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Filing date: **06/10/2016**

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

Proceeding	92063790
Party	Plaintiff Home Tech Innovation, Inc.
Correspondence Address	SHANE RUMBAUGH COOLEY LLP 1299 PENNSYLVANIA AVE NW, SUITE 700 WASHINGTON, DC 20004 UNITED STATES srumbaugh@cooley.com, trademarks@cooley.com, vbadolato@cooley.com, pwillsey@cooley.com, Avijay6@gmail.com, bhardwajsa@cs.com
Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/Shane Rumbaugh/
Date	06/10/2016
Attachments	Amended Petition to Cancel SUVI.pdf(45931 bytes ) Motion to amend.pdf(48908 bytes )

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

In the matter of Trademark Registration No. 4,890,276  
For the Trademark SUVI  
Registered on January 19, 2016

Home Tech Innovation, Inc.,	)	
	)	
Petitioner,	)	
	)	Cancellation No. 92063790
v.	)	
	)	
IDT Consulting and Services, Inc.,	)	
	)	
Respondent.	)	
_____	)	

**AMENDED PETITION TO CANCEL**

Home Tech Innovation, Inc. (“Petitioner”), a Delaware corporation having its principal place of business at 975 Memorial Dr., #410 Cambridge, Massachusetts 02138, believes that it has been and will continue to be damaged by the continued registration of the mark SUVI, United States Registration No. 4,890,276, issued on January 19, 2016, to IDT Consulting and Services, Inc. (“Respondent”), and hereby petitions to cancel the same pursuant to Section 1 of the Lanham Act, 15 U.S.C. § 1051.

As grounds for its petition, Petitioner alleges as follows.

1. Petitioner, has a bona fide intent to offer refrigeration and cooking appliances in connection with the SUIVIE mark (“Petitioner’s Mark”).
2. On September 29, 2014, Respondent filed an intent to use application with the United States Patent and Trademark Office (“PTO”) in connection with “IT consulting services; Technical support services, namely, troubleshooting of computer software problems; Design and

development of medical research products, kitchen products, electronic products, solar products, machinery for the agriculture industry and home decor products” for services in International Class 42, as evidenced by Application Serial No. 86/408,559 (“Respondent’s Application”).

3. Respondent’s Application was published for opposition on March 4, 2015, and a Notice of Allowance was issued on May 19, 2015.

4. Respondent submitted a Statement of Use along with an alleged specimen of use on August 14, 2015.

5. On September 21, 2015, the PTO rejected Respondent’s alleged specimen of use because it failed to demonstrate use of Respondent’s services in International Class 42.

6. On September 24, 2015, Petitioner filed an application with the PTO to register the SUVIE mark in connection with “refrigeration and cooking appliances” in International Class 11, as evidenced by Application Serial No. 86/766,860 (“Petitioner’s Application”).

7. After Petitioner filed its application, Respondent proposed to amend Respondent’s Application by adding goods in connection with “[E]nvironmental control apparatus, namely, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; design and development of medical research products, kitchen products, electronic products, solar products, machinery for the agriculture industry and home decor products” in International Class 11.

8. Respondent’s Application was not published for opposition in connection with goods in International Class 11.

9. Respondent submitted an alleged specimen of use on December 13, 2015 in the form of the computer-generated images as demonstrated below.



10. On information and belief, the December 13, 2015 specimen is not an actual image of product packaging.

11. United States Registration No. 4,890,276 for the mark SUVI issued on January 19, 2016, in connection with “IT consulting services; technical support services, namely, troubleshooting of computer software problems” in International Class 42, and “[E]nvironmental control apparatus, namely, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; design and development of medical research products, kitchen products, electronic products, solar products, machinery for the agriculture industry and home decor products” in International Class 11 (the “Cited Registration”).

12. On January 14, 2016, the PTO issued an Office Action initially refusing to register Petitioner’s Mark.

13. The PTO refused registration of Petitioner’s Mark pursuant to Section 2(d) of the Lanham Act, because the Examining attorney concluded that Petitioner’s Mark, when used on or

in connection with the goods identified in the Application, is likely to cause confusion with Respondent's SUVI mark.

14. Petitioner is informed and believes that Respondent owns the Cited Registration and that Respondent's address is 3613 Whitworth Drive, Dublin, California 94568.

15. The continued existence of the Cited Registration will damage Petitioner because it could prevent Petitioner from lawfully obtaining a registration for Petitioner's Mark.

**GROUND FOR CANCELLATION:**

**REGISTRANT DOES NOT USE THE MARK IN CONNECTION  
WITH ALL IDENTIFIED GOODS & SERVICES**

16. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 15 as if fully set forth herein.

17. On information and belief, Respondent has never used the SUVI mark in connection with some of the goods and services identified in the Cited Registration.

18. On information and belief, Respondent was not using the SUVI mark on or before August 14, 2015 in connection with some of the goods and services identified in the Cited Registration.

19. Specifically, on information and belief, Respondent has never used the SUVI mark on the design and development of medical research products.

20. On information and belief, Respondent has never used the SUVI mark on the design and development of kitchen products.

21. On information and belief, Respondent has never used the SUVI mark on the design and development of electronic products.



## CERTIFICATE OF SERVICE

I hereby certify that I mailed the foregoing **AMENDED PETITION TO CANCEL** to the listed Owner of Record and Attorney of Record for Respondent by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

IDT Consulting and Services, Inc.  
3613 Whitworth Drive  
Dublin, California 94568  
[Avijay6@gmail.com](mailto:Avijay6@gmail.com)

Sanjay Bhardwaj  
Law Offices of Sanjay Bhardwaj  
44663 Japala PI  
Fremont, California 94539  
[bhardwajsa@cs.com](mailto:bhardwajsa@cs.com)

Date: June 10, 2016

By:           /s/ Shane Rumbaugh            
Shane M. Rumbaugh

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

In the matter of Trademark Registration No. 4,890,276  
For the Trademark SUVI  
Registered on January 19, 2016

Home Tech Innovation, Inc.,	)	
	)	
Petitioner,	)	
	)	Cancellation No.    92063790
v.	)	
	)	
IDT Consulting and Services, Inc.,	)	
	)	
Respondent.	)	
_____	)	

**PETITIONER’S MOTION TO AMEND**

Petitioner hereby moves this Board for leave to file the attached Amended Petition to Cancel pursuant to Federal Rule of Civil Procedure 15(a) and 37 C.F.R. 2.115. The Amended Petition to Cancel corrects a clerical error in citing to Petitioner’s trademark application number. A redline version of the correction is attached hereto as Exhibit A. Since Petitioner has filed this motion within 21 days of serving its Petition to Cancel, Petitioner respectfully request this Board grant it leave to file the Amended Petition to Cancel.

Respectfully submitted,

By: /s/ Shane Rumbaugh  
Shane M. Rumbaugh, Esq.  
1299 Pennsylvania Ave., NW  
Suite 700  
Washington, DC 20004  
(202) 728-7107  
*Attorney for*  
*Home Tech Innovation, Inc.*

# **Exhibit A**

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

In the matter of Trademark Registration No. 4,890,276  
For the Trademark SUVI  
Registered on January 19, 2016

Home Tech Innovation, Inc.,	)	
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Petitioner,	)	
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v.	)	
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IDT Consulting and Services, Inc.,	)	
	)	
Respondent.	)	
_____	)	

**AMENDED PETITION TO CANCEL**

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As grounds for its petition, Petitioner alleges as follows.

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2. On September 29, 2014, Respondent filed an intent to use application with the United States Patent and Trademark Office (“PTO”) in connection with “IT consulting services; Technical support services, namely, troubleshooting of computer software problems; Design and

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5. On September 21, 2015, the PTO rejected Respondent’s alleged specimen of use because it failed to demonstrate use of Respondent’s services in International Class 42.

6. On September 24, 2015, Petitioner filed an application with the PTO to register the SUVIE mark in connection with “refrigeration and cooking appliances” in International Class 11, as evidenced by Application Serial No. 86/~~720,759~~766,860 (“Petitioner’s Application”).

7. After Petitioner filed its application, Respondent proposed to amend Respondent’s Application by adding goods in connection with “[E]nvironmental control apparatus, namely, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; design and development of medical research products, kitchen products, electronic products, solar products, machinery for the agriculture industry and home decor products” in International Class 11.

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13. The PTO refused registration of Petitioner’s Mark pursuant to Section 2(d) of the Lanham Act, because the Examining attorney concluded that Petitioner’s Mark, when used on or

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**GROUND FOR CANCELLATION:**

**REGISTRANT DOES NOT USE THE MARK IN CONNECTION  
WITH ALL IDENTIFIED GOODS & SERVICES**

16. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 15 as if fully set forth herein.

17. On information and belief, Respondent has never used the SUVI mark in connection with some of the goods and services identified in the Cited Registration.

18. On information and belief, Respondent was not using the SUVI mark on or before August 14, 2015 in connection with some of the goods and services identified in the Cited Registration.

19. Specifically, on information and belief, Respondent has never used the SUVI mark on the design and development of medical research products.

20. On information and belief, Respondent has never used the SUVI mark on the design and development of kitchen products.

21. On information and belief, Respondent has never used the SUVI mark on the design and development of electronic products.

22. On information and belief, Respondent has never used the SUVI mark on the design and development of machinery for the agriculture industry.

23. On information and belief, Respondent has never used the SUVI mark on the design and development of home decor products.

24. On information and belief, Respondent has never used the SUVI mark on an apparatus for lighting, an apparatus for heating, an apparatus for cooking, an apparatus for refrigerating, an apparatus for drying, an apparatus for ventilating, or an apparatus for water supply and sanitary purposes.

25. On information and belief, the Cited Registration did not meet the use in commerce requirement as of August 14, 2015 (nor does it currently do so) pursuant to 15 U.S.C. § 1051. Therefore, the Cited Registration was *void ab initio*.

WHEREFORE, Petitioner requests that the present Petition to Cancel be sustained and that Registration No. 4,890,276 be cancelled on the ground that the subject mark was *void ab initio*. The required fee is submitted herewith.

Respectfully submitted,

Dated: ~~May 26~~ June 10, 2016

By:           /s/ Shane Rumbaugh          

Shane M. Rumbaugh, Esq.  
1299 Pennsylvania Ave., NW  
Suite 700  
Washington, DC 20004  
(202) 728-7107

*Attorney for  
Home Tech Innovation, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that I mailed the foregoing **PETITIONER'S MOTION TO AMEND** to the listed Owner of Record and Attorney of Record for Respondent by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

IDT Consulting and Services, Inc.  
3613 Whitworth Drive  
Dublin, California 94568  
[Avijay6@gmail.com](mailto:Avijay6@gmail.com)

Sanjay Bhardwaj  
Law Offices of Sanjay Bhardwaj  
44663 Japala PI  
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[bhardwajsa@cs.com](mailto:bhardwajsa@cs.com)

Date: June 10, 2016

By:           /s/ Shane Rumbaugh            
Shane M. Rumbaugh