

ESTTA Tracking number: **ESTTA271399**

Filing date: **03/11/2009**

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	Nexsan Technologies, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	555 St. Charles Drive Thousand Oaks, CA 91360 UNITED STATES		

Attorney information	Valerie Greenberg The Greenberg Law Firm 121 Brite Avenue Scarsdale, NY 10583 UNITED STATES valerie@greenbergfirm.com Phone:914-722-9111
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Applicant Information

Application No	77423804	Publication date	03/10/2009
Opposition Filing Date	03/11/2009	Opposition Period Ends	04/09/2009
Applicant	Nexenta Systems, Inc 814 South Fremont San Mateo, CA 94402 UNITED STATES		

Goods/Services Affected by Opposition


Class 009. First Use: 2005/09/01 First Use In Commerce: 2008/02/15 All goods and services in the class are opposed, namely: Downloadable computer operating programs and computer operating systems; downloadable computer operating systems; downloadable operating system programs; downloadable computer software for storage of data


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.	3169059	Application Date	10/28/2002
Registration Date	11/07/2006	Foreign Priority Date	NONE
Word Mark	NEXSAN NEXSAN TECHNOLOGIES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2001/04/00 First Use In Commerce: 2001/04/00 Computer hardware, namely, redundant array of independent disks (RAID), just a bunch of drives (JBOD), storage area network (SAN) computer hardware and computer operating software, network attached storage (NAS) device, computer hard disk drives and enclosures for the aforementioned and user manual sold as a unit with the aforementioned

U.S. Registration No.	3077096	Application Date	06/05/2003
Registration Date	04/04/2006	Foreign Priority Date	NONE
Word Mark	NEXSAN TECHNOLOGIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2001/04/00 First Use In Commerce: 2001/04/00 computer hardware and computer software, namely redundant array of independent disks (RAID), just a bunch of drives (JBOD), storage area network (SAN) consisting of computer hardware, disk to disk backup (D2D) computer hardware and computer operating software, network attached storage (NAS) devices, computer hard disk drives which are blank or which contain formatted RAID data, RAID controllers, and chassis for the enclosure of the aforementioned components		

U.S. Application No.	77666170	Application Date	02/09/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NEXSAN		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2000/11/30 First Use In Commerce: 2000/11/30 Computer hardware and software used for data storage, and related services

Attachments	76462159#TMSN.gif (1 page)(bytes) 76519986#TMSN.gif (1 page)(bytes) 77666170#TMSN.jpeg (1 page)(bytes) Nexenta Notice of Opposition.pdf (3 pages)(1498723 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	/Valerie Greenberg/
Name	Valerie Greenberg
Date	03/11/2009

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

In the matter of Trademark Application Serial No. 77/423,804

Filed March 17, 2008

For the Mark: NEXENTA

Nexsan Technologies, Inc.,

Opposer,

v.

Nexenta Systems, Inc.

Applicant.

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Interlocutory Attorney:

Opposition Number:

NOTICE OF OPPOSITION

Opposer Nexsan Technologies, Inc., a Delaware corporation, believes that it will be damaged by registration of the mark shown in Serial No. 77/423,804 and hereby opposes the same.

The grounds for opposition are as follows:

1. Applicant filed Application Serial No. 77/423,804 (the "Application") on or about March 17, 2008 to register the mark NEXENTA in connection with "downloadable computer operating programs and computer operating systems; downloadable computer operating systems; downloadable operating system programs; downloadable computer software for storage of data" ("Applicant's Mark").
2. Opposer will be damaged by the registration of Applicant's Mark.
3. Opposer has been designing, manufacturing and commercially distributing computer hardware, software and related services used for data storage since the year 2000.

4. Opposer has been using the mark "NEXSAN" in connection with its data storage products and services since the year 2000, prior to the filing of the Application and prior to any claimed priority associated with the Application.

5. Opposer is the owner of two (2) registered trademarks that include the word "NEXSAN" filed on October 28, 2002 and June 5, 2003, respectively. See, U.S. Reg. Nos. 3169059 and 3077096.

6. Opposer has applied for two (2) trademarks that include the word "NEXSAN." See, U.S. Serial Nos. 77635737 and 77666170.

7. Applicant appears to be focused on the same niche within the field of computer as Opposer: the provision of data storage products. Applicant's tag-line is "Nexenta Enterprise Storage For Everyone." See, www.nexenta.com.

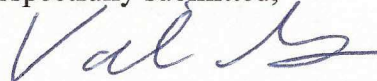
8. Granting trademark rights in Applicant's Mark may impair Opposer's ability to advertise and market its products and services.

9. Granting trademark rights in Applicant's Mark may cause confusion among consumers of data storage products and services.

WHEREFORE, Opposer prays that said application Serial No. 77/423804 be rejected, that no registration be issued, and that this Opposition be sustained in favor of Opposer.

This 11th day of March, 2009

Respectfully submitted,



Valerie Greenberg, Esq.
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CERTIFICATE OF FILING

I do hereby certify that on March 11, 2008, I filed via electronic means (ESTTA) this
NOTICE OF OPPOSITION with the:

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

With copy via first class mail and email to:

Evan Powell, CEO
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814 South Fremont
San Mateo, CA 94402

And with copy via first class mail to:

Jason Gonder
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San Jose, California 95110



Valerie Greenberg, Esq.