

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTINE VARAD,)	
)	
Plaintiff,)	
)	C.A. No. 06 CA 11370 MLW
v.)	
)	
REED ELSEVIER INCORPORATED,)	
d/b/a/ Lexis Nexis Corporation,)	
Lexis Nexis Accurint,)	
)	
Defendant.)	

REPLY TO PLAINTIFF’S OPPOSITION TO MOTION FOR SUBSTITUTION OF SEISINT, INC. FOR DEFENDANT REED ELSEVIER INC. AND TO DISMISS THE COMPLAINT AGAINST REED ELSEVIER INC.

Defendant Reed Elsevier Inc. (“Reed”) submits this short reply to address certain points raised in plaintiff Christine Varad’s opposition to Reed’s Motion for Substitution (“Opposition”). The central focus of plaintiff’s complaint is allegedly incorrect information in an Accurint database. Plaintiff’s Opposition fails to refute the controlling facts that (1) neither Accurint nor Lexis Nexis Accurint is a juridical entity—rather, Accurint is a product owned by Seisint, Inc. (Affidavit of John M. Byrne, ¶ 3) and a registered trademark owned by Seisint, Inc. (see United States Patent and Trademark Registration No. 2941345, attached hereto as Exhibit A); (2) Seisint, Inc. is a corporation separate and apart from Reed (Byrne Aff., ¶ 6); and (3) Reed is merely Seisint’s corporate parent—there is no other relationship (Id., ¶ 4). On these settled facts, Seisint is the proper party defendant and Reed must be dismissed.

Fundamentally flawed is plaintiff’s contention that Seisint’s Director and Senior Corporate Counsel, John Byrne, made “party admissions” on behalf of Reed in his June

20, 2006 letter. Mr. Byrne's letter was written on behalf of **Seisint**, not Reed, as confirmed by his sworn testimony. (Byrne Aff., ¶7). Reed Elsevier Inc. appears nowhere in Mr. Byrne's letter. Rather, the letter repeatedly references only Accurint—the product and trademark owned by Seisint.¹ Plainly, Mr. Byrne was writing on behalf of Seisint.

In any case, Mr. Byrne had no obligation to explain in his June 20, 2006 letter that Seisint owns the Accurint database and trademark. His silence on that point is not an admission that Reed is liable for the allegedly incorrect information in the Accurint database which is the subject of plaintiff's complaint. There is nothing in the statutory language of M.G.L. c. 93A or the case law which supports plaintiff's citation-free assertion that Mr. Byrne was obliged to address Seisint's ownership role of Accurint in response to plaintiff's demand letter which focused on the Accurint database. See generally M.G.L. c. 93A § 9.

Finally, the fact that plaintiff mis-addressed her June 3, 2006 to “Lexis Nexis Accurint” does not change the fact that there is no juridical entity known as “Lexis Nexis Accurint.” As explained under oath by Mr. Byrne, “Accurint is a database product owned by Seisint” and “Seisint is a separate legal entity from Reed Elsevier Inc. [and] its unincorporated division LexisNexis.” (Byrne Aff., ¶¶ 3, 6).

¹ The fact that the letter appears on LexisNexis letterhead does not change the fact that Accurint is owned by Seisint, a corporation separate and distinct from Reed. The letter was mailed from Seisint's office in Boca Raton, Florida. Byrne Aff., ¶ 7.

CONCLUSION

WHEREFORE, Reed respectfully requests that this court substitute Seisint, Inc. for defendant Reed, with such corresponding changes to the case caption and docket as necessary, and for such further relief as this court deems just and proper.

REED ELSEVIER INC. and
SEISINT, INC.
By their attorneys,

/s/ Kristin M. Cataldo
T. Christopher Donnelly (BBO #129930)
Kristin M. Cataldo (BBO #654033)
Donnelly, Conroy & Gelhaar, LLP
One Beacon Street, 33rd Floor
Boston, Massachusetts 02108
(617) 720-2880

Dated: October 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October, 2006, I caused a copy of the foregoing to be served on the following by regular mail:

Christine M. Varad
P.O. Box 582
Milton, MA 02186

/s/ Kristin M. Cataldo
Kristin M. Cataldo

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTINE VARAD,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06 CA 11370 MLW
)	
REED ELSEVIER INCORPORATED,)	
d/b/a/ Lexis Nexis Corporation,)	
Lexis Nexis Accurint,)	
)	
Defendant.)	

EXHIBIT A



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System(Tess)

TESS was last updated on Wed Oct 18 04:18:53 EDT 2006

TESS HOME NEW USER STRUCTURED FREE FORM Browse Dict SEARCH OG BOTTOM HELP Prev List CURR LIST
NEXT List FIRST Doc PREV Doc NEXT Doc LAST Doc

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

Start List At: [] OR Jump to record: [] Record 1 out of 2

TARR Status ASSIGN Status TDR TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

Accurint

Word Mark	ACCURINT
Goods and Services	IC 045. US 100 101. G & S: Providing computerized background and personal information on individuals for use by attorneys, law enforcement, debt collectors, insurance providers, investigators of fraud and institutional risk managers. FIRST USE: 20010620. FIRST USE IN COMMERCE: 20010620
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.11.08 - Rectangles comprised of letters, numerals or punctuation and letters, numerals or punctuation forming the perimeter of a rectangle or bordering the perimeter of a rectangle. 26.11.09 - Rectangles made of geometric figures, objects, humans, plants or animals 26.11.21 - Rectangles that are completely or partially shaded
Serial Number	76572396
Filing Date	January 29, 2004
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 25, 2005
Registration Number	2941345
Registration Date	April 19, 2005
Owner	(REGISTRANT) Seisint, Inc. CORPORATION FLORIDA 6601 Park of Commerce Boulevard Boca

Raton FLORIDA 33487
Attorney of Record Thomas W. Brooke
Prior Registrations 2624319
Type of Mark SERVICE MARK
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					

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)