

ESTTA Tracking number: **ESTTA800975**

Filing date: **02/13/2017**

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	Dow AgroSciences LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	9330 Zionsville Road Indianapolis, IN 46268 UNITED STATES		

Attorney information	Julia Spoor Gard; Caitlin R. Byczko Barnes & Thornburg LLP 11 S. Meridian St. Indianapolis, IN 46204 UNITED STATES jgard@btlaw.com, cbyczko@btlaw.com, tmindocket@btlaw.com		
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Applicant Information

Application No	87149200	Publication date	01/17/2017
Opposition Filing Date	02/13/2017	Opposition Period Ends	02/16/2017
Applicant	E.C. Grow, Inc. P.O. Box 837 Eau Claire, WI 54702 UNITED STATES		

Goods/Services Affected by Opposition

Class 001. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Fertilizers; Chemical fertilizers
Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pesticides; Pesticides for for home, garden and lawn use

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Other	Likelihood of confusion based on client's prior common law rights

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4593001	Application Date	03/12/2014
Registration Date	08/26/2014	Foreign Priority Date	NONE
Word Mark	SIMPLICITY		

Design Mark	SIMPLICITY
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2014/01/20 First Use In Commerce: 2014/01/20 Cereal herbicides used in the agricultural market

Related Proceedings	N/A
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Attachments	86218443#TMSN.png(bytes) DOW Notice of Opposition.pdf(17756 bytes) Dow Exhibit A1.pdf(90140 bytes) Dow Exhibit A2.pdf(875713 bytes)
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Signature	/cbyczko/
Name	Julia Spoor Gard; Caitlin R. Byczko
Date	02/13/2017

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

Dow Agrosciences, LLC)	
)	
Opposer,)	In the matter of trademark application
)	Serial No. 87149200
)	Published in the Official Gazette January 17, 2017
)	
v.)	
)	
)	
E.C. Grow, Inc.)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Dow Agrosciences, LLC, a Limited Liability Company organized under the laws of Delaware (Opposer) believes that it will be damaged by the registration of the mark SIMPLIFY shown in Serial No. 87149200, and hereby opposes registration of this mark. The grounds for the opposition are as follows:

1. Opposer is a well-known agricultural chemical company which specializes in the research, development, and manufacture of, among other things, herbicides, pesticides, and fertilizers for both the agricultural market as well as for home, garden and lawn use (“Opposer’s Goods”).

2. Opposer has sold herbicides throughout the United States under the trademark SIMPLICITY (“Opposer’s Mark”) since at least as early as January 20, 2014.

3. Opposer is the owner of U.S. Registration No. 4593001 for the mark SIMPLICITY. This registration claims “cereal herbicides used in the agricultural market.” This registration issued from use-based application filed on March 12, 2014, and claims a date of first use of January 20, 2014. A printout from TSDR, evidencing the current status and ownership of the registration, is attached as **Exhibit A**.

4. Opposer has spent significant amounts of time and money promoting and advertising SIMPLICITY as a trademark throughout the United States since at least as early as 2014. As a result of this long and substantially exclusive use, SIMPLICITY has acquired distinctiveness in the minds of relevant consumers.

5. Applicant seeks to register the trademark SIMPLIFY, as evidenced by Application Serial No. 87149200, filed August 24, 2016, and published in the Official Gazette on January 17, 2017 (“Applicant’s Mark”).

6. The goods claimed in Applicant’s application, “fertilizers; chemical fertilizers” in class 1 and “pesticides; pesticides for home, garden and lawn use” in class 5,” (“Applicant’s Goods”) are similar to Opposer’s Goods.

7. Upon information and belief, relevant purchasers would expect Applicant’s Goods to come from the same or a similar source as Opposer’s Goods.

8. Upon information and belief, Applicant’s Goods are likely to be sold to the same purchasers and through the same channels of trade as Opposer’s Goods.

9. Applicant’s mark is confusingly similar to Opposer’s Mark in sight, sound, and meaning.

10. Because of the similarities in the marks and in the goods, Applicant's Mark is likely to cause confusion, or to cause mistake or to deceive because relevant purchasers familiar with Opposer's Mark and with Opposer's Goods are likely to believe that Applicant's Goods are in some way affiliated with Opposer or related to Opposer so as to create a likelihood of confusion as to the source of Applicant's Goods.

11. Upon information and belief, Applicant has no rights in Applicant's Mark prior to Opposer's rights in Opposer's Mark.

12. Opposer would be injured by the granting to Applicant of the registration sought because Applicant's Mark so resembles Opposer's Mark as to be likely, when used on Applicant's Goods, to cause confusion, or to cause mistake, or to deceive, to falsely suggest a connection with Opposer, and to damage Opposer's goodwill in Opposer's Mark.

WHEREFORE, Opposer believes that it will be damaged by the registration of SIMPLIFY to Applicant, and prays that the registration be denied.

Respectfully submitted,

/s/ Julia Spoor Gard

Date: February 13, 2017

Julia Spoor Gard
Caitlin R. Byczko
BARNES & THORNBURG
11 South Meridian Street
Indianapolis, Indiana 46204
Telephone: (317) 236-1313
Attorneys for Opposer
Dow AgroSciences, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Notice of Opposition was filed with the Trademark Trial and Appeal Board via ESTTA on **February 13, 2017**.

/s/ Caitlin R. Byczko

United States of America
United States Patent and Trademark Office

SIMPLICITY

Reg. No. 4,593,001

DOW AGROSCIENCES LLC (DELAWARE LIMITED LIABILITY COMPANY)
9330 ZIONSVILLE ROAD
INDIANAPOLIS, IN 46268

Registered Aug. 26, 2014

Int. Cl.: 5

FOR: CEREAL HERBICIDES USED IN THE AGRICULTURAL MARKET, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

TRADEMARK

FIRST USE 1-20-2014; IN COMMERCE 1-20-2014.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 86-218,443, FILED 3-12-2014.

CHRISTOPHER BUONGIORNO, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

The Trademark organization is beta testing a next generation examination system. As a result, there may be instances where Office actions have unexpected formatting or spacing issues. The Office is working on improvements to resolve these issues and appreciates your patience. Please contact us at [TMFeedback](#) if you have comments or issues with the appearance of a particular Office action or its attachments.

STATUS **DOCUMENTS**

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Mark: SIMPLICITY

SIMPLICITY

US Serial Number: 86218443

Application Filing Date: Mar. 12, 2014

US Registration Number: 4593001

Registration Date: Aug. 26, 2014

Register: Principal

Mark Type: Trademark

TM5 Common Status

LIVE/REGISTRATION/Issued and Active

Descriptor:



The trademark application has been registered with the Office

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Aug. 26, 2014

Publication Date: Jun. 10, 2014

Mark Information

Mark Literal Elements: SIMPLICITY

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Cereal herbicides used in the agricultural market

International Class(es): 005 - Primary Class

U.S Class(es): 006, 018, 044, 046, 047

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 20, 2014

Use in Commerce: Jan. 20, 2014

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Ame
Filed ITU: No	Currently ITU: No	Ame
Filed 44D: No	Currently 44D: No	Ame
Filed 44E: No	Currently 44E: No	Ame
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Dow AgroSciences LLC	
Owner Address: 9330 Zionsville Road Indianapolis, INDIANA UNITED STATES 46268	
Legal Entity Type: LIMITED LIABILITY COMPANY	State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: C. Joe Miller **Docket Number:** Atty. Reg. N

Correspondent

Correspondent Name/Address: C. JOE MILLER
DOW AGROSCIENCES LLC
9330 ZIONSVILLE RD
INDIANAPOLIS, INDIANA UNITED STATES 46268-1053

Phone: 317-337-4584 **Fax:** 317-337-4847

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Aug. 26, 2014	REGISTERED-PRINCIPAL REGISTER	
Jun. 10, 2014	PUBLISHED FOR OPPOSITION	
May 21, 2014	NOTICE OF PUBLICATION	
May 02, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 01, 2014	ASSIGNED TO EXAMINER	77299
Mar. 25, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 15, 2014	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Aug. 26, 2014

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