

ESTTA Tracking number: **ESTTA931214**

Filing date: **10/26/2018**

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 has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Flanders Electric Motor Service, Inc.		
Entity	Corporation	Citizenship	IN
Address	8101 Baumgart Road Evansville, IN 47725 UNITED STATES		

Attorney information	C. Richard Martin 318 Main St., Ste. 503 Evansville, IN 47708 UNITED STATES rick@ipsolutionslaw.com 8124924478		
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Registration Subject to Cancellation

Registration No.	5419579	Registration date	03/06/2018
Registrant	Longyear TM, Inc. 2640 West 1700 South Salt Lake City, UT 84104 UNITED STATES		

Goods/Services Subject to Cancellation

Class 007. First Use: 2016/09/28 First Use In Commerce: 2016/09/28 All goods and services in the class are subject to cancellation, namely: Earth drilling machine parts and accessories, namely, drill rod loaders, drill rod presenters, and drill rod handlers
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Related Proceedings	Opposition proceeding in Canada regarding trademark application serial no. 1,821,041
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4790826	Application Date	11/30/2011
Registration Date	08/11/2015	Foreign Priority Date	NONE
Word Mark	FREEDOM		

Design Mark	<h1 style="margin: 0;">FREEDOM</h1>
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2012/11/00 First Use In Commerce: 2012/11/00 Supervisory control and data acquisition industrial control system comprised of- computers, computer hardware, computer software, transmitters, receivers and network interface devices for monitoring and controlling mining and other indus- trial machinery

Attachments	85483639#TMSN.png(bytes) PETITION TO CANCEL.pdf(87412 bytes)
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Signature	/C. Richard Martin/
Name	C. Richard Martin
Date	10/26/2018

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

IN THE MATTER OF
U.S. Trademark Registration No.
5,419,579

FLANDERS ELECTRIC MOTORS SERVICE, INC.,	:	
	:	
Petitioner,	:	
	:	
v.	:	<i>Cancellation No.</i>
	:	<i>[not yet assigned]</i>
	:	
LONGYEAR TM INC.	:	
	:	
Registrant.	:	
	:	

PETITION TO CANCEL

Flanders Electric Motors Service, Inc. (“Petitioner”) hereby petitions to cancel U.S. Trademark Registration No. 5,491,579 (for the mark FREEDOM) on the following grounds:

1. Flanders Electric Motors Service, Inc. is an Indiana Corporation having a principle place of business at 8101 Baumgart Road, Evansville, IN 47725.

2. According to the records the USPTO, the current owner of U.S. Trademark Registration No. 5,419,579 is Longyear TM, Inc., a corporation organized under the laws of Delaware, having an address of 2640 West 1700 South, Salt Lake City, Utah 84104.

3. Petitioner is the owner of U.S Patent Registration No. 4,790,826 for the Trademark FREEDOM which was registered on August 11, 2015 and was first used in commerce in November, 2012.

4. Petitioner's Registration No. 4,790,826 is for supervisory control and data acquisition industrial control system comprised of computers, computer hardware, computer software, transmitters, receivers and network interfaced devices for monitoring and controlling mining and other industrial machinery in Class 9.

5. Petitioner is actively engaged in the field of providing fully featured control and automation systems for heavy mobile machines, stationary standalone machines and coordinated systems. Petitioner is actively engaged in providing these control systems in the following industries: **mining**, mills, oil and gas, power generation, energy and utilities, marine and speciality industrial. Specifically within the mining industry, Petitioner provides control systems for **drills**, draglines, shovels and haul trucks.

6. Petitioner is actively engaged in use of the FREEDOM mark in connection with control systems for blast hole drills which, when retro-fitted with Petitioner's control system, transform the drill into a state-of-the-art synchronized remotely operated machine.

7. On information and belief, Registrant is using the FREEDOM mark in connection with mining drill machine parts and accessories, primarily drill rod loaders, drill rod presenters and drill rod handlers.

8. Registrant's FREEDOM mark is identical in appearance, sound, connotation and commercial impression to Petitioner's senior mark, FREEDOM.

9. On information and belief, Registrant's goods (earth drilling parts and accessories) are closely related to Petitioner's goods (control systems for earth drilling machines) in that they are

both used in connection with the same types of earth drilling machines commonly used in mining for coal, copper and the like.

10. On information and belief, the trade channels for products offered under Registrant's FREEDOM mark and Petitioner's senior mark FREEDOM are very similar in that both are marketed and sold for use in connection with earth drilling equipment used for mining.

11. On information and belief, there are very few, if any, similar marks to the FREEDOM mark that are used in connection with earth drilling equipment used for mining or on similar goods.

12. Petitioner's FREEDOM mark for supervisory controlled systems is arbitrary and, as such is a strong mark.

13. On information and belief, there is a likelihood of confusion between Registrant's use of FREEDOM and Petitioner's use of the senior mark FREEDOM.

WHEREFORE, Petitioner prays that the Trademark Trial and Appeal Board grant its petition and cancel U.S. Trademark Registration No. 5,419,579.

Respectfully submitted,

Date: October 26, 2018

By: /C. Richard Martin/
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