

ESTTA Tracking number: **ESTTA45698**

Filing date: **09/21/2005**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	RadView Software Ltd.		
Entity	Corporation	Citizenship	Israel
Address	7 New England Executive Park Burlington, MA 01803 UNITED STATES		

Attorney information	Patrick J. Gallagher Fulbright & Jaworski L.L.P. 666 5th Avenue 31st Floor New York, NY 10103 UNITED STATES pgallagher@fulbright.com, mmutterperl@fulbright.com Phone: 212-318-3000
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Registration Subject to Cancellation

Registration No	2926855	Registration date	02/15/2005
Registrant	Radi Medical Systems AB Palmladsgatan 10 754 50 Uppsala, SWEDEN		
Goods/Services Subject to Cancellation	Class 009. First Use: 20011130, First Use In Commerce: 20011130 Goods/Services: software for digital transfer of physiological recordings within the field of medical devices, diagnostics and technologies		

Related Proceedings	91159806
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Attachments	Petition -- RADIVIEW.pdf (3 pages) Petition -- RADIVIEW --p4.pdf (1 page) cert_of_reg.pdf (2 pages)
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Signature	/Patrick J. Gallagher/
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Name	Patrick J. Gallagher
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Date	09/21/2005
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TRADEMARK

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

In the matter of Registration No.: 2,926,855
Mark: RADIVIEW
By Radi Medical Systems AB
Registered: February 15, 2005

RADVIEW SOFTWARE LTD.,

Petitioner,

v.

RADI MEDICAL SYSTEMS AB,

Respondent.

Cancellation No. _____

PETITION TO CANCEL

Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Commissioner:

RadView Software Ltd., (“RadView” or “Petitioner”), a corporation organized and existing under the laws of Israel, having a place of business at 7 New England Executive Park, Burlington, Massachusetts 01803, believes that it is being damaged by registration of the mark shown in U.S. Trademark Registration No. 2,926,855 for the mark RADIVIEW in International Class 9 and hereby seeks to cancel the same under the provisions of 15 U.S.C. § 1064.

As grounds for cancellation, RadView asserts that:

1. RadView owns U.S. Registration No. 2,479,424 for the mark RADVIEW registered for “computer hardware and software for use in testing and analyzing the performance

and scalability of web applications and simulating and measuring the impact of extreme conditions on the Internet” in International Class 9. Registration No. 2,479,424 issued on August 21, 2001. RadView has continuously used the RADVIEW mark for the identified goods since at least as early as July 24, 1997. The mark RADVIEW is inherently distinctive for such goods. Registration No. 2,479,424 is valid, subsisting and enforceable (a copy of which is attached hereto as Exhibit A).

2. RadView has expended considerable effort and expense in developing and extensively advertising and promoting its RADVIEW mark and the goods offered under that mark.

3. Because RadView has expended considerable effort and expense in promoting its RADVIEW mark and the goods offered under that mark, the purchasing public has come to know, rely upon and recognize the products of RadView by such mark. RadView has therefore established valuable goodwill in its RADVIEW mark.

4. As a result of RadView’s considerable effort and expense in promoting its RADVIEW mark, the RADVIEW mark has become famous. Moreover, the RADVIEW mark became famous before the mark RADIVIEW was used and before the underlying application for Registration No. 2,926,855 was filed.

5. Respondent Radi Medical Systems AB (“Respondent”) registered the mark RADIVIEW (“Respondent’s mark”) for “software for digital transfer of physiological recordings within the field of medical devices, diagnostics and technologies” in International Class 9 (“Respondent’s goods”).

6. Registration No. 2,926,855 issued on February 15, 2005, and it asserts a date of first use in commerce as November 30, 2001 (with the underlying trademark application having

been filed August 27, 2002). In contrast, RadView has continuously used the RADVIEW mark in commerce since at least as early as July 24, 1997, with U.S. Registration No. 2,479,424 issuing on August 21, 2001 (and the underlying trademark application have been filed on January 31, 2000).

7. Respondent's mark so resembles RadView's RADVIEW mark as to be likely, when used on or in connection with Respondent's goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to falsely believe that Respondent's goods offered under Respondent's mark are sponsored, endorsed, or approved by RadView, or are in some way affiliated, connected, or associated with RadView or its goods. Therefore, U.S. Registration No. 2,926,855 should be cancelled in light of 15 U.S.C. § 1052(d).

8. Respondent's mark, when used on or in connection with Respondent's goods, so resembles RadView's RADVIEW mark that Respondent's mark is likely to cause and causes dilution of the distinctive quality of RadView's RADVIEW mark, in violation of 15 U.S.C. § 1125(c).

9. U.S. Registration No. 2,926,855 is a source of damage to RadView because purchasers are likely to attribute the source or sponsorship of Respondent's goods to RadView.

10. U.S. Registration No. 2,926,855 is a further source of damage to RadView because it confers upon Respondent various statutory presumptions to which Respondent is not entitled in view of RadView's long prior use of its RADVIEW mark.

WHEREFORE, RadView prays that U.S. Registration No. 2,926,855 be cancelled, and that this Petition to Cancel be sustained.

* * *

The Commissioner is authorized to draw on the Deposit Account of Fulbright & Jaworski L.L.P., Account No. 50-0624/10102389/RADV 017, if the accompanying check is insufficient or if the check is inadvertently omitted.

RadView consents and appoints Mark N. Mutterperl, Patrick J. Gallagher, and any and all other attorneys with the law firm of Fulbright & Jaworski L.L.P., as its attorneys, with full power of substitution and revocation, as its duly authorized agents and attorneys in the matter of the above-captioned Cancellation proceeding, to prosecute such Cancellation proceeding, to transmit all business in the Patent and Trademark Office and in the United States courts in connection with this Cancellation proceeding, to sign their name to all papers which may hereinafter be filed in connection herewith, and to receive all communications relating to the same.

All communications relating to this Cancellation proceeding should be addressed to:

Mark N. Mutterperl, Esq.
Patrick J. Gallagher, Esq.
FULBRIGHT & JAWORSKI L.L.P.
666 Fifth Avenue, 31st Floor
New York, New York 10103-3198
Telephone: (212) 318-3000
Facsimile: (212) 318-3400

Date: September 21, 2005

Respectfully submitted,

/s/Patrick J. Gallagher/
Mark N. Mutterperl
Patrick J. Gallagher
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New York, New York 10103-3198
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ATTORNEYS FOR PETITIONER
RADVIEW SOFTWARE LTD.

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



Nicholas P. Galai

Acting Director of the United States Patent and Trademark Office

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,479,424

United States Patent and Trademark Office

Registered Aug. 21, 2001

**TRADEMARK
PRINCIPAL REGISTER**

RADVIEW

**RADVIEW SOFTWARE LTD. (ISRAEL COR-
PORATION)
2 HABARZEL ST.
TEL-AVIV, ISRAEL 69710**

**ON THE INTERNET, IN CLASS 9 (U.S. CLS. 21, 23, 26,
36 AND 38).**

FIRST USE 7-24-1997; IN COMMERCE 7-24-1997.

**FOR: COMPUTER HARDWARE AND SOFT-
WARE FOR USE IN TESTING AND ANALYZING
THE PERFORMANCE AND SCALABILITY OF WEB
APPLICATIONS AND SIMULATING AND MEASURING THE IMPACT OF EXTREME CONDITIONS**

SER. NO. 75-906,576, FILED 1-31-2000.

**WILLIAM P. SHANAHAN, EXAMINING ATTOR-
NEY**