

ESTTA Tracking number: **ESTTA311461**

Filing date: **10/14/2009**

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	Netop Business Solutions A/S		
Entity	A Denmark public limited Company	Citizenship	Denmark
Address	BregnerÅ, dvej 127 BirkerÅ, d, DK-3460 DENMARK		

Attorney information	James P. Muraff Neal, Gerber & Eisenberg LLP Two North LaSalle Street Chicago, IL 60602 UNITED STATES DocketMail@ngelaw.com, jmuraff@ngelaw.com Phone:312-269-8000		
----------------------	---	--	--

### Registrations Subject to Cancellation

Registration No	3005630	Registration date	10/11/2005
International Registration No.	NONE	International Registration Date	NONE
Registrant	OMNI CORPORATE ASSETS LIMITED PALM GROVE HOUSE, P.O. BOX 438 ROAD TOWN, TORTOLA, VIRGIN ISLANDS, BRITISH		

### Goods/Services Subject to Cancellation

Class 009. First Use: 2001/01/01 First Use In Commerce: 2001/03/01 All goods and services in the class are cancelled, namely: Computer software that allows software producers to distribute digital goods in the nature of software, games, music, mobile applications, and movies, in an efficient and secure way via the Internet and computer networks
Class 038. First Use: 2001/01/01 First Use In Commerce: 2001/03/01 All goods and services in the class are cancelled, namely: Telecommunications services, namely, electronic transmission of data by means of telephone, cable and computer
Class 042. First Use: 2001/01/01 First Use In Commerce: 2001/03/01 All goods and services in the class are cancelled, namely: Computer software development and consultancy in the field of data volume and download management

### Grounds for Cancellation

Abandonment	Trademark Act section 14		
Registration No	3102908	Registration date	06/13/2006
International Registration No.	NONE	International Registration Date	NONE

Registrant	OMNI CORPORATE ASSETS LIMITED PALM GROVE HOUSE, P.O. BOX 438 ROAD TOWN, TORTOLA, VIRGIN ISLANDS, BRITISH
------------	---

### Goods/Services Subject to Cancellation

Class 042. First Use: 2001/01/01 First Use In Commerce: 2001/03/01 All goods and services in the class are cancelled, namely: Development and consulting service in the field of software and hardware technology for optimization of data volume and download management
--

### Grounds for Cancellation

Abandonment	Trademark Act section 14
-------------	--------------------------

Attachments	ConsolidatedPetitiontoCancel.pdf ( 5 pages )(70234 bytes )
-------------	--

### 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	/James P. Muraff/
Name	James P. Muraff
Date	10/14/2009

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

In the Matter of	)	
Registration Nos. 3,005,630 and 3,102,908	)	
	)	
	)	
NETOP BUSINESS SOLUTIONS A/S,	)	Cancellation No. _____
	)	
Petitioner,	)	<b>CONSOLIDATED PETITION TO</b>
	)	<b>CANCEL</b>
v.	)	
	)	
OMNI CORPORATE ASSETS LIMITED,	)	
	)	
Respondent.	)	

This Consolidated Petition to Cancel is submitted in the matter of Registration Nos. 3,005,630 and 3,102,908 which are owned by Omni Corporate Assets Limited, La Maison Craven, with a mailing address at Palm Grove House, P.O. Box 438, Road Town, Tortola, Br. Virgin Islands. Registration No. 3,005,630 issued on October 11, 2005 for the mark NETOPSYSTEMS & Design in connection with “computer software that allows software producers to distribute digital goods in the nature of software, games, music, mobile applications, and movies, in an efficient and secure way via the Internet and computer networks” in International Class 09, “telecommunications services, namely, electronic transmission of data by means of telephone, cable and computer” in International Class 38, and “Computer software development and consultancy in the field of data volume and download management” in International Class 42. Registration No. 3,102,908 issued on June 13, 2006 for the mark NETOPSYSTEMS in connection with “development and consulting service in the field of software and hardware technology for optimization of data volume and download management” in International Class 42.

Netop Business Solutions A/S, a Denmark public limited Company with a place of business at Bregnerødvej 127 DK-3460 Birkerød Denmark (“Netop”), believes that it will be damaged by the continued registration of Registration Nos. 3,005,630 and 3,102,908 and, therefore, petitions to cancel the same on the following grounds:

1. Netop (formerly Danware Data A/S) has applied for federal registration of the trademark NETOP, NETOP & Design, NETOP SOLUTIONS, and NETOP SOLUTIONS & Design, all in connection with “computer software; electronic downloadable publications” in International Class 9, “manuals” in International Class 16, “telecommunication” in International Class 38, and “Computer programming, design, maintenance and update of computer software, computer data retrieval” in International Class 42, Serial Nos. 79/068,307, 79/066,889\*, 79/066,888\*, and 79/066,887\*, respectively.

3. On information and belief, Respondent is a limited company under the laws of the British Virgin Islands.

4. On October 11, 2005, Registration No. 3,005,630 (the “630 Registration”) issued to issued to Netopsystems AG for the mark NETOPSYSTEMS & Design for use in connection with computer software that allows software producers to distribute digital goods in the nature of software, games, music, mobile applications, and movies, in an efficient and secure way via the Internet and computer networks” in International Class 09, “telecommunications services, namely, electronic transmission of data by means of telephone, cable and computer” in International Class 38, and “Computer software development and consultancy in the field of data volume and

---

\*Application Nos. 79/066,889, 79/066,888, and 79/066,887 were filed in the name of Danware Data A/S, which has since changed its name to Netop Business Solutions A/S, the present Petitioner.

download management” in International Class 42. The ‘630 Registration was based on Section 44(e) of the Trademark Act. On February 16, 2006, Netopsystem AG assigned its entire interest to the NETOPSYSTEMS & Design mark and the ‘630 Registration to Oliver H. Wessling, who assigned his entire interest to Respondent on August 24, 2006.

5. On June 13, 2006, Registration No. 3,102,908 (the “‘908 Registration”) issued to issued to Netopsystems AG for the mark NETOPSYSTEMS for use in connection with “development and consulting service in the field of software and hardware technology for optimization of data volume and download management” in International Class 42. The ‘908 Registration was based on Section 44(e) of the Trademark Act. On June 12, 2006, Netopsystems AG assigned its entire interest to the NETOPSYSTEMS mark and the ‘908 Registration to Oliver H. Wessling, who assigned his entire interest to Respondent on August 24, 2006.

6. On information and belief, subsequent to the issuance of the ‘630 and ‘908 Registrations, Respondent discontinued use of the marks NETOPSYSTEMS & Design and NETOPSYSTEMS in connection with the registered goods and has not resumed use of the marks for at least the last three years with no intent to resume use in the foreseeable future. On information and belief, Respondent has abandoned the registered NETOPSYSTEMS & Design mark and registered NETOPSYSTEMS mark within the meaning of Section 45 of the Trademark Act, 15 U.S.C. § 1127, and the ‘630 and ‘908 Registrations should be cancelled in accordance with Section 14 of the Trademark Act, 15 U.S.C. § 1064.

7. On April 22, 2009, Office Actions issued for Serial Nos. 79/066,889 (NETOP & Design), 79/066,888 (NETOP SOLUTIONS), and 79/066,887(NETOP SOLUTIONS & Design) in which the Examining Attorney refused registration of the

applied-for-mark because of a likelihood of confusion with the '630 and '908 Registrations. Additionally, on June 16, 2009, an Office Action issued for Serial No. 79/068,307 (NETOP) in which the Examining Attorney refused registration of the applied-for-mark because of a likelihood of confusion with the '630 and '908 Registrations as well.

8. Accordingly, Netop has been damaged by the continued registration of Respondent's NETOPSYSTEMS and NETOPSYSTEMS & Design marks on the Principal Register.

WHEREFORE, Netop requests that Registration Nos. 3,005,630 and 3,102,908 be canceled and that this Consolidated Petition for Cancellation be granted.

Petitioner requests that the requisite filing fee be charged to the deposit account of Neal, Gerber & Eisenberg, Account No. 502261.

Please address all communications relating to this matter to James P. Muraff, Neal, Gerber & Eisenberg LLP, Two North LaSalle Street, Chicago, Illinois 60602-3801.

Respectfully submitted,

Date: October 14, 2009

By: /James P. Muraff /

One of the Attorneys for  
Netop Business Solutions A/S

James P. Muraff  
Neal, Gerber & Eisenberg LLP  
Two North LaSalle Street  
Chicago, Illinois 60602-3801  
(312) 269-8000

**CERTIFICATE OF SERVICE**

I, James P. Muraff, an attorney, state that, pursuant to 37 CFR §§ 2.111 and 2.119, I caused a copy of the foregoing Consolidated Petition to Cancel to be served upon:

Oliver Wessling  
7181 Encina Lane  
Boca Raton FL 33433

via First Class U.S. Mail, postage pre-paid, on this 14th day of October 2009.

/James P. Muraff/  
James P. Muraff