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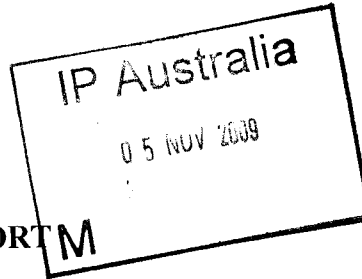
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**NOTE - EVIDENCE FORWARDED
TO EXAM SERVICES**

5 November, 2009

The Registrar of Trade Marks
WODEN ACT 2606



RESPONSE TO EXAMINER'S REPORT M

Attention: Tracy Mc Caughan

Our Ref: 30226153/FMB/sgb

Re: j2 Global Communications, Inc.
Australian Trade Mark Application No. 1176283
EFAX in classes 9, 16, 35, 38, 42

FEES
\$180

Dear Ms Mc Caughan

We refer to your first report in relation to the above application.

Firstly, in order to address the classification enquiries raised in your report, we are instructed to request an amendment of the specification of goods and services as follows:

Class 9: "Electronic apparatus and equipment for data transmission; electronic apparatus and equipment for data transmission to, from and between computers and facsimile machines; telecommunications equipment; facsimile machines and equipment; computer software for use in data transmission; computer software for use in facsimile, electronic communication and messaging systems; computer software for enabling computer systems to transmit and/or receive facsimile information and electronic communication; computer software for use with multi-functional products for the purpose of scanning, printing, faxing, copying and managing documents; parts and fittings for aforesaid goods."

Class 16: "Printed matter, periodical publications; instruction manuals and user manuals and literature."

Class 35: "Services relating to storage, retrieval and recording of data; advisory and consultancy services relating to all the aforesaid services."

Class 38: "Providing access to electronic communications networks and electronic databases, transfer and dissemination of information and data via computers; services relating to receipt or transmission of data;

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Canberra
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In association with:
Davies Collison Cave Solicitors
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advisory and consultancy services relating to all the aforesaid services; advisory and consultancy services relating to communication services, telecommunications services, data communication services, communication by computer terminals, electronic transmission and receipt of interactive and non-interactive data, images, facsimiles and information, software; advisory and consultancy services relating to all the aforesaid services; technical information services."

We enclose* fees in the sum of \$180 in relation to the addition of class 35.

In addition, you have raised an objection under ss. 41 (6) of the Act on the basis that the prefix "E" indicates "electronic" and that the prefix coupled with the word "FAX" has a direct reference to the goods and services which the applicant is providing. On this basis, you have requested that evidence of use be provided in support of the application.

We now attach a Declaration made by the Vice President and General Counsel of the applicant company dated 28 October 2009 together with the Exhibits thereto.

We ask the Examiner to note that the evidence shows use of the EFAX mark by or on behalf of the applicant for more than 20 years in 46 countries throughout the world, including Australia (where use commenced in about 1997).

The applicant is the market leader in relation to the provision of its services under the EFAX mark. In that regard, we refer to the independent Davidson Report dated July 2009 which is exhibited as Confidential Exhibit "O". The Executive Summary to the report states as follows:

"The individual Internet Fax services segment is dominated by j2 Global and will continue to be".

The applicant provides its services under the EFAX mark by means of the websites www.j2global.com, www.efax.com and www.efax.com/s/r/au.

The applicant also uses related marks being EFAX CORPORATE, EFAX PLUS, EFAX FREE, EFAX MESSENGER, EFAX BROADCAST, EFAX PRO and EFAX DEVELOPER.

Australian visitors to the www.efax.com website are directed to a specific Australian landing page. In addition, Australian customers who visit the applicant's website can change the location specifically to Australia, which allows them to choose an Internet fax number with an Australian area code.

In the period 2005 until 2007 approximately 800,000 Australian visitors visited the website www.efax.com. The number of customers for services provided under the EFAX mark in Australia from 1999 until 2009 is set out in Confidential Exhibit "S".

The applicant has expended very considerable advertising expenditure in Australia in relation to services provided under the EFAX mark. Data in this regard relating to the period 2004 until 2009 is set out in Confidential Exhibit "G".

The applicant has conducted a wide range of advertising and promotion for the services provided under the EFAX mark including:

5 November, 2009

- Online by means of very high profile media sources
- Internet advertisements in global business websites
- Direct mail outs
- Print advertisements in newspapers and business magazines
- Participation in International Trade Shows
- Product integration
- Promotion in third party news articles
- Promotion by marketing affiliates, including more than 25 Australian affiliates which post banner advertisements on their websites.

The applicant collects and posts customer testimonials on the website www.efax.com.

Revenue figure worldwide and in Australia for services provided by the applicant under the EFAX mark from 2006 until 2009 are set out in Confidential Exhibit "N".

Services provided by reference to the EFAX mark have received several industry awards as detailed in Paragraph 22 of the Declaration.

It can be seen from Paragraph 23 of the Declaration and Exhibit "P" that the applicant has obtained several trade mark registrations for EFAX (and derivative marks) throughout the world. Such registrations support the applicant's commitment to the EFAX mark on a worldwide basis.

On the basis of the foregoing, we submit that there is ample evidence upon which the Examiner may accept that because of the very considerable extent to which the applicant has used and promoted the mark before the filing date, the EFAX mark distinguishes the designated goods and services as being those of the applicant. Thus, the trade mark is capable of distinguishing the designated goods or services from the goods or services of other persons in compliance with ss. 41 (6) of the Act.

Accordingly, we look forward to favourable reconsideration of the application.

Yours Sincerely,
DAVIES COLLISON CAVE



Fiona Brittain
Associate
fbrittain@davies.com.au

Enc* Statutory declaration

COMMONWEALTH OF AUSTRALIA

Trade Marks Act 1995

IN THE MATTER of Application No.
1176283 EFAX in the name of j2
Global Communications, Inc.

STATUTORY DECLARATION

I, JEFF ADELMAN, of j2 Global Communications, Inc., 6922 Hollywood Boulevard, 5th Floor, Hollywood, California 90028, United States does solemnly and sincerely state as follows:

1. I am the Vice President and General Counsel of j2 Global Communications, Inc. 6922 Hollywood Blvd., 5th floor, Hollywood, CA 90028, USA (hereinafter referred to as the "Applicant"). I have held these positions with Applicant since 2000. I have full access to the records and files of Applicant and I have personal knowledge of the facts contained herein and could and would testify competently about these facts if called upon to do so.

2. The following statements are made either on the basis of my own personal knowledge or as a result of enquiries which I have made of other officers. The Applicant regards the information which is disclosed in this Statutory Declaration to be *strictly confidential*, particularly insofar as it relates to:
 - (a) sales/revenue figures as set forth in Paragraph 20 and Exhibit N;
 - (b) advertising expenditures as set forth in Paragraph 13 and Exhibit G;
 - (c) the number of visitors to the Applicant's websites as set forth in Paragraphs 9 and 21 and Exhibit E;
 - (d) the number of the Applicant's customers as set forth in Paragraph 10 and Exhibit F;
 - (e) the Applicant's customers as set forth in Paragraph 11;
 - (f) the Applicant's advertising media sources and properties as set forth in Paragraph 14; and
 - (g) excerpts from certain reports as set forth in Paragraph 21 and Exhibit O;

as relating to the business affairs of the company within the meaning of section 43 of the Freedom of Information Act 1982 (Cth).

3. I am aware that Applicant applied for registration of its trademark eFax and the details of the application are as follows:

Number: 1176283
Classes: 9, 16, 38, 42
Date: 15 May 2007

Goods/Services:

Class 9: Electronic apparatus and equipment for data transmission; electronic apparatus and equipment for data transmission to, from and between computers and facsimile machines; telecommunications equipment; facsimile machines and equipment; computer software for use in data transmission; computer software for use in facsimile, electronic communication and messaging systems; computer software for enabling computer systems to transmit and/or receive facsimile information and electronic communication; computer software for use with multi-functional products for the purpose of scanning, printing, faxing, copying and managing documents; parts and fittings for aforesaid goods.

Class 16: Printed matter, periodical publications; instruction manuals and user manuals and literature.

Class 35: Services relating to storage, retrieval and recording of data; advisory and consultancy services relating to all the aforesaid services.

Class 38: Providing access to electronic communications networks and electronic databases, transfer and dissemination of information and data via computers; services relating to receipt or transmission of data; advisory and consultancy services relating to all the aforesaid services; advisory and consultancy services relating to communication services, telecommunications services, data communication services, communication by computer terminals, electronic transmission and receipt of interactive and non-interactive data, images, facsimiles and information.

Class 42: Computer services, computer programming writing, researching development; updating and design of computer software; technical support services relating to computer

software; advisory and consultancy services relating to all the aforesaid services; technical information services.

4. Applicant provides outsourced value added messaging and communications services, including, but not limited to faxing and voice-mail solutions, document management solutions, web-initiated conference calling and unified-messaging and communication services, to individuals and businesses around the world. Applicant's network spans more than 3,300 cities in 46 countries on 5 continents, including Australia, with more than 11 million members worldwide. Applicant's eFax brand is the most used internet faxing service. Applicant and its predecessors in interest have used the mark in connection with the electronic transmission of facsimile mail and related services for more than 20 years.
5. Applicant and its subsidiaries throughout the world, deliver their services throughout Australia, the United States, the European Union and Asia. Applicant's eFax services allow customers to send and receive faxes via email, eliminating the need for a fax machine, an extra fax line and all the associated expenses including paper, ink cartridges. There is now produced and shown to me marked "**Exhibit A**" extracts from the websites www.j2global.com, www.eFax.com and www.eFax.com/s/r/au which illustrate the nature of Applicant's services.
6. Applicant also provides services under a family of eFax marks including eFax Corporate, eFax Plus, eFax Free, eFax Messenger, eFax Broadcast, eFax Pro and eFax Developer. There is now shown to me marked as "**Exhibit B**" extracts from the Applicant's websites demonstrating Applicant's use of its family of eFax marks.
7. Applicant has been providing the services under the eFax mark in Australia since at least as early as 1997, and in the United States and worldwide since as early as 1989. Australian visitors to the eFax website are directed to a specific Australian landing page [http://home.efax.com/s/r/esi_au offer](http://home.efax.com/s/r/esi_au_offer). There is now shown to me marked as "**Exhibit C**" the Australian landing page for eFax.com.

8. In addition, Applicant's customers who visit Applicant's website eFax.com can change the location specifically to Australia. They are then directed to a page specifically designated for the purchase of internet fax services in Australia through which they can choose an internet fax number with an Australian area code. Additional Australian-related pages from Applicant's website are attached as **"Exhibit D."**
9. Applicant's eFax.com website enjoys extraordinary visibility, and receives tens of millions of visitors annually. In addition, from 2005-2007, there were close to 800,000 Australian visitors to www.efax.com. There is now shown to me marked as **"Exhibit E"** and marked CONFIDENTIAL a table of showing Australian visitors to www.efax.com from 2005-2007.
10. In 2009, Applicant had more than 8 million customers for its eFax brand services, meaning more people used the eFax brand internet faxing service than any other. eFax has long had a similarly substantial customer base. Since the first date of use of the eFax mark, Applicant has had more than 16 million non-paying eFax customers and over 2,400,000 paying eFax customers. In addition, hundreds of thousands of new customers around the world, including in Australia, purchase eFax brand services each year, which is part of the measure of the success of the above described advertising efforts in promoting and marketing the eFax brand to consumers and businesses. Attached as **"Exhibit F"** and marked CONFIDENTIAL is a table evidencing the number of customers for Applicant's eFax services in Australia for the years 1999 to 2009.
11. Customers of Applicant's eFax brand service include more than 130 Fortune 500 companies, including but not limited to American Express, Alltel, Amgen, Apple, AT&T, Black & Decker, Big Lots, Boston Scientific, Bristol-Myers Squibb, Campbell Soup, CBS, Chesapeake Energy, Chiquita Brands International, Cisco Systems, Comcast, Community Health Systems, Corning, Collar General, Dover, Eastman Kodak, eBay, Ecolab, Electronic Data Systems, EMC, Exelon, Fedex, General Electric, GMAC, Goodrich, Google, H.J. Heintz, Honeywell International, IBM, ITT, Kellogg, Kohl's, Liz Claiborne, Lockheed Martin, Masco, McDonald's, MetLife, Mosaic, National City Corp.,

NCR, Northrop Grumman, Oracle, Owens Corning, PepsiCo, Pitney Bowes, Prudential Financial, Pulte Homes, Qwest, Raytheon, Rohm & Haas, Ryder System, Sara Lee, Sears Holdings, Starwood Hotels & Resorts, Sun Microsystems, Symantec, Sysco, Target, Textron, Time Warner, Trane, U.S. Bancorp, UAL, U.S. Bancorp, Verizon Communications, W.W. Grainger, Waste Management, Western Union, Whole Foods Market, Winn-Dixie Stores, Xerox, XTO Energy and Yahoo, among others.

12. Applicant has extensively and continuously advertised and promoted the eFax brand services since 1999 through a wide variety of media, reaching millions of customers around the world and in Australia. Applicant and its predecessors in interest have spent millions of dollars marketing the eFax brand of internet fax services, including marketing personnel, advertising, consulting, promotions, public relations, trade shows and business development. These amounts represent the substantial investment Applicant makes annually promoting the eFax brand, informing consumers about the eFax brand products, making consumers aware of the eFax brand, and promoting the eFax brand services as well as their quality, reliability and features associated with those branded services.

13. Attached as "**Exhibit G**" and marked CONFIDENTIAL is a table of confidential advertising expenditures of Applicant for promotion of the eFax services in Australia from 2004 through 2009.

14. Applicant promotes its eFax brand services to consumers and the marketplace across a broad range of specific international media properties accessible worldwide and in Australia, which include but are not limited to, the following media sources and properties:

Online:

AOL	HomeStore
Ask.com	HotJobs
AT&T	LA Times Online
Business.com	Law.com
CareerBuilder	MapQuest
CBS MarketWatch	Microsoft
CNN Online	Monster.com

Comcast	New York Times Online
eBay	TerraLycos
EarthLink	TMC
Excite	Tribune Media
Eudora	United Online
FindLaw	Yahoo!
Google	Zillow

Direct Mail:

American Express.

Print:

Entrepreneur Magazine

New York Times

Washington Post

Trade Shows:

Association of Legal Administrators

International Legal Technology Association

LegalTech

Product Integration:

Intuit (QuickBooks)

Sun (OpenOffice),

15. Internet advertisements and print advertisements promoting Applicant's eFax services have appeared in global business websites and publications, which are accessible worldwide and in Australia. Internet advertising of eFax brand services includes banner ads, sponsored links on search engine results, and promotions on third-party websites. Examples of Applicant's internet advertising and promotion of the eFax brand services, including advertisements directed specifically to Australian customers are attached as **"Exhibit H"**

16. Attached as **"Exhibit I"** is a collection of third party news articles demonstrating the manner in which the trademark eFax is used in Australia and around the world.

17. Attached and as **"Exhibit J"** are copies of press releases and promotional materials prepared by Applicant which promote and describe Applicant's eFax services.

18. Thousands of marketing affiliates also work with Applicant to promote and advertise the eFax brand around the world. These affiliates are managed through Commission Junction, which provides a clearing house for the provision of eFax advertisements, which are then posted by third parties to a wide variety of websites, numbering in the thousands. Applicant has over 25 Australian affiliates who promote Applicant's eFax services by signing up to post banner advertisements for eFax on their websites. An example of an advertisement displayed on an Australian affiliate's website is <http://www.ashopfor.com/theashopforteamdinner/> and is attached as "**Exhibit K.**"
19. Applicant also undertakes substantial marketing and advertising campaigns in connection with its www.efax.com home page, which has been used continually since at least 1999. Examples of the advertising and promotion that have appeared on that site, which have been accessible globally, including in Australia, are attached as "**Exhibit L.**" In addition, Applicant collects and posts consumer testimonials praising the eFax product and brand, of which several are posted on its website. Applicant also conducted a customer survey and gathered consumer testimonials regarding eFax services. Examples and a selection of customer testimonials are attached and reproduced in "**Exhibit M.**" The recognition of the eFax brand, as well as its quality and reliability, is recited by these examples of eFax customer testimonials.
20. eFax brand services have generated more than \$100 million dollars in revenue each year for the past 6 years, and tens of millions for years before that. Attached as "**Exhibit N**" and marked CONFIDENTIAL is a table showing revenues earned from the Applicant's provision of Applicant's services provided by reference to the eFax mark worldwide and in Australia from 2006-2009.
21. There is only one company that publishes an independent report purporting to provide the results of a survey of Internet fax service providers, called the Davidson Report. The most recent Davidson Report concluded that Applicant is the leading provider of Internet fax services worldwide through Internet-based signup and that Applicant's eFax brand is the leading brand, with almost 30% of the worldwide market. The 2009 Davidson Report

states to those who follow internet fax services that eFax is the leading brand of Internet fax services. Excerpts from the Davidson Report are attached as “**Exhibit O**” and marked CONFIDENTIAL. This is consistent with our understanding based upon our knowledge of the business. Though this is the reported conclusion of the Davidson Report, Applicant does not vouch for with the methodology, judgments or data contained in the report. In addition, according to publicly available information from www.compete.com, from January through August 2009, eFax.com attracted approximately 3,745,000 unique visitors, while its closest competitor attracted only approximately 1,300,000 unique visitors. This is also consistent with our understanding that eFax is the leading brand of Internet fax services through Internet-based signup.

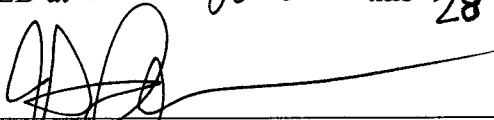
22. The eFax brand of service has also received awards from several leading publications. For example, Applicants received each of the following awards in connection with its eFax brand service and website: PC Magazine Editors' Choice; PC Magazine Top 100 Web Sites; PC World Online Editor's Pick; and PC Computing MVP Finalist.

23. Applicant also owns registrations for the eFax mark in the United States (Supplemental Register), Germany, South Africa, China and Korea, as well as numerous trademark registrations for marks containing eFax. There is now produced and shown to me marked “**Exhibit P**” copies of certificates of registrations for eFax and the eFax family of marks. In addition, Applicant submitted evidence of acquired distinctiveness of its eFax mark to the United States Patent and Trademark Office (“USPTO”), the USPTO found that Applicant established a *prima facie* case of acquired distinctiveness and published the mark for opposition. There is now produced and shown to me marked as “**Exhibit Q**” evidence submitted by Applicant to the USPTO and the Notice of Publication issued by the USPTO dated May 11, 2005.

I understand that a person who intentionally makes a false statement in a Statutory Declaration is guilty of an offence under Section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this Declaration are true in every particular.

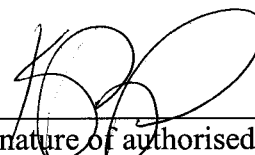
DECLARED at Los Angeles, California this 28th day of October

2009



(Signature of Declarant)

Before me:



(Signature of authorised witness)

KELLY KOPP

(Name of authorised witness (block letters))

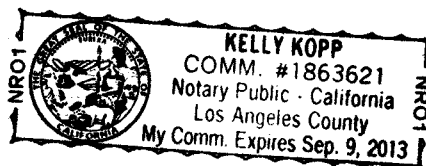
6922 Hollywood Blvd.
Suite 500
Hollywood, CA 90028

(Address of authorised witness)

Notary Public

(Capacity in which authorised witness takes the statutory declaration)

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Trade Marks Act 1995

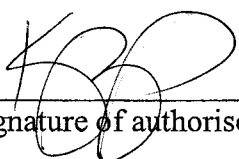
IN THE MATTER of Application No.
1176283 EFAQ in the name of j2
Global communications, Inc.

EXHIBIT "A"

This is the exhibit marked "A" to the
Statutory Declaration of:

JEFF ADELMAN, sworn before me at:

Hollywood, Ca
on October 28, 2009



Signature of authorised witness

KELLY KOPP

Name of authorised witness
(block letters)

6922 Hollywood Blvd.
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Hollywood, CA 90028

Address of authorised witness

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