

ESTTA Tracking number: **ESTTA709286**

Filing date: **11/18/2015**

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	ARTEC Computer GmbH
Granted to Date of previous extension	11/18/2015
Address	Robert-Bosch-Strasse 38 Karben, 61184 GERMANY

Attorney information	Andrew S. Curfman Emerson Thomson Bennett, LLC 1914 Akron-Peninsula Rd Akron, OH 44313 UNITED STATES iplaw@etblaw.com, asc@etblaw.com Phone:330-434-9999
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Applicant Information

Application No	77962530	Publication date	07/21/2015
Opposition Filing Date	11/18/2015	Opposition Period Ends	11/18/2015
Applicant	NextIO, Inc. 8303 North MoPac Expressway, Suite A-210 Austin, TX 78759 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer hardware, namely, solid-state drive (SSD) computer memory and storage devices; computer storage devices, namely, RAM-based systems and flash memory-based systems; SSD for computer operating system (OS) installation and data storage, transfer and backup; solid state storage, namely, a nonvolatile storage medium that employs integrated circuits
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Abandonment: Applicant no longer has a bona fide intention to use mark under 15 USC 1051(b).

Marks Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Design Mark	
Goods/Services	<p>Class 009 - First use in commerce: March 16, 2005 Computer application software for computer servers, namely, software for use in database management; computer database management software for use in searching, archiving, indexing and recovering electronic data; computer programs for use in database management and in electronic storage of data; computer hardware and computer software for document management, sold as a unit; computer hardware and computer software for database management, sold as a unit; computer search engine software for locally and globally searching electronic data in one or more databases at the same time. Class 042 - First use in commerce: March 16, 2005 Design and development of computer software for database management; computer services, namely, providing search engines for obtaining data on a local or global computer network; providing customized computer searching services, namely, searching and retrieving information at the customer's specific request through web browsers, internet, intranet or hosting services.</p>

U.S. Application No.	79017234	Application Date	04/07/2005
Registration Date	NONE	Foreign Priority Date	12/15/2004
Word Mark	VSTOR		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 0 First Use In Commerce: 0 Devices for data recording, devices for data processing and EDP-devices Class 042. First use: First Use: 0 First Use In Commerce: 0 Conception and development of computer ware and -software, as well as media for data saving and network management

U.S. Application No.	85493278	Application Date	12/12/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	VSTOR
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 009. First use: First Use: 0 First Use In Commerce: 0 Computer application software for computer servers, namely, software for use in database management; computer database management software for use in searching, archiving, indexing and recovering electronic data; computer programs for use in database management and in electronic storage of data; computer hardware and computer software for document management, sold as a unit; computer hardware and computer software for database management, sold as a unit; computer search engine software for locally and globally searching electronic data in one or more databases at the same time Class 042. First use: First Use: 0 First Use In Commerce: 0 Design and development of computer software for database management; computer services, namely, providing search engines for obtaining data on a local or global computer network; providing customized computer searching services, namely, searching and retrieving information at the customer's specific request through web browsers, internet, intranet or hosting services
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Attachments	VSTOR Stylized.jpg 79017234#TMSN.png(bytes) 85493278#TMSN.png(bytes) 41392_50004_Notice_of_Opposition.pdf(136146 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	/andrew s. curfman/
Name	Andrew S. Curfman
Date	11/18/2015

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

ARTEC Computer GmbH, Opposer, v. NextIO, Inc., Applicant	Opposition No. _____ Serial No. 77/962,530 Mark: VSTOR
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NOTICE OF OPPOSITION

1. Opposer ARTEC Computer GmbH, (“Opposer”) is a German Limited Liability Company with a principal place of business located at Robert-Bosch-Strasse 38, 61184, Karben, Germany.
2. On information and belief, applicant NextIO, Inc., (“Applicant”) is a Delaware Corporation with a principal place of business located at 8303 North MoPac Expressway, Suite A-210, Austin, Texas 78759.
3. On information and belief, Applicant is the current owner of U.S. Trademark Application Serial No. 77/962,530 (“Application”) for the following word mark (“Applicant’s Mark”): “VSTOR”
4. Applicant filed the Application on March 18, 2010, to register Applicant’s Mark, on an intent-to-use basis, in association with: “Computer hardware, namely, solid-state drive (SSD) computer memory and storage devices; computer storage devices, namely, RAM-based systems and flash memory-based systems; SSD for computer operating system (OS) installation

and data storage, transfer and backup; solid state storage, namely, a nonvolatile storage medium that employs integrated circuits,” in International Class 009.

5. The Application was published in the Official Gazette on July 21, 2015, and Opposer filed a timely Request for an Extension of Time to Oppose on August 14, 2015.

6. Opposer is an international company with offices located in Germany, the United States, and South Korea. From these offices, Opposer serves worldwide clientele, including many fortune 500 companies.

7. Since at least as early as March 16, 2005, Opposer has used, and is now using, the following marks (collectively, and in connection with the marks identified in Paragraphs 8 and 9 of this Notice, referred to as “Opposer’s Marks”):

- VSTOR (standard characters); and



in interstate commerce in association with: “Computer application software for computer servers, namely, software for use in database management; computer database management software for use in searching, archiving, indexing and recovering electronic data; computer programs for use in database management and in electronic storage of data; computer hardware and computer software for document management, sold as a unit; computer hardware and computer software for database management, sold as a unit; computer search engine software for locally and globally searching electronic data in one or more databases at the same time,” in International Class 009; and “Design and development of computer software for database management; computer services, namely, providing search engines for obtaining data on a local or global computer network; providing customized computer searching services, namely, searching and

retrieving information at the customer's specific request through web browsers, internet, intranet or hosting services,” in International Class 042.

8. Opposer is the owner of U.S. Trademark Application Serial No. 85/493,278 for “VSTOR,” (“Opposer’s Application”) in standard characters and in association with: “Computer application software for computer servers, namely, software for use in database management; computer database management software for use in searching, archiving, indexing and recovering electronic data; computer programs for use in database management and in electronic storage of data; computer hardware and computer software for document management, sold as a unit; computer hardware and computer software for database management, sold as a unit; computer search engine software for locally and globally searching electronic data in one or more databases at the same time,” in International Class 009; and “Design and development of computer software for database management; computer services, namely, providing search engines for obtaining data on a local or global computer network; providing customized computer searching services, namely, searching and retrieving information at the customer's specific request through web browsers, internet, intranet or hosting services,” in International Class 042.

9. Opposer is the owner of German Trademark registrations (“Applicant’s German Marks”) for the following marks:

- VSTOR (standard characters)
Register No.: 010730125
Filed: March 15, 2012
Registered: August 13, 2012; and,

• **VSTOR**[®] (stylized)

Register No.: 30470899 (International Registration No. IR867246)

Filed: December 15, 2004

Registered: March 16, 2005 (International Registration: April 7, 2005)

Renewed: January 1, 2015

10. Opposer's use of Opposer's Marks has been valid and continuous since the date of first use.

11. In addition to Opposer's Marks, Opposer was the owner of U.S. Trademark

Application Serial No.: 79/017,234 (now abandoned) for **VSTOR**[®], filed April 7, 2005, claiming priority to International Registration No. IR867246 identified above.

12. Opposer's world-wide, continuous, and commercially-successful use of Opposer's Marks is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money, and effort in advertising and promotion. As such, Opposer's Marks serve as unique, strong, and distinctive identifiers of Opposer's services, and significant statutory and common law rights attach thereto.

13. Opposer's use of Opposer's Marks predates the filing date of the Application, and, since it was filed on an intent-to-use basis, Opposer's use of Opposer's Marks, and Opposer's Application predates any actual use dates of Applicant's Mark.

14. Opposer's Marks were well-established long before the filing date of the Application.

15. For the reasons described below, Opposer believes that it will be damaged by registration of Applicant's Mark and opposes said registration pursuant to 15 U.S.C. §§ 1051(b) and 1052(d).

16. As more fully described below, registration of Opposer's Application has been refused should the Application mature into a registration of Applicant's Mark.

17. As more fully described below, the trademark examining attorney has determined that Opposer's Mark is likely to cause confusion with Applicant's Mark (considering the respective goods/services), and (b) if the trademark examining attorney is correct in this determination, then Opposer will be damaged by registration of Applicant's Mark, and registration of Applicant's Mark should be refused because Opposer has priority of use.

GROUND FOR OPPOSITION

I. Likelihood of Confusion

18. In an Office Action dated March 26, 2012, a trademark examining attorney has determined that the services listed in Opposer's Application are closely related to the services in the Application.

19. The trademark examining attorney also has determined that Opposer's Marks and Applicant's Mark are identical for purposes of a likelihood of confusion analysis.

20. The trademark examining attorney has determined that the services with which Opposer's Marks are used are offered in the same channels of trade as the services with which Applicant's Mark is intended to be used.

21. The trademark examining attorney has determined that the services with which Opposer's Marks are used are offered to the same class of consumers as the services with which Applicant's Mark is intended to be used.

22. The trademark examining attorney has suspended prosecution of Opposer's Application and will ultimately refuse registration of Opposer's Application because of a likelihood of confusion with the Application, in light of the determinations set forth in paragraphs 18-21.

23. If the trademark examining attorney is correct in the determinations set forth in paragraphs 18-21, then Applicant's Mark so resembles Opposer's Marks (considering the respective goods/services) as to be likely to cause confusion or mistake, or to deceive purchasers as to source by suggesting that Applicant's goods/services are associated or affiliated with, or approved, endorsed, authorized, or sponsored by, Opposer.

24. Applicant's Mark, as applied to Applicant's goods/services in the manner described in the Application, lessens the capacity of Opposer's distinctive Marks to identify and distinguish Opposer's services from those of others.

25. If Applicant is permitted to register Applicant's Mark, Applicant's corresponding *prima facie* exclusive right to use Applicant's Mark in nationwide commerce will conflict with Opposer's lawful and *prima facie* exclusive right to use Opposer's Marks.

26. Therefore, the registration sought by Applicant should be refused per 15 U.S.C. § 1052(d) because Opposer has priority of use.

II. Abandonment: Applicant Lacks Bona Fide Intention to Use Mark

27. Upon information and belief, as of August 19, 2013, Applicant is no longer in business.

28. As of the date of this Notice, Applicant's status with the Texas Secretary of State is listed as "Franchise Tax Ended" which is defined by the Texas Secretary of State as "the

entity's franchise tax responsibilities ended because the entity has ceased to exist in its state or country of formation or has ceased doing business in Texas.”

29. Upon information and belief, Applicant no longer has a bona fide intention to use Applicant's Mark and Applicant would not be able to provide a requisite specimen should the Application be issued a Notice of Allowance.

30. Therefore, the registration sought by Applicant should be refused per 15 U.S.C. § 1051(b) because Applicant no longer has a bona fide intention to use Applicant's Mark in commerce.

WHEREFORE, Opposer requests that: a) the Application for Applicant's Mark be rejected on the previously-recited bases, b) no registration be issued to Applicant, and c) this Opposition be sustained in favor of Opposer.

Date: November 18, 2015

By: /Andrew S. Curfman/
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Attorney for Opposer
ARTEC Computer GmbH

CERTIFICATE OF SERVICE

I certify that on **November 18, 2015**, a copy of the foregoing Notice of Opposition was served, via First Class U.S. Mail, on:

Dwayne K Goetzel
Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.
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/Andrew S. Curfman/
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