

ESTTA Tracking number: **ESTTA472575**

Filing date: **05/15/2012**

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	EMA Design Automation, Inc.		
Entity	Corporation	Citizenship	New York
Address	225 Tech Park Drive Rochester, NY 14623 UNITED STATES		

Attorney information	Christopher J. Day Law Office of Christopher Day 9977 North 90th Street, Suite 155 Scottsdale, AZ 85258 UNITED STATES chris@daylawfirm.com Phone:602-258-4440
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Registrations Subject to Cancellation

Registration No	3906959	Registration date	01/18/2011
International Registration No.	NONE	International Registration Date	NONE
Registrant	ARTEC Computer GmbH Robert-Bosch-Strasse 38 61184 Karben GERMANY		

Goods/Services Subject to Cancellation

<p>Class 009. All goods and services in the class are cancelled, namely: Data processing equipment; computer hardware; computer hardware, namely, central processing units (CPU); computer hardware, namely, communications servers; computer hardware for high-speed processing and storage of data using multiple CPU's; computer hardware, namely, firewalls; computer memory hardware; computer hardware, namely, memory cards; computer hardware, namely, microchips; computer hardware, namely, microprocessors; computer operating programs, recorded; computer software for encryption; software for ensuring the security of electronic mail; computer database management software for use in personalizing the content of e-mail communications; computer software for browsing electronic records with a large data volume; computer search engine software; computer anti-virus software; anti-spyware software; computer software for the creation of firewalls; computer software for use in the safeguarding of digital files, including audio, video, text, binary, still images, graphics and multimedia files; software for monitoring and controlling communication between computers and automated machine systems; network access server operating software; communications software for connecting computer network users; communications software for connecting global computer networks; computer software that provides Web-based access to applications and services through a Web operating system or portal interface</p>
<p>Class 042. All goods and services in the class are cancelled, namely: Design and development of computer hardware and software</p>

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	3639887	Registration date	06/16/2009
International Registration No.	NONE	International Registration Date	NONE
Registrant	ARTEC Computer GmbH Robert-Bosch-Strasse 38 61184 Karben GERMANY		

Goods/Services Subject to Cancellation

Class 009. All goods and services in the class are cancelled, namely: Devices for data recording and for data processing, electronic data processing devices for data storage
Class 042. All goods and services in the class are cancelled, namely: Design and development of computer hardware and software as well as medias for data saving and network management

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85362651	Application Date	07/04/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EMA DESIGN AUTOMATION		
Design Mark			
Description of Mark	The mark consists of the wording EMA followed by a vertical bar followed by the two words Design and Automation stacked vertically.		
Goods/Services	Class 035. First use: First Use: 2004/02/20 First Use In Commerce: 2007/01/10 Value-added reseller services, namely, distributorship services featuring computer software Class 042. First use: First Use: 2004/02/20 First Use In Commerce: 2004/04/00 Design, development, installation and maintenance of computer software		

Attachments	85362651#TMSN.jpeg (1 page)(bytes)
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	EMA Cancellation.pdf (10 pages)(280197 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	/Christopher J. Day/
Name	Christopher J. Day
Date	05/15/2012

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

In re:

Mark: EMA ENTERPRISE MANAGED ARCHIVE
Registration No.: 3906959
Date of Registration: January 18, 2011

Mark: EMA E-MAIL ARCHIVE APPLIANCE
Registration No.: 3639887
Date of Registration: June 16, 2009

EMA Design Automation, Inc.,
Petitioner,

v.

ARTEC Computer GmbH,
Registrant.

Cancellation No.

PETITION TO CANCEL

Petitioner, EMA Design Automation, Inc., a corporation organized under the laws of New York, with a business address of 225 Tech Park Drive, Rochester, NY 14623, believes that it is or will be damaged by Registration Nos. 3906959 and 3639887 and hereby petitions to cancel same.

As grounds of this Petition, it is alleged that:

1. On July 4, 2011, Petitioner filed App. Ser. No. 85362651 to register EMA DESIGN AUTOMATION for “value-added reseller services, namely, distributorship services featuring computer software and design, development, installation and maintenance of computer software.” Title and status copies of Petitioner’s application are attached as Exhibit A.
2. On October 20, 2011, the examining attorney reviewing Petitioner’s application issued a refusal to register Petitioner’s mark, indicating that Registrant’s marks are a bar to registration of Petitioner’s mark under Section 2(d) of the Lanham Act.
3. Since at least as early as April 2004, and well before any date that Registrant can claim priority in its mark, Petitioner, individually and or through related persons and entities, has used the mark EMA DESIGN AUTOMATION in connection with value-added reseller services, namely, distributorship services featuring computer software and design, development, installation and maintenance of computer software.
4. Registrant’s application to register the mark in Registration No. 3639887 was filed on a 66(a) basis on August 12, 2008 and was assigned App. Ser. No. 79060640.

5. The goods and services identified in Registration No. 3639887 are devices for data recording and for data processing, electronic data processing devices for data storage, and design and development of computer hardware and software as well as medias for data saving and network management.

6. Registrant's application to register the mark in Registration No. 3906959 was filed on a 66(a) basis on December 17, 2009 and was assigned App. Ser. No. 79079519. Registrant's application did not include a claim of priority.

7. The goods and services identified in Registration No. 3906959 are Data processing equipment; computer hardware; computer hardware, namely, central processing units (CPU); computer hardware, namely, communications servers; computer hardware for high-speed processing and storage of data using multiple CPU's; computer hardware, namely, firewalls; computer memory hardware; computer hardware, namely, memory cards; computer hardware, namely, microchips; computer hardware, namely, microprocessors; computer operating programs, recorded; computer software for encryption; software for ensuring the security of electronic mail; computer database management software for use in personalizing the content of e-mail communications; computer software for browsing electronic records with a large data volume; computer search engine software; computer anti-virus software; anti-spyware software; computer software for the creation of firewalls; computer software for use in the safeguarding of digital files, including audio, video, text, binary, still images, graphics and multimedia files; software for monitoring and controlling communication

Scottsdale, AZ 85258
Telephone: (602) 258-4440
Facsimile: (602) 258-4441

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited on May 15, 2012, in the U.S. mail, first class postage pre-paid, addressed to Registrant at the following address:

ARTEC Computer GmbH
Robert-Bosch-Strasse 38 61184 Karben
Germany

/Christopher J. Day/
Christopher J. Day

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-05-15 17:18:34 ET

Serial Number: 85362651 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

**EMA Design
Automation**

(words only): EMA DESIGN AUTOMATION

Standard Character claim: No

Current Status: A final Office action refusing registration has been sent(issued) because the applicant neither satisfied nor overcame all requirements and/or refusals previously raised. The applicant may respond by filing (1)a request for reconsideration; and/or (2) an appeal to the Trademark Trial and Appeal Board. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2012-03-20

Filing Date: 2011-07-04

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 110

Attorney Assigned:
SMITH REBECCA A

Current Location: M1X -TMO Law Office 110 - Examining Attorney Assigned

Date In Location: 2012-03-20

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. EMA Design Automation, Inc.

Address:

EMA Design Automation, Inc.
225 Tech Park Drive
Rochester, NY 14623
United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

Phone Number: 585-334-6001

Fax Number: 585-334-6693

GOODS AND/OR SERVICES

International Class: 035

Class Status: Active

Value-added reseller services, namely, distributorship services featuring computer software

Basis: 1(a)

First Use Date: 2004-02-20

First Use in Commerce Date: 2007-01-10

International Class: 042

Class Status: Active

Design, development, installation and maintenance of computer software

Basis: 1(a)

First Use Date: 2004-02-20

First Use in Commerce Date: 2004-04-00

ADDITIONAL INFORMATION

Color(s) Claimed: Color is not claimed as a feature of the mark.

Disclaimer: "DESIGN AUTOMATION"

Description of Mark: The mark consists of the wording EMA followed by a vertical bar followed by the two words Design and Automation stacked vertically.

Design Search Code(s):

26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)

26.17.04 - Bands, vertical; Bars, vertical; Lines, vertical; Vertical line(s), band(s) or bar(s)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2012-03-20 - Notification Of Final Refusal Emailed
2012-03-20 - Final refusal e-mailed
2012-03-20 - Final Refusal Written
2012-03-01 - Teas/Email Correspondence Entered
2012-02-29 - Communication received from applicant
2012-02-29 - TEAS Response to Office Action Received
2011-10-20 - Notification Of Non-Final Action E-Mailed
2011-10-20 - Non-final action e-mailed
2011-10-20 - Non-Final Action Written
2011-10-20 - Assigned To Examiner
2011-07-12 - Notice Of Design Search Code Mailed
2011-07-11 - New Application Office Supplied Data Entered In Tram
2011-07-07 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

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Correspondent

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Assignments on the Web > Trademark Query

No assignment has been recorded at the USPTO

For Serial Number: 85362651

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.3.1
Web interface last modified: Jan 26, 2012 v.2.3.1

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