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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.
Correspondence Address	Roy Ching Merit Law Group PC 201 San Antonio Circle, Ste. 105 Mountain View, CA 94040 UNITED STATES rching@mlgpc.com
Submission	Testimony For Plaintiff
Filer's Name	Roy Ching
Filer's e-mail	rching@mlgpc.com
Signature	/Roy Ching/
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Attachments	Affidavit of Marinos Dimosthenous for Petitioner 20091223.pdf (11 pages) (901337 bytes)

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

ABBYY SOFTWARE LTD.

Petitioner,

v.

ECTACO INC.

Registrant.

Cancellation No. 92049973

**AFFIDAVIT OF MARINOS
DIMOSTHENOUS**

Mark: LINGVOSOFT

Reg. No. 3,015,325

Reg. Date: November 15, 2005

I, Marinos Dimosthenous, 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 business by Petitioner and the ABBYY companies that it is the sole shareholder of. Such records include their corporate and financial records, their marketing records, and agreements, among others. I have also made inquiries as to the matters herein from representatives of ABBYY companies. 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. I have been the Managing Director of Petitioner, ABBYY Software Ltd. since 2004. My office address is Stasikratous 29, office 202 CY 1065 Nicosia, Cyprus.

3. I have substantial responsibility managing the operations of this company, including with regard to the agreements it enters into, its corporate affairs, its finances, its intellectual property, and its products, including the Lingvo mark and product.

4. When available, documents in Russian have been translated to English, with the English translation following the Russian document.

5. 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.

Overview.

6. Petitioner seeks the cancellation of the mark "Lingvosoft". Petitioner and Registrant's products using the respective marks both are highly similar – both being software products which provide translation and dictionary of foreign languages. The marks are clearly confusingly similar, both sharing the word "Lingvo" in their name.

7. Use of Petitioner's mark, Lingvo, started in July 1990 and sales of Lingvo in the U.S. began at least as early as 1994. Registrant's first alleged use of Lingvosoft was on May 10, 2004. Use of Petitioner's mark was more than ten years prior to that of Registrant's claimed use of Lingvosoft.

8. Petitioner's Lingvo has had a long history, having been in use for close to two decades. Petitioner's Lingvo has garnered substantial praise and has received multiple awards since its inception.

9. Petitioner's Lingvo is a famous mark. Petitioner contends that Registrant has acted in bad faith in taking advantage of the good will earned by Petitioner with respect to Lingvo.

10. Both parties also utilize similar trade channels and marketing. For instance, both parties make extensive use of marketing via the Internet.

11. Petitioner has been damaged and will continue to suffer damages by the continued use and registration of Lingvosoft. Such harm includes the USPTO's refusal to register Petitioner's mark Lingvo on the grounds that it is too similar to Registrant's

mark, and will also dilute Lingvo, and will likely cause confusion with respect to the source of products associated with the respective marks.

12. Further, Petitioner contends that Registrant misrepresented its date of first use to the USPTO when it applied for its mark Lingvosoft.

A History of Petitioner's Company and Lingvo.

13. The corporate history that led to Petitioner's Lingvo product and the Lingvo mark 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 House CSJC, and then continued as ABBYY Software LLC, and ABBYY Productions LLC. These companies will be referred hereinafter as "ABBYY Russia".

14. Lingvo was ABBYY Russia's first product, and was sold at least as early as July 1990.

15. 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".

16. Lingvo became widely acclaimed and successful internationally. Aside from Lingvo, ABBYY Russia developed other highly successful software products, such as for Optical Character Recognition.

17. From its origination to date, the Lingvo mark has always been prominently displayed on the packaging of the products, as well as in the user interface of the software application, on disks and manuals and other documentations supplied with the product.

18. Multiple separate ABBYY companies formed all over the world to better accommodate the demand for ABBYY products.

19. Petitioner was formed on June 13, 2002. Petitioner acquired all of the ABBYY companies, and has been the sole shareholder of each ABBYY company. Such companies include ABBYY USA Software House Inc. ("ABBYY USA"), currently located in Milpitas California, U.S.A., and ABBYY Russia.

20. In July 2002, a company called NLC Technologies Ltd. ("NLC") located in Cyprus was formed to handle business activities for Lingvo. Petitioner was the sole shareholder of NLC and exercised control in relation to Lingvo for the ABBYY companies. In addition, on July 15, 2002, ABBYY Russia assigned the Lingvo mark, with all of its interest and benefit in the mark, to NLC. On August 22, 2005, NLC changed its name to ABBYY Solutions Ltd.

21. ABBYY Russia, with Petitioner remaining as its sole shareholder, continued as the producer, developer and supplier of the Lingvo software products, maintained control over the maintenance of the quality of Lingvo software products in accordance with what ABBYY Russia had in place prior to the assignment, and the use of Lingvo mark was continued for the Lingvo software products.

22. Subsequently, when it was no longer necessary, for business reasons, for NLC to manage matters dealing with Lingvo, NLC assigned the Lingvo mark, with all interest

and benefit in the mark, to Petitioner on January 3, 2005. On this same date, Petitioner licensed the Lingvo mark to ABBYY Russia.

23. Accordingly, ABBYY Russia continued as the source of the Lingvo software products after the assignments, the quality of Lingvo software products was maintained, and the use of the Lingvo mark was continued for the Lingvo software products. In fact, due to continuing developments by ABBYY Russia, the Lingvo software products improved (i.e. by the expansion of its features and capabilities). ABBYY Russia also supplied Lingvo software products to the different ABBYY companies around the world in their respective territories – including ABBYY USA, for sales to customers in the U.S.

24. 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.

25. 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).¹

26. Exhibit 3 is an article published by the Moscow Times on November 21, 1996 about BIT Software.

27. Exhibit 4 includes a copy of some of the awards received by ABBYY for Lingvo (three of which predate Registrant’s first use of the mark) as well as print-outs from the websites from some of the companies which have given awards for Lingvo,

¹ 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.

such as PC Magazine, PC World, and Open Systems Publishers, which show that they are located in the U.S. and show use and recognition of the mark in the U.S.²

28. Exhibit 5 is a report from the Lomonosov Moscow State University showing that the majority of people surveyed in Russia associate the word Lingvo with ABBYY's software.

29. Exhibit 6 is a print-out from ABBYY's website (www.abbyy.com) which describes ABBYY's history and the different ABBYY companies; a copy of BIT Software's Certificate of registration in Russia when it became a LLP; its meeting minutes when it reorganized to ABBYY Software House CSJC; ABBYY Software Ltd.'s Certificate of Incorporation.

30. Exhibit 7 is a copy of the assignment and licensing agreements referenced above.

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

31. Lingvo was first sold in the U.S. at least as early as 1994. Lingvo was sold to a company called "IBT Inc." located in Cardiff, California. ABBYY Russia sold Lingvo to IBT directly, and then through a company BIT International Corp.

32. Lingvo was also sold by ABBYY USA since as at least as early as July 2000, including as a wholly owned subsidiary of Abbyy Russia or Petitioner.

33. Additionally, ABBYY USA sold Lingvo to Micro 3, located in Fremont, California, which in turn, also sold Lingvo to customers in the U.S.

34. ABBYY USA continues to actively and regularly sell and market Lingvo in the U.S. to date.

² Print-outs obtained from www.multilingual.com; www.pcmag.com; www.ziffdavis.com; www.pcworld.com; www.opensystems-publishing.com (see also the URL in the header of the print-outs); search results from www.google.com.

35. Petitioner's mark has become distinctive of the goods through Petitioner's substantially exclusive and continuous use in commerce for at least five years immediately before the date of this statement.

36. Exhibit 8 includes invoices received from IBT which reflect the numbers of products bearing the Lingvo mark sold by BIT International to IBT, and by IBT to customers in the U.S.

37. Exhibit 9 is a copy of an invoice from a U.S. law firm which BIT Software had engaged to apply to register Lingvo with the USPTO on July 2, 1997.

38. Exhibit 10 is a copy of an agreement entered into in December 1999 between BIT International and IBT for the sale of Lingvo, among other ABBYY products. IBT sold Lingvo before this agreement. BIT International Corp. is a company formed by David Yang for the purpose of selling Lingvo and ABBYY Russia's other software products overseas.

39. Exhibit 11 is a printout from California's secretary of state website showing the formation date of Micro 3, and its place of business, as well as a copy of Micro 3 sales reports, based on records kept by Micro 3 in the regular course of its business, showing the number of Lingvo products sold by it to customers within the U.S. ABBYY U.S.A. records show at least the same number of Lingvo products had been sold by ABBYY U.S.A. to Micro 3.

40. Exhibit 12 is a print-out from California's Secretary of State website, which reflects ABBYY USA's formation date, the stock certificate showing Petitioner's ownership of ABBYY USA, as well as ABBYY USA's sales reports and representative invoices, which shows its sales of Lingvo in the U.S. Based on ABBYY's records, these

sales reports show the number of Lingvo products reported to have been sold by ABBYY USA in the U.S., and a representative invoice.

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

42. Exhibit 14 is a copy of the application and subsequent registration by the U.S. Copyright Office. On October 6, 2003, NLC applied for copyright registration for "ABBYY Lingvo 7.0", intending to secure protection for the Lingvo mark.

Marketing and Awards.

43. Lingvo is a famous and well known mark, in the U.S. and abroad. Lingvo has been regularly marketed since its inception. Marketing for Lingvo has included on ABBYY's website at www.abbyy.com and on www.lingvo.com, a website created and maintained by ABBYY.

44. Representatives of the ABBYY companies ("ABBYY companies", when used herein, includes ABBYY USA) have also displayed and marketed Lingvo at tradeshows and retail channels, and have sold Lingvo through its sales staff.

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

46. Additionally, the ABBYY companies provide technical support for purchasers of Lingvo, including in the U.S.

47. Exhibit 15 is a print-out from Petitioner's account with Network Solutions, where it first registered the domain name Lingvo.com on April 2, 1999, and print-outs

from the website. Lingvo.com is a website created and maintained by ABBYY advertising the Lingvo products.

48. 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.

49. Lingvosoft is a software product. It offers its user a translation and a dictionary of foreign languages.

50. The parties' products and their respective marks are clearly similar -- both being software products and electronic devices that provide translation and dictionary features for foreign languages, clearly, leading to confusion among consumers as to the source of the parties' respective products.

51. In my opinion, Registrant was aware of Lingvo and has wanted to take advantage of the good will associated with Lingvo, not only by its decision to use Lingvosoft for its products, but also, by their attempt to use the domain name of "Lingvobit.ru".

52. Exhibit 17 is a copy of documents produced by Ectaco, describing Lingvosoft, and showing Ectaco's use of the Internet to advertise Lingvosoft.

53. Exhibit 18 is a copy of Registrant's USPTO application for registration for Lingvosoft listing the products as to which the mark would cover and indicating Lingvosoft's date of first use.

54. The continuation of Lingvosoft's registration would cause damage to Petitioner. As a result of Lingvosoft's registration, Petitioner has been refused registration of its mark Lingvo.

55. Exhibit 19 is a copy of a ruling rendered by the court in Russia, requiring that Ectaco-RD LLC and AV Epifanov to cease its use of the domain name "Lingvobit.ru" and "Lingvo".

56. Exhibit 20 is a print-out from Wikipedia reporting that Ectaco has an office in Russia – clearly, it is Ectaco-RD LLC, a company sharing the same name and selling the same Lingvosoft products, and having Anton Epifanov, a person as its officer working for both companies.

57. Exhibit 21 is a copy of the USPTO's Office Action refusing Petitioner's registration on the basis of Lingvo's similarity with Lingvosoft.

Ectaco's Fraud on the USPTO.

58. Ectaco states its date of first use for Lingvosoft is May 10, 2004. However, it produced no documents, which supports this date.

59. Petitioner and its use of Lingvo are much more widespread than Registrant or Lingvosoft.

60. Registrant claims that it is only a one-person company.

61. Further, based on their discovery response and documents production, it has only utilized one outlet for advertising its products on the internet.

62. Additionally, its revenue appeared sporadic and infrequent. Petitioner only produced invoices for four months in 2005, in January, April, July and December, with orders for totaling less than \$1,500.

63. Our attorney, on our behalf, has repeatedly asked Registrant for additional financial documents but no others have been produced.

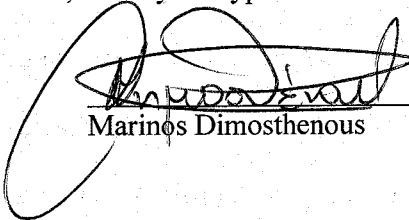
64. Registrant registered "Lingvosoft" in bad faith. It was clearly aware of "Lingvo" at the time of its application, and misrepresented their date of first use.

65. Exhibit 22 is a copy of discovery responses received from Registrant in this proceeding.

66. Exhibit 23 is a copy of a coversheet supplied by Registrant, listing all of the documents reflecting its expenditures and invoices ordering Lingvosoft. Its earliest invoice is dated January 1, 2005, and its earliest expenditure being February 10, 2005.

67. Exhibit 24 is a copy of documents produced by Registrant that it claimed supported its date of first use. Notably, none of its documents support Ectaco's date of first use.

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 23rd, 2009 in the city of Nicosia, country of Cyprus.


Marinos Dimosthenous