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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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Submission	Other Motions/Papers
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Date	04/27/2010
Attachments	Abbyy - Objections to Affidavit of David Lubinitsky + COS 04.27.10.pdf ( 4 pages ) (285327 bytes )

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

<p><b>ABBYY SOFTWARE LTD.</b></p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">v.</p> <p><b>ECTACO INC.</b></p> <p style="text-align: right;">Registrant.</p>	<p>Cancellation No. 92049973</p> <p><b>OBJECTIONS TO AFFIDAVIT OF DAVID LUBINITSKY</b></p> <p>Mark: LINGVOSOFT Reg. No. 3,015,325 Reg. Date: November 15, 2005</p>
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Petitioner hereby objects to the following kinds of statements in the Affidavit of David Lubinitsky submitted by Registrant Ectaco Inc. as indicated in the following chart. The first column lists paragraphs with the type of statements to which the objection is made, with a short description of the nature of the statements. The second column lists the objections being made.

Petitioner also asks that the objection applied to any other paragraphs not listed with the type of statement being objected, and reserves its right to make additional objections.

<b>Representative Paragraphs</b>	<b>Reasons for Objection</b>	<b>Ruling</b>
<b><i>Conclusory, Hearsay Statements</i></b>		
Lubinitsky states that, ¶ 9, Ectaco products are “world renowned”.	Mr. Lubinitsky makes statements concerning what others think about Ectaco and its products, without properly establishing foundation, and are thus conclusory. These statements rely on the testimony or opinions of others, and are thus hearsay (i.e., that the products are “well renowned” is premised on third parties having knowledge of	Sustained ____  Over-ruled ____

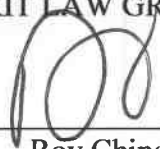
<b>Representative Paragraphs</b>	<b>Reasons for Objection</b>	<b>Ruling</b>
	the products). ABBYY objects to these statements being considered.	
¶ 10 & 11, That Ectaco is influential, at the forefront of innovation and respected or recognized by others.	<i>Same as above.</i> Also, as to whether Ectaco is innovative is conclusory and lacks foundation.	Sustained ____ Over-ruled ____
¶ 10, LINGVOSOFT acquired secondary meaning & good will, and is well-known.	<i>Same as above.</i>	Sustained ____ Over-ruled ____
¶ ¶ 25, 26, Ectaco has had extensive advertising and promotion and distribution.	<i>Same as above.</i> Mr. Lubinitsky makes this statement without providing any facts that supports this assertion. Thus, it lacks proper foundation and is conclusory.	Sustained ____ Over-ruled ____
¶ 62, Consumers have not associated “Lingvo” with Petitioner	<i>Same as above.</i>	Sustained ____ Over-ruled ____
¶ 47, Petitioner’s reason for adopting Lingvo	<i>Same as above.</i> Also, entirely speculative and untrue.	Sustained ____ Over-ruled ____
<b><i>Legal Opinions</i></b>		
¶ 13, LINGVOSOFT is “fanciful”.	Mr. Lubinitsky makes legal conclusions, such as the mark being “fanciful”, and thus are argumentative and conclusory. They lack proper foundation and are improper opinion testimony.	Sustained ____ Over-ruled ____
¶ 56, Lingvo is “generic”	<i>Same as above.</i>	Sustained ____ Over-ruled ____
¶ 58, Lingvo is “merely descriptive”	<i>Same as above.</i>	Sustained ____ Over-ruled ____

Representative Paragraphs	Reasons for Objection	Ruling
¶ 64, Lingvo is not a "famous foreign mark"	<i>Same as above.</i>	Sustained ____ Over-ruled ____
<b><i>Foreign language opinions</i></b>		
¶¶ 32 to 36, 38 to 39, 41, 42, 46, 49, 50 to 53, 56	Mr. Lubinitsky offers translations of the Russian language, and opinions concerning languages, such as how Cyrillic characters should be transliterated. However, no qualifications were provided that could properly establish Mr. Lubinitsky as an expert capable to offer such translations or opinions. On this basis, ABBYY objects to these statements being considered.	Sustained ____ Over-ruled ____
<b><i>Foreign records</i></b>		
¶ 32, 33, 39, 41, Records relating to companies in Cyprus and Russia	Mr. Lubinitsky seeks to establish the facts concerning records held by foreign governmental agencies, but fails to provide any foundation for his statements, and does not provide any other supporting admissible evidence. I.e., whether truly, no records are held by such agencies. On this bases, ABBYY objects to these statements being considered	Sustained ____ Over-ruled ____
¶¶ 40, 41, Records in Russian Trademark office		Sustained ____ Over-ruled ____

Date: April 25, 2010

MERIT LAW GROUP PC

By \_\_\_\_\_



Roy Ching, Attorney for  
Petitioner ABBYY Software Ltd.

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

**ABBY SOFTWARE LTD.**

Petitioner,

v.

**ECTACO INC.**

Registrant.

Cancellation No. 92049973

**CERTIFICATE OF SERVICE**

Mark: LINGVOSOFT

Reg. No. 3,015,325

Reg. Date: November 15, 2005

It is hereby certified that a copy of the foregoing **OBJECTIONS TO  
AFFIDAVIT OF DAVID LUBINITSKY**, was served upon counsel for Registrant this  
27th day of April, 2010 by US mail and e-mail, addressed as follows:

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Roy Ching, Esq.