



“Power tools, namely, nailers, sanders, lathes, saws, mortising machines, drill presses, shapers, planers, grinders, jointers, dust collectors, and parts and accessories therefor, including chucks, blades, bits, chisels, knives, discs, drums, wheels, belts, sleeves, abrasive attachments, arbors, dados, moulding inserts, hex keys, brackets, plates, vises, jaws, clamps, gauges, rip fences, guides, extensions, jigs, blocks, work supports, rollers, stands, casters, tables, tool collectors, dust chutes, vacuum attachments, control switches, cleaners, chuck adapters, and push blocks,” in International Class 7.

2. Petitioner is the owner of U.S. Trademark Application Serial Nos. 78/104,874 and 78/131,558 on the Principal Register for TRADESMAN covering (see Exhibit B, attached hereto):

“Hand-held electric, cordless, and pneumatic power tools, namely, drill, single speed drill, variable speed drill, driver, drill/driver, screw driver, grinder, angle grinder, hammer, hammer drill, nailer, nailing gun, brad nailer, brad nailer-stapler, angle finish nailer, roofing coil nailer, finish nailer, framing nailer, sander, orbit sander, random orbit sander, palm grip sander, sheet finishing sander, saw, circular saw, reciprocating saw, stapler, crown stapler, and staple gun, and parts and accessories therefor, namely, air compressors, rechargeable batteries, battery charges, power packs and chargers therefor, bits blades, chucks, drivers, hammers, nails, staples, grinding wheels, abrasive attachments, abrasive belts and abrasive discs,” in International Class 7; and

“Door openers, remote controls for door openers, control consoles for door openers, sensor for door openers, keyless entry systems for door openers, and parts and accessories for the foregoing,” in International Class 9.

3. Petitioner manufactures and markets in the United States numerous tools and related hardware products using the trademark TRADESMAN on or in connection with these products. Petitioner has spent substantial sums in commercializing and otherwise promoting its TRADESMAN products throughout the United States. As a result of the expenditure of considerable sums and efforts in connection with such activities, and by virtue of the excellence of its products, petitioner has garnered a valuable reputation for its TRADESMAN products.

4. Registrant obtained Registration No. 1,262,851 for TRADESMAN covering “oxy-fuel cutting and welding kit comprising a cutting and welding torch, oxygen regulator, fuel regulator, tips, hose, igniter and goggles,” on January 3, 1984.

5. Registrant filed a declaration of use and incontestability on May 22, 1989.

6. While Registration No. 1,262,851 is ostensibly incontestable, upon information and belief, Registrant’s mark TRADESMAN has been abandoned, rendering the registration void.

7. Petitioner is likely to be damaged by the continued existence of Registration No. 1,262,851. Petitioner has continuously used its TRADESMAN mark in U.S. commerce since at least as early as February 1987, while the Registrant’s mark is not in use in commerce. The assertion of a registration covering an abandoned mark is a cloud on Petitioner’s legal right and ability to further expand its use and to register its mark TRADESMAN. Such registration would thus be a source of damage and injury to petitioner.

A duplicate of this petition is enclosed herewith.

The statutory fee of \$300 as prescribed in Rule 2.6(a)(16) should be charged to Deposit Account No. 11-0231.

WHEREFORE, Petitioner prays that this Petition to Cancel be sustained in favor of Petitioner, and that Registration No. 1,262,851 be cancelled.

Respectfully submitted:

Power Tool Specialists, Inc.

Dated:

9/26/02

By:

Carrie Webb Olson

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Carrie Webb Olson  
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**CERTIFICATE OF EXPRESS MAILING**

I hereby certify that this Petition to Cancel is being deposited with the United States Postal Service as Express Mail (EL872983040US) addressed to the Commissioner for Trademarks, BOX TTAB/FEE, 2900 Crystal Drive, South Tower, Arlington, Virginia 22202-3513 on this 26th day of September, 2002.

Christina M. London

Christina M. London

TTAB

CUMMINGS & LOCKWOOD LLC



09-26-2002  
U.S. Patent & TM Office/TM Mail Rept Dt. #77

September 26, 2002

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**Via Express Mail**

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**Re: Power Tool Specialists, Inc. v. Air Products and Chemicals, Inc.  
Petition to Cancel Registration No. 1,262,851  
TRADESMAN  
Our Ref.: 731117.0001 PTSI-123**

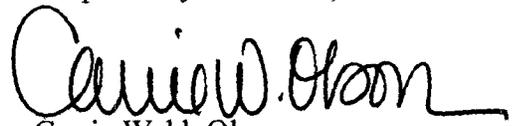
Dear Madam:

We enclose herewith for filing one original and copy of the Petition to Cancel and Certificate of Express Mailing for the above-captioned cancellation proceeding.

Please charge the \$300.00 Petition fee to our Deposit Account No. 11-0231.

Kindly indicate your receipt of this document by applying your date stamp to the enclosed postage-prepaid postcard and drop it in the mail to us.

Respectfully submitted,

  
Carrie Webb Olson

CWO:cl  
Enclosures

cc: Mr. Anthony J. Borgatti  
Ms. Judi Bryskiewicz  
Mark D. Giarratana, Esq.

.StmLib1:975271.1 09/26/02