

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

IN THE MATTER OF APPLICATIONS

Mark: DROP GYRO
Applicant: Gyrodata, Inc.
Serial No.: 76/131,014
Filing Date: September 13, 2000
Published: September 9, 2003

Mark: DROP GYRO
Applicant: Gyrodata, Inc.
Serial No.: 76/481,141
Filing Date: January 9, 2003
Published: January 27, 2004

SCIENTIFIC DRILLING
INTERNATIONAL, INC.,

Opposer,

v.

GYRODATA, INC.,

Applicant.

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APPLICANT’S RESPONSE TO MOTION FOR SUMMARY JUDGMENT

I. Introduction

Applicant, Gyrodata, Inc. (“Gyrodata”) files its response to Opposer, Scientific Drilling International, Inc.’s (“Scientific Drilling”) motion for summary judgment and asks the Trademark Trial and Appeal Board (“TTAB”) to deny such motion on the grounds that (1) the Trademark Examining Attorneys properly passed the above-referenced applications to publication, or, alternatively, (2) that genuine issues of material fact exist precluding the grant of summary judgment.

The old adage, “copying is the most sincere form of flattery” comes to mind when considering the present opposition filed by Scientific Drilling. Regarding the technology involved with the DROP GYRO mark, Applicant, Gyrodata, and Opposer, Scientific Drilling, are competitors in what essentially is a two competitor market. Gyrodata was

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the market leader in developing and introducing into the marketplace the technology that serves as the basis for the services provided under the mark, and Gyrodata was by a long shot the first to use the mark in the marketplace with this technology. Gyrodata introduced its patented DROP GYRO technology in 1997, developed a market for the services that embrace the technology, and enjoyed recognition of the DROP GYRO services as being an exclusive offering of Gyrodata. These marketing efforts have continued from the introduction of the DROP GYRO services in 1997 to the present. Years after Gyrodata introduced its successful DROP GYRO services, Gyrodata's principle rival, Scientific Drilling, introduced a copycat service using the "DROP GYRO" designation to trade on the good will earned by Gyrodata. Scientific Drilling has admitted in federal court pleadings (where it was accused of infringement of the DROP GYRO mark) that "[Scientific Drilling] has in the past used the phrase 'Drop Gyro' to describe some of its services." *See* Paragraph 8 of "Scientific Drilling International, Inc.'s and Applied Technologies Associates, Inc.'s Answer to Gyrodata Corporation's Supplemental Counterclaims" filed on January 17, 2002, attached hereto as Ex. A. Scientific Data's website also indicates that it calls this competing tool/service the "DROP KEEPER GYRO" and "ALL ATTITUDE DROP KEEPER" ("AdK"). *See* true and correct copies of marketing information printed from the website of Scientific Drilling, attached hereto as Ex. B. *See also* DROP GYRO Application Serial No. 76/131,014 File Wrapper, a true and correct copy of which is attached as Ex. C; Supplemental Declaration of Jeffrey Leonard Dated July 23, 2004 ("Leonard Supp. Declaration"), attached as Ex. D; and DROP GYRO Application Serial No. 76/481,141 File Wrapper, a true and correct copy of which is attached as Ex. E.

As such, the present opposition has nothing to do with the registrability of the DROP GYRO mark, inasmuch as two different Examining Attorneys already have examined and passed these two DROP GYRO applications on to publication; but instead, this opposition is a malicious, anticompetitive attempt by Scientific Drilling to usurp Gyrodata's successful trademark rights, divert market share away from Gyrodata and unfairly compete by attempting to steal the DROP GYRO trademark and its associated good will under the guise of "trademark opposition". It is also an attempt by Scientific Drilling to unjustly delay the registration of the DROP GYRO trademark applications. The only "harm" that Scientific Drilling really appears to be complaining about here is the fact that their competitor Gyrodata beat it to the marketplace with a successful service.

II. Background of the DROP GYRO Applications

A. New Counsel of Record

Subsequent to the filing of Scientific Drilling's present motion, Gyrodata appointed the undersigned counsel to act on its behalf and handle the prosecution of the two applications and this pending opposition. As such, and to the extent necessary or as may be requested by the TTAB, new counsel for Gyrodata desires the opportunity to further comment regarding the record made by his predecessor.

B. The '014 Application

One of the two trademark applications the subject of this consolidated opposition is Serial No. 76/131,014 ("the '014 Application"). Gyrodata filed the '014 DROP GYRO Application with the United States Patent and Trademark Office ("PTO") on September 13, 2000, for "controlled directional drilling of oil wells". Gyrodata recited use of the

DROP GYRO mark in commerce on or in connection with the recited services at least as early as September 1997, and provided acceptable specimens of use. The examination of the '014 Application resulted in its being published for opposition on September 9, 2003, for "controlled directional drilling of oil wells". See '014 Application File Wrapper, Ex. C.

Looking now at the prosecution history, on March 1, 2001, the PTO issued its first office action in the '014 Application, refusing registration on the grounds that the proposed mark "merely describes the services". See Ex. C. The Examining Attorney relied on the definition of the word "drop" as being "to fall from a higher to a lower place or position". Additionally, the PTO examining attorney requested that additional information be provided about the services to determine whether "all or part of the mark is merely descriptive as applied to the services". See Ex. C. (*citing* Trademark Rule 2.61(b): "The examiner may require the applicant to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application.")

On Oct. 24, 2001, Gyrodata (after revival of the unintentionally abandoned application) filed its response to the first office action arguing that the DROP GYRO mark was not descriptive, but instead, "is actually only suggestive of the process used to insert a tool incorporating a gyroscope into an oil or gas well and then direct the tool down the hole to a desired depth or location in the well bore. ... The tool is not merely dropped into the well bore and allowed to fall. Thus, the mark 'DROP GYRO' is suggestive of the method used to determine a profile in a well bore." See Ex. C.

Additionally, as requested by the Examining Attorney, Gyrodata submitted a detailed explanation of the method used to log a well using a tool incorporating a

gyroscope. For example, in the Gyrodata brochure of record entitled: “RGS-DP™: Rate Gyroscopic Surveyor-Drop Gyro System” the DROP GYRO system is described as follows:

Innovation:

The battery powered rate gyroscopic surveyor (RGS-BT) is a major advancement in operational versatility, and it offers significant cost-savings by eliminating electric wireline.

With the introduction of RGS-BT in 1994, a rate-gyro survey for the first time could be run inside drillpipe while tripping out of the hole, just like a magnetic tool.

However, due to its sensitivity to shock, the tool could not be dropped like a magnetic tool. It had to be lowered on slick line and released. This involved extra time and expense to rig and run the line, and the pipe could not be rotated with the line in the hole.

Drop Gyro System:

Now, utilizing a proprietary new run configuration to control the speed of descent and provide a low-shock landing, the drop battery system (RGS-DP) can be pumped down to bottom in drillpipe without the use of slick or braided line.

See Ex. C (Emphasis Added).

As evidenced from this submission, the emphasis placed on operation of the tool used during the DROP GYRO services was on a controlled descent and landing of the tool, not literally a “dropping”. Thus, the mark DROP GYRO does not mean “dropping a gyro”, but rather is suggestive of the movement of a downhole tool for use in the controlled directional drilling of oil wells.

On July 8, 2002, the PTO issued a Final refusal to register under Section 2(e)(1) of the Trademark Act. The Trademark Examining Attorney again relied on the definition of “dropping” noted in the first office action, and added “[t]he likely reaction of the

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