

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

Reed Elsevier Properties, Inc.,)
)
Opposer,)
)
Interface Systems, Inc. and)
Dynamic Fax, Inc.)
)
Applicants.)

Opposition No. 115,119



02-13-2004

U.S. Patent & TMO/tc/TM Mail Rcpt Dt. #22

MOTION TO STRIKE AND TO EXTEND

Opposer, Reed Elsevier Properties Inc., respectfully requests that the Board strike the December 23, 2003 testimonial deposition of Jeffrey C. Schneider, Applicants' President.

As cause for this Motion, Reed Elsevier Properties, Inc.'s counsel never received notice of the deposition. Specifically, Applicants' testimony period opened on December 1, 2003 and closed December 31, 2003.

On January 16, 2004, Reed Elsevier Properties, Inc. first received notice that Applicants had deposed Mr. Schneider when Applicants' counsel sent the attached letter to Opposer's counsel. **Exhibit A.** Before scheduling or taking the deposition, Applicants' counsel never contacted Opposer's counsel to notify her of the deposition or to schedule a mutually agreeable date. Instead, according to the letter on December 11, 2003, Applicants' counsel allegedly unilaterally scheduled the deposition in Michigan for the day before Christmas Eve.

Upon receiving the January 21, 2004 letter, Reed Elsevier Properties, Inc.'s counsel instructed the Manager of the Mail and Docketing Departments of its office to thoroughly investigate whether the Notice of Deposition had been received. No such notice was ever received. *See* Affidavit of Cecilia Bell. **Exhibit B.** Subsequently, upon receiving the transcript

of the deposition, containing a copy of the notice, Opposer's counsel noticed that the deposition notice allegedly also was served by fax. **Exhibit C.** Opposer's counsel instructed a manager of the Facsimile Tracking Department to thoroughly investigate whether the Notice of Deposition had been received by fax. No such notice was ever received. See Affidavit of Richard Hunter. **Exhibit D.** Opposer's counsel then contacted Applicants' counsel to request any proof that we had received the notice by fax or mail. **Exhibit E.** Applicants' counsel mailed the attached response, **Exhibit F.** Applicant has no proof that the Notice was received.

As Reed Elsevier Properties, Inc. did not timely receive the Notice of the deposition nor Notice of Reliance, Reed Elsevier Properties, Inc.'s counsel requested that Applicants' counsel stipulate to a sixty day extension of Reed Elsevier Properties, Inc.'s rebuttal testimony period, running from the date that Reed Elsevier Properties, Inc. finally received the last of Applicants' evidence in the case so that the parties could attempt to work out the matter. **Exhibit G.** Opposer's counsel first received the Notice of Reliance on February 2, 2004. **Exhibit H.** Applicants' counsel rejected this request offering only a two-week extension instead.

Reed Elsevier Properties, Inc. has attempted to negotiate a compromise with Applicants' counsel regarding the handling of the testimonial deposition of Jeff Schneider taken without notice to Reed Elsevier Properties, Inc. on December 23, 2003. However, Reed Elsevier Properties, Inc. has so far been unsuccessful because Applicants' counsel postures that Opposer has not been prejudiced. Further, Reed Elsevier Properties, Inc. needs time to review the evidence and to prepare for its rebuttal.

Under the Trademark Rules of Practice, the Board is required to allow the Opposer a testimony period that closes at least 45 days after the close of the Applicants' testimony period. As the Board is well aware, 30 days of this period is to permit the Opposer time to review the

evidence the Applicant has submitted and to prepare for its own case. Failing to allow Reed Elsevier Properties, Inc. this extension will result in an unfair surprise on Reed Elsevier Properties, Inc. and prejudice Reed Elsevier Properties, Inc. substantially in this case.

Further, Reed Elsevier Properties, Inc. has been substantially prejudiced by the taking of Mr. Schneider's deposition without notice. Reed Elsevier Properties, Inc. has not had the opportunity to cross-examine Mr. Schneider, or to object to improper questioning. The deposition is full of, among other things, leading questions to which Reed Elsevier Properties, Inc. had no opportunity to object. **Exhibit I.** As the Board is aware, objections of these type are waived if not made at the deposition.

Trademark Rule 2.123(a)(3) provides that:

every adverse party shall have full opportunity to cross-examine each witness ... A motion to strike the testimony for lack of adequate notice of examination must request the exclusion of the entire testimony of that witness.

Reed Elsevier Properties, Inc. must be given an opportunity to cross examine the witness and to object to questions asked, testimony given and evidence introduced.

Applicant cannot be prejudiced by the granting of this motion as all of the events that have transpired resulted from inadequate service on Reed Elsevier Properties, Inc. and by Applicants' failure to follow the simple courtesies usually accorded in noticing and taking depositions. In fact, by noticing the deposition for December 23, 2003, Applicants clearly were attempting to insure the greatest inconvenience to Opposer's counsel who, given such late notice would be unlikely to find flights back to the Washington, D.C. area on Christmas Eve.

Reed Elsevier Properties, Inc. requests a telephone hearing on this motion. Otherwise, as the Board likely will not rule on this motion until after Opposer's rebuttal testimony period has passed, Opposer respectfully requests that the Board issue an order suspending the case pending

the disposition of this motion, or reset Opposer's rebuttal period to close forty-five days following the Board's order, opening fifteen days prior thereto.

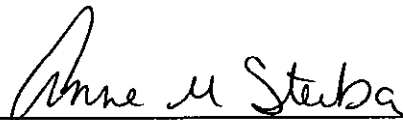
In conclusion, Reed Elsevier Properties, Inc. asks that the testimony of Mr. Schneider be stricken and retaken. Otherwise, if the Board is permitted to take other action, Reed Elsevier Properties, Inc. asks that Mr. Schneider be ordered to reappear for a deposition to be noticed and taken by Reed Elsevier Properties, Inc. for cross-examination; and that Reed Elsevier Properties, Inc. be permitted to object to specific questions asked, testimony given, and evidence introduced in its brief on the case without operation of the usual waiver provisions for failing to object at the deposition. If Mr. Schneider fails to appear at the time agreed upon and noticed, Mr. Schneider's testimony should be stricken in its entirety. Also, Opposer requests that testimony period be reset such that Opposer's rebuttal testimony period closes forty-five days after the Board issues its decision.

Respectfully submitted,

REED ELSEVIER PROPERTIES, INC.

Date: February 13, 2004

By: _____



Carla C. Calcagno

Anne Sterba

ROTHWELL, FIGG, ERNST & MANBECK LLP

1425 K Street, N.W., Suite 800

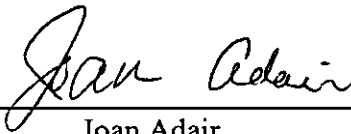
Washington, DC 20005

Telephone: 202-783-6040

Attorneys for Opposer

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MOTION TO STRIKE AND TO EXTEND, including Exhibits A-I was mailed by first-class mail, postage prepaid to Christopher A. Mitchell, Esq., Young & Basile, P.C., 2001 Commonwealth Boulevard, Suite 301, Ann Arbor, MI 48105-1562, this 13th day of February, 2004.



Joan Adair

EXHIBIT A

LAW OFFICES
YOUNG & BASILE, P.C.

THOMAS N. YOUNG
ANDREW R. BASILE
WILLIAM M. HANLON, JR.
MARSHALL G. MACFARLANE
DONALD L. WOOD
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MICHELLE L. KNIGHT
MATTHEW D. FAIR
JAMES L. COX II
DUNCAN F. BEAMAN

YOUNG, BASILE, HANLON,
MACFARLANE, WOOD & HELMHOLDT, P.C.
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JACKSON
(517) 787-4511

DAVID B. EHRLINGER (496-2000)
TOWNSEND F. BEAMAN (621-1023)

January 15, 2004

Carla C. Calcagno
Rothwell, Figg, Ernst & Manbeck, P.C.
1425 K Street, NW, Suite 800
Washington, D.C. 20005

****VIA FACSIMILE****

RE: *Reed Elsevier Properties, Inc. v. Interface Systems, Inc., et al.*
Opposition No. 115,119
Our File CCI-100

Dear Ms. Calcagno:

Pursuant to the December 11, 2003 Notice of Deposition of Jeff Schneider, we conducted that deposition on Tuesday, December 23, 2003. It is our understanding of the rules that although Reed Elsevier's rebuttal testimony period is not scheduled to open until February 1, 2004, we are nevertheless required by the rules to serve a copy of Mr. Schneider's testimony and deposition exhibits on you within thirty (30) days of having taken that testimony. TBMP § 703.01(m), 37 CFR § 2.125(a). That thirty (30) day period expires on January 22, 2004.

Due to some scheduling difficulties between Mr. Schneider and the deposition service in finding a time to meet for his review of the transcript, we expect that we will be unable to serve a copy of that testimony and exhibits by January 22. We do not expect that the delay will be much more than a few days, and we fully expect that we will be able to serve you well before January 31, 2004.

My reading of the TBMP and the rules indicates that you have recourse by way of motion to extend your rebuttal testimony period due to our unavoidable delay. To the extent that our delay necessitates your filing such an extension, we will stipulate to an extension corresponding to the number of days by which our service of Mr. Schneider's deposition testimony and exhibits exceeds the thirty (30) day deadline set by the rules.

Carla C. Calcagna
Rothwell, Figg, Ernst & Manbeck, P.C.
Page 2 of 2
January 15, 2004

Please let me know at your earliest convenience if you expect to file such a motion or, alternatively, if you think my understanding of the relevant rules is in error.

Sincerely,



Christopher A. Mitchell

CAM:llb

EXHIBIT B

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

Reed Elsevier Properties, Inc.,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 115,119
)	
Interface Systems, Inc. and)	
Dynamic Fax, Inc.)	
)	
Applicant.)	

DECLARATION OF CECELIA M. BELL

I, Cecelia M. Bell, declare:

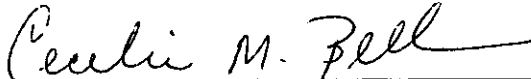
1. I am the Docketing Department Manager for the firm of Rothwell, Figg, Ernst & Manbeck. My responsibilities include managing the operations of the Docketing Department, which includes, but is not limited to, supervising docketing personnel, initiating, organizing and implementing means to aid in the performance of the docketing functions, overseeing the distribution and handling of incoming faxes, mail and courier packages. I act as the liaison between the file room and facilities staff to ensure adequate support is provided to the Docketing Department. I coordinate with other personnel within the Firm as necessary to ensure that when additional duties arise in the day-to-day functioning and development of the Department that their needs are met. I ensure that equipment and supplies are adequate to meet the needs of the Department. I manage the cost-efficient operation of the Department, including reasonable and efficient use of time, equipment and personnel, including ensuring that billable time is kept properly and turned in regularly as required by the Accounting Department.

2. Rothwell, Figg, Ernst & Manbeck utilizes a mail tracking system to log and track all incoming mail received into the Firm on a daily basis. This system has been utilized for over two years and is helpful in determining what mail has arrived in the Firm. Mail is received into the Firm, opened and date stamped to show the client matter number associated with the incoming document. The mail is then logged into "Mail Trac" by client matter number and type of paper. After the completion of the logging of the mail, it is then docketed accordingly into CPI, the file is requested and the docketed paper is attached and then checked by a designated docket checker.

3. Upon the request of Carla Calcagno on January 20, 2004, to investigate whether a Notice of Deposition had been received for Opposition Number 115,119, the following steps were carried out in an effort to determine if the document had been received at Rothwell, Figg, Ernst & Manbeck. A search was conducted in CPI. CPI is the docketing software used by the Firm to keep track of all due date actions. In searching CPI, there was no docketed entry found to reflect that the Notice of Deposition had been received for this Opposition Number. A search was done in our Mail Trac System to see the listing of all papers that had been received by due date and client matter number. The search reflected no receipt of the Notice of Deposition.

4. Upon completion of searching both systems, the Notice of Deposition for Opposition Number 115,119 was not received.

I declare under penalty of perjury pursuant to 28 U.S.C. Sec. 1746 that the preceding statements are true and correct to the best of my personal knowledge, information and belief.



Cecelia M. Bell

Date: February 13, 2004

EXHIBIT C

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

Reed Elsevier Properties, Inc.)
)
Opposer,)
)
v.)
)
Interface Systems, Inc.,)
)
Applicant,)
)
Dynamic Fax, Inc.,)
)
Party Defendant.)

Opposition No. 115,119
Application Serial No. 75/497,661
Published: Reed Elsevier Properties, Inc., Opposer
v.
Interface Systems, Inc. and Dynamic Fax, Inc.,
Applicant

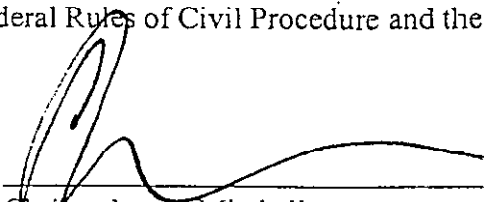


Opposition No. 115, 119
Schneider Deposition, December 23, 2003
Applicant's Exhibit No. 1

NOTICE OF DEPOSITION
OF JEFF SCHNEIDER

PLEASE TAKE NOTICE that Party Defendant Dynamic Fax, Inc. will take the deposition of JEFF SCHNEIDER on Tuesday, December 23, 2003, beginning at 12:00 P.M., at the offices of CLEO COMMUNICATIONS, 4203 Galleria Drive, Loves Park, Illinois 61111, or at such other time and place as may be mutually agreed upon by the parties.

The deposition will continue from day to day until completed or adjourned. You are invited to attend and participate to the extent provided under the Federal Rules of Civil Procedure and the regulations applicable to *inter partes* proceedings.


Christopher A. Mitchell
Young & Basile, P.C.
2001 Commonwealth Blvd.
Suite 301
Ann Arbor, Michigan 48105
(734) 662-0270
Attorneys for Dynamic Fax, Inc.

DATED: December 11, 2003

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

Reed Elsevier Properties, Inc.,)	
)	
Opposer,	)	Opposition No. 115,119
)	
v.	)	Application Serial No.
	)	75/497,661
Interface Systems, Inc. and)	
Dynamic Fax, Inc.	)	Published: June 1, 1999
)	
Applicant/)	
Party Defendant)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a Notice of Deposition of Jeff Schneider was served upon Carla C. Calcagno, Rothwell, Figg, Ernst & Manbeck, P.C., 1425 K Street, NW, Suite 800, Washington, D.C. 20005, via facsimile and by First Class Mail, on December 11, 2003.



Linda L. Braman

EXHIBIT D

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

Reed Elsevier Properties, Inc.,)
)
 Opposer,)
)
v.) Opposition No. 115,119
)
Interface Systems, Inc. and)
Dynamic Fax, Inc.)
)
 Applicant.)

DECLARATION OF RICHARD HUNTER

I, Richard Hunter, declare:

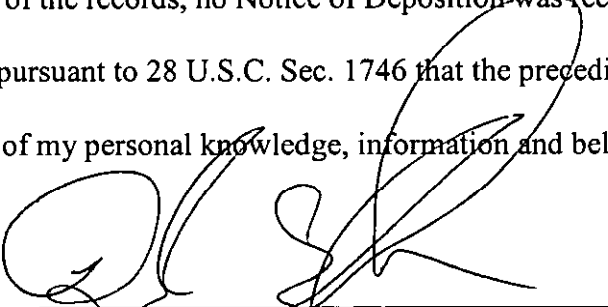
1. I am the assistant Network Engineer for the firm of Rothwell, Figg, Ernst & Manbeck. My responsibilities include the maintenance of computer-based data storage systems for the firm, including, but not limited to, systems for the storage and routing of facsimiles in an image format, along with the retrieval of archived facsimiles.

2. On January 20, 2004, Carla Calcagno instructed me to investigate whether a Notice of Deposition had been received from Mr. Mitchell in the month of December or thereafter. I then searched the archived documents received via facsimile for the specified time frame based upon the client matter number used to identify them and the intended recipient. I found no such fax. I then also searched and examined the documents based solely upon date and content, and the entirety of the archived faxes received for the given time period, regardless of whether they were forwarded to a recipient within our office or not. I found no such fax. Those documents without identifying data were examined as well for the requested contents.

3. Rothwell Figg Ernst & Manbeck has several systems for tracking the receipt of incoming mail and to docket them. The system for which I am responsible receives facsimiles in analog format using one of four dedicated telephone lines located at the office. The documents are then captured in multi-page PCX format (DCX format) and forwarded to a designated electronic mailbox maintained by the firm on a Microsoft Exchange mail server. This process takes a few seconds. As these faxes arrive in the mailbox, they are reviewed by docketing department personnel, who then route them according to the intended recipient. The documents are then stored by date in an e-mail archive, from which they can later be retrieved if necessary.

4. Based on our investigation of the records, no Notice of Deposition was received.

I declare under penalty of perjury pursuant to 28 U.S.C. Sec. 1746 that the preceding statements are true and correct to the best of my personal knowledge, information and belief.



Richard Hunter

EXHIBIT E

LAW OFFICES
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January 26, 2004

Via Facsimile

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* NOT ADMITTED IN D.C.

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CARLA C. CALCAGNO
JEFFREY L. IHNEN
GLENN E. KARTA

OF COUNSEL

STEPHEN B. PARKER
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BARBARA WEBB WALKER

File No. 3020-108

Christopher A. Mitchell, Esq.
Young & Basile, P.C.
2001 Commonwealth Boulevard
Suite 301
Ann Arbor, Michigan 48105-1562

Re: *Reed Elsevier Properties Inc. v. Interface Systems, Inc.
and Dynamic Fax, Inc.,
Opposition No. 115,119*

Dear Mr. Mitchell:

I write to thank you for and to respond to your January 16, 2004 telefax. It has taken me several days to respond to you as I was surprised to learn of the Notice of Deposition of Mr. Jeffrey Schneider. I received no Notice of Deposition. I wanted to ensure that our firm had not received the notice before communicating with you.

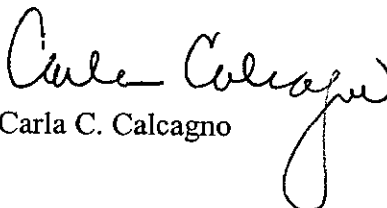
I note that you represent that on December 11, 2003 your firm served a notice of deposition on us. Allegedly, the notice scheduled the deposition for the day before Christmas Eve. After thoroughly investigating, we failed to find any record that we received the alleged notice.

Our firm's various departments have advised me that they did not receive the Notice of Deposition or any other communications from your firm around December 11, 2003 or thereafter.

If for some reason you have evidence that our firm received this communication, I would appreciate receiving that evidence within three business days of this communication's date.

Otherwise, and unless we can agree on alternate means of proceeding, I will need to file a motion to strike the testimonial deposition. Please also note that apart from the deposition notice we failed to receive any other evidence or notices of testimonial depositions from your firm. Please send me copies of any other evidence or notices served.

Very truly yours,


Carla C. Calcagno

CCC/jea/nlf

EXHIBIT F

LAW OFFICES
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THOMAS N. YOUNG
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DAVID B. EHRLINGER (1920-2006)
TOWNSEND F. BEAMAN (1921-1993)

January 27, 2004

Carla C. Calcagno
Rothwell, Figg, Ernst & Manbeck, P.C.
1425 K Street, NW, Suite 800
Washington, D.C. 20005

****VIA FACSIMILE****

RE: Reed Elsevier Properties, Inc. v. Dynamic Fax, Inc.
Our File CCI-100

Dear Ms. Calcagno:

Further to your letter of January 26, 2004, please be advised that on December 11, 2003, we served upon you, via facsimile and first class mail, the Notice of Deposition of Jeff Schneider. In evidence of the foregoing, we enclose a copy of that Notice of Deposition and accompanying Certificate of Service. As indicated in that paper, Mr. Schneider's deposition was scheduled for, and took place on, December 23, 2003, which date was within the thirty (30) day window provided by the applicable rules for Defendant to take testimony in this matter.

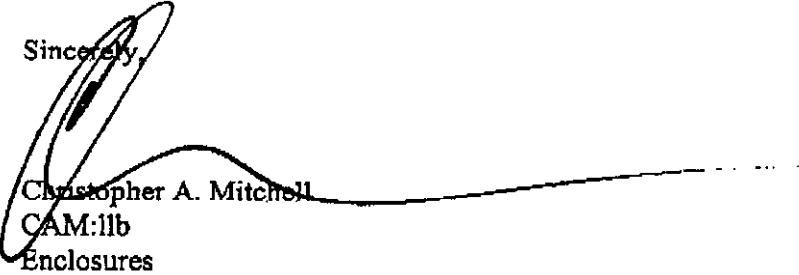
While I can confirm service of Mr. Schneider's deposition notice on the 11th of December, I obviously cannot explain why, if the statements of your January 26th letter are true, the United States Postal Service would have failed in this instance. Certainly our offices have never had this Notice of Deposition returned to us as undeliverable.

As to the question of how to address this matter, I am willing to consider such alternate means of proceeding as you may propose. However, I must state that, under the circumstances, I believe a motion to strike will be unavailing.

Carla Calcagno
January 27, 2004
Page 2

Finally, be advised that on December 11, 2003, our firm also served, upon the same address reflected in the attached Notice of Deposition, a Notice of Reliance. I am unclear from your January 26th letter whether or not you also failed, for reasons which I cannot explain, to receive this paper as well. Please advise.

Sincerely,



Christopher A. Mitchell

CAM:llb

Enclosures

cc: Jeff Schneider

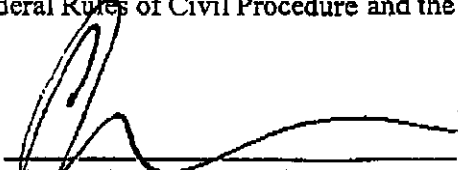
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

Reed Elsevier Properties, Inc.)	
	)	Opposition No. 115,119
Opposer,)	
	)	Application Serial No. 75/497,661
v.)	
	)	Published: June 1, 1999
Interface Systems, Inc.,)	
)	
Applicant,)	
)	
Dynamic Fax, Inc.,)	
)	
Party Defendant.)	

NOTICE OF DEPOSITION
OF JEFF SCHNEIDER

PLEASE TAKE NOTICE that Party Defendant Dynamic Fax, Inc. will take the deposition of JEFF SCHNEIDER on Tuesday, December 23, 2003, beginning at 12:00 P.M., at the offices of CLEO COMMUNICATIONS, 4203 Galleria Drive, Loves Park, Illinois 61111, or at such other time and place as may be mutually agreed upon by the parties.

The deposition will continue from day to day until completed or adjourned. You are invited to attend and participate to the extent provided under the Federal Rules of Civil Procedure and the regulations applicable to *inter partes* proceedings.



Christopher A. Mitchell
Young & Basile, P.C.
2001 Commonwealth Blvd.
Suite 301
Ann Arbor, Michigan 48105
(734) 662-0270
Attorneys for Dynamic Fax, Inc.

DATED: December 11, 2003

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

Reed Elsevier Properties, Inc.,)	
)	
Opposer,	)	Opposition No. 115,119
)	
v.	)	Application Serial No.
	)	75/497,661
Interface Systems, Inc. and)	
Dynamic Fax, Inc.	)	Published: June 1, 1999
)	
Applicant/)	
Party Defendant)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a Notice of Deposition of Jeff Schneider was served upon Carla C. Calcagno, Rothwell, Figg, Ernst & Manbeck, P.C., 1425 K Street, NW, Suite 800, Washington, D.C. 20005, via facsimile and by First Class Mail, on December 11, 2003.


Linda L. Braman

EXHIBIT G

LAW OFFICES
ROTHWELL, FIGG, ERNST & MANBECK

A PROFESSIONAL CORPORATION

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JOYCE H. A. VON NATZMER
JOO MEE KIM*
CHRISTOPHER M. DURKEE
STEVEN M. GIOVANNETTI*

* NOT ADMITTED IN D.C.

G. FRANKLIN ROTHWELL
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BARBARA G. ERNST
HARRY F. MANBECK, JR.
GEORGE R. REPPER
STEVEN LIEBERMAN
VINCENT M. DELUCA
JOSEPH A. HYNDS
ELIZABETH A. LEFF
RICHARD WYDEVEN
MARTIN M. ZOLTICK
MINAKSI BHATT
MICHAEL G. SULLIVAN
SHARON L. DAVIS
ROBERT B. MURRAY
CARLA C. CALCAGNO
JEFFREY L. IHNEN
GLENN E. KARTA

OF COUNSEL

STEPHEN B. PARKER
JOHN A. MCCAHERILL
BARBARA WEBB WALKER

January 30, 2004

Via Facsimile

File No. 3020-108

Christopher A. Mitchell, Esq.
Young & Basile, P.C.
2001 Commonwealth Boulevard
Suite 301
Ann Arbor, Michigan 48105-1562

Re: *Reed Elsevier Properties Inc. v. Interface Systems, Inc.
and Dynamic Fax, Inc.,
Opposition No. 115,119*

Dear Mr. Mitchell:

Further to your January 27, 2004 letter, we confirm that we did not receive either the Notice of Deposition or Notice of Reliance. Please re-serve any Notice of Reliance on us by overnight mail as soon as possible.

We intend to seek a 60-day extension of our testimony period with the Board in light of the fact that we failed to receive your evidence until this week, and will not receive the Notice of Reliance until next week. Please let us know if you consent to this extension. If possible, I would like to hear from you by Tuesday, February 3, 2004.

In the meantime, I am reviewing the transcript of the deposition and will contact you to see if there is a way of resolving this short of a motion to strike.

Very truly yours,

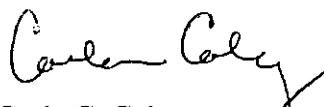

Carla C. Calcagno

EXHIBIT H

THOMAS N. YOUNG
ANDREW R. BASILE
WILLIAM M. HANLON, JR.
MARSHALL G. MACFARLANE
DONALD L. WOOD
THOMAS D. HELMHOLDT
TODD L. MOORE
THOMAS E. BEJIN
CHRISTOPHER A. MITCHELL
KATHLEEN G. MELLON
DARLENE P. CONDR
AMANDA CONTI DUHAIME
MOLLY BASILE MARKLEY
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RAYMOND C. MEIERS
MICHELLE L. KNIGHT
MATTHEW D. FAIR
JAMES L. COX II
DUNCAN F. BEAMAN

LAW OFFICES
YOUNG & BASILE, P.C.

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MACFARLANE, WOOD & HELMHOLDT, P.C.
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COPY TO C3

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JACKSON
(517) 787-4511

DAVID B. EHRLINGER (1920-23 C)
TOWNSEND F. BEAMAN (1931-143)

February 2, 2004

Carla C. Calcagno
Rothwell, Figg, Ernst & Manbeck, P.C.
1425 K Street, NW, Suite 800
Washington, D.C. 20005

VIA FACSIMILE AND OVERNIGHT MAIL

RECEIVED/DOCKETING
ROTHWELL FIGG ERNST & MANBECK
FILE NO.: 3020-108
DKI PROC INIT. frd

FEB - 3 2004

RE: Reed Elsevier Properties, Inc. v. Dynamic Fax, Inc.
Our File CCI-100

DKI ENTRY INIT: _____
SEND TO: CCC
OK TO FILE: _____

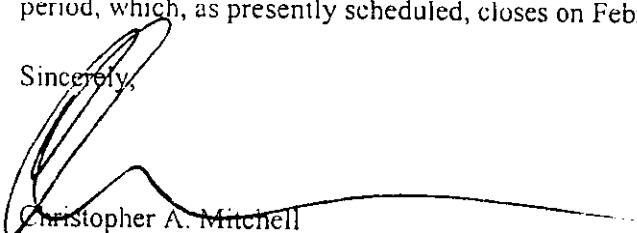
Dear Ms. Calcagno:

I am in receipt of your letter of January 30, 2004, in response to which I can tell you that the reasons why your offices did not receive either the Notice of Deposition or Notice of Reliance duly served by our firm remain a mystery to me. Nonetheless, I cannot agree to your request for a sixty (60) day extension of Opposer's *testimony* period for the simple fact that Defendant's testimony period took place *after* the close of Opposer's testimony period and, as such, the apparent failure of your offices to receive service copies of our testimony materials had no impact whatsoever on Opposer's testimony period.

To the extent that you meant to request a sixty (60) day extension of Opposer's *rebuttal* testimony period, I am likewise unwilling to agree to such a lengthy extension as unnecessary. As you acknowledge, your offices did timely receive a copy, with exhibits, of Mr. Schneider's deposition testimony. And while you claim to have not received Defendant's Notice of Reliance, you will note that the same, a copy of which we transmit with this letter, is exceedingly brief. Sixty additional days should not be required to review and digest this paper.

Notwithstanding the foregoing, I will stipulate to a two week extension of Opposer's rebuttal testimony period, which, as presently scheduled, closes on February 14th.

Sincerely,


Christopher A. Mitchell

CAM:llb

Enclosure

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

Reed Elsevier Properties, Inc. )	)	Opposition No. 115,119
Opposer, )	)	Application Serial No. 75/497,661
v. )	)	Published: June 1, 1999
Interface Systems, Inc.,))	
Applicant,))	
Dynamic Fax, Inc.,))	
Party Defendant.))	

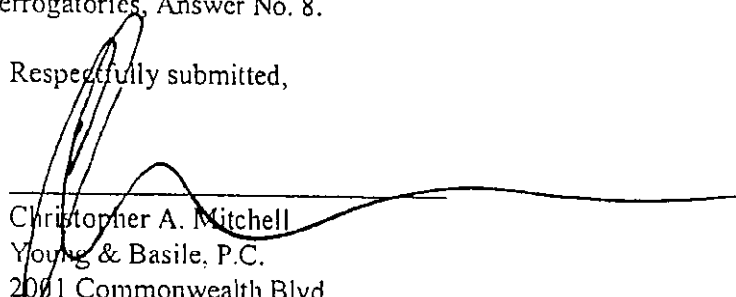
DEFENDANT DYNAMIC FAX, INC.'S NOTICE OF RELIANCE

Pursuant to 37 CFR Section 2.120(j), party Defendant DYNAMIC FAX, INC. hereby submits its
Notice of Reliance upon the following discovery answers, copies of which are appended hereto:

Opposer's Responses to Applicant's First Set of Discovery Requests to Opposer, Answer No. 5.

Opposer's Responses to Applicant's Interrogatories, Answer No. 8.

Respectfully submitted,


Christopher A. Mitchell
Young & Basile, P.C.
2001 Commonwealth Blvd.
Suite 301
Ann Arbor, Michigan 48105
(734) 662-0270
Attorneys for Applicant

DATED: December 11, 2003

11/3/77

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

Reed Elsevier Properties Inc.,	§	
	§	Opposition No. 115,119
Opposer,	§	
	§	Application Serial
v.	§	No. 75/497,661
	§	
Interface Systems, Inc.,	§	
	§	
Applicant.	§	

OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF DISCOVERY
REQUESTS TO OPPOSER

REQUEST NO. 5

Identify any and all instances of actual confusion between Applicant's product and Opposer's products known to Opposer or any person who is expected to testify as a witness for Opposer.

RESPONSE

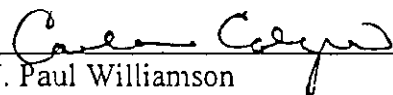
Opposer has not yet identified any instances of actual confusion, given Applicant's only recent use of the mark.

AS TO OBJECTIONS:

Respectfully submitted,

REED ELSEVIER PROPERTIES INC.

By:



J. Paul Williamson
Carla C. Calcagno
ARNOLD, WHITE & DURKEE
750 Bering Drive
Houston, Texas 77057
(202) 289-0229
Attorneys for Opposer

Date:

Nov. 8, 1999

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

Reed Elsevier Properties Inc.,	§	
	§	Opposition No. 115,119
Opposer,	§	
	§	Application Serial No. 75/497,661
v.	§	
	§	Published: June 1, 1999
Interface Systems, Inc.,	§	
	§	
Applicant.	§	

OPPOSER'S RESPONSES TO APPLICANT'S INTERROGATORIES

INTERROGATORY NO. 8

Identify all instances of actual confusion known to Opposer as between any use by it of the mark "LEXCOM" for any goods and/or services and Applicant's use of the mark "LEXCOM" for its goods, stating for each such instance: (1) The person or persons confused; (2) the date of such instance; and (3) the person or persons in Opposer's employ to whom the instance was reported.

ANSWER:

Opposer is not aware of confusion at that this time.

Respectfully submitted,

REED ELSEVIER PROPERTIES INC.

Date: 2-20-02

As to Objections Carla Calcagno
Carla C. Calcagno
HOWREY, SIMON ARNOLD & WHITE
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402
(202) 383-6830
Attorneys for Opposer

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

Reed Elsevier Properties, Inc.,)	
)	
Opposer,	)	Opposition No. 115,119
)	
v.	)	Application Serial No.
	)	75/497,661
Interface Systems, Inc. and)	
Dynamic Fax, Inc.	)	Published: June 1, 1999
)	
Applicant/)	
Party Defendant)	

CERTIFICATE OF MAILING

The undersigned hereby certifies that an original of Defendant Dynamic Fax, Inc.'s Notice of Reliance was filed with the United States Patent and Trademark Office, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513, via First Class Mail on December 11, 2003.


CHRISTOPHER A. MITCHELL

Exhibit I

COPY

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

REED ELSEVIER PROPERTIES, INC.,)	
	)	OPPOSITION NO. 115,119
)	
Opposer,	)	APPLICATION SERIAL
	)	NO. 75/497,661
)	
vs.)	
	)	PUBLISHED: JUNE 1, 1999
INTERFACE SYSTEMS, INC.,)	
	)	DEPOSITION OF
Applicant,	)	JEFFREY C. SCHNEIDER
)	
DYNAMIC FAX, INC.,	)	12-23-03
)	
Party Defendant.)	

Deposition of JEFFREY C. SCHNEIDER, a witness of lawful age, taken on behalf of the party defendant in the above-entitled cause, pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board, before Angela D. Barnhart, Notary Public in and for Winnebago County, Illinois, in the offices of Cleo Communications, 4203 Galleria Drive, in the City of Loves Park, State of Illinois, on 23rd day of December, 2003, commencing at 12:05 p.m., as reported and transcribed by Angela D. Barnhart, Certified Shorthand Reporter in and for the State of Illinois.

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APPEARANCES: ATTORNEY CHRISTOPHER A. MITCHELL
Young & Basile, P.C.
Suite 301
2001 Commonwealth Boulevard
Ann Arbor, Michigan
Appeared on behalf of the
party defendant, Dynamic Fax, Inc.

PRESENT: Daniel J. Kelly, Law Clerk

1 that correct?

2 A. That's correct. It was an asset purchase.

3 Q. And that included the LexiCom software product?

4 A. It did.

5 Q. And the LexiCom trademark?

6 A. Yes.

7 Q. Going back to Exhibit 3, which you represented is
8 the software delivered to the client, this is the
9 only product that Cleo Communications/DFI sells,
10 correct, that facilitates -- strike that.

11 Mr. Schneider, when a customer of your
12 company purchases the LexiCom software, this
13 software, Exhibit No. 3, is what they get,
14 correct?

15 A. That's correct.

16 Q. Other than the support services you testified
17 about, that's all they get, correct?

18 A. That's correct.

19 Q. Other than those ancillary support services, your
20 company provides nothing beyond the software when
21 a customer purchases the software, correct?

22 A. That's right.

23 Q. You don't provide any content; is that correct?

24 A. No. That's correct.

1 were going to be their trading partner, they
2 would distribute a digital certificate just for
3 you so they can identify you.

4 Q. Now, again, just to clarify, all the encrypted
5 content comes from the user of the software,
6 correct?

7 A. Yes.

8 Q. Cleo Communications provides no content?

9 A. That's true. We provide no content.

10 Q. The LexiCom software, as I think you have already
11 testified, simply encrypts the user's content and
12 sends it certified, signed to a designated
13 recipient?

14 A. That's correct. We don't even know what we're
15 sending. It could be a business document or
16 could be a picture of someone's dog. We don't
17 know at all. We just send whatever file is
18 presented to us.

19 Q. I want to make sure we've clarified,
20 Mr. Schneider, for the record, the relationship
21 between Interface and Dynamic Fax. I believe
22 your earlier testimony, correct me if I'm wrong,
23 was that the assets of the Cleo Communications
24 Group were sold by Interface to Dynamic Fax; is

1 Q. And do you know, sir, when your sales staff
2 answers the phone, do they identify that they are
3 Cleo Communications?

4 A. They do answer the phone "Cleo Communications."

5 Q. How much time is usually consumed in the average
6 telephone sale?

7 A. In order to adequately explain the product, I
8 would say 20 to 30 minutes could be consumed to
9 actually inform the customer of all they need to
10 know.

11 Q. And then when the sale is consummated, the
12 software deliverable such as we saw in
13 Exhibit 3 is shipped out to the customer?

14 A. Yes; although, they can download it off of our
15 website once they have purchased it.

16 Q. And is there any follow-on support?

17 A. Yes, there is. We have eight support reps that
18 provide installation and connection support.

19 Q. And is that follow-on support common?

20 A. Very common. Many of our users are not very
21 sophisticated in terms of communications and so
22 often call us to get help installing and then
23 communicating with our first site.

24 Q. What percentage of customers of the LexiCom