

SECTION 45 PROCEEDINGS
TRADE-MARK: FLEXAIR
REGISTRATION NO.: 119,729

On January 4, 2000, the Registrar forwarded a Section 45 notice to the Rexroth Corporation, the registered owner of the above-referenced trade-mark registration. The name of the registrant was changed to Mannesmann Rexroth Corporation which change was recorded on the register on September 21, 2000.

The trade-mark FLEXAIR is registered for use in association with the following wares: manually operated pneumatic control valves employed in industrial machinery.

In response to the notice, the affidavit of Scott G. Brady together with exhibits has been furnished. Neither party filed a written argument. An oral hearing has not been requested in this case.

In his affidavit Mr. Brady states that he is Manager of the Mobile Marine and Oilfield Products Group of the registrant company and he has primary responsibility for the FLEXAIR trade-mark. He explains that the registrant carries on the business of manufacture and sale of fluid operated valves and controls and commencing, at least as early as 1960, and continuously since that date, the registrant has used the trade-mark FLEXAIR in association with the registered wares.

He submits that the trade-mark is displayed on a metal tag which is affixed to the wares by two screws at the time of manufacture. He states that the trade-mark is also prominently displayed in catalogs which are used to sell the wares and in maintenance manuals and drawings which at times accompany the goods. As Exhibit B, he attaches photographs showing the mark on the registered wares, pages from the registrant's catalog, and a photocopy of the actual tag used on the wares.

He states that the registrant currently distributes the majority of its sales in the Canadian market through a distributor, Basic Technologies, Inc., of Burlington, Ontario and that in the years 1998

and 1999 annual sales in Canada of all goods including the registered wares were US \$1,339,637 and US \$1,051,600 respectively. Concerning the registered wares the sales amounted to US \$16,144.33 and US \$25,054.77 respectively. As Exhibit C are copies of representative invoices to the distributor evidencing sales of the registered wares bearing the trade-mark FLEXAIR.

Having considered the evidence, I conclude that it is clear that the trade-mark was in use in Canada in association with the wares during the relevant period. Mr. Brady has described and shown the manner the trade-mark was associated with the wares at the time of sale and the invoices and sales figures confirm that transfers of the wares in the normal course of trade occurred during the relevant period.

In view of the evidence furnished, I conclude that the trade-mark registration ought to be maintained.

Registration No. 119,729 will be maintained in compliance with the provisions of Section 45(5) of the Act.

DATED AT HULL, QUEBEC, THIS 25th DAY OF APRIL 2001.

D Savard
Senior Hearing Officer
Section 45 Division