

TTAB

UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark registration No. 2,413,305, registered on December 12, 2000.

_____)	
ARCOA INDUSTRIES, INC.)	CANCELLATION NO. _____
)	
Petitioner,)	PETITION FOR
)	CANCELLATION
v.)	
)	Attorney Docket: ARCOA.1217
TIM McDOWELL, an individual)	
)	
Respondent.)	
_____)	



10-11-2001

U.S. Patent & TMO/TM Mail Rpt Dt 411

10/17/2001 KGIBBONS 00000098 2413305

01 FC:376

300.00 DP

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, Attention: Trademark Trial & Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513

October 10, 2001
(Date of Deposit)

Cynthia A. Willis-
(Name of Person Mailing Paper)

Cynthia A. Willis
(Signature)

October 10, 2001

BOX TTAB FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Now comes Petitioner, ARCOA INDUSTRIES, INC. a corporation of the State of California, having a place of business at 130 Bosstick Blvd., San Marcos, CA 92069, and, for its Petition for Cancellation against Respondent TIM McDOWELL, alleges as follows:

1. The above-identified Petitioner believes that it is being damaged and will continue to be damaged by Respondent's registration, and hereby petitions to cancel the same.
2. The grounds for cancellation are as follows:

PETITION FOR CANCELLATION
Attorney Docket: ARCOA.1217

(1) On March 16, 2001 Petitioner intended and still intends to adopted and continuously use thereafter the trademark "E-Z GRABBER" for hand-held pickup tools for reaching remote objects in International Class 008.

(2) Petitioner is the registered owner of the trademark "E-Z REACHER" for hand-operated pickup tools, in International Class 8, Registration No. 1,489,052, Registered May 24, 1988, copy attached hereto as Exhibit A.

(3) Petitioner is the registered owner of the trademark "E-Z PRUNNER" for hand-operated tree-branch pruning tool in International Class 8, Registration No. 2,220,850, Registered January 26, 1999, copy attached hereto as Exhibit B.

(4) On information and belief, Petitioner avers that Respondent applied to federally register the trademark "THE GRABBER", alleging that it was to be used for a personal hand retrieval device that allows an individual to grab or retrieve items out of normal reach, and further alleging a first use of 06/01/1997. Respondent was issued a Registration for the trademark on December 12, 2000, Registration No. 2,413,305, a copy of the Information Sheet concerning same is attached hereto as Exhibit C.

(5) On information and belief, Petitioner avers that Respondent obtained his registration fraudulently in that Respondent did not use the mark when alleged and, if he did so use the mark when alleged, he did so without the intent of continuing the use of said mark.

(6) On information and belief, Petitioner avers that Respondent obtained his registration through assignment from a previous registrant and did not, at the same time, obtain the good will engendered by the mark when it was in the possession of the previous registrant.

(7) On information and belief, Petitioner avers that Respondent has abandoned the mark.

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(8) On August 13, 2001, Petitioner received an Office Action from the U.S. Patent Office, pertaining to its registration application for "E-Z-GRABBER" wherein the trademark examining attorney refused registration on the basis of this Respondent's registration of "THEGRABBER".

WHEREFORE, Petitioner hereby respectfully petitions the Trademark Trial and Appeal Board to cancel Registration No. 2,413,305.

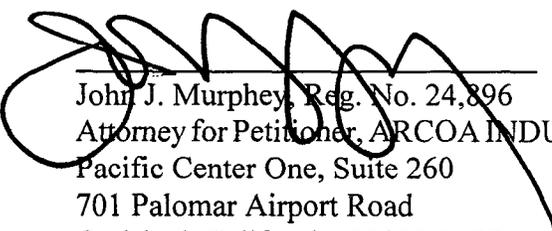
Petitioner hereby appoints the following attorney to represent it in this Petition for Cancellation and to transact all business in the Patent and Trademark and before the Trademark Trial and Appeal Board in connection therewith: Attorney JOHN J. MURPHEY (#24,896), c/o MURPHEY & MURPHEY, A.P.C., Pacific Center One, Suite 260, 701 Palomar Airport Road, Carlsbad, CA 92009-1027, telephone number (619) 431-0091, and fax number (619) 431-9441.

Also enclosed with this Petition for Cancellation is a check in the amount of \$300.00 to cover the filing fee.

Date: 10-10-01

Respectfully submitted,

MURPHEY & MURPHEY, A.P.C.



John J. Murphey, Reg. No. 24,896
Attorney for Petitioner, ARCOA INDUSTRIES, INC.
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Int. Cl.: 8

Prior U.S. Cl.: 23

United States Patent and Trademark Office Reg. No. 1,489,052
Registered May 24, 1988

**TRADEMARK
PRINCIPAL REGISTER**

E-Z REACHER

CALIPUTER, INCORPORATED (CALIFORNIA
CORPORATION)
888 RANCHEROS DRIVE
SAN MARCOS, CA 92069

FIRST USE 0-0-1979; IN COMMERCE
0-0-1979.

SER. NO. 672,806, FILED 7-17-1987.

FOR: HAND-OPERATED PICKUP TOOLS, IN
CLASS 8 (U.S. CL. 23).

MICHAEL MURPHY, EXAMINING ATTORNEY

Int. Cl.: 8

Prior U.S. Cls.: 23, 28, and 44

Reg. No. 2,220,850

United States Patent and Trademark Office

Registered Jan. 26, 1999

**TRADEMARK
PRINCIPAL REGISTER**

E-Z PRUNER

ARCOA INDUSTRIES, INC. (CALIFORNIA
CORPORATION)
2348 MEYERS AVENUE
ESCONDIDO, CA 920291008

FOR: HAND-OPERATED TREE-BRANCH
PRUNING TOOL, IN CLASS 8 (U.S. CLS. 23, 28
AND 44).

FIRST USE 8-16-1998; IN COMMERCE
8-16-1998.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "PRUNER", APART FROM
THE MARK AS SHOWN.

SN 75-237,777, FILED 1-31-1997.

WON TEAK OH, EXAMINING ATTORNEY

THE GRABBER

Mark

THE GRABBER

Goods and Services

IC 008. US 023 028 044. G & S: personal hand retrieval device that allows an individual to grab or retrieve items out of normal reach.
FIRST USE: 19970601. FIRST USE IN COMMERCE: 19970601

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75885020

Filing Date

January 6, 2000

Supplemental Register Date

August 1, 2000

Registration Number

2413305

Registration Date

December 12, 2000

Owner Name and Address

(REGISTRANT) McDowell, Tim INDIVIDUAL UNITED STATES 360 Roden Ave Boaz
ALABAMA 35957

Type of Mark

TRADEMARK

Register

SUPPLEMENTAL

Live Dead Indicator

LIVE