

ESTTA Tracking number: **ESTTA1145140**

Filing date: **07/07/2021**

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	DivX, LLC
Granted to Date of previous extension	07/07/2021
Address	4350 LA JOLLA VILLAGE DRIVE, SUITE 950 SAN DIEGO, CA 92122 UNITED STATES

Attorney information	JOHN M. KIM IPLA, LLP 4445 EASTGATE MALL SUITE 200 SAN DIEGO, CA 92121 UNITED STATES Primary Email: litigation@ipla.com 8582720220
Docket Number	

**Applicant Information**

Application No.	90130514	Publication date	03/09/2021
Opposition Filing Date	07/07/2021	Opposition Period Ends	07/07/2021
Applicant	Clvrly Learning, Inc. 591 TEMPLETON DRIVE SUNNYVALE, CA 94087 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 042. First Use: 2020/06/16 First Use In Commerce: 2020/06/16 All goods and services in the class are opposed, namely: Software as a service (SAAS) services featuring software for managing virtual reality devices in real time
---

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
--------------------------------------	----------------------------

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application No.	88659883	Application Date	10/18/2019
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	GROVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2020/05/04 First Use In Commerce: 2020/05/04  Downloadable computer software in the nature of a mobile application for video recording, producing, editing and sharing of video clips and photos; Downloadable software tools for image editing and video editing; Downloadable software for social networking including chat, user location, and groups; Downloadable software that enables users to create, produce, edit and share videos using digital images, photos, text, graphics, audio, video clips, and multimedia content; Downloadable software for creating, viewing, sorting, storing, transferring, uploading, downloading and sharing videos with others via computer networks, mobile devices, and other communication devices; Downloadable computer software in the nature of a mobile application for geo-location based video creation and sharing</p>		

Attachments	88659883#TMSN.png( bytes ) 2021-07-07 - NOO - GROVE XR.pdf(830123 bytes )
-------------	--

Signature	/Benjamin S. White/
Name	Benjamin S. White
Date	07/07/2021

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

DivX, LLC	)	Opposition No. _____
	)	
Opposer,	)	Mark: GROVE XR
	)	Serial No.: 90130514
v.	)	Filing Date: August 21, 2020
	)	
Clvrly Learning, Inc.,	)	
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

1. DivX, LLC (“Opposer”), a Delaware limited liability company with an address of 4350 La Jolla Village Drive, Suite 950 San Diego, CA 92122, believes that it would be damaged by the registration of the application identified in the caption (the “Application”) owned by Clvrly Learning, Inc., a Delaware corporation with an address of 591 Templeton Drive, Sunnyvale, CA 94087 (the “Applicant”).

**OPPOSER AND ITS TRADEMARK RIGHTS**

2. Opposer is a prominent and well-known developer, manufacturer, and provider of video software, devices, and streaming services. Among its wide range of products and services, Opposer offers computer software and a mobile application that allow users to create, produce, record, edit, view, and share videos, photos, and various multimedia content under its GROVE trademark (the “Grove Mark”). Opposer’s software and mobile application also encompasses social networking and geo-location components and capabilities that allow users to communicate

and share their unique experiences with one another. All of the aforementioned goods are collectively referred to as the “Grove Goods.”

3. Opposer has used the Grove Mark in connection with the Grove Goods since at least as early as May 4, 2020.

4. Opposer has a valid and subsisting trademark application and common law rights for its Grove mark in the United States. Opposer’s relevant US application on the Principal Register (the “Grove Application”) is shown below:

<b>Mark</b>	<b>Reg. No.</b>	<b>Filing Date</b>	<b>Allowance Date</b>
GROVE	88659883	October 18, 2019	September 15, 2020

5. Opposer’s Statement of Use was filed on May 25, 2021 and is pending examination. Once the Opposer’s Statement of Use is accepted, the Grove Application will proceed to registration with a constructive use date of October 18, 2019. A true and correct copy of the Grove Application is enclosed as Exhibit A.

6. Opposer also owns common law trademark rights in and to the Grove Mark that has been in use since at least as early as May 4, 2020 in connection with the Grove Goods.

**APPLICANT AND ITS APPLICATIONS**

7. On August 21, 2020, Applicant filed the Application to register GROVE XR in connection with the following:

Class 42: Software as a service (SAAS) services featuring software for managing virtual reality devices in real time

The Application was filed based on use with a first use date of June 16, 2020.

8. On March 9, 2021, the Application was published for opposition.

9. On April 5, 2021, Opposer timely requested, and was granted, a 90-day extension of the opposition deadline.

10. The current deadline to oppose is July 7, 2021. Therefore, this Notice of Opposition is timely filed.

**COUNT 1**  
**Likelihood of Confusion**  
**(15 U.S.C. § 1052(d))**

11. Opposer realleges and incorporates by reference the preceding allegations of this Notice of Opposition.

12. Opposer's trademark rights are senior to any rights that Applicant may allege to have in its Application or the GROVE XR mark because Opposer's Grove Application was filed on the Principal Register before the filing date of the Application and/or the first use Applicant's GROVE XR mark.

13. Opposer's trademark rights are senior to any rights that Applicant may allege to have in the Application or its GROVE XR mark because Opposer owns common law trademark rights to its Grove Mark in connection with goods that are either identical or highly related to the Applicant's services claimed in the Application, and that predate the filing date of the Application and/or the first use of Applicant's GROVE XR mark.

14. Applicant's GROVE XR mark is confusingly similar to Opposer's Grove Mark because the marks are nearly identical in sight, sound, meaning, and commercial impression.

15. The services in the Application are highly related to the goods claimed in Opposer's Grove Application.

16. Applicant had constructive knowledge and, on information and belief, had actual knowledge of Opposer's trademark rights in and to the Grove Mark before it filed its Application.

17. The Application to register GROVE XR in connection with the services claimed in the Application is likely to cause confusion or mistake, to deceive, or to create the false impression that Applicant's services are provided by, related to, endorsed by, or associated with Opposer, or otherwise would cause injury to Opposer and Opposer's rights in its Grove Mark, in violation of Lanham Act § 2(d), with consequent damage to Opposer and the public.

WHEREFORE, Opposer requests that this opposition be sustained and that each of the three Applications be denied registration.

Dated: July 7, 2021

Respectfully submitted,

*/Benjamin S. White/*

IPLA, LLP

4445 Eastgate Mall, Suite 200

San Diego, CA 92121

Phone: 858-272-0220

Email: [litigation@ipla.com](mailto:litigation@ipla.com)

Attorney for Opposer, DivX, LLC

# **Exhibit A**

**uspto** UNITED STATES PATENT AND TRADEMARK OFFICE About Us Careers Contact Us

**Patents Trademarks Learning and Resources**

USPTO > Trademark > TSDR > Trademark Search TSDR FAQ'S

For assistance with TSDR, email [teas@uspto.gov](mailto:teas@uspto.gov) and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

**Trademark Status & Document Retrieval (TSDR)**

SEARCH MULTI-SEARCH ?

US Serial, Registration, or Reference No. 88659883 **Status Documents**

Status results found

STATUS	DOCUMENTS
Generated on: This page was generated by TSDR on 2021-07-07 16:32:30 EDT	
Mark: GROVE	
US Serial Number: 88659883	Application Filing Date: Oct. 18, 2019
Filed as TEAS RF: Yes	Currently TEAS RF: Yes
Register: Principal	
Mark Type: Trademark	
TM5 Common Status Descriptor:	LIVE/APPLICATION/Under Examination
	The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.
Status: A Statement of Use has been forwarded to the examining attorney for examination.	
Status Date: Jun. 09, 2021	
Publication Date: Jul. 21, 2020	Notice of Allowance Date: Sep. 15, 2020
<b>▼ Mark Information</b> <span>Expand All</span>	
Mark Literal Elements: GROVE	
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.	
Mark Drawing Type: 4 - STANDARD CHARACTER MARK	
<b>▼ Goods and Services</b>	
Note: The following symbols indicate that the registrant/owner has amended the goods/services:	
<ul style="list-style-type: none"> <li>• Brackets [...] indicate deleted goods/services;</li> <li>• Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and</li> <li>• Asterisks *...* identify additional (new) wording in the goods/services.</li> </ul>	
For: Downloadable computer software in the nature of a mobile application for video recording, producing, editing and sharing of video clips and photos; Downloadable software tools for image editing and video editing, Downloadable software for social networking including chat, user location, and groups; Downloadable software that enables users to create, produce, edit and share videos using digital images, photos, text, graphics, audio, video clips, and multimedia content; Downloadable software for creating, viewing, sorting, storing, transferring, uploading, downloading and sharing videos with others via computer networks, mobile devices, and other communication devices; Downloadable computer software in the nature of a mobile application for geo-location based video creation and sharing	
International Class(es): 009 - Primary Class	U.S Class(es): 021, 023, 026, 036, 038
Class Status: ACTIVE	
Basis: 1(b)	
First Use: May 04, 2020	Use in Commerce: May 04, 2020
<b>▼ Basis Information (Case Level)</b>	
Filed Use: No	Currently Use: No
Filed ITU: Yes	Currently ITU: Yes
Filed 44D: No	Currently 44E: No



Filed 44E: No	Currently 66A: No	
Filed 66A: No	Currently No Basis: No	
Filed No Basis: No		
<b>▼ Current Owner(s) Information</b>		
Owner Name: DivX, LLC		
Owner Address: 4350 La Jolla Village Drive, Suite 950 San Diego, CALIFORNIA UNITED STATES 92122		
Legal Entity Type: LIMITED LIABILITY COMPANY	State or Country Where Organized: DELAWARE	
<b>▼ Attorney/Correspondence Information</b>		
<b>Attorney of Record</b>		
Attorney Name: John M. Kim		
Attorney Primary Email Address: trademarks@ipla.com	Attorney Email Authorized: Yes	
<b>Correspondent</b>		
Correspondent Name/Address: John M. Kim IPLA, LLP 4445 EASTGATE MALL SUITE 200 SAN DIEGO, CALIFORNIA UNITED STATES 92121		
Phone: 858-272-0220	Fax: 8582720221	
Correspondent e-mail: trademarks@ipla.com	Correspondent e-mail Authorized: Yes	
Domestic Representative - Not Found		
<b>▼ Prosecution History</b>		
Date	Description	Proceeding Number
Jun. 09, 2021	STATEMENT OF USE PROCESSING COMPLETE	66530
May 25, 2021	USE AMENDMENT FILED	66530
Jun. 04, 2021	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66530
May 25, 2021	TEAS STATEMENT OF USE RECEIVED	
Mar. 03, 2021	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Mar. 01, 2021	EXTENSION 1 GRANTED	98765
Mar. 01, 2021	EXTENSION 1 FILED	98765
Mar. 01, 2021	TEAS EXTENSION RECEIVED	
Sep. 15, 2020	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Jul. 21, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 21, 2020	PUBLISHED FOR OPPOSITION	
Jul. 01, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 17, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 27, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 26, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 26, 2020	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jan. 27, 2020	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jan. 27, 2020	NON-FINAL ACTION E-MAILED	6325
Jan. 27, 2020	NON-FINAL ACTION WRITTEN	92458
Jan. 24, 2020	ASSIGNED TO EXAMINER	92458
Oct. 22, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
<b>▲ TM Staff and Location Information</b>		
<b>▲ Assignment Abstract Of Title Information - Click to Load</b>		
<b>▲ Proceedings - Click to Load</b>		

Download Adobe Reader

If you are the applicant or the applicant's attorney and have questions about this file, please contact the Trademark Assistance Center

**uspto** UNITED STATES PATENT AND TRADEMARK OFFICE

<b>BROWSE BY TOPIC</b> <ul style="list-style-type: none"><li><a href="#">Patents</a></li><li><a href="#">Trademarks</a></li><li><a href="#">Learning &amp; Resources</a></li><li><a href="#">About the USPTO</a></li><li><a href="#">Glossary</a></li><li><a href="#">Careers</a></li><li><a href="#">Contact Us</a></li></ul>	<b>ABOUT THIS SITE</b> <ul style="list-style-type: none"><li><a href="#">Accessibility</a></li><li><a href="#">Privacy Policy</a></li><li><a href="#">Terms of Use</a></li><li><a href="#">Security</a></li><li><a href="#">Systems Status</a></li><li><a href="#">Site Map</a></li></ul>	<b>USPTO BACKGROUND</b> <ul style="list-style-type: none"><li><a href="#">Federal Activity</a></li><li><a href="#">Inventory Reform Act (FAIR)</a></li><li><a href="#">USPTO Budget and Performance</a></li><li><a href="#">Freedom of Information Act</a></li><li><a href="#">Information Quality Guidelines</a></li></ul>	<b>FEDERAL GOVERNMENT</b> <ul style="list-style-type: none"><li><a href="#">Regulations.gov</a></li><li><a href="#">StopFakes.gov</a></li><li><a href="#">USA.gov</a></li><li><a href="#">Department of Commerce</a></li><li><a href="#">Strategy Targeting</a></li><li><a href="#">Organized Piracy</a></li></ul>	
--	---	---	--	---