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Filing date: **03/10/2015**

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	Neogen Corporation		
Entity	Corporation	Citizenship	Michigan
Address	620 Leshar Place Lansing, MI 48912 UNITED STATES		

Attorney information	Brittany D. Parling Honigman Miller Schwartz and Cohn LLP 2290 First National Building 660 Woodward Avenue Detroit, MI 48226 UNITED STATES bparling@honigman.com, jreitz@honigman.com, esmith@honigman.com, lit-docket@honigman.com, tmdocketing@honigman.com Phone:(313) 465-7296		
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Registration Subject to Cancellation

Registration No	3926253	Registration date	03/01/2011
Registrant	MEDICADET MEDICAL DESIGN AND MANUFACTURING, LLC 1911 NW 150 AVENUE, #201 PEMBROKE PINES, FL 33028 UNITED STATES		

Goods/Services Subject to Cancellation

Class 010. First Use: 2010/06/25 First Use In Commerce: 2010/06/25 Cancelled goods and services in the class: latex medical gloves; non-medicated compresses; chemically activated hot and/or cold compresses; medical wearing apparel, namely, scrub tops, scrub suits, scrub pants; electrodes for medical use, cardiac electrodes; nebulizers for administering oxygen in respiration therapy; glassvials and ampoules for collection of fluids; needles for medical use;

Grounds for Cancellation

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. Application No.	86289384	Application Date	05/22/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NEOGEN		

Design Mark	
Description of Mark	The mark consists of NEGOEN with a flask appearing left of the term NEOGEN.
Goods/Services	Class 010. First use: First Use: 1990/01/00 First Use In Commerce: 1990/01/00 medical specimen collection devices in the nature of tubes, vials, collection strips and/or absorbent pads for the collection of fluids; hypodermic syringes, needles, needle holders, surgical blades, clothing for medical use namely, gloves, aprons, sleeves, boots, suits, coveralls, jackets; cadaver bags and liners for containers; veterinary instruments, namely, dehorner, castrators, obstetrical loops, obstetrical fetal extractors, balling guns, forceps, teeth cutters, dental floats, semen collectors, cauterizers, sterilizers, leads, ear notchers, tattoo markers, cannulas, milk tubes, stomach tubes, rumen magnets, splints, thermometers, toenail clippers, prolapse buttons for cattle, scalpels, serum bottles, livestock capturing devices and holders, tubes for repair of rectal prolapse, and tape/ cement for holding protective devices on livestock

Attachments	86289384#TMSN.png(bytes) Petition for Partial Cancellation.pdf(21426 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	/Brittany D. Parling/
Name	Brittany D. Parling
Date	03/10/2015

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

Neogen Corporation,

Petitioner,

Cancellation No. _____

vs.

Registration No. 3926253

Medicadet Medical Design and
Manufacturing, LLC,

Date of Issue: March 1, 2011

Respondent.

Mark: NEOGEN

_____ /

PETITION FOR PARTIAL CANCELLATION

Respondent Neogen Corporation, a corporation organized under the laws of the State of Michigan located at 620 Leshar Place, Lansing, Michigan 48912, believes that it will be damaged by the continued existence of Registration No. 3926253 for the mark NEOGEN, issued March 1, 2011, registered to Medicadet Medical Design and Manufacturing, LLC, a Florida limited liability company located at 1911 NW 150 Avenue, #201, Pembroke Pines, Florida 33028, and therefore petitions to partially cancel this registration.

As grounds for partial cancellation, Petitioner, through its attorneys Honigman Miller Schwartz and Cohn LLP, alleges as follows:

1. Petitioner is the owner of pending U.S. Trademark Application No. 86289384 (“Petitioner’s Application”) to register the mark NEOGEN with a flask appearing left of the term NEOGEN (“Petitioner’s Mark”):



2. Petitioner’s Application seeks to register Petitioner’s Mark for the following goods in International Class 10:

Medical specimen collection devices in the nature of tubes, vials, collection strips and/or absorbent pads for the collection of fluids; hypodermic syringes, needles, needle holders, surgical blades, clothing for medical use namely, gloves, aprons, sleeves, boots, suits, coveralls, jackets; cadaver bags and liners for containers; veterinary instruments, namely, dehorner, castrators, obstetrical loops, obstetrical fetal extractors, balling guns, forceps, teeth cutters, dental floats, semen collectors, cauterizers, sterilizers, leads, ear notchers, tattoo markers, cannulas, milk tubes, stomach tubes, rumen magnets, splints, thermometers, toenail clippers, prolapse buttons for cattle, scalpels, serum bottles, livestock capturing devices and holders, tubes for repair of rectal prolapse, and tape/cement for holding protective devices on livestock.

3. Petitioner has used Petitioner's Mark in connection with the goods identified in Petitioner's Application since at least as early as January 1990.

4. Petitioner's use of Petitioner's Mark in connection with the goods identified in Petitioner's Application has been valid and continuous since at least as early as January 1990 and has not been abandoned.

5. Respondent is the owner of U.S. Registration No. 3926253 ("Respondent's Registration") for the mark NEOGEN consisting of the stylized word NEOGEN, a stylized globe representing the letter "O," and a base for the globe below the "O" ("Respondent's Mark"):



6. Respondent's Mark is registered in connection with the following goods in International Class 10:

Medical equipment and medical supplies, namely, walkers for use by mobility-impaired individuals, walkers to aid in mobility, orthopedic walkers, invalid walkers; canes for medical purposes; crutches; commodes and toilets for medical patients or for use by handicapped persons; latex medical gloves; non-medicated compresses; chemically activated hot and/or cold compresses;

medical wearing apparel, namely, scrub tops, scrub suits, scrub pants; electrodes for medical use, cardiac electrodes; nebulizers for administering oxygen in respiration therapy; glass vials and ampoules for collection of fluids; needles for medical use; catheters for medical use.

7. Petitioner's Mark has been refused registration by the Examining Attorney based upon an alleged likelihood of confusion with Respondent's Mark.

8. Petitioner is being damaged and will be damaged by the continued registration of Respondent's Mark for the following goods (the "Overlapping Goods") because Petitioner's Application for registration of a similar mark on similar goods has been refused registration on the ground that it is confusingly similar to Respondent's Mark:

Latex medical gloves; non-medicated compresses; chemically activated hot and/or cold compresses; medical wearing apparel, namely, scrub tops, scrub suits, scrub pants; electrodes for medical use, cardiac electrodes; nebulizers for administering oxygen in respiration therapy; glass vials and ampoules for collection of fluids; needles for medical use.

GROUND FOR CANCELLATION

Priority and Likelihood of Confusion

9. Petitioner incorporates by reference the allegations contained in Paragraphs 1 through 8.

10. Petitioner adopted and began using Petitioner's Mark long before Respondent's claimed date of first use of Respondent's Mark in June 2010 and application date of March 30, 2009 for Respondent's Registration.

11. Respondent's Mark, when used in connection with the Overlapping Goods, so resembles Petitioner's Mark as to be likely to cause customer confusion, mistake, and/or deception in violation of 15 USC § 1052(d).

12. Accordingly, the continued registration of Respondent's Mark for the Overlapping Goods would be inconsistent with Petitioner's common law rights in Petitioner's Mark.

Non-Use/Abandonment

13. Petitioner incorporates by reference the allegations contained in Paragraphs 1 through 12.

14. On information and belief, Respondent has never used Respondent's Mark in commerce in connection with the Overlapping Goods.

15. On information and belief, Respondent has not used Respondent's Mark in commerce in connection with the Overlapping Goods for at least the last three years.

16. On information and belief, Respondent has no intention of resuming commercial use of Respondent's Mark in connection with the Overlapping Goods.

17. On information and belief, as a result of such non-use by Respondent, Respondent's Mark has been abandoned and has lost all capacity to be identified as a source indicator for the Overlapping Goods under 15 USC § 1127.

WHEREFORE, Petitioner respectfully requests that U.S. Registration No. 3926253 be partially cancelled for the Overlapping Goods, namely, latex medical gloves; non-medicated compresses; chemically activated hot and/or cold compresses; medical wearing apparel, namely, scrub tops, scrub suits, scrub pants; electrodes for medical use, cardiac electrodes; nebulizers for administering oxygen in respiration therapy; glass vials and ampoules for collection of fluids; needles for medical use.

Dated: March 10, 2015

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND
COHN LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing PETITION FOR PARTIAL CANCELLATION was served on Respondent as identified by the records of the U.S. Patent and Trademark Office, this 10th day of March, 2015, by sending same via First Class mail, postage prepaid, to:

Werner H. Stemer
Lerner Greenberg Stemer LLP
P.O. Box 2480
Hollywood, FL 33022

/Brittany D. Parling/
Brittany D. Parling

CERTIFICATE OF FILING

I, Julie Kretschmer Reitz, do certify that on March 10, 2015, I filed via electronic means (ESTTA) the foregoing PETITION FOR PARTIAL CANCELLATION with the:

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board

By: /Brittany D. Parling/