

ESTTA Tracking number: **ESTTA1139149**

Filing date: **06/09/2021**

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	MMT, Inc.
Granted to Date of previous extension	06/09/2021
Address	25 BLODGETT AVENUE PAWTUCKET, RI 02860 UNITED STATES
Attorney information	ALAN F. FEENEY FEENEY IP LAW 235 PROMENADE STREET #141 PROVIDENCE, RI 02908 UNITED STATES Primary Email: Alan@FeeneyLawGroup.com Secondary Email(s): Docketing@FeeneyLawGroup.com, Donald@FeeneyLawGroup.com, JSHyde@FeeneyLawGroup.com 1-401-660-6079
Docket Number	

Applicant Information

Application No.	88900803	Publication date	02/09/2021
Opposition Filing Date	06/09/2021	Opposition Period Ends	06/09/2021
Applicant	Hydro International Limited CLEVEDON HALL ESTATE, VICTORIA ROAD CLEVEDON, BS217RD UNITED KINGDOM		

Goods/Services Affected by Opposition


Class 011. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Apparatus for water supply and sanitary purposes, namely, a stormwater treatment and detention system within the field of bioretention comprised of baffle walls, engineered filter media and plant life; apparatus for sewer network treatment and water treatment, namely, water filter and ground soil percolation systems comprised of baffle walls, engineered filter media and plant life for the purpose of removing contaminants found in stormwater runoff within the field of bioretention; water filtering installations; water filtering apparatus; water purification installations; water sterilisers; water purifying machines; membranes for the filtration of water; cartridge filtration units for treating water; filters made of fibre for water treatment; reverse osmosis water filtration units; water purification, sedimentation and filtration apparatus for clarification, thickening and filtration of water, waste water and industrial water; filters and screens for re-
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removal of solids in water treatment systems; water filtering apparatus for use in screening and separating solid matter and particulates from waste water; apparatus, installations and systems for the management, flow, storage and treatment of water, namely, a bioretention system comprised of baffle walls, engineered filter media and plant life for the purpose of removing contaminants found in storm-water runoff; apparatus, installations and systems for the control and management of water flow, including flow of stormwater, and industrial effluent, namely, a modular, partly-submerged base for use as a water filtering apparatus that contains baffle walls, engineered filter media and plant life; storm-water drainage systems comprised of a modular, partly submerged base for use as a water filtering apparatus that contains containing baffle walls, engineered filter media and plant life; parts, accessories and fittings for all of the aforesaid goods, namely, structural parts for the aforesaid goods, water filtering apparatus in the nature of filtering water and engineered filter media, namely, filtering materials made of engineered coarse and fine sand mixed with organic material such as peat, loam or carbon; apparatus, installations and systems for the management, flow, storage and treatment of water, namely, filtration and infiltration systems, namely, a modular, partly-submerged base comprised of baffle walls in the nature of submergible fiberglass and metal or concrete walls used to direct water flow, engineered filter media and plant life; apparatus, installations and systems for the control and management of water flow, including flow of stormwater, and industrial effluent, namely, a modular, partly-submerged base comprised of baffle walls in the nature of submergible fiberglass walls used to direct water flow, engineered filter media and plant life

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	5280518	Application Date	02/05/2017
Registration Date	09/05/2017	Foreign Priority Date	NONE
Word Mark	STORMTREE		
Design Mark			
Description of Mark	The mark consists of the word "STORMTREE" wherein "STORM" is blue and "TREE" is green and further wherein the "T" in "TREE" merges with brown roots forming a stylized letter "T". The color white represents background and is not claimed as a feature of the mark.		
Goods/Services	Class 011. First use: First Use: 2014/07/12 First Use In Commerce: 2014/07/12 Filtering units for removing sediment and contaminants from storm water influent using a soil media; Lawn sprinkler systems comprising pumps, valves and filters; Storm water filtering units featuring non-metal filtering booms and tendrils used to reduce bacteria and hydrocarbons in standing water; Water filtering apparatus		
U.S. Registration No.	5057487	Application Date	09/10/2015

Registration Date	10/11/2016	Foreign Priority Date	NONE
Word Mark	STORMTREE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2014/07/12 First Use In Commerce: 2014/07/12 External filtering device for use in a local containment area for removing oil and other contaminants from storm drain effluent as it exits storm water systems; Lawn sprinkler systems comprising pumps, valves and filters; Storm water filtering units featuring non-metal filtering booms and tendrils used to reduce bacteria and hydrocarbons in standing water; Water filtering units for removing sediment and contaminants from storm water influent using a soil media use		

Related Proceedings	District Court of Maine brought by MMT, INC. against Hydro International Limited, Case No.: 2:21-cv-00079- JDL
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Attachments	87324886#TMSN.png(bytes) 86753399#TMSN.png(bytes) StormTree Notice of Opposition 6-9-2021.pdf(305625 bytes)
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Signature	/alan f feeney/
Name	ALAN F. FEENEY
Date	06/09/2021

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

MMT, INC.

Opposer,

v.

HYDRO INTERNATIONAL
LIMITED

Applicant.


Opposition No. _____
Serial No. 88/900,803
Mark: STORMSCAPE
Filing Date: May 5, 2020
Publication Date: February 9,
2021

NOTICE OF OPPOSITION

MMT, INC. (d/b/a StormTree), a Rhode Island corporation, located and doing business at 25 Blodgett Avenue, Pawtucket, Rhode Island 02860, (hereinafter called "Opposer"), believes that it will be damaged by the registration of the mark shown in Application Serial No. 88/900,803 in Class 011, filed by HYDRO INTERNATIONAL LIMITED (hereinafter "Applicant") on May 5, 2020, and opposes Application Serial No. 88/900,803.

The grounds for this opposition are as follows:

1. Opposer is engaged in the manufacture and sale in interstate commerce of a biofiltration device that removes sediment, chemical pollutants, and debris from stormwater runoff using patented "tree filtering" technology (U.S. Patent No. 8,333,885 B1, U.S. Patent No. 10,563,392) (the "Products") under the following trademarks which are registered in the U.S. Patent and Trademark Office (the "Marks")

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Date of First Use in Interstate Commerce</u>
	5280518	September 5, 2017	July 12, 2014
StormTree	5057487	October 11, 2016	July 12, 2014

(hereafter collectively referred to as "Opposer's Registered Marks"). The description of the goods and services of Opposers' Marks in International Class 011 are as follows: **Filtering units for removing sediment and contaminants from storm water influent using a soil media**; Lawn sprinkler systems comprising pumps, valves and filters; **Storm water filtering units** featuring non-metal filtering booms and tendrils used to reduce bacteria and hydrocarbons in standing water; **Water filtering apparatus**. Registration of Opposer's Registered Marks is valid, subsisting and conclusive evidence of Opposer's exclusive right to use Opposer's Registered Marks in commerce on the goods specified in said registrations.

2. The Marks have been used continuously in interstate commerce in connection with the Products beginning at least as early as the dates set forth above. All of the Marks are currently registered.

3. Opposer has made substantial investment in advertising and promoting their goods under Opposer's STROMETREE Marks since their initial use. Opposer has used, advertised, promoted and offered Opposer's goods bearing Opposer's STORMTREE Marks to the public through

various channels of trade in commerce, with the result that Opposer's customers have come to know and recognize Opposer's STORMTREE Marks and associate the same with Opposer and/or the goods sold by Opposer.

4. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's STORMTREE marks, on May 5, 2020, Applicant filed an application for registration of the proposed STORMSCAPE trademark in International Class 011 for "Apparatus for water supply and sanitary purposes, namely, a stormwater treatment and detention system within the field of bioretention comprised of baffle walls, engineered filter media and plant life; apparatus for sewer network treatment and water treatment, namely, water filter and ground soil percolation systems comprised of baffle walls, engineered filter media and plant life for the purpose of removing contaminants found in stormwater runoff within the field of bioretention; water filtering installations; water filtering apparatus; water purification installations; water sterilisers; water purifying machines; membranes for the filtration of water cartridge filtration units for treating water; filters made of fibre for water treatment; reverse osmosis water filtration units; water purification, sedimentation and filtration apparatus for clarification, thickening and filtration of water, waste water and industrial water; filters and screens for removal of solids in water treatment systems; water filtering apparatus for use in screening and separating solid matter and particulates from waste water; apparatus, installations and systems for the management, flow, storage and treatment of water, namely, a bioretention system comprised of baffle walls, engineered filter media and plant life for the purpose of removing contaminants found in stormwater runoff; apparatus, installations and systems for the control and management of water flow, including flow of stormwater, and industrial effluent, namely, a modular, partly-submerged base for use as a water filtering apparatus that contains baffle walls, engineered filter media and plant life; stormwater drainage systems comprised of a modular, partly submerged base for use as a water filtering apparatus that contains containing baffle walls, engineered filter media and plant life; parts, accessories and fittings for all of the aforesaid goods, namely, structural parts for the aforesaid goods, water filtering apparatus in the

nature of filtering water and engineered filter media, namely, filtering materials made of engineered coarse and fine sand mixed with organic material such as peat, loam or carbon; apparatus, installations and systems for the management, flow, storage and treatment of water, namely, filtration and infiltration systems, namely, a modular, partly-submerged base comprised of baffle walls in the nature of submergible fiberglass and metal or concrete walls used to direct water flow, engineered filter media and plant life; apparatus, installations and systems for the control and management of water flow, including flow of stormwater, and industrial effluent, namely, a modular, partly-submerged base comprised of baffle walls in the nature of submergible fiberglass walls used to direct water flow, engineered filter media and plant life. Said application was assigned Serial No. 88/900,803, and was published for Opposition in the Official Gazette of February 9, 2021.

5. Applicant's STORMSCAPE mark so resembles Opposer's STROMTREE marks as to be likely, when applied to the goods of Opposer, including Opposer's range of patented products, to cause confusion or mistake or to deceive purchasers resulting in damage and detriment of Opposer and its reputation.

6. Opposer, upon information and belief, avers that its customers are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's proposed goods of Application Serial Number 88/900,803 to be marketed under Applicant's proposed STROMSCAPE mark and misled into believing that such goods emanate from, are licensed by, or are in some way directly or indirectly associated with, approved by or sponsored by Opposer, to the damage and detriment of Opposer and its reputation.

7. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the proposed STORMSCAPE trademark, as set forth in Applicant's Trademark Application Serial No. 88/900,803, in that the mark is substantially similar to Opposer's STORMTREE Marks and common law rights and will be used in connection with goods that, as described in Applicant's application, would directly compete with Opposer's own patented biofiltration devices offered to the public by Opposer and/or its controlled licensees.

8. Lastly, a lawsuit is currently pending in the District Court of Maine brought by MMT, INC. against Hydro International Limited, Case No.: 2:21-cv-00079-JDL seeking relief under 15 U.S.C. §§1114 and 1125 for Defendant's misappropriation of Plaintiff's trademark and the associated consumer goodwill.

Wherefore, this Opposer, MMT, INC., (d/b/a StormTree), believes and avers that it is being and will continue to be damaged by registration of the proposed STORMSCAPE trademark as aforesaid, prays that the said Application Serial No. 88/900,803 be rejected in accordance with the provisions of the Trademark Act, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Dated: June 9, 2021

/ alan f. feeney /
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CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of June 2021, a copy of the foregoing **NOTICE OF OPPOSITION of REGISTRATION NO. 88/900,803** via U.S. mail, postage prepaid, and addressed as follows:

Luna M. Samman, Esq.
Argent Fox
1717K Street NW
Washington, DC 20006
UNITED STATES

as well as by email to:

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/s/ Alan. F. Feeney

Alan F. Feeney
Attorney for Applicant