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

Proceeding	91201378
Party	Defendant Crytek GmbH
Correspondence Address	THOMAS W ADAMS RENNER, OTTO, BOISSELLE & SKLAR LLP 1621 EUCLID AVE FL 19 CLEVELAND, OH 44115-2193 tadams@rennerotto.com
Submission	Answer
Filer's Name	Thomas W Adams
Filer's e-mail	tadams@rennerotto.com, sthomas@rennerotto.com
Signature	/thomaswadams/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NVIDIA Corporation)	
)	
Opposer,)	Opposition No. 91201378
)	Serial No. 77677724
)	
v.)	
)	
Crytek GmbH)	APPLICANT'S
)	ANSWER
)	
Applicant.)	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, Crytek GmbH, by and through its counsel, hereby answers the Notice of Opposition of the Opposer, NVIDIA Corporation, as follows:

1. Admitted

2. Applicant is without sufficient knowledge or information as to the truth of the allegations in paragraph 2 of the Notice of Opposition and denies the allegations as a result.

3. The Notice of Opposition contains no paragraph 3. Accordingly, Applicant is without sufficient knowledge or information as to the truth of any allegations in paragraph 3 of the Notice of Opposition and denies any such allegations as a result.

4. Applicant is without sufficient knowledge or information as to the truth of the allegations in paragraph 4 of the Notice of Opposition and denies the allegations as a result.

5. Admitted.

6. Admitted.

7. Neither admitted nor denied, Applicant being without sufficient information to form a belief as to the truth of matters asserted therein and, therefore, leaves Opposer to its proofs.

8. Applicant is without sufficient knowledge or information as to the truth of the allegations in paragraph 8 of the Notice of Opposition and denies the allegations as a result.

9. Applicant is without sufficient knowledge or information as to the truth of the allegations in paragraph 9 of the Notice of Opposition and denies the allegations as a result.

10. Denied.

11. Denied.

12. Denied.

AFFIRMATIVE DEFENSES

For its affirmative defenses, Applicant hereby pleads as follows:

13. Applicant's mark as used on or in connection with the goods and services in Applicant's Serial No. 77677724 are not likely to be confused with any of Opposer's Marks, for at least the following reasons:

14. It is very popular to use an EYE DESIGN symbol as a trademark in the fields involved, i.e., software and hardware. In modern IT-infrastructure software programs always monitor processes and keep an eye on software applications and routines. Therefore, it is common-place to use eye symbols in signs and trademarks. Applicant is aware of some 736 U.S. trademarks that are classified for design search

code 02.11.02 (Eyes, human; Human eyes; Iris (eye)) and claim the goods "software", of which about 50 are U.S. design trademarks claiming the goods "software". Many more combined word and design trademarks exist. The existence and filing of all these trademark registrations demonstrate how popular the "eye"-symbol is in trademarks in this field, which means that the public must be able to distinguish between them, including between Opposer's EYE logo and the Applicant's mark, with no likelihood of confusion.




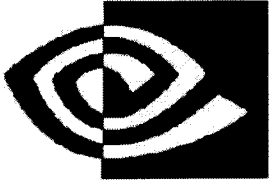
15. Applicant's mark is derived from a unique source and is not simply an EYE DESIGN, as shown in the following:

16. The design portion of Applicant's mark was inspired by the so-call nazar (also called evil eye), which is an eye-shaped amulet believed to protect against the evil eye ("evil eye", from nazar and "amulet" from boncuğu; in Turkish: nazar boncuğu). Actually, the Applicant Crytek GmbH is a German video game company founded in 1999 by three Turkish brothers: Cevat, Avni and Faruk Yerli, who have been inspired by the Turkish nazar. In Turkey and the Middle East a nazar usually consists of concentric blue and white circles (usually, from inside to outside, dark blue, light blue, white, dark blue). The Applicant's mark was inspired by the nazar, which results in a clearly different appearance of the mark from the marks of Opposer.

17. Applicant's mark is sufficiently different from all of the Opposer's marks that purchasers are not likely to mistakenly assume that Applicant's goods originate from, are sponsored by, or are in some way associated with Opposer, for at least the following reasons:

18. Applicant's mark is very different from Opposer's EYE Logo Marks, as shown by comparing the marks in dispute, a number of differences are found:

COMPARISON OF MARKS

Applicant's Mark	Opposer's Marks
	
	
	

19. Applicant's mark is dominated by the letters "C E", which is an abbreviation of Applicant's CryEngine mark (U.S. Registration No. 2870428). The center of the "eye" portion of Applicant's mark consists of three circles, from inside to outside, in black, white and black. This corresponds to the standard pattern of a nazar, as outlined above. In contrast the center of the Opposer's mark is not circular, but lemon-shaped, consisting only of a single lemon-shaped field, which is divided in a mirror-symmetric manner into two halves, namely a white half on the left-hand side and a black half on the right-hand side.

20. In the Applicant's mark the round nazar center is enclosed by a pattern consisting of two virtually identical patterns rotated by 180 degrees about the center. Each pattern consists of two fin- or arrow-shaped patterns of different sizes, the inner pattern being black and the outer pattern being white, that lie above each other.

21. In contrast in the Opposer's mark a line extends in a spiral-like manner and with increasing line width from inside towards the outside while maintaining the above lemon-like shape.

22. While the Applicant's mark is shown in front of a rectangular black background, the Opposer's mark is before a quadratic black background only on the right-hand side.

23. Overall, the Opposer's mark has a mirror-symmetric appearance, the background on the right-hand side being black and on the left-hand side being white. In contrast, the Applicant's mark overall has a point-symmetric appearance and contains the letters "C E".

24. The Opposer's marks EYE LOGO (and NVIDIA) are dominated by the word NVIDIA, while Applicant's mark contains the letters "C E" which are quite different, and the public will orient itself based on these words and will clearly distinguish between Opposer's marks and the Applicant's mark.

25. The nature of the goods and services associated with each party's respective mark are not closely related, for the following reasons:

26. In class 09 the goods of the Opposer's marks are related to special purpose integrated circuits and related computer software. In contrast, the Applicant's mark is in particular for use related to "Computer software development tools, namely,

computer software designed for the creation and development of video games; computer game software; computer graphics software; video game software;" and related downloadable electronic publications, pre-recorded electronic data carriers and printed matter".

27. In class 41 the services of the Opposer's marks are related to the design of computer hardware, software and peripherals for others. In contrast, the Applicant's mark is for use for "Entertainment services, namely, providing on-line computer games over local area computer networks; providing a computer game that may be accessed network-wide by network users".

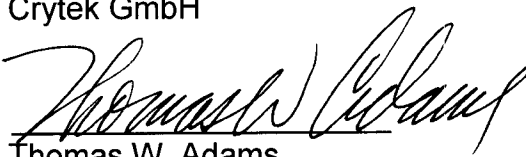
28. Applicant's mark does not so resemble Opposer's marks as to be likely to cause confusion, or to cause mistake, or to deceive.

29. Due to the differences in the Applicant's mark and the Opposer's marks, Opposer is not likely to be damaged by the registration of Applicant's mark.

WHEREFORE, Applicant prays that Applicant's Serial No. 77677724 be registered and that the Notice of Opposition be denied.

Crytek GmbH

By:



Thomas W. Adams

Donald L. Otto

RENNER, OTTO, BOISSELLE & SKLAR, LLP

1621 Euclid Avenue

Nineteenth Floor

Cleveland, Ohio 44115-2191

Dated: October 10, 2011

Attorneys for Applicant

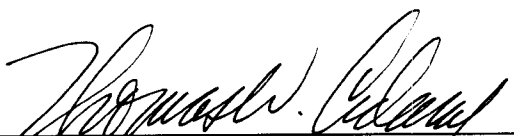
Attorney Docket No.: BLAST9067US

CERTIFICATE OF SERVICE

I hereby certify that on this 10 th day of October, 2011, a true copy of the foregoing Applicant's Answer to Notice of Opposition was served by first-class mail, postage prepaid, upon counsel for Opponent:

Karen A. Webb
Fenwick & West LLP
801 California Street, Silicon Valley Center
Mountain View, CA 94041

and by email at: trademarks@fenwick.com



Thomas W. Adams