

ESTTA Tracking number: **ESTTA376701**

Filing date: **11/03/2010**

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	IOIP Holdings, LLC
Granted to Date of previous extension	11/03/2010
Address	7201 Engle Road Fort Wayne, IN 46804 UNITED STATES

Attorney information	Gerard T. Gallagher Barnes & Thornburg LLP 100 N. Michigan Street 600 1st Source Bank Center South Bend, IN 46601 UNITED STATES jerry.gallagher@btlaw.com, michelle.horvath@btlaw.com Phone:574-233-1171
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### Applicant Information

Application No	77648190	Publication date	07/06/2010
Opposition Filing Date	11/03/2010	Opposition Period Ends	11/03/2010
Applicant	Ontel Products Corporation 21 Law Drive Fairfield, NJ 07004 UNITED STATES		

### Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: ALL-PURPOSE CLEANER; CLEANING PREPARATIONS
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### 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.	693672	Application Date	04/13/1959
Registration Date	03/01/1960	Foreign Priority Date	NONE
Word Mark	IRON OUT		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class U006 (International Class 001). First use: First Use: 1958/12/17 First Use In Commerce: 1958/12/17 CHEMICAL COMPOUND FOR USE IN REMOVING FOREIGN MATTER FROM WATER SOFTENERS

U.S. Registration No.	1505474	Application Date	02/19/1988
Registration Date	09/27/1988	Foreign Priority Date	NONE
Word Mark	RUST OUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1958/00/00 First Use In Commerce: 1958/00/00 CHEMICAL COMPOUND FOR USE IN REMOVING FOREIGN MATTER FROM WATER SOFTENERS		

U.S. Registration No.	1537090	Application Date	08/22/1988
Registration Date	05/02/1989	Foreign Priority Date	NONE
Word Mark	IRON OUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1964/01/31 First Use In Commerce: 1964/01/31 ALL PURPOSE RUST AND STAIN REMOVER FOR USE IN WATER SYSTEMS, SUCH AS TOILETS, PIPES, PUMPS, AND WATER CONDITIONERS		

U.S. Registration No.	1914442	Application Date	07/06/1994
Registration Date	08/29/1995	Foreign Priority Date	NONE
Word Mark	IRON OUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1964/01/31 First Use In Commerce: 1964/01/31 all-purpose rust and iron stain remover for - whitening, brightening and removing stains from clothing; removing stains from tubs, sinks, chrome, ceramic tile, showers, and like items; removing stains from dishes, glassware, plasticware, and like items; removing stains from brick, stone, concrete and other exterior surfaces; and removing stains from dishwashers and washing machines		

U.S. Registration No.	1917128	Application Date	02/03/1994
Registration Date	09/05/1995	Foreign Priority Date	NONE
Word Mark	DRAIN OUT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1995/02/00 First Use In Commerce: 1995/02/00 drain openers and sewer cleaning preparations

U.S. Registration No.	1976124	Application Date	02/03/1995
Registration Date	05/28/1996	Foreign Priority Date	NONE
Word Mark	RUST OUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1988/02/19 First Use In Commerce: 1988/02/19 all-purpose rust and stain remover for use in toilet bowls, flush tanks, sinks and bowls, dishwashers and washing machines, and for white clothing, dishes and glassware, brick, stone, or concrete exterior surfaces, tubs, chrome, ceramic tile, shower stalls and the like		

U.S. Registration No.	1986001	Application Date	11/05/1993
Registration Date	07/09/1996	Foreign Priority Date	NONE
Word Mark	YELLOW OUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1994/08/31 First Use In Commerce: 1994/08/31 cleaner for removing hard water stains, rust stains and iron stains from clothing		

U.S. Registration No.	2366983	Application Date	07/20/1998
Registration Date	07/11/2000	Foreign Priority Date	NONE
Word Mark	LIME OUT		
Design Mark	<b>LIME OUT</b>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 GENERAL PURPOSE PREPARATIONS FOR PREVENTING AND REMOVING MINERAL DEPOSITS		

U.S. Registration No.	2685393	Application Date	01/03/2001
Registration Date	02/11/2003	Foreign Priority	NONE

		Date	
Word Mark	WHIRL OUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1999/08/13 First Use In Commerce: 1999/08/13 MOLD, MILDEW, DEPOSIT, AND CORROSION INHIBITOR FOR WHIRLPOOL BATHS, HOT TUBS AND JETTED BATHTUBS		

Attachments	75521438#TMSN.gif ( 1 page )( bytes ) 76189353#TMSN.gif ( 1 page )( bytes ) Notice of Opposition.pdf ( 3 pages )(276485 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	/Gerard T. Gallagher/
Name	Gerard T. Gallagher
Date	11/03/2010

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

In the Matter of U.S. Trademark Application Serial No. 77/648,190

IOIP HOLDINGS, LLC,	)
	)
Opposer,	)
	)
v.	)
	)
ONTEL PRODUCTS CORPORATION	)
	)
Applicant.	)

NOTICE OF OPPOSITION

Opposer, IOIP Holdings, LLC ("Opposer"), hereby opposes registration of U.S. Trademark Application Serial No. 77/648,190 for the mark OUT used in connection with "all purpose cleaner; cleaning preparations" ("the '190 Application"). As grounds for opposition, Opposer states as follows:

1. Opposer is the owner of the following U.S. Trademark Registrations:

Reg. No.	Mark	Goods	First Use Date	First Use in Commerce
693,672	IRON OUT	Chemical Compound for Use in Removing Foreign Matter from Water Softeners	12-17-1958	12-17-1958
1,505,474	RUST OUT	Chemical Compound for Use in Removing Foreign Matter from Water Softeners	0-0-1958	0-0-1958
1,537,090	IRON OUT	All Purpose Rust and Stain Remover for Use in Water Systems, Such as Toilets, Pipes, Pumps, and Water Conditioners	1-31-1964	1-31-1964
1,914,442	IRON OUT	All Purpose Rust and Iron Stain Remover for Whitening, Brightening and Removing Stains from Clothing; Removing Stains from Tubs, Sinks, Chrome, Ceramic Tile, Showers, and Like Items; Removing Stains from Dishes, Glassware, Plasticware, and Like Items; Removing Stains from Brick, Stone, Concrete and Other Exterior Surfaces; and Removing Stains from Dishwashers and Washing Machines	1-31-1964	1-31-1964

1,917,128	DRAIN OUT	Drain Openers and Sewer Cleaning Preparations	2-0-1995	2-0-1995
1,976,124	RUST OUT	All-Purpose Rust and Stain Remover for Use in Toilet Bowls, Flush Tanks, Sinks and Bowls, Dishwashers and Washing Machines, and for White Clothing, Dishes and Glassware, Brick, Stone, or Concrete Exterior Surfaces, Tubs, Chrome, Ceramic Tile, Shower Stalls and the Like	2-19-1988	2-19-1988
1,986,001	YELLOW OUT	Cleaner for Removing Hard Water Stains, Rust Stains and Iron Stains from Clothing	8-31-1994	8-31-1994
2,366,983	LIME OUT	General Purpose Preparations for Preventing and Removing Mineral Deposits	1-1-2000	1-1-2000
2,685,393	WHIRL OUT	Mold, Mildew, Deposit, and Corrosion Inhibitor for Whirlpool Baths, Hot Tubs and Jetted Bathtubs	8-13-1999	8-13-1999

The foregoing marks are hereinafter referred to as "Opposer's Marks" and the goods are referred to as "Opposer's Goods."

2. Opposer has continuously used each of Opposer's Marks on and in connection with each of Opposer's Goods for which the marks are registered in interstate commerce since at least as early as the first use in commerce dates indicated in the registration certificates for Opposer's Marks.

3. Ontel Products Corporation ("Applicant") is the purported owner of the '190 Application.

4. The goods listed in the '190 Application are the same as, similar to and/or competitive with at least some of Opposer's Goods.

5. Applicant's OUT mark is similar in appearance to Opposer's Marks, both individually and as a family of marks.

6. Applicant's OUT mark is similar in pronunciation to Opposer's Marks, both individually and as a family of marks.

7. Applicant's OUT mark is similar in meaning to Opposer's Marks, both individually and as a family of marks.

8. Applicant's products bearing the OUT mark are sold in the same channels of trade as Opposer's Goods bearing Opposer's Marks.

9. Applicant's use of the OUT mark on and in connection with the goods listed in the '190 Application is likely to cause confusion with Opposer's Marks, both individually and as a family of marks, within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

10. Upon information and belief, Applicant did not use the OUT mark on or in connection with the goods listed in the '190 Application prior to January 1, 2000.

11. Upon information and belief, Applicant did not use the OUT mark in commerce on or in connection with the goods listed in the '190 Application prior to January 1, 2000.

12. Opposer has ownership rights and rights to use Opposer's Marks that predate and are superior to any rights of Applicant with respect to the OUT mark.

13. Opposer would be harmed by the registration of the OUT mark as sought in the '190 Application because such registration would constitute prima facie evidence of Applicant's right to use the OUT mark and such use would cause confusion with Opposer's Marks and Opposer's Goods sold under Opposer's Marks.

WHEREFORE, Opposer respectfully requests that registration of the OUT mark as sought through the '190 Application be denied.

Respectfully submitted,



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Attorneys for Opposer,