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Filing date: **07/20/2015**

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	Health Payment Systems, Inc.		
Entity	Corporation	Citizenship	Wisconsin
Address	735 North Water Street, Suite 333 Milwaukee, WI 53202 UNITED STATES		

Attorney information	Patrick M. Bergin Davis & Kuelthau, s.c. 111 E. Kilbourn Avenue Suite 1400 Milwaukee, WI 53202 UNITED STATES pbergin@dkattorneys.com Phone:414-225-7563		
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Registration Subject to Cancellation

Registration No	4055729	Registration date	11/15/2011
Registrant	Mohaideen, Hassan P.O. Box 141282 Staten Island, NY 103141282 UNITED STATES		

Goods/Services Subject to Cancellation

Class 036. First Use: 2008/06/14 First Use In Commerce: 2010/01/04 All goods and services in the class are cancelled, namely: Medical insurance case and utilization review and insurance claims adjustment services for healthcare purchasers and payors and providers and Medicare beneficiaries
Class 042. First Use: 2008/06/18 First Use In Commerce: 2010/01/04 All goods and services in the class are cancelled, namely: Computer software development, computer programming and maintenance of computersoftware for healthcare industry

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	the application is void for failure to name the applicant and void for failure to use the mark on or in connection with at least one of the goods or services listed in each class of the application

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	HPS
Goods/Services	insurance claims processing for the healthcare industry; payment processing services in the field of healthcare payments

Attachments	Petition to Cancel (12213242).pdf(21022 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	/Patrick M. Bergin/
Name	Patrick M. Bergin
Date	07/20/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 4,055,729,
For the mark HPS NOVUS,
Registered on the Principal Register on November 15, 2011

Health Payment Systems, Inc., :
 :
Petitioner, :
 :
vs. : Cancellation No. _____
 :
Hassan Mohaideen, :
 :
Registrant. :

PETITION TO CANCEL

Petitioner, Health Payment Systems, Inc. (hereinafter “Petitioner”), a Wisconsin Corporation with an address of 735 North Water Street, Suite 333 Milwaukee, WI 53202, believes that it is and will continue to be damaged by the continued registration of U.S. Registration No. 4,055,729 for the mark HPS NOVUS and, accordingly, hereby petitions this honorable tribunal to cancel the same pursuant to 15 U.S.C. § 1064 and 37 C.F.R. § 2.111(b).

Grounds for Cancellation

As grounds for the instant Petition to Cancel, it is alleged that the continued registration of Registrant Hassan Mohaideen’s (hereinafter “Registrant”) mark HPS NOVUS as more fully displayed in U.S. Registration No. 4,055,729 would be likely to cause confusion with Petitioner’s mark HPS which retains priority of use over Registrant’s mark HPS NOVUS by virtue of its prior use in commerce in the United States.

Statement of Facts

In support of the instant Petition to Cancel, it is alleged that:

1. Petitioner is the owner of the mark HPS, and other HPS-formative marks, all of which are used on or in connection with insurance claims processing for the healthcare industry; payment processing services in the field of healthcare payments.

2. Petitioner first used the mark HPS in connection with the above-identified services in interstate commerce on or about March 6, 2006.

3. Petitioner's use of the mark HPS in connection with the above-identified services has been continuous since on or about March 6, 2006.

4. Petitioner has invested significant amounts of time, money and other resources in the promotion of the mark HPS in conjunction with the Petitioner's services in the United States.

5. As a result of the aforesaid, Petitioner has established and continues to develop a valuable reputation and goodwill in its HPS mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Registrant's application to register the mark HPS NOVUS identified more fully in U.S. Registration No. 4,055,729.

6. On September 30, 2014, Petitioner filed applications to register the marks

- HPS, Serial No. 86/410,359,
- HPS INNOVATION, Serial No. 86/410,317,
- HPS EXPERIENCE, Serial No. 86/410,328,
- HPS HEALTH PAYMENT SYSTEMS, Serial No. 86/410,322,
- HPS SIMPLICITY THROUGH INNOVATION, Serial No. 86/410,331 and
- HPS HEALTH PAYMENT SYSTEMS SIMPLICITY THROUGH INNOVATION, Serial No. 86/410,336

all used on or in connection with insurance claims processing for the healthcare industry; payment processing services in the field of healthcare payments in International Class 36.

7. By Office Action dated January 20, 2015, the Examining Attorney issued an initial refusal to register Petitioner's marks HPS, HPS INNOVATION, HPS HEALTH PAYMENT SYSTEMS, HPS EXPERIENCE, HPS SIMPLICITY THROUGH INNOVATION, HPS HEALTH PAYMENT SYSTEMS SIMPLICITY THROUGH INNOVATION based upon the Examining Attorney's belief that, if registered, Petitioner's mark would be likely to create a likelihood of confusion with Registrant's registered mark for HPS NOVUS, U.S. Registration No. 4,055,729, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

8. The Office Action dated January 20, 2015 referenced hereinabove was Petitioner's first notice that Registrant was using the mark HPS NOVUS in the United States.

9. Based upon information and belief, Registrant is an individual located and doing business at P.O. Box 141282 Staten Island, New York 10314-1282. Registrant is using the mark HPS NOVUS in connection with medical insurance case and utilization review and insurance claims adjustment services for healthcare purchasers and payors and providers and Medicare beneficiaries in International Class 36 and computer software development, computer programming and maintenance of computer software for healthcare industry in International Class 42.

10. Registrant's registration is identified more fully in U.S. Registration No. 4,055,729 and was filed with the United States Patent and Trademark Office on March 21, 2011.

11. Upon information and belief, Registrant first used the mark HPS NOVUS in connection with the services covered by its registration in the United States on or about January 4, 2010.

12. As such, Petitioner's rights in the mark HPS has priority of use over Registrant's rights in the mark HPS NOVUS, U.S. Registration No. 4,055,729, inasmuch as Petitioner commenced its use of the mark HPS in connection with its services in interstate commerce prior to the filing, registration, and/or priority of use date of the Registrant's registration and use of the mark HPS NOVUS.

13. Petitioner believes that consumers confronted with the Registrant's mark HPS NOVUS will inevitably be confused and deceived into the mistaken belief that the Registrant's services have their origin or are in some manner connected with the Petitioner and/or Petitioner's services offered in connection with its HPS mark.

14. The continued registration of Registrant's mark confers upon Registrant rights to which it is not entitled and is inconsistent with the prior established rights of Petitioner in its mark HPS.

15. By reason of the foregoing, Petitioner will be seriously damaged by the continued registration of Registrant's mark HPS NOVUS.

16. Registration No. 4,055,729 is void *ab initio* because Registrant was not the owner of the mark at the time the application was filed.

17. Registration No. 4,055,729 is void *ab initio* because Registrant had not used the mark in connection with at least one or all of the goods and services described in each of the classes listed in registration at the time the application was filed.

WHEREFORE Petitioner Health Payment Systems, Inc. by counsel, prays that the instant petition be granted, and U.S. Registration No. 4,055,729 be cancelled.

Respectfully submitted this 20th day of June 2015

Davis & Kuelthau, s.c.

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Counsel for Petitioner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 4,055,729,
For the mark HPS NOVUS,
Registered on the Principal Register on November 15, 2011

Health Payment Systems, Inc.,	:
	:
Petitioner,	:
	:
vs.	: Cancellation No. _____
	:
Hassan Mohaideen,	:
	:
Registrant.	:

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing this 20th day of July, 2015 to be served, via first class mail, postage prepaid upon:

Hassan Mohaideen
P.O. Box 141282, Staten Island, New York
103141282

/Patrick M. Bergin/
Patrick M. Bergin