

ESTTA Tracking number: **ESTTA457689**

Filing date: **02/21/2012**

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	StorageCraft Technology Corporation
Granted to Date of previous extension	02/22/2012
Address	11850 Election Road Suite 120 Draper, UT 84020 UNITED STATES

Attorney information	Anne Hiaring Hocking Hiaring + Smith, LLP 101 Lucas Valley Road, Suite 300 San Rafael, CA 94903 UNITED STATES info@hiaringsmith.com, anne@hiaringsmith.com, kathy@hiaringsmith.com
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Applicant Information

Application No	85036583	Publication date	10/25/2011
Opposition Filing Date	02/21/2012	Opposition Period Ends	02/22/2012
Applicant	D-Link Systems, Inc. 17595 Mt. Herrmann Street Fountain Valley, CA 92708 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Computer networking hardware for use in data storage, operation of computer applications and networks, recovery of data, data protection, data back-up, data encryption, data consolidation and data duplication/redundancy and network data management
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Grounds for Opposition

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

U.S. Registration No.	3950931	Application Date	09/08/2010
Registration Date	04/26/2011	Foreign Priority Date	NONE
Word Mark	SHADOWPROTECT		

Design Mark	SHADOWPROTECT
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2006/07/07 First Use In Commerce: 2006/07/07 Providing temporary use of software in the field of data and/or system protection, recovery, migration, backup, restoration and retrieval; leasing of software in the field of data and/or system protection, recovery, migration, backup, restoration and retrieval; technical support services, namely, troubleshooting of computer software problems; updating and maintaining computer software

U.S. Registration No.	3856613	Application Date	02/25/2010
Registration Date	10/05/2010	Foreign Priority Date	NONE

Word Mark	SHADOWPROTECT		
Design Mark	SHADOWPROTECT		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2006/07/07 First Use In Commerce: 2006/07/07 Computer software for data and/or system protection, recovery, migration, backup, restoration and retrieval		

U.S. Application No.	85358538	Application Date	06/28/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SHADOWCONTROL		

Design Mark	SHADOWCONTROL		
Description of Mark	NONE		
Goods/Services	Class 009. First use: Computer software for data and/or system protection, recovery, migration, backup, restoration and retrieval		

U.S. Application No.	85258350	Application Date	03/04/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SHADOWSTREAM		
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Design Mark	SHADOWSTREAM		
Description of Mark	NONE		
Goods/Services	Class 009. First use: Computer software that separates a computer file into packets, transfers those packets at high speed over a high-latency link, and validates and reassembles those packets into the original computer file at the destination without the delay caused by acknowledgment of receipt on a packet-by-packet basis		

U.S. Application No.	85361842	Application Date	07/01/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SHADOWVAULT		
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Design Mark	SHADOWVAULT
Description of Mark	NONE
Goods/Services	Class 009. First use: Computer software for data and/or system protection, recovery, migration, backup, restoration and retrieval

Attachments	85124859#TMSN.jpeg (1 page)(bytes) 77945130#TMSN.jpeg (1 page)(bytes) 85358538#TMSN.jpeg (1 page)(bytes) 85258350#TMSN.jpeg (1 page)(bytes) 85361842#TMSN.jpeg (1 page)(bytes) 120221 Not Opp.pdf (9 pages)(577438 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	/anne hiaring hocking/
Name	Anne Hiaring Hocking
Date	02/21/2012

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

In the Matter of Application No. 85/036,583

Mark: SHADOW

Filing Date: May 12, 2010

Published: Oct. 25, 2011

STORAGECRAFT TECHNOLOGY
CORP., a Utah Corporation,

Opposer,

v.

D-LINK SYSTEMS, a California
Corporation,

Applicant.

OPPOSITION NO. _____

NOTICE OF OPPOSITION

NOTICE OF OPPOSITION

StorageCraft Technology Corporation (“Opposer”), a Utah corporation, having its principal place of business at 11850 Election Road, Suite 120, Draper, UT 84020, believes that it will be damaged by registration of the mark shown in Serial No. 85/036,583 and hereby opposes the same under Section 13 of the Lanham Act, 15 U.S.C. § 1063.

This Notice of Opposition is timely filed as the mark SHADOW was published on October 25, 2011. On November 8, 2011 Opposer filed a request for extension of time for 90 days, for cause, until February 22, 2012. The Trademark Trial and Appeal Board (“TTAB”) granted the extension on November 8, 2011. The current deadline for filing the Notice of Opposition is February 22, 2012.

As grounds in support of its opposition, Opposer asserts as follows:

1. Applicant D-Link Systems (“Applicant”) is seeking to obtain under the provisions of the Trademark Act of 1946, as amended, registration on the Principal Register of the trademark SHADOW for goods in International Class 9:

Computer networking hardware for use in data storage, operation of computer applications and networks, recovery of data, data protection, data back-up, data encryption, data consolidation and data duplication/redundancy and network data management.

The application was filed on May 12, 2010, and is based on an intent-to-use under Section 1(b).

2. Opposer filed an application to register the mark SHADOWPROTECT on September 8, 2010 with the United States Patent and Trademark Office (the "USPTO") in Class 42 for:

Providing temporary use of software in the field of data and/or system protection, recovery, migration, backup, restoration and retrieval; leasing of software in the field of data and/or system protection, recovery, migration, backup, restoration and retrieval; technical support services, namely, troubleshooting of computer software problems; updating and maintaining computer software

The application was assigned Serial No. 85/124,859. The mark registered with the USPTO on April 26, 2011, Reg.No. 3,950,931. Opposer has used the SHADOWPROTECT mark continuously since at least as early as July 7, 2006. (See **Exhibit A.**)

3. Opposer filed an application to register the mark SHADOWPROTECT on February 25, 2010 with the USPTO in Class 9 for:

Computer software for data and/or system protection, recovery, migration, backup, restoration and retrieval

The application was assigned Serial No. 77/945,130. The mark registered with the USPTO on October 5, 2010, Reg. No. 3,856,613. Opposer has used the SHADOWPROTECT mark continuously since at least as early as July 7, 2006. (See **Exhibit B.**)

4. Opposer filed an application to register the mark SHADOWCONTROL pursuant to Section 1(b) on June 28, 2011 with the USPTO in Class 9 for:

Computer software for data and/or system protection, recovery, migration, backup, restoration and retrieval

The application was assigned Serial No. 85/358,538. The mark was published for Opposition on November 22, 2011, and is currently in the Notice of Allowance stage.

5. Opposer filed an application to register the mark SHADOWSTREAM pursuant to Section 1(b) on March 4, 2011 with the USPTO in Class 9 for:

Computer software that separates a computer file into packets, transfers those packets at high speed over a high-latency link, and validates and reassembles those packets into the original computer file at the destination without the delay caused by acknowledgment of receipt on a packet-by-packet basis

The application was assigned Serial No. 85/258,350. The mark was published for Opposition on July 26, 2011, and is currently in the Notice of Allowance stage.

6. Opposer filed an application to register the mark SHADOWVAULT pursuant to Section 1(b) on July 1, 2011 with the USPTO for:

Computer software for data and/or system protection, recovery, migration, backup, restoration and retrieval

The application was assigned Serial No. 85/361,842. The mark was published for Opposition on November 22, 2011, and is currently in the Notice of Allowance stage.

7. Opposer has a family of SHADOW marks, which includes the SHADOWPROTECT, SHADOWCONTROL, SHADOWSTREAM, and SHADOWVAULT marks (“Opposer’s SHADOW marks”).

8. Opposer is informed and believes that Applicant is a California Corporation with a principal business address of 17595 Mt. Herrmann Street, Fountain Valley, CA 92708, as listed on its trademark application.

9. The goods recited in Applicant’s application are identical or related to the goods and services for which Opposer’s SHADOW marks are registered or applied for.

10. Applicant’s SHADOW mark is comprised of the word SHADOW, which is identical to the prefix in Opposer’s family of SHADOW marks.

11. Applicant’s use of its SHADOW mark for the goods as recited in Application Ser. No. 85/036,583 is likely to cause confusion, mistake, or deception in that consumers and others are likely to believe that Applicant’s goods are sponsored,

authorized or approved by, or associated or in some way legitimately connected with Opposer, when they are not.

12. Registration of the mark shown in Application Ser. No. 85/036,583 will result in damage to Opposer under the provisions of Section 2(d) of the U.S. Trademark Act, 15 U.S.C. § 1052, pursuant to the allegations stated above.

13. Opposer will be damaged if Applicant obtains a registration for the SHADOW mark because Applicant will obtain statutory rights in the mark in violation and derogation of the established prior rights of Opposer in its trademark.

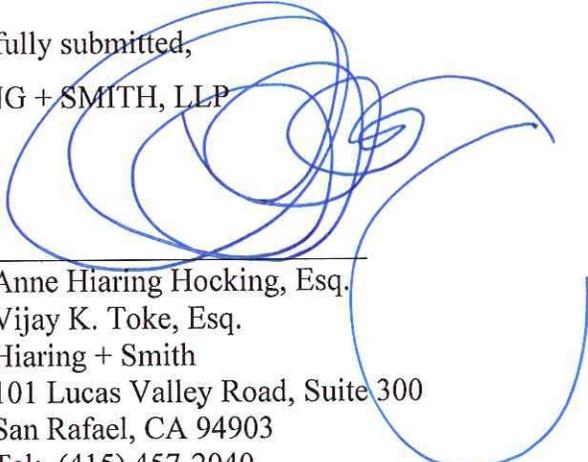
14. The required filing fee of \$300 to oppose registration in one class has been submitted electronically with this Notice of Opposition.

WHEREFORE, Opposer requests that the application to register SHADOWCLOUD, Serial No. 85/129,448, filed September 14, 2010 be denied and that this Opposition be sustained.

Respectfully submitted,
HIARING + SMITH, LLP

Date: February 21, 2012

By



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Attorneys for Opposer

CERTIFICATE OF SERVICE BY MAIL

This is to certify that one copy of the foregoing **NOTICE OF OPPOSITION** was mailed by first class mail, postage prepaid, to Applicant's Correspondent of Record:

BRETT S. ADAIR
17595 MOUNT HERRMANN ST
FOUNTAIN VALLEY, CA 92708-4160

Attorney for Applicant D-Link Systems

D-Link Systems
17595 Mt. Herrmann Street
Fountain Valley, CALIFORNIA 92708

Applicant D-Link Systems

Dated: February 21, 2012

Signed: _____


Kathy Dong

EXHIBIT A

United States of America

United States Patent and Trademark Office

SHADOWPROTECT

Reg. No. 3,950,931

Registered Apr. 26, 2011

Int. Cl.: 42

SERVICE MARK

PRINCIPAL REGISTER

STORAGECRAFT TECHNOLOGY CORPORATION (UTAH CORPORATION)
SUITE 120
11850 ELECTION ROAD
DRAPER, UT 84020

FOR: PROVIDING TEMPORARY USE OF SOFTWARE IN THE FIELD OF DATA AND/OR SYSTEM PROTECTION, RECOVERY, MIGRATION, BACKUP, RESTORATION AND RETRIEVAL; LEASING OF SOFTWARE IN THE FIELD OF DATA AND/OR SYSTEM PROTECTION, RECOVERY, MIGRATION, BACKUP, RESTORATION AND RETRIEVAL; TECHNICAL SUPPORT SERVICES, NAMELY, TROUBLESHOOTING OF COMPUTER SOFTWARE PROBLEMS; UPDATING AND MAINTAINING COMPUTER SOFTWARE, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-7-2006; IN COMMERCE 7-7-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,856,613.

SER. NO. 85-124,859, FILED 9-8-2010.

SUE LAWRENCE, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

EXHIBIT B

United States of America

United States Patent and Trademark Office

SHADOWPROTECT

Reg. No. 3,856,613

Registered Oct. 5, 2010

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

STORAGECRAFT TECHNOLOGY CORPORATION (UTAH CORPORATION)
121 ELECTION ROAD, SUITE 110
DRAPER, UT 84020

FOR: COMPUTER SOFTWARE FOR DATA AND/OR SYSTEM PROTECTION, RECOVERY, MIGRATION, BACKUP, RESTORATION AND RETRIEVAL, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 7-7-2006; IN COMMERCE 7-7-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-945,130, FILED 2-25-2010.

LINDA E. BLOHM, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office