

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

In the matter of Application Serial No. 76/304,063
For the Mark HEXAWAVE
Published in the Official Gazette on March 18, 2003 at TM 278

Bose Corporation	*	
Opposer	*	
v.	*	Opposition No. 91157315
	*	
Hexawave, Inc.	*	
	*	
Applicant	*	
	*	
* * * * *		

Honorable Commissioner for Trademarks
Box TTAB – No Fee
2900 Crystal Drive
Arlington, VA 22202-3513

APPLICANT'S FIRST NOTICE OF RELIANCE
PURSUANT TO RULE 2.122(d)(2)

Applicant, by its Attorneys, hereby submits this First Notice of Reliance Pursuant to Rule 2.122(d)(2). Applicant will rely on and hereby introduces in evidence the following documents, which evidence is competent and relevant to the issues in this proceeding:

EXHIBIT 1: A Trademark Application for the mark HEXAWAVE;
Serial Number 76/304,063



07-28-2004
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

EXHIBIT 2: Photocopy of Specimen submitted with Application for
Serial Number 76/304,063

EXHIBIT 3: Transcript of deposition of John F. Mar; Friday, May
21, 2004; pp. 1-7, 50-55, 69

EXHIBIT 4: Applicant's First Set of Requests to Opposer for the
Production of Documents and Things, served on
January 26, 2004

EXHIBIT 5: Opposer's Response to Applicant's First set to Request
for Production of Documents and Things, served on
March 1, 2004

EXHIBIT 6: Opposer's Supplemental 5/14/04 Response to
Applicant's First set to Request for Production of
Documents and Things, served on May 14, 2004

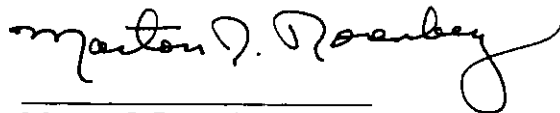
EXHIBIT 7: Applicant's First set of Interrogatories to Opposer,
served on January 26, 2004

EXHIBIT 8: Opposer's Response to Applicant's Interrogatories,
served on March 1, 2004

EXHIBIT 9: Opposer's Supplemental 5/14/04 Responses to
Applicant's Interrogatories, served on May 14, 2004

EXHIBIT 10: Declaration of Morton J. Rosenberg in Support of
Applicant's Notice of Reliance for Introduction of
Deposition of John F. Mar

Respectfully submitted,



Morton J. Rosenberg
Jun Y. Lee

ROSENBERG, KLEIN & LEE
3458 Ellicott Center Drive, Suite 101
Ellicott City, Maryland 21043
Telephone: 410-465-6678
Facsimile: 410-461-3067

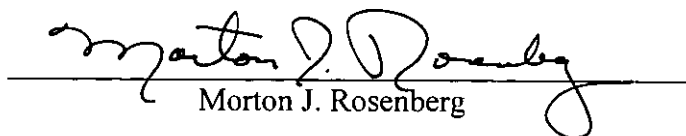
Attorneys for Applicant, Hexawave, Inc.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I HEREBY CERTIFY under 37 CFR § 1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514.

1/27/04

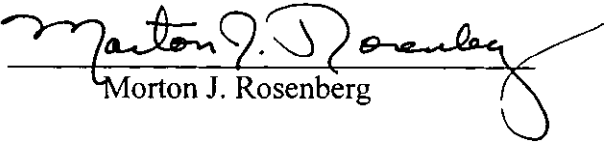
Date of Deposit



Morton J. Rosenberg

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July 2004, a copy of the foregoing Applicant's First Notice of Reliance Pursuant to Rule 2.122(d)(2) was mailed, first-class, postage prepaid, to Charles Hieken, Esquire and Amy L. Brosius, Esquire, Fish & Richardson P.C., 225 Franklin Street, Boston, MA 02110-2804.


Morton J. Rosenberg

TO THE COMMISSIONER OF TRADEMARKS:

APPLICANT NAME:

HEXAWAVE Inc.

APPLICANT BUSINESS ADDRESS:

1F, 2 Prosperity Rd. II, Science-Based Industrial Park, Hsinchu, Taiwan, R.O.C.

APPLICANT ENTITY: (Check one and supply requested information)

- ☐ Individual - Citizenship: (Country) _____
- ☐ Partnership - Partnership Domicile: (State and Country) _____
Names and Citizenship (Country) of General Partners: _____
- ☒ Corporation - State (Country, if appropriate) of Incorporation: Taiwan, R.O.C.
- ☐ Other: (Specify Nature of Entity and Domicile) _____

GOODS AND/OR SERVICES:

Applicant requests registration of the above-identified trademark/service mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et seq., as amended.) for the following goods/services: COMPOUND SEMI-CONDUCTOR DEVICES CONSISTING OF AN INTEGRATED CIRCUIT; MICROWAVE MONOLITHIC INTEGRATED CIRCUIT; MODULE; TRANSISTOR; TUNER; MIXER; AMPLIFIER; DOWNCONVERTER; TRANSCEIVER; TRANSMITTER; RECEIVER; DETECTOR; RADIO FREQUENCY SWITCH; ANTENNA

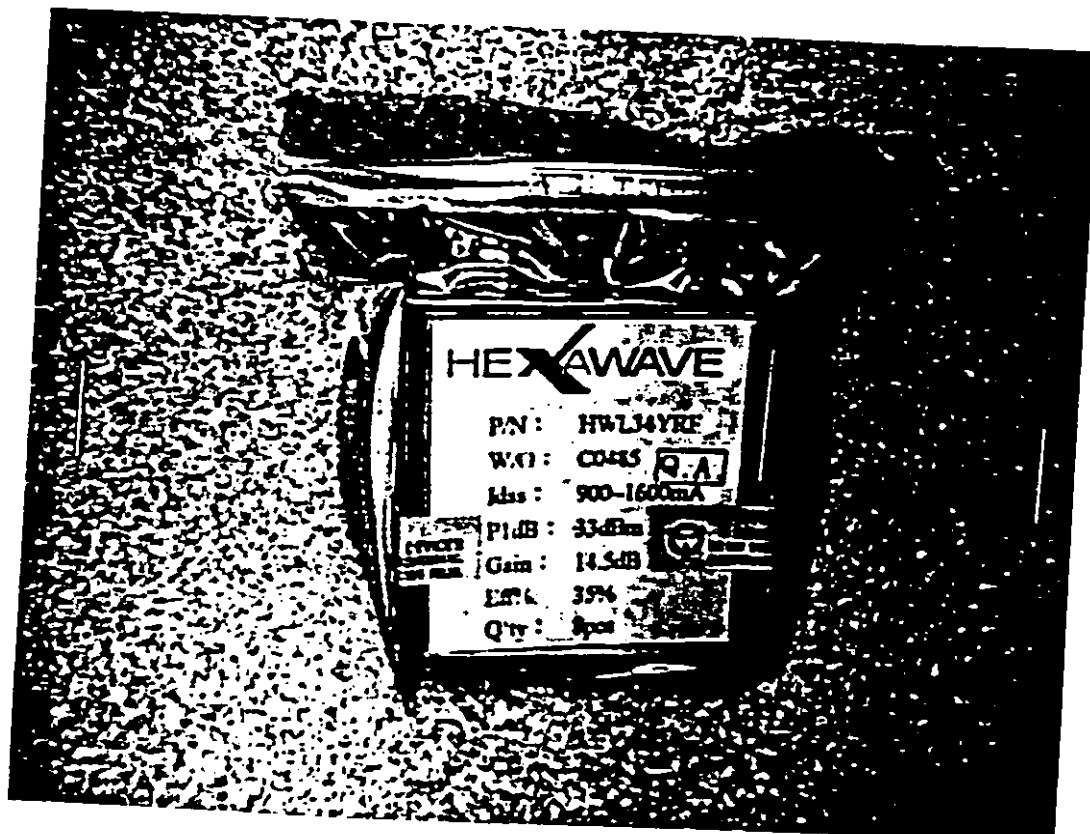
BASIS FOR APPLICATION: (Check one or more, but NOT both the first AND second boxes, and supply requested information)

- ☒ Applicant is using the mark in commerce between the United States and Taiwan, R.O.C. on or in connection with the above identified goods/services. (15 U.S.C. 1051(a), as amended.) One specimen showing the mark as used in commerce is submitted with this Application.
- Date of first use of the mark anywhere: May 2, 2000
 - Date of first use of the mark in commerce which the U.S. Congress may regulate: May 2, 2000
 - Specify the type of commerce: Between the U.S. and Taiwan, R.O.C.
(e.g. interstate, between the U.S. and a specified foreign country)
 - Specify manner or mode of use of mark on or in connection with the goods/services: Trademark is applied to labels
(e.g. trademark is applied to labels, service mark is used in advertisements)
- ☐ Applicant has a bona fide intention to use the mark in commerce between the United States and Taiwan, R.O.C. on or in connection with the above identified goods/services. (15 U.S.C. 1051(b), as amended.)
- Specify intended manner or mode of use of mark on or in connection with the goods/services: _____
(e.g. trademark will be applied to labels, service mark will be used in advertisements)
- ☐ Applicant has a bona fide intention to use the mark in commerce between the United States and Taiwan, R.O.C. on or in connection with the above identified goods/services, and asserts a claim of priority based upon a foreign application in accordance with 15 U.S.C. 1126(d), as amended.
- Country of foreign filing: _____
 - Date of foreign filing: _____
- ☐ Applicant has a bona fide intention to use the mark in commerce between the United States and Taiwan, R.O.C. on or in connection with the above identified goods/services and, accompanying this application, submits a certification or certified copy of a foreign registration in accordance with 15 U.S.C. 1126(e), as amended.
- Country of registration: _____
 - Registration number: _____

Note: Declaration on Reverse Side MUST be signed

EXHIBIT 1

Attorneys Docket #: MR1035-917
Applicant: HEXAWAVE INC.
Mark: HEXAWAVE



SPECIMEN

08:53

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

Volume: I
Pages: 1 to 69
Exhibits: 1 through 65B

UNITED STATES PATENT & TRADEMARK OFFICE
IN THE TRADEMARK TRIAL AND APPEAL BOARD
Opposition No. 91157316

- - - - - x

BOSE CORPORATION,
Opposer,
v.
HEXAWAVE, INC.,
Applicant.

- - - - - x

CONTAINS CONFIDENTIAL PORTIONS

DEPOSITION OF JOHN F. MAR
Friday, May 21, 2004
9:05 a.m.
Bose Corporation
The Mountain
Framingham, Massachusetts

Reporter: Lisa A. Moreira, RMR/CRR

A P P E A R A N C E S

FISH & RICHARDSON P.C.

(BY: AMY L. BROSIUS, ESQ.)

225 Franklin Street

Boston, Massachusetts 02110

(617)542-5070

Counsel for the Opposer

LAW OFFICES OF ROSENBERG, KLEIN & LEE

(BY: MORTON J. ROSENBERG, ESQ., and

JUN YOUNG LEE, ESQ.)

3458 Ellicott Center Drive, Suite 101

Ellicott City, Maryland 21043

(410)465-6678

Counsel for the Applicant

I N D E X

DEPONENT	DIRECT	CROSS	REDIRECT	RECROSS
JOHN F. MAR				
(By Ms. Brosius)	7		61	
(By Mr. Rosenberg)		50		60
(By Mr. Lee)		59		

E X H I B I T S

NO.	DESCRIPTION	PAGE
1	Notice of examination of witness	7
2	Press release for Acoustic Wave system	9
3	Press release for Acoustic Wave III	10
4A-F	Print ads for Acoustic Wave system	-
5A-F	Print ads for Acoustic Wave system	-
6	Direct mail piece for Acoustic Wave	13
7	Letter from Steve Kingsbury	14
8	Print advertizing for Acoustic Wave	14
9	Direct mail piece for Acoustic Wave	15
10	Direct mail piece for Acoustic wave	15
11	Forbes magazine ad for Acoustic Wave	16
12	Full-page ad for Acoustic wave	17
13	Full-page ad for Acoustic wave	17
14	Full-page ad for Acoustic wave and wave	18
15	Print ad for Acoustic Wave	11
16	Direct mail piece for Acoustic wave	18

E X H I B I T S

	NO.	DESCRIPTION	PAGE
1			
2			
3	17A-B	Pages from website re Acoustic Wave	19
4	18	USA Weekend ad for Acoustic Wave	19
5	19	Parade magazine ad for Acoustic Wave	20
6	20	Metrowest Business Review article, 12/84	21
7	21	Chicago Tribune article, 12/16/94	21
8	22	Bay State Business World article, 11/28/94	22
9	23	Boston Herald article, 11/15/84	23
10	24	Show Daily article, 1/5/85	23
11	25	Sound & Vision article	24
12	26	Stereo Guide article, March/April 1985	24
13	27	High Fidelity article, March 1985	24
14	28	Popular Science article, April 1985	25
15	29A	The Atlantic article, April 1985	25
16	29B	Chicago article, April 1985	25
17	30A-E	Articles of Acoustic Wave, 1999/2000	26
18	31	Inventor of the Year Award program, 4/7/87	28
19	32A	Trademark Registration No. 1,764,183	28
20	32B	Trademark Registration No. 1,338,571	28
21	33	Press release announcing Wave radio	31
22	34	Press release announcing Wave radio	31
23	35	Direct mail piece on Wave radio	32
24	36A-F	Print ads for the Wave radio	32

1	E X H I B I T S		
2	NO.	DESCRIPTION	PAGE
3	37	Direct mail piece for Wave	33
4	38A-G	Print ads for the Wave radio	34
5	39	Direct mail piece for Wave radio	35
6	40	Print ad for Wave radio	35
7	41	Testimonials about the Wave radio	36
8	42	Excerpts from Wave brochure	36
9	43	Direct mail package for Wave radio	36
10	44	Print ad for Wave radio/CD	37
11	45A-C	Print ads for Wave radio and radio/CD	37
12	46A-C	Direct mail packages for Wave radio/CD	38
13	47A-B	Website excerpts re Wave	39
14	48	SkyMall ad for Bose	39
15	49	Delta Air Lines ad for Bose	39
16	50	USAir ad for the Wave radio	40
17	51A	Frontgate catalog with Bose ads	40
18	51B	Brookstone Collection ad for Bose	40
19	51C	Mercedes-Benz ad for Bose Wave radio	40
20	52A-C	Parade magazine ads for Bose in 2003	42
21	53	Good Morning Show transcript, 3/23/99	43
22	54	Car Talk transcript, 10/21/00	43
23	55	Joan Hamburg's Program transcript, 8/10/01	44
24	56	1993 Popular Science ad introducing wave	44

E X H I B I T S

	NO.	DESCRIPTION	PAGE
1			
2			
3	57	San Francisco Chronicle reprint article	45
4	58A	Chicago Tribune Bose article	45
5	58B	San Francisco Chronicle Bose article	45
6	59	Better Homes & Gardens ad for Bose, 11/99	46
7	60	Audio Video Interiors article, 12/99	46
8	61	where Boston article, 9/00	47
9	62	Los Angeles Times article, 1/6/02	47
10	63	Trademark Registration No. 1,633,789	48
11	64A-C	Acoustic Wave Cannon-related info	49
12	65A-B	Acoustic Wave Cannon-related info	50
13			
14			
15			
16			
17			
18			
19			
20	* Original exhibits returned to Attorney Brosius		
21			
22			
23			
24			

P R O C E E D I N G S

JOHN F. MAR,

a witness called on behalf of Bose Corporation,
having been satisfactorily identified by the
production of his driver's license and duly sworn by
the Notary Public, was deposed and testified as
follows:

DIRECT EXAMINATION

BY MS. BROSIUS:

Q. Good morning.

A. Good morning.

MR. BROSIUS: I'd like to start by
asking the court reporter to mark the first exhibit,
which is the notice of examination. Please mark it
as Exhibit 1.

(Document marked as Exhibit 1 for
identification)

Q. Can you state your name for the record,
please.

A. John Mar.

Q. And can you tell me a little bit about --
actually, could you state your home address as well?

A. 19 Willow Road in Wellesley, Massachusetts.

Q. Okay. Can you tell us a little bit about

10:03 1 directly from Bose.

10:03 2 Q. Okay.

10:03 3 MS. BROSIUS: I'd like to have the court
10:03 4 reporter mark these as Exhibits 65A and B.

5 (Documents marked as Exhibits 65A and 65B
10:03 6 for identification)

10:03 7 Q. Can you take a look at those and tell me
10:03 8 what those are?

10:03 9 A. In 65A, the first page is a picture of the
10:03 10 product, of the Acoustic Wave Cannon, and the rest
10:03 11 of the package is a brochure which describes the
10:03 12 Cannon and how to -- how it works, how to use it.

10:04 13 And the second page looks to be one page
10:04 14 of a brochure about the Cannon, the Acoustic Wave
10:04 15 Cannon.

10:04 16 Q. Okay. Thank you.

10:04 17 MS. BROSIUS: I'm all done.

10:04 18 MR. ROSENBERG: Okay.

10:04 19 MS. BROSIUS: Can we go off the record?
20 (Recess taken).

21 CROSS EXAMINATION

10:24 22 BY MR. ROSENBERG:

10:24 23 Q. Mr. Mar, we began the deposition with a very
0:24 24 brief discussion of what you do and your background,

10:24 1 but what are your responsibilities at the Bose
10:24 2 Corporation?

10:24 3 A. Right now?

10:24 4 Q. Well, why don't we take it from the
10:24 5 beginning when you joined the Bose Corporation.
10:24 6 When did you join the Bose Corporation? And take it
10:24 7 to the present time.

10:25 8 A. Okay. I joined in 1988. I was the product
10:25 9 manager for the consumer direct division. I was
10:25 10 responsible for product development of the Acoustic
10:25 11 wave and the wave radio from 1998 to -- I'm sorry,
10:25 12 1988 until 1998.

10:25 13 In 1998 I left the company for a couple
10:25 14 of years, and I returned in 2001. I'm currently the
10:25 15 director of marketing for the automotive systems
10:25 16 division.

10:25 17 Q. Okay. We have -- you've testified on
10:25 18 Exhibits 1 through 65B, with most of it being
10:26 19 advertising directed to the Bose radio and CD
10:26 20 players and audio systems. Would that be a fair
10:26 21 statement?

10:26 22 A. Yes.

10:26 23 Q. Are you involved in any of this
10:26 24 advertisement?

10:26 1 A. Presently, no.

10:26 2 Q. Were you previously?

10:26 3 A. Yes.

10:26 4 Q. Okay. May I ask what the products that Bose
10:26 5 Corporation produces are?

10:26 6 A. We produce loudspeakers and music systems
10:27 7 for the general public.

10:27 8 Q. And the music systems are of what nature
10:27 9 specifically?

10:27 10 A. There are systems for the home, for the
10:27 11 professional environment, and for automobiles.

10:27 12 Q. Okay. Let me go just a little bit further
10:27 13 in a little more detail, if I may, and you'll just
10:27 14 have to excuse me. I may not be familiar with the
10:27 15 terminology of your particular corporation.

10:27 16 Music systems can be phonographs. Music
10:27 17 systems can be radios. What specific type of
10:27 18 products does your corporation produce?

10:27 19 A. We produce radios. We also produce systems
10:27 20 that include a radio as a component but also have a
10:28 21 CD player or, in some cases, a DVD player, and we
10:28 22 also produce a powered loudspeaker system to meet
10:28 23 with somebody else's head unit such as we do for the
0:28 24 automobile business.

10:28 1 Q. I don't know what a powered head system is.

10:28 2 A. A powered loudspeaker, which matches to
10:28 3 someone else's head unit; a source unit made by
10:28 4 somebody else; a tape player or CD player made by
10:28 5 another company.

10:28 6 Q. I see. You testified with regard to
10:28 7 Exhibits 1 through 65. To your knowledge, do you
10:28 8 make any -- does Bose Corporation produce and market
10:28 9 television receivers?

10:29 10 A. Not to my knowledge.

10:29 11 Q. Okay. Do they market video cassette
10:29 12 recorders?

10:29 13 A. Not to my knowledge.

10:29 14 Q. Do they market video cassette players?

10:29 15 A. No.

10:29 16 Q. Do you market camcorders?

10:29 17 A. No.

10:29 18 Q. Do you market radios?

10:29 19 A. Yes.

10:29 20 Q. Do you market clock radios?

10:29 21 A. Yes.

10:29 22 Q. Do you market audiotape recorders?

10:29 23 A. We have in the past, yes.

0:29 24 Q. And do you know when you marketed those;

10:29 1 produced and marketed, I assume?

10:29 2 A. 1984 up until probably the late '90s, I
10:29 3 would guess, as part of the Acoustic Wave music
10:29 4 system.

10:30 5 Q. Did you or do you at the present time market
10:30 6 and produce portable radio and cassette recorder
10:30 7 combinations?

10:30 8 A. Yes.

10:30 9 Q. Okay. And do you produce compact stereo
10:30 10 systems?

10:30 11 A. Yes.

10:30 12 Q. And do you produce and market portable
10:30 13 compact disc players?

10:30 14 A. Yes.

10:30 15 Q. You've testified with regard to Exhibits 1
10:30 16 through 65 to the mark "Wave," and it is shown in
10:31 17 many of these exhibits. I'm going to ask you, does
10:31 18 Bose use the mark "Wave" for any internal
10:31 19 components?

10:31 20 A. The loudspeaker enclosure that's contained
10:31 21 in the wave radio and the Acoustic Wave is known as
10:31 22 the acoustic waveguide, and it's commonly referred
10:31 23 to as a wave, so yes.

10:31 24 Q. That waveguide internal to the system has

10:31 1 the mark "wave" on it; is that correct?

10:31 2 A. No. It's referred to as the wave.

10:31 3 Q. It's referred to. who refers to that?

10:31 4 A. Excuse me?

10:31 5 Q. who refers to that?

10:31 6 A. I do.

10:31 7 Q. Okay. That's fair enough. That's fair.

10:32 8 The question that I have is whether
10:32 9 Bose produces any transistors under the mark "wave"?

10:32 10 A. No.

10:32 11 Q. Does it produce a tuner under the mark
10:32 12 "wave"?

10:32 13 A. No.

10:32 14 Q. Does it produce a mixer under the mark
10:32 15 "wave"?

10:32 16 A. No.

10:32 17 Q. Does it produce any microwave monolithic
10:32 18 integrated circuits under the mark "wave"?

10:33 19 A. No.

10:33 20 Q. Does it produce any compound semiconductor
10:33 21 devices consisting of an integrated circuit under
10:33 22 the mark "wave"?

0:33 23 A. No.

0:33 24 Q. Does it produce a down converter under the

1 Commonwealth of Massachusetts

2 Suffolk, ss.

CERTIFIED TRANSCRIPT
LEGALINK BOSTON

3
4 I, Lisa A. Moreira, Registered Merit Reporter,
5 Certified Real-Time Reporter and Notary Public in
6 and for the Commonwealth of Massachusetts, do hereby
7 certify that JOHN F. MAR, the witness whose
8 deposition is hereinbefore set forth, was duly sworn
9 by me and that such deposition is a true record of
10 the testimony given by the witness.

11 I further certify that I am neither related to or
12 employed by any of the parties in or counsel to this
13 action, nor am I financially interested in the
14 outcome of this action.

15 In witness whereof, I have hereunto set my hand
16 and seal this day of May, 2004.

17
18
19
20 Lisa A. Moreira, RMR, CRR

21 Notary Public

22 CSR No. 146299

23 My commission expires

24 December 25, 2009

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

Bose Corporation,	*	
	*	
Opposer,	*	
	*	
v.	*	Opposition No. 91157315
	*	
Hexawave, Inc.	*	
	*	
Applicant.	*	

APPLICANT'S FIRST SET OF REQUESTS TO OPPOSER
FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and Trademark Rules of Practice 37 CFR §§ 2.116 and 2.120, Applicant, Hexawave, Inc., by its undersigned attorneys, requests that Opposer, Bose Corporation, produce the following documents and things for inspection and copying by Applicant on or before 26 February 2004 at the law offices of Rosenberg, Klein & Lee, 3458 Ellicott Center Drive, Suite 101, Ellicott City, Maryland 21043, or at such other time and place as may be mutually agreed upon between counsel for the parties in this Opposition.

INSTRUCTIONS

1. These instructions and definitions should be construed to require responses based upon the knowledge of, and information available to, the responding party as well as its agents, representatives, and unless privileged, attorneys. It is intended that the following discovery requests will not solicit any material protected either by the attorney/client privilege or work product doctrine which was created by, or developed by,

counsel for the responding party after the date on which this Opposition was commenced. If the responding party objects to any request on such basis, the responding party shall so indicate and clearly set forth regarding the material claimed to be protected the information set forth in Fed. R. Civ. 26(b)(5), including the type of material, the general subject matter of the material, the date of the material, and such other information as is sufficient to identify the material, including where appropriate the author, addressee, custodian, and any other recipient of the material, and where not apparent the relationship of the author, addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable this party to assess the applicability of the privilege or protection claimed.

2. These Requests are continuing in character, so as to require that supplemental responses to be filed seasonably if further or different information is obtained with respect to any request.

3. No part of a request should be left un-responded to merely because an objection is interposed to another part of the request. If a partial or incomplete response is provided, the responding party shall state that the response is partial or incomplete.

4. Where a claim of privilege is asserted in objecting to any request or part thereof, and information is not provided on the basis of such assertion:

a. In asserting the privilege, the responding party shall, in the objection to the request, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed;

b. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information,

(1) For oral communications:

i. the name of the person making the communication and the names of persons present while the communication was made, and, where not apparent, the relationship of the persons present to the person making the communication;

ii. the date and place of the communication; and

iii. the general subject matter of the communication.

(2) For documents:

i. the type of document,

ii. the general subject matter of the document,

iii. the date of the document, and

iv. such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other.

5. If the responding party elects to specify and produce business records in response to any request, the specification shall be in sufficient detail to permit the

requesting party to locate and identify, as readily as the responding party can, the business records from which the response may be ascertained.

6. If, in responding to these requests, the responding party encounters any ambiguities when construing a request, instruction, or definition, the responding party's response shall set forth the matter deemed ambiguous and the construction used in responding.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in this Request is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure and the Trademark Rules of Practice. As used in this Request, the following terms are to be interpreted in accordance with these definitions:

1. *Communication*: The term "communication" means the transmittal of information by any means.
2. *Concerning; Relate to; Relating to; Relates to*: The terms "concerning," "relate to," "relating to," or "relates to" shall be construed broadly to mean and include evidencing, constituting, referring to, comprising, illustrating, recording, memorializing, discussing, or describing, supporting, embodying, setting forth, alluding to, responding to, connected with, commencing on, in respect of, regarding, about, showing, mentioning, analyzing, or reflecting.

3. *Document:* The terms "document" and "documents" are defined to be synonymous in meaning and equal in scope to the usage of the term "documents" in Fed. R. Civ. P. 34(a) and include(s) the term "writing." Unless expressly precluded by the Federal Rules of Civil Procedure or the Trademark Rules of Practice, electronic mail is included within the definition of the term "document." The terms "writings," "recordings," and "photographs" are defined to be synonymous in meaning and equal in scope to the usage of those terms in Fed. R. Evid. 1001. A draft or non-identical copy is a separate document within the meaning of the term "document."

4. *Applicant:* The term "Applicant" refers to Hexawave, Inc., and, where applicable, its officers, directors, employees, partners, agents, corporate parent, subsidiaries, including subsidiaries of a corporate parent, affiliates, predecessors or successors, attorneys, representatives, assigns, and persons having a duty of loyalty to Hexawave, Inc.

5. *Opposer:* The term "Opposer" refers to Bose Corporation, and, where applicable, its officers, directors, employees, partners, agents, corporate parent, subsidiaries, including subsidiaries of a corporate parent, affiliates, predecessors or successors, attorneys, representatives, assigns, and persons having a duty of loyalty to Bose Corporation. This definition is not intended to impose a discovery obligation on any person who is not a party to this Opposition.

6. *Person:* The term "person" is defined as any natural person or any business, legal or governmental entity, or association.

7. *You/Your*: The terms "you" or "your" include the person(s) to whom a discovery request is addressed, and all of that person's agents, elected officials, appointed officials, representatives, and attorneys.

8. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all;" "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." Words in the masculine, feminine, or neuter form shall include each of the other genders.

9. *Identify/Identity (with respect to persons)*: When referring to a person, to "identify" means to state the person's full name, present or last known address, and, when referring to a natural person, additionally, the present or last known place of employment. If the business and home telephone numbers are known to the responding party, and if the person is not a party or present employee of a party, said telephone numbers shall be provided. Once a person has been identified in accordance with this subparagraph, only the name of the person need be listed in response to subsequent discovery requesting the identification of that person.

10. *Identify/Identity (with respect to corporate entities, legal or governmental entity, or other business associations)*: When referring to a corporate entity, legal or governmental entity, or other business association, to "identify" means to state the entity's full legal name; the complete address (including street number; city or town; state, province, or territory; and, country) of all business locations of the entity throughout the

United States and in foreign countries; the date and complete address of the entity's first place of business; the date when the entity engaged in business at each subsequent place of business; the date(s) and state(s) of incorporation of the entity; the identity of each past and present officer and each past and present director of the entity and, if known, all other corporation(s) of which the officer/director is or was an officer or director.

11. *Identify/Identity (with respect to documents)*: When referring to documents, to "identify" means to state the: (i) type of document; (ii) general subject matter; (iii) date of the document; and, (iv) author(s), addressee(s), and recipient(s) or, alternatively, to produce the document.

12. *Trademark/Mark*: The terms "trademark" or "mark" as used in these requests shall include trademarks, service marks, trade names, or any word or symbol utilized in connection with business activities.

13. *Applicant's Mark / Hexawave's Mark*: The terms "Applicant's mark" or "Hexawave's mark" refer to the mark as it appears in Trademark Application Serial No. 76/304,063.

14. *Opposer's Marks / Bose's Marks*: The terms "Opposer's marks" or "Bose's marks" refer to one or more of the marks as they appear in Trademark Registration Nos. 1,633,789; 1,764,183; 1,338,571; 2,464,181; and 2,493,186.

15. *Employee*: The term "Employee" refers to a person who has in the past or who does presently perform duties in furtherance of a party's operation or business under the party's control and direction.

16. *Sales/Sold:* The term "Sales" or "Sold" used in connection with goods or services refers to all revenues of a party generated in the course of its operation or business, including all fees for services performed, and all other monies received by the party as consideration from third party sources in the sale of the goods and services.

REQUESTS

REQUEST NO.1

Any and all documents that constitute, refer, or relate to your Answers to Applicant's First Set of Interrogatories to Opposer.

REQUEST NO.2

Any and all documents that constitute, refer, or relate to all statements (as that term is used in Fed. R. Civ. P. 26 (b)(3)) which were previously made by Opposer and any of its present or former directors, officers, elected officials, appointed officials or employees, concerning this Opposition, its subject matter, or Applicant.

REQUEST NO.3

Any and all documents that constitute, refer, or relate to any communication between any present or former director, officer, employee, representative, elected official, appointed official, or agent of Opposer and any person(s) concerning one or more of Opposer's marks.

REQUEST NO.4

Any and all documents that constitute, refer, or relate to any promotional advertising done by Opposer for any products bearing or associated with one or more of Opposer's marks.

REQUEST NO.5

Any and all documents that constitute, refer, or relate to distributors, sales representatives, retailers, or other manufacturers with which Opposer has entered into any agreement for the manufacture, sale, licensing, distribution, advertising, or promotion or other marketing in the United States of products bearing or associated with one or more of Opposer's marks.

REQUEST NO.6

Any and all documents that constitute, refer, or relate to the amount of money which Opposer has spent each year on advertising to promote in the United States products bearing or associated with one or more of Opposer's marks for the last ten (10) years.

REQUEST NO.7

Any and all documents that constitute, refer, or relate to the incorporation of any products bearing or associated with one or more of Opposer's marks within one or more goods manufactured by one or more other end manufacturers.

REQUEST NO.8

Any and all documents that constitute, refer, or relate to your allegations in paragraphs 5 and 6 of the Notice of Opposition that the use of Applicant's mark, as applied with its goods, so resembles Opposer's marks, as applied to their goods, as to be

“likely to cause confusion or cause mistake, or to deceive;” and, that registration of Applicant’s mark on the principle register “will cause injury and damage to Opposer.”

REQUEST NO.9

Any and all documents that constitute, refer, or relate to each and every instance Opposer is aware of in which a customer or prospective customer of products bearing or associated with one or more of Applicant’s marks has been confused, mistaken, or deceived regarding the origin of Applicant’s products.

REQUEST NO.10

Any and all documents that constitute, refer, or relate to each and every instance Opposer is aware of in which a customer or prospective customer of products bearing or associated with one or more of Opposer’s marks has been confused, mistaken, or deceived regarding the origin of Opposer’s products.

REQUEST NO.11

Any and all documents that constitute, refer, or relate to each and every injury which Opposer’s business reputation has suffered due to the use by Applicant or others of Applicant’s mark.

REQUEST NO.12

Any and all documents that constitute, refer, or relate to each and every effect which Opposer has sustained to its interstate use of Opposer's marks due to the use by Applicant or others of Applicant's mark.

REQUEST NO.13

Any and all documents that constitute, refer, or relate to each and every loss of sales which Opposer has suffered due to the use by Applicant or others of Applicant's mark.

REQUEST NO.14

Any and all documents that constitute, refer, or relate to Opposer's annual gross and net sales for products bearing or associated with one or more of Opposer's marks for the last ten (10) years in the United States, broken down by the demographic customer groups identified in Opposer's Answers to Applicant's First Set of Interrogatories.

REQUEST NO.15

Any and all documents that constitute, refer, or relate to communications or agreements with one or more other end manufacturers, or a representative thereof, regarding the incorporation, or prospective incorporation, of a product bearing or associated with one or more of Opposer's marks into one or more of the other end manufacturer's goods.

REQUEST NO.16

Any and all documents that constitute, refer, or relate to any current or prospective marketing or advertising materials for products bearing or associated with one or more of Opposer's marks, including representative samples thereof.

REQUEST NO.17

Representative samples or photographs of current or prospective products bearing or associated with one or more of Opposer's marks, including labels and packaging used or intended to be used in connection with such products or prospective products.

REQUEST NO.18

Any and all documents that constitute, refer, or relate to any descriptions and representative photographs of each of the products bearing or associated, or intended to bear or be associated with, one or more of Opposer's marks.

REQUEST NO.19

Any and all documents that constitute, refer, or relate to any use or proposed use of one or more of Opposer's marks, or confusingly similar variants thereof, by third parties without the authorization, consent, or agreement of Opposer.

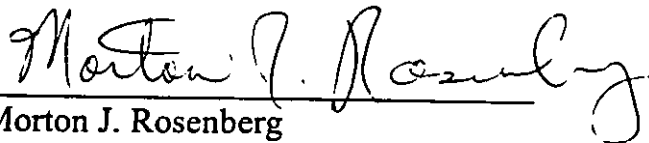
REQUEST NO.20

Any and all documents that constitute, refer, or relate to any and all protests made by Opposer to others, or by others to Opposer, based upon or related to Opposer's use or proposed use of one or more of Opposer's marks.

REQUEST NO.21

Any and all documents that constitute, refer or relate to any request or opinion of counsel relating to the adoption or use of one or more of Opposer's marks; any and all searches, surveys, and investigations in connection with one or more of Opposer's marks; any requests or opinion of counsel relating to Applicant's mark; and, any and all searches, surveys, and investigations relating to Applicant's mark.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Morton J. Rosenberg", written over a horizontal line.


Morton J. Rosenberg
ROSENBERG, KLEIN & LEE
3458 Ellicott Center Drive, Suite 101
Ellicott City, Maryland 21043
Telephone: 410-465-6678
Facsimile: 410-461-3067

Attorneys for Applicant,
HEXAWAVE, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January 2004 a true copy of the foregoing was both faxed and sent by Federal Express to the following counsel to the facsimile number and address set forth:

Charles Hieken, Esq.
Amy L. Brosius, Esq.
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804
(617)542-5070 (Telephone)
(617)542-8906 (Facsimile)



Jun-Y Lee

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

In the matter of Application Serial No. 76-304,063
For the Mark HEXAWAVE
Published in the Official Gazette on March 18, 2003 at TM 278

Bose Corporation,

Opposer,

v.

Hexawave, Inc.,

Applicant.

Opposition No. 91157315

**OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET TO REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS**

GENERAL OBJECTIONS

Opposer objects to Applicant's requests to the extent the definitions and instructions request Opposer to produce documents beyond the requirements of the Federal Rules of Civil Procedure and the Trademark Rules of Practice. Opposer will respond to Applicant's document requests in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

Opposer objects to Applicant's requests to the extent they call for documents and things that are protected by the attorney-client privilege, work-product doctrine, or other applicable privilege or immunity. Any production Opposer makes of such documents and things is inadvertent and shall not constitute a waiver of the applicable privilege or immunity as to such documents and things.

Request No. 1. Any documents that constitute, refer, or relate to your answers to Applicant's First Set of Interrogatories.

Response Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 2. Any and all documents that constitute, refer, or relate to all statements (as that term is used in Fed. R. Civ. P. 26(b)(3) which were previously made by Opposer and any of its present or former director, officers, elected officials, appointed officials, or employees, concerning this Opposition, its subject matter, or Applicant.

Response Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 3. Any and all documents that constitute, refer, or relate to any communications between any present or former director, officer, employee, representative, elected official, appointed official, or agent of Opposer and any person(s) concerning one or more of Opposer's marks.

Response Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges.

Request No. 4. Any and all documents that constitute, refer, or relate to any promotional advertising done by Opposer for any products bearing or associated with one or more of Opposer's Marks.

Response Opposer objects to this request to the extent it is overly broad and unduly burdensome. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 5. Any and all documents that constitute, refer, or relate to distributors, sales representatives, retailers, or other manufacturers with which Opposer has entered into any agreement for the manufacture, sale, licensing, distribution, advertising, or promotion or other marketing in the United States of products bearing or associated with one or more of Opposer's marks.

Response Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 6. Any and all documents that constitute, refer, or relate to the amount of money which Opposer has spent each year on advertising to promote in the United States products bearing or associated with one of more of Opposer's marks for the last ten (10) years.

Response Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 7. Any and all documents that constitute, refer, or relate to the incorporation of any products bearing or associated with one or more of Opposer's marks within one or more goods manufactured by one or more other end manufacturers.

Response Opposer objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 8. Any and all documents that constitute, refer, or relate to your allegations in Paragraph 5 and 6 of the Notice of Opposition that the use of Applicant's mark as applied with its goods, so resembles Opposer's marks, as applied to their goods, as to be "likely to cause confusion, mistake or to deceive," and that registration of Applicant's mark on the principal register "will cause injury and damage to Opposer."

Response Opposer objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to

this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 9. Any and all documents that constitute, refer, or relate to each and every instance Opposer is aware of in which a customer or prospective customer of products bearing or associated with one or more of applicant's marks has been confused, mistaken, or deceived regarding the origin of Applicant's products.

Response Opposer objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Opposer responds as follows: There are responsive documents.

Request No. 10. Any and all documents that constitute, refer, or relate to each and every instance Opposer is aware of in which a customer or prospective customer of products bearing or associated with one or more of Opposer's marks has been confused, mistaken, or deceived regarding the origin of Opposer's products.

Response Opposer objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Opposer responds as follows: There are responsive documents.

Request No. 11. Any and all documents that constitute, refer, or relate to each and every injury which Opposer's business reputation has suffered due to the use by Applicant or others of Applicant's mark.

Response Opposer objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges.

Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 12. Any and all documents that constitute, refer, or relate to each and every effect which Opposer has sustained to its interstate use of Opposer's marks due to the use by Applicant or others of Applicant's mark.

Response Opposer objects to this request on the basis that it is unintelligible.

Request No. 13. Any and all documents that constitute, refer, or relate to each and every loss of sales which Opposer has suffered due to the use by Applicant or others of Applicant's mark.

Response Opposer objects to this request on the basis that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 14. Any and all documents that constitute, refer, or relate to Opposer's annual gross and net sales for products bearing or associated with one or more of Opposer's mark for the last ten (10) years in the United States, broken down by the demographic customer groups identified in Opposer's Answer to Applicant's First Set of Interrogatories.

Response Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 15. Any and all documents that constitute, refer, or relate to communications or agreements with one or more other end manufacturers, or a representative thereof, regarding the incorporation, or prospective incorporation, of a product bearing or

associated with one or more of Opposer's marks into one or more of the other end manufacturer's goods.

Response Opposer objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 16. Any and all documents that constitute, refer, or relate to any current or prospective marketing or advertising materials for products bearing or associated with one or more of Opposer's marks, including representative samples thereof.

Response Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 17. Representative samples or photographs of current or prospective products bearing or associated with one of more of Opposer's marks, including labels and packaging used or intended to be used in connection with such products or prospective products.

Response Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 18. Any and all documents that constitute, refer, or relate to any descriptions and representative photographs of each of the products bearing or associated, or intended to be associated with, one or more of Opposer's marks.

Response Opposer objects to this request to the extent it is vague, irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 19. Any and all documents that constitute, refer, or relate to any use or proposed use of one of more of Opposer's marks, or confusingly similar variants thereof, by third parties without the authorization, consent, or agreement of Opposer.

Response Opposer objects to this request to the extent it is overly broad and unduly burdensome. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 20. Any and all documents that constitute, refer, or relate to any and all protests made by Opposer to others, or by others to Opposer, based upon or related to Opposer's use of proposed use of one or more of Opposer's marks.

Response Opposer objects to this request to the extent it is overly broad and unduly burdensome. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the

extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

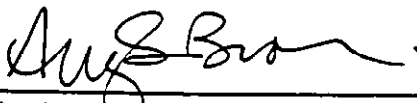
Request No. 21. Any and all documents that constitute, refer, or relate to any requests or opinion of counsel relating to the adoption or use of one or more of Opposer's mark; any and all searches, surveys, and investigations in connection with one of more of Opposer's marks; any requests or opinion of counsel relating to Applicant's marks; and any and all searches, surveys, and investigations relating to Applicant's mark.

Response Opposer objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, and upon entry of a suitable protective order, representative, responsive, non-privileged documents, to the extent they exist and are in Opposer's custody, will be made available for inspection and copying at Fish & Richardson's Boston office at a mutually agreeable date and time.

Respectfully submitted,

Date: _____

3/1/04



Charles Hicken
Amy L. Brosius
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

Attorneys for Opposer,
BOSE CORPORATION

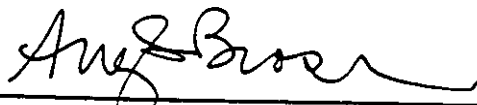
Applicant : Hexawave, Inc.
Serial No. : 76-304,063
Filed: : August 24, 2004
Mark : HEXAWAVE
Page : 10

Attorney's Docket No.: 02103-008PP1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS has this 1ST day of March 2004 been mailed by prepaid first class mail to the below-identified Attorney at his/her place of business:

Morton J. Rosenberg, Esq.
Rosenberg, Klein & Lee
3458 Ellicott Center Drive, Suite 101
Ellicott City, MD 21043-4178



Amy L. Brosius

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

In the matter of Application Serial No. 76-304,063
For the Mark HEXAWAVE
Published in the Official Gazette on March 18, 2003 at TM 278

Bose Corporation,

Bose,

v.

Hexawave, Inc.,

Applicant.

Opposition No. 91157315

**BOSE'S SUPPLEMENTAL 5/14/04 RESPONSE TO APPLICANT'S FIRST SET
TO REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

GENERAL OBJECTIONS

Bose objects to Applicant's requests to the extent the definitions and instructions request Bose to produce documents beyond the requirements of the Federal Rules of Civil Procedure and the Trademark Rules of Practice. Bose will respond to Applicant's document requests in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

Bose objects to Applicant's requests to the extent they call for documents and things that are protected by the attorney-client privilege, work-product doctrine, or other applicable privilege or immunity. Any production Bose makes of such documents and things is inadvertent and shall not constitute a waiver of the applicable privilege or immunity as to such documents and things.

Applicant : Hexawave, Inc.
Serial No. : 76-304.063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 2

Attorney's Docket No.: 02103-008PP1

REQUESTS

Request No. 1. Any documents that constitute, refer, or relate to your answers to Applicant's First Set of Interrogatories.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant.

Request No. 2. Any and all documents that constitute, refer, or relate to all statements (as that term is used in Fed. R. Civ. P. 26(b)(3)) which were previously made by Opposer and any of its present or former director, officers, elected officials, appointed officials, or employees, concerning this Opposition, its subject matter, or Applicant.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 3. Any and all documents that constitute, refer, or relate to any communications between any present or former director, officer, employee, representative, elected official, appointed official, or agent of Bose and any person(s) concerning one or more of Bose's marks.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, where the request is not limited to a particular subject matter or time period. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges.

Request No. 4. Any and all documents that constitute, refer, or relate to any promotional advertising done by Bose for any products bearing or associated with one or more of Bose's Marks.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is overly broad and unduly burdensome. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 5. Any and all documents that constitute, refer, or relate to distributors, sales representatives, retailers, or other manufacturers with which Bose has entered into any agreement for the manufacture, sale, licensing, distribution, advertising, or promotion or other

Applicant : Hexawave, Inc.
Serial No. : 76-304,063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 4

Attorney's Docket No.: 02103-00SPP1

marketing in the United States of products bearing or associated with one or more of Bose's marks.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 6. Any and all documents that constitute, refer, or relate to the amount of money which Bose has spent each year on advertising to promote in the United States products bearing or associated with one of more of Bose's marks for the last ten (10) years.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 7. Any and all documents that constitute, refer, or relate to the incorporation of any products bearing or associated with one or more of Bose's marks within one or more goods manufactured by one or more other end manufacturers.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 8. Any and all documents that constitute, refer, or relate to your allegations in Paragraph 5 and 6 of the Notice of Opposition that the use of Applicant's mark as applied with its goods, so resembles Bose's marks, as applied to their goods, as to be "likely to cause confusion, mistake or to deceive," and that registration of Applicant's mark on the principal register "will cause injury and damage to Bose."

Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 9. Any and all documents that constitute, refer, or relate to each and every instance Bose is aware of in which a customer or prospective customer of products bearing or associated with one or more of applicant's marks has been confused, mistaken, or deceived regarding the origin of Applicant's products.

Supplemental 5/14/04 Response Bose objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Bose responds as follows: There are responsive documents.

Request No. 10. Any and all documents that constitute, refer, or relate to each and every instance Bose is aware of in which a customer or prospective customer of products bearing or associated with one or more of Bose's marks has been confused, mistaken, or deceived regarding the origin of Bose's products.

Supplemental 5/14/04 Response Bose objects to this request to the extent it requests documents containing confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Bose responds as follows: There are responsive documents.

Request No. 11. Any and all documents that constitute, refer, or relate to each and every injury which Bose's business reputation has suffered due to the use by Applicant or others of Applicant's mark.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client

Applicant : Hexawave, Inc.
Serial No. : 76-304,063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : -

Attorney's Docket No.: 02103-00SPP1

and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 12. Any and all documents that constitute, refer, or relate to each and every effect which Bose has sustained to its interstate use of Bose's marks due to the use by Applicant or others of Applicant's mark.

Supplemental 5/14/04 Response Bose objects to this request on the basis that it is unintelligible.

Request No. 13. Any and all documents that constitute, refer, or relate to each and every loss of sales which Bose has suffered due to the use by Applicant or others of Applicant's mark.

Supplemental 5/14/04 Response Bose objects to this request on the basis that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 14. Any and all documents that constitute, refer, or relate to Bose's annual gross and net sales for products bearing or associated with one or more of Bose's mark for the last ten (10) years in the United States, broken down by the demographic customer groups identified in Bose's Answer to Applicant's First Set of Interrogatories.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges.

Applicant : Hexawave, Inc.
Serial No. : 76-304,063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 8

Attorney's Docket No.: 02103-008PPI

Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 15. Any and all documents that constitute, refer, or relate to communications or agreements with one or more other end manufacturers, or a representative thereof, regarding the incorporation, or prospective incorporation, of a product bearing or associated with one or more of Bose's marks into one or more of the other end manufacturer's goods.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 16. Any and all documents that constitute, refer, or relate to any current or prospective marketing or advertising materials for products bearing or associated with one or more of Bose's marks, including representative samples thereof.

Supplemental 5/14/04 Response Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents,

to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 17. Representative samples or photographs of current or prospective products bearing or associated with one of more of Bose's marks, including labels and packaging used or intended to be used in connection with such products or prospective products.

Supplemental 5/14/04 Response Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 18. Any and all documents that constitute, refer, or relate to any descriptions and representative photographs of each of the products bearing or associated, or intended to be associated with, one or more of Bose's marks.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is vague, irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for

inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 19. Any and all documents that constitute, refer, or relate to any use or proposed use of one of more of Bose's marks, or confusingly similar variants thereof, by third parties without the authorization, consent, or agreement of Bose.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is overly broad and unduly burdensome. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Request No. 20. Any and all documents that constitute, refer, or relate to any and all protests made by Bose to others, or by others to Bose, based upon or related to Bose's use of proposed use of one or more of Bose's marks.

Supplemental 5/14/04 Response Bose objects to this request to the extent it is overly broad and unduly burdensome. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Applicant : Hexawave, Inc.
Serial No. : 76-304,063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 11

Attorney's Docket No.: 02103-00SPP1

Request No. 21. Any and all documents that constitute, refer, or relate to any requests or opinion of counsel relating to the adoption or use of one or more of Bose's mark; any and all searches, surveys, and investigations in connection with one or more of Bose's marks; any requests or opinion of counsel relating to Applicant's marks; and any and all searches, surveys, and investigations relating to Applicant's mark.

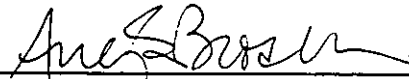
Supplemental 5/14/04 Response Bose objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests documents protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged documents, to the extent they exist and are in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Applicant : Hexawave, Inc.
Serial No : 76-304,063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 12

Attorney's Docket No.: 02103-00SPP1

Respectfully submitted,

Date: 5/14/04



Amy L. Brosius
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

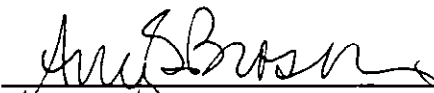
Attorneys for Bose,
BOSE CORPORATION

20862569.doc

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **BOSE'S SUPPLEMENTAL 5/14/04 RESPONSE TO APPLICANT'S FIRST SET TO REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS** has this 14th day of May 2004, been mailed by prepaid first class mail to the below-identified Attorney at his/her place of business:

Morton J. Rosenberg, Esq.
Rosenberg, Klein & Lee
3458 Ellicott Center Drive, Suite 101
Ellicott City, MD 21043-4178



Amy L. Brosius

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

Bose Corporation,	*	
	*	
Opposer,	*	
	*	
v.	*	Opposition No. 91157315
	*	
Hexawave, Inc.	*	
	*	
Applicant.	*	

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and Trademark Rules of Practice 37 CFR §§ 2.116 and 2.120, Applicant, Hexawave, Inc., by its undersigned attorneys, propounds the following Interrogatories, to which Opposer, Bose Corporation, shall respond separately and fully, in writing and under oath, within thirty (30) days from the date of service, in accordance with the Instructions and Definitions set forth hereinafter.

INSTRUCTIONS

1. These instructions and definitions should be construed to require answers based upon the knowledge of, and information available to, the responding party as well as its agents, representatives, and unless privileged, attorneys. It is intended that the following discovery requests will not solicit any material protected either by the attorney/client privilege or work product doctrine which was created by, or developed by, counsel for the responding party after the date on which this Opposition was commenced. If the

responding party objects to any request on such basis, the responding party shall so indicate and clearly set forth regarding the material claimed to be protected the information set forth in Fed. R. Civ. 26(b)(5), including the type of material, the general subject matter of the material, the date of the material, and such other information as is sufficient to identify the material, including where appropriate the author, addressee, custodian, and any other recipient of the material, and where not apparent the relationship of the author, addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable this party to assess the applicability of the privilege or protection claimed.

2. These Interrogatories are continuing in character, so as to require that supplemental answers to be filed seasonably if further or different information is obtained with respect to any interrogatory.

3. No part of an interrogatory should be left unanswered merely because an objection is interposed to another part of the interrogatory. If a partial or incomplete answer is provided, the responding party shall state that the answer is partial or incomplete.

4. Where a claim of privilege is asserted in objecting to any interrogatory or part thereof, and information is not provided on the basis of such assertion:

a. In asserting the privilege, the responding party shall, in the objection to the interrogatory, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed;

b. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information,

(1) For oral communications:

i. the name of the person making the communication and the names of persons present while the communication was made, and, where not apparent, the relationship of the persons present to the person making the communication;

ii. the date and place of the communication; and

iii. the general subject matter of the communication.

(2) For documents:

i. the type of document,

ii. the general subject matter of the document,

iii. the date of the document, and

iv. such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other.

5. If the responding party elects to specify and produce business records in answer to any interrogatory, the specification shall be in sufficient detail to permit the

interrogating party to locate and identify, as readily as the responding party can, the business records from which the answer may be ascertained.

6. If, in answering these interrogatories, the responding party encounters any ambiguities when construing a question, instruction, or definition, the responding party's answer shall set forth the matter deemed ambiguous and the construction used in answering.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in these Interrogatories is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure and the Trademark Rules of Practice. As used in these Interrogatories, the following terms are to be interpreted in accordance with these definitions:

1. *Communication*: The term "communication" means the transmittal of information by any means.

2. *Concerning; Relate to; Relating to; Relates to*: The terms "concerning," "relate to," "relating to," or "relates to" shall be construed broadly to mean and include evidencing, constituting, referring to, comprising, illustrating, recording, memorializing, discussing, or describing, supporting, embodying, setting forth, alluding to, responding to, connected with, commencing on, in respect of, regarding, about, showing, mentioning, analyzing, or reflecting.

3. *Document:* The terms “document” and “documents” are defined to be synonymous in meaning and equal in scope to the usage of the term “documents” in Fed. R. Civ. P. 34(a) and include(s) the term “writing.” Unless expressly precluded by the Federal Rules of Civil Procedure or the Trademark Rules of Practice, electronic mail is included within the definition of the term “document.” The terms “writings,” “recordings,” and “photographs” are defined to be synonymous in meaning and equal in scope to the usage of those terms in Fed. R. Evid. 1001. A draft or non-identical copy is a separate document within the meaning of the term “document.”

4. *Applicant:* The term “Applicant” refers to Hexawave, Inc., and, where applicable, its officers, directors, employees, partners, agents, corporate parent, subsidiaries, including subsidiaries of a corporate parent, affiliates, predecessors or successors, attorneys, representatives, assigns, and persons having a duty of loyalty to Hexawave, Inc.

5. *Opposer:* The term “Opposer” refers to Bose Corporation, and, where applicable, its officers, directors, employees, partners, agents, corporate parent, subsidiaries, including subsidiaries of a corporate parent, affiliates, predecessors or successors, attorneys, representatives, assigns, and persons having a duty of loyalty to Bose Corporation. This definition is not intended to impose a discovery obligation on any person who is not a party to this Opposition.

6. *Person:* The term “person” is defined as any natural person or any business, legal or governmental entity, or association.

7. *You/Your*: The terms "you" or "your" include the person(s) to whom a discovery request is addressed, and all of that person's agents, elected officials, appointed officials, representatives, and attorneys.

8. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all;" "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." Words in the masculine, feminine, or neuter form shall include each of the other genders.

9. *Identify/Identity (with respect to persons)*: When referring to a person, to "identify" means to state the person's full name, present or last known address, and, when referring to a natural person, additionally, the present or last known place of employment. If the business and home telephone numbers are known to the answering party, and if the person is not a party or present employee of a party, said telephone numbers shall be provided. Once a person has been identified in accordance with this subparagraph, only the name of the person need be listed in response to subsequent discovery requesting the identification of that person.

10. *Identify/Identity (with respect to corporate entities, legal or governmental entity, or other business associations)*: When referring to a corporate entity, legal or governmental entity, or other business association, to "identify" means to state the entity's full legal name; the complete address (including street number; city or town; state, province, or territory; and, country) of all business locations of the entity throughout the

United States and in foreign countries; the date and complete address of the entity's first place of business; the date when the entity engaged in business at each subsequent place of business; the date(s) and state(s) of incorporation of the entity; the identity of each past and present officer and each past and present director of the entity and, if known, all other corporation(s) of which the officer/director is or was an officer or director.

11. *Identify/Identity (with respect to documents)*: When referring to documents, to "identify" means to state the: (i) type of document; (ii) general subject matter; (iii) date of the document; and, (iv) author(s), addressee(s), and recipient(s) or, alternatively, to produce the document.

12. *Trademark/Mark*: The terms "trademark" or "mark" as used in these interrogatories shall include trademarks, service marks, trade names, or any word or symbol utilized in connection with business activities.

13. *Applicant's Mark / Hexawave's Mark*: The terms "Applicant's mark" or "Hexawave's mark" refer to the mark as it appears in Trademark Application Serial No. 76/304,063.

14. *Opposer's Marks / Bose's Marks*: The terms "Opposer's marks" or "Bose's marks" refer to one or more of the marks as they appear in Trademark Registration Nos. 1,633,789; 1,764,183; 1,338,571; 2,464,181; and 2,493,186.

15. *Employee*: The term "Employee" refers to a person who has in the past or who does presently perform duties in furtherance of a party's operation or business under the party's control and direction.

16. *Sales/Sold:* The term "Sales" or "Sold" used in connection with goods or services refers to all revenues of a party generated in the course of its operation or business, including all fees for services performed, and all other monies received by the party as consideration from third party sources in the sale of the goods and services.

INTERROGATORIES

INTERROGATORY NO. 1

Identify all persons with knowledge of any facts relating to the allegations set forth in the Notice of Opposition. For each person identified, set forth his/her name, address, current telephone number, title, and/or affiliation with Opposer, and the subjects upon which he/she has knowledge.

INTERROGATORY NO. 2

Identify each and every search that Opposer performed or had performed for it relating to any of Opposer's marks or to Applicant's mark. Identify all marks or trade names comprising or including the term "WAVE" known to Opposer, and describe for each mark or trade name identified Opposer's ownership interest, if any.

INTERROGATORY NO. 3

Identify and provide a detailed description of each and every product manufactured, licensed, sold by or on behalf of Opposer, or marketed by or on behalf of Opposer since the inception of Opposer's business that bear Opposer's marks, and/or that Opposer intends to manufacture, license, sell, market, have sold, or have marketed that bear or are associated with one or more of Opposer's marks. Include in the identification the model number or other identifying designation, if any, for the product.

INTERROGATORY NO. 4

Identify with specificity all promotional advertising done by Opposer, or by a person on behalf of Opposer, for the product or products identified in Interrogatory 3.

INTERROGATORY NO. 5

Indicate all geographical areas in which products bearing one or more of Opposer's marks are sold, distributed, advertised, or otherwise marketed.

INTERROGATORY NO. 6

Describe the demographics of all customers or prospective customers for each of the products identified in your answer to Interrogatory No. 3, and the channels of trade through which such products reach or are intended to reach those customers/prospective customers following their manufacture.

INTERROGATORY NO. 7

Identify the amount of money Opposer has spent each year on its advertising to promote the sales and/or distribution in the United States of the products identified in your answer to Interrogatory No. 3 for the last ten (10) years. In connection with your answer, identify each form of media which Opposer has used for advertising each product.

INTERROGATORY NO. 8

For each product identified in your answer to Interrogatory No. 3, describe all retail outlets or other channels of trade through which the product is sold or marketed to individual consumers. In connection with your answer, identify for each product:

- a. each of the Opposer's marks used on or in association with the product;
and,
- b. the precise location and manner in which the mark, or marks, is affixed on
or in association with the product.

INTERROGATORY NO. 9

Identify each and every instance that Opposer is aware of in which any person has been confused, mistaken, or deceived regarding the origin of Applicant's products, or of any products bearing Applicant's mark. In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer, or relate to any facts set forth in your answer.

INTERROGATORY NO. 10

State in detail and with particularity each and every fact upon which you rely in support of your allegations in paragraphs 5 and 6 of the Notice of Opposition that the use of Applicant's mark, as applied to its goods, so resembles Opposer's marks, as applied to their goods, as to be "likely to cause confusion or cause mistake, or to deceive;" and, that registration of Applicant's mark on the principle register "will cause injury and damage

to Opposer.” In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer, or relate to any facts set forth in your answer.

INTERROGATORY NO. 11

Identify in detail and with particularity each and every effect which Opposer has sustained to its interstate use of Opposer’s marks as a result of Applicant’s use of Applicant’s mark, including the date on which each injury occurred and the monetary value, if any, associated with each injury. In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer, or relate to any facts set forth in your answer.

INTERROGATORY NO. 12

For the last ten (10) years, state Opposer’s annual gross and net sales in the United States for the products identified in your answer to Interrogatory No. 3, broken down by each demographic group of customers or prospective customers identified in your answer to Interrogatory No. 6. In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer to, or relate to any facts set forth in your answer.

INTERROGATORY NO. 13

Identify in detail and with particularity any and all surveys, polls, or market research studies that Opposer is aware of, which relate to the issues in this Opposition,

including the issue of likelihood of confusion between Applicant's mark and one or more of Opposer's marks, or as to the source of Applicant's or Opposer's products, or as to the existence of any affiliation or connection between Opposer and Applicant. In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer, or relate to any facts set forth in your answer.

INTERROGATORY NO. 14

Identify each and every past or pending litigation or administrative proceeding concerning one or more of Opposer's marks, or any mark alleged to be confusingly similar to one or more of Opposer's marks. For each litigation or proceeding:

- a. state its full identifying information, including the names of all parties, dates of commencement and any rendered decision, docket number, and the court or administrative body in which it is/was pending;
- b. the nature of the controversy or matter(s) at issue; and
- c. the final resolution or current status.

INTERROGATORY NO. 15

Identify any and all distributors, retail outlets, or marketing sources through which any of the products identified in your answer to Interrogatory No. 3 is sold, advertised, or otherwise marketed to consumers. In connection with your answer, identify with specificity the product(s) so sold, advertised, or marketed, and the mark(s) used on or in association with that product(s).

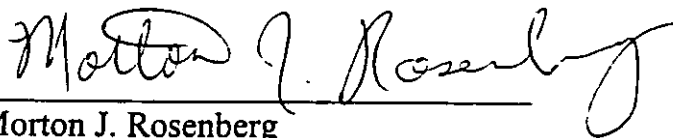
INTERROGATORY NO. 16

Identify any and all other end manufacturers which incorporate in one or more of their goods any of the products identified in your answer to Interrogatory No. 3. In connection with your answer, identify with specificity each of the other end manufacturers' goods; the product(s) incorporated or prospectively incorporated in such goods; and, the mark(s) used on or in association with that product(s).

INTERROGATORY NO. 17

Identify each person who assisted in providing answers to these Interrogatories, noting with specificity the Interrogatory numbers for which he or she supplied information.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Morton J. Rosenberg", is written over a horizontal line.

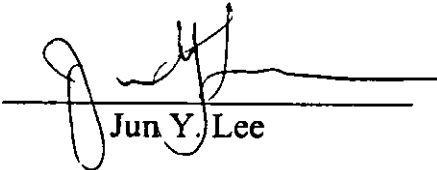
Morton J. Rosenberg
ROSENBERG, KLEIN & LEE
3458 Ellicott Center Drive, Suite 101
Ellicott City, Maryland 21043
Telephone: 410-465-6678
Facsimile: 410-461-3067

Attorneys for Applicant,
HEXAWAVE, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January 2004 a true copy of the foregoing was both faxed and sent by Federal Express to the following counsel to the facsimile number and address set forth:

Charles Hieken, Esq.
Amy L. Brosius, Esq.
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804
(617)542-5070 (Telephone)
(617)542-8906 (Facsimile)



Jun Y. Lee

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

In the matter of Application Serial No. 76-304,063
For the Mark HEXAWAVE
Published in the Official Gazette on March 18, 2003 at TM 278

Bose Corporation,

Opposer,

v.

Hexawave, Inc.,

Applicant.

Opposition No. 91157315

OPPOSER'S RESPONSE TO APPLICANT'S INTERROGATORIES

GENERAL OBJECTIONS

Opposer objects to Applicant's First Set of Interrogatories To Opposer to the extent the definitions and instructions request Opposer to provide information beyond the requirements of the Federal Rules of Civil Procedure and the Trademark Rules of Practice. Opposer will respond to Applicant's Interrogatories in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice. Opposer also objects to Applicant's Interrogatories to the extent they call for information that is protected by attorney-client privilege, work-product doctrine or other applicable privilege or immunity. Any disclosure Opposer makes of such information is inadvertent and shall not constitute a waiver of the applicable privilege of immunity as to such information.

Interrogatory No. 1. Identify all persons with knowledge of any facts relating to the allegations set forth in the Notice of Opposition. For each person identified, set forth his/her name, current telephone number, title and/or affiliation with Opposer, and the subjects upon which he/she has knowledge.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 2. Identify each and every search that Opposer performed or had performed for it relating to any of Opposer's marks or to Applicant's mark. Identify all marks or trade names comprising or including the term "WAVE" known to Opposer, and describe for each mark or trade name identified in Opposer's ownership interest, if any.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Opposer refers to its Notice of Opposition. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 3. Identify and provide a detailed description of each and every product manufactured, licensed sold by or on behalf of Opposer, or marketed by or on behalf of Opposer since the inception of Opposer's business that bear Opposer's marks, and/or that Opposer intends to manufacture, license, sell, market, have sold, or have marketed that bear or are associated with one or more of Opposer's marks. Include in the identification the model number or other identifying designation, if any, for the product.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Opposer refers to its Notice of Opposition. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 4. Identify with specificity all promotional advertising done by Opposer, or by a person by or on behalf of Opposer, for the product or products identified in Interrogatory No. 3.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 5. Indicate all geographical area in which products bearing one or more of Opposer's marks are sold, distributed, advertised or otherwise marketed.

Response Opposer's products are sold worldwide.

Interrogatory No. 6. Describe the demographics of all customers or prospective customers for each of the products identified in your answer to Interrogatory No. 3, and the channels of trade through which such products reach or are intended to reach those customers/prospective customers following their manufacture.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or

attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 7. Identify the amount of money Opposer has spent each year on its advertising to promote the sales and/or distribution in the United States of the products identified in your answer to Interrogatory No. 3 for the last ten (10) years. In connection with your answer, identify each form of media which Opposer has used for advertising each product.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 8. For each product identified in your answer to Interrogatory No. 3, describe all retail outlets or other channels of trade through which the product is sold or marketed to individual customers. In connection with your answer, identify for each product:

- (a) each of the Opposer's marks used on or in association with the product; and
- (b) the precise location and manner in which the mark, or marks, is affixed on or in association with the product.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 9. Identify each and every instance that Opposer is aware of in which any person has been confused, mistaken, or deceived regarding the origin of Applicant's

products, or of any products bearing Applicant's marks. In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer, or relate to any facts set forth in your answer.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 10. State in detail and with particularity each and every fact upon which you rely in support of your allegations in paragraphs 5 and 6 of the Notice of Oppositions that the use of Applicant's marks, as applied to its goods, so resembles Opposer's marks, as applied to their goods, as to be "likely to cause confusion or cause mistake, or to deceive," and that registration of Applicant's mark on the principal register "will cause injury and damage to Opposer." In connection with your answer, identify all persons with knowledge of and all document which constitute, refer, or relate to any facts set forth in your answer.

Response: Opposer objects to this request to the extent it requests information consisting of information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Opposer identifies the goods identified in Applicant's Application Serial No. 76/304,063, the goods identified in Opposer's Registration Nos. 1,633,789; 1,764,183; 1,338,571; 2,464,181; and 2,493,186, and the Federal Circuit Court of Appeals decision in Bose Corp. v. OSC Audio Products, 293 F.3d 1367, 63 U.S.P.Q.2d 1303 (Fed. Cir. 2002).

Interrogatory No. 11. Identify in detail and with particularity each and every effect which Opposer has sustained to its interstate use of Opposer's marks as a result of Applicant's use of Applicant's mark including the date on which each injury occurred, and the monetary value if any, associated with each injury. In connection with your answer, identify all persons

with knowledge of and all documents which constitute, refer, or relate to any facts set forth in your answer.

Response: Opposer objects to this request on the basis that it is vague and unintelligible. To the extent Opposer understands this request, Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 12. For the last ten (10) years, state Opposer's annual gross and net sales in the United States for the products identified in your answer to Interrogatory No. 3, broken down by each demographic group of customers or prospective customers identified in your answer to Interrogatory No. 6. In connection with your answer, identify all persons with knowledge of and all document which constitute, refer to, or relate to any facts set forth in your answer.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 13. Identify in detail and with particularity any and all surveys, polls, or market research studies that Opposer is aware of, which relate to the issues in this Opposition, including the issue of likelihood of confusion between Applicant's mark and one or more of Opposer's marks, or as to the source of Applicant's or Opposer's products, or as to the existence of any affiliation or connection between Opposer and Applicant. In connection with

your answer, identify all persona with knowledge of and all documents which constitute, refer to, or relate to any facts set forth in your answer.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Opposer responds as follows: None.

Interrogatory No. 14. Identify each and every past or pending litigation or administrative proceeding concerning one or more of Opposer's mark, or any mark alleged to be confusingly similar to one or more of Opposer's marks. For each litigation or proceeding:

- (a) state its full identifying information, including the names of all parties, dates of commencement and any rendered decision, docket number, and the court or administrative body in which it is/was pending;
- (b) the nature of the controversy or matter(s) at issue; and
- (c) the final resolution or current status.

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, is being collected and will be provided shortly in a supplemental response.

Interrogatory No. 15. Identify any and all distributors, retail outlets, or marketing sources through which any of the products identified in your answer to Interrogatory No. 3 is sold, advertised, or otherwise marketed to consumers. In connection with your answer, identify with specificity the product(s) so sold, advertised, or marketed, and the mark(s) used on or in association with that product(s).

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting

of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

--
Interrogatory No. 16. Identify any and all other end manufacturers which incorporate in one or more of their goods any of the products identified in your answer to Interrogatory No. 3. In connection with your answer, identify with specificity each of the other end manufacturers' goods; the product(s) incorporated or prospectively incorporated in such goods; and, the mark(s) used on or in connection with that product(s).

Response: Opposer objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it requests information consisting of confidential business information and/or information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, will be provided upon entry of a suitable protective order.

Interrogatory No. 17. Identify each person who assisted in providing answers to these interrogatories, noting with specificity the Interrogatory numbers for which he or she supplied information.

Response: Opposer objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Applicant : Hexawave, Inc.
Serial No. : 76-304,063
Filed: : August 24, 2004
Mark : HEXAWAVE
Page : 9

Attorney's Docket No.: 02103-008PP1

Respectfully submitted,

Date: 3/1/04



Charles Hieken
Amy L. Brosius
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

Attorneys for Opposer,
BOSE CORPORATION

20814852.doc

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES has this 1ST day of March 2004, been mailed by prepaid first class mail to the below-identified Attorney at his/her place of business:

Morton J. Rosenberg, Esq.
Rosenberg, Klein & Lee
3458 Ellicott Center Drive, Suite 101
Ellicott City, MD 21043-4178



Amy L. Brosius

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

In the matter of Application Serial No. 76-304,063
For the Mark HEXAWAVE
Published in the Official Gazette on March 18, 2003 at TM 278

Bose Corporation,

Opposer,

v.

Hexawave, Inc.,

Applicant.

Opposition No. 91157315

**BOSE'S SUPPLEMENTAL 5/14/04 RESPONSES TO APPLICANT'S
INTERROGATORIES**

GENERAL OBJECTIONS

Opposer, Bose Corporation ("Bose") continues its objections to Applicant's First Set of Interrogatories To Opposer to the extent the definitions and instructions request that Bose provide information beyond the requirements of the Federal Rules of Civil Procedure and the Trademark Rules of Practice. Bose will respond to Applicant's Interrogatories in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice. Bose also objects to Applicant's Interrogatories to the extent they call for information that is protected by attorney-client privilege, work-product doctrine or other applicable privilege or immunity. Any disclosure Bose makes of such information is inadvertent and shall not constitute a waiver of the applicable privilege of immunity as to such information.

Interrogatory No. 1. Identify all persons with knowledge of any facts relating to the allegations set forth in the Notice of Opposition. For each person identified, set forth his/her name, current telephone number, title and/or affiliation with Opposer, and the subjects upon which he/she has knowledge.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, where discovery is now closed. Subject to the foregoing objections, Bose identifies John Mar, Director Marketing, Automotive Systems Division at Bose Corporation. Mr. Mar has knowledge of the issues involved in this proceeding, including but not limited to, Bose's marks, sales, advertising and general knowledge of the industries and products at issue in this proceeding.

Interrogatory No. 2. Identify each and every search that Opposer performed or had performed for it relating to any of Opposer's marks or to Applicant's mark. Identify all marks or trade names comprising or including the term "WAVE" known to Opposer, and describe for each mark or trade name identified in Opposer's ownership interest, if any.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges.

Notwithstanding the foregoing objections, Bose refers to its Notice of Opposition and also identifies the following trademarks owned by Bose:

ACOUSTIC WAVE - REG. NO. 1,338,571

Applicant : Hexawave, Inc.
Serial No. : 76-304.063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 3

Attorney's Docket No.: 02103-00SPP1

ACOUSTIC WAVE - REG. NO. 1,764,183

ACOUSTIC WAVE CANNON

PROFESSIONAL WAVE - REG. NO. 2,464,181

WAVE - REG. NO. 1,633,789

SONIWAVE - REG. NO. 2,235,620

WAVESYNC - REG. NO. 2,493,186

WAVE/PC - REG. NO. 2,552,385

BIG WAVE - Reg. No. 2,572,548

WAVESERVER - Reg. No. 2139094

WAVES and Design - Reg. No. 2,275,136

THE LAST WAVE - Reg. No. 2,659,979

Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information in the form of documents and things, to the extent it exists and is in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Interrogatory No. 3. Identify and provide a detailed description of each and every product manufactured, licensed sold by or on behalf of Opposer, or marketed by or on behalf of Opposer since the inception of Opposer's business that bear Opposer's marks, and/or that Opposer intends to manufacture, license, sell, market, have sold, or have marketed that bear or are associated with one or more of Opposer's marks. Include in the identification the model number or other identifying designation, if any, for the product.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Bose refers to its Notice of Opposition and to relevant, representative, responsive, non-privileged information in the form of documents and things, to the extent it exists and is in Bose's custody and control, that Bose will make available to Applicant for inspection at Fish & Richardson's Boston office at a mutually agreeable date and time.

Interrogatory No. 4. Identify with specificity all promotional advertising done by Opposer, or by a person by or on behalf of Opposer, for the product or products identified in Interrogatory No. 3.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information in the form of documents and things, to the extent it exists and is in Bose's custody and control, will be made available to Applicant for inspection at Fish & Richardson's Boston office at a mutually agreeable date and time.

Interrogatory No. 5. Indicate all geographical area in which products bearing one or more of Opposer's marks are sold, distributed, advertised or otherwise marketed.

Applicant : Hexawave, Inc.
Serial No. : 76-304,063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 5

Attorney's Docket No.: 02103-008PP1

Supplemental 5/14/04 Response Bose's products are sold worldwide.

Interrogatory No. 6. Describe the demographics of all customers or prospective customers for each of the products identified in your answer to Interrogatory No. 3, and the channels of trade through which such products reach or are intended to reach those customers/prospective customers following their manufacture.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges.

Notwithstanding the foregoing objections, Bose responds as follows:

Petitioner identifies the following as representative of the classes of ultimate users, consumers, or purchasers of Petitioner's Goods and Services:

All classes of users, consumers and purchasers, including but not limited to:
Consumers
Owners/renters of residential structures
Owners/renters/lessees of motor coaches
Owners/renters/lessees of boats
Hospitality industry
Production builders industry
Architects
Systems integrators
Retailers in custom installation industry

Petitioner identifies the following as representative of the channels of trade by which Petitioner's Goods or Services reach and/or are advertised to their intended classes of ultimate users: consumers, or purchasers:

All channels of trade, including but not limited to:
Airport kiosks

Applicant : Hexawave, Inc.
Serial No. : 76-304,063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 6

Attorney's Docket No.: 02103-008PP1

Architects
Automotive dealers
Automotive promotions
Bose retail
Car shows
Catalogues
Conference facilities
Corporate Sponsorships
Credit card inserts
Cruise ships
Dance studios
Direct mail
Direct response advertising-print, radio and TV
Hotels
Incentive programs
In-flight magazines
Internet
Mall kiosks
Motor coaches
Office building
Professional offices
Schools
Sports facilities
Sweepstakes
Television show sponsorships
TV & movie product placements
TV shopping networks
Worldwide export markets

Interrogatory No. 7. Identify the amount of money Opposer has spent each year on its advertising to promote the sales and/or distribution in the United States of the products identified in your answer to Interrogatory No. 3 for the last ten (10) years. In connection with your answer, identify each form of media which Opposer has used for advertising each product.

Supplemental 5/14/04 Response:

Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose

further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information in the form of documents and things, to the extent it exists and is in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Interrogatory No. 8. For each product identified in your answer to Interrogatory No. 3, describe all retail outlets or other channels of trade through which the product is sold or marketed to individual customers. In connection with your answer, identify for each product:

- (a) each of the Opposer's marks used on or in association with the product; and
- (b) the precise location and manner in which the mark, or marks, is affixed on or in association with the product.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Bose refers to its answer to Interrogatory No. 6, and to relevant, representative, responsive, non-privileged information in the form of documents and things, to the extent they exist and are in Bose's custody and control, will be made available to Applicant for inspection at Fish & Richardson's Boston office at a mutually agreeable date and time.

Interrogatory No. 9. Identify each and every instance that Opposer is aware of in which any person has been confused, mistaken, or deceived regarding the origin of Applicant's

products, or of any products bearing Applicant's marks. In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer, or relate to any facts set forth in your answer.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges.

Notwithstanding the foregoing objections, Bose responds as follows: None.

Interrogatory No. 10. State in detail and with particularity each and every fact upon which you rely in support of your allegations in paragraphs 5 and 6 of the Notice of Oppositions that the use of Applicant's marks, as applied to its goods, so resembles Opposer's marks, as applied to their goods, as to be "likely to cause confusion or cause mistake, or to deceive," and that registration of Applicant's mark on the principal register "will cause injury and damage to Opposer." In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer, or relate to any facts set forth in your answer.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it requests information consisting of information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Bose identifies the goods identified in Applicant's Application Serial No. 76/304,063, the goods identified in Bose's Registration Nos. 1,633,789; 1,764,183; 1,338,571; 2,464,181; and 2,493,186, and the Federal Circuit Court of Appeals decision in Bose Corp. v. QSC Audio Products, 293 F.3d 1367, 63 U.S.P.Q.2d 1303 (Fed. Cir. 2002).

Interrogatory No. 11. Identify in detail and with particularity each and every effect which Opposer has sustained to its interstate use of Opposer's marks as a result of Applicant's use of Applicant's mark including the date on which each injury occurred, and the monetary value if any, associated with each injury. In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer, or relate to any facts set forth in your answer.

Supplemental 5/14/04 Response: Bose objects to this request on the basis that it is vague and unintelligible. To the extent Bose understands this request, Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, where the Board cannot award damages to Bose in this proceeding.

Interrogatory No. 12. For the last ten (10) years, state Opposer's annual gross and net sales in the United States for the products identified in your answer to Interrogatory No. 3, broken down by each demographic group of customers or prospective customers identified in your answer to Interrogatory No. 6. In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer to, or relate to any facts set forth in your answer.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged

information in the form of documents and things, to the extent it exists and is in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Interrogatory No. 13. Identify in detail and with particularity any and all surveys, polls, or market research studies that Opposer is aware of, which relate to the issues in this Opposition, including the issue of likelihood of confusion between Applicant's mark and one or more of Opposer's marks, or as to the source of Applicant's or Opposer's products, or as to the existence of any affiliation or connection between Opposer and Applicant. In connection with your answer, identify all persons with knowledge of and all documents which constitute, refer to, or relate to any facts set forth in your answer.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, Bose responds as follows: None.

Interrogatory No. 14. Identify each and every past or pending litigation or administrative proceeding concerning one or more of Opposer's mark, or any mark alleged to be confusingly similar to one or more of Opposer's marks. For each litigation or proceeding:

- (a) state its full identifying information, including the names of all parties, dates of commencement and any rendered decision, docket number, and the court or administrative body in which it is/was pending;
- (b) the nature of the controversy or matter(s) at issue; and

Applicant : Hexawave, Inc.
Serial No. : 76-304.063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 11

Attorney's Docket No.: 02103-00SPP1

(c) the final resolution or current status.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information in the form of documents and things, to the extent it exists and is in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Interrogatory No. 15. Identify any and all distributors, retail outlets, or marketing sources through which any of the products identified in your answer to Interrogatory No. 3 is sold, advertised, or otherwise marketed to consumers. In connection with your answer, identify with specificity the product(s) so sold, advertised, or marketed, and the mark(s) used on or in association with that product(s).

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges. Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information in the form of documents and things, to the extent it exists and is in Bose's custody and control, will be made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Interrogatory No. 16. Identify any and all other end manufacturers which incorporate in one or more of their goods any of the products identified in your answer to Interrogatory No.

Applicant : Hexawave, Inc.
Serial No. : 76-304,063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 12

Attorney's Docket No.: 02103-008PP1

3. In connection with your answer, identify with specificity each of the other end manufacturers' goods; the product(s) incorporated or prospectively incorporated in such goods; and, the mark(s) used on or in connection with that product(s).

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Bose further objects to this request to the extent it requests information protected by the attorney-client and/or attorney work product privileges.

Notwithstanding the foregoing objections, relevant, representative, responsive, non-privileged information, to the extent it exists, and is in Bose's custody and control made available for inspection by Applicant at Fish & Richardson's Boston office at a mutually agreeable date and time.

Interrogatory No. 17. Identify each person who assisted in providing answers to these interrogatories, noting with specificity the Interrogatory numbers for which he or she supplied information.

Supplemental 5/14/04 Response: Bose objects to this request to the extent it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Applicant : Hexawave, Inc.
Serial No. : 76-304,063
Filed: : August 24, 2001
Mark : HEXAWAVE
Page : 13

Attorney's Docket No.: 02103-008PP1

Respectfully submitted,

Date: _____

5/14/04



Amy L. Brosius
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

Attorneys for Opposer,
BOSE CORPORATION

20861912.doc

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Bose's Supplemental 5/14/04 Responses to Applicant's Interrogatories has this 14th day of May, 2004, been mailed by prepaid first class mail to the below-identified Attorney at his/her place of business:

Morton J. Rosenberg, Esq.
Rosenberg, Klein & Lee
3458 Ellicott Center Drive, Suite 101
Ellicott City, MD 21043-4178



Amy L. Brosius

MR1035-917
Opposition No. 91157315
Appl. No. 76/304,063

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

In the matter of Application Serial No. 76/304,063
For the Mark HEXAWAVE
Published in the Official Gazette on March 18, 2003 at TM 278

Bose Corporation

*

Opposer

*

v.

*

Opposition No. 91157315

*

Hexawave, Inc.

*

Applicant

*

*

*

*

*

*

*

*

*

*

*

*

DECLARATION OF MORTON J. ROSENBERG IN SUPPORT OF
APPLICANT'S NOTICE OF RELIANCE FOR INTRODUCTION OF
DEPOSITION OF JOHN F. MAR

Commissioner for Trademarks
BOX TTAB – NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Honorable Commissioner for Trademarks:

I, Morton J. Rosenberg, hereby declare as follows:

(1) That I am a partner in the law firm of Rosenberg, Klein & Lee, having a business address at 3458 Ellicott Center Drive, Suite 101, Ellicott City, Maryland 21043, attorneys for Petitioner;

(2) That I personally attended a Deposition of John F. Mar in this Opposition on 21 May 2004.

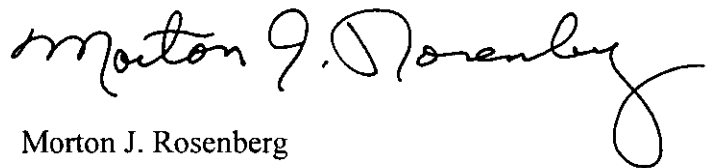
(3) That the law offices of Rosenberg, Klein & Lee received a copy of the transcript of the Deposition from the court reporter, LegaLink Boston, on or about 8 June 2004.

(4) That the law offices of Rosenberg, Klein & Lee received a further copy of the transcript of the Deposition from Opposer on or about 21 June 2004.

(5) That the attached Exhibit 3 shows true and accurate copies of pages 1-7, 50-55, and 69 containing non-confidential material, taken from the transcript copy of the John F. Mar Deposition, as received from the court reporter in the law offices of Rosenberg, Klein & Lee on or about 8 June 2004.

I declare under penalty of perjury that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Morton J. Rosenberg", with a stylized, flowing script.

Morton J. Rosenberg

Dated: 27 July 2004

Suite 101
3458 Ellicott Center Drive
Ellicott City, MD 21043
(410) 465-6678

LAW OFFICES

MORTON J. ROSENBERG
DAVID I. KLEIN
JUN Y. LEE
HARRY L. SERNAKER

PATENT AGENTS
DAVID R. WOOD

ROSENBERG, KLEIN & LEE
CHARTERED

3458 ELLICOTT CENTER DRIVE

ELLICOTT CITY, MARYLAND 21043

PHONE (410)-465-6678 OR (410)-465-MORT

TELEFAX (410)-461-3067

INTERNET: rkl@rklpatlaw.com

PATENT, TRADEMARK & COPYRIGHT MATTERS

PATENT RESEARCH
SPECIALISTS

JOHN V. PRESTIA
RAYMOND J. DUDEK
EVA BURDMAN
MORGAN D. ROSENBERG
RUSSELL SCHUMANN
KEVIN PHIPPS
BARBARA BENCIVENGA

TTAB

July 27, 2004

MR1035-917

Honorable Clerk
Trademark Trial and Appeal Board
2900 Crystal Drive
Alexandria, VA 22202-3514

Re: Applicant's First Notice of Reliance Pursuant to Rule 2.122(d)(2)
Opposition No. 91157315
Bose Corp. v. Hexawave, Inc.

Sir:

Enclosed is Applicant's First Notice of Reliance Pursuant to Rule 2.122(d)(2) for filing before the Trademark Trial and Appeal Board.

Please file this Notice of Reliance in the file of the above-referenced Opposition.

Respectfully submitted,



Morton J. Rosenberg

MJR/la
Enclosure



07-28-2004

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