

ESTTA Tracking number: **ESTTA158045**

Filing date: **08/21/2007**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

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| Name | VUTEk Inc |
| Granted to Date of previous extension | 08/22/2007 |
| Address | One Vutek Place Meredith, NH 03253 UNITED STATES |

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| Attorney information | Alex K. Grab, Esq. 303 Velocity Way Foster City, CA 94404 UNITED STATES alex.grab@efi.com Phone:650-357-3500 |
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Applicant Information

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| Application No | 76636906 | Publication date | 04/24/2007 |
| Opposition Filing Date | 08/21/2007 | Opposition Period Ends | 08/22/2007 |
| Applicant | BioWare Corp. 4445 Calgary Trail, Suite 200 Edmonton, Alberta T6H 5R7, CANADA | | |

Goods/Services Affected by Opposition

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| Class 009. First Use: 1998/00/00 First Use In Commerce: 1998/00/00 All goods and services in the class are opposed, namely: Computer game software; prerecorded audio tapes, videotapes and video and audio discs featuring characters, voices and soundtrack from a computer game |
| Class 016. First Use: 1998/00/00 First Use In Commerce: 1998/00/00 All goods and services in the class are opposed, namely: Paper goods, namely, computer game instruction manuals, strategy guides for playing computer games |
| Class 025. First Use: 1998/00/00 First Use In Commerce: 1998/00/00 All goods and services in the class are opposed, namely: Apparel, namely, hats, tee-shirts, sweatshirts for men, women and children |
| Class 041. First Use: 1998/00/00 First Use In Commerce: 1998/00/00 All goods and services in the class are opposed, namely: Entertainment Services, namely providing information on-line relating to computer games |
| Class 042. First Use: 1998/00/00 First Use In Commerce: 1998/00/00 All goods and services in the class are opposed, namely: Providing temporary use of non-downloadable computer software for use in creating computer games |

Grounds for Opposition

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| Other | The Trademark Trial and Appeal Board Manual of Procedure (Â“TBMPÂ”) states that a partyÂ’s reasonable belief that it may be damaged as a result of the registration of a mark provide standing to file a complaint where Â“[d]efendant has asserted a likelihood of confusion in another proceeding between the parties involving the same marks.Â” TBMP Â§ 309.03(b). |
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| Related Proceedings | Opposition No. 91174133 Opposition No. 91177900 |
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| Attachments | Notice of Opposition.pdf (4 pages)(143972 bytes) |
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| Signature | /Alex K. Grab/ |
| Name | Alex K. Grab, Esq. |
| Date | 08/21/2007 |

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

In the matter of trademark application Serial No. 76636906
For the mark BIOWARE CORP.
Published in the *Official Gazette* on April 24, 2007

VUTEK INC., a Delaware corporation,

Opposer,

vs.

BIOWARE CORP., a Canadian
corporation,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

VUTEk Inc. ("VUTEk"), a Delaware corporation located at One VUTEk Place, Meredith, New Hampshire 03253, will be damaged by registration of the mark sought by Application Serial No. 76636906, and hereby opposes that application and registration. The grounds for opposition are:

1. VUTEk is a Delaware corporation located at One VUTEk Place, Meredith, New Hampshire 03253.
2. Upon information and belief, Applicant BioWare Corp. ("BioWare") is a Canadian corporation located at 4445 Calgary Trail, Suite 200, Edmonton, Alberta T6H 5R7 Canada.
3. VUTEk filed an application for the mark BIOWARE used in connection with "ink jet printer ink" in International Class 2 on March 20, 2006, Serial No. 78841029. VUTEk has been using the mark BIOWARE continuously in commerce since at least as early as April 2006.
4. Applicant filed an application on April 21, 2005 to register the stylized mark BIOWARE CORP. for use in the following categories:
 - **International Class 9:** Computer game software; prerecorded audio tapes, videotapes and video and audio discs featuring characters, voices and soundtrack from a computer game.
 - **International Class 16:** Paper goods, namely, computer game instruction manuals, strategy guides for playing computer games.
 - **International Class 25:** Apparel, namely, hats, tee-shirts, sweatshirts for men, women and children.
 - **International Class 41:** Entertainment Services, namely providing information on-line relating to computer games; and
 - **International Class 42:** Providing temporary use of non-downloadable computer software for use in creating computer games.

5. The BIOWARE CORP. mark was published for opposition on April 24, 2007. On May 24, 2007, the Board extended the time for VUTEk to oppose the mark until August 22, 2007.

6. BioWare is the owner of two additional registrations of the mark BIOWARE. One of these is for use of the BIOWARE mark in connection with "video game software and computer software used to create full multi-media electronic games to be played on a computer" in International Class 9, Reg. No. 2454474. The other is for use in connection with "computer game software; prerecorded audio tapes, videotapes and video and audio discs featuring characters, voices and soundtracks from a computer game" in International Class 9; "paper goods, namely, computer game instruction manuals, strategy guides for playing computer games in International Class 16; and "producing an online store offering merchandise related to computer games" in International Class 35, Reg. No. 3172886.

7. BioWare is opposing VUTEk's application for the mark BIOWARE in International Class 2 based on BioWare's ownership of registrations of the mark BIOWARE in International Classes 9, 16, and 41. That opposition is currently pending before the Board, Opposition No. 91174133. In that opposition, BioWare has asserted a likelihood of confusion between its BIOWARE registrations in International Classes 9, 16, and 41, and VUTEk's application for the mark BIOWARE in International Class 2.

8. If Applicant's application for the BIOWARE CORP. mark at issue here is registered, BioWare will likely argue that there is a likelihood of confusion between that mark and VUTEk's application for the BIOWARE mark in International Class 2. Any such action by Applicant could prejudice VUTEk's application for the BIOWARE mark in International Class 2.

9. Based on BioWare's actions, including its opposition to VUTEk's application, VUTEk will be damaged if the BIOWARE CORP. mark is registered. Accordingly, VUTEk opposes the registration.

10. For these reasons, Applicant's application should be rejected, and registration of the term BIOWARE CORP should be denied.

11 Submitted with this Notice is VUTEK's payment of the required filing fee.

Dated. August 21, 2007

Respectfully submitted,

By .

ALEX K. GRAB

Attorney for Opposer
VUTEK INC.