

ESTTA Tracking number: **ESTTA557118**

Filing date: **08/30/2013**

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    | Utilitech, Inc.  |             |              |
| Entity  | Corporation  | Citizenship | Pennsylvania |
| Address | 3020 Penn Avenue<br>West Lawn, PA 19609<br>UNITED STATES |             |              |

|                      |  |  |  |
|----------------------|--|--|--|
| Attorney information | Gavin P Lentz<br>Bochetto & Lentz, P.C.<br>1524 Locust Street<br>Philadelphia, PA 19102<br>UNITED STATES<br>glentz@bochettoandlentz.com Phone:215-735-3900 |  |  |
|----------------------|--|--|--|

### Applicant Information

|                        |   |                        |            |
|------------------------|---|------------------------|------------|
| Application No         | 85896167  | Publication date       | 08/06/2013 |
| Opposition Filing Date | 08/30/2013  | Opposition Period Ends | 09/05/2013 |
| Applicant              | LF, LLC<br>P.O. Box 39<br>Mount Mourne, NC 28123<br>UNITED STATES |                        |            |

### Goods/Services Affected by Opposition

|  |
|--|
| Class 011. First Use: 2011/06/15 First Use In Commerce: 2011/06/15<br>All goods and services in the class are opposed, namely: LED light bulbs, decorative LED bulbs, and incandescent light bulbs |
|--|

### Grounds for Opposition

|                                      |                            |
|--------------------------------------|----------------------------|
| Deceptiveness                        | Trademark Act section 2(a) |
| False suggestion of a connection     | Trademark Act section 2(a) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| Other                                | 15 U.S.C. s 1063           |

### Mark Cited by Opposer as Basis for Opposition

|                       |                                    |                       |            |
|-----------------------|------------------------------------|-----------------------|------------|
| U.S. Registration No. | 4066588                            | Application Date      | 04/15/2011 |
| Registration Date     | 12/06/2011                         | Foreign Priority Date | NONE       |
| Word Mark             | UTILITECH ENERGY & TELECOM EXPERTS |                       |            |

|                     |   |
|---------------------|---|
| Design Mark         |   |
| Description of Mark | The mark consists of the wording "UtiliTech" with "Util" in green and "Tech" in blue. A thin blue line and the wording "ENERGY & TELECOM EXPERTS" in blue appear underneath.  |
| Goods/Services      | Class 035. First use: First Use: 1993/01/01 First Use In Commerce: 1993/01/01<br>Business auditing; Conducting energy audits of commercial and institutional facilities for the purpose of improving energy efficiency; Energy auditing |

|             |  |
|-------------|--|
| Attachments | Utilitech Notice opposition.pdf(242179 bytes ) |
|-------------|--|

### **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 | /Gavin P. Lentz/ |
| Name      | Gavin P Lentz    |
| Date      | 08/30/2013       |

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

|                  |   |                                      |
|------------------|---|--------------------------------------|
| UTILITECH, INC., | ) |                                      |
|                  | ) |                                      |
| Opposer,         | ) |                                      |
|                  | ) |                                      |
| v.               | ) | Opposition No.                       |
|                  | ) |                                      |
| LF, LLC,         | ) | Mark: Utilitech                      |
|                  | ) | Application Ser. No. 85/896,167      |
| Applicant.       | ) | Dated of Publication: August 6, 2013 |

**NOTICE OF OPPOSITION**

UTILITECH, INC., a Pennsylvania Corporation, having a principal place of business at 3020 Penn Avenue, West Lawn, Pennsylvania 19609 (“Opposer”), believes that it will be damaged by the registration of Ser. No. 85/896,167 for the mark Utilitech (“Applicant’s Mark”) covering “LED light bulbs, decorative LED bulbs, and incandescent light bulbs” in U.S. Class 013, 021, 023, 031, 034, and International Class 011 (the “Applicant”); filed on April 5, 2013 by LF, LLC, a Delaware Limited Liability Company, having an address at 1000 Lowe’s Boulevard, Mooresville, North Carolina, 28117 (“Applicant”), and hereby opposes the same pursuant to Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063:

As grounds of the opposition, Opposer alleges that:

1. Opposer is the owner of the mark UTILITECH to identify its business, having an online presence on the World Wide Web as a business conducting energy and business auditing and energy audits of commercial and institutional facilities for the purpose of improving energy efficiency.

2. The mark UTILITECH has been continuously used by Opposer since at least as early as January 1, 1993 in connection with energy and business auditing and energy audits of commercial and institutional facilities for the purpose of improving energy efficiency.

3. Prior to the Application filing date of April 5, 2013, Opposer has used the UTILITECH mark to identify energy and business auditing and energy audits of commercial and institutional facilities for the purpose of improving energy efficiency

4. Opposer is the owner of:

Reg. No. 4,066,588 – UTILITECH for “business auditing; conducting energy audits of commercial and institutional facilities for the purpose of improving energy efficiency; Energy auditing” in U.S. Class 100, 101, 102 and International Class 035; registered December 6, 2011; based on use since January 1, 1993.

This registration is valid, subsisting, unrevoked, and has not been canceled. A copy of the registration certificate and its corresponding TSDR status report are attached hereto as Exhibit A.

5. Opposer has extensively advertised its UTILITECH mark throughout the range of available media, including but not limited to print publications, point-of-sale advertising on a regional and national level and via the Internet.

6. By virtue of its extensive use, sales, marketing and promotion, Opposer’s UTILITECH mark has acquired a high degree of distinctiveness to companies seeking energy auditing and business auditing services, indicating source in the Opposer.

7. The services for which Applicant seeks to register Applicant’s Mark are related to and encompassed in the services identified in Opposer’s UTILITECH mark registration in that Opposer provides energy auditing services to energy providers.

8. The intended use and registration by Applicant of Applicant’s Mark for the services identified in the Application is likely to cause confusion, mistake or deception by having the public erroneously assume or believe that the services offered in connection with the confusingly similar Applicant’s Mark emanate from the same source or origin as

Opposer's UTILITECH services, or are in some other way associated, endorsed, licensed, authorized or sponsored by Opposer, all to Opposer's irreparable damage in violation of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

9. Moreover, Applicant's proposed use and registration of Applicant's Mark is likely to dilute the distinctive quality of the Opposer's UTILITECH mark, and, thus, injure Opposer.

10. Accordingly, registration for the mark applied for under Ser. No. 85/896,167 should be refused.

For the reasons set forth in paragraphs 1 through 10, Opposer believes and asserts it will be damaged by the registration of Ser. No. 85/896,167 for the mark UTILITECH.

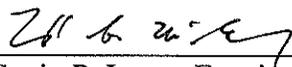
Therefore, Opposer prays that his Opposition be sustained, and that Applicant be refused registration of Applicant's Mark for the goods and services set forth in application Ser. No. 85/896,167.

This notice is being filed electronically accompanied by payment of the \$300.00 filing fee.

Respectfully submitted,

UTILITECH, INC.

By:

  
\_\_\_\_\_  
Gavin P. Lentz, Esquire  
Todd S. McGarvey, Esquire  
Bochetto & Lentz, P.C.  
1524 Locust Street  
Philadelphia, Pennsylvania 19102  
215-735-3900 (phone)  
215-735-2455 (fax)

*Attorney for Opposer*

# EXHIBIT

A

United States of America  
United States Patent and Trademark Office

**UtiliTech**

ENERGY & TELECOM EXPERTS

**Reg. No. 4,066,588**

**Registered Dec. 6, 2011**

**Int. Cl.: 35**

**SERVICE MARK**

**PRINCIPAL REGISTER**

UTILITECH (PENNSYLVANIA CORPORATION)  
3020 PENN AVENUE  
WEST LAWN, PA 19609

FOR: BUSINESS AUDITING; CONDUCTING ENERGY AUDITS OF COMMERCIAL AND INSTITUTIONAL FACILITIES FOR THE PURPOSE OF IMPROVING ENERGY EFFICIENCY; ENERGY AUDITING, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-1-1993; IN COMMERCE 1-1-1993.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ENERGY & TELECOM EXPERTS", APART FROM THE MARK AS SHOWN.

THE COLOR(S) GREEN, BLUE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDING "UTILITECH" WITH "UTIL" IN GREEN AND "TECH" IN BLUE. A THIN BLUE LINE AND THE WORDING "ENERGY & TELECOM EXPERTS" IN BLUE APPEAR UNDERNEATH.

SER. NO. 85-296,074, FILED 4-15-2011.

SANI KHOURI, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

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Mark: UTILITECH ENERGY & TELECOM EXPERTS



US Serial Number: 85296074  
US Registration Number: 4066588  
Filed as TEAS Plus: Yes  
Register: Principal  
Mark Type: Service Mark  
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.  
Status Date: Dec. 06, 2011  
Publication Date: Sep. 20, 2011

Application Filing Date: Apr. 15, 2011  
Registration Date: Dec. 06, 2011  
Currently TEAS Plus: Yes

## Mark Information

Mark Literal Elements: UTILITECH ENERGY & TELECOM EXPERTS  
Standard Character Claim: No  
Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)  
Description of Mark: The mark consists of the wording "UtiliTech" with "Utili" in green and "Tech" in blue. A thin blue line and the wording "ENERGY & TELECOM EXPERTS" in blue appear underneath.  
Color Drawing: Yes  
Color(s) Claimed: The color(s) Green, Blue is/are claimed as a feature of the mark.  
Disclaimer: "ENERGY & TELECOM EXPERTS"  
Design Search Code(s): 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Underlined words or letters; Overlined words or letters

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services.
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks "\*" identify additional (new) wording in the goods/services.

For: Business auditing; Conducting energy audits of commercial and institutional facilities for the purpose of improving energy efficiency; Energy auditing

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 01, 1993

Use in Commerce: Jan. 01, 1993

## Basis Information (Case Level)

|                    |                        |                 |
|--------------------|------------------------|-----------------|
| Filed Use: Yes     | Currently Use: Yes     | Amended Use: No |
| Filed ITU: No      | Currently ITU: No      | Amended ITU: No |
| Filed 44D: No      | Currently 44D: No      | Amended 44D: No |
| Filed 44E: No      | Currently 44E: No      | Amended 44E: No |
| Filed 66A: No      | Currently 66A: No      |                 |
| Filed No Basis: No | Currently No Basis: No |                 |

## Current Owner(s) Information

Owner Name: UtiliTech  
Owner Address: 3020 Penn Avenue  
West Lawn, PENNSYLVANIA 19609  
UNITED STATES  
Legal Entity Type: CORPORATION  
State or Country Where Organized: PENNSYLVANIA

## Attorney/Correspondence Information

**Attorney of Record**

Attorney Name: Clark Burt

Attorney Primary Email Address: [clark@franchisedevelopmentgroup.com](mailto:clark@franchisedevelopmentgroup.com)

Attorney Email No Authorized:

**Correspondent**Correspondent Name/Address: CLARK BURT  
949 PIONEER RD STE B2  
DRAPER, UTAH 84020-9330  
UNITED STATESCorrespondent e-mail: [clark@franchisedevelopmentgroup.com](mailto:clark@franchisedevelopmentgroup.com)

Correspondent e-mail No Authorized:

**Domestic Representative - Not Found****Prosecution History**

| Date          | Description  | Proceeding Number |
|---------------|--|-------------------|
| Aug. 13, 2013 | NOTICE OF SUIT                                       |                   |
| Jul. 31, 2013 | NOTICE OF SUIT                                       |                   |
| Dec. 06, 2011 | REGISTERED-PRINCIPAL REGISTER                        |                   |
| Sep. 20, 2011 | OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED   |                   |
| Sep. 20, 2011 | PUBLISHED FOR OPPOSITION                             |                   |
| Aug. 18, 2011 | LAW OFFICE PUBLICATION REVIEW COMPLETED              | 73797             |
| Aug. 17, 2011 | ASSIGNED TO LIE                                      | 73797             |
| Aug. 15, 2011 | ASSIGNED TO LIE                                      | 68123             |
| Jul. 31, 2011 | APPROVED FOR PUB - PRINCIPAL REGISTER                |                   |
| Jul. 29, 2011 | TEAS/EMAIL CORRESPONDENCE ENTERED                    | 88889             |
| Jul. 29, 2011 | CORRESPONDENCE RECEIVED IN LAW OFFICE                | 88889             |
| Jul. 29, 2011 | TEAS RESPONSE TO OFFICE ACTION RECEIVED              |                   |
| Jul. 28, 2011 | NOTIFICATION OF NON-FINAL ACTION E-MAILED            | 6325              |
| Jul. 28, 2011 | NON-FINAL ACTION E-MAILED                            | 6325              |
| Jul. 28, 2011 | NON-FINAL ACTION WRITTEN                             | 77986             |
| Jul. 22, 2011 | ASSIGNED TO EXAMINER                                 | 77986             |
| Apr. 20, 2011 | NOTICE OF DESIGN SEARCH CODE AND PSEUDO MARK MAILED  |                   |
| Apr. 19, 2011 | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM |                   |
| Apr. 19, 2011 | NEW APPLICATION ENTERED IN TRAM                      |                   |

**TM Staff and Location Information****TM Staff Information - None****File Location**

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Dec. 06, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served on Applicant at the following address of record, by first class mail, postage prepaid, this 30th day of August, 2013:

John Gary Maynard, III  
Hunton & Williams, LLP  
951 East Byrd Street  
Richmond, Virginia 23219

*Attorneys for Applicant*

  
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Todd S. McGarvey