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

Proceeding	92066765
Party	Defendant Biostar Technology International LLC
Correspondence Address	BIOSTAR TECHNOLOGY INTERNATIONAL LLC SUITE B , 4443 W SUNSET BLVD LOS ANGELES, CA 90027 UNITED STATES
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Eric Misterovich
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Signature	/EM/
Date	10/06/2017
Attachments	10-06-17 Diacom MTD MSJ.pdf(372704 bytes) Ex 1 - 86830759 Petition to Cancel.pdf(1284740 bytes) Ex 2 - April 27 2017 Order.pdf(81354 bytes) Ex 3 - 92066217 Petition.pdf(4264817 bytes) Ex 4 - Cover Page.pdf(174890 bytes) Ex 6 - 92066217 MTD .pdf(2855399 bytes) Ex 7 - 92066217 Order .pdf(68784 bytes) Ex 8 - 312 Office Action.pdf(36045 bytes) Ex 9 - 312 Office Action Response.pdf(26650 bytes) Ex 10 - DIACOM USA Certificate of Registration.pdf(89996 bytes) Ex 11 - WIPO Printout for 1319213.pdf(158188 bytes) Ex 12 - Bashuk Bio.pdf(421103 bytes) Ex 13 - 312 TSDR Printout.pdf(160281 bytes)

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

ING. KHACHATUR MKRTCHYAN

Petitioner,

Proceeding No: 92066765

v.

BIOSTAR TECHNOLOGY
INTERNATIONAL, LLC,

Registrant.

REGISTRANT'S MOTION TO DISMISS / MOTION FOR SUMMARY JUDGMENT

Registrant Biostar Technology International, LLC, by and through its attorneys Revision Legal, PLLC, moves the Trademark Trial and Appeal Board (the "Board") to Dismiss Petitioner's Petition pursuant to Fed. R. Civ. P. 12(b)(6) and 56 and TBMP § 503, and states the following:

SUMMARY OF ARGUMENT

This is Petitioner's *third* attempt at cancelling Registrant's '919 Registration. His first attempt was rejected because his attorney was not licensed to practice in the United States. His second attempt cleared the TTAB's internal review procedures, but was dismissed on Registrant's Motion to Dismiss based on the fact 1) Petitioner's attorney was again not licensed in the United States and practice before the Board and that 2) Petitioner failed to state a claim. The Board granted Registrant's motion dismissing Petitioner's claims **with prejudice**. Yet, the day after that order, Petitioner filed *another* petition to cancel. This third petition is identical to the second petition, the one dismissed with prejudice. Petitioner's petition must be dismissed based on res judicata, collateral estoppel, failure to state a claim, and using an unlicensed attorney.

STATEMENT OF FACTS

1. Petitioner's First Petitioner was Rejected for Filing through a and Petitioner now Foreign Attorney

On March 1, 2017 Petitioner—with the assistance of a foreign attorney not licensed to practice in the United States—filed a petition to cancel. Ex 1, Miscellaneous Proceeding No. 86830759 Petition to Cancel. The Board did not entertain this filing, in part, because the attorney was not licensed in the United States. Ex 2, April 27, 2017 Order.

2. Petitioner's Second Petitioner was also Drafted by a Foreign Attorney and was Dismissed with Prejudice.

On May 31, 2017, Petitioner filed another Petition to cancel the '919 Registration. See Ex 3, 92066217 Petition. This petition listed “BASHUK CHICHKANOV, YURIDICHESKAYA FIRMA” from the “RUSSIAN FEDERATION” as the Petitioner's correspondent, including the following email addresses: a.bashuk@bashukchichkanov.com, a.bashuk@yandex.ru. Ex 4, Petition to Cancel Cover Page. BASHUK CHICHKANOV, YURIDICHESKAYA FIRMA is a Russian law firm. Ex 5. Leaving little doubt that someone other than Petitioner prepared the pleading, Petitioner's signature on the Petition to Cancel appears to be a digital screenshot copied and pasted into the document itself:

Wherefore, Petitioner's prays for cancellation of the United States trademark Registration No.

5,011,919.

Dated: May 31, 2017



Screenshot from Petition to Cancel in Proceeding 92066217, p. 10.

On July 13, 2017, Registrant moved to dismiss Proceeding 92066217. See **Ex 6**, Motion to Dismiss (Proceeding No. 92066217). Petitioner failed to respond. On August 22, 2017, the Board granted Registrant's Motion and dismissed the petition to cancel with prejudice. **Ex 7**, August 22, 2017 Order.


3. Petitioner's Actions Between Registrant's Motion to Dismiss and the Board's August 22, 2017 Order in Proceeding 92066765.

On July 31, 2017, an examining attorney issued an office action on Serial No. 79196312. **Ex 8**, '312 Office Action. Here, the examining attorney required further clarification regarding the associated identification of goods and repeated and continued a prior refusal based on the '919 Registration. On August 16, 2017, Petitioner responded to the '312 Office Action by altering the associated identification of goods and services. **Ex 9**, '312 Office Action Response.

4. Third Petition to Cancel the '919 Registration

On August 23, 2017, the day after the TTAB dismissed Petitioner's claim with prejudice, Petitioner filed the instant Petition. The instant Petition is **identical** to the petition filed –and dismissed with prejudice– in Proceeding No. 92066765. Compare Proceeding No. 92066765 TTABVue Dkt. No. 1 and **Ex 3**, 92066217 Petition.

5. Registrant's Registration

Registrant filed federal trademark application Serial No. 86/830,759 on November 24, 2015 for  for "computer software and hardware for use in measuring the frequency of energy emitted by the human body" noting a first use date of January 6, 2005. **Ex 10**, Certificate of Registration. This application was registered on August 2, 2016 under Registration No. 5,011,919. *Id.*

STANDARD OF REVIEW

To withstand a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), a petitioner must allege facts that, if proven, would establish that the petitioner is entitled to the relief sought. *See Fair Indigo, LLC v. Style Conscience*, 85 U.S.P.Q.2d 1536, 1538 (TTAB 2007). Specifically, the petitioner must allege facts that establish that: (1) the petitioner has standing to bring the proceeding; and (2) the petitioner has a valid statutory ground for cancelling the registration. *Id.* A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), *quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “In the context of cancellation proceedings before the Board, a claim is plausible on its face when the petitioner pleads factual content that if proved, would allow the Board to conclude, or draw a reasonable inference that, the petitioner has standing and that a valid ground for cancellation exists.” *Corporacion Habanos, S.A. & Empresa Cubana Del Tabaco, D.B.A. Cubatabaco*, 92052146, 2011 WL 3871952 (TTAB Order Dkt. No. 16, Aug. 1, 2011) (citing *Twombly*, 550 U.S. at 556). The purpose of a Rule 12(b)(6) motion is to “‘eliminate actions that are fatally flawed in their legal premises and destined to fail....” *Meckatzer Lowenbrau Benedikt Weib Kg*, 95 U.S.P.Q.2d 1185 (TTAB May 13, 2010).

Summary judgment is an appropriate method of disposing of cases in which there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). A party moving for summary judgment has the burden of demonstrating that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). *See generally Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

ARGUMENT

I. PETITIONER'S CLAIMS ARE BARRED BY RES JUDICATA AND COLLATERAL ESTOPPEL

Under the doctrine of res judicata (or claim preclusion), the entry of a final judgment “on the merits” of a claim (i.e., cause of action) in a proceeding serves to preclude the relitigation of the same claim in a subsequent proceeding between the parties or their privies, even in those cases where the prior judgment was the result of a default or consent. *See Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955); *Chromalloy American Corp. v. Kenneth Gordon, Ltd.*, 736 F.2d 694, 222 USPQ 187 (Fed. Cir. 1984); and *Flowers Industries, Inc. v. Interstate Brands Corp.*, 5 USPQ2d 1580 (TTAB 1987). A second suit is barred by res judicata or claim preclusion if:

- (1) the parties (or their privies) are identical;
- (2) there has been an earlier final judgment on the merits of a claim; and
- (3) the second claim is based on the same set of transactional facts as the first.

Jet, Inc. v. Sewage Aeration Systems, 223 F.3d 1360, 55 USPQ2d 1854, 1856 (Fed. Cir. 2000).

No questions of fact exist to any of the three elements of res judicata. The parties are identical. Compare Proceeding No. 92066765 TTABVUE Dkt. No. 1 and **Ex 3**, 92066217 Petition. There was an earlier final judgment on the merits of the 92066217 proceeding. **Ex 7**, August 22, 2017 Order. And the 92066217 petition is identical to the instant petition. Compare Proceeding No. 92066765 TTABVUE Dkt. No. 1 and **Ex 3**, 92066217 Petition. Dismissal on res judicata grounds is required. *See, Orouba Agrifoods Processing Co. v. United Food Import*, 97 USPQ2d 1310 (TTAB 2010) (granting summary judgment to registrant on claim preclusion where petitioner's opposition had been dismissed with prejudice); *La Fara Importing Co. v. F. Lli de Cecco di Filippo Fara S. Martino S.p.a.*, 8 USPQ2d 1143, 1146 (TTAB 1988)

(“Issue preclusion operates only as to issues actually litigated, whereas claim preclusion may operate between the parties simply by virtue of the final judgment.”); *Flowers Indus. Inc. v. Interstate Brands Corp.*, 5 USPQ2d 1580, 1583 (TTAB 1987) (claim preclusion applies “even when the prior judgment resulted from default, consent, or dismissal with prejudice”); *USOC v. Bata Shoe Co.*, 225 USPQ 340, 342 (TTAB 1984) (“default judgments generally operate as res judicata”)

The reality is that Petitioner is simply serial filing petitions to cancel with the hope that Registrant fails to respond. This is bad faith. Petitioner has no justification whatsoever for filing additional petitions to cancel warranting sanctions, as requested below.

II. RULE 11 SANCTIONS ARE APPROPRIATE

This Board should take all measures possible to sanction Petitioner for this baseless claim. Petitioner’s actions to continue to file Petitions to cancel using an unauthorized attorney, respond to pending office actions while ignoring a substantive motion to dismiss, then re-file the instant Petitioner the day after dismissal of Proceeding 92066217 is bad faith. Registrant requests, at a minimum, the Board institute measures to reject future Petitions from Petitioner being filed against Registrant, and award any and all other relief within this Board’s authority.

III. THE BOARD SHOULD DISMISS THE PETITION IN WHOLE BECAUSE PETITIONER IS BEING REPRESENTED BY A FOREIGN ATTORNEY

Only “attorneys” defined under 37 C.F.R. § 11.1 may represent others before the Office in trademark cases. See also 37 C.F.R. § 11.14. “Attorney” is defined as “an individual who is an active member in good standing of the bar of the highest court of any State. 37 C.F.R. § 11.11. Foreign attorneys are permitted to apply for reciprocal registration, provided the attorney can prove to the OED Director that he or she is registered and in good standing before the patent or trademark office of the attorney’s home country. 37 C.F.R. § 11.14(c). However, this is only available if the

home country's trademark office allows substantially reciprocal privileges to those permitted to practice in trademark matters before the Office. *Id.* Currently, only Canada provides substantial reciprocal privileges. TBMP § 114.05.

“An individual who is not entitled, under 37 C.F.R. § 11.14 [other citations omitted], to practice before the Office in trademark cases, will not be permitted to represent a party in a proceeding before the Board, and may not file submissions on behalf of the party.” TBMP § 117.08. “If it comes to the attention of a Board attorney that such an individual is attempting to represent a party in a Board proceeding, the Board attorney will bring the matter to the attention of the Chief Administrative Trademark Judge, who will coordinate appropriate action with the Office of Enrollment and Discipline.” *Id.* “Moreover, no Board correspondence intended for the party will be sent to the individual. *Id.* Rather, the Board will send such correspondence to the party itself, or to the party's attorney or other authorized representative entitled to practice before the USPTO in trademark cases. *Id.*

The Petition filed overwhelmingly shows that Ing. Khachatur Mkrtchyan is not representing himself. Instead, his Russian attorney Bashuk Aleksey Andreevich is presenting him. **Ex 12**, Bashuk Aleksey Andreevich profile at <bashukchichkanov.com>.

Attorney Bashuk is also listed as Petitioner's attorney of record for Serial No. 79/196,312. **Ex 13**, '312 Application TSDR Printout. While it appears that Petitioner himself signed the Petition, this signature is extremely suspect as it appears to have been digitally transplanted into the document someone else (his Russian attorney) prepared. This is Petitioner's second attempt at using a foreign attorney before the Board. **Ex 2**, April 27, 2017 Order. Given Petitioner has repeatedly disregarded the Board's rules, dismissal with prejudice is proper.

IV. PETITIONER'S PRIORITY AND LIKELIHOOD OF CONFUSION CLAIMS FAIL AS A MATTER OF LAW

Petitioner seeks to cancel Registrant's registration based on priority and likelihood of confusion. Both positions are fatally flawed. On May 25, 2015, Petitioner filed a trademark application for DIACOM in the Czech Republic. Petition at ¶ 17. Petitioner argues that date is the priority date within the U.S. because he applied for an extension of protection for that registration into the U.S. Petition at ¶ 38.

But that May 25, 2015 date would only be available as the priority date if Petitioner filed for extension of protection to the United States within 6 months of the May 25, 2015 filing. TMEP § 1904.01(e). Petitioner failed to do so. Plaintiff filed his request for extension of protection in the United States on July 4, 2016, or 1 year and 9 months after filing his Czech application. Ex. 11, WIPO Printout. As a result, Petitioner cannot use May 25, 2015 as a priority date and this ground for cancellation should be dismissed with prejudice.

In a similar vein, Petitioner's claim for likelihood of confusion also fails. "In a cancellation proceeding, to establish priority on a likelihood of confusion claim brought under Section 2(d), a party must prove that, vis-à-vis the other party, it owns 'a mark or trade name previously used in the United States . . . and not abandoned.'" *Alexander Kronik v Sayed Najem*, 2016 WL 837734 (TTAB Feb. 11, 2016) (citing 15 U.S.C. § 1052(d)). "A party may establish its own prior proprietary rights in a mark through actual use, use analogous to trademark use, or an earlier constructive use date accorded to the party's own application." *Id.* (citing *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020, 1022 (TTAB 2009)). Absent proof of ownership of such superior rights vis-à-vis the defendant, the plaintiff cannot prevail on its Section 2(d) claim. *See, e.g., American Security Bank v. American Security and Trust Company*, 571 F.2d 564, 197 USPQ 65, 66 (CCPA 1978); *Corporate Document Services Inc. v. I.C.E.D. Management Inc.*, 48 USPQ2d

1477 (TTAB 1998); and *Intersat Corp. v. International Telecommunications Satellite Organization*, 226 USPQ 154, 156 n.5 (TTAB 1985).

Outside of Petitioner's flawed priority analysis described above, Petitioner has failed to allege any facts evidencing a priority date superior to Registrant's filing date of November 24, 2015. At most, Petitioner simply contends that Registrant's first use date is "obviously" false. Compl. at ¶ 34. This conclusory statement does *not* state a valid ground for cancellation. 3 McCarthy on Trademarks and Unfair Competition § 20:54 n.6 (4th ed.) (citing *In re W.R. Case & Sons Cutlery Co.*, 12 U.S.P.Q. 1544 (TTAB 1989)).

V. PETITIONER FAILED TO STATE A CLAIM FOR MISREPRESENTATION OF SOURCE

"The term misrepresentation of source, as used in Section [14(3)] of the Act, refers to situations where it is deliberately misrepresented by or with the consent of the registrant that goods and/or services originate from a manufacturer or other entity when in fact those goods and/or services originate from another party." *Osterreichischer Molkerei-und Kasereiverband Registrierte GmbH v. Marks and Spencer Limited*, 203 USPQ 793, 794 (TTAB 1979). *See Global Maschinen GmbH v. Global Banking Systems, Inc.*, 227 USPQ 862, 864 n.3 (TTAB 1985). In order to prevail, petitioner must show that respondent took steps to deliberately pass off its goods as those of petitioner. That is, petitioner must establish "blatant misuse of the mark by respondent in a manner calculated to trade on the goodwill and reputation of petitioner." *Otto Int'l Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861, 1863 (TTAB 2007), *quoting McDonnell Douglas Corp. v. National Data Corp.*, 228 USPQ 45, 47 (TTAB 1985). *See also* Theodore H. Davis, Jr., "Cancellation Under Section 14(3) for Registrant Misrepresentation of Source," 85 TMR 67 (Jan.-Feb. 1995) ("As a vehicle for canceling federal registrations, Section 14(3)'s misrepresentation of source prong has been invoked infrequently,

much less successfully used.”). Thus, in reviewing the record, we look for evidence reflecting respondent’s deliberate misrepresentation of the source of its products, “blatant misuse” of the mark, or conduct amounting to the deliberate passing-off of respondent’s goods. Willful use of a confusingly similar mark is not sufficient. *McDonnell Douglas Corp. v. National Data Corp.*, 228 USPQ at 47. Because intentional misrepresentation is a “classic fraud” count in other contexts, federal courts require pleadings containing this ground for cancellation to be pled with specificity consistent with Fed. R. Civ. P. 9(b). *American Cruise Lines, Inc. v HMS American Queen Steamboat Company LLC*, 223 F.Supp.3d 207, 213, (D. DE. 2016).

Petitioner’s claims are largely irrelevant to a proceeding before the Board. Petitioner claims Registrant engaged in “unfair competition” against him and committed defamation. Petition at ¶¶ 26, 28, 29. At most, Petitioner presents a run-of-the-mill likelihood of confusion claim. *Id.* at ¶¶ 30-31. This is simply not sufficient, consistent with Fed. R. Civ. P. 9(b), to establish a claim for passing off or that Registrant “blatantly represented” its goods or services as coming from Petitioner. See *American Cruise Lines, Inc. v HMS American Queen Steamboat Company LLC*, 213-14, (D. DE. 2016).

VI. PETITIONER FAILED TO STATE A CLAIM FOR FRAUD ON THE USPTO

Petitioner presents a narrow claim for fraud. Petitioner alleges that Registrant does not use the DIACOM trademark on the applied goods. Petition at ¶ 31, 43. Specifically, Registration is for the subject mark in association with “Computer software and hardware for use in measuring the frequency of energy emitted by the human body” in international class 009. Petitioner claims Registrant does not use its mark in association with “Computer software and hardware for use in measuring the frequency of energy emitted by the human body”; but rather, with “electric measuring devices and radiotherapy apparatus.” Petition at ¶¶ 31, 43.

Fraud occurs when an applicant knowingly makes false, material representations of fact in connection with an application to register. “There is no fraud if a false representation is occasioned by an honest misunderstanding or inadvertence without a willful intent to deceive.” *In re Bose Corp.*, 91 USPQ2d at 1942. “Unless the challenger can point to evidence to support an inference of deceptive intent, it has failed to satisfy the clear and convincing evidence standard required to establish a fraud claim.” *Id.* To prove a claim of fraud, petitioner must show that:

- (1) respondent made a false representation to the USPTO;
- (2) respondent had knowledge of the falsity of the representation;
- (3) the false representation was material to the continued registration of the mark, and
- (4) respondent made the representation with the intent to deceive the USPTO.

In re Bose Corp., 91 USPQ2d at 1941. A party asserting a fraud claim is under a heavy burden of proof because fraud must be proved by clear and convincing evidence, leaving nothing to speculation, conjecture, or surmise. The very nature of the charge of fraud requires that it be proven “to the hilt” with clear and convincing evidence. Any doubt must be resolved against the party making the claim. *Sinclair Oil Corp. v. Kendrick*, 85 USPQ2d 1032, 1035 (TTAB 2007); *Smith International, Inc. v. Olin Corporation*, 209 USPQ 1033, 1043 (TTAB 1981). And allegations of fraud must comply with Fed. R. Civ. P. 9(b). TBMP § 309.03(c) n.33.

Petitioner’s claim fails as a matter of law because Petitioner has failed to allege any facts showing that Registrant made a false representation that was material to the registration of the mark or that any representation was made with the intent to deceive the USPTO. The distinction Petitioner attempts to draw between the goods identified in the subject registration and the goods Petitioner believes Registrant sells is, at most, insubstantial. Petitioner’s allegation that Registrant’s goods are misidentified is false on its face. An “apparatus” can comprise hardware and software. Additionally, Petitioner failed to plead any facts, consistent with Fed. R. Civ. P. 9(b), showing why that alleged misrepresentation was material to obtaining the registration. And

Petitioner provides no facts whatsoever as to Registrant's intent to deceive. Without such facts, Petitioner has failed to state a claim.

CONCLUSION

Petitioner's Petition should be dismissed based on res judicata. In the alternative, Petitioner's Petition should be dismissed for using an attorney not licensed to practice before the Board and for failure to state a claim, in the same manner an identical petition was already denied.

For the reasons stated above, Registrant respectfully requests this Board GRANT its Motion to Dismiss or Motion for Summary Judgment and dismiss this Petition in whole and with prejudice. Again.

Date: October 6, 2017

/s/ Eric Misterovich
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Attorneys for Registrant

PROOF OF SERVICE

I, Eric Misterovich, hereby certify that a true and complete copy of the foregoing Registrant's Motion to Dismiss/Motion for Summary Judgment has been served on ING. KHACHATUR MKRTCHYAN by forwarding said copy on October 6, 2017, via email to: diacomtechnology@gmail.com.

Date: October 6, 2017

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EXHIBIT 1

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Trademark Trial and Appeal Board
U.S. Patent and Trademark Office P.O. Box 1451
Alexandria, VA 22313-1451
USA

Subject:

DIACOM^{USA}, serial Number 86830759

the registrant and owner Biostar Technology International LLC, at the address 4443 West Sunset Blvd., Los Angeles, Ca 90027, USA

- **Protest against the entry trademark DIACOM^{USA} and petition to cancel this trademark registration filed by Khachatur Mkrtchyan - Diacom Technology**

Prague 20th February 2017

I file a protest against the entry of the combined trademark DIACOM USA under serial number 86830759 and I file petition to cancel this trademark - the applicant and owner Biostar Technology International LLC, filed November 24 2015, registration date August 2, 2016, namely due to the fact that I already registered trademark of the DIACOM TECHNOLOGY and DIACOM and DIACOM MEDITRONIC in the intellectual property Office of the Czech Republic, the first number 328076, the filing date on 7.5.2012, record date 24.10.2012, the occurrence of pre-emptive rights on 7.5.2012, the second number 334763, the filing date 2.4.2013, recording date 13.11.2013, the occurrence of pre-emptive rights 2.4.2013 and a third of them under the number 349218, the filing date on 5.7.2015, record date 21.10.2015, the occurrence of pre-emptive rights on 25.5.2015.

You can find this information on the website of the intellectual property Bureau of the Czech Republic www.upv.cz. Further reported that in the Czech Republic I've been engaged in business under the brand name Khachatur Mkrtchyan - Diacom Technology, bin: 28765737, the office of the company at the following address: Neratovice Jedová 189, zip code: 27711 and is a manufacturer and distributor of measuring devices SOLO-NLS, generators of a low-voltage electromagnetic waves SOLO-FREQ generators, plasma generator Plazmotronic, combined devices Lite – FREQ and accessories, which are protected by the combined trademark DIACOM TECHNOLOGY. I have also registered the trademark DIACOM^{DIACOM} at the USPTO USA, serial Number 79196312, International registration Number 1319213. It is obvious that record of the combined DIACOM USA trademark has resulted in replaceability with my trademarks and to damage of my business activity and my trade name.

Proof:

Public information www.upv.cz

The extract from the trade register of the Czech Republic about my firm

In order to inform you, I also announce that the firm Biostar Organix Healthcare Association at 4443 West Sunset Blvd., Los Angeles, Ca 90027, USA, represented by Mr. Ulysses Angulo (both firms is



03-01-2017

U.S. Patent & TM/O/TM Mail Rpt Ct. w/1

obvious from the title and same address) I signed the agreement from 9.1.2014 on the basis of which I granted to this firm the right to offer and sell my products in the market of the USA, Canada, Mexico and South Korea with Biostar Organix Healthcare Association firm which is represented by mister Ulysses Angulo. In March, 2015, the Biostar Organix Healthcare Association firm declared carrying out and held the Presentation of the products DIACOM in the Czech Republic which is absolutely violated terms of the contract, mister Angulo promised me later that I as the owner of the DIACOM company, will be in attendance, as Dušan Medvec – exclusive distributor in the Czech Republic, as a result they held the presentation without our presence with the explanation that the room where the presentation was held, is too small and we did not have seats.

As a result of pressure of distributors as in their opinion, such activity interferes with a field of activity of the distributor of this region, and in the future similar should not repeat, Ulysses L Angulo apologized to all exclusive distributors. However shortly thereafter it published on the official website that he carries out sales, support and training in work with Diacom worldwide and the official manager there was Maria Sheretova at the present time is the wife of Mr. Angulo and former close assistant and right hand of the company Khachatur Mkrtchyan - Diacom Technology.

The contract in any agreement with the Biostar firm or with Mr. Ulysses L Angulo says nothing about the fact that it provides the right to conduct training of the DIACOM devices to users, as I could not guarantee his knowledge in this field, on the contrary, I am sure, that he was not competent enough, however, he proclaimed himself as the best specialist on training of the DIACOM technologies. As these actions went beyond all the agreements, I demanded a company Biostar – Mr. Angulo, to remove the false information.

In 2015, cooperation with the company Biostar was discontinued, and the firm no longer has the right to offer and sell my product that I already don't provide to this company and in the USA market I have another distributor for the moment. Biostar company could, as a distributor, use the name of the DIACOM only during the period of our cooperation that it completely ignores and still continues to use my trading name DIACOM and DIACOM trademark, namely for the promotion and sale of counterfeit products and seemingly similar products of own production, and Biostar claims that their devices are better than the original products of DIACOM. On the website of Biostar this company also declared that it recruits programmers and developers in the USA. The purpose of this activity is clear - to abuse and use for their enrichment, the DIACOM technologies developed by me.

I repeatedly asked the company Biostar about the complete elimination of the name DIACOM from their website and that they ceased to offer the products under this name, because my they are protected trademarks. After a lengthy red tape they changed the title of their website graphic design, however, they continue to use the name DIACOM on their site, sometimes they use even the original version of the trademark DIACOM TECHNOLOGY. All of these actions can be described as the abuse of my trademarks, unfair competition and damage to my trading name. This activity can be checked on the sites that they use, a total of 3, namely:

diacom-usa.org

diacom-usa.com

diacom-3d-nls.com

and as I found out at the moment, Biostar Technology International LLC (Mr. Ulysses Angulo L /Sheretov) brought his illegal activities to the level that has applied for registration of the trade mark

DIACOM^{USA}, which was registered and it is interchangeable with my TM and still to aggravate, his other firm also filed an application for registration.

Khachatur Mkrtchyan - Diacom Technology
Jedová 189
27711 Neratovice
Czech Republic

represent under the power of attorney by
JUDr. Eva Winklerová
Attorney at law
e-mail: eva.winkler@cdipraha.cz
Zelený pruh 52, 147 00 Praha 4, Czech Republic

A handwritten signature in blue ink, appearing to be 'Eva Winklerová', is written over the text of the attorney's details.

POWER OF ATTORNEY

The person signed below:

Khachatur Mkrtchyan – Diacom Technology, identification number: 28765737, tax identification number: CZ28765737, business address Neratovice, Jedová 189, PSČ: 27711, Česká republika

grants Power of Attorney to

JUDr. Eva Winklerová, solicitor, registered with the Czech Bar Association ref. no. 3283, registered solicitor's office Zelený pruh 1294/52, 147 00 Praha 4, Czech Republic.

The Power of Attorney authorises the Solicitor to represent the person stated above and to act on him behalf, to carry out all acts necessary, to take delivery of written matters, to submit proposals and applications, to reconcile and settle, to recover debts, to accept recovered debts, to confirm their receipt, to appoint arbitrators, to negotiate arbitration contracts and supplements and any other matters where a power of attorney is necessary in accordance with legal regulations. This Power of Attorney is granted within the scope of rights and obligations under the Civil Code of the Criminal Act as a **specific Power of Attorney**

to filing of objections against the entry of the trademark **DIACOM USA** serial number **86830759**, registrant and owner **Biostar Technology International LLC**, Los Angeles California

I hereby acknowledge that the Solicitor is entitled to appoint a representative to act on her behalf.

Prague, 20th February 2017



Khachatur Mkrtchyan – Diacom Technology

I hereby accept the Power of Attorney and grant the power within the same extent:

JUDr. Eva Winklerová
advokátka
Zelený pruh 52/1294
147 00 Praha 4

JUDr. Eva Winklerová
Solicitor

Výpis

z obchodního rejstříku, vedeného
Městským soudem v Praze
oddíl A, vložka 74900

Datum zápisu:	17. dubna 2009
Spisová značka:	A 74900 vedená u Městského soudu v Praze
Obchodní firma:	Khachatur Mkrtchyan - Diacom Technology
Sídlo:	Neratovice, Jedová 189, PSČ 27711
Identifikační číslo:	287 65 737
Právní forma:	Fyzická osoba - podnikatel
Podnikatel:	KHACHATUR MKRTCHYAN, dat. nar. 17. března 1972
Bydliště:	113 162 Moskva, Dubinskaja 16/5, Ruská federace
Místo pobytu:	Starochodovská 198/20, Chodov, 149 00 Praha 4
Předmět podnikání:	výroba, obchod a služby neuvedené v přílohách 1 až 3 živnostenského zákona

EXHIBIT 2

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: April 27, 2017

Khachatur Mkrtchyan
Diacom Technology
189 Jedova
Neratovice, CZ-277 11
Czech Republic

Biostar Technology International, LLC
4443 W. Sunset Blvd.
Suite B
Los Angeles, CA 90027
United States

In re Registration No. 5011919
Issued: 8/2/2016
Registrant: Biostar Technology International LLC
Mark: DIACOM USA

By the Trademark Trial and Appeal Board:

On March 1, 2017, Eva Winklerova, Attorney at Law, on behalf of Khachatur Mkrtchyan (“Petitioner”) filed a “Petition to Cancel” against Registration No. 5011919, owned by Biostar Technology International, LLC.

The petition to cancel was filed in paper form. The paper submission is not acceptable for three separate reasons. First, the petition to cancel was filed by a foreign attorney. Second, the petition to cancel was not accompanied by the required fee. Third, the petition to cancel was filed in paper rather than

through the Board's Electronic System for Trademark Trials and Appeals ("ESTTA") (see below) without a Petition to the Director, as required by the TTAB amended rules of practice, which became effective January 14, 2017.

In regard to the foreign attorney, only attorneys defined under 37 C.F.R. § 11.1 may represent others before the Office in trademark cases. See also 37 C.F.R. § 11.14(a)-(d) Petitioner's attorney has not demonstrated to the Board that she is entitled to practice before the USPTO; e.g., that as an attorney practicing in a foreign country she is also an active member in good standing of the bar of the highest court of any State of the United States. See Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 114.05 (Jan. 2017).

With respect to the fee, "[p]etitions for cancellation are not accepted for filing unless accompanied by the statutory fee." *Fred Bevs., Inc. v. Fred's Capital Mgmt. Co.*, 605 F.3d 963, 94 USPQ2d 1958, 1959 (Fed. Cir. 2010); 15 U.S.C. § 1064, 37 C.F.R. § 2.111(a); TBMP § 302("[A] cancellation proceeding is commenced by the timely filing of a petition for cancellation, together with the required fee, in the USPTO.").¹ Inasmuch as the petition to cancel was not accompanied by the required fee, the petition cannot be given consideration. A filer's failure to include the required fee alone, is a basis for not instituting a petition to cancel.

Finally, the filing is unacceptable under the recent amendments to the TTAB rules of practice that went into effect on January 14, 2017. On October 7, 2016, the

¹ A copy of the January 2017 TBMP is available at the TTAB home page at the USPTO website, www.uspto.gov under Policies and Procedures.

Board published its NOTICE OF FINAL RULEMAKING at 81 Fed. Reg. 69950, thereby providing the public three months advance notice of these changes to the rules of practice. The NOTICE alerted the public that Trademark Rule 2.126, 37 C.F.R. § 2.126, was being amended to state affirmatively that filing via ESTTA is mandatory for all filings and that a Petition to the Director is required for certain submissions filed in paper form, including a petition for cancellation.

In sum, Petitioner's submission of the petition to cancel in paper form is not acceptable because it was filed by a foreign attorney, it was not accompanied by the requisite fee, and it was not accompanied by a Petition to the Director. The remedy for Petitioner lies in submitting a renewed petition to cancel through ESTTA, with the required fee and by the appropriate party. As a reminder, ESTTA users are strongly urged to plan ahead. TBMP § 110.01(b). Brief outages of ESTTA, as with any computerized system, occur from time to time without prior notice.²

cc:

JUDr. Eva Winklerova
Zeleny Pruh 1294/52,
147 00 Praha 4
Czech Republic
eva.winkler@cdipraha.cz

² A user may check system status and planned outages from the TTAB homepage at www.uspto.gov. Instructions for filing documents with the TTAB during an outage are also available. Such instructions provide useful information pertinent to filing in paper.

EXHIBIT 3

ESTTA Tracking number: **ESTTA823887**Filing date: **05/31/2017**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Khachatur Mkrtchyan		
Entity	Individual	Citizenship	CZECH REPUBLIC
Address	Jedova 189 Neratovice, 277 11 CZECH REPUBLIC		

Correspondence information	BASHUK CHICHKANOV, YURIDICHESKAYA FIRMA ul. Studencheskaya, 34, of.4 Kursk, 305040 RUSSIAN FEDERATION a.bashuk@bashukchichkanov.com, a.bashuk@yandex.ru Phone:+79207204848
----------------------------	--

Registration Subject to Cancellation

Registration No	5011919	Registration date	08/02/2016
Registrant	Biostar Technology International LLC Suite B Los Angeles, CA 90027 UNITED STATES		

Goods/Services Subject to Cancellation


Class 009. First Use: 2005/01/06 First Use In Commerce: 2005/01/06 All goods and services in the class are cancelled, namely: Computer software and hardware for use in measuring the frequency of energy emitted by the human body
--

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	79196312	Application Date	07/04/2016
----------------------	----------	------------------	------------

Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DIACOM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 0 First Use In Commerce: 0 Electric measuring devices Class 010. First use: First Use: 0 First Use In Commerce: 0 Radiological apparatus for medical purposes, radiotherapy apparatus		

Attachments	79196312#TMSN.png(bytes) Petition for cancellation of the DIACOM USA.pdf(5223830 bytes)
-------------	---

Signature	/Khachatur Mkrtchyan/
Name	Khachatur Mkrtchyan
Date	05/31/2017

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark “DIACOM USA” Registration No 5,011,919 Aug. 02, 2016

Ing. Khachatur Mkrtchyan, Petitioner,

v.

Biostar Technology International LLC, Registrant

PETITION FOR CANCELLATION

Ing. Khachatur Mkrtchyan - Diacom Technology (“Petitioner”), a Czech entrepreneur with a principal place of business at Jedová 189, CZ-277 11, Neratovice, Czech Republic, believes that he is damaged by U.S. Registration No. 5,011,919 for the designations “DIACOM USA”, which registration is owned by Biostar Technology International LLC, (“Registrant”) a U.S.A. corporation with a principal place of business Suite B, 4443 W Sunset Blvd, Los Angeles, California, U.S.A. 90027.

The above-identified petitioner believes that he is damaged by the above-identified registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner seeks for cancellation of the United States Registration No. 5,011,919 on the ground of priority and likelihood of confusion under the Trademark Act Sections 14(1) and 2(d).
2. Petitioner seeks for cancellation of the United States Registration No. 5,011,919 on the ground of cause, that the Registrant is not rightful owner of mark for identified goods or services under the Trademark Act Sections 14(1) and 1.

3. Petitioner seeks for cancellation of the United States Registration No. 5,011,919 on the ground of cause that the registration is being used by the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used under the Trademark Act Section 14(3).

4. Petitioner seeks for cancellation of the United States Registration No. 5,011,919 on the ground of the fraud on the USPTO under the Trademark Act Section 14(3); *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009).

THE HISTORY OF THE “DIACOM” BRAND CREATION BY PETITIONER

5. Petitioner created the designation “DIACOM” in 2006 and named his Russian legal entity with this name in Cyrillic alphabet transliteration “ДИАКОМ”. The screenshot from the Federal Tax Service of Russia official website <https://egrul.nalog.ru/> with the translation into English is attached hereto as **Exhibit 1** as the evidence of this fact.

6. The design of the “DIACOM” logotype consists of the word DIACOM in capital letters with a globe of the planet Earth with lines around it to the right hand side with an oval with the wording, created by Petitioner’s employee Dmitri. The screenshot of the e-mail from Dmitri with “DIACOM” globe dated 19 July, 2007 is attached hereto as **Exhibit 2** as the evidence of this fact.

7. Since at least as early as July 2007, Petitioner has made use of his “DIACOM” mark in commerce.

8. Petitioner uses the “DIACOM” designation for electric measuring devices, radiological apparatus for medical purposes and radiotherapy apparatus: micro-frequency generators, plasma generators, generators of colloidal silver and combined devices, and sale, marketing and servicing of these goods.

9. Petitioner has received 28 February, 2008 in Russia the official Certificate of compliance with State Standards, which confirms that the above-mentioned product fulfils the

essential safety requirements. The copy of this Certificate is attached hereto as **Exhibit 3** as the evidence of this fact.

10. Petitioner has received 12 May, 2008 in Czech Republic the Certificate, which confirms that the above-mentioned product fulfils the essential safety requirements of Directive 2006/95/EC. The copy of this Certificate is attached hereto as **Exhibit 4** as the evidence of this fact.

11. Petitioner has expended considerable sums in exerting every effort to maintain the highest quality standard of produced devices and has created valuable goodwill among the purchasing public all around the world under the “DIACOM” mark.

12. As a result of the continuous and extensive use of the “DIACOM” mark by Petitioner, this mark has become and continues to function as valuable business and marketing asset of Petitioner, and serves to indicate the devices originating from the Petitioner and its authorized representative.

13. Petitioner has registered himself as an entrepreneur Khachatur Mkrtchyan with the commerce designation “Diacom Technology” in Czech Republic in April 17, 2009, registration number 28765737. The screenshot from the Justice of Czech Republic official website <https://or.justice.cz> with the translation to English is attached hereto as **Exhibit 5** as the evidence of this fact.

14. Petitioner has filed the trademark application №494975 “DIACOM TECHNOLOGY” to the Czech Republic Patent Office in April 5, 2012 (the priority date) and this trademark has been registered under №328076 for the electric measuring devices (class 9 of goods and services) and radio waves generator for the medical purposes (class 10 of goods and services). The screenshot from the Czech Republic Patent Office official website <https://isdv.upv.cz> with the translation to English is attached hereto as **Exhibit 6** as the evidence of this fact.

15. Petitioner has filed the trademark application №503113 “DIACOM MEDITRONIC” to the Czech Republic Patent Office in April 4, 2014 (the priority date) and this trademark has been registered under №33473 for the electric measuring devices (class 9 of goods and services) and radio waves generator for the medical purposes (class 10 of goods and services). The screenshot from the Czech Republic Patent Office official website <https://isdv.upv.cz> with the translation to English is attached hereto as **Exhibit 7** as the evidence of this fact.

16. Petitioner has filed the trademark application №349218 “DIACOM” to the Czech Republic Patent Office in April 25, 2015 (the priority date) and this trademark has been registered under №522575 for the electric measuring devices (class 9 of goods and services) and radiological apparatus for medical purposes, radiotherapy apparatus (class 10 of goods and services). The screenshot from the Czech Republic Patent Office official website <https://isdv.upv.cz> with the translation to English is attached hereto as **Exhibit 8** as the evidence of this fact.

17. The Petitioner’s trademark application №522575 “DIACOM” filed to the Czech Republic Patent Office in May 25, 2015 (the priority date) has been applied as an international trademark application №1319213 for the electric measuring devices (class 9 of goods and services) and radiological apparatus for medical purposes, radiotherapy apparatus (class 10 of goods and services) under the Madrid protocol in some countries, including the U.S.A. The screenshot from WIPO trademark database official website <http://www.wipo.int/branddb/en/> is attached hereto as **Exhibit 9** as the evidence of this fact.

18. “Every international registration shall enjoy the right of priority provided for by Article 4 of the Paris Convention for the Protection of Industrial Property, without it being necessary to comply with the formalities prescribed in Section D of that Article”. *The Article №4 (2) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November 12, 2007).*

19. “Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority”. *The Article 4A (2) of the Paris Convention for the Protection of Industrial Property (as amended on September 28, 1979).*

20. On the basis of the above-mentioned legal rules, the priority date of Petitioner’s “DIACOM” trademark is May 25, 2015 (the date of filing basic Czech application №522575 by Petitioner).

THE REGISTRANT’S FRAUD

21. Petitioner and Registrant have met each other and Registrant has started to sell “DIACOM” products, manufactured by Petitioner, approximately in December, 2011 – January, 2012. That time Registrant was a representative of the Petitioner’s distributor in the U.S.A. The screenshot of the e-mail from Registrant to Petitioner, where Registrant mentions that fact, is attached hereto as **Exhibit 10** as the evidence of this fact.

22. The first business contact between Petitioner and Registrant has happened in November 8, 2013. Registrant asks Petitioner to place the advertising banner of “DIACOM” products, which were manufactured by Petitioner, on Petitioner’s “DIACOM” website, so that Petitioner’s distributor in the U.S.A. could sell these products in Los Angeles. It is important to notice that Registrant wasn’t a distributor himself that time. Also, Registrant asks the Petitioner to title him as “DIACOM-LA” on this advertising banner. The screenshot of the e-mail from Registrant to Petitioner with advertising banner is attached hereto as **Exhibit 11** as the evidence of this fact.

23. In January 9, 2014 Petitioner and Registrant has signed distribution contract “Contract number 14361 about providing the right to present product in the market countries USA, Canada, Mexico, South Korea”. Under this contract Registrant got the right to sell Petitioner’s products and pledged not to sale similar products of other manufacturers. The copy

of this contract between Registrant and Petitioner is attached hereto as **Exhibit 12** as the evidence of this fact.

24. Registrant repeatedly violates the terms of the above-mentioned contract. After the serious violation of the exclusive partnership terms (one of the Registrant's obligations according to the above-mentioned contract) by Registrant, Petitioner demanded official writing apologize to the Petitioner and Petitioner's Distributors. The copy of this official apologize with the sign of Registrant is attached hereto as **Exhibit 13** as the evidence of this fact.

25. Notwithstanding the official apologize, Registrant has continued a flagrant violation of the above-mentioned contract's terms. This was the reason why Petitioner had to terminate the contract with Registrant in May 2, 2015.

26. After the termination of the contract between Petitioner and Registrant, Registrant started unfair competition against Petitioner.

27. Registrant represented by Ulysses Angulo (Sheretov), the President of Registrant's company, has registered website <http://www.diacom-3d-nls.com/> . The screenshot from the <https://who.is/whois/diacom-3d-nls.com> website with Ulysses Angulo's indication as a website registrant is attached hereto as **Exhibit 14** as the evidence of this fact.

28. On his website <http://www.diacom-3d-nls.com/> Registrant has posted false information, which defamed Petitioner and damaged Petitioner's business. For example, Registrant posted that Petitioner discontinued manufacturing of "DIACOM" devices. The screenshot from the <http://www.diacom-3d-nls.com/> website with the false statement is attached hereto as **Exhibit 15** as the evidence of this fact.

29. Moreover, a lot of Petitioner's clients and distributors have received e-mails from Registrant with the false information about the Petitioner's products and offer to buy the Registrant's products. The screenshot of this e-mail is attached hereto as **Exhibit 16** as the evidence of this fact.

30. Registrant started to buy similar Chinese products, label them with Petitioner's "DIACOM" mark and sell them. The screenshot from the <http://www.diacom-3d-nls.com/> website is attached hereto as **Exhibit 17** as the evidence of this fact.

31. Notwithstanding the Registrant's goods specification as "Computer software and hardware for use in measuring the frequency of energy emitted by the human body" for the trademark Registration №5,011,919, Registrant actually uses this trademark for "electric measuring devices" and "radiotherapy apparatus" goods and doesn't use it for the applied "computer hardware and software" goods. Registrant's products are physical independent devices, which function without a computer. The screenshot from the <http://www.diacom-3d-nls.com/> website is attached hereto as Exhibit 17 as the evidence of this fact. Also, the "Plasma generator" device, specified in the trademark application №86830759 by Registrant as a specimen, actually is radiotherapy apparatus, but not computer hardware.

32. Registrant continues his illegal actions now. For example, Registrant sells the same products under the Petitioner's mark "DIACOM", but Registrant's devices don't successfully pass the FDA certification for the medical devices in contrast to original certificated "DIACOM" devices, produced by Petitioner. Use of the Registrant's medical devices, which hasn't been checked by the FDA, can lead to unpredictable harm for the consumers. The screenshot from the <http://www.diacom-3d-nls.com/> website with the marketing offer is attached hereto as **Exhibit 18** as the evidence of this fact.

33. The above-mentioned Registrant's illegal and unfair competition forced Petitioner to submit the statement in the Police of Czech Republic with the prosecution of Registrant for the trademark and competition fraud. Statement №KRPA-267790/TČ -2016-001493 was filed by Petitioner in July 13, 2016.

34. In the consequence to above-mentioned facts, it's obvious that the information about the date of the first use of the "DIACOM" mark by Registrant, specified as January 6, 2005 in the trademark application № 86830759 by Registrant, is false.

GROUND FOR CANCELLATION

35. As mentioned and proved above, Petitioner is the rightful creator and the owner of the “DIACOM” designation for the electric measuring devices (international class №009) and radiological apparatus for medical purposes, radiotherapy apparatus (international class №010).

36. Notwithstanding to the specified goods in the Registrant’s U.S.A. trademark №5,011,919 “Computer software and hardware for use in measuring the frequency of energy emitted by the human body” (international class 009), Registrant actually uses this trademark for the same goods as Petitioner does — electric measuring devices and radiological and radiotherapy apparatus. The screenshot from the Registrant’s <http://www.diacom-3d-nls.com/> website with the products offer is attached hereto as **Exhibit 19** as the evidence of this fact.

37. Therefore, Petitioner and Registrant use the “DIACOM” designation for the same goods — electric measuring devices (international class №009) and radiological apparatus for medical purposes, radiotherapy apparatus (international class №010).

38. The priority date of Petitioner’s “DIACOM” trademark in the U.S.A. is May 25, 2015 (the date of filing basic Czech application №522575 by Petitioner), according to p.16-18 of this Petition.

39. The priority date of Registrant’s “DIACOM” trademark Registration №5,011,919 is November 24, 2015.

40. Because of Petitioner’s earlier priority date for the “DIACOM” trademark, because of use by Petitioner and Registrant “DIACOM” trademark for the same goods, Registrant’s trademark Registration №5,011,919 should be cancelled on the ground of priority and likelihood of confusion, under the Trademark Act Sections 14(1) and 2(d).

41. As far as Petitioner is the “DIACOM” brand creator and the “DIACOM” products manufacturer, and Registrant actually is Petitioner’s ex-distributor, who has started the illegal and unfair competition after the termination of the contract between Petitioner and Registrant, Registrant’s trademark Registration №5,011,919 should be cancelled on the ground of cause, that

the Registrant is not rightful owner of mark for identified goods or services under the Trademark Act Sections 14(1) and 1.

42. Because of Registrant's unfair competition and Registrant's actions directed to mislead consumers about the real manufacturer of the product, trademark Registration №5,011,919 should be cancelled on the ground of cause, that the registration is being used by the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used under the Trademark Act Section 14(3).

43. As mentioned and proved in the p.31, Registrant's don't use the trademark Registration №5,011,919 for the applied goods. Consequently Registrant has made the false statement in his application about "now in use" filing basis (section 1 (a)) for the applied goods. It is fraud on the USPTO. *First International Services Corp. v. Chuckles Inc. 5 USPQ2d 1628 (TTAB 1988)*. Registrant's trademark Registration №5,011,919 should be cancelled on the ground of fraud on USPTO under Trademark Act Section 14(3); *In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)*.

CONCLUSION

44. The story of partnership between Registrant and Petitioner is a story of Registrant's lie, contract violation, unfair competition and illegal action of the Biostar Technology International LLC and Ulysses Angulo (Sheretov), the President of this company, in particular.

45. Accordingly, if Registrant's registration is not cancelled, Petitioner will continue suffering from irreparable harm and damage.


46. On the foregoing basis, Petitioner believes he has been damaged and will continue to be damaged by the existence of the United States Trademark Registration No. 5,011,919.

Wherefore, Petitioner's prays for cancellation of the United States trademark Registration No. 5,011,919.

Dated: May 31, 2017



Exhibit 1



**ФЕДЕРАЛЬНАЯ
НАЛОГОВАЯ СЛУЖБА**

The Federal Tax Service of Russia
official website

Сведения о государственной регистрации юридических лиц,
индивидуальных предпринимателей, крестьянских (фермерских)
хозяйств

The information about the official
registration of legal entities

РЕЗУЛЬТАТЫ ПОИСКА

← Вернуться к критериям поиска

Выписку из ЕГРЮЛ/ЕГРИП о конкретном юридическом лице/индивидуальном предпринимателе в форме электронного документа, подписанного усиленной квалифицированной электронной подписью, можно получить [здесь](#).

Наименование юридического лица	Адрес (место нахождения) юридического лица	ОГРН	ИНН	КПП	Дата присвоения ОГРН	Дата прекращения деятельности	Дата признания регистрации недействительной
ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ "ДИАКОМ"	350001, КРАЙ КРАСНОДАРСКИЙ, ГОРОД КРАСНОДАР, УЛИЦА ЛЕСНАЯ, 28/1,,	1062309026548	2309101819	230901001	01.12.2006		

Name
"Diacom"

The date of
the registration

Exhibit 2

Google

Gmail Поместить во входящие Еще

НАПИСАТЬ

Дмитрий
кому: Хачатур

Входящие x granata@rambler.ru x

19.07.2007 ★




Exhibit 3

The Russian system of the official certification

The Certificate of compliance

Date of issue February 28, 2008

Срок действия с 28.02.2008

по 27.02.2011

0927005

ОРГАН ПО СЕРТИФИКАЦИИ ПРОДУКЦИИ И УСЛУГ ЗАКРЫТОГО АКЦИОНЕРНОГО
ОБЩЕСТВА "КУБАНСКИЙ ЦЕНТР СЕРТИФИКАЦИИ И ЭКСПЕРТИЗЫ "КУБАНЬ-ТЕСТ"
РОСС RU.0001.10АЯ24

350000 г. Краснодар, ул. Красная, 124, тел. 255-03-20, т. факс 259-55-06

ПРОДУКЦИЯ УСТРОЙСТВА ИНФОРМАЦИОННО-ИЗМЕРИТЕЛЬНЫЕ
типа "DIAKOM", ТУ 4217-001-97750475-2008
Серийный выпуск

код ОК 005 (ОКП):

42 1711

СООТВЕТСТВУЕТ ТРЕБОВАНИЯМ НОРМАТИВНЫХ ДОКУМЕНТОВ
ГОСТ Р 51350-99

код ТН ВЭД:

The manufacturer is the "Diacom"

ИЗГОТОВИТЕЛЬ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ "DIAKOM"
ИНН 2309101819

350001 Россия, г. Краснодар, ул. Лесная, 28/1

СЕРТИФИКАТ ВЫДАН ОБЩЕСТВУ С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ "DIAKOM"
350001 Россия, г. Краснодар, ул. Лесная, 28/1, т. 277-07-50

НА ОСНОВании протокола испытаний № 35/13-Б-2008 от 28.02.2008 испытательного
центра ФГУ "Краснодарский ЦСМ" РОСС RU.0001.21АЯ35

The Certificate has issued to the "Diacom"

ДОПОЛНИТЕЛЬНАЯ ИНФОРМАЦИЯ Схема сертификации 3.
Разрешение на применение знака соответствия № АЯ24.Н28952 от 28.02.2008.



Руководитель органа

Н. И. Бурлаченко
подпись

инициалы, фамилия

Эксперт

Е. И. Кекало

Exhibit 4



Strojírenský zkušební ústav, s. p., Brno, Česká republika
Engineering Test Institute, public enterprise, Brno, Czech Republic

CERTIFIKÁT CERTIFICATE

podle směrnice 2006/95/ES (určité meze napětí)
according to Directive 2006/95/EC (certain voltage limits)

Číslo
Number **E-31-00344-08**

Držitel certifikátu
Owner of certificate

Iurie Troian
544 75 Mostek 45
Česká republika - Czech Republic

Výrobce
Manufacturer

DIACOM Co., Ltd.
Rusko - Russia

Výrobek
Product

Informační měřicí přístroj
Information Measure Device

Typové označení
Type designation

DIACOM

Podklad pro vydání certifikátu
Basis of certificate

Závěrečný protokol č. 31-8361 ze dne 2008-05-12
Final Report No. 31-8361 dated 2008-05-12

Strojírenský zkušební ústav, s. p. potvrzuje, že výše uvedený výrobek splňuje základní bezpečnostní požadavky směrnice 2006/95/ES (nařízení vlády č. 17/2003 Sb.).

The Engineering Test Institute confirms that the above-mentioned product fulfils the essential safety requirements of Directive 2006/95/EC (Government Regulation No. 17/2003 Coll.).

Brno 2008-05-12




Ing. Jiří Rozsival
zástupce ředitele
Deputy Director

E-31-00344-08, strana - page 1 (1)

Strojírenský zkušební ústav, s. p., Hudecova 56b, 621 00 Brno, Česká republika


Exhibit 5

Ministerstvo spravedlnosti [CZ] | <https://or.justice.cz/ias/ui/rejstrik-firma.vysledky?subjektId=422890&typ=UPLNY>

Veřejný rejstřík a Sběrka listin

Úplný výpis z obchodního rejstříku

Khachatur Mkrtchyan - Diacom Technology, A 74900 vedená u Městského soudu v Praze

 Vytisknout

[Zpět na výsledky hledání](#)

Datum zápisu:	17. dubna 2009	 April 17, 2009
Spisová značka:	<u>A 15255 vedená u Krajského soudu v Hradci Králové</u>	<u>zapsáno 17. dubna 2009</u> <u>vymazáno 27. ledna 2012</u>
	A 74900 vedená u Městského soudu v Praze	zapsáno 27. ledna 2012
Obchodní firma:	<u>Khachatur Mkrtchyan</u>	<u>zapsáno 17. dubna 2009</u> <u>vymazáno 17. ledna 2012</u>
	<u>Khachatur Mkrtchyan - Diacom Technology</u>	zapsáno 17. ledna 2012
Sídlo:	<u>Jičín - Valdické Předměstí, Husova 200, PSČ 50601</u>	<u>zapsáno 17. dubna 2009</u> <u>vymazáno 17. ledna 2012</u>
	Neratovice, Jedová 189, PSČ 27711	zapsáno 17. ledna 2012
Identifikační číslo:	287 65 737	zapsáno 17. dubna 2009
Právní forma:	Fyzická osoba - podnikatel	zapsáno 17. dubna 2009
Podnikatel:	<u>KHACHATUR MKRTCHYAN, dat. nar. 17. března 1972</u>	<u>zapsáno 17. dubna 2009</u> <u>vymazáno 17. ledna 2012</u>
Podnikatel:	KHACHATUR MKRTCHYAN, dat. nar. 17. března 1972	zapsáno 17. ledna 2012
Bydliště:	113 162 Moskva, Dubinskaja 16/5, Ruská federace	zapsáno 17. dubna 2009
Místo pobytu:	<u>Jičín - Valdické Předměstí, Husova 200, PSČ 50601</u>	<u>zapsáno 17. dubna 2009</u> <u>vymazáno 17. ledna 2012</u>
	<u>Praha - Čakovice, Třtinová 660/18, PSČ 19600</u>	<u>zapsáno 17. ledna 2012</u> <u>vymazáno 2. dubna 2014</u>
	Starochodovská 198/20, Chodov, 149 00 Praha 4	zapsáno 2. dubna 2014

Exhibit 6



Úřad průmyslového vlastnictví

Výsledky dotazu Rešerše OZ (ÚPV, EUIPO, WIPO)

Údaje byly získány dne 22.05.2017 17:41. Poslední aktualizace databáze:

ÚPV	EUIPO	WIPO	WIPO - v řízení	WIPO - 6ter
21.05.2017 19:00	18.05.2017 00:00	18.05.2017 00:00	17.05.2017 00:00	20.03.2014 00:00

(210) (540)	Zdroj: Číslo přihlášky: Reprodukce:	ÚPV-ČR <u>494975</u>
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(111) (511) (531) (220) (320) (330)	Číslo zápisu: Třídy výrobků a služeb: Obrazové třídy: <input type="checkbox"/> Datum podání přihlášky: Datum práva přednosti: Země priority:	<u>328076</u> 9, 10 25.12.25, 26.4.22, 27.5.6, 27.5.9, 27.5.11, 29.1.4, 29.1.6 07.05.2012 CZ 07.05.2012 CZ
(442) (151) (730) (812) (740) (591)	Datum zveřejnění přihlášky: Datum zápisu: Příhlašovatel/vlastník: Země původu: Zástupce:	18.07.2012 CZ 24.10.2012 CZ <u>Ing. Khachatur Mkrtchyan, Jedová 189, Neratovice, 27711, Česká republika</u> Česká republika Evgeny Semenov, Pod Vavřincem 27, Neratovice, 27711, Česká republika Barevná
(510)	Stav dokumentu: Druh: Seznam výrobků a služeb:	Platný dokument Kombinovaná C S (9) měřicí radioelektrické zařízení; (10) generátory radioelektrické pro zdravotní účely.

(9)electric measuring devices
(10)radio waves generator for the medical purposes

Exhibit 7

https://isdv.upv.cz/webapp/webapp.ozs.det?pozsk=10530032&plan=cs&s_naze=&s_sezn=%20&s_majs=




Úřad průmyslového vlastnictví

Výsledky dotazu Rešerše OZ (ÚPV, EUIPO, WIPO)

Údaje byly získány dne 22.05.2017 17:52. Poslední aktualizace databáze:

ÚPV	EUIPO	WIPO	WIPO - v řízení	WIPO - 6ter
21.05.2017 19:00	18.05.2017 00:00	18.05.2017 00:00	17.05.2017 00:00	20.03.2014 00:00

(210)	Zdroj:	ÚPV-ČR
(540)	Číslo přihlášky:	503113
(540)	Reprodukce:	
(111)	Číslo zápisu:	334763
(511)	Třídy výrobků a služeb:	9, 10
(531)	Obrazové třídy:	25.12.1, 27.5.6, 27.5.9, 27.5.11, 29.1.4, 29.1.6
(220)	Datum podání přihlášky:	02.04.2013 CZ
(320)	Datum práva přednosti:	02.04.2013
(330)	Země priority:	CZ
(442)	Datum zveřejnění přihlášky:	07.08.2013 CZ
(151)	Datum zápisu:	13.11.2013 CZ
(730)	Příhlašovatel/vlastník:	Ing. Khachatur Mkrtchyan, Jedová 189, Neratovice, 27711, Česká republika
(812)	Země původu:	Česká republika
(740)	Zástupce:	Alina Alekhina, Husinecká 557/4, Praha 3, 13000, Česká republika
(591)	Barevná	
	Platný dokument	
	Kombinovaná	
(510)	Seznam výrobků a služeb:	C S (9) měřicí radioelektrické zařízení; (10) generátory radioelektrické pro zdravotní účely, zdravotní přístroje.

(9) electric measuring devices
(10) radio waves generator for the medical purposes

Exhibit 8

https://isdv.upv.cz/webapp/webapp.ozs.det?pozk=15575027&plan=cs&s_naze=&s_sezn=%20&s_majs=



Úřad průmyslového vlastnictví

Výsledky dotazu Rešerše OZ (ÚPV, EUIPO, WIPO)

Údaje byly získány dne 22.05.2017 17:57. Poslední aktualizace databáze:

ÚPV	EUIPO	WIPO	WIPO - v řízení	WIPO - 6ter
21.05.2017 19:00	18.05.2017 00:00	18.05.2017 00:00	17.05.2017 00:00	20.03.2014 00:00

Zdroj:
(210) Číslo přihlášky:
(540) Reprodukce:

ÚPV-ČR
522575



(111)	Číslo zápisu:	349218
(511)	Třídy výrobků a služeb:	9, 10
(531)	Obrázové třídy:	1.5.6, 25.12.1, 26.1.22, 27.5.4
(220)	Datum podání přihlášky:	25.05.2015 CZ
(320)	Datum práva přednosti:	25.05.2015
(330)	Země priority:	CZ
(442)	Datum zveřejnění přihlášky:	15.07.2015 CZ
(151)	Datum zápisu:	21.10.2015 CZ
(730)	Přihlašovatel/vlastník:	Ing. Khachatur Mkrtchyan , Jedová 189, Neratovice, 27711, Česká republika
(812)	Země původu:	Česká republika
(740)	Zástupce:	Mgr. Marek Jansta, LL.M., advokát, MUSALOVÁ, JANSTA, MAŘAN, advokáti, v.o.s., nám. Míru 894/14, Mladá Boleslav, 29301, Česká republika
	Stav dokumentu:	Platný dokument
	Druh:	Kombinovaná
(510)	Seznam výrobků a služeb:	CS (9) měřicí přístroje; (10) radioléčebné přístroje, radiologické přístroje určené pro lékařské účely.

(9) electric measuring devices
(10) radio devices using in medicine

Exhibit 9

back

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International Trademark

1319213 - DIACOM


(151) Date of the registration
04.07.2016

(180) Expected expiration date of the registration/renewal
04.07.2026

(270) Language(s) of the application
English

(732) Name and address of the holder of the registration
Ing. Khachatur Mkrtchyan
Jedová 189
CZ-277 11 Neratovice (CZ)

(813) Contracting State or Contracting Organization in the territory of which the holder has his domicile
CZ

(540) Mark


(531) International Classification of the Figurative Elements of Marks (Vienna Classification)- VCL (7)
01.05.06; 03.13.02; 03.13.08; 27.05.04.

(511) The International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) and the list of goods and services classified according thereto- N
09 Electric measuring devices.
10 Radiological apparatus for medical purposes, radiotherapy apparatus.

(821) Basic application
CZ, 25.05.2015, 522575.

(822) Basic registration
CZ, 21.10.2015, 349218.

(832) Designation(s) under the Madrid Protocol
AU, EM, TR, US.

(834) Designation(s) under the Madrid Protocol by virtue of Article 9sexies
AM, BY, CN, RU.

(527) Indications regarding use requirements
US.

Exhibit 10

Biostar Organix (orders) <orders@biostarorganix.com>

09.04.2014

кому: мне

английский

русский

Просмотреть переведенное сообщение

Всегда переводить: английский

Here are problems I have experienced with the selling of the Diacom device in the USA, and this experience started in 2013: In late 2011/2012, I purchased the Diacom from Diana with the agreement that I would learn the device and the Los Angeles, Regional Distributor, she said she would refer clients in Los Angeles to me but she never did. Without

Exhibit 11

31.03.2017

Gmail - advertise



Khachatur Mkrtchyan <diacomtechnology@gmail.com>

advertise

Писем: 9

BioStar Organix <sunsetprohosting@gmail.com>
Кому: admin@forum-diacom.com

8 ноября 2013 г., 6:37

hello - how can i advertise on the diacom forum?

I'm from los angeles, usa

Khachatur Mkrtchyan <diacomtechnology@gmail.com>
Кому: BioStar Organix <sunsetprohosting@gmail.com>

8 ноября 2013 г., 20:29

Hello,

You need to send me information what you want to publish on our web site. If you have any kind of example of a picture you want to advertise, it would also help. The price of advertisement is 50 USD per month, including discount, as being our first advertiser.

Best regards,
Khachatur Mkrtchyan
Diacom Technology

2013/11/8 BioStar Organix <sunsetprohosting@gmail.com>
hello - how can i advertise on the diacom forum?

I'm from los angeles, usa

С уважением, Хачатур Мкртчян!
Sincerely, Khachatur Mkrtchyan.
S pozdravem Khačatur Mkrťčyan.
Sinceramente, Khachatur Mkrtchyan!



<https://mail.google.com/mail/u/0/?ui=2&ik=cfs209d26d&view=pt&q=angulo&qs=true&search=query&th=14302bee664b7a54&siml=14236383b5f5b954&siml=1423930b1ba86373&siml=1423935b3b2983c0&siml=1423967fc419286d...> 1/4

31.03.2017

Gmail - advertise

<http://www.diacomsoft.com/>

Ulysses Angulo <orders@biostarorganix.com>
Кому: Khachatur Mkrtchyan <diacomtechnology@gmail.com>

8 ноября 2013 г., 20:46

ok great - what is the size of the space to advertise - and i will create the art, so you can see the ad first.

[Цитируемый текст скрыт]

Khachatur Mkrtchyan <diacomtechnology@gmail.com>
Кому: Ulysses Angulo <orders@biostarorganix.com>

8 ноября 2013 г., 21:29

hello

it doesn't matter the size - you can send in all possible sizes, and than we can easily change them

best regards
[Цитируемый текст скрыт]

Biostar Organix (orders) <orders@biostarorganix.com>
Кому: Khachatur Mkrtchyan <diacomtechnology@gmail.com>

8 ноября 2013 г., 23:39

ok - i will send you an image on monday - have a good weekend.

Biostar Organix Healthcare

4443 W Sunset Blvd
Los Angeles, CA 90027
<http://www.biostar-health.org>
(323)698-8777 | 818-974-1422 (direct)
orders@biostarorganix.com

* A Private Medical Membership Association
[Цитируемый текст скрыт]

Ulysses Angulo <orders@biostarorganix.com>
Кому: Khachatur Mkrtchyan <diacomtechnology@gmail.com>

19 ноября 2013 г., 1:06

<https://mail.google.com/mail/u/0/?ui=2&ik=cfs209d26d&view=pt&q=angulo&qs=true&search=query&th=14302bee664b7a54&siml=14236383b5f5b954&siml=1423930b1ba86373&siml=1423935b3b2983c0&siml=1423967fc419286d...> 2/4

31.03.2017

Gmail - advertise



On Nov 8, 2013, at 11:46 AM, Ulysses Angulo <sunsetprohosting@gmail.com> wrote:

ok great - what is the size of the space to advertise - and i will creat the art, so you can see the ad first.

On Nov 8, 2013, at 11:29 AM, Khachatur Mkrtchyan <diacomtechnology@gmail.com> wrote:

[Цитируемый текст скрыт]

Khachatur Mkrtchyan <diacomtechnology@gmail.com>
Komy: Maria Sheretova <maria.sheretova@gmail.com>

22 ноября 2013 г., 19:15

[Цитируемый текст скрыт]

Khachatur Mkrtchyan <diacomtechnology@gmail.com>
Komy: Maria Sheretova <maria.sheretova@gmail.com>

17 декабря 2013 г., 23:47

[Цитируемый текст скрыт]

Khachatur Mkrtchyan <diacomtechnology@gmail.com>
Komy: diacom.assistance@gmail.com

17 декабря 2013 г., 23:48

<https://mail.google.com/mail/u/0/?ui=2&ik=c5209d26d&view=pt&q=angulo&qs=true&search=query&th=14302bee664b7a54&siml=14236383b5fb954&siml=1423930b1ba86373&siml=1423935b3b2983c0&siml=1423967fc419286d...> 3/4

Exhibit 12

Contract number 14361
about providing the right to present product in the
market countries USA, Canada, Mexico, South Korea

09.01.2014

Los Angeles, California USA

This agreement (hereinafter the "Contract") is made between Mkrtchyan Khachatur - Diacom Technology represented Khachatur Mkrtchyan, who is a manufacturer of original products under the name «DIACOM», hereinafter "Product", referred to as "Provider" on the one hand, and Biostar Organix Healthcare Association/dba DIACOM USA company, represented by Ulysses L Angulo, hereinafter the "applicant" on the other hand, as follows:

I. GENERAL PROVISIONS

1. Applicant stated his intention of representing products in the territory of countries: **USA, Canada, Mexico, South Korea** hereinafter "Region".
2. The parties hereby undertake to make every effort to organize the realization of the product using the capabilities of the Applicant in the certain Region. Moreover the applicant guarantees only of the Supplier products sales organization and agrees not to promote Supplier competitors products or similar products.
3. Supplier guarantees the right of the Applicant to realize the original product in the Region under the terms of the Contract.
4. The present Contract set minimum retail selling price for these devices (the "Retail Price"):

• Diacom-Lite-FREQ-Utium -	8000 USD
• Diacom-SOLO-NLS -	7000 USD
• Diacom-SOLO-FREQ-PC и -Personal	1000 USD
• Diacom-SOLO-FREQ-Home -	600 USD
• Diacom-SOLO-FREQ-IONiser -	400 USD
• Diacom-Magneto-Module -	400 USD

5. Contract has several levels of relationships, each of the stages provides certain privileges to the Applicant and contains conditions for receiving them, they are listed below:

a) The stage of the Applicant receives an interested person who wishes to sell products in the Region according to the consultation with the supplier.

b) This stage provides Applicant the following quotation:

• Diacom-Lite-FREQ-Utium -	5500 USD
• Diacom-SOLO-NLS -	4500 USD
• Diacom-SOLO-FREQ-PC и -Personal	600 USD
• Diacom-SOLO-FREQ-Home -	550 USD
• Diacom-SOLO-FREQ-IONiser -	350 USD
• Diacom-Magneto-Modul -	350 USD

c) Devices sent to the Applicant come with a limited activation for up to 12 months.

d) If within 12 months after the official entry into the Contract Applicant does not implement (realize) in the regions totaling Products price – 100 000 USD, Applicant obliged to make a surcharge for all derived products during this period (with the exception of products - Diacom-SOLO-FREQ-Home, Diacom-SOLO-FREQ-IONiser, Diacom-Magneto-Modul) to the level of the Consumer Price

e) In case of refusal surcharges received Competitor devices are deactivated, and the consequences will carry entirely applicant.

f) In the case of full payment of the Products to the retail price by the Applicant, Supplier undertakes provide complete activation of the delivered product.

g) An applicant who carried out within 12 months from the date of formal entry into the Contract implementation in the certain Region devices totaling – 100 000 USD moves to the next stage (the "Distributor").

h) Step Distributor provides the following quotation:

• Diacom-Lite-FREQ-Utium -	5000 USD
• Diacom-SOLO-NLS -	4000 USD
• Diacom-SOLO-FREQ-PC и -Personal	600 USD
• Diacom-SOLO-FREQ-Home -	400 USD
• Diacom-SOLO-FREQ-IONiser -	250 USD
• Diacom-Magneto-Modul -	250 USD

i) In contrast, from the stage of the Applicant this quotation has no time limitations.

j) If within 12 months from the date of transition to stage Distributor applicant implements Products 100 000 USD, then he has the right to move to stage the exclusive distributor in the Region.

k) If the Applicant until the transition to stage of the exclusive distributor other applicants will receive this status, the applicant deprived of the right of implementation (realization) in the Region under the Products Contract, unless Applicant makes agreements with the current exclusive distributor in that Region.

l) Step exclusive distributor provides the following quotation:

• Diacom-Lite-FREQ-Utium -	4500 USD
• Diacom-SOLO-NLS -	3500 USD
• Diacom-SOLO-FREQ-PC и -Personal	500 USD
• Diacom-SOLO-FREQ-Home -	330 USD
• Diacom-SOLO-FREQ-IONiser -	200 USD
• Diacom-Magneto-Modul -	200 USD

m) If within 12 consecutive months from the date of transition to stage the Applicant exclusive distributor, is implementing in the Region devices totaling – 100 000 USD, it remains on the level of exclusive distributor

n) If the condition specified in Chapter «I GENERAL PROVISIONS» paragraph "5" of the «m» Contract not fulfilled, the applicant returns to the stage of the Distributor.

o) In the transition to the Distributor stage of candidates, other applicants have the opportunity to go on stage exclusive distributor in the region, which does not contradict the terms of the Contract.

p) In the case of appearance of new products, the Supplier shall inform the Applicant. They work together to develop sales strategy and cost of new products in the Region. To do this, the parties agree additional terms of this agreement and the protocol sent by the Supplier, in electronic form, provided for in the details of your email address and become an integral part of the Contract.

q) The applicant, by signing the contract, provides its electronic photograph in JPG format 400x320 pixels resolution to the Supplier, name and surname which will be placed on the official website of the Supplier, for identification and display the status of the Applicant interested persons, potential buyers and other Applicants

r) In the event of termination of the Contract, the Supplier undertakes to delete the data provided by the Applicant from the official site of the Supplier.

s) In the absence of the Provider Call Center (hereinafter "PCC") offering training, support, technical service, etc., under the Training and Service Program (hereinafter "TSP") of Suppliers in the region, the Applicant has the possibility to organize them.



t) Terms of course within the TSP at PCC determined by PCC independently, with PCC signed a separate agreement with the Supplier that is not tied to a contract.

u) In the event of termination, the contract between the Supplier and the JRC may be valid, unless otherwise will be decided by last ones.

v) An applicant who requires training to work with the products of Supplier guarantees its payment in the amount of one thousand 1000 USD and during the transition to Stage distributors, Supplier returns the sum of cash to the bank account of the Applicant, or in the Products equivalent amount to be paid.

w) Initial training includes a minimum knowledge needed for a quick start of sales of the Products Supplier and includes 80 hours of instruction. Training can be conducted as a full-time way, and in absentia, by Internet applications such as Skype and remote control desktop software.

x) In the next 6-12 months Supplier will try to provide the necessary amount of knowledge to fully master the skills of working with the product of the Applicant.

y) If the Applicant need an interpreter, the costs of translation fully carries the Applicant. Thus the sum paid by Applicant interpreter will not be compensated by the Supplier and agreed between the Applicant and the interpreter themselves. Training schedule agreed by the parties individually, so that it will be accepted not only the Applicant and the Supplier, but an interpreter too. When it needed.

z) These terms are not final and can be modified or supplemented by the parties, if there will be held for more coordination, protocols signed by the parties will be an integral part of the Contract. For the implementation of the Contract, the parties will do their strength and capabilities and assume their duties, rights and responsibilities mentioned below.

II. DUTIES, RIGHTS AND RESPONSIBILITIES OF THE PARTIES

1. From the Supplier:

a. Supplier provides the Applicant with the necessary information by means of electronic materials if necessary paper-based too, including the Internet for information and promotions and presentations, and for paper-based payment must be made by the Applicant by Supplier tariff.

b. Supplier, upon request of the Applicant, provides original merchandise(souvenir products) with their logo and the Marks at wholesale prices determined by the Supplier for the Applicants.

c. Cost and Payment Terms of paper-based and souvenir products agreed by the parties individually, after the order of such products by the Applicant.

d. Supplier provides the Applicant necessary information materials for the organization of the PCC, and if necessary, conducts training future specialist Applicant to work in the PCC at no extra charge. Applicant accepts the costs of travel, accommodation, and, if necessary, translation services if any charges will occur for training specialist PCC under production conditions of the Supplier.

e. Supplier provides software to work with the product in the right language by the Applicant, if translation of required material will be carried out by the Applicant in the amounts required to be implemented in software and other materials.

f. Supplier provides Applicant information about all the innovations and development of software in the form of installation packages placed on the pages of its website and available for download by users of the Supplier Products.

g. Supplier provides the opportunity to exchange old for new versions of the product, or the replacement of one type of product to another, according to pre-agreed rates (tariffs).

h. Supplier has the right to deprive the Applicant stage of exclusive distributor if within one month applicant does not sell products of more than 5,000 (five thousand) USD, starting from the stage of transition to the exclusive distributor

i. Number of units sold Products by Applicant is limited amount of delivered products of Supplier.

j. In case of withdrawal of the Applicant Supplier stage of exclusive distributor, he returns to the stage of the Distributor, and the condition specified in Chapter «I GENERAL PROVISIONS" paragraph "5" of the "o" comes into force.

k. Organizing deliveries of products to Applicant in the region, taking into account of inventory, according to his request, provided 30% deposit stated positions. Delivery of only specified devices by the Supplier for the implementation in the certain Region.

l. Each product has activation codes and comes in a deactivated state.

m. Providing code is only possible after the receipt of Applicant Products and for carrying out of necessary volume of payment. Moreover, the products having a single activation code must be paid in full before to providing the activation code. Products that have multiple activation codes are paid under the conditions agreed between the parties verbally, but the code "without limit" activation applicant provided only after the full payment products.

Devices have the following number of activation codes:

Diacom-Lite-FREQ-Utium - 25 codes (24 - for each month, 1 - no limit)

Diacom-SOLO-NLS - 25 codes (24 - for each month, 1 - no limit)

Diacom-SOLO-FREQ-PC and -Personal - 1 code without limit

Diacom-SOLO-FREQ-Home - codes 0

Diacom-SOLO-FREQ-IONiser - 0 codes

Diacom-Magneto-Modul - 0 codes

n. Each product installed warranty period of 24 months duration, which starts with the first activation of the device.

o. Supplier organizes free replacement parts and accessories Products, became unserviceable during the operation, if it does not cause mechanical damage or mishandling during the warranty period of operation.

p. All work concerning unserviceable products are carried by the Supplier at the factory regardless of its warranty status. The cost of delivering goods to the supplier for repair work are paid by Applicant independently within rules established by legislation.

q. In case of no warranty or after warranty repair work, they are paid additionally by the Supplier's tariff rates. Supplier, at its discretion, may reduce the amount of such payment

r. Supplier maintains accounting records and control supply products according to serial numbers.

2. From Applicant:

a. Organize information - promotions and presentations in the Region, under the contract, from derived promotional materials, or using your own.

b. Accept deliver products from supplier and ensure their implementation only in the certain Region, as well as not contribute to leakage of product into the territory of other regions are not included in this Contract, through representation of Applicant.

- c. Organize PCC the Region and implement Supplier policy regarding to information and training activities.
- d. To inform Provider about all the wishes of consumers, third parties to carry out the implementation of these wishes into the to delivering products.
- e. To translate into the language of the requested materials and software within the required consumers to third parties, with a preliminary agreement with the Supplier of the translated materials so than the Supplier will provide with that material.
- f. In the case of the transition to stage of exclusive distributor, ensure the necessary arrangements for the organization of the implementation in the Region of products in the required quantity, and the number of sold units is limited only by the amount of supplies.
- g. If desired, arrange representation or sub offices in the Region.
- h. Record and control of units sold, according to the serial numbers.

3. General for the parties:

The parties have all the rights guaranteed by the laws of their countries of residence and location, as well as international law and responsible under these laws.

Parties also undertake to make all efforts for the peaceful settlement of disputes and conflicts arising, if any, will occur.

Parties are civilized partners and will make every effort to prevent the occurrence of conflict, disputes or other negative situations in relationships within the validity of this Contract.

II. CONTRACT PRICE

1. Parties hereby declare that they will coordinate in advance about sizes, timing, methods and conditions of the Products delivery. All negotiations are carried out by the parties in written form, as well as using the electronic document management in the form of an e-mail to the specified e-mail addresses in requisites, or by other means of contacting that will be an integral part of this contract. Specified correspondence can be used by either party to protect its interests, its staff, its customers and suppliers, as well as for the full implementation of the Contract.
2. According to the results of agreement applicant sends a request to the Supplier according to the standard form of the model presented in "Application 1'", for the product delivery, and the Supplier sends Applicant proforma invoice for 30% of the payment for the products which will be delivered, as in an integral part of the Contract.
3. Payment of Invoice indicates that the parties came to an agreement that could be seen from the correspondence.
4. Implemented transaction can not be appealed and is completed, if parties will not have mutual claims at the time of its closure. If there are any claims, the parties undertake to make appropriate efforts that would prevent the damage or loss of customers and suppliers, third parties according to contract conditions.
5. Party guilty of creating such kind of situation guarantees to take the payment of incurred costs.
6. Calculations are carried out between the parties by prior agreement, which is consistent with international standards of business ethics. All signed documents by the parties, will be sent to




each other electronically, and its original form will be sent using the transport companies before the January 25th of following reporting year.

III. DURATION OF THE CONTRACT AND TERMINATION

1. Contract signed by the parties at the time of his official signature, enters into force "___" _____ 20__ and is valid for three years. The contract is automatically extended for one year after the expiry of its validity period, unless one of the parties does not wish to terminate it.
2. Termination of contract is only possible if:
 - Mutual written commitment by the parties.
 - Unilaterally, for non-performance by the parties, or one of the parties of the Contract, if the termination does not entail financial losses by the other party
3. Statement termination of the Contract shall be sent to the other parties in electronic form for 2 months before it expires at the current period. In this case, the termination shall be without any sanctions if the sides have no mutual financial claims.
4. Upon termination of the contract by the Applicant, products, which are available to him, returned to the Supplier and the Supplier returns to the Applicant only 50% paid an advance of funds for returned products. If the applicant wishes to pay the full cost of unpaid Products, Supplier shall provide the remaining activation codes for these products.

V. FORCE MAJEURE

If will occur force majeure, the parties undertake don't to make mutual claims and provide full cooperation to maximize the performance of its obligations to customers or suppliers, third parties, for during the period of these circumstances, the sides opposite to that which fell in such circumstances, undertake to help the other side in all aspects, and the side got in such circumstances guarantees full payment for the provided assistance.

VI. CLAIMS OF THE PARTIES

In the case of a situation where one of the parties wishes to discuss certain inconsistencies in the actions of the other party or breach of contract by the other party ("Claims"), the party having the claim, according to the other side informs the essence of Claims in oral and, if necessary, in written form. Party receiving this message, is obliged within three working period to take action and to respond adequately to reported claims, and in the case of failing to rapid elimination of disorders described in the Complaint, need to inform about the reason and indicate possible time to fix it.

If the parties do not reach an agreement through peaceful negotiation, they may apply to the Court, the Arbitration Court and other courts in its sole discretion, to protect their interests and rights.


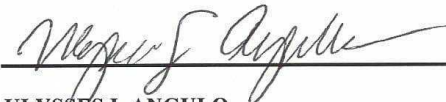
In the case going to court one of the parties, the costs of proceedings, including transportation, meals and accommodation of persons participating in the proceedings, as well as translation services, and other overhead costs in the country of residence, where will be held the litigation parties paid the losing party, in full, according to reports submitted on those costs.

VII. SPECIAL CONDITIONS

The parties have identified the following specific conditions for further use: Applicant will become an Exclusive Distributor from the moment of signing this contract and from this moment come into force the conditions of the 1) of the General Conditions.



VIII. REQUISITES (DETAILS) OF THE PARTIES

From Supplier	From Applicant
MKRTCHYAN KHACHATUR DIACOM TECHNOLOGY	ULYSSES L ANGULO BIOSTAR ORGANIX HEALTHCARE ASSOCIATION /dba DIACOM USA
<p>Registered number: 28765737 VAT number: CZ7203171943</p> <p>Registered address: Jedova 189, Neratovice 277 11 Czech Republic</p> <p>Address for correspondence: Jedova 189, Neratovice 277 11 Czech Republic</p> <p>Account data: Bank name: KB bank Account number: 43-6248210287/0100 IBAN: CZ4301000000436248210287 SWIFT: KOMBCZPPXXX Name account: KHACHATUR MKRTCHYAN – DIACOM TECHNOLOGY Bank address: Budejovicka 1667/64, 140 00 Praha-Praha 4, Czech Republic</p>	<p>Registered address: 4443 W Sunset Blvd Los Angeles, CA 90027</p> <p>Address for correspondence: 4443 W Sunset Blvd Los Angeles, CA 90027 (800)590-1USA</p>
<p>E-mail: diacom.assistance@gmail.com Skype: Mkrtchyan Khachatur</p>	<p>Email: sales@diacom-usa.com Skype: DIACOM USA</p>
 MKRTCHYAN KHACHATUR	 ULYSSES L ANGULO

Application 1 (SAMPLE)

Application for the Products delivery under the Contract number ***** of "___" _____ 20__.

No	Name	Unit	Amount	Description
1	Diacom-Lite-FREQ-Troia	pcs.	10	Set with ext. USB cable
2	Cable FREQ type «A»	pcs.	15	
3	user Manual	pcs.	20	
4	Blank Certificate	pcs.	5	
5	Souvenir keychain	pcs.	50	

Exhibit 13



Exhibit 14

ладежный | <https://who.is/whois/diacom-3d-nls.com>

who.is Search for domains or IP addresses... Premium Domains Tra

Registrar Data

Registrant Contact Information:

Name	<u>Ulysses Angulo</u>
Organization	Sunset ProHosting
Address	4443 W Sunset Blvd
City	Los Angeles
State / Province	California
Postal Code	90027
Country	US
Phone	3236656365
Fax	3236652498
Email	<u>sunsetprohosting@gmail.com</u>

Administrative Contact Information:

Name	Ulysses Angulo
Organization	Sunset ProHosting
Address	4443 W Sunset Blvd
City	Los Angeles
State / Province	California
Postal Code	90027
Country	US
Phone	3236656365
Fax	3236652498
Email	<u>sunsetprohosting@gmail.com</u>



Technical Contact Information:

Name	Ulysses Angulo
Organization	Sunset ProHosting
Address	4443 W Sunset Blvd
City	Los Angeles
State / Province	California
Postal Code	90027
Country	US
Phone	3236656365
Fax	3236652498

Exhibit 15


← → ↻ ⌂ www.diacom-3d-nls.com

call us on 800-590-1872 | [Выбрать язык](#) | home | my account | sign in or create an account | all prices are in [usd](#) | view cart (0 items)



products sound therapy freq zappers services software manual prints and posters reference library parts & accessories

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Get Coupons!

Consumer Alert!

Diacom-NLS is DISCONTINUED





Exhibit 16



Hello & как дела

**** You may have heard about the news, but we'd like to let you know that full support for Diacom Urmium will be discontinued on Dec 15, 2017, and move to "email-only support" until Dec 15, 2019. Be assured our company "Biostar Technology International, LLC" will remain for many years to come - our newest office opening in St. Petersburg, Russia 2017, to bring you more technology, and UK 2018.

**** At this time we would like you to let you know about the Next Generation NLS Technology. Designed and Developed in the USA, this newest device will provide you with more features, 400x bigger database, 200x high resolution of accuracy and 100% Russian Technology. *The software is based on Virtual technology, so there is no need to learn to install. Check out our newest poster.


Poster: Upgrade: Comparison: Diacom: to: Biostar

Upgrade Comparison	DIACOM	BIOSTAR
Hardware	DIACOM 3D-NLS	BIOSTAR Pro-META-Ultima
Accuracy	400x bigger database	200x high resolution of accuracy
Modes of META-Correction	400x bigger database	200x high resolution of accuracy
Advanced Scan & Analysis	400x bigger database	200x high resolution of accuracy
Assimilation Elimination	400x bigger database	200x high resolution of accuracy
Targeted Stress Relief	400x bigger database	200x high resolution of accuracy
Reports & Homeostasis	400x bigger database	200x high resolution of accuracy
Video Library & Classes	400x bigger database	200x high resolution of accuracy
Quality	400x bigger database	200x high resolution of accuracy

If you would like to read more, check out our dedicated website.

Diacom-USA is offering very good trade-in value for your old Diacom even if it is not working* see Consumer Alert below

Trade-up your old Diacom



BIOSTAR Pro-META-Ultima
Nonlinear Measurement System

Faster . More Accurate . Easier to Use






Exhibit 17



DIACOM-USA.COM

EXCLUSIVE SALES PARTNER



DIACOM WORLDWIDE SERVICE

DIACOM TECHNOLOGY

800-590-1USA

sales@diacom-usa.com

Search for a product

HOME

FEATURES

BLOG

ABOUT US

VIDEOS

TRAINING

CONTACT US

PURCHASE

HELP & SUPPORT

TOS

HOME > DIACOM-NLS (NEXUS)

BUY ONLINE

Services

Diacom-NLS (URMIUM)

Diacom-NLS (NEXUS)


Vector-NLS (8D-LRIS)

Solo-FREQ (Zapper)

Diacom Plasma (True Rife)

Quantum-Laser

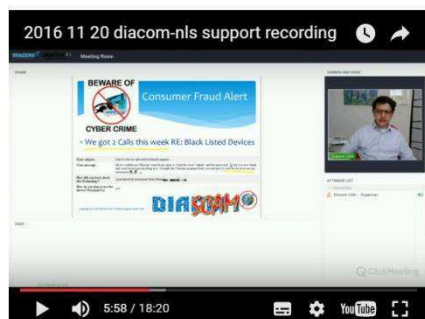
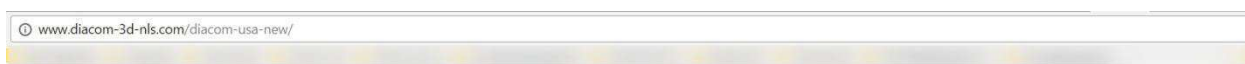
DIACOM-NLS (NEXUS)



Diacom 3D-NLS (Original Version)

€4,406 €3,084

Exhibit 18



COMING SOON - 2017 Development

We are in the process of bringing you a new devices that is safe to buy. See our warning about Counterfeit and Black Listed devices.

Diacom-USA will target all Spanish speaking countries like Spain, Mexico, Latin America, including Central and South America). Our new Devices will be brought to you exclusively on <http://Diacom-Espanol.com> - if you would like to be one of the first Exclusive Distributor contact us at ventas@diacom-espanol.com

PRÓXIMAMENTE - Desarrollo 2017

Estamos en el proceso de traerle un nuevo dispositivo que es seguro de daños y reputación para comprar de los EE.UU. Vea nuestro video sobre dispositivos falsificados y listados en negro que se venden en Europa.

Exhibit 19



EXHIBIT 4



United States Patent and Trademark Office

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v1.9

Cancellation

Number: 92066217

Status: Pending

Filing Date: 05/31/2017

Status Date: 05/31/2017

General Contact Number: 571-272-8500

Interlocutory Attorney: [MIKE WEBSTER](#)

Paralegal Name: [LALITA R WEBB](#)

Defendant

Name: [Biostar Technology International LLC](#)

Correspondence:

BIOSTAR TECHNOLOGY INTERNATIONAL LLC
SUITE B , 4443 W SUNSET BLVD
LOS ANGELES, CA 90027
UNITED STATES
jason@llapc.com
Phone: 866-400-2507

Serial #: [86830759](#)

[Application File](#)

[Assignment](#)

Registration #: [5011919](#)

Application Status: Cancellation Pending

Mark: DIACOM USA

Plaintiff

Name: [Khachatur Mkrtchyan](#)

Correspondence: [BASHUK CHICHKANOV, YURIDICHESKAYA FIRMA](#)

UL. STUDENCHESKAYA, 34, OF.4
KURSK, 305040
RUSSIAN FEDERATION
a.bashuk@bashukchichkanov.com, a.bashuk@yandex.ru
Phone: +79207204848

Serial #: [79196312](#)

[Application File](#)

[Assignment](#)

Application Status: Non-Final Action - Mailed

Mark: DIACOM

Prosecution History

#	Date	History Text	Due Date
3	06/05/2017	PENDING, INSTITUTED	
<u>2</u>	06/05/2017	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	07/15/2017
<u>1</u>	05/31/2017	FILED AND FEE	

Results as of 07/12/2017 08:57 AM

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EXHIBIT 6

ESTTA Tracking number: **ESTTA832963**

Filing date: **07/13/2017**

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

Proceeding	92066217
Party	Defendant Biostar Technology International LLC
Correspondence Address	BIOSTAR TECHNOLOGY INTERNATIONAL LLC SUITE B , 4443 W SUNSET BLVD LOS ANGELES, CA 90027 UNITED STATES Email: jason@llapc.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Eric Misterovich
Filer's email	Eric@Revisionlegal.com, kathleen@revisionlegal.com
Signature	/em/
Date	07/13/2017
Attachments	07-13-17 Motion to Dismiss - FINAL.pdf(551131 bytes) Ex 1 - 86830759 Petition to Cancel.pdf(1284740 bytes) Ex 2 - April 27 2017 Order.pdf(81354 bytes) Ex 3 - Cover Page.pdf(182806 bytes) Ex 4 - Bashuk Chichkanov Law Firm.pdf(2648059 bytes) Ex 5 - DIACOM USA Certificate of Registration.pdf(89241 bytes) Ex 6 - 79196312 Application Printout.pdf(250730 bytes) Ex 7 - WIPO Printout for 1319213.pdf(295402 bytes) Ex 8 - Bashuk Bio.pdf(420091 bytes) Ex 9 - 27312 TSDR Printout.pdf(162228 bytes)

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

ING. KHACHATUR MKRTCHYAN

Petitioner,

Proceeding No: 92066217

v.

BIOSTAR TECHNOLOGY
INTERNATIONAL, LLC,

Registrant.

REGISTRANT'S MOTION TO DISMISS

Registrant Biostar Technology International, LLC, by and through its attorneys Revision Legal, PLLC, moves the Trademark Trial and Appeal Board (the "Board") to Dismiss Petitioner's Petition pursuant to Fed. R. Civ. P. 12(b)(6) and TBMP § 503, and states the following in support:

SUMMARY OF ARGUMENT

This Petition to Cancel the subject registration (the "Petition") is fatally flawed because it relies on an incorrect priority date as shown on the record, irrelevant and facially incorrect assertions of fact, and does not contain any allegations sufficient to establish a reasonable inference that Registrant misrepresented the source of its goods or committed fraud on the United States Patent and Trademark Office ("USPTO"). Furthermore, the record shows this Petition was prepared by a foreign attorney who is not authorized to practice before the Board. This Petition is Ing. Khachatur Mkrtchyan's *second* attempt at using an unauthorized foreign attorney to challenge the subject registration with spurious claims. Because Petitioner cannot amend this Petition to remedy its flaws, it should be dismissed with prejudice.

STATEMENT OF FACTS

1. Petitioner's Previous Filing Through a Foreign Attorney Was Rejected and Petitioner now Files Through Another Foreign Attorney

This is Petitioner's second attempt to file a petition to cancel Registration No. 5,011,919. On March 1, 2013 Petitioner—with the assistance of a foreign attorney not license to practice in the United States—filed a petition to cancel. Ex 1, Miscellaneous Proceeding No. 86830759 Petition to Cancel. The Board did not entertain this filing, in part, because the attorney was not licensed in the United States. Ex 2, April 27, 2017 Order. For its instant Petition to Cancel, Petitioner lists “BASHUK CHICHKANOV, YURIDICHESKAYA FIRMA” from the “RUSSIAN FEDERATION” as the Petitioner's correspondent, including the following email addresses: a.bashuk@bashukchichkanov.com, a.bashuk@yandex.ru. Ex 3, Petition to Cancel Cover Page. BASHUK CHICHKANOV, YURIDICHESKAYA FIRMA is a Russian law firm. Ex 4. Leaving little doubt that someone other than Petitioner prepared the pleading, Petitioner's signature on the Petition to Cancel appears to be a digital screenshot copied and pasted into the document itself:


Wherefore, Petitioner's prays for cancellation of the United States trademark Registration No. 5,011,919.

Dated: May 31, 2017



Screenshot from Petition to Cancel, p. 10.

2. Registrant's Registration

Registrant filed federal trademark application Serial No. 86/830,759 on November 24, 2015 for  for “computer software and hardware for use in measuring the

frequency of energy emitted by the human body” noting a first use date of January 6, 2005. **Ex 5**, Certificate of Registration. This application was registered on August 2, 2016 under Registration No. 5,011,919. *Id.*

3. Petitioner’s Grounds for Cancellation

Petitioner asserts four grounds for cancellation: 1) priority and likelihood of confusion pursuant to Trademark Act Sections 14(1) and 2(d); 2) that Registrant is not the rightful owner of the mark pursuant to “Section 14(1) and 1”¹; 3) that subject registration is being used “to misrepresent the source of the goods or services on or in connection with which the mark is used under the Trademark Act Section 14(3)”¹; and 4) fraud on the USPTO pursuant to “Trademark Act Section 14(3)”.

4. Petitioner’s Factual Allegations Regarding Priority

At ¶¶ 5-20, Petitioner provides the following factual allegations to support his claim for priority. Specifically, Petitioner lays out the following timeline:

- 2006: Petitioner allegedly creates the designation DIACOM by naming his Russian entity ДИАКОМ, which Petitioner asserts is the Russian translation of DIACOM (Petition at ¶ 5);
- 2007: Petitioner’s employee allegedly creates the DIACOM design mark (*Id.* at ¶ 6);
- July 2007: Petitioner allegedly starts using the mark in commerce, but does not indicate the country in which Petitioner used the mark (*Id.* at ¶ 7);

¹ Contrary to Petitioner’s belief, “being the rightful owner” is not a statutory ground for cancellation to the extent this claim is understood by Registrant. 15 U.S.C. § 1064.

- February 2008: Petitioner allegedly obtains a certificate about complying with Russian safety standards (*Id.* at ¶ 9);
- May 2008: Petitioner allegedly obtains a certificate about complying with Czech Republic safety standards (*Id.* at ¶ 10);
- April 2009: Petitioner allegedly registers himself as an entrepreneur in the Czech Republic (*Id.* at ¶ 13);
- April 5, 2012: Petitioner allegedly files a Czech Republic trademark application for DIACOM TECHNOLOGY (*Id.* at ¶ 14);
- April 4, 2014: Petitioner allegedly files a Czech Republic trademark application for DIACOM MEDITRONIC (*Id.* at ¶ 15); and,
- April 25, 2015:² Petitioner allegedly files a Czech Republic trademark application (Czech Republic Registration No. 522575) for DIACOM for electric measuring devices and radiological apparatus for medical purposes, radiotherapy apparatus (*Id.* at ¶ 16);

Next, Petitioner alleges the Czech Republic Registration No. 522575 filed on “May 25, 2015” was “applied as an international trademark application No. 1319213 for electric measuring devices... and radiological apparatus for medical purposes, radiotherapy apparatus...under the Madrid protocol in some countries, including the U.S.A.” *Id.* at ¶ 17. Petitioner concludes that “the priority date of Petitioner’s DIACOM trademark is May 25, 2015 (the filing date of the basic Czech application No. 522575). *Id.* at ¶20.

² Petitioner’s citation to April 25, 2015 seems to be an error as Petitioner’s Exhibit 8 shows a filing date of May 25, 2015.

5. Petitioner's Factual Omissions Regarding Priority

In rather conspicuous fashion, Petitioner fails to note the date on which he filed for protection under the Madrid Protocol. As evidenced by the attached **Exhibits 6 and 7**, Petitioner filed international application No. 1319213, based on Czech Republic Registration No. 522575, designating the United States on July 4, 2016, or 1 year and 9 months after Czech Republic Registration No. 522575 was filed.

6. Petitioner's Allegations of Registrant's Fraud on the USPTO

From ¶¶ 21-34, Petitioner provides a rambling narrative of an irrelevant alleged history between the parties. Specifically, Petitioner claims that Registrant sold DIACOM products as “a representative of the Petitioner’s distributor in the U.S.A.” in 2011. Petition at ¶ 21. Petitioner states that the “first business contact” between the parties was in 2013. *Id.* at ¶ 22. This alleged “business contact” came in the form of Registrant buying advertising space on Petitioner’s website to advertise *Registrant’s* “title” of DIACOM-LA. *Id.*; See also Petitioner’s Ex 11. Petitioner alleges the parties executed a distribution contract in 2014 in which Registrant obtained the right to sell Petitioner’s products and that Registrant breached the agreement. *Id.* at ¶¶ 23-26.

Petitioner then asserts Registrant owns <diacom-3d-nls.com>, that through this website Registrant posted false information that “defamed and damaged” Petitioner, that Registrant emailed Petitioner’s clients and distributors “with false information about Petitioner’s products and offer [sic] to buy the Registrant’s products;” and that Registrant bought Chinese products and labeled them as DIACOM. *Id.* at ¶¶ 27-30.

Petitioner, at ¶ 31, then makes the following allegation regarding the goods identified in Registrant’s registration, which forms the basis of its fraud claim:

Notwithstanding the Registrant's goods specification as "Computer software and hardware for use in measuring the frequency of energy emitted by the human body" for the trademark Registration №5,011,919, Registrant actually uses this trademark for "electric measuring devices" and "radiotherapy apparatus" goods and doesn't use it for the applied "computer hardware and software" goods. Registrant's products are physical independent devices, which function without a computer. The screenshot from the <http://www.diacom-3dnls.com/> website is attached hereto as Exhibit 17 as the evidence of this fact. Also, the "Plasma generator" device, specified in the trademark application №86830759 by Registrant as a specimen, actually is radiotherapy apparatus, but not computer hardware.

Petitioner claims that Registrant "continues his illegal actions" by selling "the same products" under the Petitioner's mark DIACOM, but that Registrant's goods are not FDA certified. *Id.* at ¶ 32. Petitioner claims this forced him to report Registrant to the police in the Czech Republic. *Id.* at ¶ 33. Then Petitioner concludes that "it's obvious" Registrant's first use date of DIACOM, January 6, 2005, is false. *Id.* at ¶ 34.

At ¶¶ 35-43, Petitioner presents his "Grounds for Cancellation". Petitioner claims:

- He is the "rightful creator and the owner of the DIACOM designation for the electric measuring devices and radiological apparatus for medical purposes, radiotherapy apparatus" (*Id.* at ¶ 35);
- That Registrant uses its registered mark on the same goods for which Petitioner uses DIACOM, being "electric measuring devices and radiological and radiotherapy apparatus" (*Id.* at ¶ 36-37);
- That Petitioner's priority date for DIACOM in the United States is May 25, 2015 (*Id.* at ¶ 38) which is earlier than the filing date of the subject mark (November 24, 2015) (*Id.* at ¶¶ 38-40);

- That Registrant’s registration should be cancelled because “Registrant is not the rightful owner of mark for identified goods or services under “Trademark Act Sections 14(1) and 1” (*Id.* at ¶ 41); and,
- That “because of Registrant’s unfair competition and Registrant’s actions directed to mislead customers about the real manufacture of the product,” Registrant’s registration should be cancelled because the “registration is being used by the registrant so as to mispresent the source of the goods or services on or in connection with which the mark is used under the Trademark Act Section 14(3)” (*Id.* at ¶ 42).

STANDARD OF REVIEW

To withstand a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), a petitioner must allege facts that, if proven, would establish that the petitioner is entitled to the relief sought. *See Fair Indigo, LLC v. Style Conscience*, 85 U.S.P.Q.2d 1536, 1538 (TTAB 2007). Specifically, the petitioner must allege facts that establish that: (1) the petitioner has standing to bring the proceeding; and (2) the petitioner has a valid statutory ground for cancelling the registration. *Id.* A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), *quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “In the context of cancellation proceedings before the Board, a claim is plausible on its face when the petitioner pleads factual content that if proved, would allow the Board to conclude, or draw a reasonable inference that, the petitioner has standing and that a valid ground for cancellation exists.” *Corporacion Habanos, S.A. & Empresa Cubana Del Tabaco, D.B.A. Cubatabaco*, 92052146, 2011 WL 3871952 (TTAB Order Dkt. No. 16, Aug. 1, 2011) (citing *Twombly*, 550 U.S. at 556). The purpose of a Rule 12(b)(6) motion is to “eliminate

actions that are fatally flawed in their legal premises and destined to fail....” *Meckatzer Lowenbrau Benedikt Weib Kg*, 95 U.S.P.Q.2d 1185 (TTAB May 13, 2010).

ARGUMENT

I. THE BOARD SHOULD DISMISS THE PETITION IN WHOLE BECAUSE PETITIONER IS BEING REPRESENTED BY A FOREIGN ATTORNEY

Only “attorneys” defined under 37 C.F.R. § 11.1 may represent others before the Office in trademark cases. See also 37 C.F.R. § 11.14. “Attorney” is defined as “an individual who is an active member in good standing of the bar of the highest court of any State. 37 C.F.R. § 11.11. Foreign attorneys are permitted to apply for reciprocal registration, provided the attorney can prove to the OED Director that he or she is registered and in good standing before the patent or trademark office of the attorney’s home country. 37 C.F.R. § 11.14(c). However, this is only available if the home country’s trademark office allows substantially reciprocal privileges to those permitted to practice in trademark matters before the Office. *Id.* Currently, only Canada provides substantial reciprocal privileges. TBMP § 114.05.

“An individual who is not entitled, under 37 C.F.R. § 11.14 [other citations omitted], to practice before the Office in trademark cases, will not be permitted to represent a party in a proceeding before the Board, and may not file submissions on behalf of the party.” TBMP § 117.08. “If it comes to the attention of a Board attorney that such an individual is attempting to represent a party in a Board proceeding, the Board attorney will bring the matter to the attention of the Chief Administrative Trademark Judge, who will coordinate appropriate action with the Office of Enrollment and Discipline.” *Id.* “Moreover, no Board correspondence intended for the party will be sent to the individual. *Id.* Rather, the Board will send such correspondence to the party itself, or to the party’s attorney or other authorized representative entitled to practice before the USPTO in trademark cases. *Id.*

The Petition filed overwhelmingly shows that Ing. Khachatur Mkrtchyan is not representing himself. Instead, his Russian attorney Bashuk Aleksey Andreevich is presenting him. Ex 8, Bashuk Aleksey Andreevich profile at <bashukchichkanov.com>. Attorney Bashuk is expressly listed as the Petitioner's representative:

TTABVue. Trademark Trial and Appeal Board Inquiry System		v1.9	
Cancellation			
Number: 92066217		Filing Date: 05/31/2017	
Status: Pending		Status Date: 05/31/2017	
General Contact Number: 571-272-8500			
Interlocutory Attorney: MIKE WEBSTER			
Paralegal Name: LALITA R WEBB			
Defendant			
Name: Biostar Technology International LLC			
Correspondence:			
BIOSTAR TECHNOLOGY INTERNATIONAL LLC SUITE B , 4443 W SUNSET BLVD LOS ANGELES, CA 90027 UNITED STATES jason@llapc.com Phone: 866-400-2507			
Serial #: 86830759		Application File	Assignment
Registration #: 5011919			
Application Status: Cancellation Pending			
Mark: DIACOM USA			
Plaintiff			
Name: Khachatur Mkrtchyan			
Correspondence: BASHUK CHICHKANOV, YURIDICHESKAYA FIRMA			
UL. STUDENCHESKAYA, 34, OF.4 KURSK, 305040 RUSSIAN FEDERATION a.bashuk@bashukchichkanov.com, a.bashuk@yandex.ru Phone: +79207204848			
Serial #: 79196312		Application File	Assignment
Application Status: Non-Final Action - Mailed			
Mark: DIACOM			
Prosecution History			
#	Date	History Text	Due Date
3	06/05/2017	PENDING, INSTITUTED	
2	06/05/2017	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	07/15/2017
1	05/31/2017	FILED AND FEE	
Results as of 07/11/2017 10:35 PM		Back to search results	Search: <input type="text"/>

Attorney Bashuk is also listed as Petitioner's attorney of record for Serial No. 79/196,312. Ex 9, '312 Application TSDR Printout. While it appears that Petitioner himself signed the Petition, this signature is extremely suspect as it appears to have been digitally transplanted into the document someone else (his Russian attorney) prepared. This is Petitioner's second attempt at using a foreign attorney before the Board. Ex 2, April 27, 2017 Order. Given Petitioner has repeatedly disregarded the Board's rules, dismissal with prejudice is proper.

II. PETITIONER'S PRIORITY AND LIKELIHOOD OF CONFUSION CLAIMS FAIL AS A MATTER OF LAW

Petitioner seeks to cancel Registrant's registration based on priority and likelihood of confusion. Both positions are fatally flawed. On May 25, 2015, Petitioner filed a trademark application for DIACOM in the Czech Republic. Petitioner argues that date is the priority date within the U.S. because he applied for an extension of protection for that registration into the U.S.

But that May 25, 2015 date would only be available as the priority date if Petitioner filed for extension of protection to the United States within 6 months of the May 25, 2015 filing. TMEP § 1904.01(e). Petitioner failed to do so. Plaintiff filed his request for extension of protection in the United States on July 4, 2016, or 1 year and 9 months after filing his Czech application. **Exs. 6, 7.** As a result, Petitioner cannot use May 25, 2015 as a priority date and this ground for cancellation should be dismissed with prejudice.

In a similar vein, Petitioner's claim for likelihood of confusion also fails. "In a cancellation proceeding, to establish priority on a likelihood of confusion claim brought under Section 2(d), a party must prove that, vis-à-vis the other party, it owns 'a mark or trade name previously used in the United States . . . and not abandoned.'" *Alexander Kronik v Sayed Najem*, 2016 WL 837734 (TTAB Feb. 11, 2016) (citing 15 U.S.C. § 1052(d)). "A party may establish its own prior proprietary rights in a mark through actual use, use analogous to trademark use, or an earlier constructive use date accorded to the party's own application." *Id.* (citing *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020, 1022 (TTAB 2009)). Absent proof of ownership of such superior rights vis-à-vis the defendant, the plaintiff cannot prevail on its Section 2(d) claim. *See, e.g., American Security Bank v. American Security and Trust Company*, 571 F.2d 564, 197 USPQ 65, 66 (CCPA 1978); *Corporate Document Services Inc. v. I.C.E.D. Management Inc.*, 48 USPQ2d

1477 (TTAB 1998); and *Intersat Corp. v. International Telecommunications Satellite Organization*, 226 USPQ 154, 156 n.5 (TTAB 1985).

Outside of Petitioner's flawed priority analysis described above, Petitioner has failed to allege any facts evidencing a priority date superior to Registrant's filing date of November 24, 2015. At most, Petitioner simply contends that Registrant's first use date is "obviously" false. Compl. at ¶ 34. This conclusory statement does *not* state a valid ground for cancellation. 3 McCarthy on Trademarks and Unfair Competition § 20:54 n.6 (4th ed.) (citing *In re W.R. Case & Sons Cutlery Co.*, 12 U.S.P.Q. 1544 (TTAB 1989)).

III. PETITIONER FAILED TO STATE A CLAIM FOR MISREPRESENTATION OF SOURCE

"The term misrepresentation of source, as used in Section [14(3)] of the Act, refers to situations where it is deliberately misrepresented by or with the consent of the registrant that goods and/or services originate from a manufacturer or other entity when in fact those goods and/or services originate from another party." *Osterreichischer Molkerei-und Kasereiverband Registrierte GmbH v. Marks and Spencer Limited*, 203 USPQ 793, 794 (TTAB 1979). *See Global Maschinen GmbH v. Global Banking Systems, Inc.*, 227 USPQ 862, 864 n.3 (TTAB 1985). In order to prevail, petitioner must show that respondent took steps to deliberately pass off its goods as those of petitioner. That is, petitioner must establish "blatant misuse of the mark by respondent in a manner calculated to trade on the goodwill and reputation of petitioner." *Otto Int'l Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861, 1863 (TTAB 2007), *quoting McDonnell Douglas Corp. v. National Data Corp.*, 228 USPQ 45, 47 (TTAB 1985). *See also* Theodore H. Davis, Jr., "Cancellation Under Section 14(3) for Registrant Misrepresentation of Source," 85 TMR 67 (Jan.-Feb. 1995) ("As a vehicle for canceling federal registrations, Section 14(3)'s misrepresentation of source prong has been invoked infrequently,

much less successfully used.”). Thus, in reviewing the record, we look for evidence reflecting respondent’s deliberate misrepresentation of the source of its products, “blatant misuse” of the mark, or conduct amounting to the deliberate passing-off of respondent’s goods. Willful use of a confusingly similar mark is not sufficient. *McDonnell Douglas Corp. v. National Data Corp.*, 228 USPQ at 47. Because intentional misrepresentation is a “classic fraud” count in other contexts, federal courts require pleadings containing this ground for cancellation to be pled with specificity consistent with Fed. R. Civ. P. 9(b). *American Cruise Lines, Inc. v HMS American Queen Steamboat Company LLC*, 223 F.Supp.3d 207, 213, (D. DE. 2016).

Petitioner’s claims are largely irrelevant to a proceeding before the Board. Petitioner claims Registrant engaged in “unfair competition” against him and committed defamation. Petition at ¶¶ 26, 28, 29. At most, Petitioner presents a run-of-the-mill likelihood of confusion claim. *Id.* at ¶¶ 30-31. This is simply not sufficient, consistent with Fed. R. Civ. P. 9(b), to establish a claim for passing off or that Registrant “blatantly represented” its goods or services as coming from Petitioner. See *American Cruise Lines, Inc. v HMS American Queen Steamboat Company LLC*, 213-14, (D. DE. 2016).

IV. PETITIONER FAILED TO STATE A CLAIM FOR FRAUD ON THE USPTO

Petitioner presents a narrow claim for fraud. Petitioner alleges that Registrant does not use the DIACOM trademark on the applied goods. Petition at ¶ 31, 43. Specifically, Registration is for the subject mark in association with “Computer software and hardware for use in measuring the frequency of energy emitted by the human body” in international class 009. Petitioner claims Registrant does not use its mark in association with “Computer software and hardware for use in measuring the frequency of energy emitted by the human body”; but rather, with “electric measuring devices and radiotherapy apparatus.” Petition at ¶¶ 31, 43.

Fraud occurs when an applicant knowingly makes false, material representations of fact in connection with an application to register. “There is no fraud if a false representation is occasioned by an honest misunderstanding or inadvertence without a willful intent to deceive.” *In re Bose Corp.*, 91 USPQ2d at 1942. “Unless the challenger can point to evidence to support an inference of deceptive intent, it has failed to satisfy the clear and convincing evidence standard required to establish a fraud claim.” *Id.* To prove a claim of fraud, petitioner must show that:

- (1) respondent made a false representation to the USPTO;
- (2) respondent had knowledge of the falsity of the representation;
- (3) the false representation was material to the continued registration of the mark, and
- (4) respondent made the representation with the intent to deceive the USPTO.

In re Bose Corp., 91 USPQ2d at 1941. A party asserting a fraud claim is under a heavy burden of proof because fraud must be proved by clear and convincing evidence, leaving nothing to speculation, conjecture, or surmise. The very nature of the charge of fraud requires that it be proven “to the hilt” with clear and convincing evidence. Any doubt must be resolved against the party making the claim. *Sinclair Oil Corp. v. Kendrick*, 85 USPQ2d 1032, 1035 (TTAB 2007); *Smith International, Inc. v. Olin Corporation*, 209 USPQ 1033, 1043 (TTAB 1981). And allegations of fraud must comply with Fed. R. Civ. P. 9(b). TBMP § 309.03(c) n.33.

Petitioner’s claim fails as a matter of law because Petitioner has failed to allege any facts showing that Registrant made a false representation that was material to the registration of the mark or that any representation was made with the intent to deceive the USPTO. The distinction Petitioner attempts to draw between the goods identified in the subject registration and the goods Petitioner believes Registrant sells is, at most, insubstantial. Petitioner’s allegation that Registrant’s goods are misidentified is false on its face. An “apparatus” can comprise hardware and software. Additionally, Petitioner failed to plead any facts, consistent with Fed. R. Civ. P. 9(b), showing why that alleged misrepresentation was material to obtaining the registration. And

Petitioner provides no facts whatsoever as to Registrant's intent to deceive. Without such facts, Petitioner has failed to state a claim.

CONCLUSION

Petitioner's Petition should be dismissed in whole without a review of the merits because he used, for the second time, a foreign attorney who is not permitted to practice before the Board. In the alternative, this Petition should be dismissed in whole because it is based on faulty reasoning regarding priority and irrelevant allegations regarding foreign registrations, foreign safety standards, breach of contract, defamation, and unfair competition. This Petition is inherently and fatally flawed and should be rejected in total with prejudice. For the reasons stated above, Registrant respectfully requests this Board GRANT its Motion to Dismiss and dismiss this Petition in whole and with prejudice.

Date: July 13, 2017

/s/ Eric Misterovich
Eric Misterovich
John Di Giacomo
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Anderson@revisionlegal.com

Attorneys for Registrant

PROOF OF SERVICE

I, Eric Misterovich, hereby certify that a true and complete copy of the foregoing Registrant's Motion to Dismiss has been served on ING. KHACHATUR MKRTCHYAN by forwarding said copy on July 13, 2017, via email to: a.bashuk@bashukchichkanov.com, a.bashuk@yandex.ru.

Date: July 13, 2017

/s/ Eric Misterovich
Eric Misterovich
John Di Giacomo
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Attorneys for Registrant

EXHIBIT 1

JUDr. Eva Winklerová, attorney at law
Zelený pruh 1294/52, 147 00 Praha 4, Czech Republic
e-mail: eva.winkler@cdipraha.cz or eva.winkler@email.cz

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office P.O. Box 1451
Alexandria, VA 22313-1451
USA

Subject:

DIACOM^{USA}, serial Number 86830759

the registrant and owner Biostar Technology International LLC, at the address 4443 West Sunset Blvd., Los Angeles, Ca 90027, USA

- **Protest against the entry trademark DIACOM^{USA} and petition to cancel this trademark registration filed by Khachatur Mkrtchyan - Diacom Technology**

Prague 20th February 2017

I file a protest against the entry of the combined trademark DIACOM USA under serial number 86830759 and I file petition to cancel this trademark - the applicant and owner Biostar Technology International LLC, filed November 24 2015, registration date August 2, 2016, namely due to the fact that I already registered trademark of the DIACOM TECHNOLOGY and DIACOM and DIACOM MEDITRONIC in the intellectual property Office of the Czech Republic, the first number 328076, the filing date on 7.5.2012, record date 24.10.2012, the occurrence of pre-emptive rights on 7.5.2012, the second number 334763, the filing date 2.4.2013, recording date 13.11.2013, the occurrence of pre-emptive rights 2.4.2013 and a third of them under the number 349218, the filing date on 5.7.2015, record date 21.10.2015, the occurrence of pre-emptive rights on 25.5.2015.

You can find this information on the website of the intellectual property Bureau of the Czech Republic www.upv.cz. Further reported that in the Czech Republic I've been engaged in business under the brand name Khachatur Mkrtchyan - Diacom Technology, bin: 28765737, the office of the company at the following address: Neratovice Jedová 189, zip code: 27711 and is a manufacturer and distributor of measuring devices SOLO-NLS, generators of a low-voltage electromagnetic waves SOLO-FREQ generators, plasma generator Plazmotronic, combined devices Lite – FREQ and accessories, which are protected by the combined trademark DIACOM TECHNOLOGY. I have also registered the trademark DIACOM^{DIACOM} at the USPTO USA, serial Number 79196312, International registration Number 1319213. It is obvious that record of the combined DIACOM USA trademark has resulted in replaceability with my trademarks and to damage of my business activity and my trade name.

Proof:

Public information www.upv.cz

The extract from the trade register of the Czech Republic about my firm

In order to inform you, I also announce that the firm Biostar Organix Healthcare Association at 4443 West Sunset Blvd., Los Angeles, Ca 90027, USA, represented by Mr. Ulysses Angulo (both firms is



03-01-2017

U.S. Patent & TM Office Mail Rpt Ct. 111

obvious from the title and same address) I signed the agreement from 9.1.2014 on the basis of which I granted to this firm the right to offer and sell my products in the market of the USA, Canada, Mexico and South Korea with Biostar Organix Healthcare Association firm which is represented by mister Ulysses Angulo. In March, 2015, the Biostar Organix Healthcare Association firm declared carrying out and held the Presentation of the products DIACOM in the Czech Republic which is absolutely violated terms of the contract, mister Angulo promised me later that I as the owner of the DIACOM company, will be in attendance, as Dušan Medvec – exclusive distributor in the Czech Republic, as a result they held the presentation without our presence with the explanation that the room where the presentation was held, is too small and we did not have seats.

As a result of pressure of distributors as in their opinion, such activity interferes with a field of activity of the distributor of this region, and in the future similar should not repeat, Ulysses L Angulo apologized to all exclusive distributors. However shortly thereafter it published on the official website that he carries out sales, support and training in work with Diacom worldwide and the official manager there was Maria Sheretova at the present time is the wife of Mr. Angulo and former close assistant and right hand of the company Khachatur Mkrtchyan - Diacom Technology.

The contract in any agreement with the Biostar firm or with Mr. Ulysses L Angulo says nothing about the fact that it provides the right to conduct training of the DIACOM devices to users, as I could not guarantee his knowledge in this field, on the contrary, I am sure, that he was not competent enough, however, he proclaimed himself as the best specialist on training of the DIACOM technologies. As these actions went beyond all the agreements, I demanded a company Biostar – Mr. Angulo, to remove the false information.

In 2015, cooperation with the company Biostar was discontinued, and the firm no longer has the right to offer and sell my product that I already don't provide to this company and in the USA market I have another distributor for the moment. Biostar company could, as a distributor, use the name of the DIACOM only during the period of our cooperation that it completely ignores and still continues to use my trading name DIACOM and DIACOM trademark, namely for the promotion and sale of counterfeit products and seemingly similar products of own production, and Biostar claims that their devices are better than the original products of DIACOM. On the website of Biostar this company also declared that it recruits programmers and developers in the USA. The purpose of this activity is clear - to abuse and use for their enrichment, the DIACOM technologies developed by me.

I repeatedly asked the company Biostar about the complete elimination of the name DIACOM from their website and that they ceased to offer the products under this name, because my they are protected trademarks. After a lengthy red tape they changed the title of their website graphic design, however, they continue to use the name DIACOM on their site, sometimes they use even the original version of the trademark DIACOM TECHNOLOGY. All of these actions can be described as the abuse of my trademarks, unfair competition and damage to my trading name. This activity can be checked on the sites that they use, a total of 3, namely:

diacom-usa.org

diacom-usa.com

diacom-3d-nls.com

and as I found out at the moment, Biostar Technology International LLC (Mr. Ulysses Angulo L /Sheretov) brought his illegal activities to the level that has applied for registration of the trade mark

DIACOM^{USA}, which was registered and it is interchangeable with my TM and still to aggravate, his other firm also filed an application for registration.

Khachatur Mkrtchyan - Diacom Technology
Jedová 189
27711 Neratovice
Czech Republic

represent under the power of attorney by
JUDr. Eva Winklerová
Attorney at law
e-mail: eva.winkler@cdipraha.cz
Zelený pruh 52, 147 00 Praha 4, Czech Republic

A handwritten signature in blue ink, appearing to be 'E. Winklerová', is written over the text of the attorney's details.

POWER OF ATTORNEY

The person signed below:

Khachatur Mkrtchyan – Diacom Technology, identification number: 28765737, tax identification number: CZ28765737, business address Neratovice, Jedová 189, PSČ: 27711, Česká republika

grants Power of Attorney to

JUDr. Eva Winklerová, solicitor, registered with the Czech Bar Association ref. no. 3283, registered solicitor's office Zelený pruh 1294/52, 147 00 Praha 4, Czech Republic.

The Power of Attorney authorises the Solicitor to represent the person stated above and to act on him behalf, to carry out all acts necessary, to take delivery of written matters, to submit proposals and applications, to reconcile and settle, to recover debts, to accept recovered debts, to confirm their receipt, to appoint arbitrators, to negotiate arbitration contracts and supplements and any other matters where a power of attorney is necessary in accordance with legal regulations. This Power of Attorney is granted within the scope of rights and obligations under the Civil Code of the Criminal Act as a **specific Power of Attorney**

to filing of objections against the entry of the trademark **DIACOM USA** serial number **86830759**, registrant and owner **Biostar Technology International LLC**, Los Angeles California

I hereby acknowledge that the Solicitor is entitled to appoint a representative to act on her behalf.

Prague, 20th February 2017



Khachatur Mkrtchyan – Diacom Technology

I hereby accept the Power of Attorney and grant the power within the same extent:

JUDr. Eva Winklerová
advokátka
Zelený pruh 52/1294
147 00 Praha 4

JUDr. Eva Winklerová
Solicitor

Výpis

z obchodního rejstříku, vedeného
Městským soudem v Praze
oddíl A, vložka 74900

Datum zápisu:	17. dubna 2009
Spisová značka:	A 74900 vedená u Městského soudu v Praze
Obchodní firma:	Khachatur Mkrtchyan - Diacom Technology
Sídlo:	Neratovice, Jedová 189, PSČ 27711
Identifikační číslo:	287 65 737
Právní forma:	Fyzická osoba - podnikatel
Podnikatel:	KHACHATUR MKRTCHYAN, dat. nar. 17. března 1972
Bydliště:	113 162 Moskva, Dubinskaja 16/5, Ruská federace
Místo pobytu:	Starochodovská 198/20, Chodov, 149 00 Praha 4
Předmět podnikání:	výroba, obchod a služby neuvedené v přílohách 1 až 3 živnostenského zákona

EXHIBIT 2

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: April 27, 2017

Khachatur Mkrtchyan
Diacom Technology
189 Jedova
Neratovice, CZ-277 11
Czech Republic

Biostar Technology International, LLC
4443 W. Sunset Blvd.
Suite B
Los Angeles, CA 90027
United States

In re Registration No. 5011919
Issued: 8/2/2016
Registrant: Biostar Technology International LLC
Mark: DIACOM USA

By the Trademark Trial and Appeal Board:

On March 1, 2017, Eva Winklerova, Attorney at Law, on behalf of Khachatur Mkrtchyan (“Petitioner”) filed a “Petition to Cancel” against Registration No. 5011919, owned by Biostar Technology International, LLC.

The petition to cancel was filed in paper form. The paper submission is not acceptable for three separate reasons. First, the petition to cancel was filed by a foreign attorney. Second, the petition to cancel was not accompanied by the required fee. Third, the petition to cancel was filed in paper rather than

through the Board's Electronic System for Trademark Trials and Appeals ("ESTTA") (see below) without a Petition to the Director, as required by the TTAB amended rules of practice, which became effective January 14, 2017.

In regard to the foreign attorney, only attorneys defined under 37 C.F.R. § 11.1 may represent others before the Office in trademark cases. See also 37 C.F.R. § 11.14(a)-(d) Petitioner's attorney has not demonstrated to the Board that she is entitled to practice before the USPTO; e.g., that as an attorney practicing in a foreign country she is also an active member in good standing of the bar of the highest court of any State of the United States. See Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 114.05 (Jan. 2017).

With respect to the fee, "[p]etitions for cancellation are not accepted for filing unless accompanied by the statutory fee." *Fred Bevs., Inc. v. Fred's Capital Mgmt. Co.*, 605 F.3d 963, 94 USPQ2d 1958, 1959 (Fed. Cir. 2010); 15 U.S.C. § 1064, 37 C.F.R. § 2.111(a); TBMP § 302("[A] cancellation proceeding is commenced by the timely filing of a petition for cancellation, together with the required fee, in the USPTO.").¹ Inasmuch as the petition to cancel was not accompanied by the required fee, the petition cannot be given consideration. A filer's failure to include the required fee alone, is a basis for not instituting a petition to cancel.

Finally, the filing is unacceptable under the recent amendments to the TTAB rules of practice that went into effect on January 14, 2017. On October 7, 2016, the

¹ A copy of the January 2017 TBMP is available at the TTAB home page at the USPTO website, www.uspto.gov under Policies and Procedures.

Board published its NOTICE OF FINAL RULEMAKING at 81 Fed. Reg. 69950, thereby providing the public three months advance notice of these changes to the rules of practice. The NOTICE alerted the public that Trademark Rule 2.126, 37 C.F.R. § 2.126, was being amended to state affirmatively that filing via ESTTA is mandatory for all filings and that a Petition to the Director is required for certain submissions filed in paper form, including a petition for cancellation.

In sum, Petitioner's submission of the petition to cancel in paper form is not acceptable because it was filed by a foreign attorney, it was not accompanied by the requisite fee, and it was not accompanied by a Petition to the Director. The remedy for Petitioner lies in submitting a renewed petition to cancel through ESTTA, with the required fee and by the appropriate party. As a reminder, ESTTA users are strongly urged to plan ahead. TBMP § 110.01(b). Brief outages of ESTTA, as with any computerized system, occur from time to time without prior notice.²

cc:

JUDr. Eva Winklerova
Zeleny Pruh 1294/52,
147 00 Praha 4
Czech Republic
eva.winkler@cdipraha.cz

² A user may check system status and planned outages from the TTAB homepage at www.uspto.gov. Instructions for filing documents with the TTAB during an outage are also available. Such instructions provide useful information pertinent to filing in paper.

EXHIBIT 3



United States Patent and Trademark Office

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TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.9

Cancellation

Number: 92066217**Status:** Pending**Filing Date:** 05/31/2017**Status Date:** 05/31/2017**General Contact Number:** 571-272-8500**Interlocutory Attorney:** [MIKE WEBSTER](#)**Paralegal Name:** [LALITA R WEBB](#)

Defendant

Name: [Biostar Technology International LLC](#)

Correspondence:

BIOSTAR TECHNOLOGY INTERNATIONAL LLC
 SUITE B , 4443 W SUNSET BLVD
 LOS ANGELES, CA 90027
 UNITED STATES
jason@llapc.com
 Phone: 866-400-2507

Serial #: [86830759](#)[Application File](#)[Assignment](#)**Registration #:** [5011919](#)**Application Status:** Cancellation Pending**Mark:** DIACOM USA

Plaintiff

Name: [Khachatur Mkrtchyan](#)**Correspondence:** [BASHUK CHICHKANOV, YURIDICHESKAYA FIRMA](#)

UL. STUDENCHESKAYA, 34, OF.4
 KURSK, 305040
 RUSSIAN FEDERATION
a.bashuk@bashukchichkanov.com, a.bashuk@yandex.ru
 Phone: +79207204848

Serial #: [79196312](#)[Application File](#)[Assignment](#)**Application Status:** Non-Final Action - Mailed**Mark:** DIACOM

Prosecution History

#	Date	History Text	Due Date
3	06/05/2017	PENDING, INSTITUTED	
<u>2</u>	06/05/2017	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	07/15/2017
<u>1</u>	05/31/2017	FILED AND FEE	

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EXHIBIT 4



LEGAL ACTION

Business objectives

OUR COMPANY

We are specialized in Intellectual Property and Business Law.

Intellectual property: registering trademarks, software, inventions and utility models, conducting a patent search according to GOST, develop sets of contract documents for the development of sites, programs and design of R & D, prepare licensing and franchising agreements.

Legal support of business: register individual entrepreneurs, commercial and non-profit organizations. We work on outsourcing as an external legal department - take care of the legal part of the business: contracts, claims and judgments, we put in order internal workflow.

Intellectual property and contractual documentation are working with customers from all regions of Russia: Moscow help organizations save money on paying for the services of the capital lawyers relieve customers from the small towns of the forced treatment of the "generalists".

In our opinion, formalistic attitude of the lawyer to the case inadmissible. Our job - to identify the client's business problem and solve it with the help of law. To do this, we together with the client determines that there is now, you need to get and how to get it, and only then proceed to the legal procedures. With this approach, our customers achieve the desired result, and we have regular customers who are satisfied with our services.

PRACTICE

- Intellectual property
- Corporate law
- Legal outsourcing
- trade secret

INDUSTRY






- Information Technology
- Catering
- Mass media
- Non-profit organizations
- startups

A complete list of services

TRUST US

< ASSOCIATION
SUPPORT CENTER
ENTERPRISE
KURSK REGION> COMMERCIAL AND
INDUSTRIAL
CHAMBER OF KURSK
REGION

CONTACT US

-  Kursk, Dzerzhinsky 82, office 14
-  +7 (4712) 25-09-01
-  +7 920 720 48 48
-  8 800 707-30-67
-  info@bashukchichkanov.com

WRITE TO US

Имя

Сообщение

Email

Тема

to send

ул. Дзержинского, 82, Курск, Курская обл., Россия, 305035 ✕



200 м

Картографич

Basuki ČIČKANOV,
LAW FIRM
OGRN 1154632009102
© 2017

EXHIBIT 5

United States of America

United States Patent and Trademark Office



Reg. No. 5,011,919

Registered Aug. 02, 2016

Int. Cl.: 9

Trademark

Principal Register

Biostar Technology International LLC (CALIFORNIA LIMITED LIABILITY COMPANY)
Suite B
4443 W Sunset Blvd
Los Angeles, CA 90027

CLASS 9: Computer software and hardware for use in measuring the frequency of energy emitted by the human body

FIRST USE 1-6-2005; IN COMMERCE 1-6-2005

The color(s) Blue, white, and black is/are claimed as a feature of the mark.

The mark consists of the word "Diacom" in blue and white. Immediately to the right of the word is a design comprised of a blue sphere with black orbit lines and the word "USA" in black that appears within a white oval with a black border.

No claim is made to the exclusive right to use the following apart from the mark as shown:
"USA"

SER. NO. 86-830,759, FILED 11-24-2015

GIANCARLO CASTRO, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

EXHIBIT 6



United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed Jul 12 05:00:44 EDT 2017

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Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 4 out of 9**

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)



Word Mark

DIACOM

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Electric measuring devices

IC 010. US 026 039 044. G & S: Radiological apparatus for medical purposes, radiotherapy apparatus

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

01.07.07 - Astronomic orbits; Globes with rings or orbits
 03.23.12 - Spider webs; Spiders; Tarantulas
 26.03.02 - Ovals, plain single line; Plain single line ovals
 27.03.05 - Objects forming letters or numerals

Serial Number

79196312

Filing Date

July 4, 2016

Current Basis

66A

Original Filing Basis

66A

International Registration Number

1319213

Owner

(APPLICANT) Ing. Khachatur Mkrtchyan UNKNOWN NOT PROVIDED Jedová 189 CZ-277 11 Neratovice CZECH REPUBLIC

Description of Mark

Color is not claimed as a feature of the mark.

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)

EXHIBIT 7



1319213 - DIACOM

AM AU BY CN EM RU TR US

151 Date of the registration

04.07.2016

180 Expected expiration date of the registration/renewal

04.07.2026

270 Language of the application

English

Current Status

732 Name and address of the holder of the registration

Ing. Khachatur Mkrtchyan

Jedová 189

CZ-277 11 Neratovice

(CZ)

540 Mark



531 International Classification of the Figurative Elements of Marks (Vienna Classification) - VCL(7)

01.05.06; 03.13.02; 03.13.08; 27.05.04

511 International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) - NCL(10-2016)

09 Electric measuring devices.

10 Radiological apparatus for medical purposes, radiotherapy apparatus.

821 Basic application

CZ, 25.05.2015, 522575

882 Basic registration

CZ, 21.10.2015, 349218

832 Designation(s) under the Madrid Protocol

AU - EM - TR - US

834 Designation(s) under the Madrid Protocol by virtue of Article 9sexies

AM - BY - CN - RU

527 Indications regarding use requirements

US

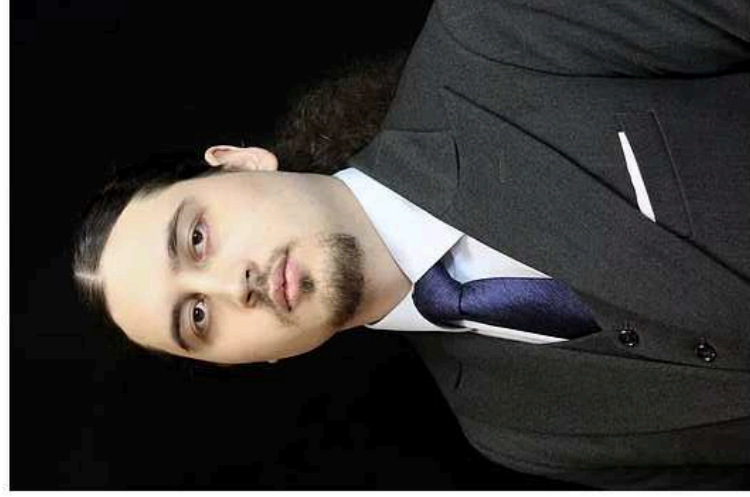
Registration : 2016/45 Gaz, 17.11.2016, AM, AU, BY, CN, EM, RU, TR, US
Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1) : 2016/49 Gaz, 15.12.2016, EM
Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1) : 2016/50 Gaz, 22.12.2016, AU
Total provisional refusal of protection : 2016/50 Gaz, 22.12.2016, US
Statement of grant of protection made under Rule 18ter(1) : 2017/8 Gaz, 09.03.2017, AU
Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1) : 2017/12 Gaz, 06.04.2017, TR
Total provisional refusal of protection : 2017/18 Gaz, 18.05.2017, EM
Limitation : 2017/25 Gaz, 06.07.2017, EM

[Back to top](#)

EXHIBIT 8

ABOUT US

We are specialized in Intellectual Property and Business Law. In our opinion, formalistic attitude of the lawyer to the case inadmissible. We identify the client's business problem and solve it with the help of law. To do this, we together with the client determines that there is now, you need to get and how to get it, and only then proceed to the legal procedures. With this approach, our customers achieve the desired result, and we have regular customers who are satisfied with our services.



Bashuk Aleksey Andreevich

*managing partner
intellectual property practice leader*

Education: higher legal, Kursk State University.

Training:

Patent school Skolkovo;

Intellectual property and innovation, global best practices, the St. Petersburg Polytechnic University, Petra Velikogo.

Legal Specialization: registration of trademarks, inventions, utility models, computer programs, the alienation of intellectual property, the development of licensing agreements, pre-trial and legal representation.

a.bashuk@bashukchichkanov.com

EXHIBIT 9

TSDR now includes a Post Registration Maintenance Tab. When viewing a Registered mark, users will now find a new 3rd tab providing Post Registration information next to the "Status" and "Document" tabs, below the search text box. The tab will not appear if the mark is not registered.

[STATUS](#)[DOCUMENTS](#)[Back to Search](#)[Print](#)

Generated on: This page was generated by TSDR on 2017-07-12 09:45:16 EDT

Mark: DIACOM



US Serial Number: 79196312

Application Filing Date: Jul. 04, 2016

Register: Principal

Mark Type: Trademark

TM5 Common Status

Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (minimum filing requirements) and that this application has been examined by the examiner.

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents the Trademark Document Retrieval link at the top of this page.

Status Date: Feb. 15, 2017

Mark Information

Related Properties Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent BASHUK CHICHKANOV, YURIDICHESKAYA FIRMA

Name/Address: ul. Studencheskaya, 34, of.4

ul. Studencheskaya, 34, of.4

Kursk RUSSIAN FEDERATION 305040

Correspondent e-mail: a.bashuk@bashukchichkanov.com
a.bashuk@yandex.ru

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

[International Registration Information \(Section 66a\)](#)

[TM Staff and Location Information](#)

[Assignment Abstract Of Title Information - Click to Load](#)

[Proceedings - Click to Load](#)

EXHIBIT 7

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

mw/lw

Mailed: August 22, 2017

Cancellation No. 92066217

Khachatur Mkrtchyan

v.

Biostar Technology International LLC

By the Trademark Trial and Appeal Board:

Respondent's motion to dismiss (filed July 13, 2017) is granted as conceded. *See* Trademark Rule 2.127(a) and Fed. R. Civ. P. 12(b).¹

Accordingly, the petition to cancel is dismissed with prejudice.

¹ Registrant's communication filed August 3, 2017 is noted.

EXHIBIT 8

To: Ing. Khachatur Mkrtchyan (a.bashuk@bashukchichkanov.com)
Subject: U.S. TRADEMARK APPLICATION NO. 79196312 - DIACOM - N/A
Sent: 7/31/2017 3:14:43 PM
Sent As: ECOM101@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL
NO.** 79196312

MARK: DIACOM

79196312

CORRESPONDENT

ADDRESS:

BASHUK CHICHKANOV,
YURIDICHESKAYA FIRMA
ul. Studencheskaya,; ul.
Studencheskaya,
Kursk;
305040
RUSSIAN FED.

APPLICANT: Ing. Khachatur
Mkrtchyan

**CLICK HERE TO RESPOND TO THIS
LETTER:**

http://www.uspto.gov/trademarks/teas/response_forms.jsp

[VIEW YOUR APPLICATION FILE](#)

CORRESPONDENT'S

REFERENCE/DOCKET NO:

N/A

**CORRESPONDENT E-MAIL
ADDRESS:**

a.bashuk@bashukchichkanov.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT **EASTERN TIME** OF THE LAST DAY OF THE RESPONSE PERIOD.

ISSUE/MAILING DATE: 7/31/2017

INTERNATIONAL REGISTRATION NO. 1319213

This Office action is in response to applicant's communication filed on June 12, 2017. Applicant's amendments have been received and entered. The following issues remain.

IDENTIFICATION OF GOODS

The identification of goods still requires further clarification as it is still indefinite. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant must amend the identification to specify the common commercial or generic name of the goods. *See* TMEP §1402.01. If the goods have no common commercial or generic name, applicant must describe the product, its main purpose, and its intended uses. *See id.*

Below are the current identification of goods. Identifications that are not acceptable are in bold; suggestions are in italics.

Class 9: Devices for feeble-current electromagnetic fields 0,1 Hz - 1 MHz range measuring

Measuring devices for range measuring feeble current electromagnetic fields.

Class 10: is still acceptable as submitted.

Applicant's goods and/or services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably narrowed. *See* 37 C.F.R. §2.71(a); TMEP §§1402.06, 1904.02(c)(iv). Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods and/or services or add goods and/or services not found or encompassed by those in the original application or as acceptably narrowed. *See* TMEP §1402.06(a)-(b). The scope of the goods and/or services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e). Additionally, for applications filed under Trademark Act Section 66(a), the scope of the identification for purposes of permissible amendments is limited by the international class assigned by the International Bureau of the World Intellectual Property Organization (International Bureau); and the classification of goods and/or services may not be changed from that assigned by the International Bureau. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Further, in a multiple-class Section 66(a) application, classes may not be added or goods and/or services transferred from one existing class to another. 37 C.F.R. §2.85(d); TMEP §1401.03(d).

PRIOR REGISTRATION

The refusal based on prior U.S. Registration No. 5011919 is repeated and continued. Once the identification of goods is resolved in this application, this application will then be suspended pending the outcome of the Cancellation Proceeding.

/Jacqueline W. Abrams/
Examining Attorney, Law Office 101
571-272-9185
jacky.abrams@uspto.gov INFORMAL ONLY

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailling date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

To: Ing. Khachatur Mkrtchyan (a.bashuk@bashukchichkanov.com)
Subject: U.S. TRADEMARK APPLICATION NO. 79196312 - DIACOM - N/A
Sent: 7/31/2017 3:14:44 PM
Sent As: ECOM101@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **7/31/2017** FOR U.S. APPLICATION SERIAL NO. 79196312

Your trademark application has been reviewed. The trademark examining attorney assigned by the USPTO to your application has written an official letter to which you must respond. Please follow these steps:

(1) **READ THE LETTER** by clicking on this [link](#) or going to <http://tsdr.uspto.gov/>, entering your U.S. application serial number, and clicking on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) **RESPOND WITHIN 6 MONTHS** (*or sooner if specified in the Office action*), calculated from **7/31/2017**, using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp. A response transmitted through TEAS must be received before midnight **Eastern Time** of the last day of the response period.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions.

(3) **QUESTIONS** about the contents of the Office action itself should be directed to the trademark examining attorney who reviewed your application, identified below.

/Jacqueline W. Abrams/
Examining Attorney, Law Office 101
571-272-9185
jacky.abrams@uspto.gov INFORMAL ONLY

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

EXHIBIT 9

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79196312
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION	
MARK FILE NAME	https://tmng-al.uspto.gov/resting2/api/img/79196312/large
LITERAL ELEMENT	DIACOM
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
GOODS AND/OR SERVICES SECTION (009)(current)	
INTERNATIONAL CLASS	009
DESCRIPTION	
Devices for feeble-current electromagnetic fields 0,1 Hz - 1 MHz range measuring	
GOODS AND/OR SERVICES SECTION (009)(proposed)	
INTERNATIONAL CLASS	009
TRACKED TEXT DESCRIPTION	
Devices for feeble-current electromagnetic fields 0,1 Hz - 1 MHz range measuring; Measuring devices for range measuring feeble current electromagnetic fields.	
FINAL DESCRIPTION	
Measuring devices for range measuring feeble current electromagnetic fields.	
GOODS AND/OR SERVICES SECTION (010)(no change)	
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Khachatur Mkrtchyan/
SIGNATORY'S NAME	Khachatur Mkrtchyan
SIGNATORY'S POSITION	Owner
SIGNATORY'S PHONE NUMBER	+79207204848
DATE SIGNED	08/16/2017
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Aug 16 11:35:15 EDT 2017
TEAS STAMP	USPTO/ROA-XXX.XXX.XX.XXX- 20170816113515346357-7919 6312-510afcf26b77a17ea49d 8eab29ff596a2b230e79496f7 4f8c74df1f5a8dff347b4-N/A

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1957 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **79196312** DIACOM (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/79196312/large>) has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 009 for Devices for feeble-current electromagnetic fields 0,1 Hz - 1 MHz range measuring

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Devices for feeble-current electromagnetic fields 0,1 Hz —1 MHz range measuring;~~ [Measuring devices for range measuring feeble current electromagnetic fields.](#)

Class 009 for Measuring devices for range measuring feeble current electromagnetic fields.

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

SIGNATURE(S)

Response Signature

Signature: /Khachatur Mkrtchyan/ Date: 08/16/2017

Signatory's Name: Khachatur Mkrtchyan

Signatory's Position: Owner

Signatory's Phone Number: +79207204848

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either: (1) the owner/holder ; or (2) a person(s) with legal authority to bind the owner/holder; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

Serial Number: 79196312

Internet Transmission Date: Wed Aug 16 11:35:15 EDT 2017

TEAS Stamp: USPTO/ROA-XXX.XXX.XX.XXX-201708161135153

46357-79196312-510afcf26b77a17ea49d8eab2

9ff596a2b230e79496f74f8c74df1f5a8dff347b

4-N/A-N/A-20170816113057722569

EXHIBIT 10

United States of America

United States Patent and Trademark Office



Reg. No. 5,011,919

Registered Aug. 02, 2016

Int. Cl.: 9

Trademark

Principal Register

Biostar Technology International LLC (CALIFORNIA LIMITED LIABILITY COMPANY)
Suite B
4443 W Sunset Blvd
Los Angeles, CA 90027

CLASS 9: Computer software and hardware for use in measuring the frequency of energy emitted by the human body

FIRST USE 1-6-2005; IN COMMERCE 1-6-2005

The color(s) Blue, white, and black is/are claimed as a feature of the mark.

The mark consists of the word "Diacom" in blue and white. Immediately to the right of the word is a design comprised of a blue sphere with black orbit lines and the word "USA" in black that appears within a white oval with a black border.

No claim is made to the exclusive right to use the following apart from the mark as shown:
"USA"

SER. NO. 86-830,759, FILED 11-24-2015

GIANCARLO CASTRO, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

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EXHIBIT 11



1319213 - DIACOM

AM AU BY CN EM RU TR US

151 Date of the registration

04.07.2016

180 Expected expiration date of the registration/renewal

04.07.2026

270 Language of the application

English

Current Status

732 Name and address of the holder of the registration

Ing. Khachatur Mkrtchyan

Jedová 189

CZ-277 11 Neratovice

(CZ)

540 Mark



531 International Classification of the Figurative Elements of Marks (Vienna Classification) - VCL(7)

01.05.06; 03.13.02; 03.13.08; 27.05.04

511 International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) - NCL(10-2016)

09 Electric measuring devices.

10 Radiological apparatus for medical purposes, radiotherapy apparatus.

821 Basic application

CZ, 25.05.2015, 522575

882 Basic registration

CZ, 21.10.2015, 349218

832 Designation(s) under the Madrid Protocol

AU - EM - TR - US

834 Designation(s) under the Madrid Protocol by virtue of Article 9sexies

AM - BY - CN - RU

527 Indications regarding use requirements

US

Registration : 2016/45 Gaz, 17.11.2016, AM, AU, BY, CN, EM, RU, TR, US
Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1) : 2016/49 Gaz, 15.12.2016, EM
Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1) : 2016/50 Gaz, 22.12.2016, AU
Total provisional refusal of protection : 2016/50 Gaz, 22.12.2016, US
Statement of grant of protection made under Rule 18ter(1) : 2017/8 Gaz, 09.03.2017, AU
Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1) : 2017/12 Gaz, 06.04.2017, TR
Total provisional refusal of protection : 2017/18 Gaz, 18.05.2017, EM
Limitation : 2017/25 Gaz, 06.07.2017, EM

[Back to top](#)

EXHIBIT 12

ABOUT US

We are specialized in Intellectual Property and Business Law. In our opinion, formalistic attitude of the lawyer to the case inadmissible. We identify the client's business problem and solve it with the help of law. To do this, we together with the client determines that there is now, you need to get and how to get it, and only then proceed to the legal procedures. With this approach, our customers achieve the desired result, and we have regular customers who are satisfied with our services.



Bashuk Aleksey Andreevich

*managing partner
intellectual property practice leader*

Education: higher legal, Kursk State University.

Training:

Patent school Skolkovo;

Intellectual property and innovation, global best practices, the St. Petersburg Polytechnic University, Petra Velikogo.

Legal Specialization: registration of trademarks, inventions, utility models, computer programs, the alienation of intellectual property, the development of licensing agreements, pre-trial and legal representation.

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EXHIBIT 13

TSDR now includes a Post Registration Maintenance Tab. When viewing a Registered mark, users will now find a new 3rd tab providing Post Registration information next to the "Status" and "Document" tabs, below the search text box. The tab will not appear if the mark is not registered.

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Mark: DIACOM



US Serial Number: 79196312

Application Filing Date: Jul. 04, 2016

Register: Principal

Mark Type: Trademark

TM5 Common Status

Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (minimum filing requirements) and that this application has been examined by the examiner.

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents the Trademark Document Retrieval link at the top of this page.

Status Date: Feb. 15, 2017

Mark Information

Related Properties Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent BASHUK CHICHKANOV, YURIDICHESKAYA FIRMA

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Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

[International Registration Information \(Section 66a\)](#)

[TM Staff and Location Information](#)

[Assignment Abstract Of Title Information - Click to Load](#)

[Proceedings - Click to Load](#)
