

ESTTA Tracking number: **ESTTA540361**

Filing date: **05/29/2013**

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	CLEAR ENERGY CONSULTING, LLC
Granted to Date of previous extension	06/08/2013
Address	438 E. MILLSAP ROAD, SUITE 200 FAYETTEVILLE, AR 72703-4820 UNITED STATES

Attorney information	JAMES E. SHLESINGER SHLESINGER, ARKWRIGHT & GARVEY LLP 5845 RICHMOND HIGHWAY, SUITE 415 ALEXANDRIA, VA 22303 UNITED STATES jim@sagllp.com, nitasantiago@sagllp.com Phone:703-684-5600
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Applicant Information

Application No	85526985	Publication date	04/09/2013
Opposition Filing Date	05/29/2013	Opposition Period Ends	06/08/2013
Applicant	Clear Energy LED, LLC 33 West St Bloomfield, NJ 07003 UNITED STATES		

Goods/Services Affected by Opposition

Class 011. All goods and services in the class are opposed, namely: LED (light emitting diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED and HID light fixtures; LED light assemblies for street lights, signs, commercial lighting, automobiles, buildings, and other architectural uses; LED light bulbs; LED lighting fixtures for indoor and outdoor lighting applications; LED luminaires; LED underwater lights; Luminaires, using light emitting diodes (LEDs) as a light source, for street or roadway lighting
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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.	3900287	Application Date	05/19/2010
Registration Date	01/04/2011	Foreign Priority	NONE

		Date	
Word Mark	CLEAR ENERGY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2009/04/01 First Use In Commerce: 2009/04/01 CONSULTATION IN THE FIELD OF ENERGY EFFICIENCY AND RELATED GREENHOUSE GAS REDUCTIONS, ENERGY PROCUREMENT AND UTILITY RATE SELECTION AND; INFORMATION IN THE FIELD OF ENERGY EFFICIENCY AND RELATED GREENHOUSE GAS REDUCTIONS, ENERGY PROCUREMENT AND UTILITY RATE SELECTION; AND PROJECT MANAGEMENT SERVICES FOR OTHERS FOR BUSINESS PURPOSES, NAMELY, BID MANAGEMENT FOR LABOR AND MATERIALS		

U.S. Registration No.	3900289	Application Date	05/19/2010
Registration Date	01/04/2011	Foreign Priority Date	NONE
Word Mark	CLEAR ENERGY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2009/04/01 First Use In Commerce: 2009/04/01 FINANCIAL MANAGEMENT PROVIDED IN THE FIELD OF ENERGY; PROVIDING FINANCIAL MANAGEMENT INFORMATION IN THE FIELD OF ENERGY		

U.S. Registration No.	3900294	Application Date	05/19/2010
Registration Date	01/04/2011	Foreign Priority Date	NONE
Word Mark	CLEAR ENERGY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 2009/04/01 First Use In Commerce: 2009/04/01 GENERAL CONTRACTING SERVICES IN THE FIELD OF ENERGY EFFICIENCY IMPROVEMENTS FOR BUILDINGS, BUILDING IMPROVEMENTS AND TENANT BUILD OUTS; INSTALLATION OF ENERGY EFFICIENCY IMPROVEMENTS FOR BUILDINGS INCLUDING LIGHTING, HEATING, COOLING AND ENVIRONMENTAL CONTROL SYSTEMS, ENERGY EFFICIENT LIGHTING FIXTURES; INSTALLATION OF ALTERNATIVE ENERGY RESOURCES, PRIMARILY SOLAR ENERGY GENERATION RESOURCES; CONSULTING IN THE FIELD OF BUILDING CONSTRUCTION		

U.S. Registration No.	3900299	Application Date	05/19/2010
Registration Date	01/04/2011	Foreign Priority Date	NONE
Word Mark	CLEAR ENERGY		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2009/04/01 First Use In Commerce: 2009/04/01 DESIGN FOR OTHERS IN THE FIELD OF ENERGY EFFICIENCY IMPROVEMENTS FOR BUILDINGS INCLUDING LIGHTING, HEATING, COOLING AND ENVIRONMENTAL CONTROL SYSTEMS, ENERGY EFFICIENT LIGHTING FIXTURES; DESIGN FOR OTHERS IN THE FIELD OF BUILDING IMPROVEMENTS AND TENANT BUILD OUTS; DESIGN FOR OTHERS IN THE FIELD OF ALTERNATIVE ENERGY RESOURCES, PRIMARILY SOLAR ENERGY GENERATION RESOURCES

U.S. Registration No.	3859333	Application Date	10/16/2009
Registration Date	10/12/2010	Foreign Priority Date	NONE
Word Mark	C E CLEAR ENERGY		
Design Mark			
Description of Mark	The mark consists of stylized letters "C" and "E" intertwined with a star comprising a portion of the letter "E" in blue, and the words "CLEAR ENERGY" in black.		
Goods/Services	Class 035. First use: First Use: 2009/04/01 First Use In Commerce: 2009/04/01 CONSULTATION IN THE FIELD OF ENERGY EFFICIENCY AND RELATED GREENHOUSE GAS REDUCTIONS, ENERGY PROCUREMENT AND UTILITY RATE SELECTION AND; INFORMATION IN THE FIELD OF ENERGY EFFICIENCY AND RELATED GREENHOUSE GAS REDUCTIONS, ENERGY PROCUREMENT AND UTILITY RATE SELECTION ; AND PROJECT MANAGEMENT SERVICES FOR OTHERS FOR BUSINESS PURPOSES, NAMELY, BID MANAGEMENT FOR LABOR AND MATERIALS Class 036. First use: First Use: 2009/04/01 First Use In Commerce: 2009/04/01 FINANCIAL MANAGEMENT PROVIDED IN THE FIELD OF ENERGY; PROVIDING FINANCIAL MANAGEMENT INFORMATION IN THE FIELD OF ENERGY		

U.S. Registration No.	3859334	Application Date	10/16/2009
Registration Date	10/12/2010	Foreign Priority Date	NONE
Word Mark	C E CLEAR ENERGY		
Design Mark			
Description of Mark	The mark consists of stylized letters "C" and "E" intertwined with a star comprising a portion of the letter "E" in blue, and the words "CLEAR ENERGY" in black.		
Goods/Services	Class 042. First use: First Use: 2009/04/01 First Use In Commerce: 2009/04/01 DESIGN FOR OTHERS IN THE FIELD OF ENERGY EFFICIENCY IMPROVEMENTS FOR BUILDINGS, BUILDING IMPROVEMENTS AND TENANT BUILD OUTS		

U.S. Registration No.	3859337	Application Date	10/16/2009
Registration Date	10/12/2010	Foreign Priority Date	NONE
Word Mark	CE CLEARENERGY		
Design Mark			

Description of Mark	The mark consists of stylized letters "C" and "E" intertwined with a star comprising a portion of the letter "E" in blue, and the words "CLEAR ENERGY" in black.
Goods/Services	<p>Class 037. First use: First Use: 2009/04/01 First Use In Commerce: 2009/04/01 GENERAL CONTRACTING SERVICES IN THE FIELD OF ENERGY EFFICIENCY IMPROVEMENTS FOR BUILDINGS, BUILDING IMPROVEMENTS AND TENANT BUILD OUTS; INSTALLATION OF ENERGY EFFICIENCY IMPROVEMENTS FOR BUILDINGS INCLUDING LIGHTING, HEATING, COOLING AND ENVIRONMENTAL CONTROL SYSTEMS, ENERGY EFFICIENT LIGHTING FIXTURES; INSTALLATION OF ALTERNATIVE ENERGY RESOURCES, PRIMARILY SOLAR ENERGY GENERATION RESOURCES; CONSULTING IN THE FIELD OF BUILDING CONSTRUCTION</p> <p>Class 042. First use: First Use: 2009/04/01 First Use In Commerce: 2009/04/01 DESIGN FOR OTHERS IN THE FIELD OF ENERGY EFFICIENCY IMPROVEMENTS FOR BUILDINGS INCLUDING LIGHTING, HEATING, COOLING AND ENVIRONMENTAL CONTROL SYSTEMS, ENERGY EFFICIENT LIGHTING FIXTURES; DESIGN FOR OTHERS IN THE FIELD OF ALTERNATIVE ENERGY RESOURCES, PRIMARILY SOLAR ENERGY GENERATION RESOURCES</p>

Attachments	Notice of Opposition 85526985.pdf(326364 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	/jes/
Name	JAMES E. SHLESINGER
Date	05/29/2013

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

In the matter of trademark application Serial No. 85526985
published in the Official Gazette of April 9, 2013.

CLEAR ENERGY CONSULTING, LLC	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.
	:	
CLEAR ENERGY LED, LLC,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Opposer, Clear Energy Consulting, LLC, an Arkansas limited liability company, located and doing business at 438 E. Millsap Road, Suite 200, Fayetteville, Arkansas 72703-4820, believes that it will be damaged by the registration of the mark shown in application Serial No. 85526985, and hereby opposes the same.

The grounds for the opposition are as follows:

1. Clear Energy Consulting, LLC (hereinafter "Opposer" or "Clear Energy") is a limited liability company,

Serial No. 85675960

located and having a principal address at 438 E. Millsap Road, Suite 200, Fayetteville, Arkansas 72703-4820.

2. Clear Energy owns, among other things, the mark, CLEAR ENERGY, used both alone and in combination with designs, together with the registrations thereof, and the good will represented thereby, and it is responsible for the licensing of the CLEAR ENERGY name and mark to its affiliates, Clear Energy, Inc., and Clear Energy Contracting, LLC. Opposer, Clear Energy Consulting, LLC, Clear Energy, Inc., and Clear Energy Contracting, LLC are referred to hereinafter collectively as "Clear Energy".

3. Since at least as early as April, 2009, Clear Energy, has helped businesses find better ways to heat and cool, illuminate and insulate their offices and buildings.

4. Since long prior to the filing date of the application for registration, and any use date claimed therein, Clear Energy has marketed and installed products and rendered services required to efficiently manage, run, maintain, and improve heating, cooling, illuminating, and insulating systems in offices and buildings. Clear Energy's products and services include, but are not limited to, retrofitting current technology T-8 systems; mechanical systems; heating, cooling, refrigeration, ventilation and hot water generation systems; automated building controls; insulation, and renewable energy

Serial No. 85675960

sources. Clear Energy has marketed its products and rendered its services under the mark, CLEAR ENERGY.

5. Clear Energy is the owner of the following U.S. trademarks:

<u>Registration Number</u>	<u>Mark</u>	<u>Goods/Services</u>
3,900,287	CLEAR ENERGY	consultation in the field of energy efficiency and related greenhouse gas reductions; energy procurement and utility rate selection and; information in the field of energy efficiency and related greenhouse gas reductions, energy procurement and utility rate selection; and project management services for others for business purposes, namely, bid management for labor and materials
3,900,289	CLEAR ENERGY	financial management provided in the field of energy; providing financial management information in the field of energy
3,900,294	CLEAR ENERGY	general contracting services in the field of energy efficiency improvements for buildings, building improvements and tenant buildouts; installation of energy efficiency improvements for buildings including

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lighting, heating, cooling and environmental control systems, energy efficient lighting fixtures, installation of alternative energy resources, primarily solar energy generation resources; consulting in the field of building construction

3,900,299

CLEAR ENERGY

design for others in the field of energy efficiency improvements for buildings including lighting, heating, cooling and environmental control systems, energy efficient lighting fixtures; design for others in the field of building improvements and tenant build outs; design for others in the field of alternative energy resources, primarily solar energy generation resources

3,859,333

CLEAR ENERGY & DESIGN

consultation in the field of energy efficiency and related greenhouse gas reductions, energy procurement and utility rate selection and; information in the field of energy efficiency and related greenhouse gas reductions, energy procurement and utility rate selection; and project management services for others for

Serial No. 85675960

		business purposes; namely, bid management for labor and materials; financial management provided in the field of energy; providing financial management information in the field of energy
3,859,334	CLEAR ENERGY & DESIGN	design for others in the field of energy efficiency improvements for buildings, building improvements and tenant build outs
3,859,337	CLEAR ENERGY & DESIGN	general contracting services in the field of energy efficiency improvements for buildings, building improvements and tenant build outs, installation of energy efficiency improvements for buildings including lighting, heating, cooling and environmental control systems, energy efficient lighting fixtures; installation of alternative energy resources, primarily solar energy generation resources; consulting in the field of building construction; and, design for others in the field of energy efficiency improvements for buildings including lighting, heating, cooling, and environmental control systems, energy

efficient lighting fixtures; design for others in the field of alternative energy resources, primarily solar energy generation resources.

Each of the above-identified registrations (hereinafter collectively the "CLEAR ENERGY Marks") are in full force and effect on the Principal Register of the United States Patent and Trademark Office, and operate as prima facie evidence of Clear Energy's ownership of said marks and its exclusive right to use the same in commerce throughout the United States.

6. By virtue of extensive sales in commerce under the CLEAR ENERGY Marks in the United States, and in connection with its rendering of services in commerce under said marks, the relevant trade and public has come to associate certain goods and services provided under the CLEAR ENERGY Marks, with Clear Energy Consulting, LLC, thereby creating a valuable reputation for such goods and services.

7. Clear Energy continues to expand its products and services under the CLEAR ENERGY Marks and the Clear Energy name. Clear Energy markets a wide range of services in the energy field. Clear Energy provides consultation, engineering and design support for services that Clear Energy provides to its customers.

Serial No. 85675960

8. Clear Energy sets itself apart from others by offering a wide range of energy related services that are second to none. Clear Energy has marketed its extensive services under the CLEAR ENERGY Marks. The marketing and sale of products and services under the CLEAR ENERGY Marks includes the installation of custom lighting retrofit kits and fixtures, said kits and fixtures identified by the CLEAR ENERGY mark, and said use is long prior to the filing date of application Serial No. 85/526,985 and any use date claimed therein. Clear Energy continues to market products and services under the CLEAR ENERGY Marks.

9. The Applicant, Clear Energy LED, LLC, filed, on January 27, 2012, an application for a similar mark to Clear Energy's CLEAR ENERGY Marks, CLEAR ENERGY LED, for LED (light emitting diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting application; LED and HID light fixtures; LED light assemblies for street lights, signs, commercial lighting, automobiles, buildings, and other architectural uses; LED light bulbs; LED lighting fixtures for indoor and outdoor lighting applications; LED luminaires; LED underwater lights; Luminaires, using light emitting diodes (LEDs) as a light source, for street or roadway lighting, on the basis of an intent to use the mark.

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10. Upon information and belief, Applicant has not used its mark in commerce prior to the filing date of the Application.

11. In view of the similarities between the respective marks, and their actual and intended uses, and the related nature of the goods and services of the respective parties, Applicant's mark so resembles Clear Energy's CLEAR ENERGY Marks, and name, previously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive to the irreparable damage of Clear Energy.

12. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby, at least a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to Clear Energy, and Clear Energy's business.

WHEREFORE, Clear Energy prays that Application Serial No. 85526985 be rejected, and that no registration be issued to Applicant, and that this Opposition be sustained in favor of Opposer.

Serial No. 85675960

Respectfully submitted,
CLEAR ENERGY CONSULTING, LLC

Date: May 29, 2013

By: 
James E. Shlesinger
Daniel T. Earle
Attorneys for Opposer

SHLESINGER, ARKWRIGHT
& GARVEY, LLP
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Suite 415
Alexandria, Virginia 22303
(703) 684-5600

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CERTIFICATE OF SERVICE

I hereby certify that this NOTICE OF OPPOSITION has been served upon Applicant, Clear Energy LED, LLC, by mailing, via first class mail, a copy thereof to Clear Energy LED, LLC, 33 West Street, Bloomfield, New Jersey 07003 on this 29th day of May, 2013.


James E. Shlesinger