

TTAB

10/06/2003 TTAB

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

HAGIE MANUFACTURING CO.

Opposer,

Opposition No. \_\_\_\_\_

v.

BAYERISCHE MOTOREN WERKE  
AKTIENGESELLSCHAFT



09-29-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Applicant.

**NOTICE OF OPPOSITION**

TO: Box TTAB, FEE  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Opposer, Hagie Manufacturing Company, an Iowa Corporation, located and doing business at 721 Central Avenue West, Clarion, Iowa 50525, believes that it will be damaged by registration of the mark shown in Serial No. 76/454,861, in International Class 12, and hereby opposes the same.

As grounds for its opposition, Hagie Manufacturing alleges that:

1. The Applicant, Bayerische Motoren Werke Aktiengesellschaft, seeks to register the term XDRIVE in International Class 12 as a trademark for automobiles and structural parts therefor. Applicant's trademark application was filed on September 29, 2002, based on an intent-to-use. | 10/06/2003 SWILSON1 00000051 76454861

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2. Opposer owns and extensively uses the virtually identical mark X-DRIVE. Opposer's mark is currently used on agricultural vehicles and structural parts therefor.

3. Opposer is the owner of the following U.S. Trademark application for its X-DRIVE mark: U.S. Trademark Application No. 76/473,526, for the mark X-DRIVE,

10/02/2002 10:00:00 AM  
for use in association with agricultural machines, namely, fertilizer applicators, chemical applicators, herbicide applicators, detassellers and hydrostatically driven agricultural vehicles in International Class 7, filed on December 4, 2002, based upon a date of first use of February 1, 2002. A copy of the application is attached hereto as Exhibit A.

4. Opposer has invested substantial resources in connection with the promotion and development of the mark X-DRIVE and the goodwill associated therewith, and it constitutes a valuable asset of Opposer.

5. If Applicant is permitted to use and register its mark for automobile and structural parts therefor, confusion in trade, resulting in damage and injury to Opposer, would be caused and would result by the use of a virtually identical mark on closely similar, related goods of both Applicant and Opposer. Persons familiar with Opposer's use of the mark would be likely to buy Applicant's goods as and for goods offered by Opposer. Furthermore, any defect, objection or fault done with Applicant's goods, marketed under its mark, would necessarily reflect upon and seriously injure the reputation of Opposer in connection with the goods.

6. If Applicant is granted the registration herein opposed, it would, thereby, obtain at least a prima facie exclusive right to its virtually identical mark, in direct conflict with the Opposer's prior rights, based on Opposer's prior use. Such a conflicting registration would be a source of damage and injury to the Opposer.

WHEREFORE, the Opposer prays that the Application, Serial No. 76/454,861, be rejected, that no notice of allowance or registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer. Opposer hereby gives notice that,

after hearing and any appeal on this Opposition proceeding, it will rely on its exhibit annexed to this Notice of Opposition as evidence in support of this Notice of Opposition.

The filing fee in this opposition, in the amount of \$300.00, is enclosed.

Opposer hereby appoints Brett J. Trout, Esquire, having a principal place of business at 300 S.W. 5th Street, Suite 222, Des Moines, Iowa 50309, to act as attorney for Opposer herein, with full power to prosecute said opposition, to transact all relative business in the United States Patent and Trademark Office and in the United States Courts, and to receive all official communication in connection with this opposition.

Respectfully submitted,

BRETT J. TROUT, P.C.

By 

Brett J. Trout

Attorney for Opposer  
300 S.W. 5th, Suite 222  
Des Moines, IA 50309  
(515) 280-1939

Dated: 9/26/03

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CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on this 26 day of September 2003, with adequate postage affixed thereto.



PTO Form 1478 (Rev 9/98)  
OMB Control #0651-0009 (Exp. 08/31/2004)

**\*Trademark/Service Mark Application\***

**\* To the Commissioner for Trademarks \***

<DOCUMENT INFORMATION>  
<TRADEMARK/SERVICEMARK APPLICATION>  
<VERSION 1.22>

<APPLICANT INFORMATION>  
<NAME> Hagie Manufacturing Company  
<STREET> 721 Central Avenue West  
<CITY> Clarion  
<STATE> IA  
<COUNTRY> USA  
<ZIP/POSTAL CODE> 50525  
<TELEPHONE NUMBER> 515-532-2861  
<FAX NUMBER> 515-532-3553

<APPLICANT ENTITY INFORMATION>  
<CORPORATION: STATE/COUNTRY OF INCORPORATION> Iowa

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> X-DRIVE

<TYPED FORM> Yes  
~ Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended). ~

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<USE IN COMMERCE: SECTION 1(a)> Yes  
~ Applicant is using or is using through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. §1051(a), as amended). Applicant attaches one SPECIMEN for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services. ~

<SPECIMEN DESCRIPTION> Brochure  
<INTERNATIONAL CLASS NUMBER> 031  
<LISTING OF GOODS AND/OR SERVICES> Agricultural equipment.  
<FIRST USE ANYWHERE DATE> 02/01/2002  
<FIRST USE IN COMMERCE DATE> 02/01/2002

<ATTORNEY INFORMATION>

<NAME> Brett J. Trout  
<STREET> 300 S.W. 5th, Suite 222  
<CITY> Des Moines

EXHIBIT "A"

<STATE> IA  
<COUNTRY> USA  
<ZIP/POSTAL CODE> 50309  
<E-MAIL ADDRESS> trout@bretttrout.com  
<AUTHORIZE E-MAIL COMMUNICATION> Yes  
<FIRM NAME> Brett J. Trout, P.C.  
<TELEPHONE NUMBER> 515-280-1939  
<FAX NUMBER> 515-883-2983

<FEE INFORMATION>  
<TOTAL FEES PAID> 325.00  
<NUMBER OF CLASSES PAID> 1  
<NUMBER OF CLASSES> 1

<DEPOSIT ACCOUNT INFORMATION>

<DEPOSIT ACCOUNT NUMBER> 501305

~ The U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to the deposit account listed above. ~

<NAME OF PERSON AUTHORIZING ACCOUNT ACTIVITY> Brett J. Trout

<COMPANY/FIRM NAME> Brett J. Trout, P.C.

<LAW OFFICE INFORMATION>

~ The USPTO is authorized to communicate with the applicant's attorney at the below e-mail address ~

<E-MAIL ADDRESS FOR CORRESPONDENCE> trout@bretttrout.com

<SIGNATURE AND OTHER INFORMATION>

~ **PTO-Application Declaration:** The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. ~

<SIGNATURE>  \* please sign here \*

<DATE> 12/02/02

<NAME> Brett J. Trout

<TITLE> Attorney