

ESTTA Tracking number: **ESTTA607065**

Filing date: **05/29/2014**

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	Proscap Technologies, Inc.		
Entity	Corporation	Citizenship	Pennsylvania
Address	1155 Business Center Drive Horsham, PA 19044 UNITED STATES		

Attorney information	Timothy D. Pecsénye Blank Rome LLP One Logan Square, 130 N. 18th Street 8th Floor Philadelphia, PA 19103 UNITED STATES pecseny@blankrome.com, bcraig@blankrome.com Phone:215-569-5619		
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### Applicant Information

Application No	85935999	Publication date	04/29/2014
Opposition Filing Date	05/29/2014	Opposition Period Ends	05/29/2014
International Registration No.	NONE	International Registration Date	NONE
Applicant	Appmachine B.V. Abe Lenstra Boulevard 44 8448 JB Heerenveen, NETHERLANDS		

### Goods/Services Affected by Opposition

<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Downloadable computer software for creating and managing computer apps and websites; Data processing apparatus</p>
<p>Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Writing and development of computer software; Computer programming; Installation, maintenance and management of software programs and computer networks, and technical consultancy relating thereto; Providing temporary use of on-line non-downloadable software for creating apps; Assistance and consultancy in the field of designing computer software applications and graphic design; Graphic design; Graphic and interactive design of software featuring computer apps; Professional consultancy in the field of computer software, computerization and ICT; Counseling in the field of the aforementioned computer software services; Design, development and maintenance of websites, parts of websites and software applications for websites, PDAs, telephones and mobile telephones; Rental of computer software and computers; Upgrading of computer software; Providing temporary use of on-line non-downloadable software, software applications and software tools, namely, tools in the field of software development; Providing information in the field of software development</p>

## 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. Application No.	85925424	Application Date	05/07/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	APPMACHINE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2010/04/03 First Use In Commerce: 2010/04/03 computer application software for mobile phones and handheld computers for use in connection with the processing of business sales information and in marketing, namely, for use by others in designing, development and creating business and marketing software applications and for delivering business and sales presentations		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	APPMACHINE		
Goods/Services	software for use in designing and developing custom software applications		

Related Proceedings	Opposer Proscap Technologies, Inc. is concurrently filing an opposition against Applicant Appmachine B.V.'s Application Serial No. 85/935,995.
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Attachments	85925424#TMSN.jpeg( bytes ) Notice of Opposition - APPMACHINE & Design - 85935999.pdf(644098 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	/Bradford C. Craig/
Name	Bradford C. Craig

Date	05/29/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of Appmachine B.V.

Application No.: 85/935,999

Filed: May 17, 2013

Mark:  AppMachine

Proscap Technologies, Inc.,	:	
a Pennsylvania corporation,	:	
	:	
Opposer,	:	
	:	Serial No.: 85/935,999
v.	:	
	:	Opposition No.: _____
Appmachine B.V.,	:	
a Dutch limited liability	:	
company,	:	
	:	
Applicant.	:	

Hon. Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Attn.: Trademark Trial and Appeal Board

**NOTICE OF OPPOSITION**

Madam:

Opposer Proscap Technologies, Inc. ("Opposer"), a Pennsylvania corporation with an address of 1155 Business Center Drive, Horsham, Pennsylvania 19044, believes that it would be damaged by the registration of the mark APPMACHINE and Design as shown in Application Serial No. 85/935,999 and hereby opposes the same under the provision of Section 13 of the Trademark Act of July 5, 1946, as amended, 15 U.S.C. § 1063.

As grounds of opposition, it is alleged that:

**OPPOSER'S RIGHTS**

1. Opposer has made continuous and extensive use of its mark APPMACHINE (hereinafter, the "APPMACHINE Mark") in the United States in connection with software for use in designing and developing custom software applications (hereinafter, the "APPMACHINE Goods") since long before March 15, 2013, the effective filing date of Applicant Appmachine B.V.'s ("Applicant") application herein opposed.

2. Opposer is the exclusive owner of all rights, title, and interest in and to the APPMACHINE Mark and has maintained priority rights in the APPMACHINE Mark in connection with the APPMACHINE Goods since at least as early as April 3, 2010.

3. Opposer has engaged in extensive marketing, promotion, and use of the APPMACHINE Mark in commerce in the United States, which has caused customers, prospective purchasers, and the general public to associate the APPMACHINE Mark with Opposer and to expect the APPMACHINE Goods offered in connection with the APPMACHINE Mark to have a connection or association with Opposer.

4. As a result of Opposer's extensive and continuous use of its APPMACHINE Mark, Opposer has established substantial goodwill in the APPMACHINE Mark in connection with the APPMACHINE Goods.

5. On May 7, 2013, Opposer filed Application Serial No. 85/925,424 for registration of the mark APPMACHINE (hereinafter, "Opposer's Application") for use in connection with

the following goods: *"computer application software for mobile phones and handheld computers for use in connection with the processing of business sales information and in marketing, namely, for use by others in designing, development and creating business and marketing software applications and for delivering business and sales presentations"* in International Class 09. See printout from the United States Patent and Trademark Office database attached hereto as Exhibit A.

6. On March 25, 2014, the Examining Attorney assigned to review Opposer's Application suspended the prosecution of Opposer's Application based on an alleged potential likelihood of confusion with two prior pending applications, namely, the application herein opposed and Applicant's Application Serial No. 85/935,995 for the mark APPMACHINE, the effective filing dates of which precede the filing date of Opposer's Application.

**APPLICANT'S MARK**

7. On May 18, 2013, Applicant filed Application Serial No. 85/935,999 for registration of the mark APPMACHINE and Design (hereinafter, "Applicant's Mark") for use in connection with the following goods and services: *"downloadable computer software for creating and managing computer apps and websites; data processing apparatus"* in International Class 09; and *"writing and development of computer software; computer programming; installation, maintenance and management of software programs and computer networks, and technical consultancy relating thereto; providing*

*temporary use of on-line non-downloadable software for creating apps; assistance and consultancy in the field of designing computer software applications and graphic design; graphic design; graphic and interactive design of software featuring computer apps; professional consultancy in the field of computer software, computerization and ICT; counseling in the field of the aforementioned computer software services; design, development and maintenance of websites, parts of websites and software applications for websites, PDAs, telephones and mobile telephones; rental of computer software and computers; upgrading of computer software; providing temporary use of online non-downloadable software, software applications and software tools, namely, tools in the field of software development; providing information in the field of software development" in International Class 42.*

8. Applicant's basis for filing Applicant's Mark is intended use in commerce pursuant to Section 1(b) of the Lanham Act.

9. Applicant's Mark was published for opposition in the Official Gazette dated April 29, 2014. See printout from the United States Patent and Trademark Office database attached hereto as Exhibit B.

**APPLICANT'S MARK IS LIKELY TO CAUSE CONFUSION  
AS TO SOURCE, ORIGIN, SPONSORSHIP, OR AFFILIATION**

10. Opposer repeats and realleges the allegations contained in paragraphs 1 through 9 above as if fully set forth herein.

11. Opposer's use of the APPMACHINE Mark for the APPMACHINE Goods predates the effective filing date of Applicant's Mark.

12. Upon information and belief, Opposer alleges that Opposer's use of the APPMACHINE Mark for the APPMACHINE Goods predates Applicant's actual date of first use of Applicant's Mark in commerce in the United States.

13. Applicant's Mark is identical in appearance, sound, connotation, and commercial impression to the APPMACHINE Mark.

14. The goods and services in connection with which Applicant intends to use Applicant's Mark are closely related, if not identical, to the APPMACHINE Goods provided by Opposer under the APPMACHINE Mark and/or the goods and services within Opposer's zone of natural expansion.

15. The intended use and registration of Applicant's Mark to identify its goods and services is likely to cause confusion, mistake, and deception as to the source, origin, sponsorship, or association of the goods and services and will injure Opposer.

16. Any defects, objections, or faults found with the goods and services offered, marketed, sold, or rendered by Applicant under Applicant's Mark, because of the false association with Opposer, would inflict serious injury upon the reputation of Opposer.

17. The grant of a Certificate of Registration to Applicant for Applicant's Mark would be inconsistent with and in derogation

of Opposer's prior rights and would cause damage and injury to Opposer and deception of and confusion to the public.

18. For the reasons set forth in the foregoing paragraphs, Opposer believes that it would be damaged by the registration of Applicant's Mark. Applicant's Mark should therefore be denied registration.

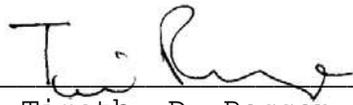
WHEREFORE, Opposer requests that this opposition be sustained and that Application Serial No. 85/935,999 be refused registration.

Respectfully submitted,

PROSCAPE TECHNOLOGIES, INC.

Date: May 29, 2014

By: \_\_\_\_\_



Timothy D. Pecsénye  
Bradford C. Craig  
Its Attorneys

BLANK ROME LLP  
ONE LOGAN SQUARE  
PHILADELPHIA, PA 19103  
(215) 569-5580

# EXHIBIT A



## Trademarks > Trademark Electronic Search System (TESS)

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# APPMACHINE

**Word Mark** APPMACHINE

**Goods and Services** IC 009. US 021 023 026 036 038. G & S: computer application software for mobile phones and handheld computers for use in connection with the processing of business sales information and in marketing, namely, for use by others in designing, development and creating business and marketing software applications and for delivering business and sales presentations. FIRST USE: 20100403. FIRST USE IN COMMERCE: 20100403

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 85925424

**Filing Date** May 7, 2013

**Current Basis** 1A

**Original Filing Basis** 1A

**Owner** (APPLICANT) Proscape Technologies, Inc. CORPORATION PENNSYLVANIA 1155 Business Center Drive Horsham PENNSYLVANIA 19044

**Attorney of Record** Timothy D. Pecsénye

Type of Mark TRADEMARK  
Register PRINCIPAL  
Live/Dead Indicator LIVE

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# EXHIBIT B



## Trademarks > Trademark Electronic Search System (TESS)

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# AppMachine

**Word Mark** APPMACHINE

**Goods and Services** IC 009. US 021 023 026 036 038. G & S: Downloadable computer software for creating and managing computer apps and websites; Data processing apparatus

IC 042. US 100 101. G & S: Writing and development of computer software; Computer programming; Installation, maintenance and management of software programs and computer networks, and technical consultancy relating thereto; Providing temporary use of on-line non-downloadable software for creating apps; Assistance and consultancy in the field of designing computer software applications and graphic design; Graphic design; Graphic and interactive design of software featuring computer apps; Professional consultancy in the field of computer software, computerization and ICT; Counseling in the field of the aforementioned computer software services; Design, development and maintenance of websites, parts of websites and software applications for websites, PDAs, telephones and mobile telephones; Rental of computer software and computers; Upgrading of computer software; Providing temporary use of online non-downloadable software, software applications and software tools, namely, tools in the field of software development; Providing information in the field of software development

**Mark**

**Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design**

**Search Code** 26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved

**Serial**

**Number** 85935999

**Filing Date** May 18, 2013

**Current**

**Basis** 1B

**Original Filing Basis** 1B;44D  
**Published for Opposition** April 29, 2014  
**Owner** (APPLICANT) Appmachine B.V. besloten vennootschap (b.v.) NETHERLANDS Abe Lenstra Boulevard 44 8448 JB Heerenveen NETHERLANDS  
**Attorney of Record** Carlos Romero  
**Priority Date** March 15, 2013  
**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of curved design to the left of word "appmachine".  
**Type of Mark** TRADEMARK. SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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CERTIFICATE OF SERVICE

I, Bradford C. Craig, do hereby certify that I have on  
May 29, 2014, mailed via first class mail the foregoing **Notice of  
Opposition** to the following:

Carlos Romero, Esq.  
Inventus Law  
2600 El Camino Real, Suite 403  
Palo Alto, CA 94306

  
\_\_\_\_\_  
Bradford C. Craig