

"Express Mail" mailing label number EL457103547US

Date of Deposit: October 17, 2002

Our File Ref.: 10710/146

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

In The Matter of:                   Application Serial No. 75/831,328

Trademark:                           Miscellaneous Design

Goods:                               electric power tools, namely, drills and screwdrivers, sold  
in retail stores, through internet retailers, catalog  
distributors, industrial and construction distributors, and in  
hardware and home improvement centers

Published:                           September 17, 2002

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Ryobi Technologies, Inc.,                    )  
  )  
  Opposer,                                    )  
  )  
v.    )  
  )  
Milwaukee Electric Tool Corporation,    )  
  )  
  Applicant.                                    )

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Opposition No. *154065*

*Contains missing  
page 3*

**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
BOX TTAB FEE  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Ryobi Technologies, Inc., a Delaware corporation having its principal place of  
business in Anderson, South Carolina ("Opposer"), believes that it will be damaged by  
the registration of the miscellaneous design, Serial No. 75/831,328 ("Applicant's  
Design"), applied for by Milwaukee Electric Tool Corporation, with its principal place of

business in Brookfield, Wisconsin ("Applicant"), and hereby opposes said application for registration.

As grounds for the Opposition, Opposer states as follows:

1. Opposer, directly and through related companies, has been engaged in the business of marketing and selling electric power tools and related goods in interstate commerce. Opposer markets and sells electric power tools in various colors, including a red-and-black color scheme.
2. Upon information and belief, Applicant also is engaged in the business of marketing and selling electric power tools and related goods in interstate commerce.
3. Opposer and Applicant are competitors with respect to the marketing and sale of electric power tools and related goods.
4. Applicant has applied to register Applicant's Design, a decorative and ornamental red, grey, and black color scheme, as a trademark for "electric power tools, namely, drills and screwdrivers, sold in retail stores, through internet retailers, catalog distributors, industrial and construction distributors, and in hardware and home improvement centers." This application was given Serial No. 75/831,328.
5. A number of other entities, including Opposer, have used and are using similar decorative and ornamental red-and-black color schemes for electric power tools and related goods. Like Applicant's Design, these other designs have been used and are used in a decorative manner covering the surface of the electric power tools and the related goods. As a result of this widespread use of such decorative designs, the consuming public perceives Applicant's Design merely as a decorative or ornamental feature of the goods and not as an indicator of the source of the goods. Thus, Applicant's

Design does not function as a mark as required under Sections 1, 2 and 45 of the Lanham Act, 15 U.S.C. §§ 1051, 1052 and 1127.

6. Moreover, even if Applicant's Design was capable of functioning as a trademark, Applicant's evidence submitted in support of its request for registration under Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f), is insufficient. Applicant's Design has not been used exclusively, and has not become distinctive of the Applicant's goods in commerce.

7. Registration of Applicant's Design would provide Applicant with prima facie evidence of an exclusive right to use Applicant's Design in commerce on or in connection with the applied-for goods. Consequently, Opposer will be seriously damaged by registration of Applicant's Design because a registration could be used to inhibit and interfere with Opposer's right to use a red-and-black color scheme in connection with power tools or other goods related to those identified in Application Serial No. 75/831,328.

WHEREFORE, Opposer, Ryobi Technologies, Inc., prays that its Opposition be sustained and that Application Serial No. 75/831,328 be denied registration.

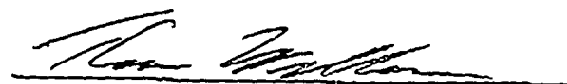
The filing fee for this Opposition, in the amount of three hundred dollars (\$300.00), is enclosed. This document is submitted in duplicate.

Respectfully submitted,

Ryobi Technologies, Inc.

Dated: October 17, 2002

By:



Jerome Gilson, Esq.

Jack C. Berenzweig, Esq.

Nanette M. Norton, Esq.

Thomas M. Williams, Esq.

BRINKS HOFER GILSON & LIONE

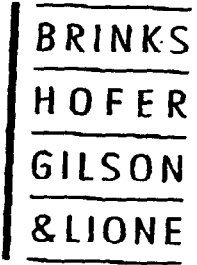
P. O. Box 10395

Chicago, Illinois 60611

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Its Attorneys

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312-321-4717  
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The Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

A PROFESSIONAL CORPORATION  
INTELLECTUAL PROPERTY ATTORNEYS

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Re: **Ryobi Technologies, Inc. v. Milwaukee Electric Tool Corporation**  
Mark: **Miscellaneous Design**  
Serial No.: **75/831,328**  
Our Case No.: **10710/146**

SAN JOSE, CA  
INDIANAPOLIS, IN  
ANN ARBOR, MI  
ARLINGTON, VA

Dear Sir/Madam:

Enclosed for filing is the following document:

1. Notice of Opposition (in dup.);
2. Filing fee in the amount of \$300.00.

The Assistant Commissioner is hereby authorized to charge payment of any additional filing fees required to Deposit Account No. 23-1925. A duplicate copy of this sheet is enclosed.

If you have any questions, please contact the undersigned at the above telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas M. Williams', written over a horizontal line.

Thomas M. Williams

TMW/jlc  
Enclosures

Applicant: Ryobi Technologies, Inc. v. Milwaukee  
Electric Tool Corporation  
Serial No.: 75/831,328  
Client/Matter: 10710/146  
Items Mailed: Transmittal Letter (in dup.), Notice of  
Opposition (in dup.), check for \$300, and return post card.  
Date of Mailing: October 17, 2002

EL457103547US

Case No. 10710/146  
Applicant Ryobi Technologies, Inc.  
v. Milwaukee Electric Tool Corp.

Director of The United States Patent & Trademark Office  
Washington, D.C. 20231

Please acknowledge receipt of the below-identified:

Serial No.: 75/831,328  
Transmittal Letter (in Dup.), Notice of Opposition (in dup.),  
check for \$300, and return post card.

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By: Thomas M. Williams

Date of Mailing: October 17, 2002

**GILSON & LIONE**

300,00

INVOICE NO.	INVOICE DATE	DISB. CODE	INVOICE AMOUNT	ACCOUNT	DESCRIPTION
34571	10/16/02	41	300.00	10710 00146	FILING FEE FOR NOTICE OF OPPOSITION
REMITTANCE ADVICE THOMAS M. WILLIAMS →			300.00	35	

**BRINKS HOFER  
GILSON & LIONE**

A PROFESSIONAL CORPORATION  
NBC TOWER

455 NORTH CITYFRONT PLAZA, DRIVE, SUITE 3600  
CHICAGO, IL 60611-6599  
10/16/02

THE NORTHERN TRUST COMPANY  
CHICAGO, ILLINOIS 60675  
2-15/710

306760

306760

AMOUNT  
\$ \*\*\*\*\*300.00

PAY: THREE HUNDRED AND 00/100 DOLLARS

COMMISSIONER OF PATENTS AND TRADEMARKS

TO THE  
ORDER  
OF

BRINKS HOFER  
GILSON & LIONE

*Mark Yates*

⑈ 306760⑈ ⑆ 1071000152⑆ 0000107042⑈