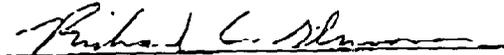


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TRADEMARK CANCELLATION
File No. 11051.127


RICHARD C. GILMORE

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

In the matter of Trademark Registration No. 2,258,517
Registration Date: July 6, 1999
Mark: AQUARIUS & DESIGN
International Class: 10

EDWARDS LIFESCIENCES CORPORATION)	Cancellation No. [_____]
)	
Petitioner,)	
)	
v.)	PETITION FOR CANCELLATION
)	
AQUARIUS MEDICAL CORPORATION)	
)	
Registrant.)	

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

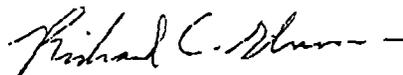
Transmitted herewith is Petition for Cancellation for entry against the above-identified registration. Also included herewith is:

 X Duplicate copy of the Petition for Cancellation.

- A Certificate of Mailing by "Express Mail" by use of Express Mail Label No. EL751310495US.
- Credit Card Payment Form in the amount of \$300.00.
- The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 23-3178. Triplicate copies of this sheet are attached.

Dated this 24 day of February 2003.

Respectfully submitted,

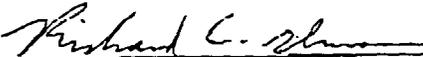


Richard C. Gilmore, Registration No. 37,335
Attorneys for Petitioner
WORKMAN, NYDEGGER & SEELEY
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephonic: (801) 533 9800

RCG:dff
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EL751310495US in an envelope addressed to:
Box: TTAB, Assistant Commissioner for Trademarks,
2900 Crystal Drive, Arlington, VA 22202-3513
on February 24, 2003.

TRADEMARK CANCELLATION
File No. 11051.127


Richard C. Gilmore

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

In the matter of Trademark Registration No. 2,258,517
Registration Date: July 6, 1999,
Mark: AQUARIUS & DESIGN
International Class: 10

EDWARDS LIFESCIENCES CORPORATION)	Cancellation No. [_____]
Petitioner,)	
v.)	PETITION FOR CANCELLATION
AQUARIUS MEDICAL CORPORATION,)	
Registrant.)	

Petitioner Edwards Lifesciences Corporation ("Petitioner"), a Delaware corporation, having a principal place of business at One Edwards Way, Irvine, California 92614, believes it will be damaged by the above-referenced registration and hereby petitions the Trademark Trial and Appeal Board to cancel the same.

As grounds for this Petition it is alleged:

1. Upon information and belief, Registrant Aquarius Medical Corporation ("Registrant"), a Delaware corporation, having an address of 7525 E. Camelback Road, Suite 210, Scottsdale, Arizona 85251, has registered the mark "AQUARIUS & DESIGN" as a

trademark to be used in connection with "devices used in the manipulation of body core temperature, namely, a body core re-warming or cooling device; and, fluid management devices used in surgery." Registrant filed United States Trademark Application Serial No. 75/304,425 for registration of the mark AQUARIUS & DESIGN on June 6, 1997. The registration issued on July 6, 1999, as Registration No. 2,258,517.

2. The records of the United States Patent and Trademark Office list the attorney of record for Registrant as Rosemary Fanelli at the law firm of Werbel & Carnelutti in New York, New York.

3. Counsel for Petitioner attempted to contact Registrant's attorney of record, Ms. Fanelli, to inquire if Registrant was still using the mark AQUARIUS. The law firm of Werble & Carnelutti discontinued operations in 1999, according to a Dun & Bradstreet comprehensive report prepared for counsel for petitioner. Further attempts to locate Ms. Fanelli were unsuccessful. The Lawyer Locator database of Martindale-Hubbell, a division of Reed Elsevier Inc., a well-known provider of information on attorneys, has no listing for Rosemary Fanelli.

4. Counsel for Petitioner attempted to contact Registrant in Scottsdale, Arizona, but there is no telephone listing for Registrant in Arizona. A Dun & Bradstreet comprehensive report prepared for counsel for Petitioner revealed that Aquarius Medical Corporation no longer conducts any business in Scottsdale, Arizona. Counsel for Petitioner continued its investigation but could not locate Aquarius Medical Corporation anywhere in the United States nor could Petitioner identify any company that currently makes or sells devices used in the manipulation of body core temperature, namely a body core re-warming or cooling device; and, fluid management devices used in surgery in connection with the mark AQUARIUS & DESIGN in the United States.

5. Upon information and belief, Registrant Aquarius Medical Corporation was acquired by Kobayashi Pharmaceutical Co., Ltd. of Japan in February 1997. Upon information and belief, Kobayashi Pharmaceutical Co., Ltd. liquidated Aquarius Medical Corporation because there was little prospect of successful commercialization of the product it had been reading to market.

6. Counsel for Petitioner unsuccessfully attempted to determine the disposition of Aquarius Medical Corporation's assets, including its registered trademark. Counsel for Petitioner found no evidence that the mark was sold to other entities or that the mark is currently being used in connection with the identified goods anywhere in the United States.

7. Upon information and belief, Registrant is no longer in existence.

8. Upon information and belief, Registrant has abandoned the mark **AQUARIUS & DESIGN**.

9. In view of the foregoing, Registrant is not entitled to maintain federal registration of its claimed mark because Registrant has abandoned its mark.

WHEREFORE, Petitioner prays that this petition be granted and that the United States Trademark Registration Serial No. 2,258,517 be cancelled.

A duplicate of this Petition to Cancel and the required fee under 37 C.F.R. § 2.6(a)(16) is enclosed.

All correspondence and telephonic communications should be directed to the undersigned.

DATED this 24 day of February, 2003.

By: Richard C. Gilmore
Richard C. Gilmore, Reg. No. 37,335

WORKMAN, NYDEGGER & SEELEY
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 533-9800
Facsimile: (801) 328-1707

Attorneys for Petitioner
EDWARDS LIFESCIENCES CORPORATION.



Date: 04/22/2003

Fax Transmission To: Postal Customer
Fax Number: 703-308-7082

Dear Postal Customer:

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PATENT AND
TRADEMARK OFFICE
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TO:

Fax Sender at 703 308 7082

Fax Information

Date Received:

Total Pages:

4/23/03 10:36:18 AM [Eastern Daylight Time]

1 (including cover page)

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Received
Cover
Page

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04/23/03 10:34 FAX 703 308 7082	TIAB	0001
<p>UNITED STATES DEPARTMENT OF COMMERCE Patent and Trademark Office Trademark Trial and Appeal Board 2900 Crystal Drive Arlington, Virginia 22202-3813</p>		
mc/	Mailed: April 23, 2003	
	Cancellation No. 92041106	
	A.G. EDWARDS & SCNS, INC.	
	v.	
	MERCANTILE BANKSHARES CORPORATION	
<p>On February 11, 2003¹, the Board sent a notice of default to respondent because no answer had been filed. The record shows no response thereto. Accordingly, judgment by default is hereby entered against respondent, the petition to cancel is granted, and Registration No. 2,179,473 will be cancelled in due course. See Fed. R. Civ. P. 65, and Trademark Rule 2.114(a).</p>		
<p><i>By the Trademark Trial and Appeal Board</i></p>		
<p><small>¹ In order to correct an inadvertence, line 1 of the office action dated February 11, 2003 is amended by substituting December 3, 2003, for December 3, 2002. The error is regretted.</small></p>		
<p>Received from <703 308 7082> at 4/23/03 10:36:18 AM [Eastern Daylight Time]</p>		

TO THE TRADEMARK TRIAL AND APPEAL BOARD,
 PLEASE STAMP AND RETURN
 TRANSMITTED: Transmittal Letter (2 pages, in triplicate);
 Petition for Cancellation (3 pages, in duplicate); Postward
 EXPRESS MAIL LABEL NO. EL751310495US
 REGISTRANT: Aquarius Medical Corporation
 PETITIONER: Edwards Lifesciences Corporation
 MARK: AQUARIUS & DESIGN
 REG. NO. 2,258,517
 DOCKET NO. 11051.127
 DATE MAILED: February 24, 2003

EL 751310495 US



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TO ADDRESSEE**

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**WORKMAN
NYDEGGER
& SEELEY**

ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

1000 EAGLE GATE TOWER

60 EAST SOUTH TEMPLE

SALT LAKE CITY, UTAH 84111

TELEPHONE (801) 533-9800

FACSIMILE (801) 328-1707

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DAVID O. SEELEY
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HOME PAGE: <http://www.wnsipatent.com>
GENERAL E MAIL: info@wnspatent.com

April 19, 2003

VIA FACSIMILE

Ms. Kimberly Litton
United States Patent and Trademark Office
2900 Crystal Drive
Arlington, Virginia 22202-3513

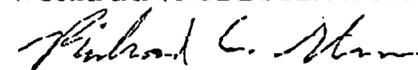
Re: United States Trademark Application
Mark: AQUARIUS
Reg. No.: 2,258,517
Reg. Date: July 6, 1999
Class: 9
Goods: Scales and weighing apparatus to be used with fluid-balance monitor and systems for various treatments in the field of renal replacement therapies; scales and weighing apparatus to be used with a fluid balance monitor and system comprised of an extracorporeal blood circuit and a substitute and a filtrate circuit
Our Ref. No.: 11051.127

Dear Ms. Litton:

It was a pleasure to talk with you on April 18, 2003 in connection with the Petition for Cancellation of registration no. 2,258,517. Attached is a copy of the previously filed petition. Please call me at 801-533-9800 if you have any questions.

Sincerely,

WORKMAN, NYDEGGER & SEELEY


RICHARD C. GILMORE

Enclosure

RCG:ek
WA11051127\CLC0000003286V001.doc

WORKMAN, NYDEGGER & SEELEY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
1000 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 533-9800
FAX (801) 328-1707

April 21, 2003

FACSIMILE COVER LETTER

Please deliver the following pages to:

Kimberly Litton
United States Patent and Trademark Office
2900 Crystal Drive
Arlington, VA 22202-3513

Telecopier Phone: 703-308-7082

Phone: 703-308-9300, ext. 134

Number of Pages Including Cover Letter: 8 pages

From: Richard C. Gilmore

Docket: 11051.127

Comments:

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