

ESTTA Tracking number: **ESTTA1017989**

Filing date: **11/25/2019**

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	KARL STORZ SE & CO. KG		
Entity	Corporation	Citizenship	Germany
Address	DR. KARL-STORZ-STR. 34 Mittelstrasse 8 D-78532 Tuttlingen, 0 GERMANY		

Attorney information	Peter Corless MINTZ LEVIN COHN FERRIS ET AL One Financial Center Boston, MA 02111 UNITED STATES PCorless@mintz.com, CSave@mintz.com, jddib@mintz.com, IPDocketing-BOS@mintz.com, acromanini@mintz.com 617-348-1859		
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Registration Subject to Cancellation

Registration No.	5438302	Registration date	04/03/2018
Registrant	MED Fibers, Inc. Ste 140 7404 W. Detroit Street, Chandler, AZ 85226 UNITED STATES		

Goods/Services Subject to Cancellation

Class 010. First Use: 2017/06/01 First Use In Commerce: 2017/06/01 All goods and services in the class are subject to cancellation, namely: Surgical instruments and apparatus; Surgical instruments and apparatus, namely, surgical laser light treatment devices for the delivery of laser light to the treatment area in contact and non-contact mode during surgical procedures designed to work with the use of ureteroscopes

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2979037	Application Date	07/18/2003
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Registration Date	07/26/2005	Foreign Priority Date	02/04/2003
Word Mark	FLEX-X		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2003/03/00 First Use In Commerce: 2003/03/00 MEDICAL AND SURGICAL INSTRUMENTS AND APPARATUS, NAMELY, EN- DOSCOPES		

Attachments	Petition to Cancel.pdf(130435 bytes)
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Signature	/Carolina Save/
Name	Carolina Save
Date	11/25/2019

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

In the matter of Registration No. 5,438,302
Mark: FLEXX TRAK
Registration Date: April 3, 2018

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KARL STORZ SE & CO. KG)	
)	
	Petitioner,)	
)	
v.)	Cancellation No.:
)	
MED Fibers, Inc.)	
)	
	Registrant.)	
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Trademark Assistance Center
Madison East, Concourse Level Room C 55
600 Dulany Street
Alexandria, VA 22314

PETITION FOR CANCELLATION

Karl Storz SE & Co. KG (“Petitioner”), a German company, with an address at Dr. Karl-
Storz-Strabe 34 78532 Tuttlingen Germany, believes that it is and will be damaged by the
continued registration of the mark FLEXX TRAK (“Registered Mark”), U.S. Registration No.
5,438,302 registered on April 3, 2018. The Registered Mark is registered for “Surgical instruments
and apparatus, namely, surgical laser light treatment devices for delivery of laser light to the
treatment area in contact and non-contact mode during surgical procedures designed to work with
the use of ureteroscopes.” (Class 10). Petitioner hereby petitions for cancellation of the above-
referenced Registration pursuant to 15 U.S.C. §§1052, 1064 and 37 C.F.R. §2.112. In support of
this Petition, Petitioner alleges as follows:

FACTUAL BACKGROUND

1. Petitioner is the owner of the U.S. Registration No. 2,979,037 registered on July 26, 2005 for the mark “FLEX-X” for “Medical and surgical instruments and apparatus, namely, endoscopes” in Class 10 (“Petitioner’s Mark”).

2. MED Fibers, Inc. (“Registrant”) is the current owner of record of U.S. Registration No. 5,438,302 (“Registration”) for the Registered Mark FLEXX TRAK. Upon information and belief, Registrant’s address of record is 7404 W. Detroit Street, Suite No. 140, Chandler, Arizona 85226.

3. On information and belief, Petitioner’s Mark has been both registered on the principal register and used in commerce prior to Registrant’s first use date for the goods in the registration; the Registered Mark is confusingly similar to Petitioner’s Mark on the goods noted in the Registration.

4. Petitioner is a well-known manufacturer and distributor of endoscopes, medical instruments, and devices.

5. Since at least the 2003’s, Petitioner has manufactured and sold these goods in the U.S. under the trademark FLEX-X.

COUNT ONE:

6. Petitioner re-alleges and incorporates herein by reference the allegations in the paragraphs above as if fully set forth herein.

7. Petitioner’s rights in its mark FLEX-X predate the June 1, 2017 date of first use claimed in Registrant’s registration and the September 22, 2017 filing date of Registrant’s application. Therefore, Petitioner has prior and superior rights in this matter.

8. As a result of the foregoing, Petitioner will be damaged by the continued registration of the mark FLEXX TRAK.

COUNT TWO:

9. Petitioner re-alleges and incorporates herein by reference the allegations in the paragraphs above as if fully set forth herein.

10. Registrant's mark FLEXX TRAK so resembles Petitioner's Mark FLEX-X as to be likely, when applied to the goods of Registrant, to cause confusion, to cause mistake, or to deceive.

11. As a result of the foregoing, Petitioner will be damaged by the continued registration of the mark FLEXX TRAK.

COUNT THREE:

12. Registrant's mark FLEXX TRAK falsely suggests that Registrant or its business and products are connected, associated, or affiliated with Petitioner or Petitioner's business and products sold in the U.S. under the name FLEX-X.

13. As a result of the foregoing, Petitioner will be damaged by the continued registration of the mark FLEXX TRAK.

WHEREFORE, Petitioner believes that it is and will be damaged by continued registration of the mark FLEXX TRAK, Registration No. 5,438,302, and, therefore, requests cancellation of the Registration.

Respectfully submitted,

By: /Carolina E. Säve/
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Dated: November 25, 2019

Attorneys for Petitioner
KARL STORZ SE & CO. KG