for Opposer  
IMAX Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served on Applicant's correspondent as identified in the correspondence address of record on May 11, 2016 via Air Mail to:

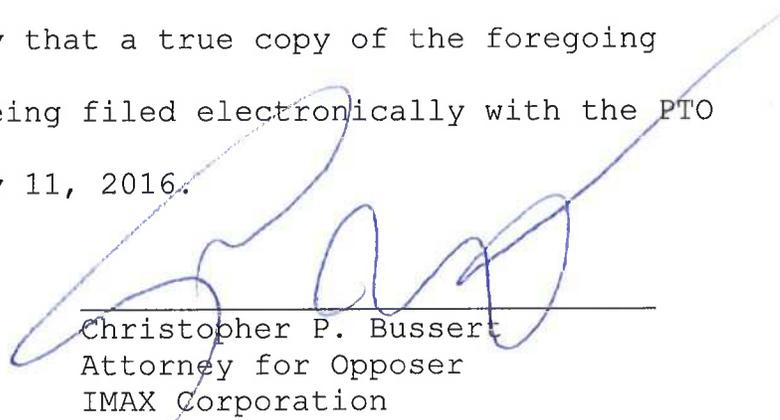
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Shenzhen, Guangdong  
China



\_\_\_\_\_  
Christopher P. Bussert  
Attorney for Opposer  
IMAX Corporation

**CERTIFICATE OF TRANSMITTAL**

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION is being filed electronically with the PTO via ESTTA on this day, May 11, 2016.



\_\_\_\_\_  
Christopher P. Bussert  
Attorney for Opposer  
IMAX Corporation