

ESTTA Tracking number: **ESTTA549079**

Filing date: **07/17/2013**

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

Name	Geomagic, Inc.
Granted to Date of previous extension	07/17/2013
Address	Suite 300, 430 Davis Drive Morrisville, NC 27560 UNITED STATES

Attorney information	Devon E. White Hutchison PLLC Suite 300 3110 Edwards Mill Road Raleigh, NC 27612 UNITED STATES tmgroup@hutchlaw.com, dwhite@hutchlaw.com
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### Applicant Information

Application No	85596097	Publication date	03/19/2013
Opposition Filing Date	07/17/2013	Opposition Period Ends	07/17/2013
Applicant	LEWIS INNOVATIVE TECHNOLOGIES, INC. 110 Johnston Street, S.E. Decatur, AL 35601 UNITED STATES		

### Goods/Services Affected by Opposition

Class 042. First Use: 2009/12/31 First Use In Commerce: 2009/12/31 All goods and services in the class are opposed, namely: Technical consulting services in the field of anti-tamper technology; and design, engineering, research, development and implementation of computer software, firmware, hardware and technology solutions in the field of anti-tamper technology
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2083626	Application Date	06/18/1996
Registration Date	07/29/1997	Foreign Priority Date	NONE
Word Mark	PHANTOM		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1993/12/19 First Use In Commerce: 1993/12/19 computer devices and systems, namely, haptic interfaces, haptic interface devices, and haptic displays, for providing haptic feedback, namely, tactile feedback and force-feedback, with respect to real or virtual objects under computer control

U.S. Registration No.	2720224	Application Date	11/13/1998
Registration Date	06/03/2003	Foreign Priority Date	NONE
Word Mark	PHANTOM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1993/12/19 First Use In Commerce: 1993/12/19 Computer devices and systems, namely, haptic interfaces, haptic interface devices, and haptic displays, for providing haptic feedback, namely, tactile feedback and force-feedback, with respect to real or virtual objects under computer control; computer software and hardware for use in accessing global computer information networks and interfacing with haptic interface devices		

U.S. Registration No.	2962623	Application Date	08/31/2003
Registration Date	06/14/2005	Foreign Priority Date	NONE
Word Mark	PHANTOM OMNI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2003/11/07 First Use In Commerce: 2003/11/07 Computer devices and systems namely, haptic interfaces, haptic interface devices, and haptic displays, for providing haptic feedback, namely, tactile feedback and force-feedback, with respect to real or virtual objects under computer control; Computer hardware and related computer software for creating three-dimensional digital content, including 3D designs, 3D models, and computer game development applications and characters on stand-alone computers, multiple computers located anywhere, and computers connected to private or public networks; Computer hardware and related computer software for interacting with three-dimensional digital content, including 3D designs, 3D models, and computer game development applications and characters on stand-alone computers, multiple computers located anywhere, and computers connected to private or public networks; Computer hardware and related computer software for use in accessing global computer information networks and interfacing with haptic interface devices; Computer hardware that provides haptic positional sensing and haptic force feedback and related computer software that enables third-party development of computer software applications; and computer hardware and related computer software for positioning and interacting with 3D digital content and digitally capturing 3D data within 3D space with or without haptic feedback		

Attachments	RGM.21056 Notice of Opposition.pdf(121230 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/DEW/
Name	Devon E. White
Date	07/17/2013

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

In the Matter of Application Serial No. 85/596,097  
Published in the Official Gazette on March 19, 2013

Geomagic, Inc.  
(a Delaware corporation),  
Opposer,

v.

Opposition No. \_\_\_\_\_

Lewis Innovative Technologies, Inc.  
(an Alabama corporation),  
Applicant.

**NOTICE OF OPPOSITION**

Geomagic, Inc., a Delaware corporation with a principal place of business at Suite 300, 430 Davis Drive, Morrisville, NC 27560 (“Geomagic” or “Opposer”), believes that it will be damaged by and thus opposes registration of the mark PHANTOM SENSOR, which is the subject of Application Serial No. 85/596,097 for use in connection with:

Technical consulting services in the field of anti-tamper technology; and design, engineering, research, development and implementation of computer software, firmware, hardware and technology solutions in the field of anti-tamper technology

in International Class 42 (“Applicant’s Services”). As provided by 15 U.S.C. §§ 1052, 1063 and all other applicable authority, and predicated upon the following grounds, Opposer alleges as follows in opposition to registration of the above-referenced mark:

1. Applicant Lewis Innovative Technologies, Inc. is an Alabama corporation with a principal place of business at 110 Johnston Street, S.E. Decatur, Alabama 35601 (“Applicant”).
2. On April 12, 2012, Applicant filed Application Serial No. 85/596,097 (the “Application”) for the mark PHANTOM SENSOR (“Applicant’s Mark”), based on Section 1(a) of the Trademark Act, 15 U.S.C. §1051(a) in connection with the International Class 42 services identified above. Applicant’s Mark was published for opposition in the March 19, 2013 edition of the Official Gazette. Opposer filed two extensions of time in which to oppose registration of Applicant’s Mark, totaling 90 days. Accordingly, the deadline to oppose is July 17, 2013.
3. Opposer is the owner of U.S. Registration No. 2,083,626 – PHANTOM (Stylized); No. 2,720,224 – PHANTOM; and No. 2,962,623 – PHANTOM OMNI, a photocopy of which are attached hereto as Exhibits A, B and C. The PHANTOM Marks are all valid, subsisting and incontestable. In addition Opposer has acquired substantial common law rights in its PHANTOM Marks and variations thereof (all registered and common law marks referred to collectively hereafter as “Opposer’s PHANTOM Marks”)
4. Opposer and its predecessor have used one or more of Opposer’s PHANTOM Marks continuously in interstate commerce since at least as early as December 19, 1993, in connection with a variety of software products and computer devices.
5. The service mark that Applicant seeks to register so resembles the Opposer’s PHANTOM Marks in appearance, sound, meaning and commercial impression that the use and registration thereof is likely to cause confusion, mistake, and

deception as to the source or origin of Applicant's Services in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's PHANTOM Marks.

6. Applicant's Services are so related to the goods and services offered under Opposer's PHANTOM Marks that the public is likely to be confused, deceived, and to assume erroneously that Applicant's Services are those of Opposer or that Applicant is in some way connected with, licensed, or sponsored by or affiliated with Opposer, all to Opposer's irreparable damage.
7. Likelihood of confusion is enhanced by the fact that Applicant's Mark is visually and phonetically identical to Opposer's PHANTOM Mark including as represented in Registration Nos. 2,083,626 and 2,720,224, but for the addition of the disclaimed term SENSOR.
8. Likelihood of confusion is also enhanced by the fact that Applicant's Mark used in connection with the Applicant's Services is likely to move through the same channels of trade as Opposer's PHANTOM Marks.
9. Opposer has not authorized Applicant to use or register Applicant's Mark, nor does Opposer exercise any control over Applicant's continued use of Applicant's Mark. Applicant's unauthorized continued use of Applicant's Mark is likely to cause confusion, mistake or deception as to the source, origin, affiliation, sponsorship or approval of the services Applicant continues to offer under Applicant's Mark. In addition, such use is likely to cause confusion, mistake or

deception as to the source, origin, affiliation, sponsorship or approval of Opposer's goods.

10. Opposer has invested considerable sums and efforts to promote Opposer's PHANTOM Marks, and its associated goods and services. Opposer has built up a high level of recognition, distinctiveness and valuable goodwill in Opposer's PHANTOM Marks.
11. Registration of Applicant's Mark by Applicant will reduce the value of the goodwill associated with Opposer's PHANTOM Marks.
12. If Applicant were granted registration of Applicant's Mark, it would obtain a *prima facie* exclusive right to use such mark in connection with the services identified in its application, contributing to the damage and injury that would be suffered by Opposer.
13. For these reasons, Opposer expressly alleges and asserts that registration of Applicant's Mark for the recited services would be inconsistent with the standards for registration set forth in 15 U.S.C. §§ 1052, 1063 and other applicable authority.

**WHEREFORE**, Opposer respectfully requests that this Opposition be sustained and that registration of Applicant's Mark be refused.





## Exhibit A

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,083,626

**United States Patent and Trademark Office**

Registered July 29, 1997

**TRADEMARK  
PRINCIPAL REGISTER**

**PHANTOM**

SENSABLE TECHNOLOGIES, INC. (DELA-  
WARE CORPORATION)  
26 LANDSDOWNE STREET  
SUITE 125 UNIVERSITY PARK AT MIT  
CAMBRIDGE, MA 02139

FOR: COMPUTER DEVICES AND SYSTEMS,  
NAMELY, HAPTIC INTERFACES, HAPTIC  
INTERFACE DEVICES, AND HAPTIC DIS-  
PLAYS, FOR PROVIDING HAPTIC FEED-  
BACK, NAMELY, TACTILE FEEDBACK AND

FORCE-FEEDBACK, WITH RESPECT TO  
REAL OR VIRTUAL OBJECTS UNDER COM-  
PUTER CONTROL, IN CLASS 9 (U.S. CLS. 21,  
23, 26, 36 AND 38).

FIRST USE 12-19-1993; IN COMMERCE  
12-19-1993.

SER. NO. 75-120,745, FILED 6-18-1996.

WANDA KAY PRICE, EXAMINING ATTOR-  
NEY

Exhibit B

**Int. Cl.: 9**

**Prior U.S. Cls.: 21, 23, 26, 36 and 38**

**Reg. No. 2,720,224**

**United States Patent and Trademark Office**

**Registered June 3, 2003**

**TRADEMARK  
PRINCIPAL REGISTER**

**PHANTOM**

SENSABLE TECHNOLOGIES, INC. (DELAWARE  
CORPORATION)  
215 FIRST STREET  
CAMBRIDGE, MA 02142

GLOBAL COMPUTER INFORMATION NET-  
WORKS AND INTERFACING WITH HAPTIC IN-  
TERFACE DEVICES, IN CLASS 9 (U.S. CLS. 21, 23, 26,  
36 AND 38).

FOR: COMPUTER DEVICES AND SYSTEMS,  
NAMELY, HAPTIC INTERFACES, HAPTIC INTER-  
FACE DEVICES, AND HAPTIC DISPLAYS, FOR  
PROVIDING HAPTIC FEEDBACK, NAMELY, TAC-  
TILE FEEDBACK AND FORCE-FEEDBACK, WITH  
RESPECT TO REAL OR VIRTUAL OBJECTS UN-  
DER COMPUTER CONTROL; COMPUTER SOFT-  
WARE AND HARDWARE FOR USE IN ACCESSING

FIRST USE 12-19-1993; IN COMMERCE 12-19-1993.

OWNER OF U.S. REG. NO. 2,083,626.

SER. NO. 75-588,219, FILED 11-13-1998.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

## Exhibit C

**Int. Cl.: 9**

**Prior U.S. Cls.: 21, 23, 26, 36, and 38**

**Reg. No. 2,962,623**

**United States Patent and Trademark Office**

**Registered June 14, 2005**

**TRADEMARK  
PRINCIPAL REGISTER**

**PHANTOM OMNI**

SENSABLE TECHNOLOGIES, INC. (DELAWARE CORPORATION)  
15 CONSTITUTION WAY  
WOBURN, MA 01801

FOR: COMPUTER DEVICES AND SYSTEMS NAMELY, HAPTIC INTERFACES, HAPTIC INTERFACE DEVICES, AND HAPTIC DISPLAYS, FOR PROVIDING HAPTIC FEEDBACK, NAMELY, TACTILE FEEDBACK AND FORCE-FEEDBACK, WITH RESPECT TO REAL OR VIRTUAL OBJECTS UNDER COMPUTER CONTROL; COMPUTER HARDWARE AND RELATED COMPUTER SOFTWARE FOR CREATING THREE-DIMENSIONAL DIGITAL CONTENT, INCLUDING 3D DESIGNS, 3D MODELS, AND COMPUTER GAME DEVELOPMENT APPLICATIONS AND CHARACTERS ON STAND-ALONE COMPUTERS, MULTIPLE COMPUTERS LOCATED ANYWHERE, AND COMPUTERS CONNECTED TO PRIVATE OR PUBLIC NETWORKS; COMPUTER HARDWARE AND RELATED COMPUTER SOFTWARE FOR INTERACTING WITH THREE-DIMENSIONAL DIGITAL CONTENT, INCLUDING 3D DESIGNS, 3D MODELS, AND COMPUTER GAME DEVELOPMENT APPLICATIONS AND CHARACTERS ON STAND-ALONE COMPUTERS, MULTIPLE COMPUTERS LOCATED ANYWHERE, AND COMPUTERS CONNECTED TO

PRIVATE OR PUBLIC NETWORKS; COMPUTER HARDWARE AND RELATED COMPUTER SOFTWARE FOR USE IN ACCESSING GLOBAL COMPUTER INFORMATION NETWORKS AND INTERFACING WITH HAPTIC INTERFACE DEVICES; COMPUTER HARDWARE THAT PROVIDES HAPTIC POSITIONAL SENSING AND HAPTIC FORCE FEEDBACK AND RELATED COMPUTER SOFTWARE THAT ENABLES THIRD-PARTY DEVELOPMENT OF COMPUTER SOFTWARE APPLICATIONS; AND COMPUTER HARDWARE AND RELATED COMPUTER SOFTWARE FOR POSITIONING AND INTERACTING WITH 3D DIGITAL CONTENT AND DIGITALLY CAPTURING 3D DATA WITHIN 3D SPACE WITH OR WITHOUT HAPTIC FEEDBACK, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 11-7-2003; IN COMMERCE 11-7-2003.

OWNER OF U.S. REG. NOS. 2,083,626 AND 2,720,224.

SN 78-294,471, FILED 8-31-2003.

MICHELE SWAIN, EXAMINING ATTORNEY