

ORS 79.4020 (1)
ORS 79.4020 (7)

XTI Xonix Technologies, Inc. v. AT&T Civ. No. 92-694-RE
Adv. Pro.No. 91-3510
In re XTI Xonix Technologies Inc. Case No. 391-36468-S07

10/5/92 J. Redden

The debtor changed its name from Tom Peterson, Inc. to XTI Xonix Technologies Inc. Defendant AT&T failed to amend its financing statement to reflect the name change within the four month period prescribed by ORS 79.4020(7). The trustee, debtor and a competing creditor argued that if the name change rendered the original financing statement seriously misleading, the filing was not effective to perfect a security interest in collateral acquired by the debtor more than four months after the name change.

Eight months after the debtor changed it's name, AT&T filed an amendment to its financing statement reflecting the name change, and referring to the original financing statement.

The district court affirmed Judge Sullivan's oral ruling that the amendment to a pre-existing financing statement constituted an adequate new financing statement under ORS 79.4020(1). The amendment provided adequate notice to other creditors, and perfected AT&T's interest in the debtor's inventory before any party could have been misled.

The case was remanded for further briefing on AT&T's interest in the collateral.

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CLERK, US DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re
XTI XONIX TECHNOLOGIES
INCORPORATED, an Oregon
corporation,

Civil No. 92-694 RE

JUDGMENT

Based on the record,

IT IS ORDERED that AT&T's interest in collateral is reversed and remanded for further briefing.

This action is dismissed.

Dated this 5th day of October, 1992.

DONALD M. CINNAMOND, CLERK
UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

by

Ingrid A. Campbell, Deputy

FILED

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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

CV-92-694-RE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re

XTI XONIX TECHNOLOGIES
INCORPORATED, an Oregon
corporation,

Debtor-in-possession.

XTI XONIX TECHNOLOGIES
INCORPORATED, an Oregon
corporation,

Debtor,

v.

AT&T COMMERCIAL FINANCE
CORPORATION, a Delaware
corporation; and FIRST
INTERSTATE BANK OF OREGON,
N.A.,

Defendants.

REDDEN, Judge:

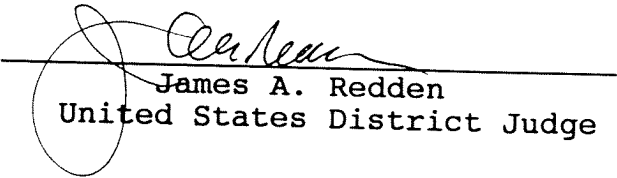
Debtor's appeal (doc. # 36) is ruled upon as follows: the
bankruptcy court's decision regarding the 20 August 1990 filing

1 - ORDER

1 is affirmed. Pursuant to the parties' representations, whether
2 debtor's name change rendered the original financing statement
3 seriously misleading need not be addressed, and the decision
4 regarding AT&T's interest in collateral is reversed and remanded
5 for further briefing.

6 IT IS SO ORDERED.

7 Dated this 2 day of October, 1992.

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11 James A. Redden
12 United States District Judge
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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

BY _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re)
XTI XONIX TECHNOLOGIES)
INCORPORATED, an Oregon) Civil No. 92-694-RE
corporation,) Bankruptcy Case No.
Debtor-in-possession.) 391-36468-S07

XTI XONIX TECHNOLOGIES)
INCORPORATED, an Oregon)
corporation,)
Debtor,)
v.)
AT&T COMMERCIAL FINANCE)
CORPORATION, a Delaware)
corporation; and FIRST)
INTERSTATE BANK OF OREGON,)
N.A.,)
Defendants.)

OPINION

Fred M. Granum
Richard Baroway
Tanya M. Gross
Garvey, Schubert & Barer
Eleventh Floor

1 - OPINION

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14 Attorneys for First Interstate Bank of Oregon, N.A.

15 REDDEN, Judge:

16 Edward C. Hostmann, bankruptcy trustee, appeals from the 13
17 November 1991 judgment of the bankruptcy court, which concluded
18 that (1) it lacked sufficient information to determine whether
19 the debtor's name change rendered defendant AT&T's original
20 financing statement seriously misleading; (2) AT&T's 20 August
21 1990 amendment to its financing statement was effective as a new
22 financing statement; and (3) AT&T had a valid security interest
23 in collateral. For the reasons that follow, this court affirms
24 the bankruptcy's ruling regarding the 20 August filing. The
25 parties agreed in oral argument that such a ruling moots the
26 first issue, and that the third issue should be reversed and
remanded for further briefing.

27 Standards

28 The bankruptcy court's conclusions of law are reviewed de
29 novo by this court. In re Mellor, 734 F.2d 1396, 1399 (9th Cir.
30 1984). The "clearly erroneous" standard of review is applied to
the bankruptcy court's findings of fact. Bankruptcy Rule 8013;

31 2 - OPINION

1 In re American Mariner Industries, Inc., 734 F.2d 426, 429 (9th
2 Cir. 1984).

3 This appeal concerns the bankruptcy court's conclusions of
4 law regarding uncontested factual findings. The de novo standard
5 of review applies.

6 Background

7 Debtor is an Oregon corporation, formerly named Tom
8 Peterson, Inc. In August 1989, debtor executed an Agreement for
9 Wholesale Financing with AT&T Credit Corporation ("AT&T"). An
10 original financing statement was filed with the Oregon Secretary
11 of State by AT&T, naming Tom Peterson, Inc. as debtor, on 21
12 August 1989.

13 Debtor also executed an Agreement for Wholesale Financing
14 with ITT Commercial Finance Corp. ("ITT") on 14 August 1989; ITT
15 filed a financing statement with the Oregon Secretary of State on
16 1 September 1989. Three months later, in December 1989, debtor
17 filed Articles of Amendment changing its name from Tom Peterson,
18 Inc., to XTI Xonix Technologies Inc. The name change was
19 effective 1 January 1990.

20 If a debtor's name change is seriously misleading, O.R.S.
21 79.4020(7) requires creditors to file amended financing
22 statements reflecting the change within four months. On 20 April
23 1990 ITT filed a form amending its 1 September 1989 financing
24 statement as to debtor's name. Then, ten months later, in
25 February 1991, ITT assigned its interest in debtors' inventory to
26 AT&T.

1 Meanwhile, AT&T failed to amend its financing statement to
2 reflect the name change within the four month period (January
3 through April 1990). On 20 August 1990, however, AT&T filed an
4 amendment to its financing statement that acknowledged changes in
5 debtor's name and address, and AT&T's name change to AT&T
6 Commercial Finance Corporation.

7 On 7 October 1991 debtor filed a voluntary petition for
8 relief under Chapter 11 of the Bankruptcy Code. Ten days later,
9 on 17 October 1991, debtor filed a complaint to avoid lien,
10 naming AT&T as defendant. A motion for expedited hearing was
11 granted, and on 21 October 1991 debtor filed (1) an amended
12 complaint to avoid lien (adding First Interstate Bank of Oregon,
13 N.A. (("FIOR"))) as co-defendant) and (2) a motion for partial
14 summary judgment against AT&T. AT&T filed a cross-motion for
15 partial summary judgment on 29 October 1991.

16 In its motion for partial summary judgment, debtor alleged
17 that AT&T's security interest in inventory and proceeds lapsed
18 when AT&T failed to file a new financing statement within four
19 months of the debtor's name change from Tom Peterson, Inc., to
20 XTI Xonix Technologies Inc. The bankruptcy court denied debtor's
21 motion for partial summary judgment and granted AT&T's cross
22 motion for partial summary judgment. The court issued oral
23 findings, determining that (1) there were insufficient facts to
24 decide whether debtor's name change rendered AT&T's original
25 financing statement "seriously misleading"; (2) AT&T's original
26 financing statement adequately protected AT&T's security interest

1 through 30 April 1990; (3) AT&T's amendment on 20 August 1990
2 qualified as a new financing statement and perfected AT&T's
3 security interest as of that date; (4) AT&T's security interest
4 may have been unperfected between 30 April and 20 August 1990,
5 but that lapse was irrelevant as between parties; and (5) AT&T
6 had a perfected security interest in the collateral assigned to
7 it by ITT.

8 Debtor and FIOR filed motions for leave to appeal and
9 notices of appeal, which were granted on 2 January 1992 and
10 consolidated by court order on 15 January 1992. The consolidated
11 appeal makes three arguments:

12 (1) Debtor's name change from Tom Peterson, Inc. to XTI Xonix
13 Technologies Inc., is so drastic that it rendered AT&T's
14 financing statement seriously misleading under O.R.S. 79.4020(7),
and the bankruptcy court should have so decided under the
uncontested facts;

15 (2) the court erred in concluding that AT&T's amendment on 20
16 August 1990 qualified as a new perfection because it failed to
17 describe the collateral, refer to the old filing or indicate
where another creditor could find a collateral description; and
finally,

18 (3) the court erred in ruling that AT&T held a valid, perfected
19 security interest in collateral assigned to it by ITT, since this
issue was not before the court.

20 During oral argument of this appeal, the parties agreed that
21 the decision regarding the third issue should be reversed, since
22 the question of whether AT&T held a valid, perfected security
23 interest in collateral assigned to it by ITT was not properly
24 before the bankruptcy court. The bankruptcy court's ruling,
25 therefore, is partially reversed, and the question of AT&T's
26 interest in collateral is remanded for further briefing.

5 - OPINION

1 Argument

2 Did the court err in concluding that AT&T's filing on 20 August
3 1990 qualified as a new perfection?

4 Trustee argues that AT&T's filing on 20 August 1990 failed
5 to correct AT&T's lapse after 30 April, because the filing failed
6 to describe the collateral, refer to the old filing, or indicate
7 where another creditor could find a collateral description. The
8 parties agree that a decision favoring AT&T on this issue moots
9 the argument concerning whether the bankruptcy court erred in
10 concluding there were insufficient facts to decide if the name
11 change rendered AT&T's security interest "seriously misleading."

12 The bankruptcy judge ruled that the filing contained the
13 names, addresses, and signatures of the debtor and the secured
14 creditor, and referred to the earlier financing statements,
15 thereby meeting the requirements of O.R.S. 79.4020(1). The judge
16 concluded that the reference to the earlier statement was
17 sufficient to provide a description of the collateral, because
18 there is no dispute that the earlier statement was effective and
19 valid. The judge also accepted AT&T's affidavit that a creditor
20 would have found AT&T's financing statements under Xonix in the
21 Secretary of State's records as of 1 September 1990, as a result
22 of AT&T's 20 August filing.

23 The statute involved, O.R.S. 79.4020(1), provides:

24 A financing statement is sufficient if it gives the
25 names of the debtor and the secured party, is signed by
26 the debtor, gives an address of the secured party from
which information concerning the security interest may
be obtained, gives a mailing address of the debtor and
contains a statement indicating the types, or
describing the items of collateral.

1 Trustee argues the 20 August 1990 filing lacked a
2 description of the collateral, and failed to specifically
3 incorporate the collateral description from AT&T's original
4 statement. Trustee contends that the bankruptcy court's decision
5 to allow the 20 August filing to protect AT&T violates the
6 U.C.C.'s purpose of establishing clarity and certainty in secured
7 transactions law. Trustee cites In re Wayne's Olive Knoll Farms,
8 Inc., 21 U.C.C. Rep Serv 1210 (Bankr. E.D. Cal. 1976), in which
9 a court rejected the argument that a continuation statement's
10 reference to an expired, void initial statement incorporated by
11 reference the information contained in the expired statement.

12 The purpose of financing statements, however, is to put
13 other creditors on notice, and the validity of a statement
14 depends on its ability to provide such notice. Matter of Reiber,
15 740 F.2d 10 (8th Cir. 1984). The 20 August filing provided such
16 notice, and adequately incorporated AT&T's still-valid original
17 statement -- the original statement's validity distinguishes
18 Olive Knoll.

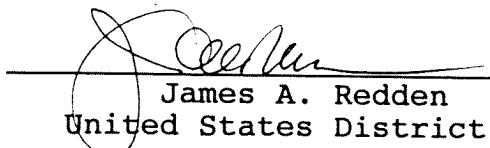
19 Trustee's concern over hypothetical situations fails to
20 establish that the U.C.C.'s purpose of certainty and clarity is
21 violated. The U.C.C. acknowledges that notice merely indicates
22 the possibility of a secured interest -- "Further inquiry from
23 the parties concerned will be necessary to disclose the complete
24 state of affairs." Official Comment No. 2 to § 9-402 of the
25 U.C.C. This court joins in the bankruptcy court reliance upon PA
26 Record Outlet, Inc. v. Mellon Bank, N.A., 894 F.2d 631 (3rd Cir.

1 1990), which held that a creditor filing an amendment after its
2 debtor changed its name perfected its interest because the
3 amendment constituted an adequate new financing statement by
4 referring to the original financing statement. Trustee's attempt
5 to distinguish this case because the amendment was filed within
6 the four month period after the name change fails. Mellon
7 establishes that an amendment to a pre-existing statement can
8 qualify even if it is necessary to incorporate by reference
9 information from that pre-existing statement.

10 This court affirms the bankruptcy court's ruling as it
11 pertains to the adequacy of AT&T's 20 August 1990 filing. That
12 filing satisfies the requirements of O.R.S. 79.4020(1). Even if
13 debtor's name change rendered AT&T's old filing seriously
14 misleading, AT&T perfected its interest in debtor's inventory
15 before any party could have been misled.

16 Debtor's appeal is ruled upon as follows: the bankruptcy
17 court's decision regarding the 20 August 1990 filing is affirmed.
18 Pursuant to the parties' representations, whether debtor's name
19 change rendered the original financing statement seriously
20 misleading need not be addressed, and the decision regarding
21 AT&T's interest in collateral is reversed and remanded for
22 further briefing.

23 Dated this 2 day of October, 1992.

24
25 
26 James A. Redden
United States District Judge