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

Proceeding	92049973
Party	Defendant Ectaco Inc.
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Date	12/29/2008
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>ABBY SOFTWARE LTD.,</p>	<p>Registration No. 3,015,325</p>
<p>v.</p>	<p>Cancellation No. 92049973</p>
<p>ECTACO INC.</p>	
<p>Petitioner,  Registrant.</p>	

**APPLICANT'S ANSWER TO PETITION TO CANCEL**

Registrant, Ectaco Inc. ("Registrant"), by and through its attorneys, Ostrolenk, Faber, Gerb & Soffen, LLP, hereby answers the Petition to Cancel ("Petition"), filed by ABBYY Software Ltd. ("Petitioner") on September 25, 2008, as follows:

Registrant admits that the application for the mark LINGVOSOFT (the "Registrant's Mark") was filed on July 30, 2004. Registrant further admits that the Registrant's Mark was registered as United States Trademark Registration No. 3,015,325 on November 15, 2005. Registrant denies the remaining allegations in the preamble of the Petition, specifically denying that the Petitioner is "damaged by the continued registration of the mark LINGVOSOFT."

**I. The Parties**

1. As to paragraph 1 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.
2. As to paragraph 2 of the Petition, Registrant admits the allegations.

## II. The Registration

3. As to paragraph 3 of the Petition, Registrant admits the allegations.

## III. Petitioner's Mark and Goods

4. As to paragraph 4 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

5. As to paragraph 5 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

6. As to paragraph 6 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

7. As to paragraph 7 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

8. As to paragraph 8 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

9. As to paragraph 9 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

10. As to paragraph 10 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

## IV. Claims

### A. Priority of Use and Likelihood of Confusion

11. As to paragraph 11 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

12. As to paragraph 12 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

13. As to paragraph 13 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

14. As to paragraph 14 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

15. As to paragraph 15 of the Petition, Registrant admits that Exhibit "B" of the Petition purports to demonstrate that the Arbitration Court of Moscow satisfied claims of ABBYY Solutions Limited and ABBYY Software Limited 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." As to the remaining allegations of paragraph 15 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

16. As to paragraph 16 of the Petition, Registrant admits that Exhibit "B" includes documents entitled ARBITRATION COURT OF MOSCOW, In the name of the Russian Federation, Decision, Case No. A40-62691/05-67-403 /Translation from Russian language into English language/; NINTH ARBITRATION COURT OF APPEAL, 115998, Moscow, 68/70 Sadovnicheskaya ul., building 1, No. 09 AP-9802/2006-GK /Translation from Russian language into English language/; FEDERAL ARBITRATION COURT OF MOSCOW DISTRICT, RULING, No. KG-A40/13696-06 /Translation from Russian language into English language/.

17. As to paragraph 17 of the Petition, Registrant denies the allegations.

18. As to paragraph 18 of the Petition, Registrant denies the allegations.

19. As to paragraph 19 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

20. As to paragraph 20 of the Petition, Registrant admits that the Registrant's mark and the Petitioner's alleged mark include the term "LINGVO." Registrant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 20 and, accordingly, denies the same.

21. As to paragraph 21 of the Petition, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, accordingly, denies the same.

22. As to paragraph 22 of the Petition, Registrant denies the allegations.

B. Fraud on the Patent and Trademark Office

23. As to paragraph 23 of the Petition, Registrant denies the allegations.

24. As to paragraph 24 of the Petition, Registrant denies the allegations.

25. As to paragraph 25 of the Petition, Registrant denies the allegations.

26. As to paragraph 26 of the Petition, Registrant denies the allegations.

27. As to paragraph 27 of the Petition, Registrant denies the allegations.

28. As to paragraph 28 of the Petition, Registrant denies the allegations.

29. As to paragraph 29 of the Petition, Registrant denies the allegations.

30. As to paragraph 30 of the Petition, Registrant denies the allegations.

31. As to paragraph 31 of the Petition, Registrant denies the allegations.

32. As to paragraph 32 of the Petition, Registrant denies the allegations.

V. Request for Relief

Registrant denies that Petitioner is entitled to the relief requested in the Petition to Cancel.

### AFFIRMATIVE DEFENSES

33. Petitioner lacks priority at least in the United States.

34. On July 30, 2004, when Registrant applied for registration of the mark LINGVOSOFT, there was no application by Petitioner to register the trademark "LINGVO" filed in the United States, no use of the term "LINGVO" by Petitioner in the United States and no available information to Registrant to suggest that the Petitioner might be contemplating use of the term "LINGVO " in the United States, or contemplating a claim of right to register or use the mark in the United States, or contemplating the filing of an application to register the trademark "LINGVO" in the United States.

35. Registrant has been a bona fide owner and user of the trademark LINGVOSOFT, its registration and its associated good will without notice of any claim of rights of Petitioner and with no source of information to suggest that the Petitioner would assert rights or have any basis for claiming rights in the same trademark in the United States.

36. The term "LINGVO" is a part of the name LINGVO ESPERANTO, LINGVO INTERNACIA. The term "LINGVO" is a generic name at least for Petitioner's goods and services involving the Esperanto language.

37. The term "LINGVO" is translated to mean "language" in the Esperanto language. The word "language" is merely descriptive of Petitioner's goods and services.

38. The term "LINGVO" as used by the Petitioner and as set forth in Petitioner's Trademark Application Serial No. 77/357275 is merely descriptive of the Petitioner's goods and services and lacks secondary meaning under Section 2(f) of Lanham Act.

39. Upon information and belief, Petitioner has not made long and substantial use of the term “LINGVO” for translation software, language learning software, electronic voice interpreters or electronic handheld dictionaries in the United States.

40. Upon information and belief, Petitioner lacks any goodwill or reputation in the term “LINGVO” for translation software, language learning software, electronic voice interpreters or electronic handheld dictionaries in the United States.

41. Upon information and belief, consumers in the relevant U.S. market are not familiar with the Russian trademark LINGVO and/or do not associate with the Russian trademark LINGVO with the goods listed in Registration No. 3,015,325.

42. Upon information and belief, Petitioner’s Russian trademark LINGVO is not a “famous foreign mark.”

43. Registrant’s mark LINGVOSOFT has been in substantially continuous and exclusive use in U.S. commerce in connection with the goods set forth in Registration No. 3,015,325 since at least as early as May, 2004.

44. During the period from at least as early as May, 2004 to date, Registrant has had extensive sales, distribution, advertising and promotion in U.S. commerce of the goods set forth in Registration No. 3,015,325 under the mark LINGVOSOFT.

45. Goods sold under the mark LINGVOSOFT have been subjects of numerous trade awards. Information regarding various awards is enclosed herewith as Exhibit A.

46. By virtue of the foregoing, Registrant’s mark LINGVOSOFT has acquired substantial secondary meaning and good will and has become well-known among the relevant trade and public as designating Registrant as the exclusive source of the goods set forth in Registration No. 3,015,325.

47. In view of the foregoing and without prejudice to Registrant's other affirmative defenses, Registrant asserts, in the alternative, that the mark LINGVOSOFT set forth in Registration No. 3,015,325 has acquired distinctiveness and secondary meaning under Section 2(f) of the Lanham Act, 15 U.S.C. Section 1052(f).

48. Registrant has been using the mark LINGVOSOFT for the goods set forth in Registration No. 3,015,325 for at least four and a half years without experiencing any actual consumer confusion with Petitioner and its purported mark

49. Petitioner's claims are barred, in whole or in part, under the equitable doctrine of laches, estoppel, and/or acquiescence.


50. Continued registration of the mark LINGVOSOFT will not damage Petitioner.

**WHEREFORE**, Registrant respectfully requests that this Cancellation No. 92049973 be dismissed with prejudice.

Dated: December 29, 2008  
New York, New York

THIS CORRESPONDENCE IS BEING  
SUBMITTED ELECTRONICALLY THROUGH  
THE PATENT AND TRADEMARK OFFICE  
ESTTA FILING SYSTEM ON December 29,  
2008.

Respectfully submitted,

  
\_\_\_\_\_  
Anna Vishev

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New York, New York 10036-8403  
Tel: (212) 382-0700

Attorneys for Applicant



**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing **REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION** was served upon counsel for Petitioner this 29th day of December, 2008 by First-Class mail, postage prepaid, addressed as follows:

Roy Ching  
Merit Law Group PC  
800 W. El Camino Real #180  
Mountain View, CA 94040

*Anna Vishev*

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Anna Vishev

# EXHIBIT A



GSA Contract #GS-35F-0218R

US CAGE - NATO Sup. Code 097N5

# ECTACO

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- [ECTACO iTRAVL NTL series wins the Innovations Design and Engineering Award 2008 from the Consumer Electronics Association \(CES\)](#)
- [LingvoSoft Talking Dictionary 2008 for Windows Mobile Pocket PC wins Best Software Award 2007 in the Multilingual Dictionaries category from Smartphone & Pocket PC magazine.](#)
- [LingvoSoft Suite 2008 for Windows Mobile Pocket PC nominated for Best Software Awards 2007 by Smartphone & Pocket PC magazine.](#)
- [LingvoSoft Talking Dictionary 2006 for Pocket PC wins Users Choice Award from Ipaqchoice.com \(a Handster Service for Hewlett Packard\)](#)
- [LingvoSoft Bilingual Talking Dictionary 2007 chosen as Finalist 2006 in the Best Multilingual Dictionaries category by Smartphone & Pocket PC magazine.](#)
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- [LingvoSoft Flashcards 2006 for Windows Mobile Pocket PC nominated for Best Software Awards 2005 by Smartphone & Pocket PC magazine.](#)
- [ECTACO Language Teacher ER586HT Partner wins the Design and Engineering Showcase Award 1999 from the Consumer Electronics Association \(CES\)](#)
- Testimonials and Reviews from New York Times, Los Angeles Times, Wired.com, Forbes Traveler, National Defense, etc. can be read [here](#)

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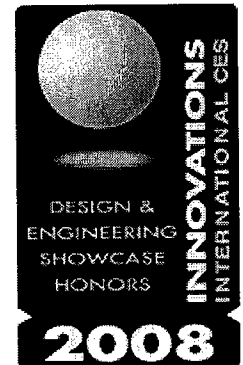


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**ECTACO iTRAVL NTL series garners Innovations 2008 Design and Engineering Award from the Consumer Electronics Association (CES)**



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The ECTACO iTRAVL NTL-9C Talking 2-way Multilingual Language Communicator and Electronic Dictionary, along with the entire iTRAVL NTL series, has been selected as an Innovations 2008 Design and Engineering Award honoree in the Personal Electronics product category for the upcoming Consumer Electronic Show to be held in Las Vegas 7-10 February 2008. Singled out from the thousands of competing new products, the Consumer Electronics Association which is responsible for organizing America's most important forum for new technology has chosen ECTACO and the iTRAVL NTL-9C, along with the entire iTRAVL NTL series, as the best of the new year.

With the new iTRAVL® device, ECTACO® has taken usability and convenience a step further to provide everything necessary to visit dozens of different countries without dragging along a single bulky dictionary or phrasebook. That's because the new NTL-9C provides travelers with the tools they need to make their trips more comfortable, communication more effective, and to help build relationship between both business and romantic partners. The multilingual iTRAVL® offers users of all ages and skill levels a true revolution in modern handheld translation technology with Language Teacher®. The latest speech recognition based Language Teacher provides a superior real time visual evaluation and testing system, real human native speaker voice output and sophisticated TTS (text-to-speech) functionality to translate between English and Chinese, French, German, Italian, Polish, Portuguese, Russian, Spanish and back. Fully-loaded with all the extras, iTRAVL® comes complete with the Fodor's Travel Guide, including maps and essential information for 50 cities, as well as CIAWorld



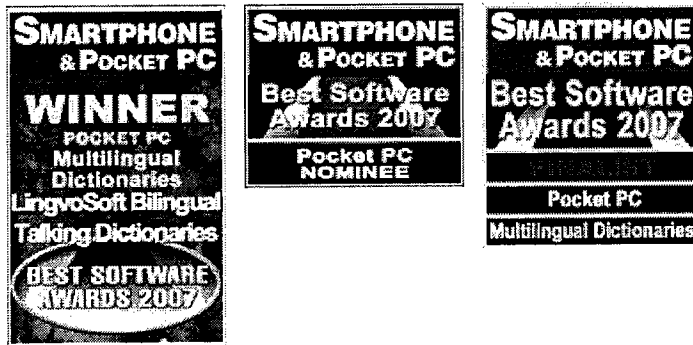
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ECTACO, Inc. is a New York based company that specialized in multilingual global communication solutions, with more than 17 years of experience, 18 offices and millions of satisfied customers.

You may get detailed information on all products from the iTRAVL NTL series [here](#).

**In 2007, LingvoSoft Talking Dictionary 2008 for Windows Mobile Pocket PC won Best Software Award 2007 in the Multilingual Dictionaries category from Smartphone & Pocket PC magazine.**



LingvoSoft Bilingual Talking Dictionaries have been recognized as the best Text and Reference Multilingual Dictionaries by 'Smartphone & Pocket PC' magazine. The software was named the winner in the magazine's 7th Annual Best Software Awards on November 20, 2007.

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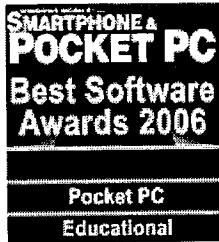
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Fairfield, IA 52556 - LingvoSoft Bilingual Talking Dictionaries have been recognized as the best Text and Reference Multilingual Dictionaries by 'Smartphone & Pocket PC' magazine. The software was named the winner in the magazine's Fifth Annual Best Software Awards on November 4, 2005.

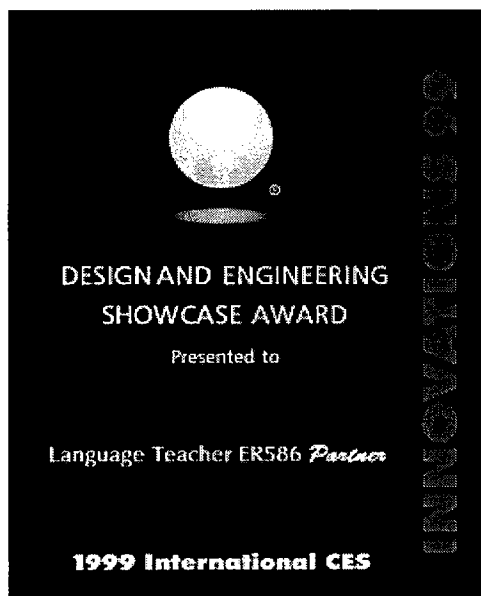
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