

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of)	
Electronic Arts Inc.)	Gina M. Fink
)	Trademark Examining Attorney
)	Law Office 109
Serial No.: 77838073)	
Filed: September 30, 2009)	<u>DECLARATION OF EUGENE M. PAK IN</u>
International Class: 9)	<u>SUPPORT OF RESPONSE TO OFFICE</u>
Mark: THE RIPPER)	<u>ACTION</u>
)	
)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451
(filed online)

I, Eugene M. Pak, hereby declare:

1. I am an attorney at DLA Piper LLP (US), counsel for Electronic Arts Inc. ("Applicant"), the applicant for the above-referenced trademark application. I make this declaration in support of Applicant's Response to Office Action. I can testify competently and of my own personal knowledge as to the matters set forth herein.

2. On or about June 21, 2010, I visited and viewed the webpage at the URL address <http://www.lucasarts.com/games/swempireatwar/indexFlash.html>. This page describes and shows screen shots of the video game STAR WARS EMPIRE AT WAR (the subject of USPTO Registration No. 32909641). I reviewed the main page as well as the "Game Information" and "Gallery" pages at this site, and subpages such as the "Games News" and "Game Overview" subpages. The Game Overview subpage describes the video game as follows: "Star Wars Empire At War puts the power to command an entire war for the Star Wars galaxy in the hands of players, giving them the freedom to determine how they play the game Set a few years before the events of Episode IV A New Hope, LucasArts' new PC game lets players wage war on ground and in space, as well as experience the creation of the Rebel

Alliance, the strengthening of the empire and the beginnings of the galactic civil war.” True and correct copies of printouts from this webpage are attached hereto as Exhibit A

3. On or about June 21, 2010, I visited and viewed the webpage at the URL address <http://www.vreonline.net/adventur/jackripr.htm>. This website www.vreonline.com contains archived descriptions of a number of computer video games. This particular page describes the game JACK THE RIPPER by GameTek, Inc., which owned a federal registration for the mark (Reg. No. 2021415) (see Exhibit C below). The webpage describes the game as one in which players act as detectives, trying to determine the identity of Jack the Ripper. I also visited the webpage at <http://www.mobygames.com/game/windows/jack-the-ripper>. This page also describes the same game, indicating that it involves a detective trying to determine the identify of Jack the Ripper. True and correct copies of printouts of these two web pages are attached hereto as Exhibit B.

4. On or about June 21, 2010, I visited the USPTO's TESS database and reviewed the TESS records for the marks listed in the chart below. Each of these marks was either registered or approved by the USPTO on the Principal Register and are not Section 2(F) registrations. In addition, for several of these marks, I also visited and viewed the website pages indicated in the chart below and reviewed the game description or content.

The first mark listed is the JACK THE RIPPER registration (Reg. No. 2021415) for video games that is described in paragraph 3 above.

True and correct copies of the TESS database printouts for these marks, and website pages describing several of the games, are attached hereto as Exhibits C through R.

Exhibit	Mark	Goods and Services
Ex. C	JACK THE RIPPER (Reg. No. 2021415)	Registered for “game cartridges, cassettes, programs, tapes and CD-ROMs; and video game cartridges and cassette”. Owned by GameTek, Inc. (NOTE: See also Exhibit B. Game featuring Jack the Ripper stories.)

Ex. D	ROBIN HOOD DEFENDER OF THE CROWN (Reg. No. 2854102)	Registered for "Computer game software, namely, computer and video game software on CD, CD-ROM, DVD, cartridges, disks and home consoles; computer software featuring card games and board games; computer game software that may be downloaded from a global computer network; video game software for tape and DVD" Game featuring character, Robin Hood. See http://ps2.ign.com/objects/015/015643.html
Ex. E	NAPOLEON: TOTAL WAR (Ser. No. 77818975)	Published application for "Video game software; computer game software; computer game programs; downloadable game programs; game programs for use with mobile phones; game programs for use with hand-held game machines; computer game cartridges, discs and cassettes; video game cartridges, discs and cassettes" as well as "Providing online computer games; providing online video games; providing information on entertainment in the field of video games and computer games; providing amusement facilities, amusement arcades and amusement parks" See http://www.totalwar.com/napoleon/?t=EnglishUK See http://en.wikipedia.org/wiki/Napoleon_Total_War Game in which user assumes the role of Napoleon or one of his rivals.
Ex. F	SPARTACUS (Ser No. 77807901)	Approved application (to be published) for "prerecorded video recordings, DVDs and CDs featuring a television series; computer game programs; computer game software; downloadable multimedia files containing artwork, text, audio, video, games and internet web links, all featuring content from or relating to a television series; downloadable video games accessible via the internet, computers and wireless devices all featuring content from or relating to a television series" and other services. See http://www.starz.com/originals/spartacus Filed by Starz Entertainment, and presumably based on television series about Spartacus.

Ex. G	KING ARTHUR (Reg. No. 3309289)	Registered for "Electronic game programs; Gaming equipment, namely, slot machines with or without video output; Gaming machines; Machines for playing games of chance; Slot machines" See http://reviews.cnet.com/xbox-games/king-arthur-xbox/4505-9582_7-31470073.html Game featuring King Arthur character. Owned by Konami Gaming.
Ex. H	JOAN OF ARC (Ser. No. 78206658)	Allowed application for "computer game software" Filed by Enlight Software. Application was allowed but later abandoned for failure to file proper SOU), but mark is in use and features character Joan of Arc. See http://www.enlight.com/joa/joa_english/
Ex. I	SHERLOCK HOLMES (Reg. No. 3418211)	Registered for "photographic, cinematographic, optical, measuring, life-saving and teaching apparatus and instruments, namely, magnifying glasses and disposable cameras; calculating machines, namely, digital calculators; computer hardware and computer software, namely, computer game software ; recorded digital versatile disks featuring material concerning and relating to the literary characters Sherlock Holmes, spectacles, glasses, sunglasses, monocles, blank and recorded video cassettes, audio cassettes and compact discs featuring motion picture films and audio books concerning and related to the literary character Sherlock Holmes and video game machines for use with televisions" Owned by The Sherlock Holmes Memorabilia Company Limited.
Ex. J	CASTLEVANIA III DRACULA'S CURSE (Reg. No. 1668043)	Registered for "Computer game programs and video output game machines" See http://www.mobygames.com/game/castlevania-iii-draculas-curse- Computer game about Dracula. Owned by Konami Digital Entertainment Co., Ltd.

Ex. K	THE DRACULA X CHRONICLES (Reg. No. 3576804)	Registered for "Video game software; video game programs; computer game software; computer game programs; electronic game programs" See http://www.mobygames.com/game/psp/castlevania-the-dracula-x-chronicles Computer game about Dracula. Owned by Konami Digital Entertainment Co., Ltd.
Ex. L	FRANKENSTEIN'S MONSTER (Reg. No. 1272920)	Registered for "video game cartridges" Computer game about Dr. Frankenstein.
Ex. M	BONNIE AND CLYDE (Ser. No. 77247780)	Allowed application for "computer game software; electronic game software; game software; video game software; downloadable motion pictures and TV shows about criminals and law enforcement; motion picture films about criminals and law enforcement" Application was later abandoned for failure to file SOU.
Ex. N	GRAND THEFT AUTO (Reg. No. 2148765)	Registered for "computer software and programs all being computer games; video game software; laser disks cartridges, audio and video tapes, audio and video cassettes and CD-ROMs all bearing video games; video game computer software adapted for use with television receivers and computers; motion picture films featuring cartoons and instruction manuals sold as a unit therewith: Computer game about car theft. Owned by Take-Two Interactive Software, Inc.
Ex. O	GOOSEBUMPS: ATTACK OF THE MUTANT (Reg. No. 2179610)	Registered for "CD Rom games". Computer game probably involving scary attacks by mutants
Ex. P	SCUD ATTACK (Reg. No. 2080308)	Registered for "coin operated video games." Video game probably involving virtual attacks.
Ex. Q	COLONY WARS (Reg. No. 2189951)	Registered for "computer game software; video game software." Computer game probably involving colony wars
Ex. R	CAVE WARS (Reg. No. 2120622)	Registered for "computer game software ". Computer game software probably involving wars taking place in caves

4. On or about June 21, 2010, I visited the website Dictionary.com which is a well-known online dictionary. I entered and searched the term "ripper." The primary definition for this term is "a person or thing that rips." There are several other meanings of this term including a type of legislative bill, a hooklike tool for tearing away ore or rock, or something that is especially strong, fine, or good of its kind (British slang). A true and correct copy of a printout from the Dictionary.com site showing the definition of the term "ripper" is attached hereto as Exhibit S.

5. On or about June 18, 2010, I performed a search on the Saegis trademark search database for all marks filed with the U.S. Patent & Trademark Office (Saegis' federal database) that contained the terms "ripper" and "game" in the goods/services description. The search yielded no results. In other words, no person or entity has used the term "ripper" to describe a computer or video game in a U.S. trademark application or registration. Saegis is a popular commercial trademark database, operated by the Thomson Compumark corporation, that is used by many trademark practitioners. A true and correct copy of a printout of the search query and search results is attached hereto as Exhibit T.

6. On or about June 21, 2010, I performed a search of the phrase "jack the ripper" on the online encyclopedia Wikipedia (www.wikipedia.org). The Wikipedia entry for Jack the Ripper states that:

"Jack the Ripper" is the best known pseudonym given to an unidentified serial killer active in the largely impoverished districts in and around the Whitechapel district of London in 1888. The name originated in a letter by someone claiming to be the murderer that was disseminated in the media. The letter is widely considered to be a hoax, and may have been written by a journalist in a deliberate attempt to heighten interest in the story. Other pseudonyms used for the killer at the time were "The Whitechapel Murderer" and "Leather Apron".

The page for this entry is at http://en.wikipedia.org/wiki/Jack_the_ripper. A true and correct copy of this page is attached hereto as Exhibit U.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed in San Francisco, California.

Dated: June 22, 2010



Eugene M. Pak