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

Proceeding	92043516
Party	Defendant Stich, Willi Lorenz Stich, Willi Lorenz 950 Jennings Street Bethlehem, PA 18017
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Date	09/07/2006
Attachments	Microsoft Word - objReqJudNotice.express.files.090606.pdf ( 6 pages )(137139 bytes )

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

9 JZCHAK N. WAJCMAN d/b/a BILL  
10 LAWRENCE PRODUCTS and BILL  
11 LAWRENCE GUITAR PICKUPS,

12 Petitioner,

13 vs.

14 WILLI LORENZ STICH a/k/a BILL  
15 LAWRENCE,

16 Registrant/Respondent.

) Cancellation No.: 92043516

) **In the matter of Registration No. 2,303,676**

) **Mark: BILL LAWRENCE**

) **Date Registered: December 28, 1999**

) **BILL LAWRENCE'S OBJECTION TO**  
) **PETITIONER'S REQUEST FOR**  
) **JUDICIAL NOTICE; MEMORANDUM**  
) **OF POINTS AND AUTHORITIES IN**  
) **SUPPORT OF OPPOSITION**

) Filed: September 6, 2006

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21 Registrant WILLI LORENZ STICH a/k/a BILL LAWRENCE (hereinafter Bill  
22 Lawrence) respectfully submits the following objection to Petitioner's REQUEST FOR  
23 JUDICIAL NOTICE (filed August 23, 2006).

24 For the following reasons, Petitioner's Request for Judicial Notice should be stricken.

25 **I.**

**BILL LAWRENCE'S OBJECTION TO PETITIONER'S REQUEST FOR JUDICIAL  
NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
OPPOSITION**



1 **Argument.**

2 Although materials outside of the pleadings ordinarily are not considered on a motion for  
3 summary judgment, a court may consider matters properly subject to judicial notice. See  
4 *Ramirez v. United Airlines, Inc.* (N.D. Cal. 2005), 416 F.Supp.2d 792, 795; *Adibin v. Cal. State*  
5 *Bd. Of Pharmacy* (N.D. Cal. 2005), 393 F.Supp.2d 999, 1003.

6 Under Rule 201 of the Federal Rules of Evidence, a court may take judicial notice of any  
7 fact “not subject to reasonable dispute in that it is . . . capable of accurate and ready  
8 determination by resort to sources whose accuracy cannot reasonably be questioned.” *In re*  
9 *Immune Response Securities Litigation* (S.D. Cal. 2005), 375 F. Supp.2d 983 (“Courts may only  
10 take judicial notice of adjudicative facts that are not subject to reasonable dispute.”).

11 Here, Petitioner’s request strays well beyond a plea for the TTAB judicially to notice  
12 mere adjudicative facts. Rather, he asks the TTAB consider the following:

13 Exhibit A: A copy of a very old lawsuit, without explaining its relevance or establishing  
14 any foundation, cannot be taken judicial notice of. This purported lawsuit is not a judgment or  
15 other judicial decision that the TTAB may judicially notice, and the alleged facts contained  
16 therein are not subject to judicial notice because they are open to reasonable dispute.

17 Exhibit B: The certified copy of the Writ of Execution and Possession issued May 31,  
18 1984 to the Sheriff of Wilson County, Tennessee or any alleged facts therein may not be taken  
19 judicial notice of because the relevancy of this document has not been established.

20 Exhibit C: The request to take judicial notice of the Answer and Counterclaim filed by  
21 registrant in a related case currently pending before the Southern District of California, Case No.  
22 05 CV 1200 LAV lacks foundation and is irrelevant. Moreover, requesting judicial notice of this  
23 sole pleading is misleading because other pleadings, such as the complaint and answers, should  
24 accompany any such request. Finally, no alleged facts within this document may be taken  
25 judicial notice of because they are subject to reasonable dispute.

1 Exhibit D: The request to take judicial notice of the Certificate of Registration of  
2 Trademark issued to petitioner Jzchak N. Wajcman for the trademark “Bill Lawrence,”  
3 Trademark Reg. No. 110127 must be refused because a state trademark is irrelevant to  
4 proceeding involving a federally registered trademark or the pending motion for summary  
5 judgment. This request lacks foundation because the alleged trademark involves “Musical  
6 instrument”, which are not the same categories as protected by Bill Lawrence®.

7 A party requesting judicial notice bears the burden of persuading the trial judge that the  
8 fact is a proper matter for judicial notice. *In re Tyrone F. Conner Corp., Inc.* (Bkrcty. E.D.Cal.  
9 1992), 140 B.R. 771, 781. Petitioner WAJCMAN has not proven that Exhibits A through D are  
10 proper subjects for judicial notice.

11 Even where it is appropriate to take judicial notice of documents, i.e. when they are part  
12 of the public record, the court “does not adopt their factual findings or holdings; it simply  
13 acknowledges their existence and contents.” *California ex rel. Lockyer v. Mirant Corp.*  
14 (N.D.Cal. 2003), 266 F.Supp.2d 1046, aff’d, 375 F.3d 831 (9<sup>th</sup> Cir. 2004), *cert. denied*, 125 S.Ct.  
15 1836 (2005). No judicial notice should be granted to these private documents, and any notice  
16 should not extend beyond the existence of them. *Del Puerto Water Dist. V. U.S. Bureau of*  
17 *Reclamation* (E.D.Cal. 2003), 271 F.Supp.2d 1224, 1233-34. Certainly, to the extent that their  
18 contents are in dispute, and also un-pled in the Petition for Cancellation, such matters of  
19 controversy are not appropriate subjects for judicial notice.

20 For these reasons, Bill Lawrence objects to the Petitioners request for judicial notice of  
21 the diverse collection of documents attached to his Request for Judicial Notice and Mr.  
22 Lawrence requests that they be stricken and not considered by the TTAB.

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24 Dated: September 6, 2006

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Gregory Richardson, Esq.

Attorney for Respondent,  
Bill Lawrence

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