

ESTTA Tracking number: **ESTTA167709**

Filing date: **10/09/2007**

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

Proceeding	91177900
Party	Defendant BioWare Corp.
Correspondence Address	PAUL N. TAUGER BRYAN CAVE LLP 120 BROADWAY , SUITE 300 SANTA MONICA, CA 90401 UNITED STATES jmeyer@schnader.com
Submission	Other Motions/Papers
Filer's Name	/s/Paul N. Tauger
Filer's e-mail	paul.tauger@bryancave.com
Signature	/s/Paul N. Tauger
Date	10/09/2007
Attachments	Declaration of Paul Tauger.PDF (18 pages)(1738093 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Trademark Trial and Appeal Board

IN RE: VUTEk, INC. v. BIOWARE CORP.

Trademark: BIOWARE/PANDEMIC STUDIOS

Opposer: VUTEk, Inc.

Applicant: BioWare Corp.

Opposition No. 91177900

Serial No. 76/653517

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

DECLARATION OF PAUL N. TAUGER

AUTHENTICATING THE DECLARATION OF ROBERT KALLIR

I, Paul N. Tauger, declare as follows:

1. I am an attorney with Bryan Cave LLP, counsel of record for Opposer BioWare Corp. in this matter. I have personal knowledge of the facts averred herein, except where asserted on information and belief, and, if called upon to do so, could and would testify to the truth thereof.

2. Attached hereto as Exhibit "A" is a true and correct copy of the Notice of Opposition filed by BioWare in Opposition No. 91174133

3. Attached hereto as Exhibit "B" is a true and correct copy of the Answer filed by VUTEk in Opposition No. 91774133

I have read the foregoing and declare under penalty of perjury pursuant to the laws of the State of California and the United States that the foregoing is true and correct.

Executed this 9th day of October at Santa Monica, California.

/s/ Paul N. Tauger
Paul N. Tauger

EXHIBIT "A"

ESTTA Tracking number: **ESTTA111250**

Filing date: **11/22/2006**

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	BioWare Corp.		
Entity	Corporation	Citizenship	Canada
Address	4445 Calgary Trail, Suite 200 Edmonton, ALB T6H5R7 CANADA		

Attorney information	Paul N. Tauger Schnader Harrison Segal & Lewis LLP One Montgomery Street, Suite 2200 San Francisco, CA 94104-5501 UNITED STATES ptauger@schnader.com Phone:(415) 364-6700		
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Applicant Information

Application No	78841029	Publication date	10/31/2006
Opposition Filing Date	11/22/2006	Opposition Period Ends	11/30/2006
Applicant	VUTEk Inc. One Vutek Place Meredith, NH 03253 UNITED STATES		

Goods/Services Affected by Opposition

Class 002. All goods and services in the class are opposed, namely: Ink jet printer ink
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Attachments	NtcOpposition.pdf (6 pages)(142875 bytes)
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Signature	/Paul N. Tauger/
Name	Paul N. Tauger
Date	11/22/2006

BOX: TTAB FEE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Trademark Trial and Appeal Board

IN RE: Application No. 78/841,029
Trademark: BIOWARE
Opposer: BioWare Corp.
Applicant: Vutek, Inc.
Published: October 31, 2006
Attorney Docket No: 3006345-0000/10US/OP3

NOTICE OF OPPOSITION

Commissioner for Trademarks
BOX: TTAB FEE
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

BioWare Corp., a corporation of Canada, located and doing business at 4445 Calgary Trail, Suite 200, Edmonton, Alberta T6H5R7 Canada believes it will be damaged by the registration of the BIOWARE mark, Application Serial No. 78/431,095, published October 25, 2005 (hereinafter, "Applicant's Mark") and having sought and obtained an extension of the time to file a Notice of Opposition, hereby opposes the same.

The grounds for the opposition are as follows:

1. BioWare Corp. (hereinafter, "Opposer") is an internationally renowned electronic entertainment company specializing in the creation of computer and console video games.
2. Opposer was founded in 1995. Since that time, it has developed an outstanding international reputation for the high quality and success of its video games.

Its games have sold many millions of copies in the U.S. and in many countries throughout the world. Opposer is universally acknowledged as one of the leading developers of computer and console games. Opposer has received over 100 industry awards for games that it has authored and developed, including Billboard Digital Entertainment's Game Developer of the Year, as well as many other business awards.

3. Opposer's games have been translated into many languages, including French, Italian, German, Spanish, Polish, Chinese, and Japanese.

4. Opposer and LucasArts Entertainment collaborated to produce the first role playing game in the Star Wars® universe, titled *Star Wars: Knights of the Old Republic*. The game has accumulated over 100 awards, including acknowledgments for its excellence in story telling, technology and sound. The game has garnered over 45 Games of the Year Awards as well as three Academy of Interactive Arts and Science Awards and one British Academy of Film and Television Arts Award.

5. Microsoft Corp. has released Opposer's newest game, *Jade Empire*, named "Game of the Year" by numerous publications and reviewers. *Jade Empire* received "Best of Show" awards at the 2004 Electronic Entertainment Expo (E3) from GameSpy, GameSpot, GameInformer, IUP, Yahoo! Games Domain and other industry leaders. CNN described *Jade Empire* as, "a gripping and intense single-player magnum opus. Its rich story, memorable characters and clever combat system make this title a must-have for your Xbox collection." USA Today said, "Overall "Jade Empire" is a gripping and intense single-player magnum opus. Its rich story, memorable characters and clever combat system make this title a must-have for your Xbox collection." GameSpy published the following: "BioWare combines excellent storytelling, exciting combat, and gorgeous visuals to create the best RPG ever to hit the Xbox."

6. Opposer has partnered with Interplay Entertainment on the *Baldur's Gate* game series, which is now in its second sequel.

7. Opposer is responsible for the popular role-playing game, *NeverWinter Nights*, which is distributed by Atari and has accumulated over 90 industry awards.

8. Opposer and Microsoft Game Studios have announced Opposer's latest game, *Mass Effect*.

9. Opposer licenses its game engine technology which has powered a number of critically acclaimed role-playing games.

10. Opposer is the owner of the following trademark registrations:

Registration No.	Mark	Type	First Use in Commerce	Class	Filing Date
2,615,576	BIOWARE CORP	Words in Stylized Form	8/1/1998	9, 16	10/31/2001
2,730,731	BIOWARE AURORA ENGINE	Typed Drawing	6/2001	9	10/10/2001
2,872,470	BIOWARE ODYSSEY ENGINE	Typed Drawing	7/16/2003	9	3/15/2001
2,733,351	THE BIOWARE INFINITY ENGINE	Typed Drawing	12/1998	9	3/6/2001
2,454,474	BIOWARE	Typed Drawing	2/1/1995	9	2/24/1999
2,460,807	BIOWARE CORP	Typed Drawing	8/1/1998	9, 16	2/24/1999
3,172,886	BIOWARE	Standard Character Mark	1A	9, 16, 25, 41, 42	4/21/2005

11. Opposer has pending the following trademark registrations:

Application No.	Mark	Type	Basis	Class	Filing Date
76/653517	BIOWARE/PANDEMIC STUDIOS	Standard Character Mark	1B	41	1/17/2006
76/636724	BIOWARE ECLIPSE ENGINE	Standard Character Mark	1B	42	4/21/2005
76/636906	BIOWARE CORP	Words, Letter and/or Number in Stylized Form	1A	9, 16, 25, 41, 42	4/21/2005
76/594456	BIOWARE ECLIPSE ENGINE	Standard Character Mark	1B	9	5/28/2004

12. Opposer's trademark is inherently distinctive in the context of the goods and services to which it is applied and has been used in commerce.

13. Opposer's long-term and extensive use, sales, distribution, advertising and promotion of its trademark throughout the United States, Canada and Europe renders it a famous mark within the meaning of 15 U.S.C. § 1125(c) (Section 43 (c) of the Lanham Act).

14. On information and belief, Applicant's contemplated use of the identical mark will result in dilution of the distinctive quality of Opposer's famous mark.

15. Notwithstanding the international and U.S. classes claimed by Applicant's pending application, Opposer is informed and believes that Applicant's goods and services are sufficiently related to Opposer's goods and services so as to result in a likelihood of confusion of the consumer demographic for Opposer and Applicant as to source, sponsorship, affiliation or endorsement of Applicant's and/or Opposer's goods.

16. Applicant's use and registration of Applicant's mark for the goods and services of the application herein opposed will lead to confusion, to mistake, or to deception of the public within the meaning of 15 U.S.C. § 1052(d) (Section 2(d) of the Trademark Act of 1946).

17. If Applicant is permitted to register its mark, the registration would give Applicant a *prima facie* exclusive right to the use of BIOWARE for the goods and services of the application. Such registration may preclude Opposer from marketing BIOWARE-identified goods that are based on and related to its computer and console video games and ancillary and other goods and services.

18. By reason of the foregoing, Applicant's registration of BIOWARE for the goods and services of the application herein opposed would cause injury and damage to Opposer and its BIOWARE marks.

WHEREFORE, Opposer prays that its opposition be sustained and that Application Serial No. 78/841,029 be refused.

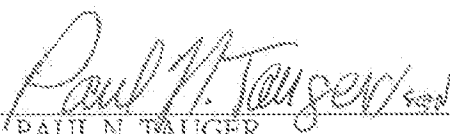
A duplicate copy of this Notice of Opposition is enclosed.

Please address all correspondence to Paul N. Tauger, Esq. at the address below.

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

Dated: November 22, 2006

By: 
PAUL N. TAUGER

Address: One Montgomery Street, Suite 2200
San Francisco, CA 94104-5501
Phone: (415) 364-6700
Fax: (415) 364-6785
ptauger@schnader.com (e-mail authorized)

ATTORNEYS FOR OPPOSER

Certification Under 37 CFR 1.8

I hereby certify that this paper or fee is being deposited with the United States Postal Service with sufficient postage as first-class mail under 37 CFR 1.8 on the date indicated above and is addressed to:

Commissioner for Trademarks
Box TTAB FEE
P.O. Box 1451
Alexandria, VA 22313-1451

With a copy also sent by Federal Express service to:

Vutek, Inc.
One Vutek Place
Meredith, NH 03253

With a copy also sent by first-class mail to:

Susan L. Heller
Greenberg Traurig, LLP
2450 Colorado Avenue, Suite 400E
Santa Monica, CA 90404

Dated: November 22, 2006


Steven G. Davenport

EXHIBIT "B"

TTAB
78,841,029

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

BioWare Corp.,
Opposer,
vs.
Vutek, Inc.,
Applicant. }
Opposition No. 91174133

ANSWER TO NOTICE OF OPPOSITION

Applicant Vutek, Inc. ("Applicant"), by and through its undersigned counsel, hereby answers the Notice of Opposition and believes that it is entitled to registration of the mark shown in Application Serial No. 78/841,029 and that opposer BioWare Corp. ("Opposer") will not be damaged by registration of the mark.

Applicant responds to the numbered paragraphs of the Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and therefore denies the same.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Notice of Opposition and therefore denies the same.



4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Notice of Opposition and therefore denies the same.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Notice of Opposition and therefore denies the same.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition and therefore denies the same.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Notice of Opposition and therefore denies the same.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the Notice of Opposition and therefore denies the same.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Notice of Opposition and therefore denies the same.

12. Applicant denies the allegations set forth in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations set forth in Paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations set forth in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations set forth in Paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations set forth in Paragraph 16 of the Notice of Opposition.

17. Applicant admits that federal registration provides Applicant a legal presumption of ownership of the mark and the exclusive right to use the mark nationwide on or in connection with the goods and/or services listed in the registration, but denies that registration of the mark shown in Application Serial No. 78/841,029 would be a source of injury or damage to Opposer. Applicant denies the remaining allegations set forth in Paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations set forth in Paragraph 18 of the Notice of Opposition.

Affirmative Defenses

1. Opposer has failed to state a claim on which relief may be granted.
2. There is no likelihood of confusion under all applicable factors and criteria required by U.S. trademark law.
3. There is no likelihood of confusion because the goods or services of the parties are noncompetitive and unrelated.
4. Opposer's mark has not attained the requisite secondary meaning to acquire distinctiveness as claimed by Opposer.
5. There is no likelihood of dilution under all applicable factors and criteria required by U.S. trademark dilution law.
6. Opposer's mark is not famous under the requirements of U.S. trademark dilution law.
7. Opposer's mark has not become the principal meaning of the word Bioware.
8. Opposer's mark is not so distinctive that the public would associate Opposer's mark with Opposer even when such mark is encountered apart from Opposer's goods or services.
9. Third party use of its mark precludes Opposer's claim of dilution.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed with prejudice and that Application Serial No. 78/841,029 proceed to registration.

Dated: December 28, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Clark', written over a horizontal dotted line.

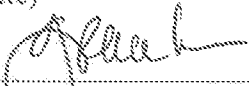
Terence J. Clark
Greenberg Traurig LLP
2450 Colorado Avenue
Suite 1400 East
Santa Monica, CA 90404
Phone: 310.586.3818 Fax: 310.586.0518

Certification of Mailing

I hereby certify that this ANSWER TO NOTICE OF OPPOSITION is being filed electronically with the United States Patent and Trademark Office, Trademark Trial and Appeal Board.

December 28, 2006

.....
(Date)

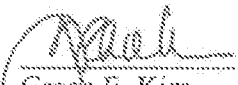

.....
Grace E. Kim
Sr. Trademark Paralegal

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served on counsel for Opposer via first class mail, with pre-paid postage thereon, on December 28, 2006, at the following address:

Paul N. Tauger
Schnader Harrison Segal, et al
One Montgomery Street
Suite 2200
San Francisco, CA 94104-5501

ptauger@schnader.com


.....
Grace E. Kim
Sr. Trademark Paralegal

CERTIFICATE OF FILING

The undersigned hereby certifies that the foregoing DECLARATION OF PAUL N. TAUGER AUTHENTICATING THE DECLARATION OF ROBERT KALLIR was electronically filed with the U.S. Patent & Trademark Office Trademark Trial and Appeal Board, on this 9th day of October, 2007.

...../s/Paul N. Tauger.....

CERTIFICATE OF SERVICE

I hereby certify that a true copy of DECLARATION OF PAUL N. TAUGER AUTHENTICATING THE DECLARATION OF ROBERT KALLIR was served upon the Opposer Vutek, Inc. by mailing the same by first class mail to Opposer's counsel, Terence J. Clark, Esq., Greenberg, Traurig, 2450 Colorado Avenue, Suite 400E, Santa Monica, CA 90404, on the 9th day of October, 2007.

/s/Julie D. Fitzwater
Julie D. Fitzwater