

# Exhibit 3

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**75982871**

PAPER NO.

**SERIAL NO.**

**APPLICANT**

**[REDACTED] Apple Computer, Inc.**

**MARK**

**IPOD**

**ADDRESS**

THOMAS R. LA PERLE  
 APPLE COMPUTER  
 1 INFINITE LOOP # MS0TM  
 CUPERTINO CA 95014-2084

**ACTION NO.**

01

**MAILING DATE**

01/16/02

**REF. NO.**

TM 5791

FORM PTO-1525 (5-90)

U.S. DEPT. OF COMM. PAT. & TM OFFICE

**ADDRESS:**

Commissioner for Trademarks  
 2900 Crystal Drive  
 Arlington, VA 22202-3513  
 www.uspto.gov

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

Please provide in all correspondence:

1. Filing Date, serial number, mark and Applicant's name.
2. Mailing date of this Office action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and ZIP code.

**A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT.**  
*For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.*

RE: Serial Number: **[REDACTED] 75982871**

Mark: IPOD

The assigned examining attorney has reviewed the application and determined the following.

Prior Pending Applications

Although the examining attorney has searched the Office records and has found no similar registered mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), the examining attorney encloses information regarding pending Application Serial Nos. 78018061, 76090687, 76071644, 76068419, 75854960, and 75854962. 37 C.F.R. Section 2.83.

There may be a likelihood of confusion between the applicant's mark and the marks in the above noted applications under Section 2(d) of the Act. The filing dates of the referenced applications precede the applicant's filing date. If one or more of these earlier-filed applications matures into a registration, the examining attorney may refuse registration under Section 2(d).

The applicant must respond to the following informalities before the six-month expiration period at which time the examining attorney will either suspend the application pending the disposition of the cited application or issue a likelihood of confusion refusal if the cited application has matured into a registration.

Application Filed Pursuant to 44(d) and 1(b)

The applicant has filed asserting a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. Section 1051(b), and claiming priority under Section 44(d), 15 U.S.C. Section 1126(d), based on a foreign application. When an application is filed pursuant to Section 44(d), this Office presumes, unless otherwise indicated, that the applicant intends to rely upon the resulting foreign registration as a basis for registration in the U.S. TMEP sections 1005 and 1006.01. Under such circumstances, the application may not be approved for publication until a certification or certified copy of the foreign registration and, if appropriate, an English translation have been filed. It is customary for the translator to sign the translation.

If the applicant wishes to proceed relying on its intent to use the mark in commerce as the sole basis for registration, the applicant may instruct the examining attorney to approve the case for publication based solely on the Section 1(b) basis. If the applicant does so, the applicant retains its priority claim under Section 44(d), but the applicant may not subsequently rely on the foreign registration as an additional basis for registration. TMEP section 1006.01. Of course, although the application may be approved for publication, the mark will not be registered until an acceptable allegation of use has been filed.

Certificate of Registration Required to Perfect 44(d) Basis

To perfect the 44(d) basis under Trademark Act Section 44(e), 15 U.S.C. Section 1126(e), the application must include a certification or certified copy of a foreign registration from the applicant's country of origin. The applicant's country of origin must either be a party to a convention or treaty relating to trademarks to which the United States is also a party or extend reciprocal registration rights to nationals of the United States by law. See TMEP Section 1002.

The applicant should submit, as soon as possible, the certification or certified copy of the foreign registration and, if the certificate is not in the English language, an English translation. 37 C.F.R. Section 2.34(a)(3)(ii); TEMP sections 1004.05 and 1005. It is customary for the translator to sign the translation.

Identification of Goods

The following is a required change regarding the identification of the goods with which the applicant has asserted a bona fide intention to use the mark. The wording "portable digital electronic devices," "software related thereto," and "handheld digital electronic devices" in the identification of goods are unacceptable as indefinite and vague. The applicant must specify the purpose and function of the electronic device. The applicant must also specify the purpose or function of the software. TMEP section 804. Considering the wide variety of computer programs and the growth of the software industry, as well as the fact that many computer programs have limited applications or specific functions in specialized fields, the Office has taken the position that an acceptable identification of software must include the specific purpose or function or the program, or the specific application, as well as the specialized field, if applicable, in order that the Office may determine questions of likelihood of confusion in a manner reflective of the market place. If the field is general purpose, the applicant should state so. Be advised, that naming the intended user or industry does not sufficiently identify the purpose of the software (i.e. saying the software is for use in business, scientific, commercial and personal computing applications would not be sufficiently definite). TMEP section 804.03(b). See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

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The applicant may amend the identification to the following, if accurate: TMEP section 804.

Portable and handheld digital electronic devices in the nature of \_\_\_\_ (specify purpose and function, e.g., "portable listening devices, namely, MP3 players"); computer software for \_\_\_\_ (specify using above parameters i.e. specify the function of the programs, for use in database management, for use as a spreadsheet, for word processing, etc. and, if software is content- or field-specific, the field of use, if not content or field specific, the applicant should indicate "for general use"). International Class 9.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(a); TMEP section 804.09. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

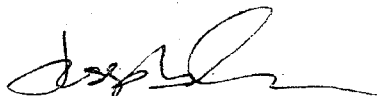
Response by Applicant

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant or its attorney, when appropriate, must sign the response.

In all correspondence to the Patent and Trademark Office, the applicant should list the name and law office of the examining attorney, the serial number of this application, the mailing date of this Office action, and the applicant's telephone number.

For your convenience, the **Trademark Status Line (703) 305-8747** has been established for immediate case status inquiry. This service is available Monday through Friday from 6:30 a.m. until midnight Eastern time. Case status inquiry is also available through the Trademark Applications and Registrations Retrieval (TARR) database at <http://tarr.uspto.gov>.

If the applicant has any questions or needs assistance in responding to this Office action, please contact the assigned examining attorney.



Joseph L. Manalili  
Trademark Attorney, Law Office 110  
(703) 308-9110 x280  
joseph.manalili@uspto.gov

APD 000068

[Typed Drawing]

Mark

IPOD

Pseudo Mark

I POD

Goods and Services

IC 009. US 021 023 026 036 038. G & S: public Internet kiosk enclosure containing computer hardware. FIRST USE: 19980301. FIRST USE IN COMMERCE: 20000115

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

78018061

Filing Date

July 24, 2000

Owner Name and Address

(APPLICANT) Grasso, Joseph N INDIVIDUAL UNITED STATES 22 Parsons Court Mahwah NEW JERSEY 07430

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

✓ non

\*\*\* Search: 3 \*\*\* Document Number: 2 \*\*\*

APD 000069

Mark

IPOD

Goods and Services

IC 009. US 021 023 026 036 038. G & S: PRERECORDED COMPUTER SOFTWARE FOR GENERATING PRINTED PRODUCTS OVER A GLOBAL COMMUNICATIONS NETWORK

IC 035. US 100 101 102. G & S: PRINT FULFILLMENT SERVICES, NAMELY BUSINESS FORMS, BROCHURES, PAMPHLETS, NEWSLETTERS, CARDS, TAGS, AND STATIONERY OVER A GLOBAL COMMUNICATIONS NETWORK

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

76090687

Filing Date

July 14, 2000

Filed ITU

FILED AS ITU

Owner Name and Address

(APPLICANT) Moore North America, Inc. CORPORATION DELAWARE 300 Lang Boulevard Grand Island NEW YORK 14072

Type of Mark

TRADEMARK. SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

✓ *NOA*

Mark

IPODZ

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Flight simulator machines; computerized amusement rides; computer automated retail recreational machines; communications software for connecting flight simulator machines and users over a global computer network; computer game software and video game software; eyewear, namely sunglasses and goggles

IC 016. US 002 005 022 023 029 037 038 050. G & S: Stationary items, namely, paper, envelopes, pads, labels and stationary writing paper; writing instruments, namely pens, pencils and markers; publications, namely books, magazines and newsletters related to cartoons and subject matter of interest to children; printed matter, namely printed guides, printed instructional and educational material; reward certificates; membership cards; novelty items, namely key chains, stickers, decals, mugs, piggy banks and stress balls

IC 025. US 022 039. G & S: Clothing, namely; footwear; headgear; sleepwear, namely, pajamas and jerseys

IC 035. US 100 101 102. G & S: Advertising services of goods and services for others over the global computer network; promoting the goods and services of others through dissemination of advertising materials on the global computer network; promoting the goods and services of others through an incentive reward program allowing points collected to be redeemed for various products and services offered by member retailers; managing reward point services for others

IC 041. US 100 101 107. G & S: Interactive entertainment services namely providing an interactive networked computer gaming environment that may be accessed over a global computer network; arranging and conducting interactive competitions related to computer and video gaming over the global computer network; and providing electronic games on-line by means of a global computer network

IC 028. US 022 023 038 050. G & S: Games, namely playing cards, trading cards and board games; toys, namely action toys, plush toys, stuffed toys, video games, windup toys, and balls

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

76071644

Filing Date

June 15, 2000

Filed ITU

FILED AS ITU

Owner Name and Address

(APPLICANT) Ipodz Worldwide Entertainment Inc. CORPORATION CANADA 114

\*\*\* Search: 4 \*\*\* Document Number: 80 \*\*\*

(cont)

Farnham Avenue Toronto, Ontario M4V 1H4 CANADA

Section 44 Indicator  
SECT44

Priority Date  
December 24, 1999

Type of Mark  
TRADEMARK. SERVICE MARK

Register  
PRINCIPAL

Live Dead Indicator  
LIVE

Attorney of Record  
John A. Clifford

\*\*\* Search: 4 \*\*\* Document Number: 80 \*\*\*

APD 000072



Mark

POD

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Computer programs, namely client software programs for managing, viewing and editing files, messages, multimedia content, audio and video content, appointments, contacts, and other digital materials in conjunction with a network server in the field of user productivity, entertainment and communication

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

76068419

Filing Date

June 13, 2000

Filed ITU

FILED AS ITU

Owner Name and Address

(APPLICANT) OMNIPOD CORPORATION UNITED STATES 41 E. 11th Street, 10th Floor New York NEW YORK 10003

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

Bretta. Carlson

J both

[Typed Drawing]

Mark

IPOD

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Protocol converter for changing proprietary digital station set information to a standard protocol suitable for transmission over an internet provider

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75854960

Filing Date

November 22, 1999

Filed ITU

FILED AS ITU

Publication for Opposition Date

January 8, 2002

Owner Name and Address

(APPLICANT) Voice Technologies Group, Inc. CORPORATION NEW YORK 2350  
North Forest Road Buffalo NEW YORK 14068

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

ROBERT N. PHILLIPS

\*\*\* Search: 4 \*\*\* Document Number: 100 \*\*\*

APD 000074

[Typed Drawing]

Mark

POD

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Protocol converter for changing proprietary digital station set information to a standard protocol suitable for transmission over an internet provider

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75854962

Filing Date

November 22, 1999

Filed ITU

FILED AS ITU

Owner Name and Address

(APPLICANT) Voice Technologies Group, Inc. CORPORATION NEW YORK 2350  
North Forest Road Buffalo NEW YORK 14068

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

BOBBY A. GHAJAR

\*\*\* Search: 4 \*\*\* Document Number: 132 \*\*\*

APD 000075