

ESTTA Tracking number: **ESTTA907714**

Filing date: **07/06/2018**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	IMAX Corporation		
Entity	Corporation	Citizenship	Canada
Address	2525 Speakman Drive Sheridan Science and Technology Park Mississauga, ON L5K 1B1 CANADA		

Attorney information	Christopher P. Bussert Kilpatrick Townsend & Stockton LLP 1100 Peachtree Street, Suite 2800 Atlanta, GA 30309 UNITED STATES Email: cbussert@ktslaw.com, aweeks@ktslaw.com, kteilhaber@ktslaw.com, tadmin@ktslaw.com		
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Applicant Information

Application No	87767475	Publication date	07/03/2018
Opposition Filing Date	07/06/2018	Opposition Period Ends	08/02/2018
Applicant	Suzhou Maxpad Infortek Co.,Ltd Bldg. NW02-409A, Nanopolis Suzhou, 99 Jinji Lake Ave., Suzhou Ind. Park Suzhou, Jiangsu, 215123 CHINA		

Goods/Services Affected by Opposition


Class 009. First Use: 2017/06/20 First Use In Commerce: 2017/06/20 All goods and services in the class are opposed, namely: Computer whiteboards; Electronic interactive whiteboards


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	942747	Application Date	04/13/1970
Registration Date	09/12/1972	Foreign Priority Date	NONE
Word Mark	IMAX		


Design Mark	
Description of Mark	NONE
Goods/Services	Class U026 (International Class 001, 009, 010). First use: First Use: 0 First Use In Commerce: 0 MOTION PICTURE PROJECTORS, CAMERAS, OPTICAL PRINTERS, FILM EDITING MACHINES ANDMOTION PICTURE SCREENS Class U038 (International Class 009, 016, 028). First use: First Use: 0 First Use In Commerce: 0 [MOTION PICTURE FILMS]

U.S. Registration No.	2857685	Application Date	07/21/2003
Registration Date	06/29/2004	Foreign Priority Date	NONE
Word Mark	IMAX DMR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2002/03/04 First Use In Commerce: 2002/03/04 Motion picture production and post production services, including remastering of films from one film format into another		

U.S. Registration No.	1283679	Application Date	09/23/1982
Registration Date	06/26/1984	Foreign Priority Date	NONE
Word Mark	IMAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1974/02/20 First Use In Commerce: 1974/02/20 Displaying Motion Picture Film and Operating Motion Picture Theatres		

U.S. Registration No.	2121078	Application Date	07/09/1996
Registration Date	12/16/1997	Foreign Priority Date	NONE

Word Mark	IMAX
Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1990/06/01 First Use In Commerce: 1990/06/01 audio and audio visual tapes and compact discs on educational and entertainment subjects; sound systems for use in motion picture theaters and other public performance theaters, halls and auditoriums, namely, digital sound sources, audio processing control subsystems, amplifier subsystems and loudspeakers Class 025. First use: First Use: 1982/12/31 First Use In Commerce: 1982/12/31 clothing, namely, T-shirts, sweatshirts, [sweatpants] and caps Class 028. First use: First Use: 1988/04/30 First Use In Commerce: 1988/04/30 [motion simulator rides]

U.S. Registration No.	3965737	Application Date	09/22/2010
Registration Date	05/24/2011	Foreign Priority Date	NONE
Word Mark	IMAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2010/03/30 First Use In Commerce: 2010/03/30 CDs, DVDs, high definition DVDs, optical discs, magneto optical discs and laser-discs in the fields of education and entertainment; downloadable audio-visual content in the fields of education and entertainment; 3D glasses		

U.S. Registration No.	5215314	Application Date	07/14/2016
Registration Date	05/30/2017	Foreign Priority Date	NONE
Word Mark	IMAX VR		

Design Mark	<h1>IMAX VR</h1>		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2017/01/06 First Use In Commerce: 2017/01/06 Entertainment services, namely, providing facilities and equipment for playing virtual reality games, providing interactive play areas, and providing virtual reality exhibits and displays in the fields of entertainment and education		

U.S. Registration No.	2197111	Application Date	01/24/1997
Registration Date	10/20/1998	Foreign Priority Date	NONE
Word Mark	THE IMAX EXPERIENCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1987/01/00 First Use In Commerce: 1987/01/00 motion picture theater services featuring integrating large format, wide angle, low distortion, high resolution, high image stability cinematographic projection equipment and film, screen, theater design, seating and sound technology		

U.S. Registration No.	2263032	Application Date	06/08/1998
Registration Date	07/20/1999	Foreign Priority Date	NONE
Word Mark	AN IMAX EXPERIENCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1996/10/11 First Use In Commerce: 1996/10/11 motion picture theater services featuring integrating large format, wide angle, low distortion, high resolution, high image stability cinematographic projection equipment and film, screen, theater design, seating and sound technology		

U.S. Registration No.	3058603	Application Date	03/01/2005
Registration Date	02/14/2006	Foreign Priority Date	NONE
Word Mark	AT THE MAX		

Design Mark	AT THE MAX		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2004/01/22 First Use In Commerce: 2004/01/22 movie theater services		

U.S. Registration No.	2871953	Application Date	11/04/1999
Registration Date	08/10/2004	Foreign Priority Date	NONE
Word Mark	TO THE MAX		
Design Mark	TO THE MAX		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2004/01/22 First Use In Commerce: 2004/01/22 movie theatre services		

U.S. Registration No.	1655809	Application Date	06/25/1990
Registration Date	09/03/1991	Foreign Priority Date	NONE
Word Mark	MOVIES TO THE MAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1989/01/31 First Use In Commerce: 1989/01/31 movie theater services		

Attachments	72356735#TMSN.png(bytes) 76532215#TMSN.png(bytes) 85135280#TMSN.png(bytes) 87104709#TMSN.png(bytes) 76632397#TMSN.png(bytes)
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Signature	/Christopher P. Bussert/
Name	Christopher P. Bussert
Date	07/06/2018

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

In the matter of Application Serial No. 87/767,475; IMAX BOARD (Stylized); Published in the
Official Gazette of July 3, 2018

IMAX CORPORATION,)
)
 Opposer,)
)
 v.) Opposition No. _____
)
 SUZHOU MAXPAD INFORTEK CO., LTD.,)
)
 Applicant.)

NOTICE OF OPPOSITION

Opposer IMAX Corporation (“Opposer”), a Canadian corporation whose business address is 2525 Speakman Drive, Sheridan Science and Technology Park, Mississauga, Ontario, Canada L5K 1B1, believes that it will be damaged by registration of the IMAX BOARD stylized mark as currently shown in Application Serial No. 87/767,475 and hereby opposes the same pursuant to the provisions of 15 U.S.C. § 1063.

On January 23, 2018, Suzhou Maxpad Infortek Co., Ltd. (“Applicant”) filed an application to register the IMAX BOARD stylized mark for computer whiteboards; electronic interactive whiteboards, in International Class 9 (collectively “Applicant’s Goods”). Applicant’s mark was published in the *Official Gazette* on July 3, 2018. As grounds for its opposition, Opposer alleges:

1.

Since at least 1972, Opposer has been, and is currently, using the IMAX mark in connection with a wide range of technology and services including projection systems, cameras, sound systems, motion picture conversion and editing equipment, 3D glasses, production and

post-production services, and screens. Opposer's IMAX mark has also been, and is currently, used in connection with a wide variety of entertainment related services including motion picture films, the operation of a worldwide system of motion picture theaters, and virtual reality experience centers. Opposer's IMAX mark has also been and is currently used in connection with other technology related goods including DVDs and compact discs. Opposer's use of its IMAX mark has been valid and continuous since the date of first use and has not been abandoned.

2.

Opposer is the owner of the following U.S. trademark registrations:

- (a) Registration No. 942,747 of the mark IMAX (in stylized letters) for "motion picture projectors, cameras, optical printers, film editing machines, and motion picture screens," issued September 12, 1972;
- (b) Registration No. 2,857,685 of the mark IMAX DMR for "motion picture production and post-production services, including remastering of films from one film format into another," issued June 29, 2004;
- (c) Registration No. 1,283,679 of the mark IMAX for "displaying motion picture film and operating motion picture theaters," issued June 26, 1984;
- (d) Registration No. 2,121,078 of the mark IMAX for "audio and audio visual tapes and compact discs on educational and entertainment subjects; sound systems for use in

motion picture theaters and other public performance theaters, halls and auditoriums, namely, digital sound sources, audio processing control subsystems, amplifier subsystems and loudspeakers,” as well as “clothing, namely, T-shirts, sweatshirts and caps,” issued December 16, 1997;

(e) Registration No. 3,965,737 of the mark IMAX for “CDs, DVDs, high definition DVDs, optical discs, magneto optical discs and laser discs in the fields of education and entertainment; downloadable audio-visual content in the fields of education and entertainment; 3D glasses,” issued May 24, 2011;

(f) Registration No. 5,215,314 of the mark IMAX VR for “entertainment services, namely, providing facilities and equipment for playing virtual reality games, providing interactive play areas, and providing virtual reality exhibits and displays in the fields of entertainment and education,” issued May 30, 2017;

(g) Registration No. 2,197,111 of the mark THE IMAX EXPERIENCE for “motion picture theater services featuring . . . large format, wide angle, low distortion, high resolution, high image stability cinematographic projection

equipment and film, screen, theater design, seating and sound technology,” issued October 20, 1998;

- (h) Registration No. 2,263,032 of the mark AN IMAX EXPERIENCE for “Motion picture theater services featuring integrating large format, wide angle, low distortion, high resolution, high image stability cinematographic projection equipment and film, screen, theater design, seating and sound technology,” issued July 20, 1999;
- (i) Registration No. 3,058,603 of the mark AT THE MAX for “movie theater services,” issued February 14, 2006;
- (j) Registration No. 2,871,953 of the mark TO THE MAX for “movie theater services,” issued August 10, 2004; and
- (k) Registration No. 1,655,809 of the mark MOVIES TO THE MAX for “movie theater services,” issued September 3, 1991.

(collectively, the “IMAX Family of Marks”). Each of these registrations, except for Registration Nos. 5,215,314 and 3,965,737, is incontestable under 15 U.S.C. § 1065 and therefore constitutes conclusive evidence of Opposer’s exclusive right to use the IMAX mark in commerce in connection with the goods and services specified in each registration. Registration Nos. 5,215,314 and 3,965,737 are valid and subsisting and therefore constitutes evidence of Opposer’s exclusive right to use the IMAX mark in commerce in connection with the goods and services specified in that registration.

3.

Opposer is also the owner of the following U.S. trademark applications:

- (a) Application Serial No. 87/104,707 of the mark IMAX for “entertainment services, namely, providing facilities and equipment for playing virtual reality games, providing interactive play areas, and providing virtual reality exhibits and displays in the fields of entertainment and education, in International Class 41,” filed July 14, 2016; and
- (b) Application Serial No. 86/524,430 of the mark IMAX for “consumer electronic products, namely, headphones, earphones, audio/video cables, camcorders, DVD players and personal stereos; home theater systems comprised of a multimedia projector, a surround sound system, projection screen, digital media servers and control devices for use therewith; computer software for playing video games and for accessing and browsing global computer and communications networks; video game programs downloadable from global computer networks and global communications networks; and user manuals for all of the aforementioned software and devices sold as a unit therewith; television and video converters; audio speakers, loudspeakers systems; and gaming equipment, namely, video game machines for use with televisions and

computers; video game controllers; devices, namely computer and video gaming consoles for recreational and computer game playing over computer networks,” filed February 4, 2015.

4.

Opposer also is the owner of other IMAX marks that are used in connection with various aspects of Opposer’s business, including:

- (a) IMAX 3D;
- (b) IMAX 3D FILM;
- (c) AN IMAX 3D EXPERIENCE;
- (d) IMAX DOME; and
- (e) IMAX NXOS.

Opposer has also used variations of the IMAX mark in association with various publications and other printed materials.

5.

Opposer has a well-recognized reputation for the excellence and technological superiority of the goods and services offered under the IMAX mark. The following are representative examples of the awards and recognition that Opposer and its goods and services have received:

IMAX Awards And Nominations - Corporate Awards

CineEurope Award for Achievement Through Innovation 2015

Presented by CineEurope for IMAX's efforts in pioneering entertainment technology, setting the standard of excellence for premium cinematic experiences

Outstanding Technical Achievement Award 2013

Presented by the Academy of Canadian Cinema & Television for Recent Technical Achievements

Gold Award 2010

Presented by International 3D Society for IMAX's significant impact on 3D technology for the Dual 16/65MM & 30 PERF Single Strip 65MM 3D Camera.

Academy Award for Scientific and Technical Achievement, 1997

Academy of Motion Picture Arts and Sciences for the IMAX System.

"Best of What's New" Award Winner, 1990
Popular Science Magazine for IMAX SOLIDO.

Academy Scientific and Engineering Award, 1986

Academy of Motion Picture Arts and Sciences for the IMAX System.

"Best of What's New" Innovations 2014

Popular Science Magazine names IMAX's Digital 3D Camera as one of the best of what's new in entertainment.

Century Award 2010

Presented by International 3D Society for IMAX's significant impact on 3D technology for the "Solido" technology.

Award for Technical Achievement, 1999 Cinema Expo International.

Award of Excellence, 1991

Presented by Canada's Minister of Communications for outstanding contribution and achievement in the fields of culture and technology.

Canada Export Award, 1988

Presented by International Trade Development External Affairs Canada, for outstanding export achievement.

The Chetwynd Award, 1985

Canadian Film and Television Association for entrepreneurial and outstanding contribution.

Selected Individual Awards And Nominations

Eileen Campbell, CMO, 2015

Named One of Variety's Top Marketing Impact Report Honorees

Richard L. Gelfond, CEO, 2015

Recipient of the Ellis Island Medal of Honor

Richard L. Gelfond, 2013

Recipient of Award from the National Committee on US-China Relations (2013)

Graeme Ferguson & Roman Kroitor, 2011

Recipient of the John Grierson International Gold Medal presented by the Society of Motion Picture and Television Engineers for their pioneering work in conceiving the IMAX medium.

Graeme Ferguson, Roman Kroitor, Robert Kerr (posthumously), Bill Shaw (posthumously) & Bill Breukelman 2010

Odyssey Award presented by Canadian Undergraduate Technology Conference for outstanding contribution.

Graeme Ferguson, 2010

SFA Silver Snoopy Award presented by NASA Astronauts.

Graeme Ferguson, 2010

Bulls Eye Lifetime Achievement Award presented by Film North.

Toni Myers, 2009

SFA Silver Snoopy Award presented by NASA.

Toni Myers, 2007

2007 Crystal Award for Outstanding Achievement presented by Women in Film and Television-Toronto.

Graeme Ferguson, 2005

7th Annual Kodak Vision Award presented by The Large Format Cinema Association.

Graeme Ferguson, 1999

Doctorate of Sacred Letters from the Victoria University at the University of Toronto.

William Shaw, 1998

Leonardo Da Vinci Award presented by the American Society of Mechanical Engineers International Design Engineering Division.

Roman Kroitor, 1994

Recipient of Honourary Doctoral Degree from the University of Manitoba.

Graeme Ferguson, 1993

Recipient of Honourary Doctoral Degree from the University of Bradford, England.

Graeme Ferguson, 1993

Named to the Order of Canada, invested by His Excellency the Right Honourable Ramon John Hnatyshyn, Governor General of Canada.

David Keighley, 1993

Recipient of the Herbert T. Kalmus Gold Medal Award presented by the Board of Governors of the Society of Motion Picture and Television Engineers (SMPTE) for outstanding contributions to large format 70mm print quality control and his pioneering efforts in making high-quality large-format 70mm release through the interpositive and internegative system.

Barbara Kerr, 1993

nominated for Best Editor (*Fires of Kuwait*) by the American Cinema Editors (ACE).

Graeme Ferguson, 1991

Environmental Achievement Award presented by the Canadian Government for outstanding communication for environmental awareness.

Roman Kroitor, 1990

Outstanding Film, EXPO category, Osaka, 1990 presented for *The Last Buffalo* by the Japanese Audiovisual Association.

Roman Kroitor, 1990

Grand Prize, Osaka, 1990, presented for *Echoes of the Sun* by the Japanese Audiovisual Association.

Graeme Ferguson, 1986

Golden Reel, Special Achievement Award presented at the Genie Awards by the Academy of Canadian Cinema and Television.

William Shaw, 1985

Recipient of the John Grierson Medal presented by the Society of Motion Picture and Television Engineers.

Graeme Ferguson, 1990

Specialty Achievement Award presented by the Royal Canadian Academy of Arts.

Roman Kroitor, 1990

Best Film, Social, Environmental and Cultural Category, Osaka 1990, presented for *The Last Buffalo* by Japan Industrial - Cultural Film and Video Festival.

William Shaw, 1988

Winner of the Gold Medal presented by the Association of Professional Engineers of Ontario (APEO).

Roman Kroitor, 1986

Nominated by the Academy of Canadian Cinema and Television for Best Short Documentary at the Genie Awards for *Skyward*.

William Shaw, 1970

Recipient of ETROG, Canadian Film Award for technical development and achievement.

Selected Film Awards And Nominations For Films Produced By IMAX

Hubble 3D, 2010

3D Creative Award presented to IMAX Corporation by the International 3D Society for best Documentary.

Nascar 3D: The IMAX Experience, 2005

2005 Golden Reel Award for sound editing in a special venue film by the Motion Picture Sound Editors.

Magnificent Desolation: Walking on the Moon, 2006

Presented to IMAX Corporation by the Visual Effects Society for Outstanding Visual Effects in a Special Venue Project.

Harry Potter and the Prisoner of Azkaban, The IMAX Experience, 2005

Presented to IMAX Corporation and Warner Bros. by the Giant Screen Theater Association for Best Film produced non-exclusively for Giant Screen Theaters.

Nascar 3D: The IMAX Experience, 2004
Presented to IMAX Corporation by the Giant Screen Theater Association for Best Marketing Campaign by Distributor and Best Sound.

Academy Awards® Nominations In the Best Documentary Short Subjects Category, 1997
Special Effects and Cosmic Voyage.

Fires of Kuwait, 1995
Gold Special Jury Award in the Short Subject Historical Category at the Worldfest Charleston, an international Film and Video Festival.

Secret of Life on Earth, 1995
The Grand Award for Best Film and Video Production at the Worldfest Charleston, an international Film and Video Festival.

Titanica, 1993
Nominated by the Academy of Canadian Cinema and Television for Best Documentary at the Genie Awards.

Mountain Gorilla, 1993
Recipient of Seventh Annual Genesis Award for Outstanding Film Documentary presented by The Ark Trust Inc.

The Dream Is Alive, 1987
Winner of the Prix du Publique for Best Film at the First International IMAX/OMNIMAX Film Festival in Paris, France.

Bill Hilson Trophy, 1985
Presented to IMAX Corporation by the Canadian Society of Cinematographers for outstanding achievement.

Space Station, 2002
Presented to IMAX Corporation by the Giant Screen Theater Association for Best Film and Best Cinematography.

To Fly, 1996
Honored by entrance to America's National Film Registry, and selected for archival preservation '96.

Titanica, 1995
Gold Award in the History and Archaeology category at the Worldfest Charleston, an international Film and Video Festival.

Destiny In Space, 1995
Gold Award in the Flight/Space Travel category at the Worldfest Charleston, an international Film and Video Festival.

Fires of Kuwait, 1993
Nominated for **Academy Award®** for Best Feature, Documentary category by the Academy of Motion Pictures Arts and Sciences.

Blue Planet, 1991
Winner of the Prix du Publique for Best Film at the Third International IMAX/OMNIMAX Film Festival in Paris.

The Dream Is Alive, 1985
Special Jury Award, CFTA '85 presented by the Academy of Canadian Cinema and Television.

North of Superior, 1971
Special Jury Award, Canadian Film Award.

6.

Opposer's IMAX camera technology has also received numerous awards as a result of the superior image quality produced. For example, in 2010 the International 3D Society selected both Opposer's IMAX SOLIDO technology and the "dual 15/65mm and 30 perf single strip 65mm 3D camera" for "Century Awards".

7.

Opposer has also made huge investments in the research and development of a wide variety of technology including its innovative projection technology. The image quality delivered by Opposer's innovative projection technology is superior to the ordinary projection standard.

8.

Opposer's first IMAX movie was released at the EXPO '70 in Osaka, Japan in 1970. Opposer's first permanent IMAX theatre opened in 1971 in Toronto, Ontario.

9.

IMAX theatres combine advanced high-resolution projection systems, sound systems and screens as large as eight stories high that extend to the edge of a viewer's peripheral vision to create highly realistic audio-visual experiences. As a result audiences feel as if they are a part of the on-screen action in a way that is more intense and exciting than in traditional theatres.

10.

The first theatre in the United States was an IMAX DOME theatre which opened in 1973 at the Rubeen H. Fleet Space Theater and Science Center in San Diego, California.

IMAX DOME theatre images are projected onto a giant dome screen (up to 88.5 feet), which gives the viewer an even greater sense of being enveloped by the images.

11.

As of March 31, 2005, there were 250 IMAX theatres operating in 36 countries worldwide, 125 of which were located in the United States. The number of IMAX theatres operating worldwide and in the United States has increased significantly since 2005. As of September 30, 2017 there were 1,302 IMAX theatres (1,203 commercial multiplexes, 11 commercial destinations, 86 institutions and 2 home theatres) operating in 75 countries worldwide, 397 of which were located in the United States.

12.

In 2002, Opposer introduced its proprietary IMAX DMR® technology, which allows virtually any 35mm live action or digital film to be digitally converted to IMAX's large format at a modest incremental cost, while meeting Opposer's high standards of image and sound quality.

13.

In 2008, Opposer introduced its digital xenon projection system which integrates a suite of Opposer's proprietary intellectual property with commercially available digital projection technology in a way that creates The IMAX Experience® in a digital format. This technology, along with proprietary IMAX technology applied to the content, dramatically enhance the image fidelity, light output and contrast in both 2D and 3D to produce a stunningly crisp and bright image on the big IMAX screen and deliver the unparalleled image and sound quality that consumers have come to recognize and enjoy.

14.

Opposer's IMAX projection system is configured for commercial multiplex operators and is capable of showing Hollywood movies that have been digitally re-mastered using Opposer's proprietary DMR® technology in both IMAX and IMAX® 3D formats. The system is capable of showing original IMAX documentaries that have been converted into digital format. In March 2010, Avatar: An IMAX 3D Experience completed its initial run as the all-time highest grossing IMAX release; the worldwide IMAX box office total for the film climbed to more than \$220 million since the movie's launch in December 2009.

15.

Currently, Opposer together with Barco N.V. has co-developed a laser-based digital projection system to present greater brightness and clarity, a wider color gamut and deeper blacks and will be capable of illuminating the largest screens in the IMAX theatre network. Designed from the ground up for IMAX's largest screens, the dual 4K laser projection system is equipped with a new optical engine and suite of proprietary IMAX technologies capable of projecting an image with up to a 1.43:1 aspect ratio with maximum resolution and sharpness, unparalleled 2D and 3D brightness, industry-leading contrast and an expanded color gamut that will allow filmmakers to present more vivid and exotic colors than ever before. The new system also includes IMAX's next-generation sound technology that delivers even greater power and precision for ultimate audio immersion. It has been upgraded to 12 discrete channels plus sub-bass, and includes additional side channels as well as new overhead channels that will improve the system's ability to position sounds around the audience and further ensure every seat is the best in the house.

16.

There are currently 46 IMAX laser-based digital projection systems in operation, 13 of which are located in the United States in the Airbus IMAX Theater at the Steven F. Udvar-Hazy Center in Chantilly, Virginia, The Boeing IMAX Theater at Pacific Science Center in Seattle, Washington, Tennessee Aquarium in Chattanooga, Tennessee, Lockheed Martin National Air & Space Museum in Washington, DC, Branson's IMAX – Entertainment Complex in Branson, Missouri, Sunbrella IMAX Theatre in Reading, Massachusetts, The TCL Chinese Theatre in Los Angeles, California, Universal Citywalk Stadium 19 (Los Angeles), Texas State History Museum, Austin, Texas, Museum of Science and Discovery, Fort Lauderdale, Florida and AMC Theatres' Metreon 16 (San Francisco), Navy Pier (Chicago), Lincoln Square (New York) IMAX locations. Opposer has also contracted for 3 additional IMAX laser-based digital projection systems deals that will be installed in theatres in the United States.

17.

As a result of Opposer's long-standing and extensive use of its IMAX Family of Marks in this country, including specifically use of the IMAX mark since 1972, Opposer's IMAX Family of Marks has become symbolic of the extensive goodwill and customer recognition established by Opposer by virtue of the expenditure of substantial amounts of time and effort in advertising and promoting its goods and services under its trademarks and service marks. In 2000 and 2006, for example, brand equity studies established that three of four consumers in North America recognized IMAX as a brand name. Brand recognition of the IMAX mark has increased in recent years. For example, a brand equity study conducted in 2011 established that over ninety (90) percent of consumers in North America recognized IMAX as a brand name. And another study conducted in 2014 established that 97 percent of consumers in

the United State recognized IMAX as a brand name. The IMAX Family of Marks thus identifies Opposer and its goods and services.

18.

Opposer's IMAX mark is famous and distinctive within the meaning of 15 U.S.C. § 1125(c) in that:

- (a) the mark possesses both inherent and acquired distinctiveness;
- (b) Opposer has made extensive and exclusive use of its IMAX mark for an extended period of time;
- (c) Opposer has extensively promoted goods and services provided under the IMAX mark throughout the United States;
- (d) Opposer has used, and is currently using, the IMAX mark throughout the United States;
- (e) Opposer currently is providing goods and services under the IMAX mark;
- (f) Opposer has successfully cultivated a high degree of recognition of the IMAX mark in the trading areas and channels in which both parties are doing business;
- (g) on information and belief, there is no significant third party use of the IMAX mark or phonetic equivalents thereof; and
- (h) the IMAX mark is covered by multiple federal registrations.

19.

On January 23, 2018, Applicant filed an application (Serial No. 87/767,475) to register the IMAX BOARD stylized mark for Applicant's Goods.

GROUND I

Likelihood of Confusion

20.

Opposer hereby incorporates by reference the allegations of Paragraphs 1-19 hereof as if fully set forth herein.

21.

Because of the high degree of distinctiveness of Opposer's IMAX Family of Marks (including, without limitation, IMAX 3D, IMAX 3D FILM, IMAX DMR, IMAX DOME and IMAX NXOS), the length of time Opposer has used its IMAX Family of Marks, the vast advertising and publicity the IMAX Family of Marks has received, the substantial trading area in which the IMAX Family of Marks is used, and the high degree of consumer recognition of the IMAX Family of Marks, the marks comprising the IMAX Family of Marks are well known, strong, and famous trademarks, deserving of a broad scope of legal protection.

22.

Applicant's IMAX BOARD stylized mark is closely similar to Opposer's IMAX mark in that it adopts Opposer's IMAX mark in its entirety combined with the descriptive term "Board"; which Applicant has disclaimed in the subject application. Moreover, Applicant's mark is described in the subject application as follows:

The mark consists of the words "IMAX BOARD" in stylized form. The word "IMAX" is written on top of the word "BOARD".

23.

Applicant's Goods are related to the goods covered by at least some of Opposer's federal registrations for the IMAX mark. In addition, Applicant's Goods fall in International Class 9. Several of Opposer's registrations and applications for registration for its IMAX Family of Marks encompass goods that also fall in International Class 9.

24.

Applicant's IMAX BOARD stylized mark, when used in connection with Applicant's Goods, so resembles Opposer's previously used IMAX Family of Marks as to be likely to cause confusion, mistake, and/or to deceive consumers concerning an affiliation, connection, association or sponsorship with the source of goods and services sold under the IMAX Family of Marks, in violation of 15 U.S.C. § 1052(d), with consequent injury to Opposer, the public and the trade.

25.

Opposer will be damaged by registration of Applicant's IMAX BOARD stylized mark because the mark in its entirety so resembles Opposer's IMAX Family of Marks previously used in the United States, and not abandoned, as to be likely to cause customer confusion, mistake and deception, particularly in view of the high degree of similarity of the respective marks and closely related nature of the respective parties' goods and/or services. Persons familiar with Opposer's IMAX Family of Marks would be likely to believe erroneously that Applicant's Goods are offered by Opposer or endorsed and sponsored by Opposer, and registration of Applicant's mark on the Principal Register would be inconsistent with Opposer's rights in its federally registered and common law rights in its IMAX Family of Marks.

GROUND II

Dilution of the Famous IMAX Mark

26.

Opposer hereby incorporates by reference the allegations of Paragraphs 1-25 hereof as if fully set forth herein.

27.

Because of the high degree of inherent and acquired distinctiveness of the IMAX mark, the length of time and extent to which Opposer has used the IMAX mark, the vast advertising and publicity the IMAX mark has received, the substantial trading area in which the IMAX mark is used, and the high degree of consumer recognition of the IMAX mark, the IMAX mark is a famous trademark pursuant to 15 U.S.C. § 1125(c)(1).

28.

The IMAX mark became famous long before Applicant's first use, actual or constructive, of the IMAX BOARD stylized mark in the United States.

29.

Applicant's IMAX BOARD stylized mark, when used on or in connection with Applicant's Goods, would lessen the capacity of Opposer's IMAX mark to identify and distinguish Opposer's goods and services sold thereunder and, as such, would cause dilution of the IMAX mark in violation of 15 U.S.C. § 1052.

30.

Pursuant to 15 U.S.C. § 1063(a), Opposer believes it will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the use of the IMAX BOARD stylized mark, and would give color and exclusive statutory right

to Applicant in violation and derogation of prior and superior statutory and common law rights of Opposer.

31.

Opposer therefore requests that Application Serial No. 87/767,475 be refused registration, and that this opposition be sustained in favor of Opposer.

32.

The required fee for instituting this opposition proceeding accompanies this notice. The Commissioner is authorized to charge Kilpatrick Townsend & Stockton LLP's credit card account as indicated on the USPTO's online fee payment management tool, Financial Manager, for the amount of the required filing fee. The Commissioner is authorized to charge Kilpatrick Townsend & Stockton LLP's Deposit Account No. 20-1430 if there is a deficiency in the required filing fee.

Dated: July 6, 2018

Respectfully submitted,

IMAX CORPORATION

By /s/ Christopher P. Bussert

Christopher P. Bussert

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Attorneys for Opposer

IMAX Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served on Applicant's correspondent as identified in the correspondence address of record on July 6, 2018 via e-mail to:

Mr. Thomas Caraco
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Toronto, Ontario M5V1J2
Canada
E-mail: thomas@witmart.com

/s/ Christopher P. Bussert
Christopher P. Bussert
Attorney for Opposer
IMAX Corporation

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION is being filed electronically with the PTO via ESTTA on this day, July 6, 2018.

/s/ Christopher P. Bussert
Christopher P. Bussert
Attorney for Opposer
IMAX Corporation