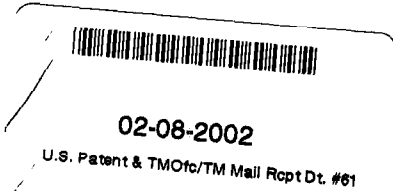


TTAB

Express Mail No. EL 934375090 US

Joseph A. Capraro, Jr.
Ira V. Heffan
Karen M. Landolt
Testa, Hurwitz & Thibault, LLP
High Street Tower
125 High Street
Boston, MA 02110

Attorneys for Petitioner



UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 1,742,871	:	Cancellation No.:
	:	
LILLY SOFTWARE ASSOCIATES, Inc.,	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	
KURT SALMON ASSOCIATES, INC.,	:	
	:	
Registrant.	:	

PETITION FOR CANCELLATION

Petitioner, Lilly Software Associates, Inc., a Delaware corporation with a principal place of business in New Hampshire, petitions for the cancellation of Registration No. 1,742,871, issued December 29, 1992 to Kurt Salmon Associates, Inc. ("the Registrant"), for the mark DCMS. Registrant filed the application for registration on October 24, 1991 and the application was registered on the Principal Register on December 29, 1992 for "computer software for managing the operations of distribution centers in International Class 9;" claiming use since October 1, 1988. Petitioner, pursuant to 15 U.S. C. § 1064 (3) and Trademark Rule 2.111 (b), believes that it is being or will be damaged by Registration No. 1,742,871 and alleges the following grounds for cancellation of same:

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1. On information and belief, Registrant's Registration No. 1,742,871, sought to be canceled, is for the trademark DCMS used in connection with "computer software for managing the operations of distribution centers in International Class 9." Registrant claims a date of first use of October 1, 1988. A copy of Registrant's current status as listed on the Trademark Applications and Registration Retrieval System is attached as Exhibit A. On information and belief, Registrant's principal place of business is located at 1355 Peachtree Street, N.E., Atlanta, GA 30309.

2. On information and belief, Kurt Salmon Associates, Inc. sold the "DCMS" product and related assets over three years ago. On information and belief, this acquisition was publicly announced on September 11, 1998.

3. On information and belief, Registrant has not made any use of the mark DCMS in connection with any goods for at least three consecutive years preceding the filing of this Petition for Cancellation and Registrant does not intend to resume such use.

4. As a result of Registrant's failure to use the DCMS mark with intent not to resume such use, the DCMS mark that is the subject of Registration No. 1,742,871 has become abandoned for purposes of 15 U.S.C. § 1127 and 37 CFR Section 45 of the Trademark Act.

5. In addition to filing this Petition for Cancellation, Petitioner has filed with the U.S. Patent and Trademark Office an application for registration of its VISUAL DCMS trademark for "computer software used by manufacturers and distributors for supply chain execution, namely, scheduling, planning, labor management, warehouse management, inventory tracking, receipts, shipping and kit assembly in International Class 9." A copy of the referenced application is attached hereto as Exhibit B.

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6. If Registrant is permitted to retain the registration sought to be canceled, Petitioner will or may be prevented from obtaining a registration from the U.S. Patent and Trademark Office for its "VISUAL DCMS" trademark.

CONCLUSION

For all of the foregoing reasons, Petitioner requests that the Petition for Cancellation be sustained in favor of Petitioner and that said Registration No. 1,742,871 be canceled.

A duplicate copy of this Petition for Cancellation and the fee required in Trademark Rule § 2.6(a)(16) are enclosed herewith.

Date: February 8, 2002

By: 

Joseph A. Capraro, Jr.
Ira V. Heffan
Karen M. Landolt
Testa, Hurwitz & Thibeault, LLP
High Street Tower
125 High Street
Boston, MA 02110

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Express Mail No. EL934375090US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
POWER OF ATTORNEY**

TO THE COMMISSIONER FOR TRADEMARKS:

Lilly Software Associates, Inc. hereby appoints the following persons:

Heather E. Balmat
Daniel J. Bernstein
David J. Byer
Steven M. Bauer
John V. Bianco
Isabelle A.S. Blundell
Maureen A. Bresnahan
Michael H. Brodowski
Jennifer A. Camacho
Joseph A. Capraro, Jr.
Karen F. Copenhaver
John J. Cotter
Deborah B. Dong
Jason A. Duva
Karen L. Febeo
John V. Forcier
Steven J. Frank

Kia L. Freeman
Brian M. Gaff
Michael J. Giannetta
Duncan A. Greenhalgh
William G. Guerin
Jonathan Harris
Ira V. Heffan
Douglas J. Kline
John D. Lanza
Karen M. Landolt
Jennifer K. Lawson
Kurt W. Lockwood
Eva Maija Marceau
Ronda P. Moore
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Sean C. Ploen
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R. Stephen Rosenholm
Christopher W. Stamos
Joel Stettenheim
Joseph P. Sullivan
Robert J. Tosti
Thomas A. Turano
Michael J. Twomey
Christine C. Vito
Elizabeth A. Walker
Jean B. Weidemier
Daniel A. Wilson
Duan Wu
Yin P. (Phil) Zhang

members of the bar of the Commonwealth of Massachusetts or the bar(s) of one or more of the fifty United States of America, as its attorneys, with power to appoint and revoke appointment of associate attorney(s) or agent(s), to prosecute all existing and future applications and registrations, and to transact all other matters before the U.S. Patent and Trademark Office and the Trademark Trial and Appeal Board in accordance with C.F.R. § 2.17.

Please direct all correspondence regarding this application to:

ATTN: Trademark Administrator
Testa, Hurwitz & Thibault, LLP
High Street Tower
125 High Street
Boston, Massachusetts 02110

LILLY SOFTWARE ASSOCIATES, INC.

Date

2/8/02

By:


Ronald E. Ripley
Senior Vice President

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 02/08/2002 10:58:27 ET

Serial Number: 74216259

Registration Number: 1742871

Mark (words only): DCMS

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 1998-03-11

Filing Date: 1991-10-24

Registration Date: 1992-12-29

Law Office Assigned: TMEO Law Office # 03

CURRENT APPLICANT(S)/OWNER(S)

1. Kurt Salmon Associates, Inc.

Address:

Kurt Salmon Associates, Inc.

1355 Peachtree Street, N.E.

Atlanta, GA 303090900

United States

Country of Citizenship: United States

Incorporated in State: Delaware

Legal Entity Type: Corporation

GOODS AND/OR SERVICES

computer software for managing the operations of distribution centers

International Class: 009

First Use Date: 19881001

First Use in Commerce Date: 19881001

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

1998-03-11 - Section 8 (6-year) accepted & Section 15 acknowledged

1998-02-09 - Section 8 (6-year) and Section 15 Filed

1992-12-29 - Registered - Principal Register

1992-10-06 - Published for opposition

1992-09-04 - Notice of publication

1992-06-23 - Communication received from applicant

1992-07-10 - Approved for Pub - Principal Register (Initial exam)

1992-01-23 - Non-final action mailed

1992-01-06 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

PAUL J. CONNELL (Attorney of record)

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Direct Dial (617) 248-7176

E-Mail heffan@tth.com

February 8, 2002

Express Mail No.: EL 934375090 US

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



02-08-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #61

Attention: BOX TTAB-FEE

RE: U.S. Trademark Registration No. 1,742,871
VISUAL DCMS *in Class 9*
LLY-633 (5125/4)

Sir or Madam:

Enclosed please find a Petition for Cancellation (in duplicate), Power of Attorney, Exhibit A and a check in the Amount of \$300.00. Any other payments should be deducted from our Deposit Account No. 20-0531. Two copies of this letter are enclosed for accounting purposes.

Please direct all correspondence relating to this Application to:

Attention: TRADEMARK ADMINISTRATOR
Testa, Hurwitz & Thibault, LLP
High Street Tower
125 High Street
Boston, MA 02110

Please acknowledge the receipt of these documents by date-stamping the enclosed postcard and returning it to the undersigned.

Very truly yours,

Ira V. Heffan

Enclosures

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