

ESTTA Tracking number: **ESTTA907179**

Filing date: **07/03/2018**

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	Stardock Systems, Inc.
Granted to Date of previous extension	07/04/2018
Address	15090 Beck Road Plymouth, MI 48170 UNITED STATES

Attorney information	David L. May Nixon Peabody LLP 799 9th Street NW, Suite 500 Washington, DC 20001 UNITED STATES Email: nptm@nixonpeabody.com, was.managing.clerk@nixonpeabody.com, dmay@nixonpeabody.com, rweikert@nixonpeabody.com, jwiser@nixonpeabody.com
----------------------	--

Applicant Information

Application No	87633531	Publication date	03/06/2018
Opposition Filing Date	07/03/2018	Opposition Period Ends	07/04/2018
Applicants	Paul Reiche 2553 Laguna Vista Drive Novato, CA 94945 UNITED STATES Fred Ford 730 Eucalyptus Avenue Novato, CA 94947 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer game software; Computer game software downloadable from a global computer network; Computer game software for use on mobile and cellular phones; Computer game software for use with personal computers, home video game consoles usedwith televisions and arcade-based videogame consoles; Downloadable computer game programs; Downloadable electronic game programs; Interactive game programs; Interactive game software; Computer game programmes downloadable via the Internet; Downloadable computer game software via a global computer network and wirelessdevices
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment services, namely, providing temporary use of non-downloadable computer games; Entertainment services, namely, providing

temporary use of non-downloadable electronic games; Entertainmentservices, namely, providing temporary use of non-downloadable interactive games; Production of video and computer game software; Providing online non-downloadable game software; Providing temporary use of non-downloadable game software

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PRECURSORS		
Goods/Services	Computer game programs; Computer game software; Video game programs; Video game software; Entertainment services, namely, providing on-line computer game software and video games; Providing information on-line relating to multimedia entertainment software production services; Providing information on-line relating to computer games and video games		

Attachments	Notice of Opposition_GHOSTS OF THE PRECURSORS.pdf(198520 bytes)
-------------	--

Signature	/Jennette E. Wiser/
Name	Jennette E. Wiser
Date	07/03/2018

Attorney Docket No.: 066632-85

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

In the Matter of:

Application Serial No.: 87/633,531

Mark: GHOSTS OF THE PRECURSORS

Published in the Official Gazette: March 6, 2018

Stardock Systems, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	Appln. Serial No. 87/633,531
Paul Reiche and Fred Ford,)	
)	
Applicants.)	
)	

NOTICE OF OPPOSITION

Stardock Systems, Inc., a Michigan corporation, located and doing business at 15090 Beck Road, Plymouth, Michigan 48170 (hereinafter “**Stardock**”), believing that it will be damaged by Applicants’ registration, hereby opposes registration of the mark shown in Application Serial No. 87/633,531 for the mark GHOSTS OF THE PRECURSORS, filed October 4, 2017, under the Trademark Act of 1946, in the names of Paul Reiche, an individual with an address of record 2553 Laguna Vista Drive, Novato, California 94945, and Fred Ford, an individual, with an address of record of 730 Eucalyptus Avenue, Novato, California 94947 (collectively hereinafter “**Applicants**”), published for opposition in the *Official Gazette* of March 6, 2018.

The grounds for Opposition are as follows:

1. In 2013, Stardock acquired, via an asset purchase agreement and associated intellectual property assignment between Stardock and Atari, Inc. dated July 18, 2013 (hereinafter “**Asset Purchase Agreement**”), certain assets in and to the classic Star Control video games (*i.e.*, Star Control I, Star Control II, and Star Control III) (hereinafter the “**Classic Star Control Games**”), including but not limited to any and all trademarks and other intellectual property rights adopted and used by the original publisher of the Classic Star Control Games (*i.e.*, Accolade, Inc. (“**Accolade**”)) in the marketing and publishing thereof, including but not limited to product names/titles, sub-names/titles, cover art, characters (*e.g.*, aliens), alien race names, characters names, spaceship names and spaceship designs, which includes, without limitation, the mark PRECURSORS (hereinafter the “**PRECURSORS Mark**”).

2. Since the release of the Classic Star Control Games in as early as 1990, the PRECURSORS Mark has been in use in U.S. commerce through the publishing and sale of the games, as first distributed by Accolade and then by Atari. Stardock has continued to use the PRECURSORS Mark in U.S. commerce via its own marketing, advertising, promotion, distribution and/or sale of the Classic Star Control Games. The rights and goodwill established from such use has inured to Stardock’s benefit. Such use of the PRECURSORS Mark in connection with at least one of the Classic Star Control Games is exemplified in **Exhibit A** attached hereto and incorporated herein by reference.

3. The PRECURSORS Mark has obtained valuable fame, reputation and goodwill as a result of the long standing use of the mark in U.S. commerce and its association with the greatly successful Classic Star Control Games.

4. Upon information and belief, on October 4, 2017, Applicants filed, under Trademark Act § 1(b) claiming intent-to-use the mark in U.S. Commerce, U.S. Trademark Application No. 87/633,531 for the mark GHOSTS OF THE PRECURSORS (the “**Opposed Mark**”) for use with *Computer game software; Computer game software downloadable from a*

global computer network; Computer game software for use on mobile and cellular phones; Computer game software for use with personal computers, home video game consoles used with televisions and arcade-based video game consoles; Downloadable computer game programs; Downloadable electronic game programs; Interactive game programs; Interactive game software; Computer game programmes downloadable via the Internet; Downloadable computer game software via a global computer network and wireless devices in Class 9 and Entertainment services, namely, providing temporary use of non-downloadable computer games; Entertainment services, namely, providing temporary use of non-downloadable electronic games; Entertainment services, namely, providing temporary use of non-downloadable interactive games; Production of video and computer game software; Providing online non-downloadable game software; Providing temporary use of non-downloadable game software in Class 41 (the “Opposed Application”).

5. The goods and services in the Opposed Application are highly related to, if not the same as, the goods and services associated with the PRECURSORS Mark.

6. Prior to Applicants’ filing date and, upon information and belief, prior to any date of first use Applicants could claim, Stardock, via Accolade and Atari and most recently itself, engaged in the sale or offering of the same and/or similar goods and services, and the advertising and promotion related to such goods and services, in connection with the PRECURSORS Mark throughout the U.S. As such, Stardock holds prior common law rights in the PRECURSORS Mark.

7. The Opposed Mark is confusingly similar to Stardock’s PRECURSORS Mark, given that the dominant portion of the Opposed Mark is identical to Stardock’s mark (*i.e.*, “PRECURSORS”).

8. Stardock has expended significant revenue and resources in connection with the marketing and sale of the goods and services in connection with the PRECURSORS Mark and,

through these efforts, has established valuable consumer recognition and goodwill therein. Stardock will therefore be damaged by registration of the Opposed Mark.

9. Applicants' use and registration of the Opposed Mark will create a likelihood of confusion, mistake and/or deception among consumers, within the meaning of Trademark Act § 2(d), 15 U.S.C. § 1052(d), all to the detriment of Stardock.

10. Upon information and belief, Stardock avers that members of the relevant consuming public are likely to be confused, mistaken, or deceived as to the origin, sponsorship, or approval of Applicants' goods and services to be marketed and offered under the Opposed Mark and misled into believing that such goods and services emanate from or are in some way associated with Stardock, in light of Stardock's prior use of the PRECURSORS Mark (via Accolade and Atari), to the damage and detriment of Stardock and its reputation.

11. Because the Opposed Mark is confusingly similar to the PRECURSORS Mark and because the goods and services listed in the Opposed Application are related and, in some cases the same as the goods and services provided by Stardock under the PRECURSORS Mark, consumers would likely believe incorrectly that the Opposed Mark is associated with Stardock and the PRECURSORS Mark.

12. Applicants and any goods and services provided under the Opposed Mark are in fact not affiliated with, endorsed by, sponsored by, or otherwise associated with Stardock.

13. Applicants' use and registration of the Opposed Mark will therefore falsely suggest a connection with Stardock within the meaning of Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), to the detriment of Stardock.

WHEREFORE, Stardock believes and avers that it is being and will continue to be damaged by registration of the Opposed Mark as aforesaid, and requests that said Application Serial No. 87/633,531 be rejected, that no registration be issued thereon to Applicants, and that this Opposition be sustained in favor of Stardock.

Stardock has appointed David L. May, Robert A. Weikert and Jennette E. Wiser, of the law firm of Nixon Peabody LLP, and members of a U.S. Bar in good standing, to prosecute this Opposition and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

David L. May
Robert A. Weikert
Jennette E. Wiser
NIXON PEABODY LLP
799 9th Street NW
Suite 500
Washington, DC 20001
nptm@nixonpeabody.com
was.managing.clerk@nixonpeabody.com

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 50-2686.

Respectfully submitted,

Dated: July 3, 2018

NIXON PEABODY LLP

By /David L. May/
David L. May
Robert A. Weikert
Jennette E. Wiser
NIXON PEABODY LLP
799 9th Street NW, Suite 500
Washington, DC 20001

(202) 585-8000 (Phone)
(202) 585-8080 (Facsimile)
nptm@nixonpeabody.com
was.managing.clerk@nixonpeabody.com

Counsel for Stardock

EXHIBIT A

OTHER IMPORTANT RACES

Arilou Lalee'lay

The Arilou visited Earth frequently in the last half of the 20th century, when they were responsible for many flying-saucer sightings, crop circles, alien abductions, and similar prankish behavior. The Arilou are pale-skinned humanoids, about 1.5 meters tall, with large, childlike heads and dark, soulful eyes. While the Arilou do not speak (they communicate through a direct telepathic link), they have mouths, which are almost always stretched in a wide, innocent-looking smile.

The Arilou Lalee'lay maintain great secrecy about themselves and their motivations. In fact, their very existence was not certain until the year 2116 when they appeared without warning on Earth's moon and asked to be inducted into the original Alliance of Free Stars. After the last war the Arilou disappeared and so they were never officially offered membership in the League.

Precursors

All over the galaxy, there can be found ruins and artifacts left by the race we know as the Precursors. Even with all these artifacts, we know little about them. We do know the Precursors were apparently giant non-bipedal beings with great intelligence. Most of the Precursor items that have been discovered seem to be technological in nature.

Unconfirmed alien reports indicate the Precursors either discovered or manufactured the Rainbow Worlds, but we didn't know how or why. The ten Rainbow Worlds in the home quadrant seem to form an arrow pointing toward the Kessari quadrant and the galactic core. Those same reports say the Precursors had found an answer to some great secret mystery just before their departure about 235,000 years ago.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **NOTICE OF OPPOSITION** was served on Applicants' attorney of record as listed with the U.S. Patent and Trademark Office this 3rd day of July, 2018, by sending the same, via first class mail and electronic mail to:

Mark Palmer
4 Meadow Drive
Mill Valley, California 94941
mark@palmerlex.com

/Jennette E. Wisner/
Jennette E. Wisner