

ESTTA Tracking number: **ESTTA291325**

Filing date: **06/23/2009**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Inter-Plant Patent Marketing, Inc.		
Entity	Corporation	Citizenship	Canada
Address	R.R. 2 Niagara-on-the-Lake Ontario, L0S 1J0 CANADA		

Attorney information	Robert L. Kelly Dickinson Wright PLLC 38525 Woodward Avenue, Suite 2000 Bloomfield Hills, MI 48304 UNITED STATES rkelly@dickinsonwright.com, amoscowitz@dickinsonwright.com, apelker@dickinsonwright.com Phone:248-433-7578
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Registration Subject to Cancellation

Registration No	2927770	Registration date	02/22/2005
International Registration No.	NONE	International Registration Date	NONE
Registrant	Consortium Deutscher Baumschulen GmbH Hauptstrasse 21 Ellerbek, D-25474 GERMANY		

Goods/Services Subject to Cancellation

Class 031. All goods and services in the class are cancelled, namely: Living plants; agricultural seeds; fresh fruits and vegetables; seeds for living plants and natural flowers
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2988914	Application Date	05/29/2003
Registration Date	08/30/2005	Foreign Priority Date	NONE

Word Mark	GISELA
Design Mark	
Description of Mark	NONE
Goods/Services	Class 031. First use: Cherry rootstock

Attachments	29618_1PetitiontoCancel.pdf (2 pages)(19998 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Robert L. Kelly/
Name	Robert L. Kelly
Date	06/23/2009

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

In the matter of trademark Registration No. 2, 927,770

Date Registered: February 22, 2005

For the mark: GISELA AND DESIGN

INTER-PLANT PATENT MARKETING, INC.,
a Canadian corporation,

v.

CONSORTIUM DEUTSCHER BAUMSCHULEN, GMBH.,
a German corporation.

PETITION TO CANCEL

Now comes Inter-plant Patent Marketing, Inc. (hereinafter "IPPM"), a Canadian corporation having a place of business at R.R. 2 Niagara-on-the-Lake, Ontario, Canada, L0S IJ0, by and through its attorneys, Dickinson Wright PLLC, and for its Petition to Cancel, states:

1. To the best of petitioner's knowledge, the name and address of the current owner of Registration No. 2,927,770 is CONSORTIUM DEUTSCHER BAUMSCHULEN, GMBH, (hereinafter "CDB") having offices at Hauptstrasse 21, Ellerbek, Germany, D-25474 and CDB's domestic representative is Russell D. Orkin having an office at 700 Koppers Bldg., 436 Seventh Ave., Pittsburgh, PA 15219.

2. Petitioner uses the mark, GISELA, for the sale of cherry rootstock throughout the United States and is the owner of U.S. Trademark Registration No. 2,988,914 which was duly registered on August 30, 2005. As such, Petitioner is being damaged by the presence of said CDB registration.

3. The CDB obtained said registration through fraud on the Patent and Trademark Office and has abandoned all use of the mark.

4. More specifically, at the time the CDB filed the application on which the registration was granted, it falsely stated that it had a bone fide intent to use the mark in the United States and that it further stated falsely that it believed that no other corporation had the right to use the mark, or a mark in near resemblance thereto as to be likely to cause confusion or to cause mistake or to deceive, when it knew that Petitioner had the exclusive right to use the mark GISELA for the sale of cherry rootstock in the United States and that these statements, together and separately, perpetrated a fraud on the United States Patent and Trademark Office and resulted in the issuance of said registration.

5. In addition, the CDB has failed to use the mark in commerce in the United States for the sale of Living Plants, Agriculture Seeds, Fresh Fruits and Vegetables, Seeds for Living Plants and Natural Flowers.

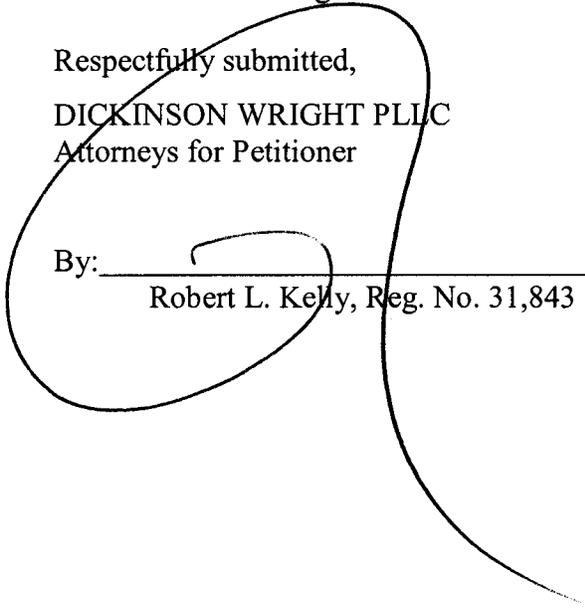
6. There has never been a contract, express or implied, between IPPM and CDB regarding the trademark GISELA

7. That the existence of the CDB registration results in a likelihood of confusion with Petitioner thereby causing damage to Petitioner.

The U.S. Patent & Trademark Office is authorized to charge or refund any fee deficiency or excess to Deposit Account No. 04-1061 in the name of Dickinson Wright PLLC.

Respectfully submitted,
DICKINSON WRIGHT PLLC
Attorneys for Petitioner

Date: June 23, 2009

By:  _____
Robert L. Kelly, Reg. No. 31,843

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