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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	M2 SOFTWARE, INC.		
Entity	Corporation	Citizenship	DELAWARE
Address	6725 Sunset Blvd. Ste. 230 Los Angeles, CA 90028 UNITED STATES		

Correspondence information	attn: D. Escamilla M2 SOFTWARE, INC. 6725 Sunset Blvd. Ste. 230 Los Angeles, CA 90028 UNITED STATES info@m2software.com Phone:3103992728		
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#### Registration Subject to Cancellation

Registration No	3200290	Registration date	01/23/2007
Registrant	AEGIS TEXAS VENTURE FUND L.P. 1800 WEST LOOP SOUTH, SUITE 475 HOUSTON, TX 77027 UNITED STATES		

#### Goods/Services Subject to Cancellation

Class 009. First Use: 2003/02/01 First Use In Commerce: 2003/02/05 All goods and services in the class are cancelled, namely: Computer hardware and software, namely, an integrated wireless device for processing financial and business transactions
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#### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	The application and resulting registration are void ab initio through violation of 37 C.F.R. Â§ 2.72 by an improper material alteration to the applied-for mark on the date of approval, and through violation of 37 C.F.R. Â§ 2.71(a) by an improper broadening of the applied-for identification of goods and services.

Related Proceedings	91202450, 91200167
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#### Marks Cited by Petitioner as Basis for Cancellation

U.S. Application/	NONE	Application Date	NONE
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Registration No.			
Registration Date	NONE		
Word Mark	M2		
Goods/Services	trade name use, general computer software		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	M2		
Goods/Services	service mark use, general computer software, technical support services, computer software design, computer programming, maintenance of computer software, information technology consultation, including but not limited to software for processing of financial and business transactions		

U.S. Registration No.	1931182	Application Date	08/30/1994
Registration Date	10/31/1995	Foreign Priority Date	NONE
Word Mark	M2		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1991/10/23 First Use In Commerce: 1992/01/10 computer software featuring business management applications for the film and music industries; and interactive multimedia applications for entertainment, education and information, in the nature of artists' performances and biographical information from the film and music industries; and instructions and information for playing musical instruments		

Attachments	PETCANC-3200290.pdf ( 5 pages )(132512 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	/de/
Name	attn: D. Escamilla
Date	01/19/2012

I hereby certify that this correspondence is being transmitted over ESTTA to the U.S. Patent and Trademark Office, via the Internet at <http://www.uspto.gov>, on the date indicated below.

By: /s David Escamilla

Date: January 19, 2012

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

M2 SOFTWARE, INC.

Petitioner,

v.

AEGIS TEXAS VENTURE FUND L.P.

Respondent.

Cancellation No. \_\_\_\_\_

For: **M2**

Reg. No.: 3,200,290

Issued: 1/23/2007

PETITION FOR CANCELLATION

M2 SOFTWARE, INC. (“Petitioner”), a Delaware corporation, believes that it has been or will be damaged by the registration of the identical trademark “**M2**” (U.S. Reg. No. 3,200,290), that was improperly obtained by the above respondent or a predecessor entity (collectively, “Respondent”) through violation of certain rule requirements at the U.S. Patent and Trademark Office. Petitioner hereby petitions to cancel U.S. Reg. No. 3,200,290 on the following grounds:

I. Priority and Likelihood of Confusion, Section 2(d) of the Lanham Act

1.) Petitioner M2 Software is the senior user and owner of the “**M2**” mark and trade name, an established brand and trademark symbol created by Petitioner M2 Software in 1991 with no dictionary meaning and no senior registered user in any remotely related field.

2.) For over 20 years, Petitioner has used its “**M2**” commercial identifier as trademark, service mark, trade name, and corporate name in the information technology (“IT”) industry. Petitioner’s trademark “**M2**” is registered on the Principal Register in International Class 009, registered in standard character form and protecting all manners of display. TMEP § 1207.01(c)(iii).

3.) Petitioner’s registration was obtained early in company history to identify its first successful enterprise solutions (“*business management applications*”) that included financial applications, initially targeting corporations in the media and entertainment sector prevalent in original launch regions. U.S. Reg. No. 1,931,182. Petitioner’s use has not been limited to its first customers or regions, and for 20 years Petitioner has used the “**M2**” trademark, service mark, and trade name to provide similar and related software and services to a broad array of customers and sectors.

4.) Petitioner's senior registration for "M2" identifies computer software described as "*business management applications*," including but not limited to software for processing of financial and business transactions. The junior registration for "M2" identifies the same, related, or directly complementary goods as "computer hardware and software, namely, an integrated wireless device *for processing financial and business transactions*." U.S. Reg. No. 3,200,290.

5.) Petitioner has invested a substantial amount of funding, time, and resources in development, promotion, registration, and protection of goodwill in its "M2" trademark and trade name. The business and goodwill of Petitioner will be irreversibly damaged if Respondent's improper registration for a second "M2" trademark in the same or related field is not cancelled.

6.) Persons in the public and the trade familiar with Petitioner's 20-year senior use of the trademark and trade name "M2" for computer software ("business management applications") providing, *inter alia*, processing of financial and business transactions are likely to mistakenly believe the new mark of Respondent, also "M2" and also for software-based goods for processing financial and business transactions, refers to products produced, developed, or licensed by Petitioner, or that there is otherwise a connection, license, or association between companies.

7.) A registration must be cancelled under Section 2(d) if it "consists of or comprises" a mark that "so resembles" a senior mark or senior trade name as to be likely to cause confusion. 15 U.S.C. § 1052(d). The Respondent's registration of U.S. Reg. No. 3,200,290 fits this criteria.

II. The Registration Was Improperly Obtained Through a Material Amendment On the Date of Approval for Publication, in Violation of 37 C.F.R. § 2.72

8.) A second independent grounds exists for cancellation of U.S. Reg. No. 3,200,290 because the application and resulting registration are void *ab initio* through violation of 37 C.F.R. § 2.72. A material amendment was improperly allowed by the examining attorney, following an *ex parte* telephonic communication on the same date the application was approved. As a result of such timing, no real examination of the mark ultimately registered (U.S. Reg. 3,200,290) has ever taken place at the United States Patent and Trademark Office.

9.) On February 10, 2003, Respondent submitted its original application for goods that it clearly described as "*a wireless point of sale device*" (not the goods actually registered). Respondent submitted a stylized design mark containing a lower-case "m" and a raised "2" in an exponential format that Respondent identified to the Trademark Office as a mark to be pronounced "M-Squared" (the "M-SQUARED DEVICE DESIGN"). Respondent also submitted an exem-

plar of a photograph it claimed represented the mark as allegedly used in commerce. A full examination was conducted under these parameters. However, this was *neither the mark, nor the description*, that was ultimately registered.

10.) Instead, after the full examination was completed for the M-SQUARED DEVICE DESIGN, the trademark file shows trademark counsel for Respondent telephonically contacted the examining attorney in an *ex parte* communication on the final date of approval for the mark, and entered an amendment that materially altered the mark in violation of 37 C.F.R. § 2.72.

11.) The improper material alteration on the same date the trademark was approved consisted of a complete elimination of stylization or design features of Respondent’s original mark that had been examined, amending the mark to become an exact copy of the senior registered trademark of Petitioner M2 Software (the “IDENTICAL M2 MARK”). As a result of the improper tactics of Respondent’s counsel in the eleventh hour material alteration to the applied-for mark, no examination of Respondent’s IDENTICAL M2 MARK was ever conducted.

12.) This material amendment was entered the same date of telephonic contact:

"As authorized by Christina Hillson on September 19, 2006, the application is amended as noted below. \* \* \* The following standard character drawing claim is added to the record. \* \* \* The mark consists of standard characters without claim to any particular font, style, size, or color."

*Examiner’s Amendment*, September 19, 2006 (emphasis added).

13.) The effect of Respondent’s 37 C.F.R. § 2.72 violation was that the PTO examined *only* the M-SQUARED DEVICE DESIGN. By amendment on date of approval, Respondent was able to obtain, *without* examination, the disputed registration of the IDENTICAL M2 MARK:



*Figure 1: Pre-Amendment Exemplar of M-SQUARED DEVICE DESIGN Subject of PTO’s Examination Through Date of Approval for Publication*



*Figure 2: Post-Amendment IDENTICAL M2 MARK, Amended on Date of Approval and Then Registered (U.S. Reg. No. 3,200,290), Identical to Petitioner’s Senior Registration (U.S. Reg. No. 1,931,182).*

14.) Respondent's eleventh-hour amendment comprised a **material alteration**, prohibited under the Code of Federal Regulations that governs the PTO's examination process:

A special form drawing containing a design element, color, a claim to a particular style or size of lettering, or other distinctive elements cannot be amended to a standard character drawing unless the amendment is non-material."

37 C.F.R. § 2.72. (emphasis added).

15.) This amendment was a material change to the way Respondent intended its registered trademark to be pronounced (from "M-SQUARED" to "M-TWO"). Sight, sound, and meaning are all elements of a proper examination. TMEP §1207.01(b)(i). Thus, the mark was not, and *could* not have been, properly examined in accordance with the PTO's examination guidelines. The amendment was also material in that it brought Respondent's mark into direct conflict with Petitioner's senior identical name and trademark, used for 20 years in the industry.

16.) Respondent's eleventh-hour amendment on the date of approval was a violation of 37 C.F.R. § 2.72. The application and resulting registration are void *ab initio*, and as a consequence U.S. Reg. No. 3,200,290 must be cancelled.

III. The Registration Was Further Improperly Obtained by a Broadening of Applied-for Identification of Goods and Services, in Violation of 37 C.F.R. § 2.71(a)

17.) As a third independent grounds for cancellation, Respondent's improper amendments not only materially affected the applied-for design, but also included an improper amendment that broadened Respondent's description of goods in violation of 37 C.F.R. § 2.71(a).

18.) The original application on February 10, 2003 was for an "M-Squared" design mark for goods described as "*a wireless point of sale device.*" On May 17, 2004, the application was morphed into something entirely different, and application for goods that added a completely new computer hardware and software component as described as: "*computer hardware and software, namely, an integrated wireless device for processing financial and business transactions.*"

19.) On information and belief, Respondent withheld this final language intentionally and in bad faith until the original X-Search was completed, aware that Petitioner's senior registration for "M2" would serve as a bar to Respondent's final registered goods if subjected to a proper X-Search query in the form that was ultimately registered.

20.) Respondent's new description impermissibly enlarged the scope of the applied-for rights after the filing of the application. Throughout the examination, parties checking the status

of Respondent's application in the PTO's system were put on notice only of an "M-squared" application for a "wireless point of sale device." Respondent's ultimate registration, for the mark "M2" for goods that included the broader description of "computer hardware and software" bypassed any effective full examination that would have identified Petitioner's senior "M2" mark.

21.) Respondent's improper amendment violated 37 C.F.R. § 2.71(a):

The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services.

37 C.F.R. § 2.71(a) (emphasis added).

22.) By violation of 37 C.F.R. § 2.71(a), the application and resulting registration are void *ab initio*, and as a consequence U.S. Reg. No. 3,200,290 must be cancelled.

WHEREFORE, for any or all of the above three (3) grounds, any one of which is independently sufficient, Petitioner M2 Software respectfully requests that this Petition for Cancellation be GRANTED and U.S. Reg. No. 3,200,290 be cancelled.

Dated: January 19, 2012  
Chicago, Illinois

Respectfully submitted,

M2 SOFTWARE, INC.

BY:       s/David Escamilla/        
David Escamilla  
President and C.E.O.

PETITIONER