

ESTTA Tracking number: **ESTTA200116**

Filing date: **03/24/2008**

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	Activision Publishing, Inc.
Granted to Date of previous extension	03/30/2008
Address	3100 Ocean Park Boulevard Santa Monica, CA 90405 UNITED STATES

Attorney information	Scott Major Millen White Zelano & Branigan 2200 Clarendon Boulevard Suite 1400 Arlington, VA 22201 UNITED STATES major@mwzb.com, culver@mwzb.com Phone:703-243-6333
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Applicant Information

Application No	77098045	Publication date	10/02/2007
Opposition Filing Date	03/24/2008	Opposition Period Ends	03/30/2008
Applicant	Sonic Branding Solutions, Inc. Suite 1604 20 West 22nd Street New York, NY 10010 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Game software in the nature of a beat matching rhythm game accessible by download via the Internet by computer, cell phone and other wireless devices
Class 041. All goods and services in the class are opposed, namely: Providing online non-downloadable game software in the nature of a beat matching rhythm game accessible via the Internet by computer, cell phone and other wireless devices

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.	3299080	Application Date	04/21/2005
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Registration Date	09/25/2007	Foreign Priority Date	NONE
Word Mark	GUITAR HERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2005/05/00 First Use In Commerce: 2005/11/08 Interactive video game comprised of a cartridge or DVD sold as a unit with an electronic guitar apparatus		

U.S. Application No.	78866127	Application Date	04/20/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GUITAR HERO		
Design Mark			
Description of Mark	The mark consists of the stylized words GUITAR HERO arranged vertically in a Gothic-type font.		
Goods/Services	Class 009. First use: First Use: 2005/11/08 First Use In Commerce: 2005/11/08 Interactive video game programs; video game controllers, namely video game interactive remote control units, guitar-shaped interactive remote control units		

U.S. Application No.	78866144	Application Date	04/20/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GUITAR HERO		
Design Mark			
Description of Mark	The mark consists of the stylized words GUITAR HERO arranged horizontally in a Gothic-type font.		
Goods/Services	Class 009. First use: First Use: 2005/11/08 First Use In Commerce: 2005/11/08 Interactive video game programs; video game controllers, namely, video game interactive remote control units, guitar-shaped interactive remote control units		

U.S. Application No.	78866277	Application Date	04/20/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GUITAR HERO II		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: Interactive video game program; video game controllers, namely video game interactive remote control units, guitar-shaped interactive remote control units		

Attachments	78613665#TMSN.jpeg (1 page)(bytes) 78866127#TMSN.jpeg (1 page)(bytes) 78866144#TMSN.jpeg (1 page)(bytes)
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	78866277#TMSN.jpeg (1 page)(bytes) Notice of Opposition & Exhibit 1.pdf (22 pages)(981465 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 Overnight Courier on this date.

Signature	/michaelculver/
Name	Michael Culver
Date	03/24/2008

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

ACTIVISION PUBLISHING, INC,)	
)	
Opposer;)	
)	
v.)	Opposition No. _____
)	App. No. 77098045
SONIC BRANDING SOLUTIONS, INC.;)	Mark: GUITAR GODS
)	
Applicant.)	

NOTICE OF OPPOSITION

Activision Publishing, Inc. (“Activision”), a Delaware corporation with a business address at 3100 Ocean Park Boulevard, Santa Monica, California 90405, believes that it will be damaged by the registration of the mark that is the subject of Application No. 77098045, and hereby opposes its registration on the following grounds:

1. Activision is the owner of the marks consisting in whole or in part of the wording GUITAR HERO (collectively referred to hereinafter as “the GUITAR HERO Mark”) that identify and distinguish in commerce interactive video games, computer game software and guitar-shaped controllers therefor; related on-line services, including providing on-line games, contests and tournaments, and a website providing news and information related to the foregoing; and various other related goods and services (all collectively referred to hereinafter as “Activision’s Goods and Services”).

2. Activision is the owner of U.S. registrations and pending applications in the U.S. Patent and Trademark Office (“PTO”) for the GUITAR HERO Mark, including the following:

Mark: GUITAR HERO
Reg. No.: 3299080
Filed: April 21, 2005
Registered: September 25, 2007
Goods: interactive video game comprised of a cartridge or DVD sold as a unit with an electronic guitar apparatus

Mark: GUITAR HERO (stylized)
App. No.: 78866127
Filed: April 20, 2006
Goods: interactive video game programs; video game controllers, namely video game interactive remote control units, guitar-shaped interactive remote control units

Mark: GUITAR HERO (stylized)
App No.: 78866144
Filed: April 20, 2006
Goods: interactive video game programs; video game controllers, namely video game interactive remote control units, guitar-shaped interactive remote control units

Mark: GUITAR HERO II (stylized)
App. No.: 78866277
Filed: April 20, 2006
Goods: interactive video game programs; video game controllers, namely video game interactive remote control units, guitar-shaped interactive remote control units

As proof of status and title, attached as Exhibit 1 hereto and incorporated by reference herein are true and correct printouts of the TARR and Assignments records for the foregoing registration and applications from the PTO's online databases.

3. Activision's use of GUITAR HERO and related marks comprised in part of this wording constitutes a family of marks ("the GUITAR HERO Family of Marks") as recognized by the relevant public.

4. Activision has expended considerable funds and made significant efforts in promoting and advertising Activision's Goods and Services identified by the GUITAR HERO Mark and the GUITAR HERO Family of Marks, and such goods and

services identified by the GUITAR HERO Mark and the GUITAR HERO Family of Marks have enjoyed enormous commercial success, won various industry awards and been the subject of substantial, unsolicited media attention. As a result, Activision has established an enviable reputation, acquired substantial goodwill, and attained distinctiveness in the GUITAR HERO Mark and the GUITAR HERO Family of Marks throughout the entire United States.

5. Activision's rights in the GUITAR HERO Mark and the GUITAR HERO Family of Marks notwithstanding, Applicant filed on February 2, 2007 with the PTO an application to register the mark GUITAR GODS for game software in the nature of a beat matching rhythm game accessible by download via the Internet by computer, cell phone and other wireless devices in International Class 9, and for providing online non-downloadable game software in the nature of a beat matching rhythm game accessible via the Internet by computer, cell phone and other wireless devices in International Class 41 (Application No. 77098045; referred to hereinafter "the Opposed Application").

6. Activision's use of the GUITAR HERO Mark and filing dates of the applications and registration are prior to any rights of Applicant to the mark GUITAR GODS.

7. In view of the similarities between, on the one hand, Activision's GUITAR HERO Mark and/or GUITAR HERO family of Marks and, on the other hand, the GUITAR GODS mark that is the subject of the Opposed Application, and the relationship between Activision's Goods and Services and the goods and services identified in the Opposed Application, it is likely that members of the public will erroneously believe that Applicant's goods and services originate with, or are in some

manner connected or associated with, or sponsored by, Activision, all to the harm of Activision's goodwill and reputation.

8. Applicant's GUITAR GODS mark so resembles Activision's GUITAR HERO Mark and/or GUITAR HERO Family of Marks as to be likely when used on or in connections with Applicant's goods or services as to be likely to cause confusion, mistake or to deceive, and is therefore precluded from registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

9. If Applicant is granted registration of the subject mark, it would obtain a prima facie exclusive right to use of its mark that would cause damage and injury to Activision.

WHEREFORE, Activision respectfully requests that this opposition be granted and that Application No. 77098045 be denied registration.

ACTIVISION PUBLISHING, INC.

Date: March 24, 2008

By: Michael Culver
Scott J. Major
Michael Culver
Millen, White, Zelano & Branigan, P.C.
2200 Clarendon Blvd., Suite 1400
Tel: 703-243-6333
Fax: 703-243-6410
major@mwzb.com; culver@mwzb.com

Attorneys for Opposer

1

Certificate of Service

This is to certify that a copy of the foregoing Notice of Opposition with Exhibit 1 was served this 24th day of March 2008 by prepaid, overnight delivery on the following as

Applicant's attorney of record:

Marcus Stephen Harris, Esq.
MARCUS STEPHEN HARRIS LLC
Suite 3500
10 South La Salle Street
Chicago, IL 60603-1025

By: Michael Kulwan
Attorney for Opposer

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

ACTIVISION PUBLISHING, INC.,)

Opposer;)

v.)

SONIC BRANDING SOLUTIONS, INC.;)

Applicant.)

Opposition No. _____

App. No. 77098045

Mark: GUITAR GODS

EXHIBIT 1

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-24 10:19:33 ET

Serial Number: 78613665 Assignment Information Trademark Document Retrieval

Registration Number: 3299080

Mark

GUITAR HERO

(words only): GUITAR HERO

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2007-09-25

Filing Date: 2005-04-21

Transformed into a National Application: No

Registration Date: 2007-09-25

Register: Principal

Law Office Assigned: LAW OFFICE 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-08-21

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Activision Publishing, Inc.

Address:

Activision Publishing, Inc.
3100 Ocean Park Boulevard
Santa Monica, CA 90405
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active

Interactive video game comprised of a cartridge or DVD sold as a unit with an electronic guitar apparatus

Basis: 1(a)

First Use Date: 2005-05-00

First Use in Commerce Date: 2005-11-08

ADDITIONAL INFORMATION

Disclaimer: "guitar"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-09-25 - Registered - Principal Register

2007-08-21 - Law Office Registration Review Completed

2007-08-21 - Assigned To LIE

2007-07-07 - Allowed for Registration - Principal Register (SOU accepted)

2007-07-03 - Statement of use processing complete

2007-03-29 - Amendment to Use filed

2007-03-29 - TEAS Statement of Use Received

2007-03-27 - Notice of allowance - mailed

2007-03-23 - Attorney Revoked And/Or Appointed

2007-03-23 - TEAS Revoke/Appoint Attorney Received

2007-02-07 - Assignment Of Ownership Not Updated Automatically

2007-01-22 - Opposition terminated for Proceeding

2007-01-22 - Opposition dismissed for Proceeding

2006-09-20 - TEAS Change Of Correspondence Received

<http://tarr.uspto.gov/tarr?regser=registration&entry=3299080>

3/24/2008

2006-04-16 - Opposition instituted for Proceeding
2006-02-07 - Attorney Revoked And/Or Appointed
2006-02-07 - TEAS Revoke/Appoint Attorney Received
2006-02-06 - Extension Of Time To Oppose Received
2006-01-10 - Published for opposition
2005-12-21 - Notice of publication
2005-11-29 - Law Office Publication Review Completed
2005-11-28 - Assigned To LIE
2005-11-23 - Approved for Pub - Principal Register (Initial exam)
2005-11-20 - Assigned To Examiner
2005-04-29 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Mary Tuck

Correspondent

Mary Tuck
Activision Legal Department
3100 Ocean Park Boulevard
Santa Monica , CA 90405
Phone Number: 310-255-2000
Fax Number: 310-255-2152



United States Patent and Trademark Office

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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 1**Serial #:** [78613665](#)**Filing Dt:** 04/21/2005**Reg #:** [3299080](#)**Reg. Dt:** 09/25/2007**Registrant:** Activision Publishing, Inc.**Mark:** GUITAR HERO**Assignment: 1****Reel/Frame:** [3471/0253](#)**Received:** 01/30/2007**Recorded:** 01/30/2007**Pages:** 5**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** [REDOCTANE, INC.](#)**Exec Dt:** 01/29/2007**Entity Type:** CORPORATION**Citizenship:** CALIFORNIA**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Assignee:** [ACTIVISION PUBLISHING, INC.](#)3100 OCEAN PARK BOULEVARD
SANTA MONICA, CALIFORNIA 90405**Correspondent:** MARY TUCK3100 OCEAN PARK BOULEVARD
SANTA MONICA, CA 90405

Search Results as of: 03/24/2008 10:19 AM

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Web interface last modified: April 20, 2007 v.2.0.1| [.HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-24 10:18:03 ET

Serial Number: 78866127 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark



(words only): GUITAR HERO

Standard Character claim: No

Current Status: Further action on the application has been suspended.

Date of Status: 2007-10-17

Filing Date: 2006-04-20

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 109

Attorney Assigned:
STRUCK ROBERT J

Current Location: L90 -TMEG Law Office 109

Date In Location: 2007-10-17

LAST APPLICANT(S)/OWNER(S) OF RECORD

I. ACTIVISION PUBLISHING, INC.

Address:

ACTIVISION PUBLISHING, INC.
3100 OCEAN PARK BOULEVARD
SANTA MONICA, CA 90405
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

<http://tarr.uspto.gov/tarr?regser=serial&entry=78866127&action=Request+Status>

3/24/2008

GOODS AND/OR SERVICES

International Class: 009**Class Status:** Active

Interactive video game programs; video game controllers, namely video game interactive remote control units, guitar-shaped interactive remote control units

Basis: 1(a)**First Use Date:** 2005-11-08**First Use in Commerce Date:** 2005-11-08

ADDITIONAL INFORMATION

Disclaimer: "GUITAR"**Description of Mark:** The mark consists of the stylized words GUITAR HERO arranged vertically in a Gothic-type font.**Lining and Stippling:** The stippling is for shading purposes only.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-10-17 - Report Completed Suspension Check Case Still Suspended

2007-10-17 - Assigned To LIE

2007-04-10 - LETTER OF SUSPENSION E-MAILED

2007-04-10 - Suspension Letter Written

2007-03-24 - Teas/Email Correspondence Entered

2007-03-23 - Communication received from applicant

2007-03-23 - TEAS Response to Office Action Received

2007-03-23 - Attorney Revoked And/Or Appointed

2007-03-23 - TEAS Revoke/Appoint Attorney Received

2007-03-22 - Notice of unresponsive amendment e-mailed

2007-03-22 - Report Unresponsive Amendment - Completed

Latest Status Info

2007-03-05 - Attorney Revoked And/Or Appointed
2007-03-05 - TEAS Revoke/Appoint Attorney Received
2007-03-06 - Teas/Email Correspondence Entered
2007-03-05 - Communication received from applicant
2007-03-05 - TEAS Response to Office Action Received
2007-03-05 - TEAS Response to Office Action Received
2007-02-07 - Automatic Update Of Assignment Of Ownership
2006-09-26 - Non-final action mailed
2006-09-25 - Non-Final Action Written
2006-09-25 - Assigned To Examiner
2006-09-20 - TEAS Change Of Correspondence Received
2006-04-26 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Mary Tuck

Correspondent

Mary Tuck

Activision Legal Department

3100 Ocean Park Boulevard

Santa Monica CA 90405

Phone Number: 310-255-2000

Fax Number: 310-255-2152



United States Patent and Trademark Office

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SANTA MONICA, CALIFORNIA 90405**Correspondent:** MARY TUCK3100 OCEAN PARK BOULEVARD
SANTA MONICA, CA 90405

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Serial Number: 78866144 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark



(words only): GUITAR HERO

Standard Character claim: No

Current Status: Further action on the application has been suspended.

Date of Status: 2007-10-17

Filing Date: 2006-04-20

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 109

Attorney Assigned:
STRUCK ROBERT J

Current Location: L90 -TMEG Law Office 109

Date In Location: 2007-10-17

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. ACTIVISION PUBLISHING, INC.

Address:

ACTIVISION PUBLISHING, INC.
3100 OCEAN PARK BOULEVARD
SANTA MONICA, CA 90405
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

<http://tarr.uspto.gov/tarr?regser=serial&entry=78866144>

3/24/2008

GOODS AND/OR SERVICES

International Class: 009**Class Status:** Active

Interactive video game programs; video game controllers, namely, video game interactive remote control units, guitar-shaped interactive remote control units

Basis: 1(a)**First Use Date:** 2005-11-08**First Use in Commerce Date:** 2005-11-08

ADDITIONAL INFORMATION

Disclaimer: "GUITAR"**Description of Mark:** The mark consists of the stylized words GUITAR HERO arranged horizontally in a Gothic-type font.**Lining and Stippling:** The stippling is for shading purposes only.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

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2007-10-17 - Report Completed Suspension Check Case Still Suspended

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2007-04-10 - Suspension Letter Written

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2007-03-23 - TEAS Response to Office Action Received

2007-03-23 - Attorney Revoked And/Or Appointed

2007-03-23 - TEAS Revoke/Appoint Attorney Received

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Latest Status Info

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2006-09-25 - Non-Final Action Written
2006-09-25 - Assigned To Examiner
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2006-04-26 - New Application Entered In Tram

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3100 Ocean Park Boulevard
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Phone Number: 310-255-2000
Fax Number: 310-255-2152



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Trademark Assignment Abstract of Title

Total Assignments: 1**Serial #:** [78866144](#)**Filing Dt:** 04/20/2006**Reg #:** NONE**Reg. Dt:****Applicant:** RedOctane, Inc.**Mark:** GUITAR HERO**Assignment: 1****Reel/Frame:** [3471/0253](#)**Received:** 01/30/2007**Recorded:** 01/30/2007**Pages:** 5**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** [REDOCTANE, INC.](#)**Exec Dt:** 01/29/2007**Entity Type:** CORPORATION**Citizenship:** CALIFORNIA**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Assignee:** [ACTIVISION PUBLISHING, INC.](#)3100 OCEAN PARK BOULEVARD
SANTA MONICA, CALIFORNIA 90405**Correspondent:** MARY TUCK3100 OCEAN PARK BOULEVARD
SANTA MONICA, CA 90405

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Serial Number: 78866277 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark



(words only): GUITAR HERO II

Standard Character claim: No

Current Status: Further action on the application has been suspended.

Date of Status: 2007-10-17

Filing Date: 2006-04-20

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 109

Attorney Assigned:
STRUCK ROBERT J

Current Location: L90 -TMEG Law Office 109

Date In Location: 2007-10-17

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United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

<http://tarr.uspto.gov/tarr?regser=serial&entry=78866277&action=Request+Status>

3/24/2008

GOODS AND/OR SERVICES

International Class: 009**Class Status:** Active

Interactive video game program; video game controllers, namely video game interactive remote control units, guitar-shaped interactive remote control units

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Concurrent Use: Applicant is also the owner of the following trademark applications/registrations: GUITAR HERO (stylized) (Serial No. 78/866,127) GUITAR HERO (stylized) (Serial No. 78/866,144) BAND HERO (Serial No. 78/866,261) KEYBOARD HERO (Serial No. 78/866,270) DRUM HERO (Serial No. 78/866,265) GUITAR HERO (Registration No. 3002745) GUITAR HERO (Serial No. 78/613,665)**Disclaimer:** "GUITAR"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-10-17 - Report Completed Suspension Check Case Still Suspended

2007-10-17 - Assigned To LIE

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2007-03-23 - Attorney Revoked And/Or Appointed

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Latest Status Info

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2007-03-05 - TEAS Response to Office Action Received
2007-02-07 - Automatic Update Of Assignment Of Ownership
2006-09-26 - Non-final action mailed
2006-09-25 - Non-Final Action Written
2006-09-25 - Assigned To Examiner
2006-04-27 - Notice Of Pseudo Mark Mailed
2006-04-26 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Mary Tuck

Correspondent

Mary Tuck
Activision Legal Department
3100 Ocean Park Boulevard
Santa Monica CA 90405
Phone Number: 310-255-2000
Fax Number: 310-255-2152



United States Patent and Trademark Office

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Trademark Assignment Abstract of Title

Total Assignments: 1**Serial #:** [78866277](#)**Filing Dt:** 04/20/2006**Reg #:** NONE**Reg. Dt:****Applicant:** RedOctane, Inc.**Mark:** GUITAR HERO II**Assignment: 1****Reel/Frame:** [3471/0253](#)**Received:** 01/30/2007**Recorded:** 01/30/2007**Pages:** 5**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** [REDOCTANE, INC.](#)**Exec Dt:** 01/29/2007**Entity Type:** CORPORATION**Citizenship:** CALIFORNIA**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Assignee:** [ACTIVISION PUBLISHING, INC.](#)3100 OCEAN PARK BOULEVARD
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