

TAB

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

-----X  
MILLIPORE CORPORATION, )  
Petitioner, )  
v. )  
EPPENDORF-NETHELER-HINZ GMBH, )  
Respondent. )  
-----X

08-30-2002  
U.S. Patent & TMO/TM Mail Rcpt Dt. #26

Cancellation No.

CERTIFICATE OF MAILING  
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.  
on 8/27/02 Stacy D. McGarry  
Date Signature  
STACY D. MCGARRY  
Typed or printed name of person signing certificate

PETITION FOR CANCELLATION

Millipore Corporation, a Massachusetts Corporation, having its principal place of business at 80 Ashby Road, Bedford, Massachusetts 01730, hereby petitions for the cancellation of United States Trademark Registration No. 2,426,144, registered February 6, 2001 to Respondent, EPPENDORF-NETHELER-HINZ GMBH, of Barkhausenweg 1, D-22339 Hamburg, Germany, for the goods of "Reaction tubes, namely, microcentrifuge tubes for laboratory use," in Class 9. Petitioner believes it will be damaged if such registration remains on the Principal Register.

As grounds for cancellation it is alleged that:

1. Respondent has obtained a registration on the Principal Register with the United States Trademark Registration No. 2,426,144 for the goods of "Reaction tubes, namely, microcentrifuge tubes for laboratory use," in Class 9. This registration has not been cancelled.

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2. Petitioner has been and is using goods having the design as shown in Respondent's registration since at least as early as 1991.

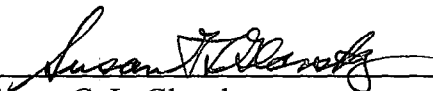
3. The design of Respondent's mark is functional. That is, the mark consists of the design of the identified goods that serves a utilitarian purpose.

4. Respondent's mark is generic. That is, the relevant purchasing public understands the mark primarily as the common or class identifier for the goods or services and not as an identifier of source.

5. The registration as issued to the Respondent places Respondent in a position to harass and cause annoyance to Petitioner and its customers, to the damage of the Petitioner. Such registration would inhibit Petitioner in its use of the design in its goods which would manifest damage upon Petitioner.

WHEREFORE, PETITIONER respectfully requests that Registration No. 2,426,144 of EPPENDORF-NETHELER-HINZ GMBH be cancelled from the Trademark Register.

Respectfully submitted,

  
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(978) 341-0036  
Attorneys for Petitioner

Dated: August 27, 2002

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on 8/27/02 Date  
Stacy D McGarry Signature  
STACY D. MCGARRY  
Typed or printed name of person signing certificate

August 27, 2002

BOX TTAB  
FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

RE: Millipore Corporation v. Eppendorf-Netheler-Hinz GmbH  
Petition to Cancel U.S. Trademark Registration No. 2,426,144  
Our File Number: 0046.0125-001

Dear Sirs:

Enclosed for filing is a Petition for Cancellation the above-referenced registration, in duplicate, with Certificate of Mailing.

A check in the amount of \$300.00 (one class) is enclosed to cover the filing fee associated herewith. Please charge any additional amount due to our Deposit Account No. 08-0380. A copy of this letter is enclosed for accounting purposes.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By John L. Dupre  
for Susan G. L. Glovsky  
Susan G. L. Glovsky  
Attorney for Petitioner

SGLG/sdm  
Enclosure

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APPEAL BOARD  
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