

ESTTA Tracking number: **ESTTA50598**

Filing date: **10/26/2005**

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

<b>Name</b>	JH Biotech Inc.
<b>Granted to Date of previous extension</b>	11/02/2005
<b>Address</b>	4951 Olivas Park Drive Ventura, CA 93003 UNITED STATES

<b>Correspondence information</b>	Ralph D. Chabot Chabot & Associates 2310 East Ponderosa Drive, Suite 4 Camarillo, CA 93010-4747 UNITED STATES rdc@chabotlaw.com Phone:805-388-5028
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#### Applicant Information

<b>Application No</b>	76483358	<b>Publication date</b>	07/05/2005
<b>Opposition Filing Date</b>	10/26/2005	<b>Opposition Period Ends</b>	11/02/2005
<b>International Registration No.</b>	NONE	<b>International Registration Date</b>	NONE

<b>Applicant</b>	Kure Engineering Ltd. 1-16-13, Higashiyama, Meguro-ku Tokyo, JAPAN
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**Goods/Services Affected by Opposition**

Class 005. Opposed goods and services in the class: GENERAL PURPOSE GERMICIDES AND FUNGICIDES FOR DOMESTIC USE
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<b>Attachments</b>	Notice of Opposition.pdf ( 3 pages )
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<b>Signature</b>	/rdc/
<b>Name</b>	Ralph D. Chabot
<b>Date</b>	10/26/2005

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

In the matter of trademark application Serial No. 76/483358  
Filed: January 21, 2003  
For the mark: KURE  
Published in the Official Gazette on July 5, 2005

JH Biotech, Inc.	)	
	)	
Opposer,	)	
	)	Opposition No: _____
v.	)	
	)	
Kure Engineering Ltd.	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

In the matter of the application for registration of the mark KURE, Serial No. 76/483358, Opposer JH Biotech, Inc. believes it will be damaged by such registration and opposes the application for a portion of the goods described in Class 005, namely “general purpose germicides and fungicides for domestic use”.

As grounds for opposition, JHB alleges:

1. JH Biotech, Inc., is a corporation organized and existing under the laws of the State of Delaware located and doing business at 4951 Olivas Park Drive, Ventura, California 93006.
2. Opposer has a pending application for the mark MILDEW CURE, Serial No. 78/342315 filed December 17, 2003 in Class 005 for “fungicide for agriculture, horticulture and garden uses. This application is based on an actual use (1A) filing basis with the first use in commerce at least as early as September 12, 2003.
3. During substantive examination for Opposer’s MILDEW CURE application, Applicant’s KURE application was cited as a possible basis for rejecting Opposer’s application on grounds of likelihood of confusion. The MILDEW CURE application is currently suspended.

4. Applicant's application was filed with the United States Patent and Trademark Office (USPTO) January 21, 2003. The original filing basis was based upon both an intent-to-use (1B) and foreign application (44D) that was filed July 23, 2002.

5. On November 21, 2003, Applicant's Japanese registration issued and Applicant submitted evidence of said registration which was received by the USPTO April 5, 2004.

6. Applicant mailed correspondence to the USPTO September 30, 2004 authorizing the Trademark attorney to delete the Section 1(B) filing basis upon acceptance of the Japanese registration satisfying Section 44(D) requirements.

7. In the same correspondence mailed to the USPTO September 30, 2004, a translation was included of the Japanese registration. The entire translation for the description of goods in Class 005 is as follows: "Deodorants for automobile and room; All other deodorants (excluding those for personal use); Antiseptics; All other pharmaceutical, veterinary and sanitary preparations".

8. By Examiner's Amendment filed November 29, 2004, the Section 1(B) basis was deleted and the current filing basis for Opposer's application is 44(E) i.e. the Japanese registration and description of goods contained therein.

9. The pending description of goods for Applicant's mark in Class 005 is: "General purpose germicides and fungicides for domestic use; fumigants for domestic use and commercial use; antiseptics; air deodorants, room deodorants, car deodorants, household deodorants, and all purpose deodorizing preparations for industrial use".

10. The submitted translation for the Japanese registration mailed September 30, 2004 to the USPTO lists as the description of goods in Class 5: "Deodorants for automobile and room; all other deodorants (excluding those for personal use); antiseptics; all other pharmaceutical, veterinary and sanitary preparations".

11. Upon information and belief, Applicant does not sell a fungicide product using the KURE mark for agriculture, horticulture or garden uses.

12. Upon information and belief, Applicant does not have a bona fide intention to sell a fungicide in the United States for agriculture, horticulture or garden uses.

13. Applicant's only basis for maintaining "general purpose germicides and fungicides for domestic use" is an interpretation of whether these descriptions are inclusive and within the meaning of "sanitary preparations" present in the Japanese registration.

14. Fungicide products used for agriculture, horticulture or garden uses is different than fungicide products used as sanitary preparations.

15. Upon information and belief, the Japanese registration restricts fungicides to sanitary preparations. To permit Applicant to receive a registration that covers all fungicide products, including agricultural, is a broadening of Applicant's description of goods. The pending US application can be no broader than the description of goods in the referenced foreign registration.


16. If Applicant's description of goods for Class 005 is not amended to delete "general purpose germicides and fungicides for domestic use", Opposer's application for MILDEW CURE, in view of the Examiner's suspension, will not register causing harm to Opposer.

17. Upon information and belief, Applicant has not yet sold any product in the United States for goods in Class 005.

WHEREFORE, The Opposer prays that the application Serial No. 78/254862 be amended to either: a) delete "general purpose germicides and fungicides for domestic use" from Class 005; or, b) to amend the description of goods to: "sanitary preparations, namely germicides and fungicides for domestic use".

**Dated: October 26, 2005**

Respectfully submitted,

By:   
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Ralph D. Chabot  
Attorney for Opposer  
JH Biotech, Inc.