

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

RAYOVAC CORPORATION,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	Serial No. 78/346,378
)	TM: RAYMAX & Design
ZHEJIANG MUSTANG)	Published October 12, 2004
BATTERY CO., LTD.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, Rayovac Corporation (“Rayovac”), believes that it will be damaged by registration of the mark RAYMAX & Design shown in application Serial No. 78/346,378, and for its Notice of Opposition against Applicant, Zhejiang Mustang Battery Co., Ltd., shows as follows:

1. Opposer is one of the largest battery, lighting, and personal grooming products companies in the world, with operations on six continents and more than 5000 employees. Its products are offered in more than 100 countries, and Opposer counts nine of the world’s top ten retailers as its customers. It offers the top selling rechargeable battery brand in North America and Europe, and it is the world leader in hearing aid batteries.

2. Opposer, through its predecessor, introduced batteries under the trademark RAY-O-VAC at least as early as 1921, and has used that mark (with and without hyphens) in connection with batteries, battery chargers, flashlights, and other products ever since.

3. On June 5, 1928, Opposer’s predecessor received Registration No. 242,884 of the mark RAY-O-VAC (stylized) for “dry cells for electric batteries, portable electric flashlights or

electric torches, and electric flashlight cases.” Opposer has complied with all requirements necessary to maintain this registration, a true and correct copy of which is attached as Exhibit A.

4. On July 15, 1958, Opposer’s predecessor received Registration No. 664,347 of the mark RAY•O•VAC (stylized) for “dry cells, dry cell batteries, flashlights, and flashlight cases.” Opposer has complied with all requirements necessary to maintain this registration, a true and correct copy of which is attached as Exhibit B.

5. On July 15, 1958, Opposer’s predecessor received Registration No. 664,348 of the mark RAY•O•VAC & Design for “dry cells, dry cell batteries, flashlights, and flashlight cases.” Opposer has complied with all requirements necessary to maintain this registration, a true and correct copy of which is attached as Exhibit C.

6. On May 16, 1989, Opposer received Registration No. 1,539,096 of the mark RAYOVAC & Lightning Bolt Design for “batteries and dry cell batteries,” and “battery powered flashlights.” Opposer has complied with all requirements necessary to maintain this registration, a true and correct copy of which is attached as Exhibit D.

7. The marks covered by the registrations above, together with Opposer’s common law rights in the RAYOVAC mark and variations thereof, are referred to hereafter collectively as the “RAYOVAC Marks.”

8. In addition, since at least as early as April 1, 1989, Opposer has used the trademark MAXIMUM in connection with a line of batteries sold under the RAYOVAC house mark. Opposer received Registration No. 2,123,841 of the mark MAXIMUM for “dry cell batteries” on December 23, 1997, and has complied with all requirements necessary to maintain that registration, a true and correct copy of which is attached as Exhibit E.

9. Batteries sold under that mark, and packaging for those batteries, prominently feature the RAYOVAC mark directly above and/or adjacent to the MAXIMUM mark.

10. Opposer, by itself and through its predecessor and affiliated companies, has expended substantial money in developing consumer recognition for Opposer's trademarks, and has extensively advertised the products provided under those marks.

11. Opposer's trademarks have acquired a high degree of recognition, fame, and distinctiveness throughout the United States as a symbol of the batteries and other products offered under those marks.

12. On December 30, 2003, Applicant filed application Serial No. 78/346,378 to register the mark RAYMAX & Design for "batteries; batteries for flashlights; solar batteries; plates for batteries." This application was published for opposition on October 12, 2004.

13. Applicant's RAYMAX & Design mark is confusingly similar to Opposer's RAYOVAC Marks and to the RAYOVAC MAXIMUM marks in appearance, sound, and commercial impression.

14. The products identified in application Serial No. 78/346,378 are identical or closely related to the products sold under Opposer's trademarks, and are likely to be sold to the same or similar customers through the same or similar wholesale and retail channels of trade. Neither Opposer's registrations nor Applicant's application are restricted as to customers, channels of distribution, or advertising media.

15. Opposer will be damaged by registration of Applicant's RAYMAX & Design mark because Applicant's mark is likely to cause confusion, mistake, and deception.

16. Persons familiar with Opposer's trademarks and products are likely to believe erroneously that Applicant's goods are products of Opposer or are authorized, licensed,

endorsed, or sponsored by Opposer, and registration of Applicant's mark on the Principal Register is inconsistent with Opposer's rights in Opposer's trademarks.

17. A duplicate copy of this Notice of Opposition and the required fee of \$300.00 are enclosed. The Commissioner is authorized to debit Kilpatrick Stockton LLP deposit account No. 11-0860 if there is any deficiency in the required fee.

WHEREFORE, Opposer requests that the Board refuse registration of the RAYMAX & Design mark shown in application Serial No. 78/346,378 and that this Opposition be sustained in favor of Opposer and for such other and further relief as the Board considers just and proper.

Respectfully submitted,

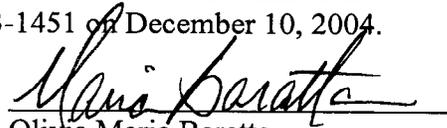


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Attorneys for Opposer
Rayovac Corporation

CERTIFICATE OF MAILING

I hereby certify that this NOTICE OF OPPOSITION is being deposited with the United States Postal Service as Express Mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on December 10, 2004.



Olivia Maria Baratta
Attorney for Opposer
Rayovac Corporation



Registered June 5, 1928.

Trade-Mark 242,884

Renewed June 5, 1948 to Ray-O-Vac Company, of Madison, Wisconsin.

Republished, under the Act of 1946, July 13, 1948, by Ray-O-Vac Company, Madison, Wis.

UNITED STATES PATENT OFFICE.

FRENCH BATTERY COMPANY, OF MADISON, WISCONSIN.

ACT OF FEBRUARY 20, 1905.

Application filed October 7, 1927. Serial No. 255,748.

RAY-O-VAC

distinctive

STATEMENT.

To the Commissioner of Patents:

French Battery Company, a corporation organized under the laws of the State of Wisconsin, located and doing business at 2317 Winnebago Street, Madison, Wisconsin, has adopted and used the trade-mark shown in the accompanying drawing, for DRY CELLS FOR ELECTRIC BATTERIES, PORTABLE ELECTRIC FLASH LIGHTS OR ELECTRIC TORCHES, AND ELECTRIC-FLASH-LIGHT CASES, in Class 21, Electrical apparatus, machines, and supplies, and presents herewith five specimens (or facsimiles) showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended. The trade-mark has been continuously used and applied to said goods in applicant's business since August 1, 1925. The applicant is the owner of the following trade-mark certificates: No. 132,947, July 6, 1920; No. 138,816, January 11, 1921; No. 149,925, December 27, 1921.

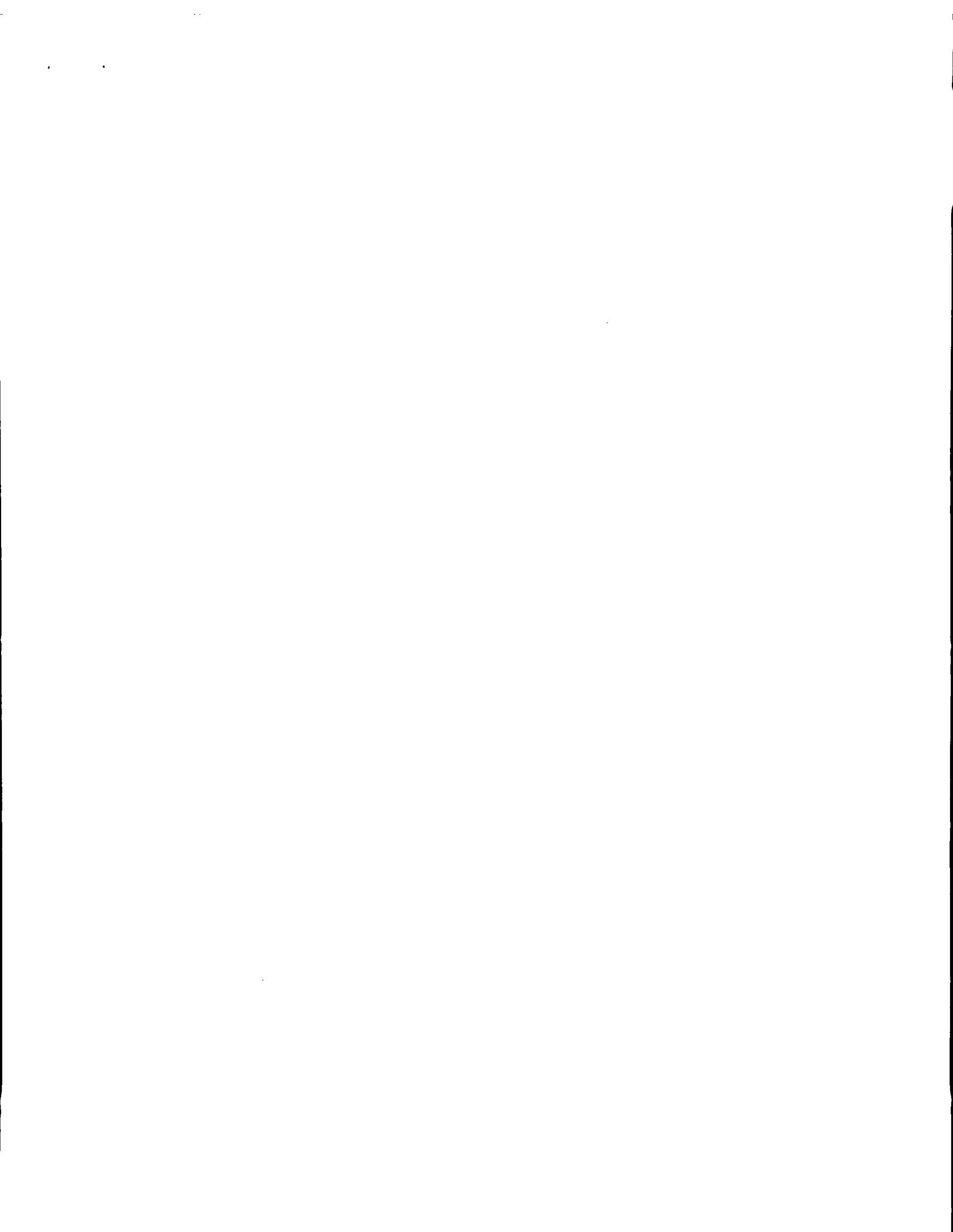
The trade-mark is applied or affixed to the goods by affixing thereto or to the containers in which the goods are shipped, a label, ticket or tag on which the trade-mark appears, or by printing, molding or otherwise impressing the trade-mark upon the goods themselves or upon the receptacles in which the goods are shipped.

The undersigned hereby appoints John H. Lee, George A. Chritton, Russell Wiles, William B. Davies, Benjamin B. Schneider and Marcus A. Hirschl, under the firm name of Dyrenforth, Lee, Chritton & Wiles, whose postal address is Washington, D. C. and Chicago, Illinois, its attorneys, to prosecute this application for registration, with full powers of substitution and revocation, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office in connection therewith.

FRENCH BATTERY COMPANY.
By WM. BALDERSTON,
V. Pres.

Affidavit under Section 8 accepted.

Affidavit under Section 15 received, Feb. 2, 1950.



Int. Cls.: 9 and 11

Prior U.S. Cl.: 21

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 664,347

Registered July 15, 1958

Renewal Term Begins July 15, 1998

TRADEMARK
PRINCIPAL REGISTER

RAY·O·VAC

RAYOVAC CORPORATION (WISCONSIN CORPORATION)
601 RAYOVAC DRIVE
MADISON, WI 53711, BY ASSIGNMENT, ASSIGNMENT, CHANGE OF NAME, ASSIGNMENT, AND ASSIGNMENT FROM ELECTRIC STORAGE BATTERY COMPANY, THE (NEW JERSEY CORPORATION) PHILADELPHIA, PA

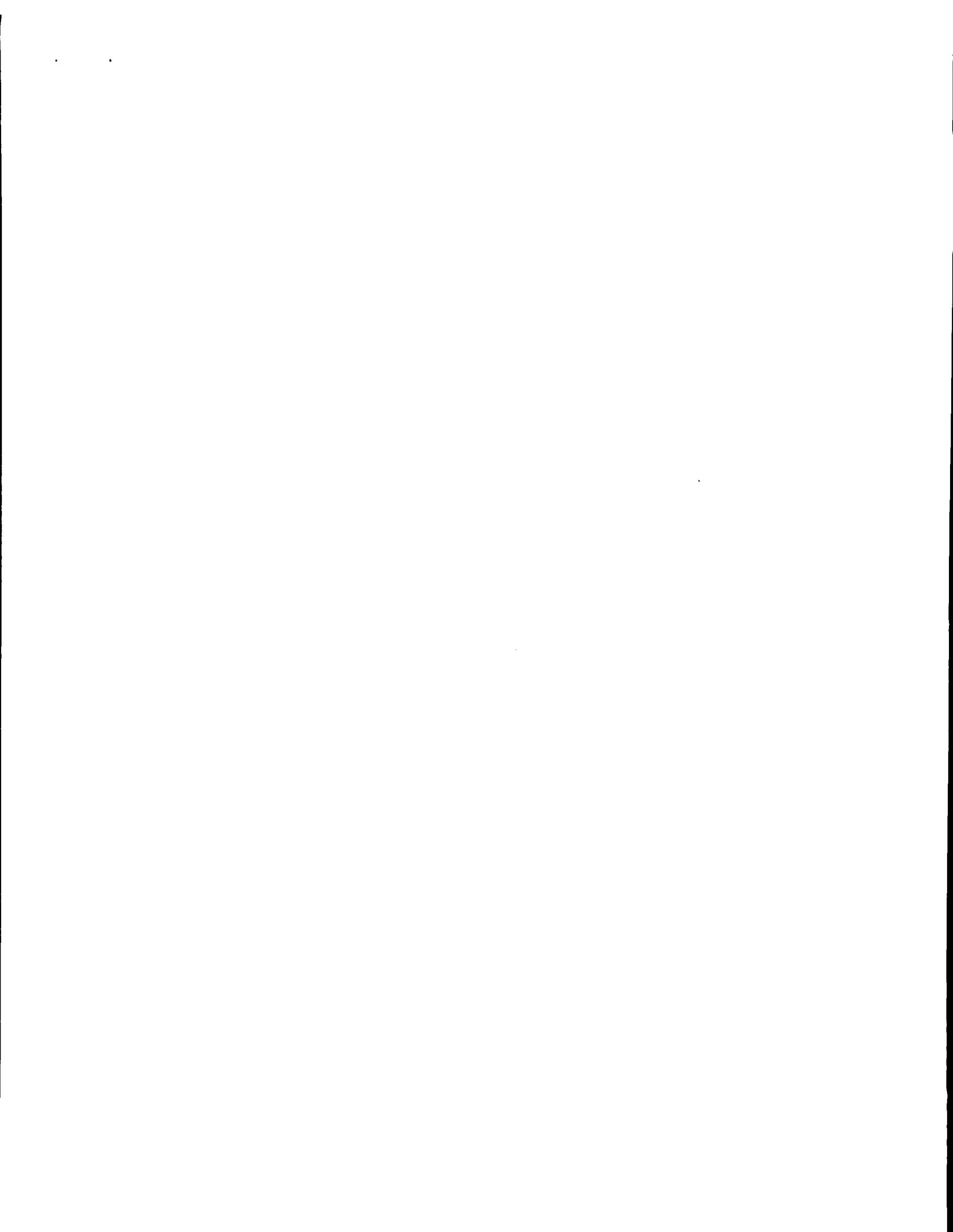
OWNER OF U.S. REG. NOS. 149,925, 550,048 AND OTHERS.

FOR: DRY CELLS, DRY CELL BATTERIES, FLASHLIGHTS, AND FLASHLIGHT CASES, IN CLASS 21 (INT. CLS. 9 AND 11).

FIRST USE 2-25-1957; IN COMMERCE 2-25-1957.

SER. NO. 72-034,738, FILED 7-31-1957.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Apr. 27, 1999.



Int. Cls.: 9 and 11

Prior U.S. Cl.: 21

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 664,348

Registered July 15, 1958

Renewal Term Begins July 15, 1998

TRADEMARK
PRINCIPAL REGISTER



RAYOVAC CORPORATION (WISCONSIN CORPORATION)

601 RAYOVAC DRIVE

MADISON, WI 53711, BY ASSIGNMENT, ASSIGNMENT, CHANGE OF NAME, ASSIGNMENT, AND ASSIGNMENT FROM ELECTRIC STORAGE BATTERY COMPANY, THE (NEW JERSEY CORPORATION) PHILADELPHIA, PA

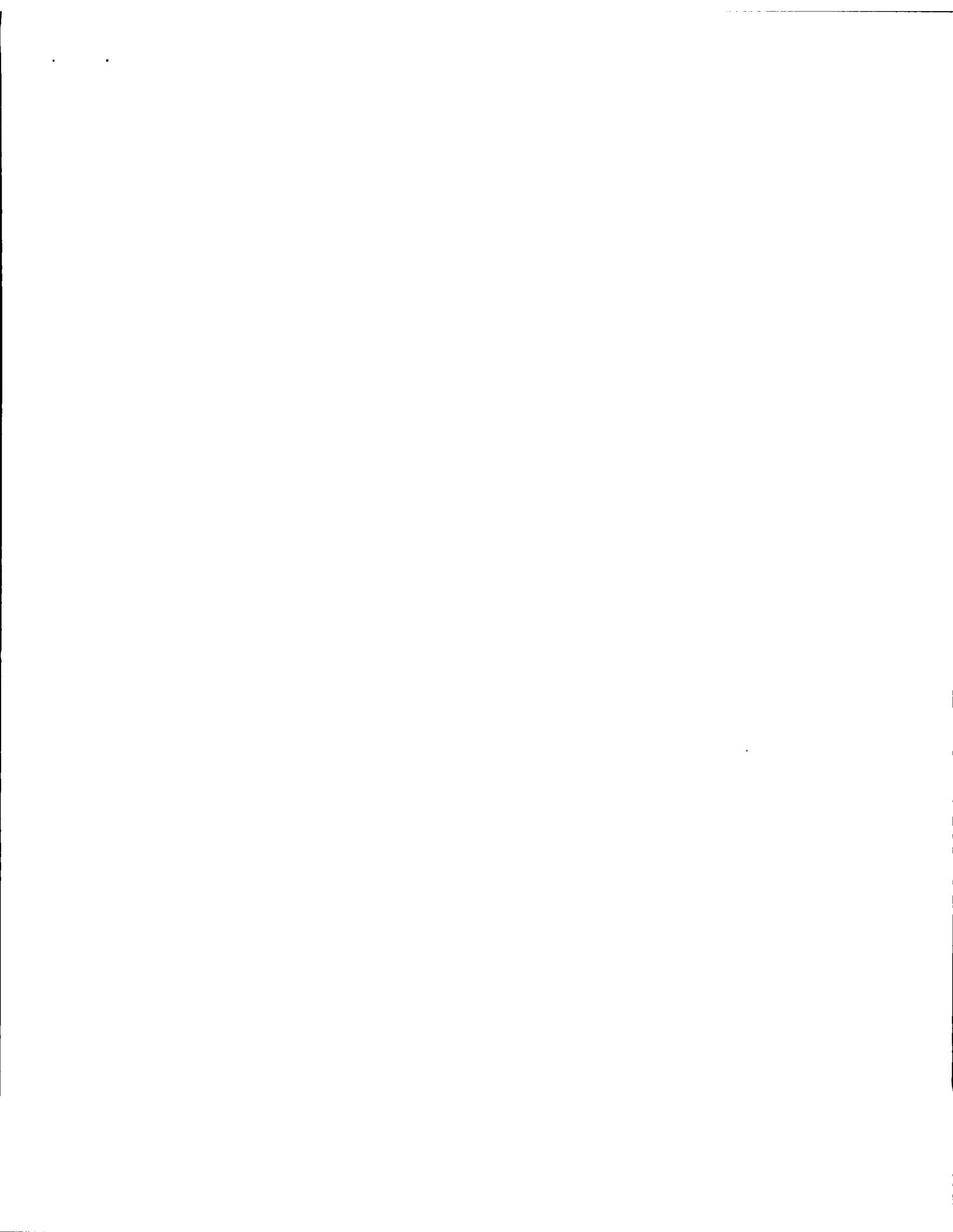
OWNER OF U.S. REG. NOS. 149,925, 242,884 AND 550,048.

FOR: DRY CELLS, DRY CELL BATTERIES, FLASHLIGHTS, AND FLASHLIGHT CASES, IN CLASS 21 (INT. CLS. 9 AND 11).

FIRST USE 2-25-1957; IN COMMERCE 2-25-1957.

SER. NO. 72-034,739, FILED 7-31-1957.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Apr. 27, 1999.





Int. Cls.: 9 and 11

Prior U.S. Cl.: 21

United States Patent and Trademark Office **Reg. No. 1,539,096**
Registered May 16, 1989

**TRADEMARK
PRINCIPAL REGISTER**

RAYOVAC

RAYOVAC CORPORATION (WISCONSIN CORPORATION)
601 RAYOVAC DRIVE
MADISON, WI 537110960

FOR: BATTERIES AND DRY CELL BATTERIES, IN CLASS 9 (U.S. CL. 21).

FIRST USE 8-0-1987; IN COMMERCE 8-0-1987.

FOR: BATTERY POWERED FLASHLIGHTS, IN CLASS 11 (U.S. CL. 21).

FIRST USE 10-0-1987; IN COMMERCE 10-0-1987.

OWNER OF U.S. REG. NOS. 664,347 AND 664,348.

SER. NO. 749,935, FILED 9-6-1988.

J. TINGLEY, EXAMINING ATTORNEY



Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,123,841

United States Patent and Trademark Office

Registered Dec. 23, 1997

**TRADEMARK
PRINCIPAL REGISTER**

MAXIMUM

RAYOVAC CORPORATION (WISCONSIN COR-
PORATION)
601 RAYOVAC DRIVE
MADISON, WI 537112497

FIRST USE 4-1-1989; IN COMMERCE
4-1-1989.

SER. NO. 75-224,648, FILED 1-13-1997.

FOR: DRY CELL BATTERIES, IN CLASS 9
(U.S. CLS. 21, 23, 26, 36 AND 38).

MARK SPARACINO, EXAMINING ATTORNEY



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December 10, 2004

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Via Express Mail

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

12-13-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

Re: Notice of Opposition to Application Serial No. 78/346,378
For the Mark RAYMAX & Design
Opposer: Rayovac Corporation
Our Reference: 55404/307795

Dear Sir or Madam:

Please find enclosed the original and one copy of the referenced Notice of Opposition and a check for the required filing fee.

Please acknowledge receipt of the enclosed documents by initialing and dating the enclosed postcard and returning it to me. If you have any questions, please feel free to contact me.

Sincerely,

Olivia Maria Baratta

OMB

Enclosures

cc: Thomas M. Parker, Esq. (via email)
Laurel J. Lucey, Esq. (w/o enc.)
Michael W. Rafter, Esq. (w/o enc.)