

ESTTA Tracking number: **ESTTA698770**

Filing date: **09/28/2015**

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	Concorde Battery Corporation		
Entity	Corporation	Citizenship	California
Address	2009 San Bernardino Road West Covina, CA 97190 UNITED STATES		

Attorney information	Edwin Komen Sheppard, Mullin, Richter & Hampton LLP 2099 Pennsylvania Avenue, NW, Ste. 100 Washington, DC 20006 UNITED STATES ekomen@sheppardmullin.com, shwang@sheppardmullin.com, pboat@sheppardmullin.com, laipdocketing@sheppardmullin.com Phone:202-747-1900
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Registration Subject to Cancellation

Registration No	4726130	Registration date	04/28/2015
Registrant	Air 1st Aviation Companies, Inc. 234 Air Park Blvd. Aiken, SC 29805 UNITED STATES		

Goods/Services Subject to Cancellation

Class 012. First Use: 2012/08/21 First Use In Commerce: 2012/08/21 All goods and services in the class are cancelled, namely: Refurbished airplanes
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Failure to use as a trademark. 15 US Code Sec. 1127

Related Proceedings	Opposition Number 91224081
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2734038	Application Date	01/25/2002
Registration Date	07/08/2003	Foreign Priority Date	NONE

Word Mark	PLATINUM SERIES
Design Mark	PLATINUM SERIES
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2001/12/21 First Use In Commerce: 2001/12/21 AIRCRAFT BATTERIES

Attachments	76363901#TMSN.png(bytes) TTAB - petition for cancellation.pdf(215481 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	/Susan Hwang/
Name	Susan Hwang
Date	09/28/2015

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

Concorde Battery Corporation)	
)	Cancellation No. _____
Petitioner,)	
)	Reg. No. 4,726,130
v.)	
)	Registered: April 28, 2015
Air 1st Aviation Companies, Inc.)	
AKA Air 1st Corporation,)	Mark: PLATINUM SERIES MU-2
)	
Registrant.)	
)	

PETITION FOR CANCELLATION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Madam:

Petitioner, Concorde Battery Corporation, a corporation organized and existing under the laws of the State of California, having a place of business at 2009 San Bernardino Road, West Covina, California 97190 (“Petitioner”), believes that it will be damaged by the existence on the Principal Register of the mark PLATINUM SERIES MU-2 for “refurbished airplanes” in International Class 12, as shown in Registration No. 4,726,130 (the “Registration”), registered on April 28, 2015 by Registrant, Air 1st Aviation Companies, Inc. AKA Air 1st Corporation, a corporation organized and existing under the laws of the State of

Georgia, having an address at 234 Air Park Blvd, Aiken, South Carolina 29805 (“Registrant”), and hereby petitions to cancel the same.

As grounds for cancellation, Petitioner alleges that:

1. Petitioner is engaged, among other things, in the business of manufacturing and selling aircraft batteries under its mark PLATINUM SERIES.
2. Petitioner is the owner of U.S. Registration No. 2,734,038 for the mark PLATINUM SERIES, registered on July 8, 2003 in connection with “aircraft batteries” in International Class 9.
3. Petitioner’s Registration No. 2,734,038 is valid, subsisting and in full force and effect. Petitioner’s registration is incontestable pursuant to 15 U.S.C. § 1065, and thus serves as conclusive evidence of the validity of Petitioner Concorde Battery’s PLATINUM SERIES mark, pursuant to 15 U.S.C. § 1115(b).
4. Petitioner has been using the PLATINUM SERIES mark continuously in commerce, throughout the United States, for the recited goods in International Class 9 since at least as early as December 21, 2001 and intends to continue so using the PLATINUM SERIES mark in the future. A true, correct, and current printout of the TESS page reflecting Petitioner’s Registration No. 2,734,038 is attached hereto as **Exhibit A**. Petitioner uses the mark PLATINUM SERIES by applying it in ways customary in the trade.

5. On October 11, 2013, Registrant filed an application, Serial No. 86/089,204, with the U.S. Patent and Trademark Office to register PLATINUM SERIES MU-2 in connection with “refurbished airplanes” in International Class 12. The application alleges a date of first use anywhere and in commerce of August 21, 2012.

6. Registrant Air 1st’s application, Serial No. 86/089,204 matured into the Registration on April 28, 2015.

7. Petitioner, through the use of its PLATINUM SERIES mark, from a time prior to Registrant’s alleged date of first use in commerce or the filing of its application underlying the Registration, and by virtue of the quality of Petitioner’s goods, has built up a valuable goodwill and reputation in connection with its PLATINUM SERIES mark.

1ST GROUND FOR CANCELLATION – LIKELIHOOD OF CONFUSION

8. Registrant’s mark PLATINUM SERIES MU-2 is similar in appearance, sound, connotation, and commercial impression to Petitioner’s PLATINUM SERIES mark.

9. The MU-2 component of Registrant’s mark PLATINUM SERIES MU-2 mark does not distinguish Registrant’s mark from Petitioner’s PLATINUM SERIES mark because MU-2 refers to a type of airplane and, thus, is weak, if not descriptive of the goods offered by Registrant under its mark, and is not proprietary to Registrant.

10. Registrant's goods and Petitioner's goods offered under their respective marks are related.

11. Petitioner believes that it will be damaged by the continued registration of Registrant's mark PLATINUM SERIES MU-2 and petitions to cancel the Registration because Registrant's registration and use of its mark PLATINUM SERIES MU-2 in connection with the goods set forth in the Registration is likely to cause confusion, to cause mistake, and to deceive customers, potential customers and others, pursuant to 15 U.S.C. § 1052(d), thereby injuring Petitioner and the consuming public and jeopardizing the valuable goodwill and reputation Petitioner has built up in connection with its PLATINUM SERIES mark.

2nd GROUND FOR CANCELLATION – FAILURE TO USE AS A TRADEMARK

12. Registrant failed to demonstrate valid use in commerce of the registered mark PLATINUM SERIES MU-2 in connection with the recited goods because each specimen submitted to the Patent and Trademark Office failed to demonstrate use of the mark PLATINUM SERIES MU-2 “on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale”. 15 U.S. Code § 1127.

13. On information and belief, Registrant did not make valid use of the registered mark PLATINUM SERIES MU-2 in connection with the recited

goods prior to or at the time of the filing of the application underlying the Registration.

14. Accordingly, for each and every reason stated above, Petitioner believes that it will be damaged by the continued registration of Registrant's PLATINUM SERIES MU-2 mark and petitions to cancel the Registration.

WHEREFORE, Petitioner prays that this petition for cancellation be sustained and that the Registration be canceled. Petitioner requests that the Board charge Deposit Account No. 50-3563 for the filing fee of \$300 under 37 C.F.R. § 2.6(a)(17) and any additional fees as necessary.

September 28, 2015

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP

By: /Edwin Komen/

EDWIN KOMEN
SUSAN HWANG
PAUL BOST

Attorneys for Petitioner
CONCORDE BATTERY CORPORATION

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Washington, DC 20006-6801
Tel.: (202) 747-1900

CERTIFICATE OF TRANSMISSION

I hereby certify that this Petition for Cancellation is being transmitted electronically through the ESTTA Filing System to the United States Patent and Trademark Office on this day, September 28, 2015.

/Susan Hwang/ _____
Susan Hwang

CERTIFICATE OF SERVICE

I hereby certify that this Petition for Cancellation is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to Registrant, on this day, September 28, 2015:

Air 1st Aviation Companies Inc.

234 Air Park Blvd

Aiken, South Carolina 29805-8921

/Betty I. Rodriguez/ _____
Betty I. Rodriguez

EXHIBIT A

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,734,038

United States Patent and Trademark Office

Registered July 8, 2003

**TRADEMARK
PRINCIPAL REGISTER**

PLATINUM SERIES

CONCORDE BATTERY CORPORATION (CALI-
FORNIA CORPORATION)
2009 SAN BERNARDINO ROAD
WEST COVINA, CA 97190

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SERIES", APART FROM THE
MARK AS SHOWN.

FOR: AIRCRAFT BATTERIES, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).

SER. NO. 76-363,901, FILED 1-25-2002.

FIRST USE 12-21-2001; IN COMMERCE 12-21-2001.

ANNE ENDIEVERI, EXAMINING ATTORNEY


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PLATINUM SERIES

Word Mark	PLATINUM SERIES
Goods and Services	IC 009. US 021 023 026 036 038. G & S: AIRCRAFT BATTERIES. FIRST USE: 20011221. FIRST USE IN COMMERCE: 20011221
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76363901
Filing Date	January 25, 2002
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 15, 2003
Registration Number	2734038
Registration Date	July 8, 2003
Owner	(REGISTRANT) Concorde Battery Corporation CORPORATION CALIFORNIA 2009 San Bernardino Road West Covina CALIFORNIA 97190
Attorney of Record	C. Robert Rhodes
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SERIES" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20130629.
Renewal	1ST RENEWAL 20130629
Live/Dead Indicator	LIVE

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