

TTAB

Attorney's Docket No.: 02103-008PP2

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

In the matter of Application Serial No. 75-698,824
For the Mark WAVEFORCE
Published in the Official Gazette on March 18, 2003 at TM 265



Bose Corporation,

Opposer,

v.

Lightsurf Technologies, Inc.,

Applicant.

04-12-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #/b

Opposition No. 91157381

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

**OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF REQUESTS FOR
ADMISSION TO OPPOSER**

REQUEST NO. 1

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in

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.

24/09/04
Date of Deposit
Signature *Jennifer Bettencourt*
Typed or Printed Name of Person Signing Certificate
Jennifer Bettencourt

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connection with television receivers at the time the application therefor was filed on October 10, 1989.

RESPONSE NO. 1

Denied.

REQUEST NO. 2

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with videocassette recorders at the time the application therefor was filed on October 10, 1989.

RESPONSE NO. 2

Denied.

REQUEST NO. 3

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with video cassette players receivers at the time the application therefor was filed on October 10, 1989.

RESPONSE NO. 3

Denied.

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REQUEST NO. 4

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with camcorders at the time the application therefor was filed on October 10, 1989.

RESPONSE NO. 4

Denied.

REQUEST NO. 5

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with radios at the time the application therefor was filed on October 10, 1989.

RESPONSE NO. 5

Denied.

REQUEST NO. 6

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with clock radios at the time the application therefor was filed on October 10, 1989.

RESPONSE NO. 6

Denied.

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REQUEST NO. 7

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with audio tape recorders and players at the time the application therefor was filed on October 10, 1989.

RESPONSE NO. 7

Denied.

REQUEST NO. 8

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with portable radio and cassette recorder combinations at the time the application therefor was tiled on October 10, 1989.

RESPONSE NO. 8

Denied.

REQUEST NO. 9

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with compact stereo systems at the time the application therefor was filed on October 10, 1989.

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RESPONSE NO. 9

Denied.

REQUEST NO. 10

The mark WAVE of Reg. No. 1,633,789 was not in use on or in connection with portable compact disc players at the time the application therefor was filed on October 10, 1989.

RESPONSE NO. 10

Denied.

REQUEST NO. 11

The mark ACOUSTIC WAVE of Reg. No. 1,338,571, issued May 28, 1985, was not in use on or in connection with loudspeaker systems at the time the application therefor was filed on April 30, 1984.

RESPONSE NO. 11

Denied.

REQUEST NO. 12

The mark ACOUSTIC WAVE of Reg. No. 1,764,183, issued April 13, 1993, was not in use on or in connection with loudspeaker systems at the time the application therefor was filed on February 3, 1992.

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RESPONSE NO. 12

Denied.

REQUEST NO. 13

The mark ACOUSTIC WAVE of Reg. No. 1,764,183, issued April 13,1993, was not in use on or in connection with loudspeaker systems consisting of a loudspeaker system and amplifier and at least one of a radio tuner, compact disc player and audio tape cassette player at the time the application therefor was filed on February 3, 1992.

RESPONSE NO. 13

Denied.

REQUEST NO. 14

The mark WAVESYNC of Reg. No. 2,493,186, issued September 25,2001, was not in use on or in connection with the each of the goods set forth therein at the time the application therefor was filed on April 15, 1999.

RESPONSE NO. 14

Admitted that this application was filed on April 15, 1999 on the basis of Intent to Use the mark in commerce, and that upon registration, Bose is deemed to have had constructive use of the mark on the goods set forth in the registration as of the filing date of April 15, 1999.

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REQUEST NO. 15

The mark PROFESSIONAL WAVE of Reg. No. 2,464,181, issued June 26, 2001, was not in use on or in connection with sound reproduction systems, namely a loudspeaker system comprising a power amplifier and a radio tuner and/or CD player at the time the application therefor was filed on May 4, 1998.

RESPONSE NO. 15

Denied.

REQUEST NO. 16

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with television receivers at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 16

Admitted.

REQUEST NO. 17

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with videocassette recorders at the time the Section 8 Declaration or Affidavit therefor was signed.

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RESPONSE NO. 17

Admitted.

REQUEST NO. 18

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with video cassette players receivers at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 18

Admitted that the mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with video cassette players at the time the Section 8 Declaration or Affidavit therefor was signed.

REQUEST NO. 19

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with camcorders at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 19

Admitted.

REQUEST NO. 20

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in

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connection with radios at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 20

Denied.

REQUEST NO. 21

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with clock radios at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 21

Denied.

REQUEST NO. 22

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with audio tape recorders and players at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 22

Denied.

REQUEST NO. 23

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in

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connection with portable radio and cassette recorder combinations at the time the Section 8

Declaration or Affidavit therefor was signed.

RESPONSE NO. 23

Denied.

REQUEST NO. 24

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with compact stereo systems at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 24

Denied.

REQUEST NO. 25

The mark WAVE of Reg. No. 1,633,789 was not in use on or in connection with portable compact disc players at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 25

Denied.

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REQUEST NO. 26

The mark ACOUSTIC WAVE of Reg. No. 1,338,571, issued May 28, 1985, was not in use on or in connection with loudspeaker systems at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 26

Denied.

REQUEST NO. 27

The mark ACOUSTIC WAVE of Reg. No. 1,764,183, issued April 13, 1993, was not in use on or in connection with loudspeaker systems at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 27

Denied.

REQUEST NO. 28

The mark ACOUSTIC WAVE of Reg. No. 1,764,183, issued April 13, 1993, was not in use on or in connection with loudspeaker systems consisting of a loudspeaker system and amplifier and at least one of a radio tuner, compact disc player and audio tape cassette player at the time the Section 8 Declaration or Affidavit therefor was signed.

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RESPONSE NO. 28

Denied.

REQUEST NO. 29

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with television receivers at the time the renewal application therefor was signed.

RESPONSE NO. 29

Admitted.

REQUEST NO. 30

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with videocassette recorders at the time the renewal application therefor was signed.

RESPONSE NO. 30

Admitted.

REQUEST NO. 31

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with video cassette players receivers at the time the renewal application therefor was signed.

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RESPONSE NO. 31

Admitted that the mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with video cassette players at the time the renewal application therefor was signed.

REQUEST NO. 32

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with camcorders at the time the renewal application therefor was signed.

RESPONSE NO. 32

Admitted.

REQUEST NO. 33

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with radios at the time the Section 8 Declaration or Affidavit therefor was signed.

RESPONSE NO. 33

Denied.

REQUEST NO. 34

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with clock radios at the time the renewal application therefor was signed.

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RESPONSE NO. 34

Denied.

REQUEST NO. 35

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with audio tape recorders and players at the time the renewal application therefor was signed.

RESPONSE NO. 35

Denied.

REQUEST NO. 36

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with portable radio and cassette recorder combinations at the time the renewal application therefor was signed.

RESPONSE NO. 36

Denied.

REQUEST NO. 37

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with compact stereo systems at the time the renewal application therefor was signed.

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RESPONSE NO. 37

Denied.

REQUEST NO. 38

The mark WAVE of Reg. No. 1,633,789 was not in use on or in connection with portable compact disc players at the time the renewal application therefor was signed.

RESPONSE NO. 38

Denied.

REQUEST NO. 39

The mark ACOUSTIC WAVE of Reg. No. 1,338,571, issued May 28, 1985, was not in use on or in connection with loudspeaker systems at the time the renewal application therefor was signed.

RESPONSE NO. 39

Denied.

REQUEST NO. 40

The mark ACOUSTIC WAVE of Reg. No. 1,764,183, issued April 13, 1993, was not in use on or in connection with loudspeaker systems at the time the renewal application therefor was signed.

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RESPONSE ON. 40

Denied.

REQUEST NO. 41

The mark ACOUSTIC WAVE of Reg. No. 1,764,183, issued April 13,1993, was not in use on or in connection with loudspeaker systems consisting of a loudspeaker system and amplifier and at least one of a radio tuner, compact disc player and audio tape cassette player at the time the renewal application therefor was signed.

RESPONSE NO. 41

Denied.

REQUEST NO. 42

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with television receivers at any time during the three (3)years immediately preceding March 5, 2004, i.e., at any time on or after March 5, 2001.

RESPONSE NO. 42

Admitted.

REQUEST NO. 43

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in

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connection with video cassette recorders at any time during the three (3) years immediately preceding March 5, 2004, i.e., at any time on or after March 5,2001.

RESPONSE NO. 43

Admitted.

REQUEST NO. 44

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with video cassette players receivers at any time during the three (3)years immediately preceding March 5, 2004, i.e., at any time on or after March 5,2001.

RESPONSE NO. 44

Admitted that the mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with video cassette players at any time during the three (3)years immediately preceding March 5, 2004, i.e., at any time on or after March 5,2001.

REQUEST NO. 45

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with camcorders at any time during the three (3) years immediately preceding March 5, 2004, i.e., at any time on or after March 5, 2001.

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RESPONSE NO. 45

Admitted.

REQUEST NO. 46

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with radios at any time during the three (3) years immediately preceding March 5, 2004, i.e., at any time on or after March 5, 2001.

RESPONSE NO. 46

Denied.

REQUEST NO. 47

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with clock radios at the time the application therefor was filed on October 10, 1989.

RESPONSE NO. 47

Denied.

REQUEST NO. 48

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with audio tape recorders and players at any time during the three (3) years immediately preceding March 5, 2004, i.e., at any time on or after March 5, 2001.

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RESPONSE NO. 48

Denied.

REQUEST NO. 49

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with portable radio and cassette recorder combinations at anytime during the three (3)years immediately preceding March 5,2004, i.e., at any time on or after March 5,2001.

RESPONSE NO. 49

Denied.

REQUEST NO. 50

The mark WAVE of Reg. No. 1,633,789, issued February 5, 1991, was not in use on or in connection with compact stereo systems at any time during the three (3)years immediately preceding March 5,2004, i.e., at any time on or after March 5,2001.

RESPONSE NO. 50

Denied.

REQUEST NO. 51

The mark WAVE of Reg. No. 1,633,789 was not in use on or in connection with portable compact disc players at any time during the three (3)years immediately preceding March 5, 2004,

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i.e., at any time on or after March 5,2001.

RESPONSE NO. 51

Denied.

REQUEST NO. 52

The mark ACOUSTIC WAVE of Reg. No. 1,338,571, issued May 28,1985, was not in use on or in connection with loudspeaker systems at any time during the three (3)years immediately preceding March 5,2004, i.e., at any time on or after March 5,2001.

RESPONSE NO. 52

Denied.

REQUEST NO. 53

The mark ACOUSTIC WAVE of Reg. No. 1,764,183, issued April 13,1993, was not in use on or in connection with loudspeaker systems at any time during the three (3)years immediately preceding March 5,2004, i.e., at any time on or after March 5,2001.

RESPONSE NO. 53

Denied.

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REQUEST NO. 54

The mark ACOUSTIC WAVE of Reg. No. 1,764,183, issued April 13, 1993, was not in use on or in connection with loudspeaker systems consisting of a loudspeaker system and amplifier and at least one of a radio tuner, compact disc player and audio tape cassette player at any time during the three (3) years immediately preceding March 5, 2004, i.e., at any time on or after March 5, 2001.

RESPONSE NO. 54

Denied.

REQUEST NO. 55

The mark WAVESYNC of Reg. No. 2,493,186, issued September 25, 2001, was not in use on or in connection with the each of the goods set forth therein at any time during the three (3) years immediately preceding March 5, 2004, i.e., at any time on or after March 5, 2001.

RESPONSE NO. 55

Denied.

REQUEST NO. 56

The mark PROFESSIONAL WAVE of Reg. No. 2,464,181, issued June 26, 2001, was not in use on or in connection with sound reproduction systems, namely a loudspeaker system comprising a power amplifier and a radio tuner and/or CD player at any time during the three (3) years

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immediately preceding March 5,2004, i.e., at any time on or after March 5,2001.

RESPONSE NO. 56

Denied.

REQUEST NO. 57

Loudspeakers and loudspeaker systems convert electrical energy into sound waves.

RESPONSE NO. 57

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 58

The act of "hearing" sound results when a pressure wave of air strikes a membrane within the ear, known as the ear drum, which converts this pressure wave into nerve impulses interpreted by the brain.

RESPONSE NO. 58

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

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REQUEST NO. 59

An "acoustic" or "acoustical" wave is a common synonym for a sound wave.

RESPONSE NO. 59

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 60

Other common types of waves known and used in the electronic industry, in addition to sound waves, are microwaves, radio waves, light waves and radio frequency or "RF" waves.

RESPONSE NO. 60

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 61

Acoustic waves are guided or directed within loudspeaker enclosures by the use of acoustic waveguides.

RESPONSE NO. 61

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

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REQUEST NO. 62

Waveguides are also commonly referred to by Opposer Bose and others as "wave guides "(i.e., using two separate words rather than one word).

RESPONSE NO. 62

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 63

Opposer Bose holds patents on acoustic waveguide (or wave guide) speaker technology.

RESPONSE NO. 63

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 64

Opposer Bose advertises and promotes the claim that "the secret " to the "lifelike sound " in certain of their radio products is "the Bose acoustic waveguide speaker technology built into " those radios and radio/CD systems.

RESPONSE NO. 64

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of

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admissible evidence.

REQUEST NO. 65

Opposer Bose explains in its advertising "how Bose waveguide systems work " and why it believes that "Bose waveguide systems sound so good".

RESPONSE NO. 65

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 66

Opposer Bose advertises that its "longest waveguide available in a consumer product delivers deep low frequencies and sound that easily fills larger rooms ".

RESPONSE NO. 66

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 67

Other manufacturers and vendors of loudspeakers, loudspeaker systems and music systems use their own or other designs of waveguide or wave guide technology for the same purposes as does Opposer Bose.

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RESPONSE NO. 67

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 68

Opposer Bose generally uses the single word waveguide in its advertising, but the two word phrase "wave guide " in its patent applications to describe and identify the same structure, function, feature or concept.

RESPONSE NO. 68

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 69

The term waveguide or wave guide is a common descriptive or generic term in the electronic and sound engineering industry, including in the fields of radios, loudspeakers and music systems.

RESPONSE NO. 69

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

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REQUEST NO. 70

The phrase sound wave is a common descriptive or generic phrase in the electronic and sound engineering industry, including in the fields of radios, loudspeakers and music systems.

RESPONSE NO. 70

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 71

The phrase acoustic wave is a common descriptive or generic phrase in the electronic and sound engineering industry, including in the fields of radios, loudspeakers and music systems.

RESPONSE NO. 71

Denied.

REQUEST NO. 72

The phrase acoustical wave is a common descriptive or generic phrase in the electronic and sound engineering industry, including in the fields of radios, loudspeakers and music systems.

RESPONSE NO. 72

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

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REQUEST NO. 73

The term wave is a common descriptive or generic in the electronic and sound engineering industry, including in the fields of radios, loudspeakers and music systems.

RESPONSE NO. 73

Denied.

REQUEST NO. 74

Sound waves or acoustic waves can be "in sync" or not "in sync", also called "out of sync", with each other.

RESPONSE NO. 74

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

REQUEST NO. 75

Waves that are "in sync" create very different sound patterns than waves that are "out of sync".

RESPONSE NO. 75

Bose objects to this request as irrelevant and not reasonably likely to lead to the discovery of admissible evidence.

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REQUEST NO. 76

The term wave is a common descriptive or generic in the electronic and sound engineering industry, including in the fields of radios, loudspeakers and music systems.

RESPONSE NO. 76

Denied.

REQUEST NO. 77

Exhibit A attached hereto is a true copy of an advertisement by Opposer Bose.

RESPONSE NO. 77

Admitted.

REQUEST NO. 78

Exhibit B attached hereto is a true copy of an advertisement by Opposer Bose.

RESPONSE NO. 78

Admitted.

REQUEST NO. 79

Exhibit C, comprising 4 pages, attached hereto is a copy of a promotional mailer advertisement by Opposer Bose.

Applicant : LightSurf Technologies, Inc.
Serial No. : 75-698,824
Filed: : May 6, 1999
Mark : WAVEFORCE
Page : 30

Attorney's Docket No.: 02103-008PP2

RESPONSE NO. 79

Admitted.

REQUEST NO. 80

Exhibit D attached hereto is a true copy of a U. S. Patent No. 5,740,259, owned by Opposer
Bose.

RESPONSE NO. 80

Admitted.

REQUEST NO. 81

Exhibit E attached hereto is a true copy of a U. S. Patent No. 5,033,577, owned by Opposer
Bose.

RESPONSE NO.81

Admitted.

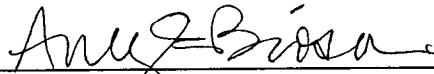
Applicant : LightSurf Technologies, Inc.
Serial No. : 75-698,824
Filed: : May 6, 1999
Mark : WAVEFORCE
Page : 31

Attorney's Docket No.: 02103-008PP2

Respectfully submitted,

Date: _____

4/9/04



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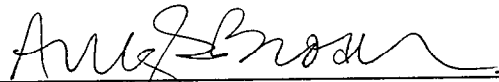
Attorneys for Opposer,
BOSE CORPORATION

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Opposer's Response to Applicant's First Set of Requests for Admission to Opposer has this 9th day of April 2004 been mailed by prepaid first class mail to the below-identified Attorney at his/her place of business:

Martin R. Greenstein
TechMark
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San Jose, California 95113-2324



Amy L. Brosius