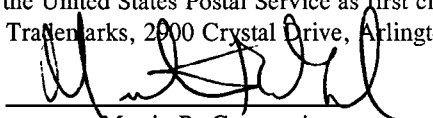


**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Trademarks, 2000 Crystal Drive, Arlington, VA 22202-3514, on May 24, 2004.

  
Martin R. Greenstein

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

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BOSE CORPORATION	:	<b>Opposition No. 157,381</b>
	:	Appln. Ser. No. 76/698,824
Opposer	:	
v.	:	Filed: May 6, 1999
	:	
LIGHTSURF TECHNOLOGIES, INC	:	Published: March 18, 2003
	:	
Applicant	:	Mark: <b>WAVEFORCE</b>
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**06-01-2004**  
U.S. Patent & TMO/TM Mail Rcpt Dt. #39

**APPLICANT’S OPPOSITION TO OPPOSER’S MOTION TO COMPEL**

Applicant, LightSurf Technologies, Inc. (“LightSurf”), objects to Opposer’s Motion to Compel Responses to Interrogatories, for the reasons set forth.

**Chronology of Relevant Facts:**

Applicant does not disagree with the chronology of relevant facts as set forth by Opposer, except to note that the *only* attempts made to contact Applicant to discuss these issues were five months ago, in the midst of the Christmas/New Year’s Holidays, while the undersigned was traveling (in part) and out of the office during much of the time. Moreover, our records show a single message left during the week of December 14, 2003, not “a number of telephone messages”, and the undersigned did follow up with a call on December 19, 2003 as promised, but due to the time difference it was after the close of business on the East coast. No attempt has been made by Opposer to contact the undersigned since December 31, 2003 - nearly 5 months ago. In the interim the parties have had many other dealings related to this case, including other discovery disputes, yet Opposer never indicated that it considered the issues raised in this motion to be active and live issues. Indeed, Opposer waited until literally

the eve of the opening of its testimony period (filing this motion on May 3, 2004, the day prior to the May 4, 2004 testimony opening), clearly demonstrating that the issue here is not a bona fide discovery dispute, but rather an attempt to delay and suspend testimony.

For this reason, Opposer's Motion to Compel responses to Opposer's interrogatories should be denied for failure to comply with TBMP Sec 523.02. TBMP Sec 523.02 and 37 CFR §2.120(e) set forth very specific, special requirements for any motion seeking an order to compel discovery.

*... The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement...*

Opposer has not made a good faith effort to resolve the issues - in fact it has made no effort at all save demands five months ago that Applicant answer all of its interrogatories. As such, there can be declaration or written statement of any sort by the moving party or its attorney that a good faith effort has been made to resolve any issues - because there was no such effort. Basically, Opposer sent a letter on December 31, 2003 demanding that all interrogatories be answered and threatening a motion to compel - with no discussion of the issue of how many subparts exists (even though Opposer now admits to at least 70 separate subparts!). Such a contentious demand letter threatening to file a Motion to Compel hardly represents a good faith effort to resolve issues.

**Applicant's Responses to Opposer's First Set of Interrogatories:**

The only issue in Opposer's motion is the sufficiency of Applicant's responses to Opposer's interrogatories. Applicant timely objected to Opposer's First Set of Interrogatories on the grounds that the total number of interrogatories served, counting subparts, is excessive

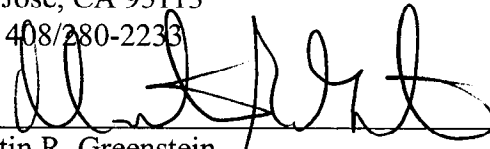
and beyond the seventy-five allowed by the Rules. In doing so, Applicant followed exactly the procedure outlined in the Board's Rules, and further explained in TBMP Sec. 405.03(e). Even though Opposer's First Set of Interrogatories purports to list 28 interrogatories, Opposer, in its motion to compel, concedes that there are, in fact, at least 70 separate interrogatories. In Exhibit A attached hereto, Applicant has parsed the actual interrogatories and clearly demonstrates that there are, in fact, *at least* two hundred and forty nine (249) separate interrogatories, counting subparts, in the multi-part, convoluted interrogatories served by Opposer. As such, Opposer's Motion to Compel further responses as to Opposer's First Set of Interrogatories should be denied.

WHEREFORE, Applicant respectfully requests that Opposer's Motion to Compel be denied,

Dated: May 24, 2004

:

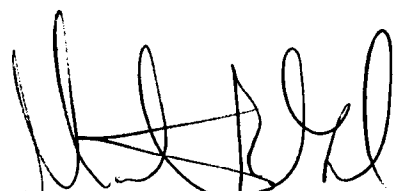
MARTIN R. GREENSTEIN  
TechMark a Law Corporation  
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San Jose, CA 95113  
Tel: 408/280-2233

By:   
Martin R. Greenstein  
Attorneys for Applicant  
LightSurf Technologies, Inc.

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL is being served by first class mail postage prepaid on this 24<sup>th</sup> day of May, 2004, on Opposer's attorneys:

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Attorneys for Opposer

  
Martin R. Greenstein

**EXHIBIT A**

**ACTUAL COUNT OF SEPARATE INTERROGATORIES  
IN OPPOSER'S FIRST SET OF INTERROGATORIES**

**TOTAL NUMBER OF SEPARATE INTERROGATORIES, INCLUDING  
SUBPARTS = AT LEAST 249**

**Interrogatory No. 1**

**State the dates and describe the circumstances under which the Applicant selected Applicant's Mark, identify all documents relating thereto, identify the person or persons who selected Applicant's Mark and identify all other marks that were considered along with Applicant's Mark for possible adoption, use and registration by the Applicant for the products for which Applicant's Mark is used.**

**Count - 8 Separate Interrogatories:**

State the dates...

Describe the circumstances...

Identify all documents relating to the dates...

Identify all documents relating to the circumstances...

Identify the person or persons who selected Applicant's Mark

Identify all other marks considered for possible adoption

Identify all other marks considered for (possible) use

Identify all other marks considered for (possible) registration

**Interrogatory No. 2**

**Identify each search that Applicant performed or had performed for it relating to any of the marks identified in answer to Interrogatory No. 1, and all documents relating thereto.**

**Count - 4 Separate Interrogatories:**

Identify each search that Applicant performed

Identify each search that Applicant had performed

Identify all documents relating to each search Applicant performed

Identify all documents relating to each search Applicant had performed

N.B.: If there were multiple marks identified in Int. No. 1, this would be 4 for each such mark.

**Interrogatory No. 3**

**Identify all marks or trade names comprising or including the term "WAVE", the existence of which was known to the Applicant at the time Applicant adopted Applicant's Mark.**

**Count - 4 Separate Interrogatories:**

Identify all marks comprising the term "WAVE"

Identify all trade names comprising the term "WAVE"

Identify all marks including the term "WAVE"

Identify all trade names including the term "WAVE"

**Interrogatory No. 4**

**State the date and describe the circumstances under which the Applicant first learned of each of Opposer's Marks, and identify all documents relating thereto.**

Count - 15 Separate Interrogatories:

State the date Applicant first learned of [each of 5 separate marks]

Describe the circumstances under which Applicant first learned of [each of 5 separate marks]

Identify all documents relating to [each of 5 separate marks]

Opposer identifies 5 separate marks, so this represents  $5 \times 3 = 15$  separate Interrogatories

**Interrogatory No. 5**

**Identify and provide a detailed description of every product manufactured, licensed for manufacture, or sold by or on behalf of Applicant since the inception of Applicant's business that bears Applicant's Mark, and/or that Applicant, or a person on behalf of Applicant, intends to manufacture, license for manufacture or sell that bears Applicant's Mark.**

Count - 24 Separate Interrogatories:

Identify every product manufactured by Applicant

Identify every product licensed for manufacture by Applicant

Identify every product sold by Applicant

Identify every product manufactured on behalf of Applicant

Identify every product licensed for manufacture on behalf of Applicant

Identify every product sold on behalf of Applicant

Provide a detailed description of every product manufactured by Applicant

Provide a detailed description of every product licensed for manufacture by Applicant

Provide a detailed description of every product sold by Applicant

Provide a detailed description of every product manufactured on behalf of Applicant

Provide a detailed description of every product licensed for manufacture on behalf of Applicant

Provide a detailed description of every product sold on behalf of Applicant

Same 12 questions but now asking for products INTENDED to be manufactured, INTENDED to be licensed for manufacture, INTENDED to be sold etc.

**Interrogatory No. 6**

**Indicate the geographical area in which Applicant distributes, advertises and sells products bearing Applicant's Mark, and/or in which Applicant intends to distribute, advertise and sell products bearing Applicant's Mark.**

Count - 6 Separate Interrogatories:

Indicate the geographic area in which Applicant distributes products ...

Indicate the geographic area in which Applicant advertises products ...

Indicate the geographic area in which Applicant sells products ...

Indicate the geographic area in which Applicant intends to distribute products ...

Indicate the geographic area in which Applicant intends to advertise products ...

Indicate the geographic area in which Applicant intends to sell products ...

**Interrogatory No. 7**

**Indicate the channels of trade through which each product bearing Applicant's Mark are distributed and sold and/or will be distributed and sold.**

**Count - 4 Separate Interrogatories:**

Indicate the channels of trade through which each product is distributed ...

Indicate the channels of trade through which each product is sold ...

Indicate the channels of trade through which each product will be distributed ...

Indicate the channels of trade through which each product will be sold ...

**Interrogatory No. 8**

**Indicate the demographics of the customers/prospective customers of each product bearing Applicant's Mark.**

**Count - 2 Separate Interrogatories:**

Indicate the demographics of the customers of each product ...

Indicate the demographics of the prospective customers of each product ...

**Interrogatory No. 9**

**Identify the date of first use and first use in commerce of Applicant's Mark in connection with each of the products identified in Application Serial No. 75/698,824.**

**Count - 2 Separate Interrogatories:**

Indicate the date of first use in connection with each of the products ...

Indicate the date of first use in commerce in connection with each of the products ...

N.B.: If answered separately with respect to EACH product, it will be  $18 \times 2 = 36$  Interrogatories

**Interrogatory No. 10**

**With respect to each of the products sold under Applicant's Mark, identify all literature or prospective literature used or proposed to be used in connection with the products, and identify every style of tag, label, package, sign, poster, point-of sale display, brochure, advertisement in any medium, or any other marketing or promotional item used or intended to be used in connection with each product.**

**Count - 22 Separate Interrogatories:**

Identify all literature used as to each product sold ...

Identify all prospective literature proposed to be used as to each product sold ...

Identify every style of tag used in connection with each product

Identify every style of label used in connection with each product

Identify every style of package used in connection with each product

Identify every style of sign used in connection with each product

Identify every style of poster used in connection with each product

Identify every style of point-of-sale display used in connection with each product

Identify every style of brochure used in connection with each product

Identify every style of advertisement in any medium used in connection with each product

Identify every style of marketing item used in connection with each product

Identify every style of promotional item used in connection with each product

Identify every style of tag intended to be used in connection with each product

Identify every style of label intended to be used in connection with each product  
Identify every style of package intended to be used in connection with each product  
Identify every style of sign intended to be used in connection with each product  
Identify every style of poster intended to be used in connection with each product  
Identify every style of point-of-sale display intended to be used in connection with each product  
Identify every style of brochure intended to be used in connection with each product  
Identify every style of advertisem. in any medium intended to be used in conn. with each product  
Identify every style of marketing item intended to be used in connection with each product  
Identify every style of promotional item used in connection with each product

**Interrogatory No. 11**

**For each item identified in response to Interrogatory No. 10:**

- a. State the dates on which such item was/will be distributed or displayed;**
- b. State the manner in which such item was/will be distributed or displayed; and**
- c. State the geographic area (by city, county and state) where such item was/will be distributed or displayed.**

Count - 12 Separate Interrogatories:

State the dates on which such item was distributed  
State the dates on which such item was displayed  
State the dates on which such item will be distributed  
State the dates on which such item will be displayed  
State the manner in which such item was distributed  
State the manner in which such item was displayed  
State the manner in which such item will be distributed  
State the manner in which such item will be displayed  
State the geographic area where such item was distributed  
State the geographic area where such item was displayed  
State the geographic area where such item will be distributed  
State the geographic area where such item will be displayed

**Interrogatory No. 12**

**Identify the persons currently employed by Applicant who have principal responsibility for Applicant's distribution, marketing or advertising of products sold, offered for sale or advertised under Applicant's Mark.**

Count - 9 Separate Interrogatories:

Identify the persons who have responsibility for distribution of products sold ...  
Identify the persons who have responsibility for marketing of products sold ...  
Identify the persons who have responsibility for advertising of products sold ...  
Identify the persons who have responsibility for distribution of products offered for sale ...  
Identify the persons who have responsibility for marketing of products offered for sale ...  
Identify the persons who have responsibility for advertising of products offered for sale ..  
Identify the persons who have responsibility for distribution of products advertised ...  
Identify the persons who have responsibility for marketing of products advertised ...  
Identify the persons who have responsibility for advertising of products advertised ..

**Interrogatory No. 13**

**State whether Applicant's Mark is or ever has been the subject of a license agreement, or other agreement, arrangement or understanding, either written or oral, concerning the use of said mark.**

Count - 2 Separate Interrogatories:

Ever been the subject of a license agreement

Ever been the subject of another agreement, arrangement or understanding

**Interrogatory No. 14**

**If the answer to Interrogatory No. 13 is other than an unqualified negative, for each such agreement, arrangement or understanding:**

- a. state the date of the agreement, arrangement or understanding;
- b. identify the parties to the agreement, arrangement, or understanding and the relationship between such parties, if any;
- c. state whether the agreement, arrangement, or understanding was oral or in writing;
- d. state the goods and/or service(s) covered by the agreement, arrangement, or understanding;
- e. state whether, by whom, and in what manner control has been or will be exercised as to the quality and character of the goods and/or service(s) on or in connection with which Applicant's Mark has been or will be used under the agreement, arrangement, or understanding; and
- f. identify all documents evidencing, or which refer or relate in any way to such agreement, arrangement, or understanding.

Count - 11 Separate Interrogatories:

By Opposer's own numbering, this is 6 separate questions. In addition, subpart e is 6 separate questions:

Whether control has been exercised

By whom control has been exercised

In what manner control has been exercised

Whether control will be exercised

By whom control will be exercised

In what manner control will be exercised

**Interrogatory No. 15**

**State whether Applicant has knowledge, directly or indirectly, of instances of Applicant's Mark used by unrelated third parties on or in connection with the sale or promotion of Applicant's Goods without Applicant's agreement, consent or authorization.**

Count - 12 Separate Interrogatories:

Whether Applicant has direct knowledge of its mark used by 3<sup>rd</sup> parties on sale of goods

Whether Applicant has direct knowledge of its mark used by 3<sup>rd</sup> parties on promotion of goods

Whether Applicant has indirect knowledge of its mark used by 3<sup>rd</sup> parties on sale of goods

Whether Applicant has indirect knowledge of its mark used by 3<sup>rd</sup> parties on promotion of goods

Whether such use was without Applicant's agreement



Whether such use was without Applicant's consent  
Whether such use was without Applicant's knowledge

4 Questions x 3 Variants of each = 12 separate Interrogatories

**Interrogatory No. 16**

**Identify each instance of which the Applicant has knowledge, directly or indirectly, of any actual or purported association or confusion of any type between the Applicant and the Opposer or their products or services, arising, in whole or in part, from contemporaneous use, adoption, or advertisement of their respective marks. For illustrative purposes only and without limiting the foregoing, such instances would include misdirected inquiries, orders, cancellations or returns; misassumptions as to the source or origin; and complaints or comments as to association or confusion or from which association or confusion may be inferred.**

Count - 24 Separate Interrogatories:

Applicant's direct knowledge of actual association between Applicant and Opposer  
Applicant's indirect knowledge of actual association between Applicant and Opposer  
Applicant's direct knowledge of purported association between Applicant and Opposer  
Applicant's indirect knowledge of purported association between Applicant and Opposer  
Applicant's direct knowledge of actual confusion between Applicant and Opposer  
Applicant's indirect knowledge of actual confusion between Applicant and Opposer  
Applicant's direct knowledge of purported confusion between Applicant and Opposer  
Applicant's indirect knowledge of purported confusion between Applicant and Opposer  
As to each, whether it arises from contemporaneous use  
As to each, whether it arises from contemporaneous adoption  
As to each, whether it arises from contemporaneous advertisement  
8 separate questions x 3 "arising from" qualifiers = 24 separate Interrogatories.

The "illustrative purposes" examples arguably create 10 additional subcategories/interrogatories

**Interrogatory No. 17**

**As to each instance identified in the answer to Interrogatory 16, of which the Applicant has direct knowledge, specify:**

- a. **the date and location of such instance of confusion, mistake or deception;**
- b. **the person or persons with knowledge of such instance of confusion, mistake or deception;**
- c. **the manner in which the Applicant became aware of such confusion or association, e.g., through an oral or written communication and, if oral, whether all or any part thereof was reduced to writing or otherwise memorialized;**
- d. **the nature of the confusion or association;**
- e. **the reason or reasons given, if any, for such confusion or association;**  
**and**
- f. **each document and/or oral communication pertaining, reflecting or referring to each instance.**

Count - 6 Separate Interrogatories:  
6 Separate Questions, using Opposer's own subcategories

**Interrogatory No. 18**

**Indicate the number of each product bearing Applicant's Mark that has been sold by Applicant to date.**

Count - 1 Interrogatory

**Interrogatory No. 19**

**Indicate the total revenue generated by the sale of Applicant's Goods bearing Applicant's Mark to date.**

Count - 1 Interrogatory

**Interrogatory No. 20**

**Indicate the total advertising expenses generated in connection with Applicant's promotion of products bearing Applicant's Mark to date.**

Count - 1 Interrogatory

**Interrogatory No. 21**

**State whether Applicant has conducted, caused to be conducted, or is aware of, any survey, poll or market research study related to the issues in this proceeding, including that of likelihood of confusion between Applicant's Mark and 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.**

Count - 36 Separate Interrogatories:

- Whether Applicant has conducted any survey ...
- Whether Applicant has caused to be conducted any survey ...
- Whether Applicant is aware of any survey ...
- Whether Applicant has conducted any poll ...
- Whether Applicant has caused to be conducted any poll ...
- Whether Applicant is aware of any poll ...
- Whether Applicant has conducted any market research study ...
- Whether Applicant has caused to be market research study ...
- Whether Applicant is aware of any market research study ...

Each question is asked as to likelihood of confusion, as to source of Applicant's products, as to source of Opposer's products, and as to existence of any affiliation of connection between Opposer and Applicant - 4 separate topics x 9 questions = 36 separate Interrogatories

**Interrogatory No. 22**

**Unless the response to Interrogatory No. 21 is an unqualified negative, identify with particularity with respect to each such survey, poll or market research study:**

- a. the date it was prepared;
- b. the names, addresses, and affiliations of each person involved in its

- c. **preparation; and  
the present location of such survey, poll or market research study.**

Count - 15 Separate Interrogatories:

Date each was prepared  
Name of each person involved in its preparation  
Address of each person involved in its preparation  
Affiliation of each person involved in its preparation  
Present location of each

Answer as to each survey, each poll, each market research study  
5 Questions x 3 topics = 15 Separate Interrogatories

Interrogatory No. 23

**State whether Applicant has ever been a party to, or otherwise participated in, any litigation or administrative proceeding concerning Applicant's Mark, and with respect to each such litigation or proceeding:**

- a. **State the full title of the litigation or proceeding, including the names of all parties, date of commencement, date of any decision rendered in same, any identifying docket number, and the court or administrative body before which the litigation or proceeding was pending; and**
- b. **State the final resolution or current status of such litigation or proceeding.**

Count - 16 Separate Interrogatories:

Ever been a party to any litigation  
Ever "otherwise participated in" any litigation  
Ever been a party to any administrative proceeding  
Ever "otherwise participated in" any administrative proceeding  
As to each, state the full title, including docket number and court/administrative body  
As to each, state the date of commencement  
As to each, state the date of decision  
As to each, state the final resolution or current status

4 Questions, and as to each, 4 Subpart Questions = 16 Separate Interrogatories

Interrogatory No. 24

**List all goods and services sold or rendered, or offered for sale or for rendering, by Applicant.**

Count - 2 Separate Interrogatories:

List all goods and services sold or rendered by Applicant.  
List all goods and services offered for sold or for rendering by Applicant.

**Interrogatory No. 25**

**Identify each director and officer of Applicant from the inception of Applicant to the present, including any predecessors-in-interest of Applicant, and state the position held, the dates each position was held, and the general responsibilities each person had in each such position.**

Count - 5 Separate Interrogatories:

Identify each director of Applicant

Identify each officer of Applicant

State the position held by each

State the dates each position was held

State the general responsibilities each person had in each such position

N.B. Multiples of 5 Interrogatories if predecessors-in-interest are included

**Interrogatory No. 26**

**Identify all persons known to Applicant to have information and/or material supporting Applicant's position in this proceeding.**

Count - 2 Separate Interrogatories:

Identify all persons known to have information supporting Applicant's position...

Identify all persons known to have material supporting Applicant's position...

**Interrogatory No. 27**

**Identify all facts that support the affirmative defenses asserted by Applicant in its Answer to the Notice of Opposition.**

Count - 1 Interrogatory

**Interrogatory No. 28**

**Identify each person who assisted in furnishing answers to these Interrogatories, specifying, for each person, the numbers of the Interrogatories for which he or she supplied information.**

Count - 2 Separate Interrogatories:

Identify each person who assisted in furnishing answers...

For each person, identify the numbers of the Interrogatories for which information was supplied

**TOTAL NUMBER OF SEPARATE INTERROGATORIES, INCLUDING SUBPARTS = AT LEAST 249**