

ESTTA Tracking number: **ESTTA545923**

Filing date: **06/28/2013**

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	Microsoft Corporation		
Entity	Corporation	Citizenship	Washington
Address	One Microsoft Way Redmond, WA 98052 UNITED STATES		

Attorney information	William O. Ferron, Jr. Seed IP Law Group LLP 701 Fifth Avenue, Suite 5400 Seattle, WA 98104 UNITED STATES billf@seedip.com, litcal@seedip.com Phone:206-622-4900		
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Registration Subject to Cancellation

Registration No	3457218	Registration date	07/01/2008
Registrant	Apple Inc. 1 Infinite Loop, MS: 3TM Cupertino, CA 95014 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 2007/01/09 First Use In Commerce: 2007/06/29 All goods and services in the class are cancelled, namely: Handheld mobile digital electronic devices comprised of a mobile phone, digital audio and video player, handheld computer, personal digital assistant, electronic personal organizer, pocket computer for note-taking, electronic calendar, calculator, and camera, and capable of providing access to the Internet and sending and receiving electronic mail, digital audio, video, text, images, graphics and multimedia files

Grounds for Cancellation

The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
Genericness	Trademark Act section 23
The mark is merely descriptive	Trademark Act section 2(e)(1)

Related Proceedings	TTAB Opp No. 91210716
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Attachments	Petition to Cancel - Apple.pdf(116706 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	/William O. Ferron, Jr./
Name	William O. Ferron, Jr.
Date	06/28/2013

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

Microsoft Corporation,)	
)	Cancellation No. _____
Petitioner,)	
)	Reg. No. 3,457,218
v.)	
)	Docket No. 663005.80626
Apple Inc.,)	
Respondent.)	
_____)	

Petition to Cancel

Petitioner Microsoft Corporation (“Petitioner” or “Microsoft”), with a principal place of business at One Microsoft Way, Redmond, Washington 98052, requests that US Trademark Registration No. 3,457,218 (“the ’218 Registration”), registered on July 1, 2008 to Apple Inc. (“Respondent” or “Apple”), be cancelled.

The grounds for this cancellation are as follows:

1. Petitioner is in the business, *inter alia*, of developing and marketing computer software for use with mobile phones. Petitioner’s software licensees sell mobile phones that compete with Respondent’s mobile phones, the goods claimed in the registration.

2. Respondent obtained the ’218 Registration in Class 09 for the following goods:

Handheld mobile digital electronic devices comprised of a mobile phone, digital audio and video player, handheld computer, personal digital assistant, electronic personal organizer, pocket computer for note-taking, electronic calendar, calculator, and camera, and capable of providing access to the Internet and sending and receiving electronic mail, digital audio, video, text, images, graphics and multimedia files.

3. The mark depicted in the ’218 Registration (“Registered Mark”) includes functional features that cannot be protected under trademark law.

4. The Registered Mark is not inherently distinctive and has not acquired distinctiveness.
5. Any consumer recognition associated with the Registered Mark is based on functional features that cannot be protected under trademark law.
6. The Section 2(f) evidence submitted in support of the '218 Registration does not support a claim of acquired distinctiveness because, *inter alia*, that evidence relates to a product configuration with features not claimed in the '218 Registration.
9. The prosecution histories of other intellectual property filings by Respondent demonstrate that elements of the Registered Mark are functional and/or lack distinctiveness.
10. The Registered Mark is generic with respect to the goods claimed in the registration.
11. Petitioner Microsoft will suffer damage if '218 Registration remains in force.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained and Registration No. 3,457,218 be canceled.

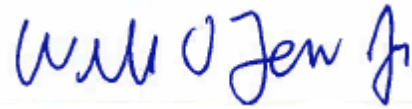
Correspondence Address

Please direct all communications to:

William O. Ferron, Jr.
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LitCal@SeedIP.com
Seed IP Law Group PLLC
701 Fifth Avenue, Suite 5400
Seattle, Washington 98104

DATED this 28th day of June 2013.

Respectfully submitted,
Seed IP Law Group PLLC

A handwritten signature in blue ink, appearing to read "William O. Ferron, Jr.", is written over a light blue horizontal line.

William O. Ferron, Jr.
Kevin S. Costanza
Jared M. Barrett
701 Fifth Avenue, Suite 5400
Seattle, Washington 98104
(206) 622-4900

Attorneys for Petitioner
Microsoft Corporation

Certificate of Service

I hereby certify that on this 28th day of June, 2013, the foregoing **Petition to Cancel** was served upon Respondent at correspondence address shown in the USPTO records by depositing same with the US Postal Service, first-class postage prepaid, addressed as follows:

Apple Inc.
1 Infinite Loop # MS36 4TM
Cupertino, CA 95014-2083

With copies to Respondent's counsel at:

Lisa G. Widup, Esq.
Apple Inc.
1 Infinite Loop # MS36 4TM
Cupertino, CA 95014-2083

Thomas R. La Perle, Esq.
Apple Inc.
1 Infinite Loop # MS3TM
Cupertino, CA 95014-2083

/Anne Calico/
Anne Calico