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

ITT INDUSTRIES, INC.
Petitioner

v.

Cancellation No.

ABEX CORPORATION
Registrant



12-10-2001

U.S. Patent & TMO/TM Mail Rpt Dt. #34

PETITION FOR CANCELLATION

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ITT INDUSTRIES, INC., an Indiana Corporation, having its principal place of business at 4 West Red Oak Lane, White Plains, New York 10604 believes it is damaged by registration of the mark SMARTPUMP, Reg. No. 1,288,694, registered on August 7, 198 by Abex Corporation, 530 Fifth Avenue, New York, New York 10036 for "servo-controlled hydraulic pump" in International Class 7 and hereby seeks to cancel registration for said mark.

As grounds of Cancellation, Petitioner alleges:

1. Petitioner, ITT Industries, Inc. is an Indiana corporation having its principal place of business at 4 West Red Oak Land, White Plains, New York 10604.
2. Upon information and belief, Registrant, Abex Corporation is a Delaware corporation, located and doing business at 530 Fifth Avenue, New York, New York 10036.
3. On June 7, 1999 Petitioner filed an application to register the mark PUMPSMART SYSTEMS in respect of "electronically monitored and controlled centrifugal pumping systems." Abex Corporation's SMARTPUMP registration was cited as a reference against registration of

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Petitioner's PUMPSMART SYSTEMS application.

4. Despite Petitioner's submission of arguments the Trademark Examiner maintained the refusal to register on the ground that the marks PUMPSMART SYSTEMS and SMARTPUMP are confusingly similar.
5. In view thereof, Petitioner is damaged by Registrant's registration of the mark SMARTPUMP.

FIRST CAUSE OF ACTION

6. Paragraphs 1-5 are repeated and made a part hereof.
7. Upon information and belief Registrant has not used the mark SMARTPUMP for a period well in excess on two (2) years with no intent to resume its use.
8. In view of Registrant's non-use of the mark SMARTPUMP for a period well in excess of two (2) years without an intent to resume its use the mark has been abandoned as abandonment is defined in Section 45 of the Lanham Act.
9. In view of the fact that Registrant has abandoned its SMARTPUMP mark the registration therefor should be canceled.

SECOND CAUSE OF ACTION

10. Paragraphs 1-5 are repeated and made a part hereof.
11. The mark SMARTPUMP is the generic name of the product.
12. In view of the fact that the mark SMARTPUMP is the generic name of the product it was not entitled to registration at the time such registration was granted.

13. The term PUMP is clearly the generic name for "pumps" and SMART is defined by Microsoft Press Computer Dictionary, Third Edition as a synonym for intelligent. Under the circumstances the mark SMARTPUMP indicates that the Registrant's pump is capable of processing information.

14. In view of the generic nature of the terms "smart" and "pump" in connection with the registered goods, the mark SMARTPUMP is the generic name of the product and is not registerable under the terms of Section 14(3) of the Lanham Act.

14. In view of the fact that SMARTPUMP is the generic name of the product it is not registerable. Accordingly, the registration should be canceled.

For the above reasons, Petitioner is damaged by registration of Registrant's SMARTPUMP mark.

WHEREFORE, Petitioner prays that the Cancellation be sustained and Registrant's registration for the mark SMARTPUMP be canceled.

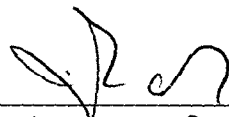
The undersigned hereby appoints JOHN R. GARBER, NORMAN H. ZIVIN, DONNA A. TOBIN, ROBERT B. G. HOROWITZ and WENDY MILLER members of the Bar of the State of New York, of Cooper & Dunham LLP, 1185 Avenue of the Americas, New York, New York 10036, its attorneys to prosecute the Cancellation with full power of substitution and revocation and to transact all business in the Patent and Trademark Office in connection therewith.

All correspondence should be addressed to John R. Garber.

The required fee accompanies this Petition for Cancellation.

ITT INDUSTRIES, INC.

Dated: 12/9/01

By 
Attorney for Petitioner