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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	Production Tool Supply, Inc.		
Entity	Corporation	Citizenship	Michigan
Address	8655 East Eight Mile Road Warren, MI 48089 UNITED STATES		

Attorney information	Arnold S. Weintraub Weintraub Group, PLC 28580 Orchard Lake Road Suite 140 Farmington Hills, MI 48334 UNITED STATES aweintraub@weintraubgroup.com Phone:248-865-9430		
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### Registration Subject to Cancellation

Registration No	2546690	Registration date	03/12/2002
Registrant	Precision Tools Service, Inc. 2396 West Norcross Drive Columbus, IN 47201 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 035. First Use: 1990/03/00 First Use In Commerce: 1990/03/00 Cancelled goods and services in the class: Distributorships in the field of tools and machine replacement parts for the automotive industry
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### Grounds for Cancellation

The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
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Attachments	20110920__Petition for Partial Cancellation.pdf ( 4 pages )(36132 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	/Arnold S. Weintraub/
Name	Arnold S. Weintraub

Date	09/20/2011
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 2,546,690  
Mark: PTS, Precision Tools Services, Inc. and design  
Issued: March 12, 2002

PRODUCTION TOOLS SUPPLY, INC.

Petitioner,

v.

PRECISION TOOLS SERVICES, INC.

Registrant

**PETITION FOR PARTIAL CANCELLATION**

Production Tool Supply, Inc. (“Petitioner”), a Michigan Corporation having its principal place of business at 8655 East Eight Mile, Warren, MI 48089-4030, believes that it is damaged by Registration No. 2,546,690, and hereby petitions to partially cancel the same under the provisions of 15 U.S.C. § 1068. As grounds for partial cancellation and the restricting of the Registrant’s services to distributorship locations for the distribution of tools, Petitioner states that:

1. Petitioner is a leading retail store, catalog, and publication service in the field of tools, machinery and shop supply products, specifically cutting tools, abrasives, measuring tools, hand tools, power tools, fluids, materials handling, and work holding machinery.

2. Upon information and belief, Precision Tools Services, Inc. is an Indiana Corporation with its principal place of business at 2426 Norcross Drive, Columbus, IN 47201 (“Registrant”).
3. Registrant’s “PTS PRECISION TOOLS, INC. and design” mark was originally filed on November 15, 2000 and issued on March 12, 2002, citing services related to “the distribution of tools and machine replacement parts for the automotive industry” and later changed to the language as issued “**distributorships** in the field of tools and machine replacement parts **for the automotive industry.**”
4. On April 30, 2007, Registrant filed with the U.S. Trademark Office a Combined Declaration of Use and Incontestability under Section 8 & 15 wherein the Registrant stated that it “is using the mark in commerce on or in connection with all goods or services listed in the existing registration for this class; and, the owner, or its related company, has continuously used the mark in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with all goods or services listed in the existing registration.”
5. Applicant is a long prior user of its mark “PTS and ratchet wheel design” since January of 1951 (Exhibit A). The mark the Applicant desires to register was originally filed on May 1, 2000 and issued on April 10, 2001, as Registration No. 2,442,757. The mark was active for retail store, catalog, and publication service in the field of tools, machinery and shop supply products, specifically cutting tools, abrasives, measuring tools, hand tools, power tools, fluids, materials handling, and work holding machinery. The 2,442,757 Registration was then cancelled January 12, 2008 after

approximately six years of coexistence on the principal register with Registrant's mark.

**Basis for Partial Cancellation — Avoidance of a Likelihood of Confusion**

6. On information and belief, Registrant is a leader in the **distribution** of automotive and machine tools industries, and is a top-class distribution company that specializes in machine tools and precision measuring tools, and supplies tools primarily for the Japanese automotive industry.
7. On information and belief, the Registrant uses the mark in commerce to mark its physical distribution centers, which provide distribution services.
8. Applicant is a tradesman's tool retailer selling cutting tools, abrasives, measuring tools, hand tools, power tools, fluids, materials handling, and work holding machinery.
9. On information and belief, Registrant is not actively selling tools, but merely distributing them from its marked distribution locations, operating mainly within the Japanese automotive industry.
10. Thus, the description of the services represented by mark in the 2,546,690 Registration is overly broad, ambiguous, and not specific to the mark as actually used by the Registrant.
11. Due to this vagueness and overbreadth the Applicant faces a refusal to register its mark, due to an examining attorney reading the area of use so broadly as to assume that the mark is being used on tools in commerce or for the sales of tools, rather than to signify distributorship locations which provide services for the distribution tools.
12. On information and belief, a more appropriate description would be limited to distributorship locations for the distribution of tools.

**WHEREFORE**, Petitioner prays that Registration 2,546,690 be restricted to distributorship locations for the distribution of tools, pursuant to 15 U.S.C. § 1068. The petitioner contends that entry of such a restriction to the services in the opponent's Registration will 1) avoid a finding of likelihood of confusion between the two marks; and 2) not essentially affect the opponent as, the Registrant is not using its mark for the sale of tools, the services that will be effectively excluded from the Registration.

Respectfully submitted,

Dated: September 20, 2011

/Arnold S. Weintraub/  
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