

ESTTA Tracking number: **ESTTA429748**

Filing date: **09/10/2011**

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	Richard Kirkpatrick		
Entity	Individual	Citizenship	UNITED STATES
Address	P.O. Box 1341 Trinity, TX 75862 UNITED STATES		

Attorney information	Karen B. Tripp Karen B. Tripp, Attorney at Law P.O. Box 1301 Houston, TX 77251-1301 UNITED STATES ktripp@tripplaw.com Phone:713-658-9323		
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**Registration Subject to Cancellation**

Registration No	3879592	Registration date	11/23/2010
Registrant	J&M Patent Designs Corp. 6001 W. William Cannon Drive, Suite 203A Austin, TX 78749 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 042. First Use: 2009/05/01 First Use In Commerce: 2009/05/01 All goods and services in the class are cancelled, namely: Drawing up of patent drawings
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**Grounds for Cancellation**

False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Related Proceedings	Application to Register Mark, U.S. Serial No. 85410135
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**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	85410135	Application Date	08/30/2011
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PATENT DESIGNS DRAFTING SPECIALISTS		
Design Mark			
Description of Mark	The mark consists of the words "Patent Designs" above the words "Drafting Specialists" in a stylized font with a drawing of a computer mouse and a compass placed underneath and to the right side of the words.		
Goods/Services	Class 042. First use: First Use: 2004/05/15 First Use In Commerce: 2004/05/15 Drafting		

Attachments	85410135#TMSN.jpeg ( 1 page )( bytes ) Kirkpatrick--Cancellation Proceeding-FINAL[1].pdf ( 7 pages )(38713 bytes ) Kirkpatrick-EXHIBIT A.pdf ( 1 page )(372188 bytes ) Kirkpatrick-EXHIBIT B.pdf ( 1 page )(361525 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	/karen tripp/
Name	Karen B. Tripp
Date	09/10/2011

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

In the matter of service mark

Registration No. 3879592 [IC 42]

Registration Date: November 23, 2010

For the Mark: **J&M PATENT DESIGNS DRAFTING SPECIALISTS and design**

RICHARD KIRKPATRICK,	:	
Petitioner	:	
	:	
v.	:	
	:	
J&M PATENT DESIGNS CORP.,	:	
dba J&M PATENT DESIGNS,	:	
Registrant	:	
	:	

**PETITION TO CANCEL**

Richard Kirkpatrick (“Petitioner”) believes he and his business are being damaged and will continue to be damaged by the registration of the mark shown in Registration No. 3879592 of J&M Patent Designs Corp. (“Registrant”), and hereby petitions for cancellation of that registration.

As grounds for this cancellation proceeding, Petitioner alleges as follows:

1. Petitioner is an individual having a business address in Austin, Texas.
  
2. On information and belief, Registrant is a Texas corporation having a business address in Austin, Texas.
  
3. On information and belief, Registrant’s principals having an ownership interest in and employment with or other work responsibility for Registrant include individuals Joshua McGee, who resides in Houston, Texas, and Melissa McCullough, who resides in Austin, Texas.

4. Petitioner has been doing patent drafting services since January 1997, and began his own business for conducting patent drafting services in May 1999.

5. Petitioner employed Joshua McGee from about 2001 until 2006 and Melissa McCullough from about 2003 until 2006, the same Joshua McGee and Melissa McCullough that are believed to be principals of Registrant. In 2005 through 2006, Petitioner, Joshua McGee and Melissa McCullough tried to form a partnership, but were unsuccessful in their efforts.

6. Petitioner hired Joshua McGee in 2001 upon Mr. McGee's completion of his studies at the Houston Art Institute. Petitioner hired Melissa McCullough in 2003 after she completed her studies at Southern Methodist University and worked for a non-drafting company for approximately two years.

7. In 2004, during the time Joshua McGee and Melissa McCullough worked for Petitioner, Petitioner changed the name of his drafting services business from "RDK Designs" to "Patent Designs," and Petitioner adopted a word and design mark for the business incorporating a mouse and compass design with the words "Patent Designs Drafting Specialists." This word and design mark, shown as Exhibit A hereto and hereinafter referred to as "Petitioner's Mark," is the subject of Petitioner's application to register this service mark with the United States Patent and Trademark Office. That application has been assigned U.S. Serial No. 85410135, and was filed on August 30, 2011.

8. Petitioner used Petitioner's Mark while Joshua McGee and Melissa McCullough worked for Petitioner and Joshua McGee and Melissa McCullough were

well aware of Petitioner's use of the mark. Joshua McGee, as part of his employment with Petitioner, helped design the mark for Petitioner.

9. Petitioner has been using Petitioner's Mark continuously since at least May 2004 in connection with identifying and promoting his patent drafting services.

10. Petitioner has performed patent drafting services for customers in a number of states in the United States.

11. Petitioner's patent drafting services were recognized by the United States Patent and Trademark Office as exemplary at the American Intellectual Property Law Association Expo in April of 2010.

12. On information and belief, Joshua McGee and Melissa McCullough have been aware of Petitioner's continuous use of Petitioner's Mark since 2004 and they have caused Registrant to be aware of Petitioner's Mark.

13. On information and belief, Joshua McGee and Melissa McCullough began a drafting services business, which became Registrant, after leaving Petitioner's employ in 2006, to be in competition with Petitioner. Petitioner and Registrant conduct the same kind of services, in the same market, targeting the same customers.

14. On information and belief, Joshua McGee and Melissa McCullough caused Registrant to adopt a service mark substantially similar to Petitioner's Mark for use in promoting Registrant's services in competition with Petitioner. This mark is hereinafter referred to as "Registrant's Mark," and a copy is attached as Exhibit B.

15. On April 8, 2010, without Petitioner's knowledge, Registrant filed to register Registrant's Mark as a word and design mark with the United States Patent and Trademark Office for patent drafting services or specifically for "drawing up of patent

drawings.” That application, assigned U.S. Serial No. 85009677, issued as U.S. Registration No. 3879592 on November 23, 2010 and is the subject of this cancellation proceeding.

16. In filing its application to register Registrant’s Mark, Registrant or its attorney on Registrant’s behalf, falsely declared that Registrant believed itself to be the owner of Registrant’s Mark.

17. In filing its application to register Registrant’s Mark, Registrant or its attorney on Registrant’s behalf, falsely declared that Registrant knew of no other person, firm, corporation, or association that had the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.

18. Registrant’s Mark is substantially similar to Petitioner’s Mark and has caused and will continue to cause a likelihood of confusion with Petitioner’s Mark, in which Petitioner has priority.

19. Registrant’s Mark is substantially identical to Petitioner’s Mark such that Registrant’s Mark is likely to confuse an ordinary person as to the source of the services signified by Registrant’s Mark.

20. Registrant’s Mark is substantially identical to Petitioner’s Mark such that Registrant’s Mark is likely to suggest an affiliation of Registrant with Petitioner or that Registrant is Petitioner.

21. Since Registrant’s services associated with Registrant’s Mark are the same kind of services as Petitioner’s services associated with Petitioner’s Mark, and since

Registrant's services are distributed through the same or similar channels of trade as Petitioner's services, Registrant's Mark is likely to cause confusion, or to cause mistake, or to deceive consumers and potential consumers within the meaning of 15 U.S.C. § 1052(d).

22. Petitioner's goodwill and reputation will be damaged and jeopardized by Registrant's use and continued registration of Registrant's Mark.

23. In August 2011, Registrant sent Petitioner a cease and desist letter respecting Petitioner's use of Petitioner's Mark. Registrant accused Petitioner of infringing Registrant's Mark and threatened suit. Such behavior by Registrant constitutes interference with Petitioner's business.

24. Registration of Registrant's Mark gives Registrant *prima facie* evidence of validity, exclusivity and ownership of Registrant's Mark and gives Registrant rights at least equal or even superior to Petitioner's rights, all to the detriment of Petitioner and despite Petitioner having used Petitioner's Mark in commerce for about six years prior to the filing date of Registrant's registration.

FOR THE REASONS STATED ABOVE, Petitioner believes that it will be damaged by continued registration of Registrant's mark and that such registration is likely to cause confusion in the minds of consumers or to cause mistake or to deceive, or otherwise injure, diminish or detract from the prior rights firmly established by Petitioner in and to Petitioner's Mark. Petitioner therefore requests that the Trademark Trial and Appeal Board cancel Registration No. 3879592.

Dated: September 9, 2011

Respectfully submitted,

/karen tripp/  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 10, 2011, a true and correct copy of the foregoing PETITION TO CANCEL was served by first class mail and email upon:

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**Attorney for Registrant**

/karen tripp/  
Karen B. Tripp

**EXHIBIT A**

**PATENT** Designs  
**DRAFTING SPECIALISTS**



EXHIBIT B

J&M PATENT Designs

DRAFTING SPECIALISTS

