

ESTTA Tracking number: **ESTTA94317**

Filing date: **08/11/2006**

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	C. Joe Miller, Dow AgroSciences LLC
Granted to Date of previous extension	08/19/2006
Address	9330 Zionsville Road Trademark & Copyright Department Indianapolis, IN 46268 UNITED STATES
Attorney information	Julia Spoor Gard Barnes & Thornburg 11 South Meridian Street Indianapolis, IN 46204 UNITED STATES kabroshous@dow.com, jgard@btlaw.com Phone:317-231-7439

Applicant Information

Application No	78718591	Publication date	06/20/2006
Opposition Filing Date	08/11/2006	Opposition Period Ends	08/19/2006
Applicant	Environmental Resource Technologies, LLC 434 N. Main Street, Suite A Suffolk, VA 23434 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2005/09/06 First Use In Commerce: 2005/09/06
All goods and services in the class are opposed, namely: Domestic pesticide in the form of a pretreated mulch; pretreated wood containing domestic pesticide, to be inserted in plastic spike and placed around buildings to kill termites

Attachments	78718591.pdf (4 pages)(130505 bytes)
Signature	/jgard/
Name	Julia Spoor Gard
Date	08/11/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Dow AgroSciences LLC)	
)	
Opposer,)	In the matter of trademark application
)	Serial No. 78718591; Published in the
v.)	Official Gazette June 20, 2006
)	
Environmental Resource)	
Technologies, LLC)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Dow AgroSciences LLC, a Delaware limited liability company with a place of business at 9330 Zionsville Road, Indianapolis, Indiana 46268, believes that it will be damaged by the registration of the mark TERMITE SENTRY shown in Serial No. 78/718591 and hereby opposes registration of that mark.

The grounds for the opposition are as follows:

1. Opposer is a manufacturer and distributor of products and services in the field of pesticides and pest control.
2. Opposer is the owner of U.S. trademark registration no. 1932063 of the mark SENTRICON for plastic spike containers for use with chemical insecticides for insertion in and around buildings and structures to kill termites. This registration issued October 31, 1995, and claims a date of first use in commerce of March 31, 1995.
3. Opposer is the owner of U.S. trademark registration no. 2418988 of the mark SENTRICON for termite and pest control services. This registration issued January 9, 2001, and claims a date of first use in commerce of March 20, 1995.

4. Opposer has used the mark SENTRICON in connection with services and products for pest control since at least as early as 1995, and has spent significant amounts of time and money promoting and advertising SENTRICON in connection with services and products for pest control.

5. Opposer markets the SENTRICON brand as “SENTRICON termite colony elimination system”.

6. Opposer’s SENTRICON brand is the number one brand of termite bait systems in the United States and the most recognized trademark in termite control. Opposer has sold over half of a billion dollars in sales of SENTRICON termite colony elimination systems services and products. Opposer has worldwide fame and recognition with sales in the United States, Latin America, Australia, Japan, Asia, Brazil and numerous other countries.

7. Applicant seeks to register the confusingly similar mark TERMITE SENTRY in connection with domestic pesticide in the form of a pretreated mulch; pretreated wood containing domestic pesticides, to be inserted in plastic spike and placed around buildings to kill termites, as evidenced by its application filed September 22, 2005, and published in the Official Gazette on June 20, 2006.

8. Upon information and belief, Applicant’s goods are marketed to the same purchasers and through the same channels of trade as Opposer’s goods and services.

9. The dominant portion of Applicant’s mark, SENTRY, is similar in sound and sight to Opposer’s registered marks, SENTRICON.

10. Applicant’s mark TERMITE SENTRY is confusingly similar to Opposer’s use of “SENTRICON termite colony elimination system.”

11. Applicant’s mark TERMITE SENTRY has the same meaning and presents the same commercial impression as Opposer’s registered marks SENTRICON when used with products and services to control termites.

12. Applicant's mark is likely to cause confusion, or to cause mistake or to deceive because relevant purchasers familiar with Opposer's marks are likely to believe that Applicant's goods are in some way affiliated with Opposer's goods or related to Opposer's goods so as to create a likelihood of confusion as to the source of the goods.

13. Applicant's use of the mark TERMITE SENTRY in connection with the goods described in the opposed application falsely suggests a connection with Opposer within the meaning of Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a).

14. Applicant's mark is also likely to dilute Opposer's marks through tarnishment, because Opposer's marks will suffer negative associations through Applicant's use of a confusingly similar mark on products which are not controlled by Opposer and which do not meet the same commercial standards as the goods and services sold under Opposer's marks.

15. Upon information and belief, Applicant has no rights in the TERMITE SENTRY mark prior to Opposer's rights.

16. Opposer would be injured by the granting to Applicant of the registration sought because Applicant's mark so resembles Opposer's marks as to be likely, when used on Applicant's goods, to cause confusion, or to cause mistake, or to deceive, to falsely suggest a connection with Opposer, to dilute Opposer's marks through tarnishment, and to damage Opposer's goodwill in the marks.

WHEREFORE, Opposer believes that it will be damaged by the registration of TERMITE SENTRY to Applicant and prays that the registration be denied.

Please charge the filing fee to Deposit Acct. 100435 (6257-200655).

Respectfully submitted,

Date: August 11, 2006

A handwritten signature in black ink, appearing to read "Julia Spoor Gard", is written over a horizontal line.

Julia Spoor Gard
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Attorneys for Opposer,
Dow AgroSciences LLC