

ESTTA Tracking number: **ESTTA196593**

Filing date: **03/05/2008**

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	Elastogran GmbH
Granted to Date of previous extension	03/05/2008
Address	Landwehrweg Lemforde, GERMANY

Attorney information	Elizabeth Pasquine Novak Druce + Quigg LLP 1300 I Street, NW 1000 West Tower Washington, DC 20005 UNITED STATES trademark@novakdruce.com Phone:202.659.0100
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Applicant Information

Application No	77205987	Publication date	11/06/2007
Opposition Filing Date	03/05/2008	Opposition Period Ends	03/05/2008
Applicant	General Electric Company 1 River Road Schenectady, NY 12345 UNITED STATES		

Goods/Services Affected by Opposition

Class 017. All goods and services in the class are opposed, namely: Synthetic elastomer resin blended with additives and colorants sold in a pellet form

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.	1400804	Application Date	02/10/1984
Registration Date	07/15/1986	Foreign Priority Date	NONE
Word Mark	ELASTOFOAM		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 001. First use: First Use: 1983/06/30 First Use In Commerce: 1983/06/30 FOAMABLE INTEGRAL SKIN POLYURETHANE SYSTEM FOR USE IN ARM RESTS, CONSOLES, AND INSTRUMENT PANELS FOR AUTOMOTIVE AND RECREATIONAL VEHICLES

U.S. Registration No.	1400802	Application Date	02/09/1984
Registration Date	07/15/1986	Foreign Priority Date	NONE
Word Mark	ELASTOLIT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1983/08/11 First Use In Commerce: 1983/08/11 POLYURETHANE SYSTEMS PARTICULARLY USEFUL FOR AUTOMOTIVE FACIA APPLICATIONS		

U.S. Registration No.	1400803	Application Date	02/09/1984
Registration Date	07/15/1986	Foreign Priority Date	NONE
Word Mark	ELASTOPOR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1983/07/11 First Use In Commerce: 1983/07/11 POLYURETHANE PLASTIC IN THE FORM OF POWDER, LIQUIDS AND PASTES		

U.S. Registration No.	1409067	Application Date	10/24/1985
Registration Date	09/16/1986	Foreign Priority Date	NONE
Word Mark	ELASTOLLAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1972/12/15 First Use In Commerce: 1981/07/20 PLASTICS IN THE CRUDE STATE (IN THE FORM OF POWDERS, LIQUIDS OR PASTES), NAMELY, POLYURETHAN ELASTOMERS		

U.S. Registration No.	1415444	Application Date	02/09/1984
Registration Date	11/04/1986	Foreign Priority Date	NONE
Word Mark	ELASTOFLEX		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 001. First use: First Use: 1983/06/15 First Use In Commerce: 1983/06/15 CHEMICALS TO BE MIXED TOGETHER TO FORM A POLYURETHANE FOAM FOR INDUSTRIAL USE		
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U.S. Registration No.	2497400	Application Date	10/29/1997
Registration Date	10/16/2001	Foreign Priority Date	NONE
Word Mark	ELASTOPREG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: plastics in the crude state, namely, in the form of granules, liquids, powders and pastes used as raw materials in the plastics processing industry Class 017. First use: semi-finished plastics in the form of sheets for the further manufacture of industrial goods and machine parts		

U.S. Registration No.	3093188	Application Date	06/09/2005
Registration Date	05/16/2006	Foreign Priority Date	NONE
Word Mark	ELASTOCORE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2004/09/13 First Use In Commerce: 2004/09/13 Unprocessed plastics in the form of liquids, granules, pastes, powders		

U.S. Registration No.	3282501	Application Date	08/29/2005
Registration Date	08/21/2007	Foreign Priority Date	07/21/2005
Word Mark	ELASTOCOAST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: Chemical products, namely polyurethane plastics, for industrial purposes regarding construction and repair, namely for use in reinforcing stone sea walls against flood disaster, coastal civil engineering repairs, river bank strengthening and earth slope protection; plastics in the crude state, namely in the form of granules, liquids, powders and pastes used as raw materials in the plastics processing industry; adhesives for industrial purposes Class 017. First use: Semi-finished polyurethane plastics combined with stone to form a film for use in reinforcing sea walls against flood disaster; semi-finished polyurethane plastics for construction, coastal civil engineering repairs, river bank strengthening and earth slope protection; sealing, packing, insulating and stabilizing materials, namely polyurethane plastics		

	<p>Class 019. First use: Construction materials not of metal, namely polyurethane plastics, especially for bonding different materials</p> <p>Class 037. First use: Services in the building sector, namely advice and consultation regarding construction and repair for bonding different materials</p> <p>Class 042. First use: Licensing of intellectual property in the construction industry sector for bonding different materials</p>
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U.S. Registration No.	3340468	Application Date	10/20/2003
Registration Date	11/20/2007	Foreign Priority Date	NONE
Word Mark	ELASTOCOOL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2002/03/01 First Use In Commerce: 2007/03/02 UNPROCESSED PLASTICS (IN THE FORM OF POWDERS, GRANULES, LIQUIDS AND PASTES); CHEMICALS USED IN THE MANUFACTURE OF UNPROCESSED PLASTICS		

U.S. Application No.	77045318	Application Date	11/16/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ELASTOTRACK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: Two polyurethane components combined to form an elastomer for use in stabilizing gravel for industrial applications in the railroad industry		

U.S. Application No.	79038722	Application Date	03/27/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ELASTOPIR		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 001. First use: Chemical products for use in industry, namely, chemicals for use in the manufacture of plastics; raw plastics in the form of powders, liquids or pastes</p> <p>Class 017. First use: Films, slabs, rods and blocks of plastics in extruded form for use in manufacture; packing materials, namely, packing foam in sheet form and polyisocyanurate rigid foams and panels; stopping materials, namely rubber stoppers and polyisocyanurate rigid foams and panels; insulating materials, namely,</p>		

	polyurethane foam, polyethylene foam and polyisocyanurate rigid foams and panels Class 019. First use: Non-metallic building materials, namely polyisocyanurate panels for building construction purposes
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U.S. Application No.	77242665	Application Date	07/31/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ELASTOTITE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: Chemicals for use in the manufacture of adhesives; Polyurethane adhesives; Unprocessed artificial resins; Unprocessed plastics for industrial use; Adhesives for industrial purposes		

Attachments	75381235#TMSN.gif (1 page)(bytes) 78646892#TMSN.jpeg (1 page)(bytes) 78702707#TMSN.jpeg (1 page)(bytes) 76552907#TMSN.gif (1 page)(bytes) 77045318#TMSN.jpeg (1 page)(bytes) 79038722#TMSN.jpeg (1 page)(bytes) 77242665#TMSN.jpeg (1 page)(bytes) ELASTOGRAN Notice of Opp w Exhibit.pdf (9 pages)(4597383 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	/EP/
Name	Elizabeth Pasquine
Date	03/05/2008

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

ELASTOGRAN GMBH)
)
 Opposer,)
) Serial No.: 77/205,987
)
 v.)
) Opposition No. _____
)
 GENERAL ELECTRIC COMPANY)
)
 Applicant.)

NOTICE OF OPPOSITION

Opposer, Elastogran GmbH ("Elastogran") believes it will be damaged by registration of the mark ELAST (the "Opposed Mark") claimed in intent-to-use Application Serial No. 77/205,987 (the "Application") filed by General Electric Company ("GE" or "Applicant") on June 14, 2007 and published for opposition on November 6, 2007.

As grounds for opposition, Elastogran alleges as follows:

1. Since long prior to the filing date of the Application, Elastogran has been making, selling and/or offering chemicals, polyurethanes, unprocessed and semi-processed plastics and finished products made from the same under ELAST- formative marks in U.S. commerce.
2. Elastogran owns several U.S. trademark registrations and approved applications for marks that incorporate the ELAST- prefix. See Schedule of Marks attached as Exhibit A.
3. Elastogran's Registration Nos. 1400802, 1400803, 1400804, 1409067 and 1415444 are incontestable pursuant to 15 U.S.C. § 1065 and provide conclusive evidence of Elastogran's ownership of the marks therein, of the validity of the marks therein, and of Elastogran's exclusive right to use the marks in commerce in connection with the services identified in the registration.

4. Elastogran began actual and constructive use of its ELAST- marks in US commerce long prior to GE's filing of its intent-to-use based Application on June 14, 2007. Elastogran has been using marks that incorporate the term ELAST- in connection with chemicals, polyurethanes, unprocessed and semi-processed plastics and finished products made from the same, in U.S. commerce since at least as early as July 20, 1981. Through use of this and subsequent marks, Elastogran has established valuable goodwill in the marks, and the relevant public has come to associate ELAST- formative marks for chemicals, polyurethanes, unprocessed and semi-processed plastics and finished products made from the same as an indication of products that emanate from Elastogran.

5. Elastogran has prior common law rights in ELAST- formative marks as trademarks for chemicals, polyurethanes, unprocessed and semi-processed plastics and finished products made from the same.

6. Elastogran is the owner of all right, title, and interest in and to its ELAST marks- as heretofore alleged (referred to hereinafter, collectively, as the "ELAST- Marks"), in connection with its goods.

7. Elastogran's ELAST- Marks have acquired a highly favorable reputation among members of the relevant purchasing public and have become valuable symbols of Elastogran's goodwill.

8. Notwithstanding Elastogran's prior rights in the ELAST- Marks, on November 27, 2006 Applicant filed the Application in the United States Patent and Trademark Office for registration of the mark ELAST for "synthetic elastomer resin blended with additives and colorants sold in a pellet form."

9. On information and belief, Applicant knew or had reason to know of Elastogran's

prior rights in the ELAST- Marks when Applicant filed the Application.

10. Elastogran's Registration Nos. 1400802, 1400803, 1400804, 1409067, 1415444, 2497400, 2692459, 2735889, 2901943 and 3093188 were all issued prior to the June 14, 2007 filing date of the intent-to-use Application and prior to any use by Applicant of the Opposed Mark in the United States.

11. The Opposed Mark ELAST consists of the prefix common to all of Opposer's marks, and therefore, is confusingly similar in sight, sound, and meaning to Opposer's ELAST-marks.

12. Further, Applicant's goods are closely related to those of Elastogran. Therefore, the relevant consumers are likely to be confused, to be deceived, and to assume erroneously that Applicant and Applicant's goods are in some way connected with, sponsored by, or affiliated with Elastogran, all to Elastogran's detriment.

13. Further, Applicant's goods and Elastogran's goods will be targeted, offered, and sold to the same classes of prospective consumers, primarily, industrial manufacturers.

14. Registration of the Opposed Mark will support and assist Applicant in the confusing and misleading use of the Opposed Mark, will give color of exclusive statutory right to Applicant in violation and in derogation of the pre-existing and superior rights of Elastogran, and will cause Elastogran to lose control over the good and valuable reputation represented by and derived from the ELAST- Marks, all causing irreparable harm and injury to Elastogran.

WHEREFORE, Elastogran respectfully prays that Application Serial No. 77/205,987 for

ELAST be refused and that no registration issue thereon to Applicant, and, further that this Opposition be sustained in favor of Elastogran.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Elizabeth Pasquine". The signature is written in black ink and is positioned above a horizontal line.

Elizabeth Pasquine
NOYAK DRUCE + QUIGG LLP
1300 I Street, NW
1000 West Tower
Washington, DC 20005
(202) 659-0100

Attorney for Opposer
Elastogran GmbH

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served by mailing said copy via First Class Mail, postage prepaid to:

SEAN MERRILL
GENERAL ELECTRIC COMPANY
3135 EASTON TPKE
FAIRFIELD, CT 06828-0001

This 5th day of March, 2008

ELASTOGRAN GmbH

By:

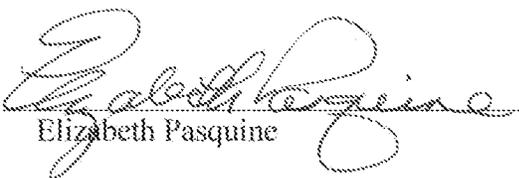

Elizabeth Pasquine

EXHIBIT A

SCHEDULE OF MARKS

Serial Number	Reg. Number	Reg. Date	Word Mark	Good/Services
73465135	1400804	July 15, 1986 Incontestable	ELASTOFOAM	IC 001: foamable integral skin polyurethane system for use in arm rests, consoles, and instrument panels for automotive and recreational vehicles. FIRST USE: 19830630. FIRST USE IN COMMERCE: 19830630
73464805	1400802	July 15, 1986 Incontestable	ELASTOLIT	IC 001: polyurethane systems particularly useful for automotive fascia applications. FIRST USE: 19830811. FIRST USE IN COMMERCE: 19830811
73464954	1400803	July 15, 1986 Incontestable	ELASTOPOR	IC 001: polyurethane plastic in the form of powder, liquids and pastes. FIRST USE: 19830711. FIRST USE IN COMMERCE: 19830711
73564782	1409067	September 16, 1986 Incontestable	ELASTOLLAN	IC 001: plastics in the crude state (in the form of powders, liquids or pastes), namely, polyurethan elastomers. FIRST USE: 19721215. FIRST USE IN COMMERCE: 19810720
73464806	1415444	November 4, 1986 Incontestable	ELASTOFLEX	IC 001: chemicals to be mixed together to form a polyurethane foam for industrial use. FIRST USE: 19830615. FIRST USE IN COMMERCE: 19830615
75381235	2497400	October 16, 2001	ELASTOPREG	IC 001: plastics in the crude state, namely, in the form of granules, liquids, powders and pastes used as raw materials in the plastics processing industry IC 017: semi-finished plastics in the form of sheets for the further manufacture of industrial goods and machine parts
78646892	3093188	May 16, 2006	ELASTOCORE	IC 001: Unprocessed plastics in the form of liquids, granules, pastes, powders. FIRST USE: 20040913. FIRST USE IN COMMERCE: 20040913
78702707	3282501	August 21, 2007	ELASTOCOAST	IC 001: Chemical products, namely polyurethane plastics, for industrial purposes regarding construction and repair, namely for use in reinforcing stone sea walls against flood disaster, coastal civil engineering repairs, river bank strengthening and earth slope protection; plastics in the crude state, namely in the

				<p>form of granules, liquids, powders and pastes used as raw materials in the plastics processing industry; adhesives for industrial purposes</p> <p>IC 017: Semi-finished polyurethane plastics combined with stone to form a film for use in reinforcing sea walls against flood disaster; semi-finished polyurethane plastics for construction, coastal civil engineering repairs, river bank strengthening and earth slope protection; sealing, packing, insulating and stabilizing materials, namely polyurethane plastics</p> <p>IC 019: Construction materials not of metal, namely polyurethane plastics, especially for bonding different materials</p> <p>IC 037: Services in the building sector, namely advice and consultation regarding construction and repair for bonding different materials</p> <p>IC 042: Licensing of intellectual property in the construction industry sector for bonding different materials</p>
76552907	3340468	November 20, 2007	ELASTOCOOL	<p>IC 001: Unprocessed plastics (in the form of powders, granules, liquids and pastes); chemicals used in the manufacture of unprocessed plastics.</p> <p>FIRST USE: 20020301. FIRST USE IN COMMERCE: 20070302</p>
77045318	Application filed November 16, 2006	Notice of Allowance issued	ELASTOTRACK	<p>IC 001: Two polyurethane components combined to form an elastomer for use in stabilizing gravel for industrial applications in the railroad industry</p>
79038722	Application filed March 27, 2007	Approved for publication	ELASTOPIR	<p>IC 001: Chemical products for use in industry, namely, chemicals for use in the manufacture of plastics; raw plastics in the form of powders, liquids or pastes</p> <p>IC 017: Films, slabs, rods and blocks of plastics in extruded form for use in manufacture; packing materials, namely, packing foam in sheet form and polyisocyanurate rigid foams and panels; stopping materials, namely rubber stoppers and polyisocyanurate rigid foams and panels; insulating materials, namely, polyurethane foam, polyethylene foam and</p>

				polyisocyanurate rigid foams and panels IC 019: Non-metallic buildings material, namely polyisocyanurate panels for construction
77242665	Application filed July 31, 2007	Published	ELASTOTITE	IC 001: Chemicals for use in the manufacture of adhesives; Polyurethane adhesives; Unprocessed artificial resins; Unprocessed plastics for industrial use; Adhesives for industrial purposes