

ESTTA Tracking number: **ESTTA710789**

Filing date: **11/24/2015**

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	NeverWet LLC
Granted to Date of previous extension	11/25/2015
Address	31 Industrial Circle Lancaster, PA 17601 UNITED STATES

Attorney information	Grace Han Stanton Perkins Coie LLP 1201 Third Avenue, Suite 4900 Seattle, WA 98101 UNITED STATES pctrademarks@perkinscoie.com Phone:206-359-8000
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Applicant Information

Application No	86376134	Publication date	07/28/2015
Opposition Filing Date	11/24/2015	Opposition Period Ends	11/25/2015
Applicants	Delves, Neil 288 Pardee Road Rochester, NY 14609 UNITED STATES Giufre, Kevin 288 Pardee Road Rochester, NY 14609 UNITED STATES		

Goods/Services Affected by Opposition

Class 037. First Use: 2014/08/12 First Use In Commerce: 2014/08/12 All goods and services in the class are opposed, namely: Waterproofing of basements; Waterproofing of basements to prepare them to be finished
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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.	3990809	Application Date	12/21/2009
Registration Date	07/05/2011	Foreign Priority	NONE

		Date	
Word Mark	NEVERWET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 002. First use: First Use: 2010/01/06 First Use In Commerce: 2010/03/20 Hydrophobic coatings in the nature of industrial sealants for waterproofing		

U.S. Registration No.	4828075	Application Date	05/21/2014
Registration Date	10/06/2015	Foreign Priority Date	NONE
Word Mark	NEVERWET		
Design Mark			
Description of Mark	The mark consists of the stylized word "NEVERWET" below an arc with droplet design on top and towards the right end of the arc.		
Goods/Services	Class 001. First use: First Use: 2014/05/12 First Use In Commerce: 2014/05/12 Chemical preparations for use in the manufacture of hydrophobic and super-hydrophobic coatings, spray coatings and sealants for waterproofing Class 002. First use: First Use: 2013/06/30 First Use In Commerce: 2013/06/30 Hydrophobic and super-hydrophobic coatings, spray coatings and sealants for waterproofing		

Attachments	77898273#TMSN.png(bytes) 86288358#TMSN.png(bytes) NEVERWET Notice of Opposition.pdf(481859 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	/Seth Reagan/
Name	Seth H. Reagan
Date	11/24/2015

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

NeverWet LLC,

Opposer,

v.

Kevin Giufre and Neil Delves,

Applicants.

Opposition No.: _____



Mark:

NEVERWET BASEMENT
WATERPROOFING &
Design

App. Ser. No.: 86/376,134

NOTICE OF OPPOSITION

NeverWet LLC (“Opposer”) believes that it will be damaged by registration of the mark NEVERWET BASEMENT WATERPROOFING & Design (“Applicants’ Mark”), Application Serial No. 86/376,134 (“Application”), filed on August 25, 2014, and hereby opposes the Application. As grounds for this opposition, Opposer alleges as follows:

I. PARTIES

1. Opposer is a Pennsylvania limited liability company with its principal place of business at 31 Industrial Circle, Lancaster, Pennsylvania, 17601.
2. Upon information and belief, Applicant Kevin Giufre (“Giufre”) is an individual doing business and/or residing in Rochester, New York.
3. Upon information and belief, Applicant Neil Delves (“Delves”) (collectively with Giufre, “Applicants”) is an individual doing business and/or residing in Rochester, New York.
4. Upon information and belief, Applicants’ principal place of business is at 1227 Ridgeway Avenue Suite L, Rochester, New York 14615.

II. OPPOSER'S MARKS

5. Since at least as early as March 2010, Opposer and its predecessor in interest have used the mark NEVERWET, which is the subject of Opposer's U.S. Registration No. 3,990,809.

6. Opposer uses the mark NEVERWET in connection with hydrophobic and super-hydrophobic coatings, spray coatings and sealants for waterproofing chemicals for use in the manufacture of these coatings and sealants. Additional information regarding Opposer's products is available on its website at <http://www.neverwet.com/>.

7. Opposer owns the following trademark registrations in the United States:

Mark	Registration No.	Registration Date	Goods/Services
NEVERWET	3,990,809	July 5, 2011	International Class 2: Hydrophobic coatings in the nature of industrial sealants for waterproofing.
 [NEVERWET & Design]	4,828,075	May 21, 2014	International Class 1: Chemical preparations for use in the manufacture of hydrophobic and super-hydrophobic coatings, spray coatings and sealants for waterproofing. International Class 2: Hydrophobic and super-hydrophobic coatings, spray coatings and sealants for waterproofing.

The aforesaid registrations for NEVERWET and NEVERWET & Design (collectively, "Opposer's Marks") are valid and subsisting, unrevoked and uncancelled, and Opposer is the owner of such registrations and all of the goodwill represented thereby. Printouts from the USPTO's Trademark Status and Document Retrieval system showing the current status of each mark are attached hereto as **Exhibit A**.

8. Opposer's Marks have achieved widespread and substantial recognition in association with Opposer's goods as a result of Opposer's longstanding and continuous use of its Marks in association with its goods.

9. At no time has Opposer granted permission, written or otherwise, to Applicants to use or register any form of Opposer's Marks, including but not limited to Applicants' Mark.

III. APPLICANTS' MARK AND APPLICATION

10. Applicants are the record owners of the Application, which covers the following services in International Class 37: "Waterproofing of basements; Waterproofing of basements to prepare them to be finished."

11. Applicants filed the Application on August 25, 2014 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), asserting continuous use of Applicants' Mark with Applicants' services since August 12, 2014.

12. The Application was published for opposition on July 28, 2015. Extensions of time to oppose were granted until November 25, 2015. This Opposition was timely filed pursuant to TBMP § 209.02 and 37 CFR § 2.196.

IV. PRIORITY

13. Opposer and its predecessor have continuously used Opposer's Marks since well-prior to the filing date of the Application, Applicants' claimed date of first use of Applicants' Mark, and upon information and belief, any other date of first use or priority date of Applicants' Mark by Applicants and in connection with Applicants' services upon which Applicants may rely.

14. The applications for Opposer's Marks were also filed well-prior to the filing date of the Application, Applicants' claimed date of first use of Applicants' Mark, and upon information and belief, any other date of first use or priority date of Applicants' Mark by Applicants and in connection with Applicants' services upon which Applicants may rely.

V. CLAIM - LIKELIHOOD OF CONFUSION

15. Applicants' Mark, with NEVERWET as its most prominent and distinctive feature, is substantially similar to Opposer's Marks.

16. Applicants' services, as described in their Application, overlap with or are closely related to Opposer's goods and services.

17. Applicants' goods and/or services and Opposer's goods and/or services are likely to travel in similar trade channels and be used by and marketed to overlapping consumers.

18. Applicants' Mark so resembles Opposer's Marks as to be likely, when applied to Applicants' services, to cause confusion, to cause mistake, and to deceive the public with consequent injury to Opposer, the trade, and the public.

19. Opposer will be damaged if the Application is allowed to proceed to registration because consumers and prospective consumers are likely to be confused, misled, or deceived into believing that Applicants or Applicants' services, offered under Applicants' Mark, are connected with, sponsored by, or approved by Opposer.

20. Any defect, objection or fault with Applicants' services marketed or sold under Applicants' Mark will reflect upon and seriously injure the valuable reputation and goodwill that Opposer has established for Opposer's Marks.

21. Registration of Applicants' Mark would also damage Opposer because such registration would grant a statutory exclusive right to Applicants in violation of the prior and superior rights of Opposer, and would unduly narrow the scope of protection afforded of Opposer's Marks, in contravention of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

VI. REQUEST FOR RELIEF

WHEREFORE, Opposer believes that it will be damaged by registration of the mark shown in Application Serial No. 86/376,134 and respectfully request that the opposition be sustained and that registration to Applicants be refused.

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This Notice of Opposition is filed according to the rules governing electronic submissions to the Trademark Trial and Appeal Board, including payment of the requisite filing fee.

DATED: November 24, 2015

<p>CERTIFICATE OF SERVICE</p> <p>I hereby certify that a true copy of this NOTICE OF OPPOSITION is being sent via First Class U.S. Mail on November 24, 2015 in an envelope addressed to the listed Attorney for the Application: Matthew H. Swyers 344 Maple Ave. W #151 Vienna, VA 22180-5612 mshyers@thetrademarkcompany.com</p> <p>Signature: <u></u> Printed Name: <u>Seth H. Reagan</u></p>	<p>Respectfully submitted,</p> <p>PERKINS COIE LLP</p> <p><u></u> Grace Han Stanton Seth H. Reagan Attorneys for Opposer 1201 Third Avenue, Suite 4900 Seattle, Washington 98101-3099 (206) 359-8000</p>
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EXHIBIT A

Generated on:

This page was generated by TSDR on 2015-11-24 21:15:31 EST

Mark: NEVERWET

NEVERWET

US Serial Number: 77898273

Application Filing Date:

Dec. 21, 2009

US Registration Number: 3990809

Registration Date:

Jul. 05, 2011

Register:

Principal

Mark Type:

Trademark

Status:

Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date:

Jul. 05, 2011

Publication Date: Jun. 29, 2010

Notice of Allowance Date:

Aug. 24, 2010

Mark Information

Mark Literal Elements:

NEVERWET

Standard Character Claim:

Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type:

4 - STANDARD CHARACTER MARK

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 incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For:

Hydrophobic coatings in the nature of industrial sealants for waterproofing

International Class(es): 002 - Primary Class

U.S Class(es):

006, 011, 016

Class Status:

ACTIVE

Basis:

1(a)

First Use: Jan. 06, 2010

Use In Commerce:

Mar. 20, 2010

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	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:

NEVERWET LLC

Owner Address:31 INDUSTRIAL CIRCLE
LANCASTER, PENNSYLVANIA 17601
UNITED STATES**Legal Entity Type:** LIMITED LIABILITY COMPANY**State or Country Where
Organized:**

PENNSYLVANIA

Attorney/Correspondence Information

Attorney of Record**Attorney Name:** Scott F. Landis**Docket Number:**

40551-903

**Attorney Primary Email
Address:** slandis@barley.com**Attorney Email
Authorized:**

No

Correspondent**Correspondent
Name/Address:**Scott F. Landis
Barley Snyder LLC
PO Box 1559
Lancaster, PENNSYLVANIA 17608-1559
UNITED STATES**Phone:** 717-299-5201**Fax:**

717-291-4660

Correspondent e-mail: ipdocket@barley.com**Correspondent e-mail
Authorized:**

No

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jun. 18, 2014	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jul. 05, 2011	REGISTERED-PRINCIPAL REGISTER	
May 28, 2011	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
May 27, 2011	LAW OFFICE REGISTRATION REVIEW COMPLETED	76568
May 25, 2011	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
May 23, 2011	EXAMINER'S AMENDMENT ENTERED	76568
May 18, 2011	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	
May 18, 2011	EXAMINERS AMENDMENT E-MAILED	
May 18, 2011	SU-EXAMINER'S AMENDMENT WRITTEN	68603
May 16, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED	76568
May 16, 2011	CORRESPONDENCE RECEIVED IN LAW OFFICE	76568
Apr. 27, 2011	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Apr. 27, 2011	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 14, 2011	NON-FINAL ACTION MAILED	
Mar. 13, 2011	SU - NON-FINAL ACTION - WRITTEN	68603
Feb. 25, 2011	STATEMENT OF USE PROCESSING COMPLETE	71034
Feb. 04, 2011	USE AMENDMENT FILED	71034
Feb. 25, 2011	CASE ASSIGNED TO INTENT TO USE PARALEGAL	71034
Feb. 04, 2011	TEAS STATEMENT OF USE RECEIVED	
Aug. 24, 2010	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Jun. 29, 2010	PUBLISHED FOR OPPOSITION	
Jun. 09, 2010	NOTICE OF PUBLICATION	
May 25, 2010	LAW OFFICE PUBLICATION REVIEW COMPLETED	76568
May 24, 2010	ASSIGNED TO LIE	76568
May 14, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 13, 2010	TEAS/EMAIL CORRESPONDENCE ENTERED	88889

May 13, 2010	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 13, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 06, 2010	NON-FINAL ACTION MAILED	
Apr. 06, 2010	NON-FINAL ACTION WRITTEN	68603
Mar. 22, 2010	ASSIGNED TO EXAMINER	68603
Dec. 29, 2009	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date In Location:

May 27, 2011

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant:

Ross Nanotechnology, LLC

Assignment 1 of 1

Conveyance:

ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 5301/0725

Pages:

3

Date Recorded: Jun. 12, 2014

Supporting Documents:

[assignment-tm-5301-0725.pdf](#)

Assignor

Name: ROSS NANOTECHNOLOGY, LLC

Execution Date:

Jun. 06, 2014

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:

PENNSYLVANIA

Assignee

Name:

NEVERWET LLC

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:

PENNSYLVANIA

Address:

31 INDUSTRIAL CIRCLE
LANCASTER, PENNSYLVANIA 17601

Correspondent

Correspondent Name:

GRACE HAN STANTON

Correspondent Address:

1021 THIRD AVENUE SUITE 4900
SEATTLE, WA 98101

Domestic Representative - Not Found

Generated on:

This page was generated by TSDR on 2015-11-24 21:17:19 EST

Mark: NEVERWET



US Serial Number: 86288358

Application Filing Date:

May 21, 2014

US Registration Number: 4828075

Registration Date:

Oct. 06, 2015

Register:

Principal

Mark Type:

Trademark

Status:

Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date:

Oct. 06, 2015

Publication Date: Jan. 13, 2015

Notice of Allowance Date:

Mar. 10, 2015

Mark Information

Mark Literal Elements:

NEVERWET

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 stylized word "NEVERWET" below an arc with droplet design on top and towards the right end of the arc.

Color(s) Claimed:

Color is not claimed as a feature of the mark.

Design Search Code(s):

01.15.08 - Teardrop (a single drop); Single drop (rain, tear, etc.); Raindrop (a single drop)
26.17.09 - Curved line(s), band(s) or bar(s); Bars, curved; Lines, curved; Bands, curved

Related Properties Information

Claimed Ownership of US Registrations:

3990809

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 Incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For:

Chemical preparations for use in the manufacture of hydrophobic and super-hydrophobic coatings, spray coatings and sealants for waterproofing

International Class(es): 001 - Primary Class

U.S Class(es):

001, 005, 006, 010, 026, 046

Class Status:

ACTIVE

Basis:

1(a)

First Use: May 12, 2014

Use In Commerce:

May 12, 2014

For:

Hydrophobic and super-hydrophobic coatings, spray coatings and sealants for waterproofing

International Class(es): 002 - Primary Class

U.S Class(es):

006, 011, 016

Class Status:

ACTIVE

Basis:

1(a)

First Use: Jun. 30, 2013

Use In Commerce:

Jun. 30, 2013

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	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:

NeverWet LLC

Owner Address:

31 Industrial Circle
Lancaster, PENNSYLVANIA 17601
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where
Organized:

PENNSYLVANIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Grace Han Stanton

Docket Number:

01867-4000.0

Attorney Primary Email Address: pctrademarks@perkinscoie.com

Attorney Email Authorized:

Yes

Correspondent

Correspondent
Name/Address:

GRACE HAN STANTON
PERKINS COIE LLP
1201 3RD AVE STE 4900
SEATTLE, WASHINGTON 98101-3099
UNITED STATES

Phone: (206) 359-8000

Fax:

(206) 359-9000

Correspondent e-mail: pctrademarks@perkinscoie.com

Correspondent e-mail
Authorized:

Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
------	-------------	-------------------

Oct. 06, 2015	REGISTERED-PRINCIPAL REGISTER	
Sep. 04, 2015	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Sep. 03, 2015	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Aug. 19, 2015	STATEMENT OF USE PROCESSING COMPLETE	69302
Aug. 05, 2015	USE AMENDMENT FILED	69302
Aug. 19, 2015	CASE ASSIGNED TO INTENT TO USE PARALEGAL	69302
Aug. 05, 2015	TEAS STATEMENT OF USE RECEIVED	
Mar. 10, 2015	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Jan. 13, 2015	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jan. 13, 2015	PUBLISHED FOR OPPOSITION	
Dec. 24, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Dec. 10, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	69712
Dec. 10, 2014	ASSIGNED TO LIE	69712
Nov. 26, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Nov. 26, 2014	EXAMINER'S AMENDMENT ENTERED	88888
Nov. 26, 2014	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Nov. 26, 2014	EXAMINERS AMENDMENT E-MAILED	6328
Nov. 26, 2014	EXAMINERS AMENDMENT -WRITTEN	69812
Sep. 10, 2014	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Sep. 10, 2014	NON-FINAL ACTION E-MAILED	6325
Sep. 10, 2014	NON-FINAL ACTION WRITTEN	69812
Sep. 04, 2014	ASSIGNED TO EXAMINER	69812
Jun. 05, 2014	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Jun. 04, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 24, 2014	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:

Sep. 03, 2015