

ESTTA Tracking number: **ESTTA730177**

Filing date: **02/29/2016**

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	Wayne Fueling Systems LLC
Granted to Date of previous extension	02/28/2016
Address	3814 Jarrett Way Austin, TX 78728 UNITED STATES
Attorney information	Susan Neuberger Weller MINTZ LEVIN 701 Pennsylvania Avenue, N.W. Washington, DC 20004 UNITED STATES snweller@mintz.com, jddib@mintz.com, LAdams@mintz.com Phone:2025853510

Applicant Information

Application No	86530938	Publication date	09/01/2015
Opposition Filing Date	02/29/2016	Opposition Period Ends	02/28/2016
Applicant	SunPower Corporation Legal Department - Trademarks San Jose, CA 95134 UNITED STATES		

Goods/Services Affected by Opposition

Class 006. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Mounting systems for solar collectors comprised of structural supports and mounting rails, made of metal, for rooftop stabilization, solar collector supports made of metal, and clamps made of metal: solar panel mounts made of metal
Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Photovoltaic cells; modules, namely, photovoltaic modules and solar cell modules; panels, namely, photovoltaic panels and solar cell panels; solar batteries; solar cells; solar concentrators; photovoltaic solar-thermal hybrid modules; electronic sensors for measuring solar radiation; apparatus for converting electronic radiation to electrical energy, namely, photovoltaic roofing members and photovoltaic cladding panels; silicon wafers; solar wafers; inverters; photovoltaic inverters; solar inverters; converters; photovoltaic converters; solar energy converters; photovoltaic panel mounting system, comprised of solar panels, connectors, mounting rails, and a mounting structure, for use in providing heating and cooling load reduction and generating electricity, all sold as a unit; Power electronics, namely, power conditioners, power optimizers, voltage regulators
Class 019. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Roofing, not of metal, incorporating solar

cells; mounting systems for solar collectors comprised of structural supports, attachment features, and mounting rails, not of metal, for rooftop stabilization and beautification, solar collector supports not of metal, and clamps, not of metal; solar panel rails not of metal for rooftop mounting

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Trademark Act section 43(a)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4286468	Application Date	07/02/2010
Registration Date	02/05/2013	Foreign Priority Date	NONE
Word Mark	HELIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2012/06/20 First Use In Commerce: 2012/06/20 Fuel dispensers and electronic payment terminals for use with fuel dispensers		

Attachments	85076923#TMSN.png(bytes) HELIX.PDF(124779 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	/Susan Neuberger Weller/
Name	Susan Neuberger Weller
Date	02/29/2016

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

In the matter of Application No. 86530938 for HELIX

Published in the Official Gazette September 1, 2015

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WAYNE FUELING SYSTEMS LLC,)	
)	
Opposer,)	
)	
vs.)	
)	Opposition No. _____
SUNPOWER CORPORATION,)	
)	
Applicant.)	
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NOTICE OF OPPOSITION

Wayne Fueling Systems LLC (“Opposer” or “Wayne”), a Delaware limited liability company with a business address at 3814 Jarrett Way, Austin, TX 78728, believes that it will be damaged by registration of the mark HELIX, which is the subject of U.S. Application Serial No. 86530938, for the goods below:

Class 6: Mounting systems for solar collectors comprised of structural supports and mounting rails, made of metal, for rooftop stabilization, solar collector supports made of metal, and clamps made of metal: solar panel mounts made of metal

Class 9: Photovoltaic cells; modules, namely, photovoltaic modules and solar cell modules; panels, namely, photovoltaic panels and solar cell panels; solar batteries;

solar cells; solar concentrators; photovoltaic solar-thermal hybrid modules; electronic sensors for measuring solar radiation; apparatus for converting electronic radiation to electrical energy, namely, photovoltaic roofing members and photovoltaic cladding panels; silicon wafers; solar wafers; inverters; photovoltaic inverters; solar inverters; converters; photovoltaic converters; solar energy converters; photovoltaic panel mounting system, comprised of solar panels, connectors, mounting rails, and a mounting structure, for use in providing heating and cooling load reduction and generating electricity, all sold as a unit; Power electronics, namely, power conditioners, power optimizers, voltage regulators

Class 19: Roofing, not of metal, incorporating solar cells; mounting systems for solar collectors comprised of structural supports, attachment features, and mounting rails, not of metal, for rooftop stabilization and beautification, solar collector supports not of metal, and clamps, not of metal; solar panel rails not of metal for rooftop mounting

and hereby opposes the same.

FACTUAL BACKGROUND

Pursuant to 15 U.S.C. §§ 1052, 1125, 1063, and 1141 of the Lanham Act, and 37 C.F.R. §§ 2.101 and 2.104, and predicated upon the following grounds, Opposer alleges the following:

1. Opposer is a leader in the energy industry. Since its founding in 1891 as the Wayne Oil Tank Company, Opposer has been at the forefront of commercial fueling technology, from its retail- and fleet-fueling systems that deliver a full range of fuels from conventional to renewable and bio-fuels, to its secure-payment platforms and point-of-sale technologies that stay ahead of a complex and rapidly changing regulatory environment, to its multimedia marketing solutions and groundbreaking retail-site-automation systems. Wayne introduced its first gasoline pump in the US in 1907, and has introduced many industry-changing products since then. As the company grew in product development and innovation, it also grew in size and global scope, expanding into Canada in 1919 and Europe in 1924, and over the years has established manufacturing, sales, distribution, and service operations in the United Kingdom, Sweden, Brazil, Germany, Italy, Sweden, China, Singapore, and India, with regional sales teams and distribution channels also covering the Middle East, Africa, and Asia Pacific regions, enabling Wayne to serve customers in more than 140 countries around the world.

2. Opposer sells its products directly and through authorized distributors to major oil companies, high-volume and convenience retailers, and national, regional, and independent fueling-station owners and operators.

3. Opposer owns U.S. Registration No. 4286468 for the mark HELIX® for “fuel dispensers and electronic payment terminals for use with fuel dispensers” in Class 9. A copy of the Certificate of Registration is attached hereto and incorporated herein by reference as Exhibit A (“Opposer’s Mark”).

4. Opposer’s Mark has been used since 2012 in the US in connection with the above products sold and distributed in the U.S. and throughout the world. Opposer operates a web site

at <https://wayne.com/en/products/helix-fuel-dispenser/> that describes in greater detail its use of Opposer's Mark.

5. Upon information and belief, SunPower Corporation ("Applicant") is a Delaware corporation with an address at 77 Rio Robles, San Jose, CA 95134.

6. Upon information and belief, and according to its web site at <http://us.sunpower.com>, Applicant operates in the energy industry, including in renewable energy.

7. Upon information and belief, Applicant markets and sells home, commercial, and utility-scale solar-energy products to homeowners, businesses, governments, and educational institutions.

8. Upon information and belief, Applicant's products are sold directly and through distributors. Its existing and target customers include retail operations, as well as fueling-station owners and operators.

9. Applicant seeks to register the mark HELIX for a commercial solar platform, which is described in its opposed US trademark application Serial No. 86530938 as follows:

Class 6: Mounting systems for solar collectors comprised of structural supports and mounting rails, made of metal, for rooftop stabilization, solar collector supports made of metal, and clamps made of metal: solar panel mounts made of metal

Class 9: Photovoltaic cells; modules, namely, photovoltaic modules and solar cell modules; panels, namely, photovoltaic panels and solar cell panels; solar batteries;

solar cells; solar concentrators; photovoltaic solar-thermal hybrid modules; electronic sensors for measuring solar radiation; apparatus for converting electronic radiation to electrical energy, namely, photovoltaic roofing members and photovoltaic cladding panels; silicon wafers; solar wafers; inverters; photovoltaic inverters; solar inverters; converters; photovoltaic converters; solar energy converters; photovoltaic panel mounting system, comprised of solar panels, connectors, mounting rails, and a mounting structure, for use in providing heating and cooling load reduction and generating electricity, all sold as a unit; Power electronics, namely, power conditioners, power optimizers, voltage regulators

Class 19: Roofing, not of metal, incorporating solar cells; mounting systems for solar collectors comprised of structural supports, attachment features, and mounting rails, not of metal, for rooftop stabilization and beautification, solar collector supports not of metal, and clamps, not of metal; solar panel rails not of metal for rooftop mounting.

Further information on Applicant's commercial solar platform can be found at:

<http://us.sunpower.com/commercial-solar-energy-system-helix/>.

10. Applicant's U.S. Application Serial No. 86530938 was filed on February 11, 2015, under Section 1(b) of the U.S. Trademark Act ("Applicant's Mark" or "Applicant's Application"). Upon information and belief, proof of use has not yet been filed in support of Applicant's Application.

11. Opposer will be damaged by registration of Applicant's Mark and, thus, opposes Applicant's Application to register the HELIX Mark in the U.S. on the grounds set forth below.

COUNT I

Likelihood of Confusion

15 U.S.C. §§1052(d) and 1125(a)

12. Applicant re-alleges and incorporates herein by reference Paragraphs 11 above as if fully set forth herein.

13. Opposer's filing date for and date of first use of Opposer's Mark in the U.S. are prior to any filing date for or any use by Applicant of Applicant's Mark in the U.S.

14. Opposer's Mark is used in connection with goods marketed in and sold to distributors and end-user customers in the high-volume retail and convenience sectors and the energy industry. These are among the same customers to which Applicant does or will market and sell its products under Applicant's Mark. Since Opposer and Applicant will market and sell products under the identical mark to the same or similar customers and end users, through the same channels of trade, it is highly likely that confusion will occur between the two marks at issue.

15. Since Applicant's Mark is identical to Opposer's Mark, it is likely that when Applicant's Mark is used for the goods set forth in Applicant's Application, it will deceive customers and potential customers of Applicant's goods and Opposer's goods into erroneously believing that there is some relationship between Opposer and Applicant, or that Opposer has

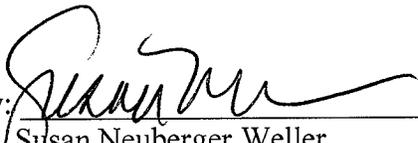
authorized, sponsored, or licensed Applicant's use of Opposer's Mark in violation of 15 U.S.C. § 1052(d).

16. Registration of Applicant's Mark will damage Opposer since such registration will give color of exclusive statutory rights to Applicant in the mark HELIX in derogation and violation of the prior and superior federal rights of Opposer.

WHEREFORE, Opposer Wayne Fueling Systems LLC believes that it will be damaged by the registration of U.S. Application Serial No. 86530938 for the mark HELIX in Classes 6, 9, and 19 and, therefore, respectfully requests that the Trademark Trial and Appeal Board sustain the opposition and refuse registration of Applicant's Mark under 15 U.S.C. §§1052(d) and 1125(a).

Respectfully submitted,

WAYNE FUELING SYSTEMS LLC

By: 
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Attorney for Opposer
Wayne Fueling Systems LLC

Dated: February 29, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served by U.S. first class mail, postage prepaid, on this 29th day of February, 2016 on the following:

*Patrick j. Gallagher
Fulbright & Jaworksi LLP
98 san Jacinto Blvd Suite 1100
Austin, TX 78701-4255*

Attorneys of record for Applicant

_____/Shelly Gause/_____
Shelly Gause

EXHIBIT A

United States of America
United States Patent and Trademark Office

HELIX

Reg. No. 4,286,468

Registered Feb. 5, 2013

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

DRESSER, INC. (DELAWARE CORPORATION)
15455 DALLAS PARKWAY, SUITE 1100
ADDISON, TX 75001

FOR: FUEL DISPENSERS AND ELECTRONIC PAYMENT TERMINALS FOR USE WITH
FUEL DISPENSERS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 6-20-2012; IN COMMERCE 6-20-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-076,923, FILED 7-2-2010.

FRANK LATTUCA, EXAMINING ATTORNEY



Sean Street Lee
Acting Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.