

CERTIFICATE OF MAILING

I hereby certify that this paper, together with all enclosures identified herein, are being deposited with the United States Postal Service as first class mail, addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on the date indicated below.

February 16, 2006  
Date

*Dana A. Lozon*  
Dana A. Lozon

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

Applicant : Charlotte Pipe and Foundry Company  
Serial No. : 78/440,179  
Filed : June 23, 2004  
Mark : **CHEMDRAIN**  
Int'l Class : 17  
For : Plastic (CPVC) drain pipe  
Published : October 25, 2005

TTAB

NIBCO Inc., )  
)  
Opposer, )  
)  
v. )  
)  
Charlotte Pipe and Foundry Company, )  
)  
Applicant. )

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

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir:

TRANSMITTAL LETTER

Enclosed please find two copies of a Notice of Opposition to be filed with the Trademark Trial and Appeal Board.



02-21-2006  
U.S. Patent & TMO/c/TM Mail Rpt Dt. #72

Applicant : Charlotte Pipe and Foundry Company  
Serial No. : 78/440,179  
Page : 2

A check for the opposition fee in the amount of Three Hundred Dollars (\$300) is also enclosed. Please charge any additional fees, or credit overpayment, to Deposit Account No. 16-2463. A duplicate copy of this Transmittal Letter is enclosed.

Kindly date stamp and return the enclosed postcard to acknowledge receipt of this request.

Respectfully submitted,

NIBCO INC.

By: Price, Heneveld, Cooper,  
DeWitt & Litton, LLP

February 16, 2006

Date



H. W. Reick, Reg. No. 25 438  
695 Kenmoor S.E.  
P.O. Box 2567  
Grand Rapids, MI 49501  
(616) 949-9610

HWR:dal

TRADE MARK

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

Applicant : Charlotte Pipe and Foundry Company  
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Opposition No. \_\_\_\_\_

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir:

**NOTICE OF OPPOSITION**

Now comes Opposer, NIBCO Inc. (hereinafter "Opposer") and opposes the grant of registration on the Principal Register to Charlotte Pipe and Foundry Company (hereinafter "Applicant") of the above-identified application for the mark **CHEMDRAIN**. As grounds for this Opposition, NIBCO alleges as follows:

**I. PARTIES**

1. Opposer, NIBCO Inc., is a corporation of the state of Indiana having its principal place of business at 1516 Middlebury Street, Elkhart, IN 46515.

2. On information and belief, Applicant, Charlotte Pipe and Foundry Company, is a corporation of the state of North Carolina, having its principal place of business at 2109 Randolph Road, Charlotte, NC 28207.

## II. BACKGROUND FACTS

3. Opposer is, and for many years has been, engaged in the manufacture and sale of plastic pipes, fittings, and valves which are sold throughout the United States.

4. Opposer, and its predecessors, have used CHEM-formative trademarks in connection with plastic pipes, fittings, and valves since as early as 1958.

5. Opposer is the exclusive owner of federal registrations and pending applications for CHEM-formative marks which are valid and existing and are in full force and effect, as follows:

<b>Trademark</b>	<b>Reg./App. No.</b>	<b>Reg. Date</b>
CHEM-COCK	693,704	03/01/60
CHEMTROL	792,080	07/06/65
CHEM-AIRE	1,815,791	01/11/94
CHEM-PURE	1,818,475	01/25/94
CHEM-PURE	1,858,624	10/18/94
CHEM-AIRE BLUE	78/617,638	04/27/05
CHEMAIRE BLUE	78/632,339	05/18/05

6. As a result of its extensive use and/or registration of its CHEM-formative marks, these Opposer's marks have acquired valuable goodwill, are widely and favorably known to the public throughout the United States, and their common characteristic is recognized by consumers, numerous trades, and the public at large as identifying Opposer and distinguishing Opposer's products from those of others.

7. As a result of Opposer's extensive use of its above-identified CHEM-formative marks, it has developed valuable goodwill and recognition in the formative "CHEM" prefix for identifying itself as a source of plastic pipes, pipe fittings, and valves under the "CHEM" prefix family of trademarks.

8. Opposer promotes its "CHEM" family of marks together in its promotional material for its products.

### III. LIKELIHOOD OF CONFUSION

9. On information and belief, the goods Applicant sells under the **CHEMDRAIN** mark are the same plastic pipes sold by Opposer for use by consumers, including those in the chemical industry for uses in drains.

10. On information and belief, the goods Applicant sells under the **CHEMDRAIN** mark will be offered through the same or similar channels of trade as Opposer's goods sold under Opposer's CHEM-formative marks.

11. The mark **CHEMDRAIN** used in connection with plastic (CPVC) drain pipes (International Class 17) by Applicant is likely to be confused with Opposer's CHEM-formative marks used in connection with the same plastic pipes and fittings used for drains.

12. Opposer will be damaged by said likelihood of confusion.

### IV. CHEMDRAIN IS MERELY DESCRIPTIVE

13. The allegations of Paragraphs 1-12 are incorporated herein by reference.

14. Alternatively, Applicant's **CHEMDRAIN** term is merely descriptive, is not distinctive, and is incapable of acquiring distinctiveness as representing a source of or a particular supplier of chemical drain pipes.

15. The term **CHEMDRAIN** sought to be registered by Applicant is de facto functional.

16. The term **CHEMDRAIN** sought to be registered by Applicant is de jure functional.

17. The registration of the term **CHEMDRAIN** by Applicant would create the improper perception and understanding among the public that Applicant has trademark rights in the **CHEMDRAIN** term.

18. The registration of the term **CHEMDRAIN** by Applicant would give Applicant the ability to object to and call into question Opposer's and Opposer's customers' ability to sell competing products in packages which include the **CHEMDRAIN** product designation.

19. The registration of Applicant's Mark will cause damage to Opposer.

**V. PRAYER FOR RELIEF**

WHEREFORE, Opposer prays that this Opposition be sustained and that registration of Applicant's **CHEMDRAIN** mark be refused.

Respectfully submitted,

NIBCO INC.

By: Price, Heneveld, Cooper,  
DeWitt & Litton, LLP

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