

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22203-3513, on

*Oct 16 2003*  
*Oct 16 2003*  
John E. Kelly, Esq. Reg. No. 24,269 Date

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

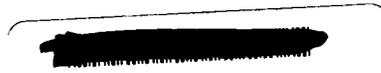
Rain Bird Corporation, )  
)  
Opposer, )  
)  
v. )  
)  
Bird Brain, Inc., )  
)  
Applicant. )

Opposition No. \_\_\_\_\_

Published Official Gazette  
August 26, 2003  
Page TM 41

Our Docket 44714

In Re Application of: )  
Bird Brain, Inc. )  
)  
S.N.: 76/349,479 )  
)  
Filed: December 14, 2001 )  
)  
Mark: BIRD BRAIN, INC. )  
)  
Int. Cls.: 6, 20 & 21 )



10-20-2003  
U.S. Patent & TMO/TM Mail Rpt Dt. #22

Assistant Commissioner for Trademarks  
Trademark Trial and Appeal Board  
**MS: FEE**  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**NOTICE OF OPPOSITION**

Rain Bird Corporation, a corporation organized under the laws of the State of California, having its principal place of business at 633 West Foothill Boulevard, Glendora,

10/28/2003 ZCLIFT01 00000003 76349479

01 FC:6402

900.00 OP

California 91740 (Opposer), believes it will be damaged if registration is granted for the mark shown in the above-identified application of Bird Brain, Inc., having an address of 7155 Cherry Hill, Ypsilanti, Michigan 48198 (Applicant) - and hereby opposes the granting of such registration.

As grounds of this Opposition, it is alleged that:

FIRST CAUSE OF ACTION - LIKELIHOOD OF CONFUSION -  
THE LANHAM ACT §2(d) & §13(a)

1. Applicant Bird Brain, Inc., is, upon information and belief, a Michigan corporation, having an address of 7155 Cherry Hill, Ypsilanti, Michigan 48198.
2. Applicant filed a trademark application in the USPTO on December 14, 2001, requesting registration on the Principal Register for the mark BIRD BRAIN, INC. (a) for "ornamental garden weather vanes made of metal and metal garden sculptures, made on non-precious metal", claiming first use April 17, 1998/Int. Cl. 6; (b) for "lawn furniture", claiming first use January 1997/Int. Cl. 20; and (c) for "lawn and garden products, namely, ornamental lawn sprinklers, bird feeders, butterfly feeders, and plant and flower baskets", claiming first use January 1997/Int. Cl. 21.
3. Applicant's mark was published for opposition in the *Official Gazette*, August 26, 2003, Page TM 41.
4. Opposer is now engaged in and for many years prior to 1997, has been continuously engaged in the business of manufacturing, selling, marketing and distributing sprinkler and irrigation products and related products/services.
5. Since at least as early as 1935, Opposer has continuously used the mark and designation RAIN BIRD in connection with manufacturing, selling, marketing and distributing sprinkler, turf irrigation and related products/services.

6. Opposer now uses and for many years prior to 1997, has continuously used as a trade name Rain Bird (and variations, including Rain Bird Sprinkler Mfg. Corp.) to exclusively identify itself as a legal entity and business concerned with selling, marketing and distributing sprinkler, turf irrigation and related products/services.

7. Opposer owns U.S. registrations for the name RAIN BIRD, including:

U.S. Reg. No. 567,442, granted December 2, 1952 (Exhibit A-1);

U.S. Reg. No. 771,728, granted June 23, 1964 (Exhibit A-2);

U.S. Reg. No. 771,809, granted June 23, 1964 (Exhibit A-3);

U.S. Reg. No. 908,921, granted March 2, 1971 (Exhibit A-4);

U.S. Reg. No. 961,439, granted June 19, 1973 (Exhibit A-5);

U.S. Reg. No. 961,506, granted June 19, 1973 (Exhibit A-6);

U.S. Reg. No. 961,538, granted June 19, 1973 (Exhibit A-7);

U.S. Reg. No. 961,868, granted June 26, 1973 (Exhibit A-8);

U.S. Reg. No. 962,015, granted June 26, 1973 (Exhibit A-9);

U.S. Reg. No. 982,529, granted April 23, 1974 (Exhibit A-10);

U.S. Reg. No. 984,827, granted May 28, 1974 (Exhibit A-11); and

U.S. Reg. No. 999,325, granted November 26, 1974 (Exhibit A-12).

Copies of these twelve registrations, identified as Exhibits A-1 thru A-12 are attached to these pleadings.

8. Opposer owns U.S. Reg. No. 1,638,024, granted May 19, 1991 for a RAIN BIRD Logo (the name RAIN BIRD, combined with a fanciful bird design) - and a copy of the registration, identified as Exhibit B is attached to these pleadings.

9. Opposer owns U.S. registrations for RAIN, combined with other terms, including:

U.S. Reg. No. 761,559 for RAIN-CLOX, granted December 17, 1963 (Exhibit C-1);

U.S. Reg. No. 790,913 for RAIN GUN, granted June 15, 1965 (Exhibit C-2);

U.S. Reg. No. 1,339,091 for RAIN BUG, granted June 4, 1985 (Exhibit C-3);

and

U.S. Reg. No. 1,365,459 for RAIN TAPE, granted October 15, 1985 (Exhibit C-4).

Copies of these four registrations, identified as Exhibits C-1 thru C-4 are attached to these pleadings.

10. Opposer owns U.S. Reg. No. 1,038,012 for BIRD - and a copy of the registration identified as Exhibit D is attached to these pleadings.

11. Opposer now owns the above-identified marks, designations, trade names and U.S. registrations by reason of a change of corporate name from its predecessor name, Rain Bird Sprinkler Mfg. Corp.

12. The relevant classes of customers and the general public have come to exclusively associate Opposer with the mark and designation RAIN BIRD, the trade name Rain Bird, and the mark and designation BIRD.

13. Use by Applicant of the mark BIRD BRAIN, INC. for the goods specified in its trademark application is likely to cause confusion, mistake and/or deception as to source relative to Opposer's mark and designation RAIN BIRD, trade name Rain Bird, and the

mark and designation BIRD, and thereby cause damage to Opposer's trade identity rights and associated good will.

14. Use by Applicant of the mark BIRD BRAIN, INC. for which registration is sought is likely to cause members of the trade, customers and the general public to incorrectly assume that Applicant's goods are sponsored by, endorsed by, licensed from or in some way associated with Opposer and thereby cause damage to Opposer's trade identity rights and good will associated with mark and designation RAIN BIRD, trade name Rain Bird, and the mark and designation BIRD.

15. As owner of the mark and designation RAIN BIRD, trade name Rain Bird, and the mark and designation BIRD, Opposer has standing and will be damaged by the listing of Applicant's mark BIRD BRAIN, INC. on the Principal Register: (a) because of the likelihood that Applicant's mark will cause confusion; (b) because registration of BIRD BRAIN, INC. will deprive Opposer of statutory benefits and advantages and cause doubt as to the correct ownership of the marks RAIN BIRD and BIRD; and (c) because registration of BIRD BRAIN, INC. may cause loss of distinctiveness to and otherwise impair Opposer's trade identity rights.

SECOND CAUSE OF ACTION - DILUTION -  
THE LANHAM ACT §13(a) & §43(c)

16. Opposer incorporates by reference the allegations of the First Cause of Action, ¶¶1 thru 12.

17. Opposer's mark RAIN BIRD is famous and became famous prior to 1997.

18. Use by Applicant of the mark BIRD BRAIN, INC. for which registration is sought is likely to dilute the distinctive quality of Opposer's mark RAIN BIRD - and thereby cause damage to Opposer's famous mark RAIN BIRD.

19. As owner of the famous mark RAIN BIRD, Opposer has standing and will be damaged by the listing of Applicant's mark BIRD BRAIN, INC. on the Principal Register: (a) because of the likelihood that Applicant's mark will cause dilution; and (b) because registration of BIRD BRAIN, INC. to Applicant may lessen the capacity of Opposer's famous mark RAIN BIRD to identify and distinguish its goods.

\* \* \* \* \*

WHEREFORE, Opposer requests that this Opposition be sustained, the subject application be rejected and that Applicant be denied and refused registration of the mark BIRD BRAIN, INC.

Please recognize as attorneys of record for Opposer, Rain Bird Corporation, in this proceeding: John E. Kelly, John D. Bauersfeld, Stuart O. Lowry, Scott W. Kelley, Aaron T. Borrowman, Matthew J. Spark, and Gary D. Mann, all members of the Bar of the State of California, whose address is Kelly Bauersfeld Lowry & Kelley, LLP, 6320 Canoga Avenue, Suite 1650, Woodland Hills, California 91367, (818) 347-7900.

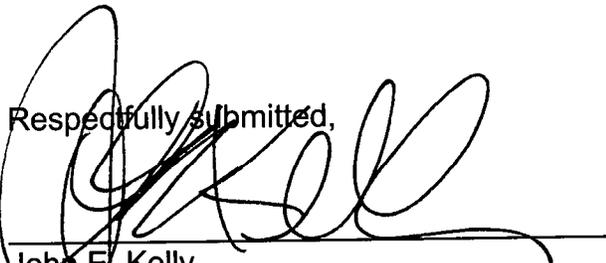
Please address all communications to John E. Kelly, Esq., Reg. No. 24,269 USPTO.

This Opposition is filed as required by Rule 2.104, in duplicate.

A check in the amount of \$900, covering the requisite fee for three Int. Cls., accompanies this Notice of Opposition.

Dated: October 16, 2003

Respectfully submitted,



John E. Kelly  
Reg. No. 24,269  
KELLY BAUERSFELD LOWRY & KELLEY, LLP  
6320 Canoga Avenue, Suite 1650  
Woodland Hills, California 91367  
(818) 347-7900/Fax: (818) 340-1859

Attorneys for Rain Bird Corporation, Opposer

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SHOPS, SEMINARS  
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(U.S. CLS. 100, 101 AND

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**SOLUTION**

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MINISTRATION (U.S.

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S. CLS. 100 AND 101).

INC., NEW YORK, NY.

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FORMATION IN CON-  
TREATS, BOOKING  
TREATS AND TRANS-  
NG YOGA RETREATS  
ON WITH YOGA RE-  
(U.S. CLS. 100 AND 101).

**CLASS 41—EDUCATION AND ENTERTAIN-  
MENT**

FOR EDUCATIONAL SERVICES, NAMELY CON-  
DUCTING YOGA RETREATS AND YOGA PROGRAMS  
WHERE YOGA IS INSTRUCTED (U.S. CLS. 100, 101 AND  
107).

SN 76-349,479. BIRD BRAIN, INC., YPSILANTI, MI. FILED  
12-14-2001.

**BIRD BRAIN, INC.**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO  
USE "INC." APART FROM THE MARK AS SHOWN.

**CLASS 6—METAL GOODS**

FOR ORNAMENTAL GARDEN WEATHER VANES  
MADE OF METAL, AND METAL GARDEN SCULP-  
TURES MADE ON NON-PRECIOUS METAL (U.S. CLS.  
2, 12, 13, 14, 23, 25 AND 50).  
FIRST USE 4-17-1998; IN COMMERCE 4-17-1998.

**CLASS 20—FURNITURE AND ARTICLES NOT  
OTHERWISE CLASSIFIED**

FOR LAWN FURNITURE (U.S. CLS. 2, 13, 22, 25, 32  
AND 50).  
FIRST USE 1-0-1997; IN COMMERCE 1-0-1997.

**CLASS 21—HOUSEWARES AND GLASS**

FOR LAWN AND GARDEN PRODUCTS; NAMELY,  
ORNAMENTAL LAWN SPRINKLERS, BIRD FEEDERS,  
BUTTERFLY FEEDERS, AND PLANT AND FLOWER  
BASKETS (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).  
FIRST USE 1-0-1997; IN COMMERCE 1-0-1997.

SN 76-349,523. SOFTWARE PROFESSIONAL GMBH & CO.  
KG, 71034 BOEBLINGEN, FED REP GERMANY. FILED  
12-14-2001.

**SIGNINFO**

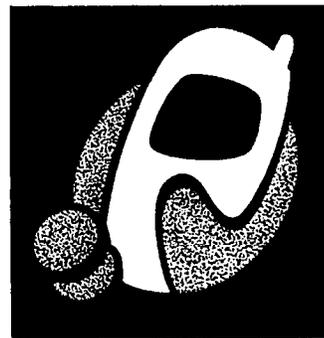
**CLASS 9—ELECTRICAL AND SCIENTIFIC  
APPARATUS**

FOR COMPUTER SOFTWARE FOR STORING, DIS-  
PLAYING, ADMINISTERING AND SEARCHING A DA-  
TABASE OF CUSTOMER AND ACCOUNT  
INFORMATION, USING IMAGES, PHOTOGRAPHS, SIG-  
NATURES, FINGERPRINTS AND OTHER MEANS OF  
AUTHENTICATING TRANSACTIONS (U.S. CLS. 21, 23,  
26, 36 AND 38).

**CLASS 42—SCIENTIFIC, COMPUTER AND  
LEGAL SERVICES**

FOR DEVELOPMENT OF SOFTWARE FOR OTHERS  
(U.S. CLS. 100 AND 101).

SN 76-350,925. MOBIPAY INTERNATIONAL, S.A., 28001  
MADRID, SPAIN. FILED 12-19-2001.



THE STIPLING IN THE DRAWING IS FOR SHADING  
PURPOSES ONLY AND IS NOT INTENDED TO INDICATE  
COLOR.

THE MARK CONSISTS OF A STYLIZED HAND HOLD-  
ING A PHONE INSIDE A SQUARE. THE OUTER SQUARE  
IS PANTONE BLUE NO. 3015, THE HAND IS PANTONE  
TURQUOISE BLUE NO. 3242, AND THE PHONE IS WHITE.  
THE APPLICANT CLAIMS THE COLORS BLUE, TUR-  
QUOISE BLUE AND WHITE AS FEATURES OF THE  
MARK.

**CLASS 9—ELECTRICAL AND SCIENTIFIC  
APPARATUS**

FOR FIXED, MOBILE AND CELLULAR TELE-  
PHONES; ADAPTERS IN THE FORM OF SMART CARD  
READERS FOR TELEPHONES AND MOBILE TELE-  
PHONES, MAGNETICALLY ENCODED DEBIT CARDS,  
MAGNETICALLY ENCODED TELEPHONE CALLING  
CARDS, SCANNERS; CONNECTIVE INTERFACE  
CARDS, COMPUTER INTERFACE BOARDS; DIGITAL  
CASH REGISTERS; SMART CARD READERS; A SYS-  
TEM FOR PAYMENT TRANSACTIONS FOR REGISTER-  
ING BANK AND GIRO MEANS OF PAYMENT AS WELL  
AS MONETARY TRANSFERS COMPRISED OF COMPU-  
TER, SMART CARD READER, COMPUTER MONITOR  
(U.S. CLS. 21, 23, 26, 36 AND 38).

**CLASS 16—PAPER GOODS AND PRINTED  
MATTER**

FOR COMPUTER PAPER, MAGNETIC PAPER, TYPE-  
WRITER PAPER, WRITING PAPER; PAPER BAGS;  
PAPER BLINDS; PAPER BOXES; BALL POINT PENS;  
PENS, PENCILS; BOXES FOR PENS; CASES FOR  
STAMPS; PAPER CLIPS FOR OFFICE USE; PAPER  
CUTTERS; DOCUMENT FILES; DRAWING PENS;  
DRAWING SETS COMPRISED OF DRAWING BOARDS;  
DRAWING BRUSHES, DRAWING COMPASSES AND  
DRAWING PADS, ENVELOPES; FOLDERS; INDEX  
CARDS; PENCIL HOLDERS; DRAWING RULERS; ART,  
NEWSPRINT, RECYCLED, SYNTHETIC, WAX, AND  
BOND PAPER; GIFT WRAPPING PAPER; PAPER STA-  
PLERS, STAPLES, AND STAPLES REMOVERS; DIC-  
TIONARIES, BOOK-BINDING TAPE; ADHESIVES FOR  
STATIONERY OR HOUSEHOLD PURPOSES; SKETCH  
PADS; POSTER BOARD; PAINTINGS; EASELS; PENS  
AND PASTELS; ELECTRIC AND NON-ELECTRIC TYPE-  
WRITERS; TYPEWRITER RIBBONS; TYPEWRITER  
TYPE BALLS AND TYPEWRITER TYPING ELEMENTS;  
MOUNTED AND UNMOUNTED PHOTOGRAPHS;  
PHOTOGRAPH ALBUMS; ARCHIVAL STORAGE  
PAGES; PENCIL SHARPENERS; TABLE LINENS OF  
PAPER; PLAYING CARDS; PRINTING TYPE AND  
BLOCKS; PLASTIC BUBBLE PACKS FOR WRAPPING  
OR PACKAGING; PUBLICATIONS AND PRINTED  
MATTER, NAMELY NEWSPAPERS, MAGAZINES,  
NEWSLETTERS, BROCHURES, PAMPHLETS, BOOKS  
AND JOURNALS DEALING WITH ECONOMIC, FINAN-  
CIAL AND LEGAL SUBJECTS AND RELATED TO  
COMPUTER SERVICES AND NETWORK COMPUTER  
SERVICES (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

12573

Registered Dec. 2, 1952

Registration No. 567,442

**PRINCIPAL REGISTER**  
**Trade-Mark**

COPIED FROM  
OFFICE

**UNITED STATES PATENT OFFICE**

Rain Bird Sprinkler Mfg. Corp., Glendora, Calif.

Act of 1946

Application July 9, 1951, Serial No. 616,244

**RAINBIRD**

**STATEMENT**

Rain Bird Sprinkler Mfg. Corp., a corporation duly organized under the laws of the State of California, located at Glendora, California, and doing business at 631 West Foothill Boulevard, Glendora, California, has adopted and is using the trade-mark shown on the accompanying drawing, for **LAWN AND YARD SPRINKLERS**, in Class 13, Hardware and plumbing and steam-fitting supplies, and presents herewith five photographs showing the trade-mark as actually used in connection with the goods, the trade-mark being applied to the body of the sprinklers by casting the same therein, and requests the same be registered in the United States Patent Office on

the Principal Register in accordance with the act of July 5, 1946.

The trade-mark was first used by applicant on November 1, 1935, and first used by applicant in commerce among the several States, which may be lawfully regulated by Congress on May 6, 1936.

The trade-mark was first used by applicant on November 1, 1935, and first used by applicant in commerce among the several States, which may be lawfully regulated by Congress on May 6, 1936.

**RAIN BIRD SPRINKLER MFG. CORP.,**  
By **C. M. LA FETRA,**  
*President.*

EXHIBIT A-1  
to  
NOTICE OF OPPOSITION

PRINCIPAL REGISTER  
Trademark

Ser. No. 177,092, filed Sept. 16, 1963

RAIN BIRD

Rain Bird Sprinkler Manufacturing Corp. (California  
corporation)  
19233 E. Foothill Blvd.  
Glendora, Calif.

For: MANUALLY-OPERATED TURF VALVES,  
ANGLE, GLOBE, AND CHECK VALVES, QUICK  
COUPLING VALVES AND VALVE KEYS, ELECTRI-  
CALLY AND HYDRAULICALLY OPERATED RE-  
MOTE CONTROL VALVES, in CLASS 13.

First use Aug. 26, 1957, on turf valves; in commerce  
Aug. 29, 1957.

Owner of Reg. No. 567,442.

EXHIBIT A-2  
to  
NOTICE OF OPPOSITION

COMB. AFF. SEC. 8 & 15

771,728

Q. D. . . . .

# United States Patent Office

771,809

Registered June 23, 1964

## PRINCIPAL REGISTER Trademark

Ser. No. 177,093, filed Sept. 16, 1963

### RAIN BIRD

Rain Bird Sprinkler Manufacturing Corp. (California corporation)  
19233 E. Foothill Blvd.  
Glendora, Calif.

For: ELECTRICALLY-OPERATED CONTROLLERS  
FOR SPRINKLER SYSTEMS, AND ELECTRICAL  
WIRE FOR USE IN SUCH SYSTEMS, in CLASS 21.  
First use June 21, 1962, on controllers; in commerce  
June 29, 1962.  
Owner of Reg. No. 567,442.

EXHIBIT A-3  
to  
NOTICE OF OPPOSITION

COMB. AFF. SEC. 8 & 15

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Q. O. . . . . 10/19

# United States Patent Office

908,921  
Registered Mar. 2, 1971

## PRINCIPAL REGISTER Trademark

Ser. No. 359,255, filed May 8, 1970

### RAIN BIRD

Rain Bird Sprinkler Mfg. Corp. (California corporation)  
7045 N. Grand  
Glendora, Calif. 91740

For: TURF AND AGRICULTURAL SPRINKLERS,  
in CLASS 13 (INT. CL. 6).

First use on or about Jan. 1, 1953; in commerce on  
or about Jan. 10, 1953.

Owner of Reg. Nos. 567,442, 771,728 and 771,809.

EXHIBIT A-4  
to  
NOTICE OF OPPOSITION

United States Patent Office

961,439  
Registered June 19, 1973

PRINCIPAL REGISTER  
Trademark

Ser. No. 428,516, filed June 27, 1972

RAIN BIRD

Rain Bird Sprinkler Mfg. Corp. (California corporation)  
7045 N. Grand Ave.  
Glendora, Calif. 91740

For: WRENCHES, in CLASS 23 (INT. CL. 8).  
First use Jan. 10, 1950; in commerce Feb. 15, 1950.  
Owner of Reg. Nos. 567,442, 908,921, and others.

EXHIBIT A-5  
to  
NOTICE OF OPPOSITION



United States Patent Office

961,506  
Registered June 19, 1973

PRINCIPAL REGISTER  
Trademark

Ser. No. 428,582, filed June 28, 1972

RAIN BIRD

Rain Bird Sprinkler Mfg. Corp. (California corporation)  
7045 N. Grand Ave.  
Glendora, Calif. 91740

For: GARDEN HOSE, in CLASS 35 (INT. CL. 17).  
First use on or before Nov. 15, 1970; in commerce  
Dec. 15, 1970.  
Owner of Reg. Nos. 567,442, 908,921, and others.

EXHIBIT A-6  
to  
NOTICE OF OPPOSITION

United States Patent Office

961,538

Registered June 19, 1973

PRINCIPAL REGISTER  
Trademark

Ser. No. 428,973, filed July 3, 1972

RAIN BIRD

Rain Bird Sprinkler Mfg. Corp. (California corporation)  
7045 N. Grand Ave.  
Glendora, Calif. 91740

For: GARDEN BOOKS, in CLASS 38 (INT. CL. 16).  
First use on or before Nov. 15, 1969; in commerce Nov.  
30, 1969.  
Owner of Reg. Nos. 567,442, 908,921, and others.

EXHIBIT A-7  
to  
NOTICE OF OPPOSITION

⊙

**United States Patent Office** 961,868  
Registered June 26, 1973

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**PRINCIPAL REGISTER**  
**Trademark**

Ser. No. 428,517, filed June 27, 1972

**RAIN BIRD**

Rain Bird Sprinkler Mfg. Corp. (California corporation)  
7045 N. Grand Ave.  
Glendora, Calif. 91740

For: RUBBER VALVE MARKERS, in CLASS 13  
(INT. CL. 6).  
First use Jan. 10, 1966; in commerce Jan. 25, 1966.  
Owner of Reg. Nos. 567,442, 908,921, and others.

EXHIBIT A-8  
to  
NOTICE OF OPPOSITION

United States Patent Office

962,015  
Registered June 26, 1973

PRINCIPAL REGISTER  
Trademark

Ser. No. 429,262, filed July 7, 1972

RAIN BIRD

Rain Bird Sprinkler Mfg. Corp. (California corporation)  
7045 N. Grand Ave.  
Glendora, Calif. 91740

For: CLOCKS USED IN CONNECTION WITH  
TIMING CONTROLS, in CLASS 27 (INT. CL. 14).  
First use June 21, 1962; in commerce June 21, 1962.  
Owner of Reg. Nos. 567,442, 908,921 and others.

EXHIBIT A-9  
to  
NOTICE OF OPPOSITION



# United States Patent Office

982,529

Registered Apr. 23, 1974

## PRINCIPAL REGISTER Trademark

Ser. No. 429,350, filed July 7, 1972

### RAIN BIRD

Rain Bird Sprinkler Mfg. Corp. (California corporation)  
7045 N. Grand Ave.  
Glendora, Calif. 91740

For: MOISTURE AND TEMPERATURE RESPON-  
SIVE CONTROLLERS, in CLASS 26 (INT. CL. 9).  
First use June 21, 1962; in commerce June 29, 1962.  
Owner of Reg. Nos. 567,442, 908,921, and others.

United States Patent Office

984,827  
Registered May 28, 1974

PRINCIPAL REGISTER  
Trademark

Ser. No. 431,781, filed Aug. 4, 1972

RAIN BIRD

Rain Bird Sprinkler Mfg. Corp. (California corporation)  
7045 N. Grand Ave.  
Glendora, Calif. 91740

For: SPRINKLER HEAD SCREENS, in CLASS 13  
(INT. CL 20).  
First use on or before Jan. 10, 1950; in commerce  
Feb. 15, 1950.  
Owner of Reg. Nos. 567,442, 908,921, and others.

EXHIBIT A-11  
to  
NOTICE OF OPPOSITION

Int. Cl.: 37

Prior U.S. Cl.: 103

United States Patent Office

Reg. No. 999,325

Registered Nov. 26, 1974

**SERVICE MARK**

Principal Register

**RAIN BIRD**

Rain Bird Sprinkler Mfg. Corp. (California corporation)  
7045 N. Grand Ave.  
Glendora, Calif. 91740

For: REPAIR OF SPRINKLER AND RELATED IR-  
RIGATION EQUIPMENT OWNED BY OTHERS, in  
CLASS 103 (INT. CL. 37).

First use on or before Jan. 15, 1949; in commerce on  
or before Jan. 30, 1949.

Owner of Reg. Nos. 567,442, 908,921, and others.

Ser. No. 431,727, filed Aug. 4, 1972.

M. E. ABRAMSON, Supervisory Examiner

F. P. WOOD, Examiner

Int. Cls.: 1, 3, 6, 7, 8, 9, 11, 14, 16, 17, 20,  
21, 25, 28 and 37

Prior U.S. Cls.: 2, 5, 13, 21, 22, 23, 26, 27,  
28, 29, 31, 32, 37, 38, 39, 50, 52 and 103

**United States Patent and Trademark Office** **Reg. No. 1,638,034**  
Registered Mar. 19, 1991

**TRADEMARK  
SERVICE MARK  
PRINCIPAL REGISTER**

**RAIN BIRD**

RAIN BIRD SPRINKLER MFG. CORP. (CALI-  
FORNIA CORPORATION)  
633 EAST FOOTHILL BOULEVARD  
GLEN DORA, CA 91740

FOR: ADHESIVES FOR PVC PIPE, IN CLASS  
1 (U.S. CL. 5).

FIRST USE 12-0-1970; IN COMMERCE  
12-0-1970.

FOR: SHAMPOO STICKS FOR USE WITH  
BRUSHES FOR WASHING CARS, IN CLASS 3  
(U.S. CL. 52).

FIRST USE 12-0-1985; IN COMMERCE  
12-0-1985.

FOR: METAL MANUALLY OPERATED  
VALVES, NAMELY Y VALVES, SHUT-OFF  
VALVES, ANTI-SIPHON VALVES, AIR VENT  
VALVES, VACUUM RELIEF VALVES, PRES-  
SURE REGULATING VALVES, QUICK COU-  
PLING VALVES, DRAIN VALVES, ANGLE  
VALVES, GLOBE VALVES, BALL VALVES,  
GATE VALVES, AND CHECK VALVES;  
METAL HOSE HANGERS; AND METAL PIPES,  
IN CLASS 6 (U.S. CL. 13).

FIRST USE 12-0-1965; IN COMMERCE  
12-0-1965.

FOR: HYDRAULICALLY OPERATED  
REMOTE CONTROL VALVES, IN CLASS 7  
(U.S. CLS. 13 AND 23).

FIRST USE 12-0-1965; IN COMMERCE  
12-0-1965.

FOR: HAND TOOLS, NAMELY SAWS AND  
BLADES THEREFOR; WRENCHES; CHUCKS;  
SCREW DRIVERS; KNIVES; KEYS; PUNCHES;  
AND SHEARS, NAMELY LOPPING SHEARS,

PRUNING SHEARS, HEDGE SHEARS, GRASS  
SHEARS, TRIMMING SHEARS, AND FLOWER  
SHEARS; PIPE CUTTERS; DRIPPER INSTAL-  
LATION TOOLS, IN CLASS 8 (U.S. CL. 23).

FIRST USE 12-0-1965; IN COMMERCE  
12-0-1965.

FOR: AUTOMATIC CONTROLS FOR IRRI-  
GATION SPRINKLERS AND SPRINKLER SYS-  
TEMS, NAMELY MECHANICAL CONTROL-  
LERS, ELECTROMECHANICAL CONTROL-  
LERS, ELECTRICAL CONTROLLERS, COM-  
PUTER CONTROLLERS, CLOCK TIMERS,  
WATER TIMERS, TEMPERATURE RESPON-  
SIVE CONTROLLERS, MOISTURE RESPON-  
SIVE CONTROLLERS; ELECTRIC SWITCHES;  
ELECTRIC SOLENOIDS; ELECTRIC RELAYS;  
ELECTRICAL CONNECTORS; ELECTRIC  
WIRE; PHOTO CELLS; WEATHER STATIONS,  
COMPRISING A RAIN GAUGE, SOLAR RADI-  
ATION SENSOR, WIND SPEED AND RELA-  
TIVE HUMIDITY SENSOR COMBINED AS A  
UNIT; FLUID METERS AND GAUGES,  
NAMELY WATER METERS, PILOT TUBES,  
PRESSURE GAUGES, AND RAIN GAUGES;  
SOLENOID AND ELECTRICALLY OPERATED  
REMOTE CONTROL VALVES; AUDIO RE-  
CORDINGS AND AUDIO VIDEO TAPE,  
NAMELY AUDIO CASSETTE TAPES AND  
VIDEO TAPES CONCERNING SPRINKLER  
SYSTEMS AND IRRIGATION; AND COMPUT-  
ERS AND COMPUTER PROGRAMS FOR IRRI-  
GATION CONTROL; COMPUTERS; RADIO  
CONTROL TRANSCEIVERS; SURGE PROTEC-

EXHIBIT B  
to  
NOTICE OF OPPOSITION

TORS; TRANSFORMERS; THERMOMETERS, IN CLASS 9 (U.S. CLS. 21, 26 AND 38).

FIRST USE 12-0-1963; IN COMMERCE 12-0-1963.

FOR: SPRINKLER SYSTEMS AND SPRINKLERS THEREFOR, NAMELY IMPACT AND IMPULSE DRIVE SPINKLERS, POP-UP SPRINKLERS, BALL DRIVE SPRINKLERS, TURBINE DRIVE SPRINKLERS, REACTION DRIVE SPRINKLERS; OSCILLATORS; SPRAY HEADS; BUBBLERS; SPRINKLER NOZZLES; SPRINKLER SUPPORTS AND BASES; DRIPPERS; EMITTERS; SOAKERS; SPINNER SEPARATORS, SPRINKLER SYSTEM FILTERS AND FILTER SCREENS; ELECTRIC OUTDOOR LIGHTS; AND FAUCET ADAPTERS, IN CLASS 11 (U.S. CLS. 13, 21 AND 31).

FIRST USE 12-0-1963; IN COMMERCE 12-0-1963.

FOR: TIE TACKS; WATCHES AND CLOCKS, IN CLASS 14 (U.S. CLS. 27 AND 28).

FIRST USE 12-0-1982; IN COMMERCE 12-0-1982.

FOR: MAINTENANCE AND OPERATIONAL MANUALS RELATED TO IRRIGATION EQUIPMENT AND SYSTEMS; INSTALLATION MANUALS RELATED TO IRRIGATION SPRINKLERS AND SPRINKLER SYSTEMS; IRRIGATION DESIGN MANUALS AND BOOKS; MAGAZINES AND NEWSLETTERS RELATED TO IRRIGATION; NOTE PAPER AND PADS; PAPER BANNERS; BINDERS; PAPER BOXES; BUMPER STICKERS; CALENDARS; DECALS; STATIONERY FOLDERS; LABELS; PAPER NAME BADGES; NAPKINS; PLAYING CARDS; SIGNS; POSTERS; PAPER FLAGS; LUGGAGE TAGS; PAPER SHOPPING BAGS; PENS; PENCILS; PAPER CLIP HOLDERS; CLIP BOARDS; LETTER OPENERS, IN CLASS 16 (U.S. CLS. 37, 38 AND 50).

FIRST USE 12-0-1965; IN COMMERCE 12-0-1965.

FOR: LAWN AND GARDEN EQUIPMENT COMPRISING NON-METALLIC HOSE, TUBING, PIPE, PIPE JOINT AND COUPLINGS, HOSE CONNECTORS, HOSE QUICK COUPLING CONNECTORS, HOSE REPAIR COUPLINGS, RISER PIPES, PIPE ADAPTERS; FITTINGS, NAMELY DRIP FITTINGS, BARB FITTINGS; COMPRESSION FITTINGS; RUBBER VALVE MARKERS; BALLOONS; HOSE AND VALVE WASHERS; SPRINKLER COLLARS, IN CLASS 17 (U.S. CL. 13).

FIRST USE 12-0-1965; IN COMMERCE 12-0-1965.

FOR: CABINETS AND HOUSINGS FOR VALVES AND IRRIGATION CONTROLLERS; COUNTER STOOLS; LITERATURE AND CORRESPONDENCE RACKS; STADIUM CUSHIONS; PLASTIC MANUALLY OPERATED VALVES, NAMELY Y VALVES, SHUT-OFF VALVES, ANTI-SIPHON VALVES, AIR-VENT VALVES, VACUUM RELIEF VALVES, PRESSURE REGULATING VALVES, QUICK COUPLING VALVES, DRAIN VALVES, ANGLE VALVES, GLOBE VALVES, BALL VALVES, GATE VALVES, AND CHECK VALVES; PLASTIC HOSE HANGERS, AND PLASTIC SIGNS, IN CLASS 20 (U.S. CLS. 13 AND 32).

FIRST USE 12-0-1965; IN COMMERCE 12-0-1965.

FOR: BRUSHES, NAMELY CAR WASH BRUSHES AND PATIO AND DECK BRUSHES; INSULATED CUPS; MUGS; CORK SCREWS; LAWN SPRINKLER NOZZLES; HOSE END NOZZLES AND HOSE NOZZLES, IN CLASS 21 (U.S. CLS. 2, 23 AND 29).

FIRST USE 12-0-1978; IN COMMERCE 12-0-1978.

FOR: CLOTHING, NAMELY COVERALLS, JACKETS, SCARFS, SWEATERS, SWEATSHIRTS, SHIRTS, NECKTIES, T-SHIRTS, VESTS, CAPS, PANTS, IN CLASS 25 (U.S. CL. 39).

FIRST USE 12-0-1977; IN COMMERCE 12-0-1977.

FOR: SPORTS EQUIPMENT, NAMELY GOLF BALLS AND GOLF TEES, IN CLASS 28 (U.S. CL. 22).

FIRST USE 12-0-1978; IN COMMERCE 12-0-1978.

FOR: IRRIGATION EQUIPMENT REPAIR SERVICES, NAMELY SPRINKLER REPAIR, VALVE REPAIR AND CONTROLLER REPAIR; AND IRRIGATION SYSTEM INSTALLATION SERVICES, IN CLASS 37 (U.S. CL. 103).

FIRST USE 12-0-1965; IN COMMERCE 12-0-1965.

OWNER OF U.S. REG. NOS. 567,442, 1,157,940 AND OTHERS.

SER. NO. 73-776,298, FILED 1-23-1989.

J. TINGLEY, EXAMINING ATTORNEY

# United States Patent Office

761,559  
Registered Dec. 17, 1963

## PRINCIPAL REGISTER Trademark

Ser. No. 160,320, filed Jan. 7, 1963

### RAIN-CLOX

Rain Bird Sprinkler Manufacturing Corp. (California  
corporation)  
19233 E. Foothill Blvd.  
Glendora, Calif.

For: TIME-CONTROLLED, AUTOMATIC LAWN  
AND IRRIGATION SPRINKLERS, in CLASS 13.  
First use Sept. 14, 1962; in commerce Sept. 14, 1962.

EXHIBIT C-1  
to  
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# United States Patent Office

790,913  
Registered June 15, 1965

## PRINCIPAL REGISTER Trademark

Ser. No. 190,645, filed Apr. 8, 1964

### RAIN GUN

Rain Bird Sprinkler Manufacturing Corp. (California  
corporation)  
19233 E. Foothill Blvd.  
Glendora, Calif.

For: IRRIGATION SPRINKLERS, in CLASS 13.  
First use Feb. 5, 1964; in commerce Feb. 5, 1964.

EXHIBIT C-2  
to  
NOTICE OF OPPOSITION

Int. Cl.: 11

Prior U.S. Cl.: 13

Reg. No. 1,339,091

Registered June 4, 1985

United States Patent and Trademark Office

**TRADEMARK  
PRINCIPAL REGISTER**

**RAIN BUG**

RAIN BIRD SPRINKLER MFG. CORP. (CALI-  
FORNIA CORPORATION)  
633 E. FOOTHILL BLVD.  
GLENORA, CA 91740

FQR: DRIP EMITTER FOR HORTICULTUR-  
AL USE, IN CLASS 11 (U.S. CL. 13).  
FIRST USE 7-8-1980; IN COMMERCE  
1-28-1981.

OWNER OF U.S. REG. NOS. 771,728, 908,921,  
AND 1,080,271.

SER. NO. 496,610, FILED 8-27-1984.

STEPHEN J. KELLER, EXAMINING ATTOR-  
NEY

Int. Cl.: 11

Prior U.S. Cl.: 13

**United States Patent and Trademark Office** Reg. No. 1,365,459  
Registered Oct. 15, 1985

**TRADEMARK  
PRINCIPAL REGISTER**

**RAIN TAPE**

**RAIN BIRD SPRINKLER MFG. CORP. (CALI-  
FORNIA CORPORATION)  
633 EAST FOOTHILL BOULEVARD  
GLEN DORA, CA 91740**

**FOR: DRIP IRRIGATION HOSE, IN CLASS 11  
(U.S. CL. 13).**

**FIRST USE 12-12-1983; IN COMMERCE  
12-12-1983.**

**OWNER OF U.S. REG. NO. 567,442.**

**SER. NO. 534,847, FILED 4-29-1985.**

**NANCY L. HANKIN, EXAMINING ATTORNEY**

EXHIBIT C-4  
to  
NOTICE OF OPPOSITION

Prior U.S. Cl.: 13

United States Patent and Trademark Office  
10 Year Renewal

Reg. No. 1,038,012  
Registered Apr. 13, 1976  
Renewal Term Begins Apr. 13, 1996

**TRADEMARK  
PRINCIPAL REGISTER**

**BIRD**

RAIN BIRD SPRINKLER MFG. CORP.  
(CALIFORNIA CORPORATION)  
633 WEST FOOTHILL BOULEVARD  
GLENORA, CA 91740

OWNER OF U.S. REG. NOS. 567,442,  
908,921 AND OTHERS.

FOR: SPRINKLERS AND SPRINKLER  
SYSTEMS FOR WATERING OR IRRIGA-

TION OF AGRICULTURAL CROPS,  
LAWNS, HORTICULTURAL AND OR-  
NAMENTAL PLANTS, IN CLASS 13  
(INT. CL. 7).

FIRST USE 5-1-1972; IN COMMERCE  
5-1-1972.

SER. NO. 72-427,185, FILED 6-14-1972.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on June 11, 1996.*

COMMISSIONER OF PATENTS AND TRADEMARKS

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to  
NOTICE OF OPPOSITION

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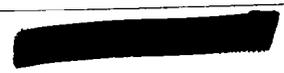
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PATENT, TRADEMARK  
AND COPYRIGHT CAUSES  
  
OF COUNSEL  
R. L. MIKESSELL

October 16, 2003



Assistant Commissioner for Trademarks  
Clerk of the TTAB  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

10-20-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

Re: Rain Bird Corporation, Opposer  
v. Bird Brain, Inc., Applicant  
Notice of Opposition (Our Docket 44714)

Dear Sir:

Enclosed on behalf of Opposer, Rain Bird Corporation, are the following:

1. Notice of Opposition (in duplicate);
2. A return postcard; and
3. Our law firm check in the amount of \$900 to cover the filing fee for three (3) Int. Cls.

Very truly yours,

John E. Kelly

KELLY BAUERSFELD LOWRY & KELLEY

JEK:rd  
Enclosures