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

Proceeding	92066765
Party	Plaintiff Ing. Khachatur Mkrtchyan
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Attachments	PETITIONERS REPLY IN SUPPORT OF IT OPPOSITION TO RESPONDENTS MOTION TO DISMISS MOTION FOR SUMMARY JUDGMENT.pdf(5031029 bytes)

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

KHACHATUR MKRTCHYAN

Petitioner,

v.

Proceeding No: 92066765

BIOSTAR TECHNOLOGY INTERNATIONAL, LLC,

Registrant.

**PETITIONER'S REPLY IN SUPPORT OF IT OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS / MOTION FOR SUMMARY JUDGMENT**

I, Khachatur Mkrtchyan, ("Petitioner"), hereby responds to the Registrant's Reply In Support Of It Motion To Dismiss / Motion For Summary Judgment filed by Biostar Technology International, LLC, ("Registrant"), submit reply brief in support of my Opposition to Respondent's Motion to Dismiss/ Motion For Summary Judgment and state the following:

SUMMARY OF ARGUMENT

Registrant's reply in support of its motion to dismiss ignores the material facts and evidence. At the same time, registrant tries to replace the facts with his own fantasies and to persuade USPTO to stop the present proceedings on these grounds.

Petitioner continues: Registrant's motion must be dismissed and the trademark should be cancelled.

The Registrant never provided a reply on the merits and failed to refute the evidence submitted by the Petitioner throughout the dispute between the parties. Res judicata may not be applied in the present case, since a decision on the merits has not been made in the past.

Registrant's motion must be dismissed and the trademark №5011919 should be cancelled.

I. RES JUDICATA

In this case, res judicata cannot be applied because the application of res judicata requires not only the identity of the causes of actions and an identity of the parties or their privies, but also there must be final judgment on the merits. In this case there is no final judgment on the merits, thus res judicata cannot be applied. See 90 F.3d 195, 68 Empl. Prac. Dec. P 44,186, 5 A.D. Cases 1286, 17 A.D.D. 832, *Judy KRATVILLE, Plaintiff-Appellant, v. Marvin T. RUNYON, United States Postmaster General, Registrant-Appellee. No. 95-3845. United States Court of Appeals, Seventh Circuit.* (Neither party disputes that res judicata, or claim preclusion, applies to bar a second suit in federal court when there exists: (1) an identity of the causes of actions; (2) an identity of the parties or their privies; and (3) a final judgment on the merits. *Golden v. Barenborg*, 53 F.3d 866, 868 (7th Cir.1995). Once these elements are satisfied, claim preclusion "bars not only those issues which were actually decided in a prior suit, but also all issues which could have been raised in that action." *Brzostowski v. Laidlaw Waste Systems, Inc.*, 49 F.3d 337, 338 (7th Cir.1995).)

Moreover, given the fraudulent and unscrupulous actions of Registrant, res judicata could not be applied. See *Morris v. Jones*, 329 U.S. 545, 550-51, 67 S.Ct. 451, 91 L.Ed. 488 (1947) ("A judgment of a court having jurisdiction of the parties and of the subject matter operates as res judicata, in the absence of fraud or collusion, even if obtained upon a default.")

Although the Registrant tries to combine the two proceedings No. 92066217 and No. 92066765 into one, they are different. And opposition under No. 92066765 was filed immediately after the suspension of the issue No. 92066217, according to the absence of my response to the Registrant's Motion to dismiss, which occurred in unintentional circumstances, according to the 37 C.F.R. §2.66 (Part 1), «...The applicant may file a petition to revive an

application abandoned in full or in part because the applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional». The respondent agrees, acknowledging my claim of ignorance of the timing and provision for response. Thus, the absence of my answer to the opposition of No. 92066217 was unintentional, and I filed a new Petition for Cancellation, which at the same time doesn't contradict the USA trademark law, but fully satisfies its requirements. I paid the necessary fees and submitted signed Petition for Cancellation of the trademark №5011919.

PETITIONER STATE A CLAIM FOR CANCELLATION

The Registrant tries to refer to the procedural irregularities and violates them himself not providing me with direct answers to the charges, according to § 2.106 (B) (2), "An answer shall state in short and plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies. If the applicant is without knowledge or information sufficient to form a belief as to the truth of an averment, applicant shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure. An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense shall not be filed. When a defense attacks the validity of a registration pleaded in the opposition, paragraph (b)(3) of this section shall govern. A pleaded registration is a registration identified by number by the party in the position of plaintiff in an original notice of opposition or in any amendment thereto made under Rule 15 of the Federal Rules of Civil Procedure". None of the charges had been refuted on the merits in the cases by Registrant.

Even now, the Registrant is not trying to bring sufficient evidence to refute the charges,

which is violation of my rights, as well as bad faith in the registration of the Trademark № 5011919. The Registrant constantly refers to the non-existent hiring of lawyers on my part, which is completely inconsistent with the truth. He does not, however, give any answers to the charges on the merits.

Two basic facts confirming unscrupulous action by the Registrant during the registration process were not commented by the Registrant, namely:

a) Registrant e-mail, where he reports that he first met the DIACOM apparatus at the border of 2011-2012 years and began working with them in 2013. (This evidence refutes the registrant statement on the use of the trademark since 2005)

b) Distribution contract between me and the Registrant, where Registrant acts as the Provider of my original DIACOM products in the USA. (refutes the registrant's statement that he is the trademark of the DIACOM)

Registrant avoids having sufficient evidence examined in the proceeding of trademark cancellation which is an unfair act.

PETITIONER'S TRANSLATIONIST

CFR §10.14 "An attorney is not required to apply for registration or recognition to practice before the Office in trademark and other non-patent cases". I am not obliged to hire a lawyer and have the right to represent my interests on my own. The defendant brings nothing but his own fantasies to prove that I am supposed to have been using foreign lawyers. Consequently, these arguments cannot be taken into account when considering the present Petition for Cancellation case.

SUPPLEMENTS

The supplements I have provided in the response indicate Registrant's propensity for violations of the law, including this case.

Registering the trademark 5011919, the defendant does not conceal the true intention of its application and he has published it on its Web pages, **Exhibit 1**.

In the context of the Registrant's website page it is clear that the Registrant conducts unfair competition. The Registrant uglified the trademark that I had registered in Europe under number 1319213, **Exhibit 2**.

The Registrant distributes false information through the e-mail and its web site, claiming to be the manufacturer of the original appliances actually produced by me, and proposes to exchange the alleged "old apparatus" with the "new ones" with "an American Design" **Exhibit 3**. This has created confusion in the marketplace, and I have already received repeated questions from the consumers about the "change of design" and other things that have been initiated by the Registrant unlawfully and should be regarded as actual confusion. See 492 F.2d 474, 181 U.S.P.Q. 611, 182 U.S.P.Q. 129, *VOLKSWAGENWERK AKTIENGESELLSCHAFT, Plaintiff-Appellee, v. Edward T. RICKARD, and Bessie Rickard, Individually, etc., Defendants-Appellants*, No. 72-3186. *United States Court of Appeals, Fifth Circuit. April 10, 1974, Partial Rehearing Denied June 12, 1974*. "Numerous facts in the record fully support the district court on this point. While a showing of likelihood of confusion is sufficient without proof of actual confusion, plaintiff in fact demonstrated that actual confusion existed on the part of some 'Bug Shop' customers as to whether that establishment was an authorized franchisee"

CONCLUSION

Both previous decisions on the petitions in this case were made without substantive consideration on the merits by the expert of TTAB. The rejection of the first Petition for Cancellation and the second one are procedural. The procedural rejections cannot be considered as prejudice without the judgment on the merits in this case, despite the identity of the causes of actions and the identity of the parties or their privies. In accordance with the recommendations of

the USPTO, I corrected all procedural mistakes in previous petitions. I represent my own interests in USPTO on my own, and I have the right to do that under the USA legislation. This Petition for Cancellation should be considered on its merits.

For the reasons set forth above, Petitioner respectfully requests the Registrant's Motion to Dismiss be denied.

Dated: November 10, 2017

Khachatur Mkrtchyan



PROOF OF SERVICE

I, Khachatur Mkrtchyan, hereby certify that a true and complete copy of the Petitioner's Reply In Support Of It Opposition To Respondent's Motion To Dismiss / Motion For Summary Judgment filed November 10, 2017, has been served on Biostar Technology International LLC by forwarding said copy on November 10, 2017, via email to: eric@revisionlegal.com, john@revisionlegal.com, Anderson@revisionlegal.com

Date: November 10, 2017

/s/ Khachatur Mkrtchyan

Khachatur Mkrtchyan

JEDOVA 189

NERATOVICE, CZ 27711

CZECH REPUBLIC

diacomtechnology@gmail.com

Phone: 00420777779978

Exhibit 1

www.diacom-3d-nls.com

diacom usa founded in los angeles, california - since 2005

Diacom USA, since before 2005 has been developing Computer software and hardware for the use in measuring the frequency of energy emitted by the human body. Our first device written by Ulysses Angulo, President of Diacom USA and is still available today with an upgraded hardware a brand new name: Biostar-VOX - this low cost device has helped many hundreds of people around the world.

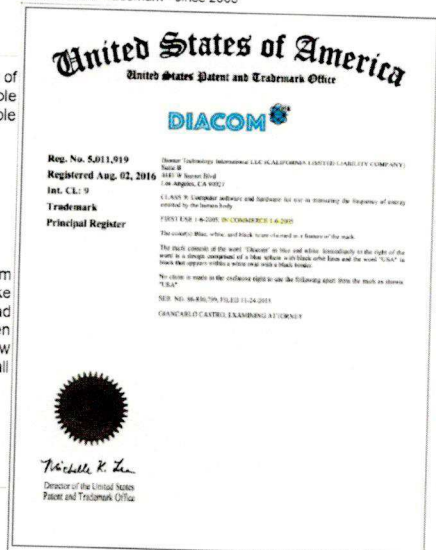


In 2014 we ventured out and contracted a company in Europe to supply us with Biofeedback devices to our specifications. From that time we have sold many of our customized devices for the American countries and produced many famous videos like "Experience a Diacom Scan", "Classroom: NLS Technology" and "Join the Diacom-USA Team". Unfortunately this outsourcing had a major drawback: **"our supplier is dishonest"**, and that was not the only reason, much of our intellectual property was stolen and counterfeited including our unique training, and so in 2016 we decided to stop overseas development and start with an all new Technology built "in-house" the we started from the ground up. Today we produce in the USA the new technology suite, we call it Biostar Technology.

To this day we works with US Customs officials to ban and reject any devices that have our trademark logo.

[read the full article \(click here\)](#)

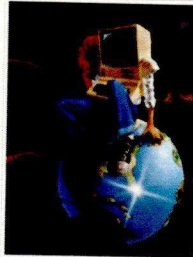
Diacom USA Trademark - since 2005



Diacom USA Trademark - since 2005

Exhibit 2

diacom-espanol.com/noticias.html



¡Queridos amigos! Únete como de costumbre a nuestra hora libre de DIACOM-USA de apoyo - todos los domingos tenemos hora dedicada para responder a todas sus preguntas!

Regístrese aquí para asistir al evento: <https://diacom.clickmeeting.com/>

Hoy usted descubrirá más sobre por qué Plasma Generator está anticuado y descubra la tecnología más reciente! Nuestra empresa siempre por delante de todos los demás!

¡Esperamos verlos como parte de nuestro exitoso equipo mundial!



Autor

Ulysses Anguo, CNHP es un Profesional de Salud Natural Certificado - y Presidente de Diacom-USA un dba de Biostar Organix Healthcare Association. Ulysses ha estado trabajando con la tecnología desde 1996 y ha viajado por todo el mundo conociendo gente que trabaja con toda la tecnología NLS y escribe sobre su experiencia. Si usted posee Tecnología de Salud y le gustaría ser entrevistado en nuestro Blog de Noticias, por favor contáctenos.

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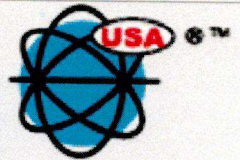
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Exhibit 3

DIACOM



www.diacom-usa.com

Hello & как дела

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

UK

At this time we would like you to let you know about the New NLS Technology. Designed and Developed in the USA, this new