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Filing date: **11/16/2011**

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	Blizzard Entertainment, Inc.
Granted to Date of previous extension	11/16/2011
Address	16215 Alton Parkway Irvine, CA 92618 UNITED STATES
Attorney information	Marc E. Mayer Mitchell Silberberg & Knupp LLP 11377 West Olympic Boulevard Los Angeles, CA 90064 UNITED STATES all@msk.com, mem@msk.com, kls@msk.com, kgp@msk.com Phone:(310) 312-2000

Applicant Information

Application No	85102245	Publication date	07/19/2011
Opposition Filing Date	11/16/2011	Opposition Period Ends	11/16/2011
Applicant	Valve Corporation 10900 NE 4th Street, Suite 500 Bellevue, WA 98004 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Computer game software; Electronic game software; Video game software

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Defense of the Ancients; DotA; Dota; DOTA		
Goods/Services	Computer game software; Electronic game software; Video game software.		

Attachments	85-102245 - Notice of Opposition - Blizzard v. Valve (4276917).PDF (12 pages) (516654 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	/s/ Marc E. Mayer
Name	Marc E. Mayer
Date	11/16/2011

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

BLIZZARD ENTERTAINMENT, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	App. Serial No. 85/102245
VALVE CORPORATION.)	Mark: DOTA
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Blizzard Entertainment, Inc. (“Blizzard”), a Delaware corporation with a business address at 16215 Alton Parkway, Irvine, CA 92618, believes that it will be damaged by the registration of the mark that is the subject of Application Serial No. 85/102245, and hereby opposes its registration on the following grounds:

Introduction

1. By this Opposition, Blizzard seeks to prevent registration by its competitor Valve Corporation (“Valve”) of a trademark, DOTA, that for more than seven years has been used exclusively by Blizzard and its fan community, under license from Blizzard. By virtue of that use, the DOTA mark has become firmly associated in the mind of consumers with Blizzard, including to signify a highly popular scenario or variant of one of Blizzard’s best-selling computer games, Warcraft III. Over the past seven years, the mark DOTA has been used exclusively in connection with Blizzard and its products, namely Warcraft III. Most notably, DOTA has been used as the popular name of a Warcraft III software “mod” file that has been distributed, marketed, and promoted by Blizzard and its fans (under license from Blizzard); that utilizes and is built upon the

Warcraft III game engine, interface, and gameplay mechanics; that is comprised of Warcraft III characters, items, spells, artwork, textures, and color palates; that can be played only using Warcraft III software and via Blizzard's online service Battle.net; and whose name (DOTA, an acronym for "Defense of the Ancients") is a reference to Warcraft III characters known as the "Ancients."

2. In contrast to Blizzard, Applicant Valve Corporation ("Valve") has never used the mark DOTA in connection with any product or service that currently is available to the public. By attempting to register the mark DOTA, Valve seeks to appropriate the more than seven years of goodwill that Blizzard has developed in the mark DOTA and in its Warcraft III computer game and take for itself a name that has come to signify the product of years of time and energy expended by Blizzard and by fans of Warcraft III. Valve has no right to the registration it seeks. If such registration is issued, it not only will damage Blizzard, but also the legions of Blizzard fans that have worked for years with Blizzard and its products, including by causing consumers to falsely believe that Valve's products are affiliated, sponsored or endorsed by Blizzard and are related or connected to Warcraft III.

Blizzard and Warcraft III

3. Blizzard is one of the world's most respected and popular makers of entertainment software. Blizzard is engaged in the business of developing, financing, producing, marketing and distributing high-quality computer software games and related products, including the Warcraft®, World of Warcraft®, StarCraft® and Diablo® gaming franchises. Blizzard and its brands are known throughout the United States and the world as a source of high-quality, challenging and immersive video games and related products.

4. Since 1994, Blizzard has, in conjunction with its licensed partners, created and developed the Warcraft® franchise of computer games, novels and other media. The Warcraft® franchise includes three real-time strategy computer games (each of which has sold millions of copies), several add-on expansions to these games, the world's best selling online role-playing game "World of Warcraft," tabletop board games, collectible card games, novels, comics, action figures, posters, and other media. Blizzard is the owner of numerous registered trademarks in the mark Warcraft® and owns copyrights in each of the Warcraft® games, including "Warcraft," "Warcraft II: Tides of Darkness," "Warcraft II: Beyond the Dark Portal," "Warcraft III: Reign of Chaos," and "Warcraft III: The Frozen Throne" (collectively, the "Warcraft Games"). The Warcraft Games are widely considered among the most popular in their genres.

5. The Warcraft Games are known for their deep and detailed mythology, which is present in each of the games. All of the Warcraft Games take place in the mythical world of Azeroth, which is populated by an enormous variety of distinctive mythical creatures, including a race of sentient, god-like trees known as the "Ancients." The "Ancients" are prominent and recurring characters in the Warcraft Games and the Warcraft "universe" as a whole.

6. "Warcraft III: Reign of Chaos" was released by Blizzard in 2002. The following year, Blizzard released an expansion to "Reign of Chaos" entitled "Warcraft III: The Frozen Throne" (collectively, "Warcraft III: Reign of Chaos" and "Warcraft III: The Frozen Throne" are referred to as "Warcraft III"). The release of Blizzard's Warcraft III was one of the most anticipated and commercially successful computer game releases of all time. Tens of millions of copies of Warcraft III have been sold around the world. Warcraft III has enjoyed long-lasting success due to its robust and cutting-edge online multiplayer component (which may be accessed and enjoyed through Blizzard's

well-known Battle.net online multiplayer network), its detailed and richly populated world, and its multitude of custom maps (created both by Blizzard and its community).

Blizzard And The Warcraft World Editor

7. Blizzard provides to every purchaser of Warcraft III a powerful and full-featured software program known as the “World Editor.” The World Editor enables members of the public to use Warcraft III’s underlying software and graphical art assets, including the character art, sounds and terrain models of the underlying game to create custom items, maps, characters, environments and campaigns (also known as a “modification” or “mod”). A user also can use the World Editor to create custom artificial intelligence scripts for computer-controlled units, change the placement of the camera, and modify the strength or abilities of individual units. Once a Warcraft III mod is complete, the World Editor permits users to save the mod as a small computer file that can be shared with other players to allow them to play the mod using their own Warcraft III software. Mod files made with the World Editor cannot be played without first installing and loading a copy of Blizzard’s Warcraft III game software.

8. Use of the World Editor (and Warcraft III) is subject to the terms of an End User License Agreement (“EULA”) between Blizzard and users of Warcraft III. The EULA sets forth the relative rights and responsibilities of the parties regarding their use of Warcraft III and the World Editor. The EULA is displayed to users during the installation of Warcraft III and the World Editor. All users of Warcraft III and the World Editor must consent to the EULA by clicking on a button labeled “Accept.” If the user declines to assent, he or she may click a button labeled “Decline,” at which point the installation will terminate, denying access to the user. If a user declines to accept the

EULA, he or she may request and obtain a full refund from Blizzard of the purchase price.

9. Pursuant to the EULA, Blizzard grants to the user, subject to the terms of the EULA, a limited, non-exclusive license to install Warcraft III and the World Editor on his or her computer, use the game for noncommercial entertainment purposes, and distribute Warcraft III mods to other users via the Battle.net game service. Warcraft III's EULA clearly specifies that all underlying intellectual property rights in and to Warcraft III are owned by Blizzard: "All title, ownership rights, and intellectual property rights in and to the Program and any and all copies thereof (including, but not limited to, any titles, computer code, themes, objects, characters, character names, stories, dialog, catch phrases, locations, concepts, artwork, animations, sounds, musical compositions, audio-visual effects, methods of operation, moral rights, any related documentation, and 'applets' incorporated into the Program) are owned by Blizzard or its licensors."

10. The EULA prohibits the use of Warcraft III or the World Editor for any commercial purpose without Blizzard's prior written consent. In addition, the EULA restricts any distribution of "New Materials [defined as modifications of Warcraft III created using the World Editor] on a stand-alone basis... through any and all distribution channels, including, but not limited to, retail sales and on-line electronic distribution without the express written consent of Blizzard."

DotA

11. Among the most popular Warcraft III mods is "Defense of the Ancients," commonly referred to, and known by consumers, as "DotA," "Dota," and "DOTA" (collectively, "DotA"). DotA is a Warcraft III scenario (or "map") that allows players to

play a version of Warcraft III in which they compete against each other using various Warcraft III characters, spells, and items. The title “Defense of the Ancients,” or “DotA,” is a reference to the Warcraft III characters known as the “Ancients,” since the primary objective of the game is to either defend or destroy (depending upon which team the player is on) the Ancient known as the Tree of Life.

12. DotA first was developed in 2003 using Blizzard’s World Editor. Over the years, under license from Blizzard, numerous versions or iterations of DotA have been distributed to the public, including the popular version “DotA AllStars” (collectively, the “DotA Mods”).

13. The DotA Mods are not stand-alone products and cannot be played independently of Warcraft III. From a technical standpoint, the DotA mods are small computer files that use the Warcraft III “extension” .w3x. The DotA Mods cannot be opened, accessed, played, or used in any manner without the user having first installed Warcraft III and assented to the Warcraft III EULA. From the user’s standpoint, the DotA Mods are Warcraft III scenarios, or “maps,” that users can loaded into Warcraft III and enable them to play Warcraft III in a slightly different manner from the original game. The DotA Mods use the same game engine, graphical elements, artwork, sound recordings and user interface of Warcraft III. All of the elements of the DotA Mods, including the heroes, items, leveling system, abilities, spells, fighting mechanics, environments, and structures, are from Warcraft III. All or nearly all of the models, textures, animations, ability or spell effects, and icons are from Warcraft III. Further, many of the names, sounds, and character icons of the heroes in the DotA Mods are the same as those used by Warcraft III characters. All of these elements were utilized by the DotA Mods under license from Blizzard and pursuant to the EULA.

14. Since its release in 2003, the DotA Mods have been downloaded and played by hundreds of thousands of people throughout the United States and the world via the Warcraft III game software and Blizzard's Battle.net system. The DotA Mods can be played only after a user has installed Warcraft III onto his or her computer, assented to the EULA, launched the game software (at which time the user is presented with the Warcraft III game screen and Blizzard logo), and entered Blizzard's "Battle.net" multiplayer online system. At all times, the DotA Mods have been marketed, advertised, and promoted as Warcraft III scenarios that require purchase and installation of Warcraft III and knowledge of Warcraft III's gameplay mechanics, user interface, and on-screen display. The fact that the DotA Mods are "mods" of Warcraft III and that to be played the user must first purchase Warcraft III is well-known and well-publicized throughout the United States and the world.

Blizzard's Rights In And To The DotA Marks

15. Since at least 2004, members of the public have come to associate and identify the marks "Defense of the Ancients," "DotA," "DOTA," and "Dota" (the "DOTA Marks") with Blizzard and its interactive computer game products, including Warcraft III. Blizzard's rights in and to the DotA Marks result from a number of factors, including but not limited to the following:

16. First, since at least 2003, Blizzard has used the DOTA Marks extensively and consistently in interstate commerce. Blizzard has distributed in commerce products bearing the DOTA Marks, including the DotA Mods. For example, Blizzard has offered for download the DotA Mods directly via the Battle.net network and/or the Blizzard.com and/or Warcraft.com websites. Blizzard also has regularly and consistently advertised and promoted the DotA Mods via the Battle.net network and/or the Blizzard.com and/or

Warcraft.com websites. Blizzard also has regularly and consistently advertised and promoted the DotA Mods at its annual convention, Blizzcon, at gaming events and conventions, and in the gaming and mainstream media.

17. Second, Blizzard has licensed third parties to exploit the DOTA Marks on Blizzard's behalf. By way of example, Blizzard has licensed various third parties and third party websites, including but not limited to the websites www.dota-allstars.com, www.playdota.com, and www.getdota.com, to distribute and promote the DotA Mods, and to use the DOTA Marks in connection with such distribution and promotion, subject to and consistent with the terms of the Warcraft III EULA. To the extent that the owners of any of these websites have used the DOTA Marks in commerce, they have done so pursuant to license with the Blizzard and for the benefit of Blizzard.

18. Third, Blizzard has licensed the DotA Mods and the DOTA Marks on an ongoing basis for a variety of third party uses. These uses include, but are not limited to, DotA tournaments and competitions, entertainment products (such as the popular musical recording "DotA" by recording artist "Basshunter"), and fan artwork.

19. Fourth, because of the nature of the DotA Mods, members of the public overwhelmingly have come to associate the DotA Mods and DOTA Marks with Warcraft III and Blizzard. For example, it is impossible to play or use any of the DotA Mods without first installing and loading Warcraft III and then connecting to Blizzard's "Battle.net" system. Thus, the DOTA Marks are always used in close proximity to Blizzard and Warcraft III, and DotA players consistently are presented with Warcraft III and Blizzard logos, copyright notices, and trademark notices during the installation and loading of the DotA Mods. Likewise, the DotA Mods are based entirely on Warcraft III, and utilize Warcraft III characters, images, artwork, items, user interface, and gameplay

mechanics (all of which are drawn from the Warcraft III software). Accordingly, members of the public, including players of the DotA Mods, understand that the DotA Mods are not independent products, but are part of (and encompassed within) Blizzard's Warcraft III game, and therefore derive from Blizzard. Indeed, the DotA Mods regularly are advertised, promoted, and described using Blizzard's Warcraft III characters and artwork.

20. Fifth, it is well-known and understood among players of the DotA Mods that the DOTA Marks refer to Blizzard's well-known characters "the Ancients." Blizzard's use of the Ancients (and the phrase "of the Ancients") includes the book series "War of the Ancients;" Warcraft maps and quests known as "Strand of the Ancients," "Heart of the Ancients," and "Blessings of the Ancients;" and the musical work titled "Rise of the Ancients."

21. In addition to the foregoing, in or about October 2004, two Warcraft fans, Steve Feak (who also participated in the development of the DotA mods) and Steve Mescon, launched the Internet website DotA-Allstars.com (www.dota-allstars.com) (the "DotA-Allstars Website"). The DotA-Allstars Website was a website dedicated to promoting, advertising and distributing the DotA Mods. The DotA-Allstars website was visited by millions of people, and at one time the average number of visitors to the website exceeded one million each month. Via the DotA-Allstars Website, Feak and Mescon distributed versions of the DotA Mods, communicated with members of the public concerning the DotA Mods, advertised upcoming DotA tournaments and competitions, and collected fan artwork concerning the DotA Mods. All of these activities were undertaken with the authorization and consent of Blizzard, pursuant to the EULA. In 2008, Feak and Mescon each assigned all of their rights in and to the DotA Mods and the DotA-Allstars Website to "DotA-Allstars, LLC." In 2010, DotA-Allstars,

LLC was purchased by Riot Games, Inc. In 2011, Riot transferred DotA-Allstars, LLC to Blizzard. Accordingly, Blizzard now possesses all rights that DotA-Allstars LLC may have had in connection with the DotA Mods and the DotA-Allstars website, including any trademarks or other goodwill DotA-Allstars LLC may have had in the DOTA Marks.

Applicant's Trademark Application

22. Applicant Valve Corporation is a computer game developer and publisher, and one of Blizzard's primary competitors in the PC computer game market. Blizzard's rights in the DOTA Marks notwithstanding, on August 6, 2010, Valve filed with the United States Patent and Trademark Office (the "PTO") Application Serial No. 85/102245 to register the mark DOTA for "Computer game software; Electronic game software; Video game software" (herein "the Opposed Application"). Valve did so for the purpose of appropriating Blizzard's goodwill in the DOTA Marks and in order to confuse consumers as to Blizzard's sponsorship, affiliation, or endorsement of Valve's products.

23. Valve has no rights in or to the DOTA mark. Valve has never released, distributed, or sold any products using the mark DOTA, or, for that matter, any of the DOTA Marks. Valve did not coin the DOTA mark and has never participated in the creation of the DotA Mods. Indeed, Valve has never released, distributed, or sold any products using any title that might conceivably be shortened to the acronym DOTA. To the contrary, the only use of the DOTA Marks in connection with a published computer or video game product is in connection with Warcraft III (and a Warcraft III mod and computer file.) Accordingly, Blizzard's use and/or constructive use rights for the DOTA Marks are prior to and superior to any rights of Valve to the mark DOTA.

24. In view of the similarities between, on the one hand, the DOTA Marks, and, on the other hand, the DOTA mark that is the subject of the Opposed Application, and the relationship between Blizzard's goods and services as identified by the DOTA Marks and the goods identified in the Opposed Application, it is likely that members of the public erroneously will believe that Valve's goods originate with, or are in some manner connected or associated with, or sponsored by, Blizzard, all to the harm of Blizzard's goodwill and reputation.

25. Valve's DOTA mark so resembles each of Blizzard's DOTA Marks when used on or in connection with Valve's goods 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).

26. If Valve is granted registration of the DOTA mark, it would obtain a prima facie exclusive right to use of its mark that would cause damage and injury to Blizzard.

WHEREFORE, Blizzard respectfully requests that this Opposition be granted and that Application No. 85/102245 be denied registration.

Date: November 16, 2011

BLIZZARD ENTERTAINMENT, INC.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice of Opposition was served this 16th day of November 2011 by first-class mail, postage prepaid, on the following as Applicant's correspondence address of record:

David J. Byer
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Kimberly Stewart

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically through ESTTA pursuant to 37 C.F.R. §2.195(a) on November 16, 2011.


Kimberly Stewart