

ESTTA Tracking number: **ESTTA271880**

Filing date: **03/13/2009**

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	Pyrotek E3 LLC
Granted to Date of previous extension	04/29/2009
Address	1108 Highway A1A N.Suite 102 Ponte Vedra, FL 32082 UNITED STATES

Correspondence information	Pyrotek E3 LLC 1108 Highway A1A N.Suite 102 Ponte Vedra, FL 32082 UNITED STATES chris.chan@sutherland.com, jason.prine@sutherland.com, greg.dillard@sutherland.com, james.johnson@sutherland.com Phone:404-853-8049
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**Applicant Information**

Application No	77530333	Publication date	12/30/2008
Opposition Filing Date	03/13/2009	Opposition Period Ends	04/29/2009
Applicant	Environmentally Efficient Energy Fuels, Inc. P.O. Box 844 Cave Junction, OR 97523 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 001. All goods and services in the class are opposed, namely: Chemical additives for use with internal combustion engine fuels
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2882663	Application Date	03/12/2003
Registration Date	09/07/2004	Foreign Priority Date	NONE
Word Mark	E3		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 007. First use: First Use: 2003/06/01 First Use In Commerce: 2004/02/10 spark plugs

Attachments	Notice of Opposition to E3FA.pdf ( 5 pages )(22903 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	/Jason M. Prine/
Name	Pyrotek E3 LLC
Date	03/13/2009

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

In the Matter of Application Serial No. 77/530,333  
Filed: July 24, 2008  
For: E3FA  
Published in the Official Gazette on December 30, 2008

Pyrotek E3, LLC,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
Environmentally Efficient Energy Fuels, Inc.,	)	
	)	
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Pyrotek E3, a limited liability company organized and existing under the laws of the State of Florida, believes that it will be damaged by registration of the mark shown in the application having Serial Number 77/530,333 in International Class 1 (for chemical additives for use with internal combustion engine fuels).

This Notice of Opposition has been timely filed, as Opposer has been granted a thirty-day extension of time in which to oppose, and a sixty-day extension of time for good cause, which expires on April 28, 2009.

As grounds of opposition, Opposer alleges that:

1. Applicant seeks to register the mark E3FA in association with the following goods: Chemical additives for use with internal combustion engine fuels in International Class

1. Opposer's Application No. Serial Number 77/530,333 was filed under Section 1(b) of the Lanham Act and includes no evidence of use of the mark in U.S. commerce.

2. Opposer adopted the mark E3® in 2003 and has continuously used the mark since that time.

3. Opposer has, since at least 2003, used the mark E3 on spark plugs.

4. Opposer's mark E3 was registered on September 7, 2004 for "spark plugs" and accorded Registration No. 2,882,663. A copy of Registration No. 2,882,663 is attached hereto and incorporated herein.

5. Opposer's Registration No. 2,882,663 recites a first use date of June 1, 2003.

6. Opposer's Registration No. 2,882,663 is valid, subsisting, and is evidence of Opposer's exclusive right to use the E3 mark and to prevent registration or use of confusingly similar marks.

7. Opposer has superior rights to Applicant because Opposer's usage and registration of the E3 mark substantially predates Applicant's filing of the opposed intent to use application in the U.S.

8. Opposer has distributed E3 branded spark plugs throughout the United States. As a result, Opposer has developed extremely valuable goodwill in respect of its E3 trademark by virtue of its efforts, the expenditure of substantial sums for advertising, and Opposer's longstanding and continuous use of the mark.

9. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant has any constructive or actual right under U.S. law in the purported mark E3FA prior to the filing date of the application opposed herein.

10. Applicant's purported mark E3FA is substantially similar to Opposer's registered mark E3 for spark plugs and Opposer's use of E3 for spark plugs.

11. If Applicant is granted the registration herein opposed, it would thereby gain at least a *prima facie* exclusive right to the use of its purported E3FA mark.

12. When the purported mark E3FA is applied to related goods in the same channels of trade as those sold by the Opposer, it so resembles Opposer's mark as to be likely to create consumer confusion, and will lead to deception or mistake as to the origin of Applicant's goods bearing Applicant's purported mark.

13. Concurrent registration of the purported E3FA mark by Applicant in association with the opposed goods would result in irreparable damage to Opposer as consumers would be likely to believe, mistakenly, that Applicant's registered mark is affiliated with or approved by Opposer.

14. If Applicant is permitted to obtain registration of the purported E3FA mark in association with the opposed goods, confusion within the meaning of Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) is likely to result, to the detriment of Opposer.

15. The bona fides of Applicant's intent-to-use the purported E3FA mark in association with all goods recited in the application are not apparent from the materials of record in Application Serial No. 77/530,333. Opposer therefore challenges the same and leaves Applicant to its proofs regarding the nature and sufficiency of its intent-to-use the purported E3FA mark in the U.S.

WHEREFORE, the Opposer prays that the application having Serial No. 77/530,333 be refused. Any fees should be charged to the Deposit Account of Sutherland Asbill & Brennan, Account No. 19-5029.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

By: /s/ James H. Johnson  
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*Attorneys for Opposer  
Pyrotek E3, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of Notice of Opposition was deposited as First Class mail with the United States Postal Service on March 13, 2009, addressed to the following recipients:

*Applicant:*

Environmentally Efficient Energy Fuels, Inc.  
P.O. Box 844  
Cave Junction, OR 97523

/s/ Jason M. Prine

Jason M. Prine  
Counsel for Opposer, Pyrotek E3, LLC