

ESTTA Tracking number: **ESTTA362016**

Filing date: **08/06/2010**

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

Proceeding	92049973
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Date	08/06/2010
Attachments	ABBYY Reply brief.pdf (25 pages)(258062 bytes)

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

ABBY SOFTWARE LTD.	Cancellation No. 92049973
Petitioner,	PETITIONER'S REPLY BRIEF
v.	Mark: LINGVOSOFT
ECTACO INC.	Reg. No. 3,015,325
Registrant.	Reg. Date: November 15, 2005

Overview.

Registrant conceded that Petitioner used LINGVO prior to its date of first use of LINGVOSOFT (see Registrant's Opposition Brief ("Opp. Brief", pp. 14-15).

In spite of their own use of Lingvo in their mark LINGVOSOFT, Registrant challenges the validity of the Lingvo mark. Their arguments are primarily based on Lingvo being a word in the Esperanto language. It is undisputed that Esperanto is not a language of any country. In fact, law cited by Registrant supports that a word within this obscure, auxiliary language should not be determined to be descriptive.

And, in spite of the obvious similarities in the marks, and the parties' products being essentially the same, Registrant nonetheless argues that the marks are not confusingly similar. This argument, to say the least, is unconvincing.

Registrant's other arguments – unsupported by law or fact – mark its desperation.

The evidence clearly shows that Registrant was well aware of Lingvo, but went ahead and ripped off Petitioner's mark through its later use of Lingvosoft. It is undisputed that Lingvo has been the most widely used translation software in Russia, and that it was

use since 14 years before Lingvosft. Registrant even went so far as to use “Lingvo” in combination with “Bit”, the original name of the developer of Lingvo. Registrant’s sister company, Ektako LLC, selling the same products as Registrant, more blatantly tried to pass its products as coming from Petitioner, by its use of “www.lingvobit.ru” and selling electronic dictionary products under the Lingvo mark.

The Russian court put a stop to Ektako’s misconduct and Petitioner respectfully requests that this Board to do the same, granting Petitioner’s requests and canceling the registration of the Lingvosoft mark.

A. Petitioner Has Established Its Priority of Use of Its Lingvo Mark.

Registrant argues that Petitioner has not shown sufficient use of its LINGVO mark as the invoices from IBT show insufficient sales.

IBT was one of the earliest distributors of Lingvo. Vladimir Kovalev owned and ran IBT. Since late 2000, IBT and Mr. Kovalev have not sold or distributed Lingvo (Kovalev Decl., ¶ 2). Rather than being “self-serving”, as Registrant inaccurately asserts, Mr. Kovalev has no interest in Lingvo. This is a third party who by definition brings more credibility to the Board than Registrant.

Mr. Kovalev clearly testified that he started selling Lingvo in 1994, that he extensively marketed Lingvo, that Lingvo was “one of [his] most popular products”, that “[his] sales of Lingvo were significant, regular and continuous, and was profitable”, and, he estimated that he “sold several hundreds of copies of Lingvo to customers in the U.S.” (Id. at 7, 10-12).

Registrant made no mention of any of this. Instead, they made it appear that the only support for sales in the U.S. were IBT invoices. This was misleading. Mr. Kovalev's testimony clearly shows substantial sales of the Lingvo product.

Further, it was also clearly stated by Mr. Kovalev that invoices attached as an Exhibit were only "some" of the invoices he had. More than 16 years had passed since he first started selling Lingvo. He had not distributed Lingvo for 10 years. Mr. Kovalev credibly explains to the Board the invoices he collected and that they are a mere representative sample.

In the sharpest of comparisons, Registrant produced no invoices to support its first use of LingvoSoft. Rather, Registrant admits that it did not sell LingvoSoft on its alleged first use date because Registrant purportedly gave it away as a "bonus add-on" product.

Registrant cites the case of *Malcolm Nicol & Co. Inc. v. Witco Corp.*, 881 F.2d 1063, 11 U.S.P.Q.2d 1638 (Fed.Cir. 1989), in support of its contention that invoices are required to prove cancellation. However, Malcolm instead supports that the testimony offered by Mr. Kovalev, as well as the other evidence provided by Petitioner, would be more than sufficient to prove first use.

Registrant also argues that products were clearly marked Lingvo, and claims that instead products were marked "CONCISE". However, this is clearly refuted by the evidence. All of the pictures of the products supplied, by both parties, show that the products were clearly marked Lingvo (Pet. Exhibit 2 and Reg. Exhibit 25). Further, Petitioner has presented clear and unchallenged testimony in support of this (Kovalev decl. ¶ 13, Tang decl. ¶ 15, Dimonsthenous decl. ¶ 17).

It also bears mention that none of the other evidence submitted by Petitioner in support of its priority of use has been challenged, among which includes awards to Lingvo, the earliest of which was in 2000, the registration of www.lingvo.com in 1999, the copyright registration of Lingvo in 2003, and the engagement of a firm to trademark Lingvo in 1997.

Registrant concedes that Petitioner should be accorded a first use date of November 2000, or August 2000, at the very earliest (Opp. at 15). Registrant then argues that while it did not use Lingvosoft before Petitioner, it did in the naming of its store “Lingvobit” and its website www.lingvobit.com.

First, their use of marks other than Lingvosoft with the products at issue is absolutely irrelevant. With respect to Lingvosoft, they concede that Petitioner has priority of use. Further, it should be noted that even their unrelated use of Lingvobit is only supported by the self-serving testimony of Registrant’s CEO. A review of the Exhibit Registrant refers to is only a self-prepared list that purports to provide the addresses of these stores. It is suspicious, to say the least, that no better evidence could be provided, and again, goes to undercut Registrant’s credibility overall. Moreover, it is important to note that the original name of the developer of Lingvo was Bit Software (Dimosthenous Decl. ¶ 13). It is astonishing that Registrant unabashedly points out that they not only ripped off Petitioner’s Lingvo mark, but also the name of Petitioner’s company -- Lingvobit.

B. Lingvo Is Distinctive.

Registrant argues that Lingvo mark is not distinctive, and as such, Petitioner cannot prevail per section 2(d) of the Lanham Act.

First, other grounds presented to this Board cancellation of the Lingvosoft mark, such as Registrant's bad faith and other misconduct.

(1) The Doctrine Of Foreign Equivalents Supports That Esperanto Should Not Be Translated.

Registrant argues that Lingvo is not distinctive. It says that because it must be translated to mean language in the Esperanto language under the doctrine of foreign equivalents, and as translated, Lingvo is descriptive and generic.

First, Registrant mis-states the doctrine of foreign equivalents. Registrant asserts that under this doctrine, foreign words are translated, and then tested for genericness or descriptiveness.

Registrant entirely omits that the doctrine first requires examining whether a foreign language should be translated. With regard to this issue, "the doctrine of foreign equivalents does not demand an unthinking or robotic translation"; rather, "[t]he doctrine should be applied only when it is likely that the ordinary American purchaser would stop and translate [the word] into its English equivalent". 2 McCarthy on Trademarks and Unfair Competition § 11.34 (citing *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1377, 73 U.S.P.Q.2d 1689 (Fed. Cir. 2005) (finding that the **French** word "Veuve" did not have to be translated as it was unlikely that an American buyer will translate the word).

The doctrine "is not an absolute rule and should be viewed as merely a guideline", and "does not mean that words from dead or obscure languages are to be literally translated into English for descriptive purposes". (Id.)

The doctrine is intended to apply when “[a]t least one **significant** group of ordinary American purchasers is the purchaser who is knowledgeable in English as well as the pertinent foreign language.” (Id. (emphasis added)).

Registrant concedes that Esperanto is an “auxiliary language” and has not been adopted by any country (Opp. at 17). Indeed, Registrant has provided absolutely no evidence to support that there is any significant group in the U.S. who is knowledgeable with Esperanto, or that any consumers of the parties’ products (or any consumers at all) would pause and translate Lingvo from Esperanto.

None of the Internet links cited by Registrant indicate that Americans citizens or consumers use Esperanto. It is even questionable how many people use Esperanto outside the U.S. The Wikipedia article cited by Registrant points out that the number of Esperanto is a “controversy” and the range of possible users start at 10,000 worldwide.

Likewise, Registrant’s cited link to a site published by the Universal Esperanto Association at uea.org/info/angle/an_ghisdatigo.html is no better. First, this organization is dedicated to the Esperanto language and has as its very purpose the propogation of its language. In any case, even this biased organization, in giving its estimate of Esperanto users, was careful to indicate its estimate was only “possible”. Indeed, none of the links provided by Registrant is based on any kind of investigation or factual findings. The need for admissible evidence is pointed out in the *In re Hag Aktiengesellschaft* case cited by Registrant. In the section quoted by Registrant (pg. 16), the court points out that the applicant had an expert who testified that to the average American, the subject mark would have no other meaning than the foreign meaning.

Further, it is notable that even when this organization lists the countries in which there are “notable concentrations” of people who use Esperanto, the U.S. is glaringly absent from that list.

Additionally, Registrant’s cited link at inters.yugsegodnya.ru/content/view/1168/ is not even a working link. Registrant amended their brief to cite a link to www.peacefromharmony.org/?cat=ru_c&key=239, which is no better given that the page it led to is not in English. English being the primary language of the U.S., the fact that this site is not in English further supports that Esperanto is not a language that would be familiar to American consumers. In fact, many pages of Registrant’s Exhibit 18 were likewise in a foreign language, and were published by biased organizations, such as lingvo.org.

Registrant cites the number of hits generated by a search for “Lingvo Esperanto”. However, this does not in any way indicate that number of people in the U.S. who use Esperanto.

Registrant also cites its Exhibit 18, which includes Internet search results generated by terms that include [lingvo](http://lingvo.org). These search results were not, and could not have been, limited to the U.S., and does not in any way show the number of people who actually use Esperanto in the U.S. Notably, Petitioner’s [Lingvo](http://lingvo.org) product was at the top of Registrant’s Google search for [Lingvo](http://lingvo.org) (Reg. Ex. 18 at LS003027 and LS003375).

In sum, there is no evidence that Esperanto is used in the U.S. by a significant group of consumers such that a translation of [Lingvo](http://lingvo.org) should be required. Rather, the evidence cited by Registrant supports the contrary conclusion.

Further, there is no evidence that a significant group of American consumers would pause and translate the word Lingvo into language. Given that there are cases where the court has declined to translate words from well-known foreign languages, such as French in the Palm Bay Imports case above, Lingvo should not be translated in this case.

Registrant also argues that permitting Petitioner to use Lingvo would interfere with merchants being able to import their goods from foreign countries. However, it is undisputed that Esperanto has not been adopted by any country, and as such, there are no imports that need to translate an Esperanto term.

(2) The Meaning of Lingvo.

Registrant argues that lingvo clearly means “language” or “linguistic communication” in Esperanto, citing to its Exhibit 5, and criticizes Petitioner for even suggesting that it could mean anything else.

Petitioner had produced a definition from third party sources in response to the U.S.P.T.O.’s Office Action which defined lingvo as tongue. Registrant’s very own Exhibit shows that lingvo is capable of being translated as tongue. The definition at LS000064 and LS000068 (“natura lingvo”) provide this alternate definition. The Russian court also found that Lingvo means “tongue” (Ex. 25; Selegey Decl. ¶ 9).

Registrant goes on to challenge Petitioner’s evidence that Lingvo is not in Webster’s dictionary and other popular dictionaries for well-known languages. However, Registrant’s argument is misdirected.

Petitioner cited the popular Webster dictionary, which had no definition for “lingvo”, as well as dictionaries for other well-accepted languages such as French and Italian

omitted this term. The fact that Lingvo is absent from these popular references supports that this term is not recognized, known or familiar to American consumers.

Notably, the Russian court also cited the fact that Lingvo was omitted from European dictionaries in support of its decision that Lingvo is distinctive, and not descriptive.

Selegey decl. ¶ 9 and Ex. 25.

Lastly, Registrant argues that Petitioner's web site refers to Lingvo's Esperanto meaning. However, Petitioner clearly defines Lingvo as its software product (see 1st page of Reg. Ex. 1, which is translated in Pet. Ex. 26, and discussed in the Selegey decl. at ¶ 18).

Further, Registrant has not challenged testimony provided by Vladimir Selegey on behalf of Petitioner that establishes that "Lingvo is not a word that is used or widely accepted in the U.S. or any other country" (Selegey decl. ¶ 16). Mr. Selegey is the Director of Linguistic Research and Head of Applied Linguistics Department of ABBYY Production Ltd, and has over 20 years of experience with linguistic software, and with linguistics in general (Id. at ¶¶ 4-5). Nor has Registrant challenged the findings of the Lomonosov Report which concluded that consumers perceived Lingvo to be a made-up word and associated Lingvo with Petitioner's product and as belonging to Petitioner.

C. "Lingvo" Is Not A Generic Term.

Registrant argues that "Lingvo" is generic because when translated as "language" or "linguistic communication", it describes linguistic products, of which the Lingvo product the class of good of which a product is a member.

Clear evidence of the relevant public's perception of a term must be provided in support of a term being generic. In re Merrill, Lynch, Pierce, Fenner & Smith, Inc., 828

F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); In re Leatherman Tool Group, Inc., 32 USPQ2d 1443, 1449 (TTAB 1994), citing In re Northland Aluminum Products, Inc., 777 F.2d 1566, 227 USPQ 961, 963 (Fed. Cir. 1985).

In this case, Registrant has produced no evidence that the relevant public in the U.S. associates Lingvo in a descriptive way as to the type of software products being sold by Petitioner, or as to language or linguistic communications. In other words, there is no evidence that Lingvo has become a generic means of describing the type of products with which the mark is being used.

Further, neither “language” nor “linguistic communications” is descriptive of Petitioner’s product. Petitioner’s product is software which provides language translation, a dictionary, and grammatical and word use information for its users, and these words do not describe the nature of these products (i.e., software) nor its features (i.e., to translate or to provide definitions or grammatical information).

Registrant’s own listing of terms it believes are generic, such as “personal computer”, “software”, “laptop” or “modem”, illustrate this point. These terms are well-known, and are directly descriptive of a product. When we see laptop, we think of the product – that being a portable computer. There is no evidence at all that Lingvo is regarded the same way, or has become generic.

If anything, assuming arguendo that Registrant is correct, Registrant’s mark, LingvoSoft would certainly have to be considered generic, not only because the salient part of the mark is Lingvo, but also because it is combined with “Soft” which a consumer would associate with software. As such, LingvoSoft would directly describe the nature of Registrant’s product – that being software.

Registrant's point that international comity requires that generic names in a foreign language not be permitted supports Petitioner. Registrant presents a hypothetical that an American company that attempts to ship a product with a generic name would be upset when its goods are stopped at the border of another country because of its use of the generic name. This, to be sure, further supports the holding that Lingvo is not generic. For one, Lingvo is not a language in any country. Accordingly, it would never come to be that a product bearing the word Lingvo would be stopped at the border of any country, and as such, international comity would actually **not** call for a finding that Lingvo is generic.

Finally, Registrant argues that under International ISO Standards, "lingv" and "ling" have long been accepted as standardized abbreviations of fundamental terms of a linguistic subject area. Registrant's assertion is completely without any evidentiary support, and simply too general and vague to be accorded any consideration. It is far-fetched that simply because these partial phrases are in the cited Standards, that the American consumer associated Lingvo with the products with which the mark is being used.

Further, if Registrant's argument is accepted, Registrant's mark also contains these partial phrases, and as such, should be cancelled. Registrant cannot have it both ways.

Not only has Registrant failed in producing any evidence to support that Lingvo is generic, the evidence in fact clearly supports that it is not. A mark should not be found to be generic if a mark is associated by consumers with a product, based on the acquisition of secondary meaning through the length of use of a mark. This is supported by the *Park n' Fly* case cited by Registrant.

In this case, Lingvo has been in use for over 20 years since its inception, and for over 16 years in the U.S. Clearly, Lingvo has acquired secondary meaning. This is overwhelmingly supported by the evidence, which includes, the many awards given for Lingvo, the unbiased testimony of Mr. Kovalev concerning the popularity and sales and marketing of the Lingvo product, and the continuing significant and increasing sales and marketing of Lingvo by ABBYY USA and the other ABBYY companies, and last but not least, Internet search results from the most popular search engines in the United States that show the Lingvo software product at the top of search results for the term “Lingvo”.

D. Lingvo Is Not Descriptive.

Registrant argues that “lingvo” is descriptive based on its meaning “language” in Esperanto. First, even assuming that Registrant’s definition of Lingvo as “language” is correct – “language” does not describe the product (software), or any feature of Petitioner’s product, such as to translate, or to provide definitions or grammatical information.

Registrant cites findings by experts it claimed were retained by Registrant (Exhibit 15). First, whether a term is “descriptive” is a legal question in the U.S. Registrant’s report provides no findings or empirical data; rather, it seemed to have been based on mostly the pleadings submitted by the parties, and provides what appears to be a philosophical or esoteric discussion. The report also does not appear As such, this report is of no probative value, and cannot take the place of this Board’s own assessment. Second, in any event, the report is confusing. It is no wonder Registrant did not even try to explain how the conclusions in this report were arrived at.

By comparison, Petitioner provided a report by a linguistic expert, based on a survey that he conducted with his University (Ex. 5). The survey provides in detail the methodology and findings of the survey. The report concluded that Lingvo is perceived by probable consumers of Lingvo to be an “imaginary word” and recognized Lingvo to be “a name that is owned by ABBYY, i.e. the LINGVO has a high differentiating feature with regard to the company owning the trademark – ABBYY” (Ex. 5, pg. 22).

There is a typographical error in Petitioner’s Main Brief discussing this report. The sentence in the Main Brief should actually read: “A survey of Russian consumers considered that consumers identified the Lingvo trademark with translation software and electronic dictionaries provided by Petitioner.”

Mr. Selegey, also a linguistics expert, concurred that Lingvo was associated with Petitioner’s product.

Last, it is worth noting that this report was used by the Russian company Ektako-RD LLC in the Russian legal proceeding concerning Ektako’s use of LINGVO. Further, Registrant claimed in its opposition brief not to have any affiliation other than being friends with the head of Ektako. However, Registrant’s admission that it had retained these “experts” further calls into question the veracity of this claim. Further, it is notable that in spite of these “findings” being submitted to the Russian court, the Russian court found that LINGVO is a valid mark belong to Petitioner, and further found that Ektako was improperly using the mark and ordered Ektako to cease its use.

Registrant challenges whether LINGVO has acquired secondary meaning. Registrant argues that awards from U.S. based companies, such P.C. Magazine, PC World Magazine and Softtool do not support that there is recognition of LINGVO in the U.S. It is not

surprising that these U.S. based companies might have their branches in Russia issue these awards given that the developer of LINGVO is in Russia. Awards from these companies were issued in this way even during the years after Lingvo was extensively sold in the U.S. It takes nothing away from the fact that the companies that issued these awards are based in the U.S., considered software from all over the world, and issued the awards from their foreign branches. These awards were not limited to only software in Russia; rather, LINGVO was picked as the best software of its kind globally.

Next, Registrant argues that the fact that the primary search results from various major U.S. internet search engines (i.e. Yahoo, Bing, Google) for “Lingvo” are to Petitioner’s Lingvo software is “inconclusive”.

These search engines would not be used if they did not provide a searcher with results that match what the searcher was looking for. Registrant provides the Board no foundation to rest a decision finding that these search engines are not performing their expected functions. Even if one calls into question the quality of the search results of a search engine, as the Registrant does, it is simply beyond question that when the search results for all of these search engines bear out the same conclusion, which is, that a search for LINGVO is a search for Petitioner’s LINGVO product. This proves a clear association of LINGVO with Petitioner’s LINGVO product, and not, as Registrant argues, with an Esperanto word.

Further, not only do these search results show that there is a current association of LINGVO with Petitioner’s software product, but also that this association has been continuously reinforced by these search results.

Further, Registrant omits other evidence which prove that LINGVO has acquired secondary meaning, the most direct evidence of which are the significant sales of LINGVO in the U.S. reflected in the declarations of Mr. Kovalev and Mr. Tang, and the sales reports provided by Petitioner. The evidence submitted by Petitioner not only show sales in the U.S. but also sales outside the U.S. to consumers, many of whom can be reasonably concluded to travel into or immigrate to the U.S. at some point.

This secondary meaning is also supported by the extensive advertising done by Petitioner of the LINGVO product. And, lastly, as set forth above, secondary meaning is presumptively acquired based on Petitioner's lengthy use of LINGVO.

E. LINGVOSOFT Is Not A Distinctive Term.

Registrant urges that LINGVOSOFT should be regarded as a distinctive term in spite of its position that LINGVO is descriptive or generic when used with linguistic products. Registrant argues that there is law that supports that consumers regard marks as a unitary whole, and that it is permissible to join two descriptive words to yield a mark that is non-descriptive.

However, there is no getting around the fact that LINGVO is the part of Registrant's mark that U.S. consumers will take notice of, because it is not recognizable by them. Further, both LINGVO and SOFT taken together do not yield a fanciful term. Rather, if LINGVO is accepted as being descriptive, when used with SOFT, directly describes nature of the product.

F. There Is A Likelihood Of Confusion

There is no mistaking that Registrant saw the value in ripping off Petitioner's name. It did it when it started its website and store www.lingvobit.com and LINGVOBIT store,

the names of which are a combination of LINGVO and BIT, the original name of developer of Petitioner's LINGVO software.

Likewise, Registrant ripped off Petitioner's name through Ektako when it started its website "lingvobit.ru" and more directly through its sale of products bearing the name "Lingvo".

There is no question that Registrant deliberately wanted to pass off its products as Petitioner's, and they did it because they knew that consumers associated LINGVO with a quality product.

Registrant argues that LINGVOSOFT has acquired secondary meaning through its advertising and sales of LINGVOSOFT. However, it cannot be forgotten that Petitioner has sold its LINGVO product for far longer, and has spent far more in advertising LINGVO. Petitioner was first to use LINGVO and is entitled to priority, regardless of what use Registrant has made of its mark subsequently.

(1) Registrant argues that generic and merely descriptive elements of mark are given little weight in a 2(d) analysis, and that LINGVO and LINGVOSOFT are very different.

First, Petitioner disagrees that LINGVO is generic or descriptive. Consumers also associate LINGVO with Petitioner's product.

"LINGVO", because of its novelty and uniqueness, jumps out at the consumer. As such, it is unsurprising that Registrant chose to copy this term. The term "soft" falls at the end of "LINGVO" is not noticeable, except as perhaps to describe to consumers the nature of Registrant's product. The addition of "soft" at the end of this mark is not sufficient to distinguish the two marks.

(2) Registrant inaccurately argues that “some” of its products are different. In the same breath, however, Registrant admits that the parties have products that are the same. Notably, Registrant admits that the products of both parties, especially those sold by Registrant under the same name “LINGVO”, are the same, and that even its products that are different, are only different to the extent that they are electronic devices. What is important is that they perform the same functions and offer the same features (i.e., dictionary and translation).

It also bears mention that in spite of Registrant’s protestation that LINGVO is generic and descriptive, that they themselves chose to use it.

(3) Registrant also admits that both parties share the same trade channels in that both sell their products over the Internet. As discussed above however, the evidence supporting that there have ever been Lingvobit store is dubious.

(4) Registrant also argues that consumers exercise more care when the products being purchased are expensive. A review of its Exhibit 11 shows web pages displaying numerous products with no pricing, products which a consumer can download for a free trial, products with pricing as low as \$39.95 and only as going as high as about \$119. Additionally, earlier in its brief, it calculated profits for its products based on a price of \$49.95. This pricing is not such that a consumer would take the kind of deliberate care as being urged by Registrant. It is in fact dishonest to characterize their products in such a way. Registrant also argues that business users tend to be more careful. However, Registrant produces no evidence that business users purchase their products, or that users generally are more careful in purchasing such products.

(5) Registrant argues that LINGVO is not a strong mark. It repeats arguments it made earlier about the sales and advertising of LINGVO, and about the importance of the Internet search results and awards. As discussed above, this is disproved by the evidence.

(6) Registrant argues that LINGVO is weak per se because it is used by other companies as their trade name, and cites to their Exhibit 19. With the exception of a section of one page, all of Exhibit 19 is in a foreign language, and appears to have been published by companies outside of the U.S. (possibly, Russia). First, the use of LINGVO in a trade name supports that it is believed by various other companies to be sufficiently distinctive, rather than Registrant's argument that it is descriptive. In fact, there is nothing in any of these documents to support that Lingvo is being used by these companies in a descriptive way. Second, the use of Lingvo by companies outside the U.S. is not relevant as to whether it should or would be regarded as "descriptive" in the U.S. Third, no translation is provided by Registrant of this Exhibit, and thus should not be considered as evidence.

Registrant also cites to their Exhibit 17, which they contend shows that Lingvo has been used by third parties in titles of books on Esperanto and linguistics. The first several pages of this Exhibit are in a foreign language without translation, and do not appear to support this contention. Next, Registrant provides two pages of a Google search, at the top of which include a link to Petitioner's Lingvo product, as well as a Wikipedia entry which equates Lingvo with Petitioner's product and as being the "most widely spread dictionary software in Russia" (LS003009). The last few pages of this Exhibit are a search through a site ostensibly dedicated to Esperanto ("esperanto-usa"), interspersed throughout these results are a few books which have Lingvo in the title. Search results on

an Esperanto website may use lingvo in a descriptive way, but certainly do not prove that either Esperanto or Lingvo is widely known or used in the U.S. Further, the search results provide no support for Petitioner's arguments given the few entries of titles containing the word Lingvo even among the search results that Petitioner had selectively chosen and provided.

(7) and (8) Registrant next argues that there is no proof of actual confusion, and points out that Registrant has been using the Lingvo mark for over six years with Petitioner's constructive knowledge. The law is clear, as Registrant admits proof of actual confusion is not needed. Clearly, Registrant ripped off the Lingvo mark, and even the original name of Lingvo's developer, Bit, for a reason – that is, to cause confusion such that consumers will purchase their products believing it to have come from Petitioner.

(9) Last, Registrant argues that it is not clear how a consumer can associate Lingvo with Petitioner, because of the ownership and assignment of Lingvo, and the different names presented as the source of the Lingvo products, citing to their Exhibit 25. Looking at Exhibit 25, every package of Lingvo is identified in conjunction with the "ABBYY" source, whether it is on the spine or the back or front of the package. So, first, this argument is simply dishonest. There is no question that Lingvo can be identified by consumers to have come from ABBYY. This is supported by the Petitioner's pictures of its packaging, as well as, declarations from Vladimir Kovalev and Dean Tang, which all support that Lingvo has always been identified as coming from ABBYY.

Registrant also questions the ownership of Lingvo, based on its own translation and interpretation of Russian Trademark Office records, and cited to its Exhibit 21. Mr. Selegey provided more information concerning the ownership of Lingvo and gave a

detailed explanation about how the ABBYY name was conceived (decl. at ¶ 11).

Essentially, there is no question that ABBYY owns Lingvo, and ABBYY is a made-up word, and is represented in Cyrillic based on the phonetics of the name.

Further, the law is clear that the assignment and ownership of trademarks is a matter left to the contracting parties. In this case, the assignment and ownership of Lingvo is clearly set forth in the Petitioner's declaration provided by its Director Marinos Dimosthenous, as well as the declarations of ABBYY USA's CEO Ding-Yuan Tang, and the assignment agreements. The Lingvo mark is unquestionably shown to have been used by ABBYY, as shown by pictures of the Lingvo's packaging and marketing, Internet search results for the Lingvo product, as well as in the awards given to Petitioner for the Lingvo product.

Further, the assignment of the mark has no effect at all as to how consumers perceive the mark given the clear identification of source on Lingvo's packaging and advertising.

Additionally, the Russian court recognized Petitioner to be the rightful owner of Lingvo, and rejected the same arguments that had been made by Ektako..

C. LINGVOSOFT Should Be Cancelled Based On Registrant's Misrepresentation And Bad Faith.

Registrant first claims that it did not rely on the fame of Petitioner's mark Lingvo as the Lingvo was not known in the U.S. First, this is simply impossible to believe given the similarities in the products that Registrant chose to sell, and with the mark it chose for these products. Especially, when considered along with the facts that a related company Ektako stole the name Lingvo and used it for the same type of products in Russia, and that Registrant even combined Lingvo with "bit" which was the original name of

Lingvo's developer. Lingvo has been described as the most widely used translation software in Russia, and had been used 14 years before Lingvosoft's alleged first use date, has received multiple awards, and has had a history of success in terms of sales. Clearly Registrant was motivated to steal the Lingvo mark.

Registrant also argues that as a matter of law, knowledge of foreign use of a mark does not preclude good faith adoption and use in the U.S. This is simply not correct. Registrant even acknowledges that the law recognizes the famous foreign marks doctrine. Registrant does not challenge the cases cited in the Main Brief. In any event, there was also use in the U.S. before Registrant's adoption of its copycat mark.

Registrant goes on to deny a relationship with the Russian company Ektako RD, and claims that Ektako's CEO, Anton Epifanov "is simply a friend" of Registrant's CEO, David Lubinitsky, and as such, Ektako's "alleged culpability" cannot be imputed to Registrant. Again, Registrant's statements strain credibility. It just defies belief that these companies have no relationship. The companies essentially share the same name, marketed and sold the same products with the same name, employed the same strategy to rip off the Lingvo trademark in doing so, and Registrant is currently making many of the same arguments made by Ektako in the Russian case, which Ektako lost.

This dishonesty is repeated in other claims and arguments that Registrant has made. This not only supports that Registrant should not be believed in this proceeding, but also, that Registrant acted in bad faith in bad faith in its adoption of the Lingvosoft mark.

D. Lingvosoft Should Be Cancelled Based On Registrant's Fraud And Bad Faith.

Registrant argues that Petitioner has not met its burden of producing sufficiently clear evidence of fraud or bad faith. The evidence clearly supports that Registrant deliberately

ripped off Petitioner's mark. Further, Registrant has admitted that it cannot prove its first use date. Its arguments and representations in this case have also been less than honest.

Registrant demonstrates a pattern of dishonesty and bad faith. It should be found that Registrant likewise acted fraudulently and in bad faith in its application for its mark.

F. Laches Should Not Be Applied.

Registrant argues that Petitioner should be estopped based on laches. Here, we have a foreign company who owns the mark, and who made an effort to enforce its mark, including by registering its Lingvo mark with the U.S. Copyright office, and retaining a law firm to register its mark.

Petitioner did not have notice of the publication of Registrant's application for opposition, and Registrant has provided no evidence in this regard.

Registrant has also invested far more in its mark than Petitioner, and has used its mark far longer than Registrant. Further, far less time has passed between the registration of the mark and the date of this proceeding, than in the Pro-Football case cited by Registrant in support of its contention.

Petitioner had started its proceeding in Russia far against the related company Ektako, which Registrant at the very least admits that he is friends with Ektako's CEO. Registrant could not have believed that it was immune.

Further, it would be unfair to grant Petitioner's requests herein given the misconduct and bad faith by Registrant in so blatantly ripping off the Lingvo trademark.

Under these circumstances, Petitioner has made substantial efforts to enforce its mark, and it would be unfair, given Registrant's clear notice of Lingvo, as well as

Petitioner's investment into and use of its mark, as well as Registrant's misconduct, to apply laches.

G. No Grounds Exist For Estoppel Based On Unclean Hands.

Registrant argues that Petitioner should be estopped because of the Petitioner's own unclean hands. They base this contention on their arguments Petitioner knew that "lingvo" can be translated into "language" in Esperanto, citing Petitioner's website which provides a translation of "lingvo", and based on Petitioner's statements concerning the meaning of "lingvo". First, Petitioner's definition of Lingvo clearly provides that Lingvo is the name of its own software product. The fact that Petitioner had stated elsewhere, in spite of Esperanto being obscure and not an official language of any country, supports that Petitioner goes above and beyond in terms of full disclosure, rather than any bad faith or dishonesty.

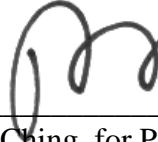
Second, Petitioner submitted definitions it found from third party sources which show an alternate definition of "tongue" for Lingvo. Registrant has not challenged these sources. The Russian court also found that lingvo meant "tongue". And, Petitioner is certainly entitled to submit this evidence, and make its arguments in this proceeding. Accordingly, there is just no basis for this contention.

With respect to the use of the registration symbol, no incorrect use was ever intentional, and Registrant produces no proof to support such an allegation.

Registrant lastly argues that Petitioner is making an attempt to usurp the Lingvo term for use with linguistic products. And as discussed in detail, Lingvo is distinctive of Petitioner's product. Further, this is absurd and disingenuous, especially given Registrant's own use of Lingvo in its Lingvosoft mark.

Respectfully submitted,

Date: August 6, 2010

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by several loops and a final flourish.

Roy Ching, for Petitioner ABBYY Software
Ltd.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **PETITIONER'S REPLY BRIEF**, was served upon counsel for Registrant this 6th day of August, 2010 by US mail and e-mail, addressed as follows:

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