

ESTTA Tracking number: **ESTTA710489**

Filing date: **11/24/2015**

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	Aptean Canada Corporation		
Entity	Corporation	Citizenship	Canada
Address	155 Wellington Street West Toronto, ON M5V3J7 CANADA		

Attorney information	Lawrence K. Nodine Ballard Spahr LLP 999 Peachtree Street Suite 1000 Atlanta, GA 30309 UNITED STATES tmdocketing@ballardspahr.com, nodinel@ballardspahr.com, bonningtonm@ballardspahr.com, odonnellm@ballardspahr.com Phone:678-420-9300		
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**Registration Subject to Cancellation**

Registration No	3983099	Registration date	06/28/2011
International Registration No.	NONE	International Registration Date	NONE
Registrant	NEW BIS SAFE LUXCO 13-15 AVENUE DE LA LIBERTE LUXEMBOURG, L-1931 LUXEMBOURG		

**Goods/Services Subject to Cancellation**

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Business intelligence tool software, namely, software whose function is to arrange and categorize data to aid with business management and decision making; accounting software; the foregoing not including project management software
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**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.	86829373	Application Date	
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	NONE
Design Mark	
Description of Mark	NONE
Goods/Services	

Attachments	PIVOTAL cancellation.pdf(164823 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	/Lawrence K. Nodine/
Name	Lawrence K. Nodine
Date	11/24/2015

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

APTEAN CANADA CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. _____
	)	
NEW BIS SAFE LUXCO S.A.R.L.,	)	Mark: PIVOTAL
	)	
Respondent.	)	
	)	

Commissioner for Trademarks  
**Box TTAB FEE**  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**PETITION FOR CANCELLATION**

In the matter of Trademark Registration No. 3,983,099 for the mark PIVOTAL, filed on April 10, 2009 and issued on June 28, 2011:

Petitioner Aptean Canada Corporation (“Petitioner”) is a corporation organized and existing under the laws of Canada, with a principal place of business at 155 Wellington Street West, Toronto, Ontario M5V3J7. Petitioner is being damaged by the continued registration of the mark shown in the above-identified registration for the goods identified therein and hereby petitions to cancel the same. The grounds for cancellation are as follows:

1. Respondent New Bis Safe Luxco S.A.R.L. (“Respondent”) is a Luxembourg Private Limited Company, with a principal place of business at 13-15 Avenue de la Liberte, Luxembourg L-1931.

**Count I: There is a Likelihood of Confusion Between Petitioner's Mark and Respondent's Mark and Petitioner has Priority Under 15 U.S.C. §1052(d).**

2. On April 10, 2009, Respondent filed an application for the standard character mark PIVOTAL ("Respondent's Mark") in Class 9 for "Business intelligence tool software, namely, software whose function is to arrange and categorize data to aid with business management and decision making; accounting software; the foregoing not including project management software" based on sections 1(b) and 44(d) of the Trademark Act.

3. Respondent's Mark issued on June 28, 2011 under Section 44(e) of the Trademark Act, with U.S. Reg. No. 3,983,099, and has a priority date of October 15, 2008 ("Respondent's Registration").

4. Since at least March 13, 1996, Petitioner and its predecessors, affiliates and licensees have used the PIVOTAL trademark ("Petitioner's Mark") in connection with computer software for use in the management of customer relationships, related information and activities, namely, software which collects, stores and manages customer contact information, tracks, processes and analyzes marketing data, schedules appointments and tasks, records customer interactions and communications, records social media based interaction, generates lists and reports of follow-up activities with regard to sales, placement of orders, order status and invoicing, and providing customer service, management of service request tickets and customer feedback.

5. Petitioner and its predecessors, affiliates and licensees have made continuous and uninterrupted use of Petitioner's Mark in interstate commerce since before the October 15, 2008 priority date of Respondent's Registration, as a result of which Petitioner has priority of use of the PIVOTAL mark over Respondent.

6. Respondent's Mark so resembles Petitioner's Mark, which was previously used in the United States by Petitioner and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive consumers, as the marks are used on or in connection with similar goods.

7. Based on the likelihood of confusion between Petitioner's Mark and Respondent's Mark, Petitioner believes that it will be damaged by the continued registration of Respondent's Mark, Reg. No. 3,983,099.

**Count II: Respondent Has Abandoned its Rights Pursuant to 15 U.S.C. §1064(3) and §1127.**

8. Respondent's Registration issued on June 28, 2011, is based on section 44(e) of the Act, and has a priority date of October 15, 2008. Upon information and belief, Respondent has not used its Mark in the United States.

9. Respondent has abandoned its Mark, thereby subjecting it to cancellation, by failing to make a bona fide use of its Mark for three (3) consecutive years, which is prima facie evidence of abandonment.

WHEREFORE, Petitioner prays that U.S. Reg. No. 3,983,099 be canceled and that this petition be granted.

This 24th day of November, 2015.

Respectfully submitted,

/s/ Lawrence K. Nodine

Lawrence K. Nodine

GA Bar No. 545250

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ATTORNEYS FOR PETITIONER APTEAN  
CANADA CORPORATION

**CERTIFICATE OF SERVICE**

I, Melissa L. Bonnington, hereby certify that on today's date, I caused copies of the foregoing Petition for Cancellation to be served by United States First Class Mail International, postage prepaid, on Respondent at the following address:

New Bis Safe Luxco S.A.R.L.  
13-15 Avenue de la Liberte  
L-1931 Luxembourg  
LUXEMBOURG

Dated: November 24, 2015

/s/ Melissa L. Bonnington  
Melissa L. Bonnington