



marks, and hereby petitions to cancel the same pursuant to 15 U.S.C. § 1064 (the below marks are collectively referred to herein as "Respondent's Marks"):

<u>Registration No.</u>	<u>Mark</u>	<u>Registration Date</u>
2,475,850	<b>.9 &amp; Design</b>	August 7, 2001
2,475,851	<b>.9 POINT NINE &amp; Design</b>	August 7, 2001
2,475,852	<b>POINT NINE</b>	August 7, 2001

The grounds for cancellation are as follows:

1. U.S. Trademark Registration No. 2,475,850 for the mark **.9 & Design** was issued on August 7, 2001 for use on "computer software for creating, displaying, storing, receiving, or transmitting digitally encoded data, documents, files, messages, images, sounds, programs, video, or web pages." The record owner of Registration No. 2,475,850 is Point Nine Design, Inc. ("Respondent").

2. U.S. Trademark Registration No. 2,475,851 for the mark **.9 POINT NINE & Design** was issued on August 7, 2001 for use on "computer software for creating, displaying, storing, receiving, and transmitting digitally-encoded data, documents, files, messages, images, sounds, programs, video, or web pages." Respondent is the record owner of Registration No. 2,475,851.

3. U.S. Trademark Registration No. 2,475,852 for the mark **POINT NINE** was issued on August 7, 2001 for use on "computer software for creating, displaying, storing, receiving, or transmitting digitally encoded data, documents, files, messages, images, sounds, programs, video, or web pages." Respondent is the record owner of Registration No. 2,475,852.

4. Upon information and belief, Respondent is a Delaware limited partnership having a principal place of business at 100 Cummings Center, Suite 215C, Beverly, Massachusetts 01915.

5. Petitioner has adopted and used the mark **.9S & Design**, and has filed U.S. Trademark Application Serial No. 76/502,520 to register the mark **.9S & Design** for use on “computer systems comprised of computer software and hardware for communications system security, traffic, and bandwidth management,” in International Class 9.

6. Upon information and belief, Respondent’s Marks shown in Registrations Nos. 2,475,850, 2,475,851 and 2,475,852 are not currently in use and have been abandoned.

7. Upon information and belief, there has been no use of Respondent’s Marks in the ordinary course of trade for more than three consecutive years prior to the date of this Petition; accordingly, Respondent has abandoned Respondent’s Marks.

8. The continued existence of Registrations Nos. 2,475,850, 2,475,851 and 2,475,852 for Respondent’s Marks will damage Petitioner since Respondent’s Marks are believed and alleged to be no longer in use and abandoned, and further since Registrations Nos. 2,475,850, 2,475,851 and 2,475,852 have been cited against Petitioner’s aforementioned application to register **.9S & Design**.

WHEREFORE, pursuant to Lanham Act Section 14(1) and 14(3), 15 U.S.C. §§ 1064(1) and 1064(3), Petitioner requests that Registrations Nos. 2,475,850, 2,475,851 and 2,475,852 be cancelled, and that this Consolidated Petition for Cancellation be sustained.

This Consolidated Petition for Cancellation is being filed in duplicate, and is accompanied by a check in the amount of \$900.00 to cover the filing fees required pursuant to 37 C.F.R. § 2.6(a)(16). The Commissioner is authorized to charge Fulbright & Jaworski L.L.P.

Deposit Account No. 06-2380 if the accompanying check is insufficient. Please return the enclosed postcard to evidence receipt of this Consolidated Petition for Cancellation.


Petitioner consents and appoints David H. Tannenbaum, Linda M. Merritt and Dana C. Jewell, each a member of the Bar of the State of Texas, and any other attorney with the law firm of Fulbright & Jaworski L.L.P., its attorneys and attorney, with full power of substitution and revocation, as its duly authorized agents and attorneys in the matter of the above-captioned proceeding, to defend such proceeding, to transmit all business in the Patent and Trademark Office and in the United States courts in connection with such proceeding, to sign their name to all papers which may hereinafter be filed in connection therewith, and to receive all communications relating to the same.

All communications and inquiries relating to the above-captioned proceeding should be addressed to:

David H. Tannenbaum  
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2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201  
(214) 855-8000

Dated: June 18, 2004

Respectfully submitted,



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ATTORNEYS FOR PETITIONER  
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