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02-28-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #30

76/343973

TRADE MARK

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

In re the matter of Application
No. 76/343973 for "ESSENTIAL"
Published in the Official Gazette
Of October 15, 2002

ASCENTIAL SOFTWARE CORPORATION.

Opposer,

vs.

SYNCFUSION, INC.

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

BOX TTAB FEE
Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

03 MAR 17 PM 9:30
TRADEMARK TRIAL AND
APPEAL BOARD

Sir:

Opposer, Ascential Software Corporation, a Delaware corporation, having a principal place of business at 50 Washington Street, Westboro, MA, 01581, believes that it will be damaged by the registration of the term "ESSENTIAL" shown in Application Serial No. 76/343,973 filed by Applicant, SyncFusion, Inc., and hereby opposes the same.

Applicant seeks registration on the Principal Register of the word mark "ESSENTIAL" for computer software development tools. The opposed application was

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published for Opposition on October 15, 2002, and Opposer has properly obtained extensions of time in which to file this Notice of Opposition.

As grounds of opposition, it is alleged that:

1. Opposer is now and has for several years been involved in the business of developing and offering for sale software products and related services under the marks and names "ASCENTIAL", "ASCENTIAL SOFTWARE", "ASCENTIAL SOFTWARE (AND DESIGN)" and "A ASCENTIAL SOFTWARE (AND DESIGN)". Opposer is the owner of United States Trademark Registration No. 2640730 for the mark "ASCENTIAL SOFTWARE (AND DESIGN)" for "computer programs, namely, data warehousing software and data integration software for enabling and managing electronic commerce over a global computer information and communications network, and for enabling the transfer of data from one computer to another" in International Class 9. Opposer filed an application to register the above trademark as an intent to use application on February 12, 2001 and the registration issued on October 22, 2002.

2. Opposer has widely used and extensively promoted and advertised its "ASCENTIAL" trademarks to the public in connection with its software products and services. Since Opposer's adoption and use of its "ASCENTIAL" trademarks, Opposer has built a well-known reputation and extensive goodwill in and to these marks as applied to its goods and services. Opposer has continuously applied its "ASCENTIAL" marks on its software products, and has also used such marks in a service mark manner in connection with software-related services prior to any use of the word "ESSENTIAL" by Applicant.

3. By reason of Opposer's advertising and use of its marks, and the substantial amount of time, money and effort expended by Opposer and the wide distribution of Opposer's

goods and services, the public has come to recognize the "ASCENTIAL" marks when associated with software products and services, as signifying Opposer and its goods and services. Opposer has accumulated extensive goodwill in connection with the sale of its goods and services in connection with these marks, and this goodwill is an important asset of its business and very valuable to it.

4. Notwithstanding Opposer's prior rights in and to its trademarks, as set forth above, Applicant filed Application Serial No. 76/343,973 for registration of the word "ESSENTIAL" on November 11, 2001 as an intent to use application.

5. The goods for which Applicant seeks to register the word "ESSENTIAL" are described in its application as computer software development tools. Such goods are substantially similar to, closely related to or of the same general type of services as the goods with which Opposer uses its "ASCENTIAL" marks.

6. On information and belief, Applicant's goods, are, or will be, offered for sale and advertised under the word "ESSENTIAL" through similar channels of trade, including similar advertising media, and are directed to many of the same general type of consumers as Opposer's goods and services.

7. The word "ESSENTIAL" which Applicant seeks to register so closely resembles Opposer's "ASCENTIAL" trademarks as set forth above as to be likely to cause confusion, mistake, and deception as to the source of Applicant's goods, all to Opposer's damage. Potential customers are likely to believe that Applicant's goods originate from, or are sponsored or approved by, Opposer, when that is not the case.

8. If Applicant is granted the registration herein opposed, it would thereby obtain a prima facie exclusive right to use of its mark, which would be a further source of damage to Opposer.

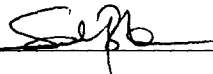
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WHEREFORE, Opposer believes that it will be damaged by said registration and requests that this Opposition be sustained, that the subject mark be refused registration, and that judgment be entered in favor of Opposer and against Applicant..

The filing fee for this Notice of Opposition in the amount of \$300 is enclosed.

Respectfully submitted,

ASCENTIAL SOFTWARE CORPORATION

By: 

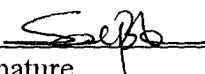
Date: 2/26/03

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Attorneys for Opposer

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
BOX TTAB FEE, Commissioner of Trademarks,
2900 Crystal Drive, Arlington, VA 22202-3513 on
February 26, 2003.

SAMUEL B. HUDSON
Name of Attorney for Applicant


Signature

2/26/03
Date of signature