

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KAZ USA, Inc.
Plaintiff,

v.

Exergen Corporation,
Defendant.

Civil Action No. IPR2016-01437

DECLARATION OF KATIE ZIMMERMAN

I, Katie Zimmerman, state and declare as follows:

1. I am a Scholarly Communications and Licensing Librarian at the Massachusetts Institute of Technology (“MIT”) Libraries, 77 Massachusetts Avenue, Building 14E-210, Cambridge, Massachusetts 02139.
2. I am over 18 years of age and am competent to make this Declaration. I make this Declaration based on my own personal knowledge, based on my knowledge and review of the business records and practices of the MIT Libraries, based on conversations with other library staff, and based on the notes and records of Marilyn McSweeney who prepared Declarations until her retirement in 2016.
3. I have been employed at MIT since 2016.
4. Through the actions described in paragraph 2, I have become knowledgeable about the MIT Libraries’ normal business practices with respect to how MIT receives, catalogs, indexes, shelves, and makes available to the public books and periodicals.
5. Attached as Exhibit A to this Declaration is a true and accurate copy of the catalog record from the MIT Libraries’ online catalog system (known as the

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KAZ USA, INC. EXHIBIT 1027

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Barton Catalog) for the book titled “Human Body Temperature: Its Measurement and Regulation” written by Y. Houdas and E.F.J. Ring, and published by Plenum Press (the “Houdas Book”). This is a record that MIT maintains in the ordinary course of its regular activities.

6. Attached as Exhibit B to this Declaration is a true and accurate copy of the catalog record in MARC tags format from the Barton Catalog for the Houdas Book. This is a record that MIT maintains in the ordinary course of its regular activities.
7. Attached as Exhibit C to this Declaration is a true and accurate copy of the title page, copyright page, preface and first page of the table of contents of the Houdas Book. The Houdas Book is available in its entirety from the MIT Libraries. The Houdas Book is a record that MIT maintains in the ordinary course of its regular activities.
8. The Houdas Book has an OCLC cataloging date of May 14, 1982 (shown as 820514 in the MARC tag field 008 of Exhibit B), indicating it was first entered into OCLC, the national bibliographic utility in which MIT does its cataloging, on May 14, 1982.
9. The Houdas Book has an MIT Libraries date stamp of “OCT 5 1983,” indicating that the MIT Libraries received this book on October 5, 1983.
10. The Houdas Book has an MIT cataloging date of February 2, 1984 (shown as 840202 in the first MARC tag field 910 of Exhibit B), indicating it was entered into the MIT cataloging system on February 2, 1984.

11. After the cataloguing date, a book undergoes a process of being labeled and moved to a shelf of the MIT Libraries. This process typically takes one to two weeks. According to MIT's normal business practice, the Houdas Book would have been displayed on a shelf of the MIT Libraries no later than February 16, 1984.
12. Once a book is on a shelf of the MIT Libraries it is available to be viewed within the MIT Libraries by any member of the public or requested via Interlibrary Loan.
13. In 1984, MIT provided access to its collection through a card catalog (the "MIT Libraries' Card Catalog"). Approximately one week after a publication was entered into the MIT cataloging system, a set of printed cards for the catalog were received by the MIT Libraries. At that time, these catalog cards were placed in the MIT Libraries' Card Catalog approximately three to twelve months after they were received.
14. Based on the practices in place at the time, the Houdas Book would have appeared in the MIT Libraries' Card Catalog anywhere from May 9, 1984 – February 9, 1985.
15. Prior to the installation of the Barton Catalog (MIT Libraries' online catalog) in 1987, access to the MIT Libraries' Card Catalog was available to the public, but limited to those who were on the MIT campus or otherwise had access to the OCLC database.
16. Beginning in June 1987 and ending in June 1995, the Barton Catalog allowed keyword searching only for words in the book title.

17. Beginning in June 1995 and ending in July 2001, the Barton Catalog allowed keyword searching only for words in the book title and subject headings.

18. From July 2001 to the present, the Barton Catalog has allowed keyword searching for all fields in the Barton Catalog record.

19. In 2014 the electronic book (“e-book”) version of the Houdas Book was purchased as part of the Springer E-book Archive. A full catalog record for the Houdas e-book was loaded into the Barton Catalog on August 15, 2014 (shown as 140815 in the second MARC tag field 910 of Exhibit B). The Houdas e-book would have appeared in a relevant Barton Catalog search conducted one to three business days after August 15, 2014.

20. To the best of my knowledge and that of current MIT employees, unless stated otherwise, the above statements are descriptions of normal business practices at the MIT Libraries from at least 1983 through the present.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 8, 2017 at Cambridge, Massachusetts.


Katie Zimmerman

EXHIBIT A

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