

ESTTA Tracking number: **ESTTA100722**

Filing date: **09/22/2006**

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
Correspondence Address	GREGORY RICHARDSON LAW OFFICES OF GREGORY RICHARDSON, ESQ. 3890 11TH STREET, SUITE 210 RIVERSIDE, CA 92501 UNITED STATES GREGORY@GREGORYRICHARDSONESQ.COM
Submission	Opposition/Response to Motion
Filer's Name	Gregory Richardson
Filer's e-mail	gregory@gregoryrichardsonesq.com,becky@billlawrence.com
Signature	/gregoryrichardsonesq/
Date	09/22/2006
Attachments	msj.opposition.oppose.092206.pdf ( 26 pages )(296124 bytes )

1 Gregory Richardson  
2 Law Offices of Gregory Richardson, Esq.  
3 3890 11<sup>th</sup> Street, Suite #210  
4 Riverside, California 92501  
5 Tel.: (951) 680-9388

6 Attorney for Bill Lawrence

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

9 JZCHAK N. WAJCMAN dba 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  
) Serial Number: 76594437  
) Registration Number: 2,303,676  
)  
)  
) **In the matter of Registration No. 2,303,676**  
) **Mark: BILL LAWRENCE**  
) **Date Registered: December 28, 1999**  
)  
) **BILL LAWRENCE'S POINTS AND**  
) **AUTHORITIES IN OPPOSITION TO**  
) **PETITIONER'S MOTION FOR**  
) **SUMMARY JUDGMENT.**  
)  
) **528.07(b) Not Defense Against Summary**  
) **Judgment**  
)  
)  
)  
)  
) Filed: September 22, 2006  
)  
)  
)

17  
18  
19  
20  
21 **I. Introduction.**

22 1. Registrant Willi Lorenz Stich a/k/a Bill Lawrence, by his attorney, hereby opposes Petitioner's  
23 Consolidated Memorandum Of Points And Authorities In Opposition To Registrant's Motion For Summary  
24 Judgment And In Support Of Petitioner's Motion For Summary Judgment [*hereinafter* Petitioner's MSJ].

25 2. Genuine issues of material fact exist as to each of the four grounds which form the basis of Petitioner's  
Motion for Summary Judgment because of the lack of admissible evidence. See Petitioner's Notice of Motion

1 and Motion for Summary Judgment (filed August 18, 2006). Registration No. 2,303,676 is for the trademark  
2 “Bill Lawrence®”, rather than for a trade name. A trade name does not by itself create a trademark because a  
3 trade name identifies only the business entity form of the person doing business, not the source of any goods or  
4 services. TMEP Section 1202.02, *Refusal On Basis of Trade Name*.

## 5 II.

### 6 **There Is a Genuine Issue of Material Fact as to Whether “Petitioner Has Properly Acquired 7 Prior Use Of The Mark Registered As Registration No. 2,303,676 (the “Bill Lawrence Mark” 8 Because He Directly Or Indirectly Purchased All Rights Therein” Since A Reasonable Fact 9 Finder Could Otherwise.**

10 3. As a first ground for summary judgment, Wajcman asserts that “Petitioner has properly acquired prior  
11 use of the mark registered as Registration No. 2,303,676 (the “Bill Lawrence Mark”) because he directly or  
12 indirectly purchased all rights therein”. Petitioner’s Notice of Motion and Motion for Summary Judgment, p. 1.

## 12 A.

### 13 **A Reasonable Finder of Fact Could Conclude That Petitioner Has Not Properly Acquired Prior 14 Use Of The Trade Name Because Wajcman Does Not Use the Term “Mark” Consistently.**

15 4. Wajcman’s use of the term “mark” is vague, inconsistent, and misleading so that no conclusion as a  
16 matter of law is possible, and a reasonable finder of fact could conclude that Wajcman never properly obtain any  
17 rights to the trademark Bill Lawrence®.

18 5. Petitioner uses the term “mark” to allege that Lawrence Sound Research, Inc. [LSR] “was the owner of  
19 various intellectual property including, without limitation, the mark BILL LAWRENCE.” Petition For  
20 Cancellation, para. 1. At this point it is unclear whether LSR’s interests in the “mark” includes trade names,  
21 trademarks, or service marks. Petitioner’s allegation that LSR’s interests were “without limitation” is also  
22 unsupported by any pleadings or evidence, other than Wajcman’s own unsupported statement which cannot be  
23 used to create any issue of material fact. *Copelands’ Enterprises Inc. v. CNV Inc.*, 945 F.2d 1563, 20 USPQ2d  
24 1295 (Fed. Cir. 1991); *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d  
25 1783 (Fed. Cir. 1990).

6. Wajcman submits no proof that LSR obtained the rights to the trademark Bill Lawrence in perpetuity.  
The “Assignment” through which LSR allegedly acquired an interest in the mark “Bill Lawrence” specifically

1 refers to only a trade name, not a trademark, and sets a time limit of six (6) years. A reasonable finder of fact  
2 could conclude that, contrary to Wajcman’s assertions, LSR obtained only a time-limited interest in a trade name  
3 or no interest at all. See *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d  
4 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy’s Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).  
5 This is a justifiable inference when the evidence is viewed in a light most favorable to Mr. Lawrence. See  
6 *Lloyd’s Food Product Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

7 7. Wajcman would have obtained no interest in any trademark, much less Bill Lawrence®. The  
8 Trademark Act does not protect trade names. § 45; 15 U.S.C. § 1127. “The Trademark Act does not provide for  
9 registration of trade names on either register, but only for registration of trademarks.” See *In re Letica Corp.*, 226  
10 USPQ 276, 277 (TTAB 1985); **TMEP** Section 1202.02, *Refusal On Basis of Trade Name*.

11 8. In the next paragraph in his petition, Wajcman mixes up using “mark”, “trade name”, and “trademark”  
12 by alleging that “Degalim, Inc. acquired all rights, title and interest in the trademarks and trade names of  
13 Lawrence Sound Research, Inc. and Willi L. Stich a/k/a Bill Lawrence including, without limitation, the mark  
14 BILL LAWRENCE via a purchase transaction with Third National Bank in Nashville, TN who acquired same  
15 by virtue of a security interest and default by Lawrence Sound Research, Inc. and Willi L. Stich a/k/a Bill  
16 Lawrence.” Petition for Cancellation, para. 2. This statement is unsupported by any admissible evidence and is  
17 not proven by any specific facts.

18 9. However, Wajcman’s continuing fraud on the PTO and TTAB is specific enough and shown by clear  
19 and convincing evidence. See *Giant Food Inc. v. Standard Terry Mills, Inc.*, 229 USPQ 955 (TTAB 1986). The  
20 “Assignment” through which LSR allegedly acquired an interest in the mark “Bill Lawrence” specifically refers  
21 to only a trade name, not a trademark. Moreover, the alleged “Assignment” sets a time limit of six (6) years for  
22 any rights, not “without limitation”. Wajcman, through his attorney, attempted to avoid these limitations by  
23 submitting a forged, false, and misleading copy of the “Assignment” with two key lines missing.

24 10. Wajcman’s Petition for Cancellation should be dismissed immediately. Moreover, a reasonable finder  
25 of fact could conclude that, contrary to Wajcman’s assertions, that Degalim, Inc. acquired only a time-limited

1 interest in a trade name that expired after six (6) years. A reasonable fact finder could also disregard all  
2 documents filed by Wajcman as suspicious and not believable, due to Wajcman's continuing fraud on the PTO.  
3 Even if Petitioner amends either his Petition for Cancellation or withdraws this forged document, such changes  
4 would not cure the fraud upon the PTO or the TTAB or avoid denial of the Petition for Cancellation. See  
5 *Medinol Ltd. v. Meuro Vasx, Inc.*, 67 USPQ2d 1205, Canc. No. 40,535 (TTAB May 13, 2003).

6 11. Petitioner next asserts that Third National Bank had "acquired the same by virtue of a security interest  
7 and default by Lawrence Sound Research, Inc. and Willi L. Stich a/k/a Bill Lawrence." Petition for Cancellation,  
8 para 2. A reasonable finder of fact could conclude that the "security interest" was in only a time-limited trade  
9 name and, more importantly, that the "mark BILL LAWRENCE" was just a trade name that expired after six (6)  
10 years, not the trademark Bill Lawrence®. This is a justifiable inference when the evidence, or lack of it, is  
11 viewed in a light most favorable to Mr. Lawrence.

12 12. Petitioner next asserts that "Degalim, Inc. and Third National Bank assigned all of the rights, title and  
13 interest in the trademarks and trade names of Lawrence Sound Research, Inc. and Willi L. Stich a/k/a Bill  
14 Lawrence including, without limitation, the mark BILL LAWRENCE to Petitioner." Petition for Cancellation,  
15 para. 3. A reasonable jury would be confused by this allegation because the Third National Bank had already  
16 sold all of its "rights, title and interest in the trademarks and trade names" "via a purchase transaction" allegedly to  
17 Degalim, Inc. who then had, allegedly, "acquired all rights, title and interest in the trademarks and tradenames . .  
18 .." Petition for Cancellation, para. 3; *cf.* para. 2.

19 13. Later, Petitioner appears to use "mark" to mean the trademark Bill Lawrence®. Petitioner's Notice of  
20 Motion and Motion For Summary Judgment, p. 1:5-7. Then Petitioner drops the use of the term "mark" and  
21 states that "Registrant's use of the trademark and trade name "Bill Lawrence" is infringing upon Plaintiff's right  
22 in the trademark and trade name "Bill Lawrence". *Id.* at p.1:11-12. Nonetheless, because the original  
23 "Assignment" assigned only a time-limited interest in the trade name, then a reasonable finder of fact could  
24 conclude that the Petitioner, at the end of his murky and fraudulent chain on title transactions, ended up with an  
25 expired right to use a trade name using "Lawrence", for which Wajcman cannot seek protection under the

1 trademark statutes. § 45; 15 U.S.C. § 1127. See *In re Letica Corp.*, 226 USPQ 276, 277 (TTAB 1985); **TMEP**  
2 Section 1202.02, *Refusal On Basis of Trade Name*.

3 14. Since a reasonable finder of fact could find that Wajcman obtained only expired rights to a trade name,  
4 Wajcman has not proven as a matter of law that he “properly acquired prior use of the mark registered as  
5 Registration No. 2,303,676 (the “Bill Lawrence Mark”)”. *Opryland USA Inc. v. Great American Music Show*  
6 *Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy’s Inc.*, 961 F.2d 200, 22  
7 USPQ2d 1542 (Fed. Cir. 1992). This is a justifiable inference when the evidence is viewed in a light most  
8 favorable to Mr. Lawrence. See *Lloyd’s Food Product Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed.  
9 Cir. 1993).

10 15. Accordingly, summary judgment on this first ground must be denied.

11 **B.**

12 **A Reasonable Finder of Fact Could Conclude That Petitioner Has Not Properly Acquired Prior**  
13 **Use Of The Mark Registered as Bill Lawrence® Because Wajcman Does Not Explain How the**  
14 **Benefits of Prior Use By the Alleged Predecessors In Interest, i.e. Lawrence Sound Research, Inc.,**  
15 **Kent, the Third National Bank, and Degalim, Inc. Accrued to Wajcman’s Benefit Individually**  
16 **Without Self-Dealing.**

17 16. Petitioner has not proven as a matter of law that he “properly acquired prior use of the mark registered as  
18 Registration No. 2,303,676 (the “Bill Lawrence mark”) because he directly or indirectly purchased all rights  
19 therein”. Petitioner’s MSJ, p.2:5-7. There are many circumstances to show that there is a genuine issue as to  
20 whether Wajcman “properly acquired prior used of the mark” or that the benefit of its use by LSR, Kent, the  
21 Third National Bank, and Degalim, Inc. accrued to Wajcman individually because a bankruptcy was involved  
22 and Wajcman was a shareholder and officer of Degalim, Inc.

23 17. First of all, Wajcman did not comply with Section 2.38 which requires explanation of the prior use by  
24 any predecessor in interest and how their use inures to the benefit of the applicant.

25 18. §2.38 Use by predecessor or by related companies.

(a) If the first use of the mark was by a predecessor in title or by a related company (sections 5 and 45 of the Act), and the use inures to the benefit of the applicant, the dates of first use (§§ 2.34(a)(1)(ii) and (iii)) may be asserted with a statement that first use was by the predecessor in title or by the related company, as appropriate.

1 (b) If the mark is not in fact being used by the applicant but is being used by one or  
2 more related companies whose use inures to the benefit of the applicant under section 5  
of the Act, such facts must be indicated in the application.

3 (c) The Office may require such details concerning the nature of the relationship and  
4 such proofs as may be necessary and appropriate for the purpose of showing that the use  
by related companies inures to the benefit of the applicant and does not affect the  
validity of the mark.

5 19. A pleading of properly acquiring use from the alleged predecessors in interest, i.e. Lawrence Sound  
6 Research, Inc., Degalim, Inc., and Third National Bank would necessarily require an explanation of how any  
7 “use” by an alleged “predecessor in title . . . inures to the benefit of the applicant” Wajcman individually and how  
8 or if Wajcman avoided self-dealing. §2.38. But Wajcman never explains how his alleged first use in his  
9 individual capacity in 1965, 1976, and 1982 is consistent with his later acquisition “directly or indirectly” of the  
10 same mark through a series of purchase transactions. See Application No. 76,594,437, filed May 27, 2004;  
11 Petitioner’s Notice of Motion and Motion for Summary Judgment, p.1 (filed August 18, 2006).

12 20. Wajcman first claims individual use of the mark in 1965, 1976, and 1982 in his Application. Then  
13 Wajcman files a Petition for Cancellation alleging that instead he acquired the same mark “directly or indirectly”  
14 through a series of purchase transactions. Wajcman’s statements regarding his first use of the mark are material  
15 to the issuance of a mark based on his Application. See *First International Services Corp. v. Chuckles Inc.*, 5  
16 USPQ2d 1628 (TTAB 1988)(fraud found in applicant’s filing of an application with verified statement that the  
17 mark was in use on a range of personal care products when applicant knew it was in use only on shampoos and  
18 hair setting lotion); *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986). The  
19 evidence demonstrating Wajcman’s fraud in filing his statement of use in his Application and his allegations in  
20 his Petition for Cancellation is clear and convincing. See *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229  
21 USPQ 995 (TTAB 1986).

22 21. Even if Petitioner amends either his Application or his Petition for Cancellation, such changes would  
23 not cure the fraud upon the PTO or the TTAB or avoid refusal of the Application and denial of the Petition for  
24 Cancellation. See *Medinol Ltd. v. Meuro Vasx, Inc.*, 67 USPQ2d 1205, Canc. No. 40,535 (TTAB May 13,  
25 2003); *General Car and Truck Leasing Systems, Inc. v. General Rent-A-Car Inc.*, 17 USPQ2d 1398, 1401 (S.D.  
Fla. 1990), aff’d *General Rent-A-Car. V. General Leaseways, Inc.*, Canc. No. 14,870 (TTAB May 2, 1998).

1 22. Wajcman can rely on his Application where he alleges first use in 1965 or 1976 or he can rely on his  
2 murky and lengthy chain of interest whereby he “directly or indirectly purchased all rights therein”. But  
3 Wajcman cannot consistently allege both because they are contradictory. A reasonable fact finder could  
4 disregard either and conclude that Wajcman did not properly acquire any trademark rights either directly or  
5 indirectly. This is a justifiable inference when the evidence, or lack of it, is viewed in a light most favorable to  
6 Mr. Lawrence. See *Lloyd’s Food Product Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

7 23. There is a genuine issue of material fact as to whether his allegation of first use in his Application are  
8 true or whether his acquisition through a series of purchase transactions involving Lawrence Sound Research,  
9 Inc., Degalim, Inc., and Third National Bank is true or proper. A reasonable finder of fact could conclude that  
10 either the Application is true or the Petition for Cancellation is true, or that both are false. *Opryland USA Inc. v.*  
11 *Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v.*  
12 *Roundy’s Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

13 24. Accordingly, summary judgment on this first ground must be denied.

14 **C.**

15 **A Reasonable Finder of Fact Could Conclude That Petitioner Has Not Properly Acquired**  
16 **Prior Use Of The Mark Registered as Bill Lawrence® Because Wajcman Engaged in Self-**  
17 **Dealing and Claimed First Use in 1965 and 1976, Well Before He “Directly or Indirectly**  
**Purchased All Rights therein.”**

18 25. Wajcman alleges in his Application that he first used the mark “Bill Lawrence” in 1965, 1976, and  
19 1982. See Application No. 76,594,437, filed May 27, 2004). A reasonable finder of fact could conclude that his  
20 first use of the mark as early as 1965 and 1976 precludes him from now arguing that he later “properly” acquired  
21 “directly or indirectly” that same mark.

22 26. A reasonable jury could also conclude that Wajcman’s long chain of interest in the mark is false, since it  
23 starts with his fraudulent copy of an “Assignment” to Lawrence Sound Research, Inc. and because Wajcman  
24 alleges inconsistently that he first used the mark in 1965, well before he allegedly later acquired “directly or  
25 indirectly” the mark through a series of purchase transactions starting “[i]n or about June 1982” from Lawrence

1 Sound Research, Inc. or “[i]n or about June 1984” from a suspended Degalim, Inc. or “[i]n or about March 1985”  
2 from Degalim, Inc. and Third National Bank. See Petition for Cancellation, para. 1, 2, and 3.

3 27. A reasonable finder of fact could conclude that Wajcman either did not properly acquire any interest in  
4 the mark or that he did not acquire it directly or indirectly. This is a justifiable inference when the evidence is  
5 viewed in a light most favorable to Mr. Lawrence. See *Lloyd’s Food Product Inc. v. Eli’s Inc.*, 987 F.2d 766, 25  
6 USPQ2d 2027 (Fed. Cir. 1993). Hence, there is a genuine issue of fact as to whether Wajcman properly or  
7 directly or indirectly acquired any trademark rights to Bill Lawrence®. *Opryland USA Inc. v. Great American*  
8 *Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy’s Inc.*, 961  
9 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

10 28. Accordingly, summary judgment on this first ground must be denied.

11 **D.**

12 **There Is a Genuine Issue of Material Fact as to Whether “Petitioner Has Properly Acquired**  
13 **Prior Use Of The Mark” “directly or indirectly” Because Wajcman Submitted to the TTAB**  
14 **and continues to rely Upon A Forged Document, i.e. an “Assignment” As the Foundation of**  
15 **His Chain of Interest in the Mark.**

16 29. Wajcman, through his attorney, submitted a forged copy of an alleged “Assignment”. In this forged  
17 document, Wajcman attempted to show that the interest in a mark transferred to Lawrence Sound Research, Inc.  
18 was “without limitation”. Petition For Cancellation, paras. 1, 2, and 3. However, the two lines that Wajcman left  
19 out of the forged copy limited the term of any alleged assignment to six (6) years and assigned only a trade name,  
20 for which Wajcman cannot seek federal protection because the Trademark Act does not protect trade names. §  
21 45; 15 U.S.C. § 1127. See *In re Letica Corp.*, 226 USPQ 276, 277 (TTAB 1985); TMEP Section 1202.02,  
22 *Refusal On Basis of Trade Name.*

23 30. Wajcman has admitted that the copy of this document that he submitted to the Patent and Trademark  
24 Office is false. Bill Lawrence has properly objected to the Board taking any judicial notice of this forged  
25 document. So even if this alleged but forged copy of the “Assignment” were entered into evidence, a reasonable  
finder of fact could disregard it as fraudulent. *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d

1 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d  
2 1542 (Fed. Cir. 1992).

3 31. Without this forged "Assignment", Wajcman has failed to show as a matter of law that he "has properly  
4 acquired prior use of the mark" or that "he directly or indirectly purchased all rights therein" from Lawrence  
5 Sound Research, Inc. Petitioner's Notice of Motion and Motion for Summary Judgment, p.1:5-7. Since a  
6 reasonable finder of fact could conclude that Wajcman, through forged documents submitted by his attorney, has  
7 perpetrated fraud on the Patent and Trademark Office and this Board, there remains a genuine issue of material  
8 fact. This is a justifiable inference when the evidence is viewed in a light most favorable to Mr. Lawrence. See  
9 *Lloyd's Food Product Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

10 32. Accordingly, summary judgment on this first ground must be denied.

### 11 **E. Conclusion**

12 33. Even if the PTO were to allow Wajcman to continue to rely on this forged "Assignment", Wajcman's  
13 use of the term "mark" is inexact and misleading and renders this first ground unsuitable for summary judgment.  
14 A reasonable finder of fact could conclude that the term "mark" means only a "trade name" but not a  
15 "trademark". Wajcman has failed to prove as a matter of law that he "has properly acquired prior use of the mark  
16 registered as Registration No. 2,303,676 (the "Bill Lawrence mark") because he directly or indirectly purchased  
17 all rights therein" since a reasonable finder of fact could conclude otherwise based on his contradictory allegations  
18 of first use in Wajcman's own Application No. 76,594,437 for the same mark, Wajcman's fraudulent claims to  
19 acquiring rights through a forged "Assignment", and the fact that the beginning of his alleged chain of title started  
20 with only a time-limited trade name that could never become a protectable trademark since the Trademark Act  
21 does not protect trade names. § 45; 15 U.S.C. § 1127; *In re Letica Corp.*, 226 USPQ 276, 277 (TTAB 1985);  
22 **TMEP** Section 1202.02, *Refusal On Basis of Trade Name*.

23 34. For the reasons stated above, there are several genuine issues of material fact as to whether Wajcman  
24 properly acquired the mark "Bill Lawrence" because a reasonable finder of fact could conclude that Wajcman's  
25 actions were fraudulent and resulted in his acquiring no interest or only an expired interest in a trade name. These

1 are justifiable inferences when the evidence is viewed in a light most favorable to Mr. Lawrence. See *Lloyd's*  
2 *Food Product Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993). *Opryland USA Inc. v. Great*  
3 *American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v.*  
4 *Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

5 35. Accordingly, Wajcman's Motion for Summary Judgment based on this first ground must be denied.

### 6 III.

7 **There is a Genuine Issue of Material Fact as to Whether "Petitioner's Rights In the Bill Lawrence**  
8 **Mark Have Not Been Abandoned, As he Has Used the Mark On Guitars and Electronic Sound**  
9 **Pickups For Guitars Since Acquiring the Same" Because Wajcman Has Submitted No Evidence of**  
10 **Use In Commerce of the Trademark Bill Lawrence®.**

11 36. As a second ground for summary judgment, Wajcman asserts that "Petitioner's rights in the Bill  
12 Lawrence Mark have not been abandoned, as he has used the Mark on guitars and electronic sound pickups for  
13 guitars since acquiring the same". Petitioner's Notice of Motion and Motion for Summary Judgment, p. 1.

### 14 A.

15 **There Is a Genuine Issue of Material Fact as to Whether Wajcman Acquired any interest in**  
16 **the mark properly and whether he abandoned the same Because Wajcman Submitted to the**  
17 **TTAB and continues to rely Upon A Forged Document, i.e. an "Assignment" As the**  
18 **Foundation of His Chain of Interest in the Mark.**

19 37. A reasonable jury could conclude that Petitioner's rights to the mark are limited to the trade name  
20 "Lawrence", which is not protectable under the Trademark Act. § 45; 15 U.S.C. § 1127. See *In re Letica Corp.*,  
21 226 USPQ 276, 277 (TTAB 1985). Or a reasonable jury could also conclude that Wajcman's alleged  
22 "Assignment", even though forged, transferred only a trade name that expired after six (6) years.

23 38. Alternatively, a reasonable jury could conclude that the chain of interest claimed by Wajcman from  
24 Lawrence Sound Research, Inc. to Kent to the Third National Bank to Degalim, Inc, and then miraculously to  
25 Wajcman individually is false or at least did not result in Wajcman acquiring any interest in the mark "directly or  
indirectly." *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir.  
1992); *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). These are  
justifiable inferences when the evidence is viewed in a light most favorable to Mr. Lawrence. See *Lloyd's Food*  
*Product Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

1 39. A reasonable fact finder could also conclude that not all of the uses by these predecessors in interest  
2 actually accrued to Wajcman's personal benefit, since Lawrence Sound Research, Inc. has provided no evidence,  
3 Degalim, Inc. is suspended and cannot conduct business or defend itself in court, the Third National Bank has  
4 provided no evidence, and Wajcman engaged in self-dealing and has unclean hands because he is an officer and  
5 sole owner of Degalim, Inc. A reasonable fact finder could infer that Wajcman's acquisitions were improper.  
6 *Lloyd's Food Product Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

7 40. Because one or more of these scenarios is possible in the eyes of a reasonable finder of fact, as explained  
8 above, there is an issue of material fact as to whether Wajcman has any rights to the trademark Bill Lawrence®.  
9 Accordingly, summary judgment must be denied on this second ground.

10 **B.**

11 **There Is a Genuine Issue of Material Fact as to Whether Wajcman Acquired Any Interest in**  
12 **the Mark Properly and Whether He Abandoned the Same Because Wajcman Has**  
13 **Submitted No Evidence of Use of the Mark as a Trademark in Commerce.**

14 41. One must consider the paucity of proof provided by Wajcman that "he has used the Mark on guitar and  
15 electronic sound pickups for guitars since acquiring the same". Petitioner's Notice of Motion and Motion for  
16 Summary Judgment, p. 1.

17 42. First, "For over 20 years, I have continuously used the Bill Lawrence Mark in the United States."  
18 Declaration of Jzchak N. Wajcman In Opposition to Registrant's Motion for Summary Judgment and in Support  
19 of Petitioner's Motion for Summary Judgment [*hereinafter* Wajcman MSJ Declaration]. This statement is vague  
20 and ambiguous, and it cannot be assumed that Wajcman is referring to his use of the "Mark" as a trademark.  
21 Moreover, this bare assertion that he has "used" the mark is unsupported by any evidence of actual use of the  
22 "Mark" in commerce as a trademark. Wajcman's mere denial of Bill Lawrence's assertion that Wajcman  
23 abandoned the mark does not set forth specific facts showing that there is a genuine issue for trial. See **FRCP**  
24 *56(e)*; *Copelands' Enterprises Inc. v. CNV Inc.*, 945 F.2d 1563, 20 USPQ2d 1295 (Fed. Cir. 1991); *Octocom*  
*Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990).

25 43. Thus far, Wajcman has submitted no proof of his use of the mark in commerce, and given that he has  
responded to a motion for summary judgment and filed his own counter motion for summary judgment, this

1 statement is all that one can expect him to produce on evidence of use in commerce. Wajcman has submitted no  
2 credible or admissible evidence of use in commerce, so it would be reasonable to infer that, even if he applied the  
3 mark to some goods, he did not use the mark as a trademark® in commerce. See *Lloyd's Food Product Inc. v.*  
4 *Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

5 44. Second, "I have sold guitar pickups under the Bill Lawrence mark in all fifty (50) states." Wajcman  
6 MSJ Declaration, para. 23. This statement is also vague and ambiguous because it does not state whether  
7 Wajcman was using the "Mark" as a trademark, or just a trade name which use would create no trademark rights  
8 and is not protectable under the Trademark Act. § 45; 15 U.S.C. § 1127. See *In re Letica Corp.*, 226 USPQ 276,  
9 277 (TTAB 1985).

10 45. Once again, this statement is not supported by any evidence of sales in any states. This statement does  
11 not create any genuine issue of material fact as to whether Wajcman actually used the mark as a trademark, e.g.  
12 through sales, because it is unsupported by any facts and a reasonable fact finder could infer from the lack of facts  
13 that no sales occurred. **TMEP** Section 1202.02, *Refusal On Basis of Trade Name*; *Lloyd's Food Product Inc. v.*  
14 *Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

15 46. Third, "I have been an exhibitor at the NAMM show under the name "Bill Lawrence Products" on  
16 numerous occasions beginning in mid-1980 and more recently the 2002, 2003, 2004 and 2005 NAMM trade  
17 shows." Wajcman MSJ Declaration, para. 23. There is no foundation for this statement because no one from  
18 NAMM supports his attendance or whether Wajcman used any trademarks at any of the shows. Nor is the  
19 significance of his showing at the NAMM trade show in the middle of 1980 and later in 2002, 2003, 2005, and  
20 2005 explained. Finally, Wajcman's attendance at these NAMM shows is not proven by any evidence, other  
21 than this conclusory, unsupported statement which cannot support a summary judgment.

22 47. In fact, showing under the name "Bill Lawrence Products" indicates that Wajcman was at most using  
23 "Bill Lawrence Products" as a trade name, not a trademark. Using this trade name would create no trademark  
24 rights. Trademark Act, § 45; 15 U.S.C. § 1127. See *In re Letica Corp.*, 226 USPQ 276, 277 (TTAB 1985);  
25 **TMEP** Section 1202.02, *Refusal On Basis of Trade Name*. These are justifiable inferences when the evidence is

1 viewed in a light most favorable to Mr. Lawrence. See *Lloyd's Food Product Inc. v. Eli's Inc.*, 987 F.2d 766, 25  
2 USPQ2d 2027 (Fed. Cir. 1993).

3 48. Moreover, “Bill Lawrence Products” refers to a suspended California corporation. As such, even if this  
4 statement were true, then the benefits of using the name “Bill Lawrence Products” would accrue to the  
5 corporation, not to Wajcman individually. Wajcman has not explained how this use of the trade name accrued to  
6 his individual benefit or that he did not engage in self-dealing. Since Bill Lawrence Products, Inc. is suspended it  
7 cannot maintain an action in court or defend itself or transfer any rights to Wajcman.

8 49. Finally, taking this statement at face value, Wajcman did not use of the name “Bill Lawrence Products”  
9 for between fifteen (15) and twenty-two (22) years, depending on how it is interpreted. Such a gap implies  
10 abandonment due to non-use. A reasonable fact finder could conclude that Wajcman abandoned or did not use  
11 the mark for up to 22 years, if not longer. These are justifiable inferences when the evidence is viewed in a light  
12 most favorable to Mr. Lawrence. See *Lloyd's Food Product Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027  
13 (Fed. Cir. 1993). Hence, Wajcman’s statement regarding his attendance at NAMM shows does not create any  
14 genuine issue of fact that he actually used the mark in commerce.

15 50. Fourth, “At these NAMM trade shows, I promote my guitar and guitar pickup products that display the  
16 Bill Lawrence Mark.” Wajcman MSJ Declaration, para. 23. Again, Wajcman’s use of the term “Mark” is  
17 ambiguous, but seems to indicate that Wajcman used the mark “Bill Lawrence Products” as a trade name, not a  
18 trademark. Wajcman provides no evidence that he used any mark as a protectable trademark Bill Lawrence®.

19 51. Fifth, “I have filed fictitious business names using the Bill Lawrence Mark.” Wajcman MSJ Decl., para.  
20 24. This statement is false because the San Diego County Recorder’s Office has no record of any “valid” dba  
21 using “Bill Lawrence” from 1990 through 2000. Wajcman, through his attorney, continues to misrepresent the  
22 meaning of the content of unofficial pages from the Recorder’s website. These pages do not indicate that the  
23 applicant has a valid dba since they are not official records, and merely having evidence of an application for a  
24 dba is not proof of actually obtaining a valid dba as a result of complying with all statutory requirements.

1 52. Wajcman has failed to submit any official records as evidence that he complied with all of the  
2 requirements for obtaining a valid dba, as opposed to just filing an application which does not result in a valid  
3 dba. But even if Wajcman uses “Bill Lawrence” in a dba, whether valid or not, he obtains no trademark rights to  
4 Bill Lawrence®. Because Wajcman has offered no proof from official records that he has a valid dba, and since  
5 even if he did have a dba it only showed that he was using a trade name, not a trademark, Wajcman has failed to  
6 show by any admissible or competent evidence that he used the mark as protectable trademark. A reasonable  
7 fact finder could infer from the lack of facts or otherwise conclude that Wajcman abandoned the mark as a trade  
8 name.

9 53. “I have a California trademark registration for the Bill Lawrence Mark . . .” State trademarks are  
10 trumped by federal trademarks, so Bill Lawrence® trumps California Trademark Reg. No. 110127. A  
11 reasonable finder of fact could conclude that Wajcman has submitted no proof or evidence to support his  
12 declaration or assertion that he has used the mark and not abandoned it since his statements are merely equivalent  
13 to denials and are unsupported by any specific facts. *Opryland USA Inc. v. Great American Music Show Inc.*,  
14 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy’s Inc.*, 961 F.2d 200, 22  
15 USPQ2d 1542 (Fed. Cir. 1992). Even if one infers that he used that mark under the name “Bill Lawrence  
16 Products”, this shows at most use of the mark as an unprotectable trade name. Trademark Act, § 45; 15 U.S.C. §  
17 1127. See *In re Letica Corp.*, 226 USPQ 276, 277 (TTAB 1985); **TMEP** Section 1202.02, *Refusal On Basis of*  
18 *Trade Name*; *Lloyd’s Food Product Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

19 54. Wajcman has not shown as a matter of law that he acquired rights to the trademark Bill Lawrence® or  
20 that he used the trademark Bill Lawrence® continuously in commerce as a trademark or that he did not abandon  
21 whatever rights he had in the Mark because he sets forth no specific facts and relies on unsupported statements  
22 and denials. Petitioner’s unsupported allegations of use are insufficient to create a genuine issue of material fact.  
23 *Copelands’ Enterprises Inc. v. CNV Inc.*, 945 F.2d 1563, 20 USPQ2d 1295 (Fed. Cir. 1991); *Octocom Systems*  
24 *Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990).

25 55. Accordingly, summary judgment on this second ground must be denied.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**C.**

**There Is A Genuine Issue Of Material Fact As To Whether Wajcman Acquired Any Interest In The Mark Properly And Whether He Abandoned The Same Because Wajcman Has Submitted No Evidence Of Use Of The Mark As A Trade Name.**

56. The Petitioner Wajcman has failed to even allege that he used the mark in commerce or in any activity regulated by Congress. Using the trade name “Bill Lawrence” “in connection with musical instruments and accessories . . .” or under the name “Bill Lawrence Products” is not a use in commerce that is subject to regulation by Congress. Rather, trade names are regulated by the states under the dba statutes. Trademark Act, § 45; 15 U.S.C. § 1127. See *In re Letica Corp.*, 226 USPQ 276, 277 (TTAB 1985).

57. On the other hand, the Respondent has proven that Petitioner Wajcman had no dba using “Bill Lawrence” from 1990 through 2000 and therefore Wajcman could not have been using a trade name using “Bill Lawrence” “continuously” during that time. Petitioner’s lack of a dba from 1990 through 2000 demonstrates that Wajcman abandoned the trade name during that time, unless the Petitioner wishes to rely in illegal and unlicensed business activity.

58. Any business conducted under a fictitious or invalid dba is illegal in California and other states, and such illegal business should not be condoned by the PTO, especially since the legal status of parties is determined by state law. And a reasonable jury could conclude that Wajcman abandoned all of this rights to the mark by not taking out a dba.

59. Wajcman’s Petition and declaration are devoid of any facts to show that Wajcman acquired any interest in the trademark Bill Lawrence®. Wajcman, through his attorney, submitted forged document which shows that at most Lawrence Sound Research, Inc. acquired the trade name for only six (6) years. Moreover, Wajcman does not allege that he also acquired the good will associated with “Bill Lawrence”, “directly or indirectly”. Since no trademark may be separated from the good will generated the use of the trademark, by failing to plead or explain whether he also acquired the good will associated with any mark “Bill Lawrence”, Wajcman fails to adequately plead that he acquired and did not “abandon” the trademark Bill Lawrence®, so that a reasonable jury could conclude that Wajcman in fact abandoned the mark. These are justifiable inferences when the evidence is

1 viewed in a light most favorable to Mr. Lawrence. See *Lloyd's Food Product Inc. v. Eli's Inc.*, 987 F.2d 766, 25  
2 USPQ2d 2027 (Fed. Cir. 1993).

3 60. Wajcman cannot be allowed to avoid a finding of summary judgment against him based on a bare,  
4 unpled allegation that he has not abandoned the mark. *Copelands' Enterprises Inc. v. CNV Inc.*, 945 F.2d 1563,  
5 20 USPQ2d 1295 (Fed. Cir. 1991); *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16  
6 USPQ2d 1783 (Fed. Cir. 1990). A reasonable jury could find that Wajcman comes to the court with unclean  
7 hands because of his lack of a dba and business license. *Opryland USA Inc. v. Great American Music Show Inc.*,  
8 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy's Inc.*, USPQ2d 1542 (Fed.  
9 Cir. 1992). These are justifiable inferences when the evidence is viewed in a light most favorable to Mr.  
10 Lawrence. See *Lloyd's Food Product Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

11 61. Accordingly, Summary Judgment on this second ground must be denied.

#### 12 IV.

#### 13 **There Is A Genuine Issue Of Material Fact As To Whether "Registrant's Use Of The** 14 **Trademark And Trade Name "Bill Lawrence" Is Infringing Upon Plaintiff's Rights In The** 15 **Trademark And Trade Name "Bill Lawrence".**

16 62. As a third ground for summary judgment, Wajcman asserts that "Registrant's use of the trademark and  
17 trade name "Bill Lawrence" is infringing upon Plaintiff's rights in the trademark and trade name "Bill  
18 Lawrence". Petitioner's Notice of Motion and Motion for Summary Judgment, p. 1.

19 63. Petitioner's use of the term "Mark" or "mark" is so vague, ambiguous, and inconsistent that summary  
20 judgment in his favor is impossible. It is unclear from the Petition for Cancellation what Wajcman means by the  
21 term "mark", but a reasonable finder of fact could conclude that Wajcman used or alleged to have used only an  
22 unprotectable trade name. These are justifiable inferences when the evidence, or lack of it, is viewed in a light  
23 most favorable to Mr. Lawrence. See *Lloyd's Food Product Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027  
(Fed. Cir. 1993).

24 64. The Petition refers only to the "mark BILL LAWRENCE", without specifying whether this is a trade  
25 name, trademark or service mark. Petition for Cancellation, para. 1, 2, and 3. Then, Petitioner starts alleging that

1 “Registrant’s use of the trademark and trade name “Bill Lawrence” is infringing on Plaintiff’s rights in the  
2 trademark and trade name “Bill Lawrence”. (Petitioner’s Notice of Motion and Motion for Summary Judgment,  
3 p. 1. But the Petition for Cancellation contains no allegation that a trade name and trademark of Bill Lawrence  
4 infringes upon Petitioner’s rights in the trademark and trade name “Bill Lawrence”. A reasonable finder of fact  
5 could conclude that if Wajcman refers only to use of an unprotectable trade name. See Trademark Act, § 45; 15  
6 U.S.C. § 1127. See *In re Letica Corp.*, 226 USPQ 276, 277 (TTAB 1985); **TMEP** Section 1202.02.

7 65. Concerning infringement on Plaintiff’s rights to any trade name, Wajcman has no rights to the exclusive  
8 use of “Bill Lawrence” in trade names because dba registrations are grant no exclusive rights to trade names.  
9 And Bill Lawrence’s federal registration of Bill Lawrence® cannot be deemed to infringe on Wajcman’s trade  
10 name in any case, for to do so would place state dba statutes and corporate names created under state law superior  
11 to rights protected under federal trademark statutes.

12 66. The allegation that Registrant Bill Lawrence’s use of Bill Lawrence® “is infringing upon Plaintiff’s  
13 rights in the trademark “Bill Lawrence” is not entitled to summary judgment in favor of Wajcman because, as  
14 explained above, a reasonable jury could conclude that Wajcman has no rights to the trademark Bill Lawrence®  
15 and/or that Wajcman abandoned the trade name by failing to obtain a dba from 1990 through 2000. These are  
16 justifiable inferences when the evidence is viewed in a light most favorable to Mr. Lawrence. See *Lloyd’s Food*  
17 *Product Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

18 67. Petitioner’s use of the term “mark” in his Petition For Cancellation is too vague and ambiguous to  
19 support any motion for summary judgment by Wajcman pertaining to the “trade name and trademark” “Bill  
20 Lawrence” because a reasonable finder of fact conclude that he has no rights to the trademark Bill Lawrence®.  
21 *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde*  
22 *Tyme Foods Inc. v. Roundy’s Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). Nor has Petitioner set forth  
23 any specific facts to show, as a matter of law, that Mr. Lawrence has infringed on either Wajcman’s rights, if he  
24 has any, on any trade name or trademark. *Copelands’ Enterprises Inc. v. CNV Inc.*, 945 F.2d 1563, 20 USPQ2d

1 1295 (Fed. Cir. 1991); *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d  
2 1783 (Fed. Cir. 1990).

3 68. Accordingly, Wajcman’s motion for summary on this third ground must be denied.

4 **V.**

5 **There Are Genuine Issue of Material Fact as to Whether Petitioner’s Allegation That Bill**  
6 **Lawrence’s “Application for the Bill Lawrence Mark Was Fraudulent Because He Knew**  
7 **That He Had Transferred All of His Rights in the Bill Lawrence Mark to Petitioner”.**

8 69. As a fourth ground for summary judgment, Wajcman asserts that “Registrant’s application for the Bill  
9 Lawrence Mark is fraudulent because he knew that he had transferred all of his rights in the Bill Lawrence Mark  
10 to Petitioner.” Petitioner’s Notice of Motion and Motion for Summary Judgment, p. 1.

11 **A.**

12 **Petitioner Has Not Shown That Bill Lawrence’s Application for the Bill Lawrence Mark Was**  
13 **Fraudulent Because Petitioner Did Not Plead This Allegation of Fraud With Particularity.**

14 70. Petitioner is still not entitled to move for summary judgment on grounds not pled in his Petition For  
15 Cancellation and because he has not pleaded with particularity any facts” to prove fraud in Lawrence’s  
16 application or that Bill Lawrence or that Bill Lawrence “knew that he had transferred all of his rights in the Bill  
17 Lawrence Mark” to Wajcman. Petitioner’s Notice of Motion and Motion for Summary Judgment, p. 1. Since  
18 no particular facts have been pled or proven, a reasonable finder of fact could conclude that Mr. Lawrence  
19 committed no fraud or that Wajcman has failed to present a *prima facie* case of fraud. These are justifiable  
20 inferences when the evidence is viewed in a light most favorable to Mr. Lawrence. See *Lloyd’s Food Product*  
21 *Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

22 71. **FRCP**, Rule 9 requires that in “all averments of fraud or mistake, the circumstances constituting fraud  
23 or mistake shall be stated with particularity.” To avoid summary adjudication on the issue of fraud, it is not, as the  
24 opposition alleges, that “Wajcman must only show “that there is a genuine factual dispute for trial”” pertaining to  
25 fraud, CONSOLIDATED MEMORANDUM, p.1:13-14, citing TBMP ¶ 528.01 at 500-102, but rather  
Wajcman must finally “allege with particularity any facts” to prove fraud. **FRCP**, Rule 9. It is now and always  
will be Wajcman’s burden as the alleger of fraud to first allege facts to support his allegations of fraud.

1 72. The Petition for cancellation has a merely conclusory statement allegation: “Registrant has fraudulently  
2 obtained Registration No. 2,303,676 which Petitioner now seeks to cancel.” Petition for Cancellation, para. 14.  
3 Wajcman’s bare allegation that Bill Lawrence “knew” that he transferred his interest in the mark cannot be used  
4 as a ground for summary judgment because Wajcman did not allege this in his Petition For Cancellation. Nor is  
5 there any allegation in the Petition For Cancellation that Bill Lawrence “knew that he had transferred all of his  
6 rights in the Bill Lawrence Mark” to Wajcman. So Wajcman cannot use this unpled allegation as a basis for his  
7 motion for summary judgment.

8 73. Bill Lawrence knew that if any rights had been transferred, they were for a limited time—i.e. not  
9 “without limitation”—and pertained only to the trade name “Lawrence”—i.e. not the trademark Bill  
10 Lawrence®. Even if the PTO were to allow WAJCMAN to rely on his forged “Assignment”, that assignment  
11 dealt only with trade names, and no successor in interest to Lawrence Sound Research, Inc.’s interest in the “trade  
12 name” “Lawrence” could thereafter acquire any rights to the trademark Bill Lawrence®. These are justifiable  
13 inferences when the evidence, or lack of it, is viewed in a light most favorable to Mr. Lawrence. See *Lloyd’s*  
14 *Food Product Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

15 74. Petitioner has had ample opportunity to amend his Petition for Cancellation, yet he has failed to do so,  
16 perhaps, as the meet-and-confer letters suggest, because WAJCMAN has no evidence that Bill Lawrence  
17 committed fraud. At the time of filing his Petition For Cancellation, Wajcman did not allege that Bill Lawrence  
18 “knew that he had transferred all of his rights in the Bill Lawrence Mark to Petitioner.” In fact, Wajcman has  
19 introduced no evidence that Bill Lawrence ever transferred any interest in any mark to him.

20 75. Accordingly, summary judgment on this fourth ground must be denied as a matter of law due to lack of  
21 particularity in the pleadings for fraud and the justifiable inference that Mr. Lawrence did not commit fraud based  
22 on the un-particularized pleading of fraud and Wajcman’s lack of evidence. *Lloyd’s Food Product Inc. v. Eli’s*  
23 *Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

24 **B.**

1           **Petitioner Has Not Shown As A Matter of Law That Bill Lawrence’s Application for the Bill**  
2           **Lawrence Mark Was Fraudulent Because Petitioner Did Not Plead, Allege, or Offer Any Proof**  
3           **That Bill Lawrence Ever “transferred all of his rights in the Bill Lawrence Mark to Petitioner.”**

4           76. Wajcman did not allege in his Petition For Cancellation that Bill Lawrence “Knew that he had  
5 transferred all of his rights in the Bill Lawrence Mark to Petitioner.” Petitioner’s Notice of Motion and Motion  
6 for Summary Judgment, p. 1. There is absolutely no allegation in the Petition For Cancellation to the effect that  
7 “Bill Lawrence transferred all of his rights in the Bill Lawrence mark to Jzchak Wajcman” individually.

8           77. Petitioner states that “Registrant’s application for the Bill Lawrence Mark is fraudulent because he knew  
9 that he had transferred all of his rights in the Bill Lawrence Mark to Petitioner.” Petitioner’s Notice of Motion  
10 and Motion for Summary Judgment, p. 1. However, this was not alleged in Wajcman’s Petition For Cancellation  
11 and cannot serve as grounds for a motion for summary judgment. Cf. *Blansett Pharmacal Co. v. Carmrick*  
12 *Laboratories Inc.*, 25 USPQ2d 1473, 1477 (TTAB 1992) (may not assert unpleaded Morehouse defense);  
13 *Perma Ceram Enterprises Inc. v. Preco Industries Ltd.*, 23 USPQ2d 1134, 1135 n.2 (TTAB 1992) (no  
14 consideration given to three unpleaded grounds asserted by opposer in response to applicant’s motion for  
15 summary judgment).

16           78. Despite the confusing and rambling consolidated memorandum of points and authorities, Wajcman has  
17 not presented any evidence that Bill Lawrence ever transferred any of his rights in the trademark Bill Lawrence®  
18 to Jzchak Wajcman. Wajcman has not submitted any documents to show that Bill Lawrence transferred the Bill  
19 Lawrence® trademark to Jzchak Wajcman. Hence, a reasonable finder of fact could conclude that Mr.  
20 Lawrence never transferred any interest in any mark to Wajcman. *Lloyd’s Food Product Inc. v. Eli’s Inc.*, 987  
21 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

22           79. A reasonable fact finder could conclude from the lack of evidence submitted by Wajcman that Bill  
23 Lawrence knew that he had never transferred any of his rights to the trademark Bill Lawrence® to the Petitioner.  
24 *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde*  
25 *Tyme Foods Inc. v. Roundy’s Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). Accordingly, summary  
judgment on this fourth ground must be denied.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**C.**

**A Reasonable Fact Finder Conclude that Registrant Bill Lawrence’s Application for the Bill Lawrence Mark Was Not Fraudulent Because Bill Lawrence “Knew” That Had Transferred At Most a Time-Limited Trade Name Which Expired in 1984.**

80. Petitioner alleges that “Registrant’s application for the Bill Lawrence Mark is fraudulent because he knew that he had transferred all of his rights in the Bill Lawrence Mark to Petitioner.” Petitioner’s Notice of Motion and Motion for Summary Judgment, p. 1.

81. The beginnings of Wajcman’s chain of title to the Bill Lawrence Mark starts with only a trade name. So a reasonable jury could conclude that the rights of any subsequent acquirer was limited to a trade name, and that since trade names are not a proper subject for trademark registration, Bill Lawrence did not commit fraud in his Application for Bill Lawrence®. Even if the alleged “Assignment” were entered into evidence, both the original and forged copy contains the time limit of six (6) years. So a reasonable jury could conclude that the rights of any subsequent acquirer expired in 1984, well before Bill Lawrence’s Application for the trademark Bill Lawrence®. *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy’s Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

82. Even if the PTO were to allow Wajcman to continue to rely on the fraudulently filed and forged copy of the “Assignment”, a reasonable jury could conclude that Registrant Bill Lawrence assigned at most a trade name, not the trademark Bill Lawrence®, and even then for only six (6) years. These are justifiable inferences when the evidence, or lack of it, is viewed in a light most favorable to Mr. Lawrence. See *Lloyd’s Food Product Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

83. Based on the above reasonable conclusions that a jury could reach showing that Registrant Bill Lawrence’s Application was not fraudulent, genuine issues of material fact exist. Accordingly, summary judgment on this fourth ground must be denied.

**D.**

**A Reasonable Fact Finder Could Conclude that Bill Lawrence’s Application for the Bill Lawrence Mark Was Not Fraudulent Because He Knew That He Had Not Transferred All of His Rights in the Bill Lawrence Mark to Petitioner” Since the Rights “Assigned” To Lawrence Sound Research, Inc. Were Limited to a Trade Name Only, Not a Trademark.**

1 84. Wajcman, through his lawyer, introduces and relies upon a forged document to show that Bill  
2 Lawrence allegedly “assigned” rights to the “trade name” “Lawrence” to Lawrence Sound Research. Bill  
3 Lawrence objects to the introduction of Wajcman’s forged copy of this alleged “Assignment”.

4 85. A reasonable jury could disregard this forged assignment and conclude that Lawrence Sound Research,  
5 Inc. [LSR], and all subsequent acquirer’s of LSR’s interests, acquired no rights to the trademark Bill Lawrence®.  
6 Alternatively, a reasonable jury could read the entire “Assignment” and conclude that only a trade name—i.e. not  
7 a trademark—was ever assigned, so that any subsequent acquirer acquired only a trade name, not the trademark  
8 Bill Lawrence®.

9 86. After reading the terms deliberately left out by Wajcman in his attorney’s submission, a reasonable jury  
10 could conclude that any such “assignment” was for only six (6) years-i.e. not “without limitation”, so that the  
11 rights secured by any subsequent purchaser or acquirer also were limited and expired in 1984.

12 87. Based on the above reasonable conclusions, a reasonable jury could conclude that Bill Lawrence’s  
13 Application was not fraudulent. Accordingly, summary judgment must be denied.

14 **E.**

15 **A Reasonable Jury Could Conclude that Registrant Bill Lawrence’s Application for the Bill**  
16 **Lawrence Mark Was Not Fraudulent Because Bill Lawrence Knew That Any Rights That**  
17 **LSR, Kent, and the Third National Bank Held Were Limited to Trade Names Only, not the**  
18 **Trademark Bill Lawrence®.**

19 88. Wajcman then uses an alleged “Kent Agreement” to show that some rights were transferred from  
20 “Wajcman and . . . Bill] Lawrence” to “LSR, Kent and Third National Bank.” Petitioner’s MSJ, p.7:12-14.  
21 However, a reasonable jury could conclude that these “rights” only pertained to “the trade name Bill Lawrence,  
22 or any licenses or related trade names”, just as the text of the Kent Agreement says. (emphasis in original). *Id.*  
23 Moreover, according to the terms of the alleged “Kent Agreement”, the “Kent Agreement” lasted only until  
24 1984.

25 89. Since a reasonable jury could conclude that any rights that LSR, Kent, and the Third National Bank  
acquired after “June 23, 1982” (Petitioner’s MSJ, p.7:5) were limited to the trade name and expired in 1984, a  
reasonable jury could conclude also that Bill Lawrence was free to use Bill Lawrence® in 1999 and did not

1 commit fraud in his application and that Wajcman had no rights to the trademark Bill Lawrence after 1984 and  
2 that Bill Lawrence did not “know” that he had transferred all of his rights to the mark to Wajcman. These are  
3 justifiable inferences when the evidence, or lack of it, is viewed in a light most favorable to Mr. Lawrence. See  
4 *Lloyd’s Food Product Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

5 90. Accordingly, summary judgment on this fourth ground must be denied.

6 **F.**

7 **A Reasonable Jury Could Conclude that Registrant Bill Lawrence’s Application for the Bill**  
8 **Lawrence Mark Was Not Fraudulent Because Bill Lawrence Knew That Wajcman Had**  
9 **Only Rights to a Tradename, not the Trademark Bill Lawrence® and That Bill Lawrence**  
10 **Could Use His Name As A Trademark®.**

11 91. Wajcman then alleges a “Kent Agreement” to show that some rights were transferred from “Wajcman  
12 and . . . Bill] Lawrence” to “LSR, Kent and Third National Bank.” Petitioner’s MSJ, p.7:12-14. However, a  
13 reasonable jury could conclude that these “rights” only pertained to “the trade name Bill Lawrence, or any  
14 licenses or related trade names”, just as the text of the Kent Agreement says. (emphasis in original). *Id.* And,  
15 according to the terms of the alleged “Kent Agreement”, the “Kent Agreement” lasted only until 1984.

16 92. Since a reasonable jury could conclude that any rights that LSR, Kent, and the Third National Bank  
17 acquired after “June 23, 1982” (Petitioner’s MSJ, p.7:5) were limited to the trade name and expired in 1984, a  
18 reasonable jury could conclude also that Bill Lawrence was free to use Bill Lawrence® in 1999, did not “know”  
19 that he had transferred all of his rights to the mark to Wajcman, and did not commit fraud in his application.  
20 These are justifiable inferences when the evidence, or lack of it, is viewed in a light most favorable to Mr.  
21 Lawrence. See *Lloyd’s Food Product Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

22 93. Accordingly, summary judgment on this fourth ground must be denied.

23 **F. Conclusion**

24 94. But even if the PTO were to allow Wajcman to continue to rely on the forged “Assignment”,  
25 Wajcman’s use of the term “mark” is inexact and misleading and renders any motion for summary judgment  
unsuitable. A reasonable jury could conclude that the term “mark” means either a “trade name” or a “trademark”  
alone or that “mark” means both.

1 95. Wajcman has failed to prove as a matter of law that Bill Lawrence “knew that he had transferred all of  
2 his rights in the Bill Lawrence Mark to Petitioner” because Wajcman has put forth no transaction whereby Bill  
3 Lawrence transferred anything to Petitioner Wajcman.

4 96. Bill Lawrence could reasonably believe that he could obtain a trademark on his own name because the  
5 case law and statutes allow for trademarks of names and pseudonyms, and Mr. Lawrence is famous world-wide  
6 in the guitar industry and music culture. See *In re First Draft, Inc.* (TTAB 2005), 76 USPQ2d 1183 (Board ruled  
7 that an author’s name or pseudonym is registrable under appropriate circumstances); *In re Polar Music*  
8 *International AB* (Fed.Cir. 1983), 221 USPQ 315, 318 (certain factors determinative that ‘ABBA’ functions as a  
9 trademark and not only as identifier of singers). Bill Lawrence’s status as an established icon in the music  
10 industry providing world-renowned consulting on the design and manufacture of guitar pickups entitles him to  
11 protect his registered trademark Bill Lawrence®.

12 97. For the reasons stated above, there are several genuine issues of material fact as to whether Wajcman  
13 properly acquired the mark “Bill Lawrence” and whether Mr. Lawrence committed fraud. Accordingly  
14 Wajcman’s Motion for Summary Judgment based on this fourth ground must be denied.

## 15 VI.

### 16 **There is a Genuine Issue of Material Fact as to the Defenses That Bill Lawrence Pleads in His** 17 **Answer, So That Summary Judgment Must Be Denied.**

18 98. Bill Lawrence asserts the defense of estoppel, acquiescence, laches and waiver. Wajcman had actual  
19 and statutory knowledge of Bill Lawrence’s application and registration of the trademark Bill Lawrence®. But  
20 Wajcman never objected to Bill Lawrence’s use and registration of Bill Lawrence® while Mr. Lawrence built up  
21 substantial good will using his trademark Bill Lawrence® during the 1980s and 1990s through the current day.  
22 The only reason now that Wajcman has filed his own application and petition to cancel Mr. Lawrence’s mark,  
23 even though there is substantial evidence that he either never acquired rights to the trademark or else abandoned  
24 it, is to acquire unearned benefit from the work of Bill Lawrence.

25 99. Bill Lawrence has explained how Wajcman, through his attorney, continues to perpetrate fraud on the  
PTO and TTAB by filing and continuing to rely upon the false, fraudulent, and forged copy of an alleged

1 “Assignment” of mark rights to Lawrence Sound Research, Inc. A reasonable fact finder could conclude that  
2 any documents submitted by Wajcman and his attorney are suspicious and disregard any arguments Wajcman  
3 makes based on those documents. Bill Lawrence has established the defense of fraud and unclean hand on the  
4 part of Petitioner Wajcman, so that Petitioner’s motion for summary judgment must be denied.

5 100. Bill Lawrence asserts the defense that Wajcman “is not, and has never been, the owner of the BILL  
6 LAWRENCE trademark.” Since a reasonable fact finder could conclude that Lawrence Sound Research, Inc.  
7 never acquired rights to any trademark “without limitation” because any right assigned pertained only to a trade  
8 name limited to six (6) years, Bill Lawrence has asserted a valid defense and Petitioner’s motion for summary  
9 judgment must be denied.

10  
11 **PRAYER**

12 **WHEREFORE, THE REGISTRANT prays for the following,**

13 For the above reasons, Registrant respectfully requests that Wajcman’s counter motion for summary  
14 judgment on each of the four grounds be denied due to Wajcman’s lack of proof, the existence of genuine issues  
15 of material facts, and Mr. Lawrence’s established defenses.

16 Dated: September 22, 2006.

17  
18 \_\_\_\_\_  
19 Gregory Richardson  
20 Attorney for Bill Lawrence  
21  
22  
23  
24  
25

