

ESTTA Tracking number: **ESTTA654805**

Filing date: **02/09/2015**

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	MPOWERD INC.		
Entity	Corporation	Citizenship	New York
Address	231 West 29th Street, Suite 1105 New York, NY 10001 UNITED STATES		

Attorney information	Jacqueline Zion Pearl Cohen Zedek Latzer Baratz LLP 1500 Broadway, 12th FL New York, NY 10036 UNITED STATES tm-uspto@pczlaw.com, jzion@pearlcohen.com Phone:6468780800
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Registration Subject to Cancellation

Registration No	3926636	Registration date	03/01/2011
Registrant	mPhase Technologies, Inc. 150 Clove Road, Suite 11 Little Falls, NJ 07424 UNITED STATES		

Goods/Services Subject to Cancellation

Class 011. First Use: 2010/05/01 First Use In Commerce: 2010/05/01 All goods and services in the class are cancelled, namely: flashlights
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition to Cancel - MPOWERD.pdf(30432 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	/JZ/
Name	Jacqueline Zion
Date	02/09/2015

Grounds for Cancellation

This Petition for Cancellation is brought in the matter of the trademark registration for the mark MPOWER EMERGENCY ILLUMINATOR, U.S. Registration No. 3926636, filed on November 17, 2009, and registered on March 1, 2011.

Petitioner, MPOWERD INC., a New York corporation, with a principal place of business at 231 West 29th Street, Suite 1105, New York, NY 10001, owns U.S. Application Serial No. 85761582, for the mark MPOWERD & Design for “Solar-powered all-weather lights,” in International Class 11.

According to the records of the United States Patent & Trademark Office (“USPTO”), Registrant, mPhase Technologies, Inc. DBA mPower Technologies, Inc., a New Jersey corporation, with a principal place of business located at 150 Clove Road, Suite 11 Little Falls New Jersey 07424, owns U.S. Registration No. 3926636 for the mark MPOWER EMERGENCY ILLUMINATOR for “flashlights,” in International Class 11.

Petitioner believes it is being/or will be damaged by the above-identified registration, and hereby petitions to cancel same. The grounds for cancellation are as follows:

1. Registrant registered the mark MPOWER EMERGENCY ILLUMINATOR, U.S. Registration No. 3926636, for “flashlights,” in International Class 11.
2. According to the records of the USPTO, Registrant’s date of first use and first use in commerce for the mark MPOWER EMERGENCY ILLUMINATOR in connection with “flashlights,” in International Class 11 was at least as early as May 1, 2010.

3. According to the records of the USPTO, the USPTO issued Registration No. 3926636 for the mark MPOWER EMERGENCY ILLUMINATOR for “flashlights,” in International Class 11 on March 1, 2011.

4. On information and belief, Registrant has made no use of the mark MPOWER EMERGENCY ILLUMINATOR on or in connection with “flashlights,” in International Class 11 for at least the three (3) consecutive years preceding the filing of this petition for cancellation and Registrant has no intent to resume such use.

5. Upon information and belief, Registrant’s web site does not list any product under the designation MPOWER EMERGENCY ILLUMINATOR for “flashlights,” in International Class 11.

6. As a result of Registrant’s failure to use the MPOWER EMERGENCY ILLUMINATOR mark with intent not to resume such commercial use, the MPOWER EMERGENCY ILLUMINATOR mark that is the subject of U.S. Registration No. 3926636 has become abandoned for purposes of Sections 14 and 45 of the Lanham Act.

7. Petitioner filed a trademark application on Oct. 23, 2012 for the mark MPOWERD & Design for “Solar-powered all-weather lights,” in International Class 11 with a date of first use and first use in commerce of September 15, 2012. The USPTO assigned the application U.S. Application Serial No. 85761582.

8. The USPTO refused registration of U.S. Application Serial No. 85761582 on February 27, 2013 citing U.S. Registration No. 3926636 as a bar to registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

9. Petitioner filed a Response to First Office Action on May 22, 2013.
10. The USPTO issued a Suspension Letter on June 12, 2013.
11. Petitioner filed a Response to the Suspension Letter on July 02, 2013.
12. The USPTO issued another Suspension Letter on July 15, 2013, followed by a second Office Action where the USPTO maintained and made FINAL the refusal based on U.S. Registration No. 3926636 as a bar to registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) on August 8, 2014.
13. Petitioner filed a Notice of Appeal with Trademark Trial & Appeal Board and Request for Reconsideration of the Final Refusal on February 9, 2014.
14. Petitioner believes it will be damaged by Registrant's continued registration on the Principal Register unless Registrant's mark is cancelled and removed from the Principal Register.
15. If Registrant is permitted to retain the registration sought to be cancelled, a cloud will be placed on Petitioner's title in and to its MPOWERD & Design mark, and on its right to enjoy the free and exclusive use thereof in connection with the sale of its goods and services, all to the great injury of Petitioner.

WHEREFORE, Petitioner believes that it is being and will continue to be damaged by U.S. Registration No. 3926636 on the Principal Register. Therefore, Petitioner respectfully requests that the instant Petition for Cancellation be granted and the subject registration

cancelled pursuant to Section 14 of the Lanham Act (15 U.S.C. § 1064) and Section 45 of the Lanham Act (15 U.S.C. § 1127).

This Petition is filed electronically via the U.S. Patent & Trademark Office Electronic System for Trademark Trials and Appeals in accordance with 37 C.F.R. § 2.111-2.115. The official filing fee of \$300 was charged to the firm's deposit account, Deposit Account No. 50-3354.

Petitioner hereby appoints Jacqueline Zion, Todd Braverman and Brendan Mee, all attorneys and members of the bar of the State of New York, whose post office address is Pearl Cohen Zedek Latzer Baratz LLP, 1500 Broadway, 12th Floor, New York, New York 10036, to act as attorney for Petitioner herein, with full power to prosecute said Petition, to transact all relevant business with the USPTO, Trademark Trial and Appeal Board and in the United States Courts and to receive all official communications in connection with this Petition.

Dated: New York, New York
February 9, 2015

Respectfully submitted,

By: _____


Jacqueline Zion, Esq.
Pearl Cohen Zedek Latzer Baratz LLP
1500 Broadway, 12th Floor
New York, New York 10036
(646) 878-0820
Attorneys for Petitioner
MPOWERD INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation was served by First Class Mail, with sufficient postage prepaid on February 9, 2015 upon mPhase Technologies, Inc. DBA mPower Technologies, Inc. 150 Clove Road, Suite 11, Little Falls New Jersey 07424.

A handwritten signature in blue ink, appearing to read "Zion", is positioned above a horizontal line. The signature is stylized and cursive.

Jacqueline Zion