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Filing date: **09/25/2008**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	ABBY Software Ltd.		
Entity	Limited	Citizenship	Cyprus
Address	Stasikratous 29, Office 202 Nicosia, 1065 CYPRUS		

Attorney information	Roy Ching Merit Law Group PC 800 W. El Camino Real #180 Mountain View, CA 94040 UNITED STATES rching@mlgpc.com Phone:650-943-2442		
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Registration Subject to Cancellation

Registration No	3015325	Registration date	11/15/2005
Registrant	Ectaco Inc. 31-21 31st Street Long Island City, NY 11106 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 2004/05/10 First Use In Commerce: 2004/05/10 All goods and services in the class are cancelled, namely: Translation software, language learning software, electronic voice interpreter, electronic handheld dictionaries

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Related Proceedings	TRADEMARK APPLICATION NO. 77357275
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77357275	Application Date	12/20/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LINGVO		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1990/07/00 First Use In Commerce: 1995/02/00 Educational software featuring instruction in languages; Pocket translators; Pocket translators, electronic; Electronic pocket translators; Computer software for language translation and learning Class 016. First use: First Use: 1990/07/00 First Use In Commerce: 1995/02/00 Dictionaries Class 041. First use: First Use: 1990/07/00 First Use In Commerce: 1995/02/00 Language translation; Language interpretation; language instruction; Translation; Translation services

Attachments	77357275#TMSN.jpeg (1 page)(bytes) Petition to Cancel 9.24.08 RC.pdf (20 pages)(1242848 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Roy Ching/
Name	Roy Ching
Date	09/25/2008

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

ABBY SOFTWARE LTD.	Petitioner,	Cancellation No. _____
		PETITION TO CANCEL
	v.	Mark: LINGVOSOFT
ECTACO INC.	Registrant.	Reg. No. 3,015,325
		Reg. Date: November 15, 2005

PETITION TO CANCEL

ABBY Software Ltd. (“Petitioner”) has been and believes it will continue to be damaged by the continued registration of the mark LINGVOSOFT (“the Mark”) shown in United States Trademark Registration No. 3,015,325 (“the Registration”), which according to the United States Patent and Trademark Office’s (“USPTO”) website, was filed on July 30, 2004 and registered on November 15, 2005, and hereby petitions for cancellation of this registration.

As grounds for cancellation, Petitioner alleges:

I. The Parties.

1. Petitioner is a Limited company, legally organized under the laws of Cyprus, and having its place of business at Stasikratous 29, Office 202, Nicosia, Cyprus, 1065.

2. On information and belief, Ectaco Inc. (“Registrant”) is a corporation with its principal place of business in New York, and that it is the owner of the United States Trademark Registration No. 3,015,325, for LINGVOSOFT.

II. The Registration.

3. On information and belief, Registrant represented in its application for the Mark that it used the Mark in connection with “[t]ranslation software, language learning

software, electronic voice interpreter, electronic handheld dictionaries”, in International Class 09, and represented that its first use of the Mark in commerce was May 10, 2004.

III. Petitioner’s Mark And Goods.

4. Petitioner produces, sells, and distributes dictionary and translation software, language learning software, electronic voice interpreter, electronic handheld dictionaries (“Petitioner’s Goods”), among other products, both internationally and in the United States.

5. Petitioner has used the mark “LINGVO” by itself and in conjunction with other terms and symbols, as trademarks (“Petitioner’s Marks”) in the United States at least as early as February 10, 1995.

6. Petitioner’s Goods are similarly widely used in the United States by individuals and businesses, with its users including well-known companies in this country and abroad, such as those reflected on the web-page attached as Exhibit “A”.

7. For instance, “ABBYY LINGVO”, has been the most popular dictionary software in Russia with five million users.

8. Petitioner’s Marks are distinctive for Petitioner’s Goods and have substantial goodwill.

9. Petitioner has made substantial investments in marketing Petitioner’s Marks, and has done so for a long and sustained period of time.

10. The goods listed in the Registration are either identical or closely related to Petitioner’s Goods.

IV. Claims.

A. Priority of Use and Likelihood of Confusion.

11. Petitioner has been using Petitioner’s Marks, including in connection with Petitioner’s Goods, prior to Registrant’s use of Registrant’s Mark.

12. On information and belief, Petitioner's use of Petitioner's Marks preceded Registrant's use of Registrant's Mark in the United States.

13. Petitioner's first use of Petitioner's Marks in connection with its goods preceded the first use date indicated in the Registration.

14. Just as Petitioner believes that it has priority with regard to Petitioner's Marks in the United States, it was determined that Petitioner had priority as to the LINGVO mark in Russia.

15. On June 13, 2006, the Arbitration Court of Moscow ordered a company called "Ectaco-RD, LLC" to "discontinue its selling and otherwise circulating the electronic dictionary 'LingvoSoft' on the territory of the Russian Federation", and further ordered that an individual by the name of "Anton Valeryevich Epifanov", who was assigned the internet domain name "Lingvobit.ru" by Ectaco-RD, LLC to discontinue his use of the "Lingvo" mark. This decision was affirmed by Moscow's Ninth Arbitration Court of Appeal and the Federal Arbitration Court of Moscow District.

16. A copy of the above referenced decisions is attached as Exhibit "B".

17. On information and belief, Ectaco-RD, LLC is affiliated with Registrant.

18. For instance, on information and belief, Anton Valeryevich Epifanov is Registrant's Vice President of Research and Development, and as stated above, had been assigned the internet domain name "Lingvobit.ru" by Ectaco-RD, LLC.

19. The marks at-issue of both Registrant and Petitioner are highly similar.

20. For instance, both marks contain the term "LINGVO" and this term is a salient part of both marks.

21. On information and belief, the goods sold by the parties and their channels of trade are similar, and such goods are sold to and marketed to the same or similar class of purchasers.

22. Registrant's Mark are so similar to Petitioner's Marks so as to be likely to cause confusion, mistake, or to deceive as to origin, sponsorship and approval of Registrant's Goods with those of Petitioner.

B. Fraud on the Patent and Trademark Office.

23. On information and belief, Registrant knew of Petitioner's Marks prior to its application for the Registration.

24. On information and belief, Registrant knew it did not have rights in the subject mark of the Registration when Registrant submitted its application to the United States Patent and Trademark Office.

25. For instance, on information and belief, Registrant knew of Petitioner's Marks and its goods, and that the mark that it was applying for in the Registration was too similar to Petitioner's Marks at the time that it was applying for Registrant's Mark.

26. However, on information and belief, Registrant knew that the existence of Petitioner's Marks was a material fact for the examiner, and yet failed to disclose the existence of Petitioner's mark to the USPTO at the time of its application, and concealed such fact so to mislead the examiner into believing that Registrant was entitled to registration on the principal register.

27. Further, on information and belief, Registrant was not using its mark in connection with all the goods identified in its application, in spite of its representation to the USPTO to the contrary.

28. On information and belief, Registrant knew or should have known that the above representations were false.

29. On information and belief that Registrant, in bad faith, made false statements with the intent to induce authorized agents of the USPTO to grant the Registration, and reasonably relying on the truth of said false statements, the USPTO did, in fact, grant this registration to Registrant.

30. The continuous registration of the subject mark of the Registration is causing injury to Petitioner, Petitioner's investment in its marks, Petitioner's business plans, by impairing Petitioner's rights in its Marks, is inconsistent with Petitioner's rights, and will continue to cause injury to Petitioner until the registration is cancelled.

31. Registrant is not entitled to the continued registration of the Registration, because Registrant committed fraud in the procurement of that registration.

32. The continued registration of the subject of the Registration is causing injury to Petitioner, Petitioner's Marks, its goodwill and its business plans, is impairing Petitioner's rights in its Marks, and is inconsistent with Petitioner's rights, and will continue to cause injury to Petitioner until the registration is cancelled.

V. Request For Relief.

WHEREFORE, Petitioner asks that this Petition be granted, that the Registration be canceled and removed from the principal register.

Date: September 24, 2008

Merit Law Group PC



Roy Ching, Esq.

Attorney for Petitioner ABBYY Software Ltd.

EXHIBIT A

ABBYY

Lingvo 12

[Site Map](#) | [Search](#) | [Feedback](#) | [Contacts](#)



[Products](#) [Services](#) [Store](#) [Support](#) [Lingvo Online](#) [Company](#)



Products

Dictionary Software

English

European

Multilingual

Languages and Dictionaries

Lingvo Tutor

Lingvo for Business

Lingvo for Pocket PC and Smartphone

ABBYY Lingvo Dictionary for Your Business



ABBYY Lingvo is the most popular dictionary software in Russia that has won the hearts of five million users because of its comprehensive, trustworthy and up-to-date dictionaries, instant translation features and ease of use.

ABBYY Lingvo is widely used by Individual users (both language learners and professional translators), in small companies and large-scale enterprises. For companies employed a large staff ABBYY Lingvo is perfectly fit because of its group work features:

- Automated network installation from the server onto workstations via Microsoft SMS, Active Directory, Task Scheduler, and the command line;
- Network installation in Interactive mode;
- License Manager utility;
- Concurrent license management;
- Flexible licensing scheme and discounts.

ABBYY Lingvo dictionary software has being used in various companies including Deloitte, SAP CIS, Nokia, Motorola, Raiffelsen, Citibank, DuPont, KPMG, AMTEL, IKEA, UPS, Toyota, Volvo, Xerox, Lucent, Nike, Adidas, Cargill, Stora Enso, Avaya, Bayer, Nycomed, Schering-Plough, Procter and Gamble, Nestle, Coca-Cola, Colgate-Palmolive, Schwarzkopf & Henkel, Samsung, Kodak, and many others.

Below you can read some Lingvo users' feedback:

"An electronic dictionary is an indispensable tool in an modern office, especially in an office like ours, since we are a branch of an overseas company. Our staff comes from many different countries and we have partners all over the world. We talk and write to each other in several languages, and an electronic dictionary is a must. In our Moscow office, we were looking for a dictionary that was comprehensive, had network capabilities, and was easy to use. We decided on ABBYY Lingvo, since it is the best dictionary currently available on the market. This is an excellent office tool which helps us do our job better".

Aleksey Goncharenko,
Systems Analyst,
Nestle, Russia

"We have offices in the USA, Russia, Switzerland, the UK and some other countries, and real understanding between people of different cultures is impossible without a good dictionary. ABBYY Lingvo has taken dialogue between our offices to a whole new level. Lingvo is a comprehensive and easy-to-use dictionary tailored to corporate environments. This is an ideal language reference tool for any office. What's more, if you need thousands of licenses for your employees price becomes an important factor, and the price of ABBYY Lingvo was a pleasant surprise. As well as the dictionary's other features".

Georgiy Soustin,
PR Specialist,
Procter & Gamble

Contact your [local office](#) for further questions.

EXHIBIT B

**ARBITRATION COURT OF MOSCOW
In the name of the Russian Federation
DECISION**

Moscow
June 13, 2006

Case No. A40-62691/05-67-403

Substantive part of the decision was announced on June 1, 2006.
Full text of the decision was prepared on June 13, 2006.

Arbitration Court comprising:

judge G. V. Cherenkova

with the minutes of the court hearing kept by G. V. Cherenkova
examined in court hearing the case brought by ABBYY Solutions Limited
ABBYY Software Limited

against the defendants Ectaco-RD, LLC

A. V. Epifanov,

third party – ANO RSIC

seeking to protect rights to trademarks and recover 2,500,000 rubles in compensation.

Present for the court hearing:

for the plaintiff – E. I. Murashova, under power of attorney,

for the defendants – G. D. Lubianitskiy, under power of attorney,

K. A. Yakovlev, under power of attorney dated March 10, 2006,

for the third party - A. P. Grinkevich, under power of attorney.

The Court

HAS ESTABLISHED:

Company NLS Technologies Limited (Cyprus) filed a lawsuit with the Arbitration Court against ANO RosNIIRos and Ectaco-RD, LLC to protect its rights to trademarks No. 280687 and No. 224996, namely:

- to prohibit Ectaco-RD, LLC from using the Lingvo trademark in the domain name Lingvobit.ru;
- to obligate Ectaco-RD, LLC and ANO RosNIIRos to transfer (re-delegate) the Lingvobit.ru domain to the plaintiff;
- to obligate Ectaco-RD, LLC to remove the Lingvo trademark from the product – electronic dictionary LingvoSoft;
- to recover damages of 2,500,000 rubles for illegal use of the trademark by Ectaco-RD, LLC.

While the case was being examined, the court changed the defendant ANO RosNIIRos to ANO RSIC – the new domain registrar; the court accepted abandonment of claim against ANO RSIC and stopped case proceedings against this defendant, bringing ANO RSIC into the proceedings as a third party without independent claims on the subject of dispute.

With its determination dated March 14, 2006, the court:

- changed the plaintiff – company NLS Technologies Ltd (Cyprus) to ABBYY Solutions Limited due to the change in the plaintiff's name.
- brought into the proceedings as a second defendant A. V. Epifanov in connection with the assignment by the first defendant – Ectaco-RD, LLC of the rights to administer the Lingvobit.ru

domain to A. V. Epifanov. .

With its determination dated May 29, 2006, the court rejected the motion of company ABBYY Software Limited to join the proceedings as a third party with independent claims on the subject of litigation.

Under Article 48 of the Arbitration Procedural Code of the Russian Federation, with its determination dated June 1, 2006, the court changed the plaintiff ABBYY Solutions Limited by order of procedural succession to Abbyy Software Limited (Cyprus) with respect to claims of intangible nature, that is, with respect to all claims with the exception of the claim seeking to recover monetary damages.

As a result of the court's procedural actions to change the composition of parties participating in the proceedings and satisfy the plaintiff's motion to change the subject of the lawsuit, the plaintiff's claims are as follows:

- the plaintiff ABBYY Solutions Limited seeks to recover 2,500,000 rubles from Ectaco-RD, LLC in damages for infringement on its trademark rights.
- the plaintiff ABBYY Software Limited seeks to prohibit A. V. Epifanov from using the "Lingvo" trademark in the Lingvobit.ru domain and obligate A. V. Epifanov to transfer the Lingvobit.ru domain to ABBYY Software Limited.

The defendants contested the lawsuit, alleging that registration of trademarks No. 280687 and No. 224996 was performed in violation of Articles 6, 7 of the Russian Federation Law "On Trademarks, Service Marks, and Appellations of Origin", and submitted to the Patent Disputes Chamber objections against registration of the trademarks.

Additionally, the defendants believe that upon the renaming of NLS Technologies Limited to ABBYY Solutions Limited, Rospatent did not perform re-registration of trademarks to ABBYY Solutions Limited, which contravenes Article 27 of the Russian Federation Law "On Trademarks, Service Marks, and Appellations of Origin", in which connection the plaintiffs are not rightholders.

After studying the case materials and evaluating the evidence presented, the court has come to the conclusion that the defendants infringed on the exclusive trademark rights of ABBYY Software Limited and such rights are subject to protection.

Verbal trademark No. 280687 "Lingvo" was registered by Rospatent in the name of NLS Technologies Limited, Cyprus, on December 24, 2004, with a priority date of October 16, 2003, including with respect to products of class 09 under the International Classification of Goods and Services – electronic translators, electronic pocket translators, computer software.

The verbal trademark No. 224996 "Lingvo" was registered to company ABBYY Software House (Russia) on October 17, 2002, with the priority date of August 23, 2000, including with regard to services of class 42 under the International Classification of Goods and Services – translation service, and products and services of class 09 under the International Classification of Goods and Services – electronic translators, electronic pocket translators, computer software.

Trademark No. 224946 was assigned on October 10, 2003, to NLS Technologies Ltd, (Cyprus).

According to the name change certificate No. NE 131582 issued on August 22, 2005, by the Republic of Cyprus, company NLS Technologies Ltd was renamed to ABBYY Solutions Limited:

- under the agreement for assignment of rights No. 03.01.N2.05 dated January 3, 2005, registered by Rospatent on March 28, 2006, under No. RD 0007692, NLS Technologies Limited assigned rights to trademarks Nos. 224996 and 280687 to company ABBYY Software Limited.

The defendants' objections concerning illegitimate registration of the contested trademarks and the agreement for assignment of rights to the trademark are not legally substantiated because under Article 2 of the Russian Federation Law "On Trademarks, Service Marks, and Appellations of Origin" legal protection of a trademark in the Russian Federation is provided on the basis of its state registration which has not been contested in accordance with the procedure prescribed by the Russian Federation Law "On Trademarks, Service Marks, and Appellations of Origin".

The cause of action is protection of the rights of holders of trademarks No. 280687 "Lingvo" and No. 224996 "Lingvo", which have been used by the defendants without the rightholders' permission in the domain name Lingvobit.ru on the Internet.

Pursuant to Article 4 of the Russian Federation Law "On Trademarks, Service Marks and Appellations of Origin", an infringement on a rightholder's exclusive rights is use without the rightholder's permission in public circulation on Russian territory of the rightholder's trademark or a name similar to the point of confusion on products for whose individualization the trademark has been registered or products of the same kind, including on the Internet, and in particular in a domain name.

The fact that the contested trademarks have been used by Ectaco-RD, LLC without the rightholder's permission is confirmed by the following evidence:

- letter of RosNIIROS No. ROS-03/125 dated September 7, 2005, to the effect that the administrator of the Lingvobit.ru domain is Ectaco-RD, LLC
- notarized minutes of inspection of evidence dated August 29, 2005, prepared in the process of securing evidence under Article 102 of the Fundamentals of Russian Legislation on Notary Practice.

The fact of use of the contested trademarks online by A. V. Epifanov is confirmed by RosNIIROS letter dated February 2, 2006, No. ROS-03/03, according to which the Lingvobit.ru domain was assigned to A. V. Epifanov by Ectaco-RD, LLC on October 24, 2005. Moreover, issue No. 3 of the 2006 PC+Mobile magazine contains an advertisement of an electronic dictionary with a link to A. V. Epifanov's website www.Lingvobit.ru.

The Lingvobit.ru domain name is similar to the Lingvo trademark to the point of confusion because it contains the verbal trademark "Lingvo" typed using Latin script and identically sounding trademark "Lingvo" as it is pronounced in Russian when spelled using the Cyrillic script, which convey the core meaning. The defendants do not contest the similarity.

The defendants have used the domain name with respect to similar products and services: electronic dictionaries, electronic software, translation services, because according to notarized minutes of inspection of evidence dated August 29, 2005, the website belonging to Ectaco-RD, LLC offered for sale: "everything for language study", electronic dictionaries "LingvoSoft", electronic software. According to the advertisement in Issue No. 3 of the 2006 PC+Mobile magazine, the administrator of the Lingvobit.ru domain (A. V. Epifanov since October 24, 2005) offered for sale electronic dictionaries "LingvoSoft 1.2.16".

Pursuant to Article 46 of the Russian Federation Law "On Trademarks, Service Marks, and Appellations of Origin", judicial protection of exclusive rights of a trademark holder is provided, among other things, by way of obligating the violator to stop using the trademark, recovering damages in the amount of 1,000 to 50,000 minimum wages as determined by the court.

Because the law protects only claims of the holder of exclusive rights to the trademark, which is ABBYY Software Limited, on the date of the court's decision, the court satisfies the plaintiff's claims against the defendants whereby the plaintiff seeks to prohibit A. V. Epifanov from using the Lingvo trademark in Lingvobit.ru domain through its administration and prohibit Ectaco-

RD, LLC from selling and otherwise circulating electronic dictionaries LingvoSoft on Russian territory.

The court does not satisfy the claims of ABBYY Software Limited whereby it seeks to obligate A. V. Epifanov to transfer the Lingvobit.ru domain to the rightholder, because this form of protection is not envisioned by Article 46 of the Russian Federation Law "On Trademarks, Service Marks, and Appellations of Origin". Now that the court has prohibited A. V. Epifanov from administering the domain, the trademark holder has no obstacles to using its trademark on the Internet, including by registering a domain name identical to that mentioned herein.

The court does not satisfy the claim of ABBYY Solutions Limited whereby it seeks to recover damages from the defendants, because liability in the form of compensation of damages caused – unlike general civil liability stipulated in Article 15 of the Civil Code of the Russian Federation for infringement on legitimate rights – is a special type of liability envisioned only for protection of the rights of the holder of exclusive rights to a trademark, which ABBYY Solutions Limited is not since March 28, 2006, and as of the date of this decision. In this connection, ABBYY Solutions Limited as a rightholder until March 28, 2006, has the right to recover damages caused under Article 15 of the Civil Code of the Russian Federation.

Additionally, unlike Article 49 of the Russian Federation Law "On Copyright and Neighboring Rights", in which the legislator has directly stipulated the right to recover compensation regardless of whether losses have been caused or not, the norm of Article 46 of the Russian Federation Law "On Trademarks, Service Marks, and Appellations of Origin" does not contain such a provision, but, on the contrary, stipulates that compensation can be recovered for actual losses caused.

Under such circumstances, ABBYY Solutions Limited is mistakenly citing the uniformity of judicial practice:

- Informational letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated September 28, 1999, No. 47, which provides an overview of the practice of examining disputes associated with the application of the Law "On Copyright and Neighboring Rights", and not the overview of the practice of application of the Law "On Trademarks, Service Marks, and Appellations of Origin".

The plaintiff also failed to prove the fact of losses caused in the form of loss of profit from license fees, which would otherwise give the plaintiff the right to recover compensation.

Pursuant to Article 393 of the Civil Code of the Russian Federation, in determining the amount of profit lost one should take into account the measures undertaken by the creditor to receive it and preparations made to this end. Meanwhile, the case materials contain no evidence to the effect that the plaintiff had forwarded to the defendants a draft license agreement for the use of the contested trademarks, whereas License Agreement No. 03.01.N1.05 dated January 3, 2005, with a different party presented by the plaintiff to substantiate possible losses does not constitute proper evidence because the case materials do not contain documents confirming registration of this agreement with Rospatent under Article 27 of the Russian Federation Law "On Trademarks, Service Marks, and Appellations of Origin". Moreover, the said agreement contains provisions on the assignment of exclusive rights to a trademark, that is, this is in fact an agreement of assignment of trademarks resulting in the change of the rightholder. At the same time, the cost of assignment of the trademark is much higher than payments under the license agreement, which makes substantiation of the declared amount of compensation untrustworthy.

Therefore, ABBYY Solutions Limited has failed to provide documentary confirmation of the fact that Ectaco-RD, LLC has caused it losses by using the contested trademarks in which connection it seeks compensation in the amount of 2,500,000 rubles.

Because the state duty associated with the lawsuit was paid by the representative acting on behalf of ABBYY Solutions Limited, in satisfying the intangible claims of company ABBYY Software Limited as its legal successor, the court orders the defendants to compensate the state duty costs incurred by ABBYY Solutions Limited.

Pursuant to Article 46 of the Russian Federation Law "On Trademarks, Service Marks, and Appellations of Origin" and Articles 110, 167-170 of the Arbitration Procedural Code of the Russian Federation, the Court

HAS DECIDED:

To prohibit Anton Valeryevich Epifanov from using the "Lingvo" trademark in the "Lingvobit.ru" domain through its administration.

To prohibit Ectaco-RD, LLC from selling and otherwise circulating the electronic dictionary "LingvoSoft" on the territory of the Russian Federation.

To reject the remaining claims of the plaintiff.

To order Anton Valeryevich Epifanov to compensate 2,000 rubles in state duty costs to ABBYY Solutions Limited.

To order Ectaco-RD, LLC to compensate 2,000 rubles in state duty costs to ABBYY Solutions Limited.

This decision may be contested with an arbitration court of appeal within one month from its date.

Judge

G. V. Cherenkova

/Stamp/: ARBITRATION COURT OF MOSCOW

*True copy
Judge Cherenkova G. V.
Signature /illegible/*

*/Seal/: ARBITRATION COURT OF MOSCOW
/State Emblem the Russian Federation/*

05-67-403
АББ
ТМ

*/Перевод с русского языка на английский язык/
/Translation from Russian language into English language/*

**NINTH ARBITRATION COURT OF APPEAL
115998, Moscow, 68/70 Sadovnicheskaya ul., building 1**

R U L I N G

**Moscow
September 25, 2006**

No. 09 AP - 9802/2006-GK

**Substantive part of the ruling was announced on September 18, 2006
Reasoned ruling was prepared on September 25, 2006**

The Ninth Arbitration Court of Appeal comprised of:
presiding judge V. V. Popov
judges A. P. Tikhonov and A. A. Solopova
minutes of the court hearing kept by secretary E. G. Sampayeva.

After examining in court the appeals of ABBYY Solutions Limited, Ectaco-RD, LLC, A. V. Epifanov, against the decision of the Arbitration Court of Moscow dated June 13, 2006, in case No. A40-62691/05-67-403, made by judge G. V. Chernenkova

in the case brought by ABBYY Solutions Limited and Abby Software Limited
against Ectaco-RD, LLC, A. V. Epifanov
third party: ANO RSIC (Regional Network Information Center),
seeking to protect trademark rights and recover compensation of 2,500,000 rubles,
with the participation of:

for the plaintiffs:

2006; ABBYY Solutions Limited – E. N. Murashova under power of attorney dated January 27,

Abby Software Limited – E. N. Murashova under power of attorney dated January 27, 2006;
for the defendants: no-show, duly notified;

third parties: A. P. Grinkevich, under power of attorney dated December 30, 2005, No. 24.

HAS ESTABLISHED:

Company NLS Technologies Ltd (Cyprus) filed a lawsuit with the Arbitration Court of Moscow against ANO RosNIIros and Ectaco-RD, LLC, seeking to protect its rights to trademarks No. 280687 and No. 224996, namely: to prohibit Ectaco-RD, LLC from using the Lingvo trademark in the domain name Lingvobit.ru; to obligate ANO RosNIIros and Ectaco-RD, LLC to transfer (re-delegate) the domain Lingvobit.ru to the plaintiff; to obligate Ectaco-RD, LLC to remove the Lingvo trademark from the product – electronic dictionary LingvoSoft; to recover from Ectaco-RD, LLC compensation of 2,500,000 rubles for illegal use of the trademark.

While the case was being examined by the court of original jurisdiction, the defendant ANO RosNIIros was changed to ANO RSIC; the court accepted abandonment of claim against ANO RSIC and stopped case proceedings against this defendant; ANO RSIC has been brought into the proceedings as a third party without independent claims in connection with the subject of dispute.

Company NLS Technologies Ltd (Cyprus) was changed to ABBYY Solutions Limited due to the change in the plaintiff's name. A. V. Epifanov has been brought into the proceedings as a second defendant in connection with the assignment of the administration rights to Lingvobit.ru domain to A. V. Epifanov.

Under Article 48 of the Arbitration Procedural Code of Russia, the Arbitration Court of Moscow has changed the plaintiff ABBYY Solutions Limited by order of procedural succession to Abby Software Limited with respect to claims of intangible nature.

As a result of actions performed by the court of original jurisdiction:

ABBYY Solutions Limited seeks to recover 2,500,000 rubles in compensation from Ectaco-RD, LLC for trademark infringement; Abby Software Limited seeks to prohibit A. V. Epifanov from

using the Lingvo trademark in the Lingvobit.ru domain through its administration and obligate A. V. Epifanov to transfer the Lingvobit.ru domain to the plaintiff, and prohibit Ectaco-RD, LLC from selling or otherwise publicly circulating the electronic dictionary LingvoSoft on Russian territory.

With its decision dated June 13, 2006, the Arbitration Court of Moscow satisfied the plaintiff's claims partially: to prohibit A. V. Epifanov from using the Lingvo trademark in Lingvobit.ru domain through its administration and prohibit Ectaco-RD, LLC from selling and otherwise circulating the electronic dictionary LingvoSoft on Russian territory. The court rejected the remaining claims of the plaintiff.

Disagreeing with this decision, ABBYY Solutions Limited lodged an appeal, seeking to change the ruling of the Arbitration Court of Moscow as regards its refusal to order payment of compensation, and seeking compensation in the amount of 2,500,000 rubles on the grounds stipulated in the appeal.

Disagreeing with this decision, A. V. Epifanov lodged an appeal, seeking to overturn the decision of the Arbitration Court of Moscow and reject the claim on the grounds stipulated in the appeal.

Disagreeing with this decision, Ectaco-RD, LLC lodged an appeal, seeking to overturn the decision of the Arbitration Court of Moscow and reject the claim on the grounds stipulated in the appeal.

During court proceedings, the representative of ABBYY Solutions Limited supported the arguments of the plaintiff's appeal and objected against the arguments of the defendants' appeals, presenting a written response to them.

During court proceedings, the representative of the third party objected against the arguments contained in the plaintiff's appeal and supported the arguments contained in the defendants' appeals, presenting a written response to the appeals.

Representatives of the defendants did not show up for the court hearing despite being duly notified, did not submit written responses to the plaintiff's appeal.

A. V. Epifanov sent a telegram requesting an adjournment of the hearing. The telegram was received by the Ninth Arbitration Court of Appeal after the court hearing, which is why it was not accepted for purposes of the case.

After studying the case materials, examining available evidence, verifying the arguments of the appeal and objections against it, hearing out the representatives of plaintiffs and the third party, the arbitration court of appeal believes that the appeals may not be satisfied for the following reasons.

It follows from the case materials that the verbal trademark No. 280687 "Lingvo" was registered to company NLS Technologies Ltd (Cyprus) on December 24, 2004, with priority date of October 16, 2003, including with regard to products and services of class 42 under the International Classification of Goods and Services – translation service, and products and services of class 09 under the International Classification of Goods and Services – electronic translators, electronic pocket translators, computer software.

The verbal trademark No. 224996 "Lingvo" was registered to company ABBYY Software House (Russia) on October 17, 2002, with priority date of August 23, 2000, including with regard to products and services of class 42 under the International Classification of Goods and Services – translation service, and products and services of class 09 under the International Classification of Goods and Services – electronic translators, electronic pocket translators, computer software.

On October 10, 2003, the trademark No. 224996 "Lingvo" was assigned to company NLS Technologies Ltd (Cyprus).

According to the name change certificate No. NE 131582 dated August 22, 2005, issued by the Republic of Cyprus, company NLS Technologies Ltd has been renamed ABBYY Solutions Limited.

Under the agreement for assignment of rights No. 03.01.N2.05 dated January 3, 2005, company NLS Technologies Ltd has assigned its rights to trademarks No. 280687 and No. 224996 to company Abby Software Limited.

The grounds for the lawsuit is the defendants' use without the rightholder's consent in the domain name Lingvobit.ru on the Internet of a name that is similar to the point of confusion with trademarks No. 224996 "Lingvo" and No. 280687 "Lingvo".

Under Article 4 of the Russian Federation Law "On Trademarks, Service Marks and Appellations of Origin", an infringement on a rightholder's exclusive rights is use without the

rightholder's permission in public circulation on Russian territory of the rightholder's trademark or a name similar to the point of confusion on products for whose individualization the trademark has been registered or products of the same kind, including on the Internet, and in particular in a domain name.

As established by the Arbitration Court of Moscow, the fact of use of the contested trademarks is confirmed by notarized minutes of the inspection of evidence dated August 29, 2005, letters from RosNIIRos dated September 7, 2005, and February 2, 2006, publication in Issue No. 3 of "PC+Mobile" magazine, 2006, which contains an advertisement of the electronic dictionary with a link to the Lingvobit.ru website.

The defendants' argument in the appeal to the effect that as of October 24, 2005, the domain Lingvobit.ru did not contain any information does not mean cessation of the infringement on the rightholder's rights, because technical specifics of the Internet make it possible to change the content of websites at the discretion of administrators at any time and any number of times.

The court has also rejected the argument to the effect that Abbyy Software Limited has not acquired rights to demand cessation of an infringement that occurred before the assignment of the rights to the trademark. Pursuant to Articles 382, 384 of the Civil Code of Russia, assignment of rights to a trademark means assignment of rights in the volume and on the conditions that existed for the original rightholder by the moment of assignment of the right.

The defendants' argument to the effect that the method of protection chosen by the plaintiffs does not meet the requirements of the Russian Federation Law "On Trademarks, Service Marks and Appellations of Origin" is not substantiated.

Article 46 of the Russian Federation Law "On Trademarks, Service Marks and Appellations of Origin" envisions the possibility of presenting a demand to stop the infringement in the form of using a trademark or a name that is similar to the point of confusion. This demand may be presented in the form of a prohibition to sell or otherwise circulate the product identified by the trademark or a name similar to the point of confusion.

The appeal of ABBYY Solutions Limited is not subject to satisfaction either, because at the moment of the ruling of the court of original jurisdiction the appellant was not the holder of the trademark, which is why the claims of ABBYY Solutions Limited seeking compensation are not subject to satisfaction. In its determination dated June 1, 2006, the Arbitration Court of Moscow refused to change ABBYY Solutions Limited to Abbyy Software Limited for purposes of proceedings, but this determination was not duly contested, nor is it contested in the appeal of ABBYY Solutions Limited in the current proceedings. For this reason, ABBYY Solutions Limited is not a rightholder and its claims to recover compensation are not subject to satisfaction.

Under such circumstances the Ninth Arbitration Court of Appeal believes that the appeals lodged by ABBYY Solutions Limited, Ectaco-RD, LLC, and A. V. Epifanov are not subject to satisfaction.

Under Article 110 of the Arbitration Procedural Code of Russia, the cost of state duties associated with lodging the appeal shall be covered by the appellants.

Pursuant to Articles 176, 266-268, paragraph 1 of Article 269, and Article 271 of the Arbitration Procedural Code of Russia, the Arbitration Court of Appeal

HAS RULED:

To leave the decision of the Arbitration Court of Moscow dated June 13, 2006, in case No. A40-62691/05-67-403 unchanged; not to satisfy the appeals of ABBYY Solutions Limited, Ectaco-RD, LLC and A. V. Epifanov.

This ruling becomes effective from the date when it is handed down and may be contested within two months' time with the Federal Arbitration Court of the Moscow District.

Presiding Judge

/Signature/: V. V. Popov

Judges

/Signature/: A. P. Tikhonov

/Signature/: A. A. Solopova

FEDERAL ARBITRATION COURT OF MOSCOW DISTRICT

RULING

No. KG-A40/13696-06

Moscow

January 31, 2007

Case No. A40-62691/05-67-403

The Federal Arbitration Court of Moscow District comprising:

presiding judge V. V. Petrova,

judges S. V. Soloviov, V. K. Tikhonova

with the participation of:

for plaintiffs – company ABBYY Solutions Limited, company Abby Software Limited – no-show, duly notified;

for defendants: 1) Ectaco-RD, LLC – K. A. Yakovlev, unnumbered power of attorney dated March 10, 2006; 2) A. V. Epifanov – K. A. Yakovlev – order No. 120 dated January 24, 2007;

for the third party - ANO RSIC – A. P. Grinkevich – unnumbered power of attorney dated December 30, 2006;

having examined in court on January 24, 2007, the cassation appeals of A. V. Epifanov and Ectaco-RD, LLC (defendants)

against the June 13, 2006, decision of the Arbitration Court of Moscow made by judge G. V. Cherenkova in case No. A40-62691/05-67-403

and the September 25, 2006, ruling No. 09AP-9802/2006-GK of the Ninth Arbitration Court of Appeal

handed down by judges V. V. Popov, A. P. Tikhonov, A. A. Solopova in the case brought by company NLS Technologies Ltd (Cyprus), seeking to protect its trademark rights and recover 2,500,000 rubles in compensation,

against Ectaco-RD, LLC and A. V. Epifanov,

third party: ANO RSIC (Regional Network Information Center)

HAS ESTABLISHED:

Company NLS Technologies Ltd (Cyprus) lodged a claim with the Arbitration Court of Moscow against ANO RosNIIRos, Ectaco-RD, LLC, seeking to protect the plaintiff's rights to its trademarks "Lingvo" under certificates Nos. 280687 and 224996 by prohibiting Ectaco-RD, LLC from using the Lingvo trademark in the domain name Lingvobit.ru, obligating ANO RosNIIRos and Ectaco-RD, LLC to assign to the plaintiff the right to administer the domain name Lingvobit.ru, obligating Ectaco-RD, LLC to remove the Lingvo trademark from the electronic dictionary LingvoSoft. Additionally, the plaintiff sought to recover 2,500,000 rubles in compensation for illegal use of the said trademark from Ectaco-RD, LLC.

The claims were filed with reference to Articles 45-47 of the Russian Federation Law dated September 23, 1992, No. 3520-I "On Trademarks, Service Marks, and Appellations of Origin", Article 10bis of the Paris Convention for the Protection of Industrial Property, and are motivated by the fact that the defendants are illegally using the verbal designation "Lingvo" in the said domain name to sell products regarding which the plaintiff has registered an eponymous trademark, in particular with regard to electronic dictionaries.

During the examination of the case in the court of original jurisdiction, under Article 48 of the Arbitration Procedural Code of Russia the defendant ANO RosNIIRos was changed to ANO RSIC. The court accepted abandonment of claim against ANO RSIC and stopped case proceedings

against this defendant; ANO RSIC was brought into proceedings as a third party without independent claims in connection with the subject of dispute.

Additionally the plaintiff – NLS Technologies Limited (Cyprus) – was changed to ABBYY Solutions Limited in connection with the plaintiff's name change. A. V. Epifanov was brought into proceedings as a second defendant. Additionally, with a reference to Article 48 of the Arbitration Procedural Code of Russia, the court of original jurisdiction changed the plaintiff, ABBYY Solutions Limited, by order of procedural succession to Abby Software Limited with respect to claims of intangible nature, that is, with respect to all claims with the exception of the claim seeking to recover monetary compensation.

In its ruling dated June 13, 2006, in case No. A40-62691/05-67-403, the Arbitration Court of Moscow partially satisfied the plaintiff's claims: the court ordered to prohibit A. V. Epifanov from using the Lingvo trademark in the domain name Lingvobit.ru, and Ectaco-RD, LLC from selling or otherwise publicly circulating on Russian territory its electronic dictionaries under the trademark LingvoSoft.

The ruling is motivated by the fact that the Lingvo trademark registered to the plaintiff and the domain name Lingvobit.ru used by the defendants are similar to the point of confusion. This fact is not contested by the defendants. The court of original jurisdiction established that the defendants in fact used the domain name Lingvobit.ru to promote under the Lingvo trademark products similar to those with respect to which the plaintiff registered an eponymous trademark, in confirmation of which the court pointed to the notarized minutes of the inspection of the website www.Lingvobit.ru as well as letters from RosNIIRos.

In refusing to satisfy the plaintiff's claim as regards obligating A. V. Epifanov to transfer to ABBYY Solutions Limited administration rights to the domain name Lingvobit.ru, the court of original jurisdiction pointed out that this form of protection of the right is not stipulated in legislation, while the plaintiff may register rights to the said domain using standard procedure. The court motivated its refusal to grant ABBYY Solutions Limited damages of 2,500,000 rubles by the fact that the possibility to claim monetary damages for the infringement of exclusive trademark rights is envisioned by the Russian Federation Law dated September 23, 1992, No. 3520-I "On Trademarks, Service Marks, and Appellations of Origin" only for trademark holders, but ABBYY Solutions Limited was not a trademark holder at the moment when the dispute was examined because it had assigned its rights to the disputed trademarks.

In its ruling dated September 25, 2006, No. 09AP-9802/2006-GK, the Ninth Arbitration Court of Appeal left the decision of the Arbitration Court of Moscow dated June 13, 2006, in case No. A40-62691/05-67-403 unchanged, confirming its findings as substantiated.

The defendants disagreed with the judicial acts in the case and lodged cassation appeals seeking to overturn the decision of the Arbitration Court of Moscow dated June 13, 2006, and the ruling of the Ninth Arbitration Court of Appeal dated September 25, 2006, No. 09AP-9802/2006-GK in case No. A40-62691/05-67-403, because they believe that the findings of both courts about the proof of the fact that the defendants used the domain name to sell products with respect to which the plaintiff has registered the Lingvo trademark do not correspond to the factual circumstances of the case established by the courts and contravene the available evidence in the case.

In particular, the defendants believe that neither the letters of RosNIIRos dated September 7, 2005, and February 2, 2006, nor the notarized minutes of the inspection of the website www.Lingvobit.ru dated August 29, 2005, confirm the fact that Ectaco-RD, LLC CEO A. V. Epifanov used the said domain name in order to offer for sale electronic dictionaries under the Lingvo trademark, that is, there is no proof of the fact that the defendants infringed on the plaintiff's exclusive rights to the trademark.

During the court hearing, the representative of both appellants, much like the representative of the third party – ANO RSIC – supported the arguments contained in their cassation appeals. The representatives of the plaintiffs, who were duly notified about the time and place of the appeal hearing, did not show up for the hearing and did not present a written response to the cassation appeal.

After studying the case materials, discussing the arguments contained in cassation appeals, hearing out the attending representatives, and checking pursuant to Article 286 of the Arbitration Procedural Code of Russia the correctness of application of substantive law and procedural law norms by the arbitration court, the cassation appeal court has reached a conclusion that the decision and the ruling are not subject to overturning in view of the following.

The subject of claim filed in this case is the requirement to protect the plaintiffs exclusive rights to its trademark.

Under paragraph 2 of clause 1, clause 2 of Article 4 of the Russian Federation Law dated September 23, 1992, No. 3520-I "On Trademarks, Service Marks, and Appellations of Origin", nobody may use a trademark protected in the Russian Federation without the rightholder's permission. An infringement on a rightholder's exclusive right (illegal use of a trademark) is use without the rightholder's permission in public circulation on Russian territory of the rightholder's trademark or a name similar to the point of confusion on products for whose individualization the trademark has been registered or products of the same kind, including placement of the trademark or a name similar to the point of confusion on the Internet, and in particular in a domain name and other address means.

Proceeding from the subject of the claim, both courts correctly established the scope of circumstances subject to inspection, study, and determination in this case.

Both courts established that the original plaintiff— company NLS Technologies held exclusive rights to the Lingvo trademarks, certificates Nos. 280687 and 224996, with respect to products and services of classes 09 and 42 under the International Classification of Goods and Services, including electronic translators, electronic pocket translators (volume 1, case sheets 25-27).

Eventually, under the agreement for assignment of rights No. 03.01.N2.05 dated January 3, 2005, company NLS Technologies Ltd has assigned its rights to trademarks under certificates Nos. 280687 and 224996 to company Abby Software Limited (volume 4, case sheets 55-56).

With respect to the defendants, the courts established that Ectaco-RD, LLC and its CEO A. V. Epifanov administered the second-tier domain name lingvobit.ru, which was used by the defendants for an eponymous website where third persons were offered to buy products and services similar to those with respect to which NLS Technologies Ltd duly registered the Lingvo trademark, rights to which had been assigned to Abby Software Limited at the moment of examination of the dispute. In particular, the website offered for sale electronic dictionaries under the "Lingvo" trademark.

The court's conclusion to the effect that the defendants used the said domain name to offer for sale electronic dictionaries under the "Lingvo" trademark is based on the legal assessment of the evidence presented in the case materials, such as: letters of RosNIIRos No. ROS-03/125 dated September 7, 2005, an ROS 03/03 dated February 2, 2006, according to which the lingvobit.ru domain was initially administered by Ectaco-RD, LLC and eventually by A. V. Epifanov; notarized minutes of the inspection of the lingvobit.ru website; an advertisement published in the "PC+Mobile" magazine No. 3/2006 advertising the sale of electronic dictionaries via the lingvobit.ru website belonging to A. V. Epifanov (volume 4, case sheets 17, 18; volume 1, case sheets 29, 40-90).

According to Part 1 of Article 72 of the Arbitration Procedural Code of Russia, the arbitration code evaluates evidence based on its internal opinion that is founded on a comprehensive, thorough, objective and firsthand examination of the available evidence.

Having established the fact that the plaintiffs own the "Lingvo" trademark and the fact that this trademark was illegally used by the defendants as administrators of the domain name lingvobit.ru similar to the point of confusion with the "Lingvo" trademark, the court of original jurisdiction and the court of appeals reached the correct conclusion to satisfy claims under Articles 2, 4, 47 of the Russian Federation Law dated September 23, 1992, No. 3520-I "On Trademarks, Service Marks, and Appellations of Origin" as regards prohibiting the defendants from using the "Lingvo" trademark, which did not belong to the defendants at the moment when the lawsuit was

filed, because at that time the trademark belonged to NLS Technologies Limited, nor at the moment of the judgment, when the rights to the trademark had been assigned to Abby Software Limited.

Notably, the assignment of the rights to the trademark does not affect the legal qualification of the defendants' actions, who used the contested trademark while not having a permission from the rightholder, which is prohibited under the Russian Federation Law dated September 23, 1992, No. 3520-I "On Trademarks, Service Marks, and Appellations of Origin".

Taking into account the established facts, the court of cassation appeals does not have grounds for a different judgment in this dispute.

The court of cassation appeals has reached a conclusion that the contested decision and ruling were made on the basis of a complete examination of actual circumstances that are material to the case and with correct application of law norms, which is why there are no grounds to overturn these judicial acts on the basis of arguments presented in the defendant's cassation appeals.

Revaluation of actual circumstances of the case established by the court of original jurisdiction and the court of appeals, much like revaluation of evidence in the case, which is in essence what the appellants' arguments are aimed at, are unacceptable under Article 268 of the Arbitration Procedural Code of Russia when reviewing judicial acts in a cassation procedure.

Pursuant to Articles 284, 286-289 of the Arbitration Procedural Code of the Russian Federation, the court

HAS RULED:

to leave unchanged the decision of the Arbitration Court of Moscow dated June 13 2006, and the ruling of the Ninth Arbitration Court of Appeal dated September 25, 2006, No. 09AP-9802/2006-GK in case No. A40-62691/05-67-403; and leave unsatisfied the cassation appeals of A. V. Epifanov and Ectaco-RD, LLC

Presiding Judge V. V. Petrova

Judges S. V. Soloviov
 V. K. Tikhonova

/Stamp/: Federal Arbitration Court of Moscow District

True copy

Expert

Signature: /illegible/

*/Seal/: Federal Arbitration Court of Moscow District
Judicial Division for Civil Cases No. 5*

/Translated from Russian language into English language by Dobrynina Alisa Andreevna/

/Перевод с русского языка на английский язык выполнила Добрынина Алиса Андреевна

