

ESTTA Tracking number: **ESTTA144459**

Filing date: **06/06/2007**

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

Name	VUTEk Inc.
Granted to Date of previous extension	06/06/2007
Address	One Vutek Place Meredith, NH 03253 UNITED STATES
Attorney information	Susan L. Heller and Terence J. Clark Greenberg Traurig, LLP 2450 Colorado Avenue, Suite 400E Santa Monica, CA 90404 UNITED STATES latm2@gtlaw.com Phone:310-586-6568

Applicant Information

Application No	76653517	Publication date	02/06/2007
Opposition Filing Date	06/06/2007	Opposition Period Ends	06/06/2007
Applicants	BioWare Corp. 4445 Calgary Trail, Suite 200 Edmonton, Alberta T6H 5R7, CANADA Pandemic Studios, LLC 1100 Glendon Avenue, 19th Floor Los Angeles, CA 90024 UNITED STATES VG Holding Corp. 2800 Sand Hill Road, Suite 160 Menlo Park, CA 94025 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Computer game and video game software
Class 041. All goods and services in the class are opposed, namely: Entertainment services, namely providing on-line computer and video games

Grounds for Opposition

Other	The Trademark Trial and Appeal Board Manual of Procedure ("TBMP") states that a party's reasonable belief that it may be damaged as a result of registration of a mark provides standing to file a complaint where "[d]efendant has asserted a likelihood of confusion in another proceeding between the parties involving the same marks." TBMP § 309.03(b).
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Related Proceedings	Opposition No. 91174133
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Attachments	BIOWARE PANDEMIC STUDIOS Notice of Opp.pdf (3 pages)(118822 bytes)
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Signature	/terence j. clark/jkg/
Name	Susan L. Heller and Terence J. Clark
Date	06/06/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 76/653,517
For the mark BIOWARE/PANDEMIC STUDIOS
Published in the *Official Gazette* on February 6, 2007

VUTEk Inc., a Delaware Corporation,)

Opposer,)

vs.)

BioWare Corp., a Canadian Corporation,)

Pandemic Studios, LLC, a California Limited
Liability Company and)

VG Holding Corp., a Delaware Corporation,)

Applicants)

Opposition No. _____

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

NOTICE OF OPPOSITION

1. Opposer VUTEk Inc. ("VUTEk") is a Delaware Corporation located at One Vutek Place, Meredith, New Hampshire 03253.

2. Upon information and belief, Applicant BioWare Corp. is a Canadian Corporation located at 4445 Calgary Trail, Suite 200, Edmonton, Alberta T6H 5R7 Canada ("BioWare"); Applicant Pandemic Studios, LLC is a California Limited Liability Company located at 1100 Glendon Avenue, 19th Floor, Los Angeles, California 90024, and Applicant VG Holding Corp. is a Delaware Corporation located at 2800 Sand Hill Road, Suite 160, Menlo Park, California 94025 (collectively, "Applicants").

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. 78/841,029). VUTEk has been using the BIOWARE mark continuously in commerce since at least as early as April 2006.

4. Applicants filed for registration of the BIOWARE/PANDEMIC STUDIOS mark on January 17, 2006, indicating their intent to use the mark in connection with “computer game and video game software” in International Class 9 and “entertainment services, namely providing on-line computer and video games” in International Class 41. Applicants’ BIOWARE/PANDEMIC STUDIOS mark was published for opposition on February 6, 2007 and the filing basis as of today’s date is under Section 1(b) of the Trademark Act. As such, it is not clear whether Applicants have used the BIOWARE/PANDEMIC STUDIOS mark in connection with the specified goods and services.

5. Applicant BioWare is also the owner of two (2) 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 soundtrack 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 “providing an on-line store offering merchandise related to computer games” in International Class 35 (Reg. No. 3172886).

6. BioWare has filed an opposition against 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 (the “BioWare Opposition”). The BioWare Opposition is currently pending before the Trademark Trial and Appeal Board (“TTAB”), Case

No. 91174133. In the BioWare 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.

7. Accordingly, VUTEk believes that if Applicants' application for the BIOWARE/PANDEMIC STUDIOS mark proceeds to registration, BioWare will assert a likelihood of confusion between this mark and VUTEk's application for the mark BIOWARE in International Class 2. Any such action by BioWare would prejudice VUTEk's application for the mark BIOWARE in International Class 2.

8. Based on BioWare's actions including the BioWare Opposition, VUTEk believes that it will be damaged if the BIOWARE/PANDEMIC STUDIOS mark is registered, and hereby opposes the registration.

9. By virtue of the foregoing, Applicants' application should be rejected and registration of the term BIOWARE/PANDEMIC STUDIOS as a trademark of Applicants should be denied and refused.

10. Enclosed is VUTEk's check in the amount of \$300.00 representing the required filing fee. Authorization is hereby provided to charge any deficiency to Deposit Account 50-2638.

Respectfully submitted,

GREENBERG TRAURIG, LLP

Dated: June 6, 2007

By: 

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