

ESTTA Tracking number: **ESTTA395908**

Filing date: **03/02/2011**

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	Wingit Innovations, LLC		
Entity	Corporation	Citizenship	New Jersey
Address	714 5th Avenue Bradley Beach, NJ 07720 UNITED STATES		

Attorney information	Joshua R. Matthews Gottlieb, Rackman & Reisman, P.C. 270 Madison Ave. 8th Floor New York, NY 10016 UNITED STATES efling@grr.com, jmatthews@grr.com Phone:2126843900		
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Registrations Subject to Cancellation

Registration No	3432676	Registration date	05/20/2008
Registrant	NIBCO Inc. 1516 Middlebury Street Elkhart, IN 46515 UNITED STATES		

Goods/Services Subject to Cancellation

Class 006. First Use: 2007/10/08 First Use In Commerce: 2007/10/08 All goods and services in the class are cancelled, namely: Metal Anchor Bolts

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	3432734	Registration date	05/20/2008
Registrant	NIBCO Inc. 1516 Middlebury Street Elkhart, IN 46515 UNITED STATES		

Goods/Services Subject to Cancellation

Class 006. First Use: 2007/10/08 First Use In Commerce: 2007/10/08 All goods and services in the class are cancelled, namely: Metal anchor bolts

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85037258	Application Date	05/13/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WINGITS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 006. First use: First Use: 1997/05/00 First Use In Commerce: 1997/05/00 Metal fastening anchors Class 020. First use: First Use: 1997/05/00 First Use In Commerce: 1997/05/00 Non-Metal fastening anchors		

Attachments	85037258#TMSN.jpeg (1 page)(bytes) Cancellation_Petition.pdf (16 pages)(726462 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Joshua R. Matthews/
Name	Joshua R. Matthews
Date	03/02/2011

for: metal anchor bolts, and hereby petitions to cancel said Registration Nos. 3,432,676 and 3,432,734, pursuant to § 14(3) of the Trademark Act of 1946, 15 U.S.C. § 1064(3).

As grounds for the Petition, Wingit Innovations, through its attorneys, alleges as follows:

1. Wingit Innovations has been using the WINGITS mark in connection with metal fastening anchors and non-metal fastening anchors since at least as early as May 1997. Attached as Exhibit A is an invoice to a customer dated March 28, 2002 which uses the mark WINGITS in association with the sale of metal fastening anchors and non-metal fastening anchors. Attached as Exhibit B is an offer for sale of WINGITS metal fastening anchors and non-metal fastening anchors, sent to a customer on April 10, 2003. Attached as Exhibit C is a copy of the landing page at wingits.com from 2000. The landing page includes the mark WINGITS. Wingit Innovations registered the wingits.com domain name in 1998 and the domain name has been continuously used in association with a website through which Wingit Innovations has advertised and/or sold metal fastening anchors and non-metal fastening anchors since at least 2000.

2. Through use and promotion in interstate commerce of the WINGITS mark since at least as early as May 1997, Wingit Innovations has acquired valuable goodwill in the mark with the result that the mark has come to indicate to the trade and purchasing public, fastening anchors having their source of origin with Wingit Innovations. Said WINGITS mark is an asset of considerable value to Wingit Innovations.

3. Wingit Innovations has sold WINGITS metal fastening anchors and non-metal fastening anchors to customers throughout the United States including HD Supply since

2005. HD Supply is a national leader in the Infrastructure & Energy, Maintenance, Repair & Improvement and Specialty Construction markets.

4. Registrant is the owner of record of Registration No. 3,432,676 for the mark WING-IT in International Class 6 for: metal anchor bolts, which issued on May 20, 2008. A copy of Registration No. 3,432,676 is attached as Exhibit D.

5. Registrant is the owner of record of Registration No. 3,432,734 for the mark WING-IT (stylized) in International Class 6 for: metal anchor bolts, which issued on May 20, 2008. A copy of Registration No. 3,432,734 is attached as Exhibit E.

6. Upon information and belief, Registrant began using its WING-IT and WING-IT (stylized) marks on or about October 8, 2007, well after Wingit Innovations began using its WINGITS mark.

7. Wingit Innovations filed application Serial No. 85/037,258 for the mark WINGITS in International Class 6 for "metal fastening anchors" and International Class 20 for "non-metal fastening anchors." In an Office Action dated September 2, 2010, the Examining Attorney refused registration of Wingit Innovations' mark based on the existence of Registrant's registrations.

8. Registrant's marks are identical to, a colorable imitation of, and confusingly similar to Wingit Innovations' WINGITS mark.

9. The goods set forth in Registrant's WING-IT and WING-IT (stylized) registrations are identical, similar and/or related to the goods on which Wingit Innovations has used the WINGITS mark since at least as early as May 1997, and on information and belief, the goods set forth on the Registrant's registrations are sold through the same sources and/or similar channels of trade, and/or to the same general

class of purchasers in and to which Wingit Innovations' products are marketed and/or sold.

10. Registrant's registration of its WING-IT and WING-IT (stylized) marks is likely to cause confusion, mistake and/or deceive as to origin, sponsorship and/or association of Wingit Innovations' goods sold under its WINGITS mark, and/or to mislead purchasers of Registrant's and/or Wingit Innovations' goods, and/or the public in general, into believing that Wingit Innovations' goods are sold by, emanate from and/or in some way, directly or indirectly, are associated with Registrant and/or Registrant's WING-IT and WING-IT (stylized) marks, or products, or vice versa, to the damage and detriment of Wingit Innovations.

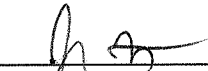
11. Wingit Innovations is therefore likely to be damaged by Registrant's registrations for its WING-IT and WING-IT (stylized) marks, and, insofar as Registrant's registrations may prevent Wingit Innovations from securing a registration for its WINGITS mark, has already been damaged.

WHEREFORE, Wingit Innovations prays that its Petition to Cancel be granted, and that Registration No. 3,432,676 for the mark WING-IT and Registration No. 3,432,734 for WING-IT (stylized) be cancelled pursuant to Section 14(3) of the Trademark Act of July 5, 1946, 15 U.S.C. § 1064(3).

Petitioner submits herewith the required fees for filing the Petition to Cancel in the amount of \$600.00. The commissioner is authorized to charge any additional required fees, or to credit any overpayment, to Deposit Account No. 07-1730, Docket No. 3841/015.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.
Attorneys for Petitioner
270 Madison Avenue
New York, New York 10016-0601
(212) 684-3900

By: 

Marc P. Misthal
Joshua R. Matthews

Dated: New York, New York
March 2, 2011

CERTIFICATE OF TRANSMITTAL

I hereby certify that the PETITION FOR CANCELLATION is being electronically transmitted to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) this 2nd day of March, 2011.

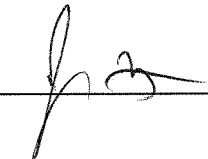


EXHIBIT A

INVOICE

Sold To	Shipped To:
Harbor Castle Hotel Kessinger Hunter 1 Harbor Square M5J 1A6 Toronto, Canada 416-869-1600	Harbor Castle Hotel Kessinger Hunter 1 Harbor Square M5J 1A6 Toronto, Canada 416-869-1600

Customer #	Purchase Order #	P.O. Date	Invoice #	Billing Terms
10000097	CA 20/2002	3-28-2002	HARBOR2	NET 10

Items Shipped	Units	Description	Unit Pr	Total
GBW40	500	Sets of the standard WingIt Grab Bar Fastening System	19.99	9,995
CTHS114	20	WingIt Installation Accessory	9	180

Subtotal	\$ 10,175
Tax	-
Shipping & handling Prepay and add	
Total	
Paid -	Net 10
Bal. Due	

EXHIBIT B

No Blocking – No Problem *WingIts*TM THE FUTURE OF FASTENING

FAX April 10, 2003
 To : Lou
 From : Sal Sisto
 Re : Grab Bars and WingIts

Frank,

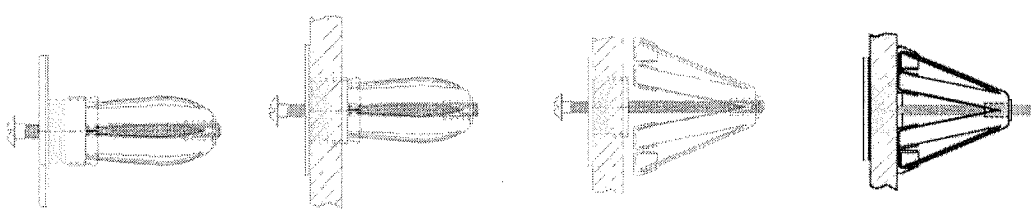
Based on the Grab Bar count you gave me, this is what you will need –

CODE	DESCRIPTION	COST	QTY	TOTAL
WGB6SS24	1 ½”X24” Stainless Steel Grab Bar w/ flange cover	18.48	16	295.68
WGB6SS36	1 ½”X36” Stainless Steel Grab Bar w/ flange cover	21.45	16	343.20
GBW40	Standard Grab Bar WingIt	19.99	64	1,279.36
Installation Accessories				
CTHS114	Industrial carbide 1 ¼” hole saw	9.99	1	9.99
ARB38	Commercial ‘quick change’ arbor	12.50	1	12.50
MDB14	Commercial Masonry Drill Bit @ ¼”	3.75	1	3.75
TOTAL				\$1,944.48

This does not include shipping and handling charges. We do not collect tax for the state of Florida.

Call with questions,

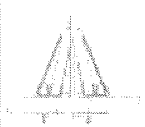
Sal



WINGIT Innovations, LLC 181 West Clay Ave, Roselle Park, New Jersey 07204-1946
 Fax: 908-259-8922 Web > www.wingits.com E-mail > wingits@wingits.com
 Phone: 908-259-8800 Toll free: 877-8WingIt

EXHIBIT C

WINGIT INNOVATIONS



Wingits™
THE FUTURE OF FASTENING TECHNOLOGY

Patented Fastening Technology

Welcome To Wingit Innovations Homepage Search Contact

- About Us
- Grab Bar Wingit
- Towel Bar, Railing & Accessory Wingit
- Architectural Information & Specifications
- The Science
- Installation Guide
- Press Release
- Product Testing and Reports
- Product
- Shower Seats
- Grab Bars
- Towel Bars, Railings & Bathroom Accessories
- Wingit Installation Accessories
- Customers

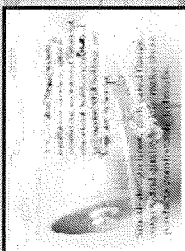
THE PATENTED WINGITS FASTENING SYSTEM ENABLES A MYRIAD OF PRODUCTS TO BE INSTALLED INTO COMMERCIAL WALL STRUCTURES-ELIMINATING BLOCKING AND RECONSTRUCTION!

PERMANENT FASTENING IN NEW CONSTRUCTION, RENOVATION, & BARS, SHOWER SEATS, HAN RAILS, COMMERCIAL PARTITIONING, TOWEL BARS & BATH ACCESSORIES.

WINGITS ALLOW FOR PERMANENT INSTALLS ANYWHERE, ANYTIME - COMMERCIAL, INSTITUTIONAL, INDUSTRIAL, EDUCATIONAL, HEALTHCARE, FOOD SERVICE, RETAIL BUILDINGS, RESIDENTIAL, AND HOSPITALITY INDUSTRIES.

WINGIT INNOVATIONS HAS COMPILED THE MOST EXTENSIVE LINES OF HIGH QUALITY GRAB BARS, SHOWER SEATS, HAND RAILS, COMMERCIAL PARTITIONING, TOWEL BARS & BATH ACCESSORIES THAT UTILIZE THE WINGIT FASTENING SYSTEM.

- FASTENING TECHNOLOGY
- GRAB BARS
- BATHROOM PARTITIONING
- TOWEL BARS
- SHOWER SEATS
- HAND RAILS
- BATHROOM ACCESSORIES



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www.wingits.com
E-Mail: wingits@wingits.com

Wingit Innovations, LLC.
181 West Clay Avenue
Roselle Park, NJ 07204
Toll Free (877) 8WINGIT (877) 894-6448
FAX (908) 259-8922

EXHIBIT D

Int. Cl.: 6

Prior U.S. Cls.: 2, 12, 13, 14, 23, 25, and 50

United States Patent and Trademark Office

Reg. No. 3,432,676

Registered May 20, 2008

**TRADEMARK
PRINCIPAL REGISTER**

WING-IT

NIBCO INC. (INDIANA CORPORATION)
1516 MIDDLEBURY STREET
ELKHART, IN 46515

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: METAL ANCHOR BOLTS, IN CLASS 6 (U.S.
CLS. 2, 12, 13, 14, 23, 25 AND 50).

SN 78-578,966, FILED 3-3-2005.

FIRST USE 10-8-2007; IN COMMERCE 10-8-2007.

STEPHANIE ALI, EXAMINING ATTORNEY

EXHIBIT E

Int. Cl.: 6

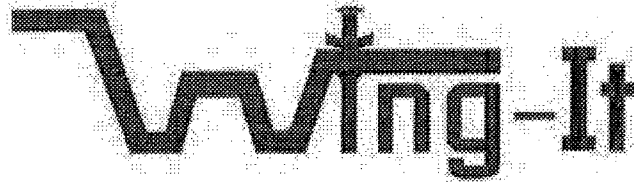
Prior U.S. Cls.: 2, 12, 13, 14, 23, 25, and 50

United States Patent and Trademark Office

Reg. No. 3,432,734

Registered May 20, 2008

**TRADEMARK
PRINCIPAL REGISTER**



NIBCO INC. (INDIANA CORPORATION)
1516 MIDDLEBURY STREET
ELKHART, IN 46515

FIRST USE 10-8-2007; IN COMMERCE 10-8-2007.

SN 78-642,371, FILED 6-2-2005.

FOR: METAL ANCHOR BOLTS, IN CLASS 6 (U.S.
CLS. 2, 12, 13, 14, 23, 25 AND 50).

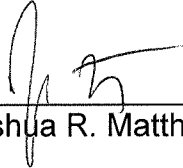
STEPHANIE ALI, EXAMINING ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2011, I caused a copy of the foregoing
PETITION FOR CANCELLATION to be served on the following party as set forth
below:

By First Class Mail on:

Nibco, Inc.
1516 Middlebury Street
Elkhart, IN 46515
Registrant



Joshua R. Matthews, Esq.

Dated: March 2, 2011