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

Proceeding	92049973
Party	Plaintiff ABBYY Software Ltd.
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Attachments	Affidavit of Ding Yuan Tang for Petitioner 20091223.pdf ( 7 pages )(287838 bytes )

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

<b>ABBYY SOFTWARE LTD.</b>	Cancellation No. 92049973
Petitioner,	<b>AFFIDAVIT OF DING-YUAN TANG</b>
v.	Mark: LINGVOSOFT
<b>ECTACO INC.</b>	Reg. No. 3,015,325
Registrant.	Reg. Date: November 15, 2005

I, Ding-Yuan Tang, hereby declare:

1. The facts stated below are based upon my personal knowledge, and upon my review of records kept in the regular course of the businesses set forth below. As to those matters stated on information and belief, I believe them to be true. If called as a witness, I could and would competently testify thereto.

2. Print-outs from websites were obtained by accessing the described website via Internet and printing out the web page which is then submitted herein as an Exhibit.

3. I am the Chief Executive Officer of ABBYY USA Software House Inc. (“ABBYY USA”), located in Milpitas, California. I have substantial responsibility managing the operations of this company, including with regard to the agreements it enters into, its finances, its intellectual property, and its products, including the Lingvo mark and software products.

4. I have been employed by ABBYY USA since its formation.

5. Prior to ABBYY USA, I was the President for a California corporation called Micro 3 based in Fremont, California.

### **Company History**

6. Micro 3 was formed and incorporated in California on March 5, 1993.

7. Exhibit 11 is a copy of a print-out from California's Secretary of State website which reflects its incorporation date.

8. ABBYY USA was formed and incorporated in California on July 5, 2000, and has operated from California since its formation. ABBYY Software Ltd., the Petitioner, is the sole shareholder of ABBYY USA.

9. Exhibit 12 is a copy of a print-out from California's Secretary of State website, which reflects ABBYY USA's incorporation date and a stock certificate showing Petitioner's ownership of ABBYY USA.

### **The Lingvo Mark and Product**

10. I am informed that ABBYY's history began in 1989. It was founded by David Yang in Moscow, Russia. It was originally known as BIT Software in Russia. It later reorganized to BIT LLP on July 6, 1999, then to ABBYY Software CSJC, then to ABBYY Software LLC, and is currently known as ABBYY Productions LLC. These companies will be referred hereinafter as "ABBYY Russia".

11. I am also informed that Lingvo was ABBYY Russia's first product, and that it was first sold at least as early as July 1990.

12. Lingvo is a software product providing translations, definitions and spelling of words, among other features. Over the years, its features have expanded to include a mobile version, grammatical information, pronunciations, examples for word use, definitions, synonyms and antonyms, word searches, etc. It enables its users to study and learn foreign languages, including Russian, European languages, such as French, German

or Italian, and Chinese. Hereinafter this software product will be referred to as the “Lingvo software products”.

13. I have been aware of and familiar with the Lingvo software products in the U.S. since at least as early as 1993.

14. In both my positions with Micro 3 and ABBYY USA, I have had significant responsibility dealing with the Lingvo software products, including in connection with its agreements, marketing and sales. Due to my experience with Lingvo, I am also familiar with other software products that offer the same or similar features as Lingvo.

15. The Lingvo mark has always been prominently displayed on the packaging of the Lingvo software products, as well as in the user interface of the software application, on disks and manuals and other documentations supplied with the product.

16. Lingvo has been widely successful, including in the U.S. It has garnered praise from a variety of sources, many of which are located in the U.S.

17. Exhibit 1 is a print-out from Wikipedia website reporting Lingvo as being the “most widely spread dictionary software in Russia” with its users exceeding 5,000,000 people.

18. Exhibit 2 includes a print-out from ABBYY’s website describing recent versions of Lingvo products, including boxshots, and pictures of the earlier versions of the Lingvo software products (screenshots and boxshots).<sup>1</sup>

19. Exhibit 4 includes a copy of some of the awards received by ABBYY, as well as print-outs from the website from some of the companies which have given awards for

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<sup>1</sup> Russian editions usually had English versions as well; the text on the English versions would be in English. Since Lingvo provided translation and definitions both ways (i.e., from English to Russian and Russian to English), the version purchased by the user would depend on the language that he or she understood.

Lingvo, such as PC Magazine, PC World, and Open Systems Publishers, which show that they are located in the U.S.<sup>2</sup>

**Petitioner's Prior Use of Lingvo in U.S. Commerce.**

20. ABBYY Russia has always been the producer and developer of the Lingvo software products.

21. Since at least as early as February 2001, Micro 3 has been selling the Lingvo software products in the U.S.

22. Since at least as early as July 2000, ABBYY USA has been selling the Lingvo software products in the U.S.

23. Both of these companies had agreements with ABBYY Russia to sell the Lingvo software products in the U.S.

24. They received inquiries and orders from purchasers, the majority of whom are within the U.S., and shipped Lingvo products to fulfill orders from our offices in California to the purchasers.

25. Our sales of Lingvo have been significant, regular and continuous, and were profitable. I estimate that Micro 3 and ABBYY USA have sold several hundreds of copies of Lingvo.

26. Exhibit 11 includes reports prepared by Micro 3, based on records and documents maintained by this company in the regular course of its business, such as invoices and accounting records; and sample invoices. These reports provide information concerning the sales of Lingvo products to customers within the U.S., including the dates of sales, to which it was sold, the quantity of products sold and the prices.

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<sup>2</sup> Print-outs obtained from [www.multilingual.com](http://www.multilingual.com); [www.pcmag.com](http://www.pcmag.com); [www.ziffdavis.com](http://www.ziffdavis.com); [www.pcworld.com](http://www.pcworld.com); [www.opensystems-publishing.com](http://www.opensystems-publishing.com) (see also the URL in the header of the print-outs); search results from [www.google.com](http://www.google.com).

27. Exhibit 12 includes sales reports prepared by ABBYY USA, based on records and documents maintained by this company in the regular course of its business, such as invoices and accounting records; and sample invoices. These reports provide information concerning the sales of Lingvo products to customers within the U.S., including the dates of sales, to which it was sold, the quantity of products sold and the prices.

28. Exhibit 13 is a copy of the license agreement entered into between ABBYY Russia and ABBYY USA in July 2000 for the sales of Lingvo, among other ABBYY products.

**Marketing and Awards.**

29. Lingvo is a famous and well known mark, in the U.S. and abroad. Since its formation, ABBYY USA has been regularly involved in the marketing of the Lingvo software products. Marketing for Lingvo has included marketing through websites at [www.abby.com](http://www.abby.com) and on [www.lingvo.com](http://www.lingvo.com), and e-mail marketing campaigns, where e-mails were sent advertising the Lingvo software products and offering them for sale to customers in the U.S.

30. Representatives of ABBYY USA have also displayed and marketed Lingvo at tradeshows and retail channels, and have sold Lingvo through its sales staff via phone or e-mail inquiries.

31. Since 1990's, the ABBYY companies have spent several thousands of dollars to market Lingvo, annually, to market Lingvo, and the Lingvo products have generated well over a million dollars in revenue annually.

32. Micro 3 also marketed Lingvo through a web store, published on the Internet, called “ePeripheral.com” and also conduct e-mail marketing campaigns, advertising and offering Lingvo for sales to customers in the U.S.

33. Additionally, ABBYY USA provided technical support for purchasers of Lingvo, including in the U.S.

34. Exhibit 16 are print-outs of search results for “Lingvo”, from a number of major search engines, such as Yahoo, Bing and Google -- almost all of the shown results are links to ABBYY Lingvo products. They also show results for Lingvosoft.

**Lingvosoft Is Confusingly Similar.**

35. Lingvosoft is a software product. Its features include translation and a dictionary of foreign languages.

36. The parties’ products and their respective marks, and their manner of marketing are clearly similar – both being software products and electronic devices that provide translation and dictionary features for foreign languages, marketed via Internet, clearly, leading to confusion among consumers as to the source of the parties’ respective products.

37. Based on my experience with Lingvo and my understanding of Lingvosoft, and software of this type, the continuation of Lingvosoft’s registration and use is likely to cause confusion among consumers, in that they may believe that Lingvosoft is also an ABBYY product and dilute the “Lingvo” mark, and thereby cause damage to Petitioner.

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I declare under the penalty of perjury under the laws of the state of California and the United States of America that the foregoing is true and accurate. Executed on December 22, 2009 in the city of Milpitas, state of California, U.S.A.

  
DING-YUAN TANG