

ESTTA Tracking number: **ESTTA567427**

Filing date: **10/28/2013**

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	BASF Corporation
Granted to Date of previous extension	10/27/2013
Address	100 Park Avenue Florham Park, NJ 07932 UNITED STATES

Attorney information	Joyce M. Ferraro Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES jferraro@frosszelnick.com Phone:2128135900
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Applicant Information

Application No	85820417	Publication date	04/30/2013
Opposition Filing Date	10/28/2013	Opposition Period Ends	10/27/2013
Applicant	Midtech R&D, Inc. 1120 Lake Avenue Fairmont, MN 56031 MONGOLIA		

Goods/Services Affected by Opposition

Class 001. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Fertilizers for agricultural use

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1749790	Application Date	04/02/1992
Registration Date	02/02/1993	Foreign Priority Date	NONE
Word Mark	ATTAIN		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 1992/01/00 First Use In Commerce: 1992/01/00 insecticide for use in commercial and professional pest control markets
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Attachments	Notice of Opposition v. Midtech R D, Inc. (ATTAIN) (F1331808).PDF(2163265 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	/jmf/
Name	Joyce M. Ferraro
Date	10/28/2013

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

In the Matter of Application Serial No. 85/820,417

Mark: ATTAIN

Filing Date: January 10, 2013

Published in the *Official Gazette* on April 30, 2013

BASF CORPORATION,

Opposer,

-against-

MIDTECH R&D, INC.

Applicant.

Opposer, BASF Corporation (“Opposer”), a Delaware corporation, with an office at 100 Park Avenue, Florham Park, New Jersey 07932, believes that it would be damaged by the registration of the trademark ATTAIN in International Class 1 as applied for in Application Serial No. 85/820,417 for “fertilizers for agricultural use” (the “Application”), filed January 10, 2013 under Section 1(b) of the Lanham Act. As grounds for its opposition, Opposer, by its attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Opposer is a leading chemical company and a large supplier of agricultural and fine chemicals.
2. Opposer owns an incontestable renewed registration for the mark ATTAIN, U.S. Reg. No. 1,749,790, registered on February 2, 1993 and based on first use since January 1992, for “Insecticide for use in commercial and professional pest control markets” in International Class 5. This registration is valid and subsisting and constitutes evidence of Opposer’s exclusive rights in the registered ATTAIN trademark pursuant to 15 U.S.C. § 1057(b). A true and correct

printout from the electronic database records of the United States Patent and Trademark Office showing the current status and title of the U.S. Reg. No. 1,749,790 is attached hereto as Exhibit A. On October 25, 2013, Applicant filed with the U.S. Patent and Trademark Office a change of Opposer's street address from 100 Campus Drive to 100 Park Avenue and a copy of the filing receipt evidencing such filing is attached hereto as Exhibit B.

3. Upon information and belief, applicant, Midtech R&D, Inc. ("Applicant"), is a Minnesota corporation with an address of 1120 Lake Avenue, Fairmont, Minnesota 56031.

4. On or about January 10, 2013, long after Opposer's first use date for ATTAIN and long after Opposer registered such mark, Applicant filed the Application with the U.S. Patent and Trademark Office to register the mark ATTAIN for "fertilizers for agricultural use" in International Class 1, based on an intent to use under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b).

5. Applicant's ATTAIN mark is identical to Opposer's ATTAIN mark in sight, sound and commercial impression.

6. The goods set forth in the Application are highly similar, closely related, and/or identical to the goods in connection with which Opposer has registered its ATTAIN mark.

7. On information and belief, Applicant targets the same type of consumers that will purchase Opposer's ATTAIN products or to whom Opposer markets and promotes such products.

8. Based on the similarities of the parties' respective marks and goods, the public is likely to falsely associate Applicant's goods under the ATTAIN mark with Opposer or with Opposer's goods; or to falsely believe that Applicant's goods emanate from or are sponsored, endorsed or licensed by Opposer; or to falsely believe that there is some relationship between Applicant and Opposer.

9. Applicant's Application and the presumption of exclusivity that would arise from a registration to Applicant of the ATTAIN mark are inconsistent with the prior rights of Opposer in the ATTAIN mark and the rights of Opposer flowing from its own federal trademark registration.

10. Use and registration of the ATTAIN mark by Applicant in connection with fertilizer products is likely to cause confusion, cause mistake or deceive consumers, and cause them to believe that the goods offered under Applicant's ATTAIN mark emanate from, or are sponsored by, endorsed by or otherwise connected with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

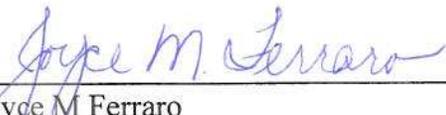
11. Opposer is likely to be harmed by a registration of Applicant's ATTAIN mark by reason of the foregoing, and because it would give color of right therein to Applicant inconsistent with Opposer's prior rights.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 85/820,417 in International Class 1 be refused in its entirety.

Dated: New York, New York
October 28, 2013

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: _____


Joyce M Ferraro
James D. Weinberger

866 United Nations Plaza
New York, New York 10017
Tel: (212) 813-5900
Fax: (212) 813-5901

Attorneys for Opposer

EXHIBIT A

Generated on: This page was generated by TSDR on 2013-10-25 14:34:03 EDT

Mark: ATTAIN

US Serial Number: 74261732
US Registration Number: 1749790
Register: Principal
Mark Type: Trademark
Status: The registration has been renewed.
Status Date: Feb. 11, 2013
Publication Date: Nov. 10, 1992
Application Filing Date: Apr. 02, 1992
Registration Date: Feb. 02, 1993

Mark Information

Mark Literal Elements: ATTAIN
Standard Character Claim: No
Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

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: insecticide for use in commercial and professional pest control markets

International Class(es): 005 - Primary Class

U.S Class(es): 006

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 1992

Use in Commerce: Jan. 1992

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: BASF CORPORATION
Owner Address: 100 CAMPUS DRIVE
FLORHAM PARK, NEW JERSEY 07932
UNITED STATES
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record
Attorney Name: JOHN P. MURTAUGH
Attorney Primary Email: lmdocket@pearme.com
Docket Number: BRAQ-J3883
Attorney Email: Yes

Address: _____

Authorized:

Correspondent

Correspondent Name/Address: JOHN P. MURTAUGH
PEARNE & GORDON LLP
1801 EAST 9TH STREET, SUITE 1200
CLEVELAND, OHIO 44114-3108
UNITED STATES

Phone: 216-579-1700

Fax: 216-579-6073

Correspondent e-mail: imdocket@pearne.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 11, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Feb. 11, 2013	REGISTERED AND RENEWED (SECOND RENEWAL - 10 YRS)	69471
Feb. 11, 2013	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	69471
Feb. 11, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	69471
Jan. 24, 2013	TEAS SECTION 8 & 9 RECEIVED	
Dec. 23, 2009	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jan. 28, 2009	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jun. 16, 2008	CASE FILE IN TICRS	
Aug. 18, 2004	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Feb. 11, 2003	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	
Feb. 11, 2003	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Oct. 29, 2002	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Oct. 29, 2002	TEAS SECTION 8 & 9 RECEIVED	
Jun. 28, 1999	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Jan. 28, 1999	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Feb. 02, 1993	REGISTERED-PRINCIPAL REGISTER	
Nov. 10, 1992	PUBLISHED FOR OPPOSITION	
Oct. 09, 1992	NOTICE OF PUBLICATION	
Aug. 06, 1992	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jul. 23, 1992	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Jul. 07, 1992	NON-FINAL ACTION MAILED	
Jun. 09, 1992	ASSIGNED TO EXAMINER	60740

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Feb. 02, 2013

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: Not Found

Date in Location: Feb. 11, 2013

Assignment Abstract Of Title Information

Summary

Total Assignments: 7

Registrant: Whitmire Research Laboratories, Inc.

Assignment 1 of 7

Conveyance: CHANGE OF NAME

Reel/Frame: 1408/0856

Pages: 5

Date Recorded: Nov. 13, 1995

Supporting Documents: No Supporting Documents Available

Assignor

Name: S. C. JOHNSON PROFESSIONAL II, INC.

Execution Date: Jun. 30, 1995

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: WHITMIRE RESEARCH LABORATORIES, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 1525 HOWE STREET
RACINE, WISCONSIN 53403

Correspondent

Correspondent Name: S. C. JOHNSON & SON, INC.

Correspondent Address: MARGARET M. SERRANO
1525 HOWE STREET - M.S. 77
RACINE, WI 53403

Domestic Representative - Not Found

Assignment 2 of 7

Conveyance: MERGER

Reel/Frame: 1427/0056

Pages: 7

Date Recorded: Nov. 06, 1995

Supporting Documents: No Supporting Documents Available

Assignor

Name: WHITMIRE RESEARCH LABORATORIES, INC.

Execution Date: Jul. 01, 1995

Legal Entity Type: CORPORATION

State or Country Where Organized: MISSOURI

Assignee

Name: S. C. JOHNSON PROFESSIONAL II, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 1525 HOWE STREET
RACINE, WISCONSIN 53403

Correspondent

Correspondent Name: S. C. JOHNSON & SON, INC.

Correspondent Address: MARGARET M. SERRANO
1525 HOWE STREET - M.S. 77
RACINE, WISCONSIN 53403

Domestic Representative - Not Found

Assignment 3 of 7

Conveyance: CHANGE OF NAME

Reel/Frame: 1408/0633

Pages: 5

Date Recorded: Nov. 13, 1995

Supporting Documents: No Supporting Documents Available

Assignor

Name: WHITMIRE RESEARCH LABORATORIES, INC.

Execution Date: Oct. 11, 1995

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: WHITMIRE MICRO-GEN RESEARCH LABORATORIES, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 3568 TREE COURT INDUSTRIAL BLVD.
ST. LOUIS, MISSOURI 63122

Correspondent

Correspondent Name: MARGARET M. SERRANO

Correspondent Address: S. C. JOHNSON & SON, INC.
1525 HOWE STREET - M.S. 77
RACINE, WI 53405

Domestic Representative - Not Found

Assignment 4 of 7

Conveyance: SECURITY INTEREST

Reel/Frame: 2873/0582

Pages: 25

Date Recorded: Jun. 11, 2004

Supporting Documents: assignment-tm-2873-0582.pdf

Assignor

Name: WHITMIRE MICRO-GEN RESEARCH
LABORATORIES, INC.

Execution Date: Jun. 09, 2004

Legal Entity Type: CORPORATION

State or Country Where
Organized: DELAWARE

Assignee

Name: THE ROYAL BANK OF SCOTLAND PLC

Legal Entity Type: TRUSTEE

State or Country Where
Organized: No Place Where Organized Found

Address: 100 BARBIROLLI SQUARE
LOWER MOSLEY STREET
MANCHESTER, UNITED KINGDOM M603NA

DBA, AKA, TA, Formerly: AKA RBS CORPORATE & STRUCTURED
FINANCE

Correspondent

Correspondent Name: REBECCA L. KUJAWA

Correspondent Address: 720 OLIVE STREET
24TH FLOOR
ST. LOUIS, MO 63101

Domestic Representative - Not Found

Assignment 5 of 7

Conveyance: RELEASE OF SECURITY INTEREST RECORDED AT REEL/FRA ME 2873/582

Reel/Frame: 3923/0063

Pages: 6

Date Recorded: Jan. 22, 2009

Supporting Documents: assignment-tm-3923-0063.pdf

Assignor

Name: THE ROYAL BANK OF SCOTLAND PLC

Execution Date: Dec. 19, 2008

Legal Entity Type: PUBLIC LIMITED COMPANY

State or Country Where
Organized: UNITED KINGDOM

Assignee

Name: WHITMIRE MICRO-GEN RESEARCH LABORATORIES, INC.

Legal Entity Type: CORPORATION

State or Country Where
Organized: DELAWARE

Address: 3568 TREE COURT INDUSTRIAL BOULEVARD
ST. LOUIS, MISSOURI 63122

Correspondent

Correspondent Name: DUSAN CLARK, ESQ.

Correspondent Address: SIDLEY AUSTIN LLP
717 N. HARWOOD ST., SUITE 3400
DALLAS, TX 75201

Domestic Representative - Not Found

Assignment 6 of 7

Conveyance: MERGER EFFECTIVE 09012009

Reel/Frame: 4116/0005

Pages: 7

Date Recorded: Dec. 17, 2009

Supporting Documents: assignment-tm-4116-0005.pdf

Assignor

Name: WHITMIRE HOLDINGS, INC.

Execution Date: Sep. 01, 2009

Legal Entity Type: CORPORATION

State or Country Where
Organized: DELAWARE

Assignee

Name: BASF CORPORATION

Legal Entity Type: CORPORATION

State or Country Where
Organized: DELAWARE

Address: 100 CAMPUS DRIVE

FLORHAM PARK, NEW JERSEY 07932

Correspondent

Correspondent Name: BASF CORPORATION

Correspondent Address: 100 CAMPUS DRIVE
LEGAL/INTELLECTUAL PROPERTY DEPARTMENT
FLORHAM PARK, NJ 07932

Domestic Representative - Not Found

Assignment 7 of 7

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 4116/0012

Pages: 10

Date Recorded: Dec. 17, 2009

Supporting Documents: assignment-tm-4116-0012.pdf

Assignor

Name: WHITMIRE MICRO-GEN RESEARCH
LABORATORIES, INC.

Execution Date: Sep. 01, 2009

Legal Entity Type: CORPORATION

**State or Country Where
Organized:** DELAWARE

Assignee

Name: WHITMIRE HOLDINGS, INC.

Legal Entity Type: CORPORATION

**State or Country Where
Organized:** DELAWARE

Address: 3568 TREE COURT INDUSTRIAL BOULEVARD
ST. LOUIS, MISSOURI 63122

Correspondent

Correspondent Name: BASF CORPORATION

Correspondent Address: 100 CAMPUS DRIVE
INTELLECTUAL PROPERTY/LEGAL DEPARTMENT
FLORHAM PARK, NJ 07932

Domestic Representative - Not Found

EXHIBIT B

Joyce Ferraro

From: TEAS@uspto.gov
Sent: Friday, October 25, 2013 11:48 AM
To: Joyce Ferraro
Subject: BRAQ-J3883 Serial number 74261732: Received Your Change of Owner's Address

We have received your Change Of Owner's Address form below.
 Application serial number(s) 74261732 has/have been amended as follows:

PTO Form 2197 (Rev 09/2005)
 OMB No. 0651-0056 (Exp 09/30/2014)

Change Of Owner's Address

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	74261732
REGISTRATION NUMBER	1749790
LAW OFFICE ASSIGNED	LAW OFFICE 11
MARK SECTION	
MARK	ATTAIN
OWNER SECTION (current)	
NAME	BASF CORPORATION
STREET	100 CAMPUS DRIVE
CITY	FLORHAM PARK
STATE	New Jersey
ZIP/POSTAL CODE	07932
COUNTRY	US
NEW OWNER ADDRESS	
STREET	100 Park Avenue
CITY	Florham Park
STATE	New Jersey
ZIP/POSTAL CODE	07932
COUNTRY	United States

SIGNATURE SECTION

SIGNATURE /jmf/
SIGNATORY NAME Joyce M. Ferraro
SIGNATORY DATE 10/25/2013
SIGNATORY POSITION Attorney for Applicant, New York state bar member
SIGNATORY PHONE NUMBER (212) 813-5900

FILING INFORMATION SECTION

SUBMIT DATE Fri Oct 25 11:47:37 EDT 2013
TEAS STAMP USPTO/COA-63.138.172.9-20
131025114737780466-742617
32-500d63452bedb907ee45bc
ec87788ab50583fceb84fba80
184f3c59799a481c7c-N/A-N/
A-20131025114505869166

Thank you,

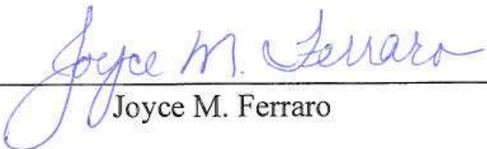
The TEAS support team
Fri Oct 25 11:47:37 EDT 2013
STAMP: USPTO/COA-63.138.172.9-20131025114737780466-74261732-
500d63452bedb907ee45bcec87788ab50583fceb84fba80184f3c59799a481c7c-N/A-N/A-
20131025114505869166

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Notice of Opposition to be sent by prepaid first-class mail to Applicant's correspondent of record:

Jennifer C. Debrow, Esq.
Gray, Plant, Mooty, Mooty & Bennett, P.A.
P.O. Box 2906
Minneapolis, Minnesota 55402-0906

on this 28th day of October, 2013.



Joyce M. Ferraro