

ESTTA Tracking number: **ESTTA1041315**

Filing date: **03/10/2020**

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	BatchTest Corporation		
Entity	Corporation	Citizenship	California
Address	2118 Walsh Ave Suite 150 Santa Clara, CA 95050 UNITED STATES		

Correspondence information	Dinesh Patel President BatchTest Corporation 2118 Walsh Ave Suite 150 Santa Clara, CA 95050 UNITED STATES BatchTest_TM@batchtest.com 408-483-1654
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Registration Subject to Cancellation

Registration No.	4698154	Registration date	03/10/2015
Registrant	Bulletproof Documentation, Inc. 340 Lorton Avenue, Suite 208 Burlingame, CA 94010 UNITED STATES		

Goods/Services Subject to Cancellation

Class 042. First Use: 2013/07/30 First Use In Commerce: 2013/07/30 All goods and services in the class are subject to cancellation, namely: Consulting services in the fields of biotechnology, pharmaceutical research and development, laboratory testing, diagnostics, and phramacogenetics

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Abandonment	Trademark Act Section 14(3)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	88723817	Application Date	12/11/2019
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BULLETPROOF		
Design Mark	<h1>BULLETPROOF</h1>		
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2005/00/00 First Use In Commerce: 2007/00/00 Automated Test Equipment and related components for use in scientific and engineering research and development, manufacturing, electronic device calibration, and process automation, and user's manuals and instructional manuals sold as a unit therewith; automation control systems and related components for use in scientific and engineering research and development, and process automation, and user's manuals and instructional manuals sold as a unit therewith; computer hardware and software to manually or automatically manage and synchronize data and functionality instructions of one or more Automated Test Equipment or automation control systems or automation devices or test systems, using intranet or the internet, and user's manuals and instructional manuals sold as a unit therewith; computer hardware and software for automation of tests or processes, enabling a user to author, edit, secure, locally or remotely manage, execute, evaluate, verify, monitor, collect or store data, report, react to, one or more sequences of commands and/or queries in order to automate a test or a process, and user's manuals and instructional manuals sold as a unit therewith; software for creating, viewing, manipulating, editing, animating, managing, indexing, organizing, transferring, synchronizing, and storing digital and graphic images and photographs, data, and text, namely, for creating Human-Machine-Interface, and user's manuals and instructional manuals sold as a unit therewith; software for use in design and managing content on a website and enabling internet publishing; computer hardware and software and electronic components for use in the fields of industrial or factory or home automation, scientific and engineering data acquisition, rapid prototyping, automated testing in manufacturing process, automated testing during research and development of products, control and analysis and for controlling, monitoring and emulating scientific and engineering instruments and instrumentation systems, and for performing instrumentation functions, and for interacting with database, and for interacting with a computer server on a intranet or internet, and instruction manuals sold therewith</p>		

U.S. Application No.	88750328	Application Date	01/08/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BULLETPROOF		

Design Mark	BULLETPROOF
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2005/00/00 First Use In Commerce: 2006/00/00 Engineering services, namely, technicalresearch, design, development, prototyping, testing or automated testing, verification and validation, and documentation in the field of software, firmware, hardware for electronic devices, test engineering, automated testing, data-acquisition, and automation; engineering services, namely, design, development, documentation, and managing of website content in the field of test engineering and automation; engineering services, namely, design and deevlopment of Graphics and Graphical User Interface in the field of software and firmware; engineering services, namely, system integration in the field of automation, and test engineering;software as a service (SAAS) services, namely, cloud-based software for use by others for activation, authentication, licensing, product features management, and user-customizable product configurations, of software or hardware designed orbuilt or manufactured by others

Attachments	88723817#TMSN.png(bytes) 88750328#TMSN.png(bytes) 20200310 BatchTest Petition For Cancellation.pdf(111896 bytes)
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Signature	/Dinesh Patel/
Name	Dinesh Patel
Date	03/10/2020

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

In re Registration of Bulletproof Documentation, Inc.

Marks: BULLETPROOF
Reg. Nos.: 4698154

BATCHTEST CORPORATION)	CANCELLATION NO.
)	
Petitioner,)	
)	
V.)	
)	
BULLETPROOF DOCUMENTATION, INC.)	
)	
Registrant.)	

PETITION FOR CANCELLATION

BatchTest Corporation (“BatchTest”), a California corporation with an address at 2118 Walsh Ave, Suite 150, Santa Clara, California 95050, USA, believes that it has been and will continue to be damaged by the continued registration of the trademark “BULLETPROOF” (the “Mark”) in Registration Number 4698154 (the “BD-Registration”) owned by dissolved corporation Bulletproof Documentation, Inc. (“Registrant”) and hereby petitions to cancel the BD-Registration.

The grounds for cancellation are as follows:

THE PARTIES

1. BatchTest is a designer, producer, and marketer of electronic boards & devices, Integrated Systems, Software, and other related products and services, including consulting services, in the fields of Automation, Medical Devices, Secure Communications, Embedded Systems, and Contract Manufacturing.
2. Registrant is a California dissolved corporation that is identified as the assignee and current owner of the BD-Registration with its last identified principal place of business at 340 Lorton Avenue, Suite 208, Burlingame, California 94010.

BACKGROUND

3. “Dinesh Patel, ICware Systems”, a sole proprietor (“DP-ICware”), is BatchTest’s immediate predecessor-in-interest. DP-ICware had first used marks “BULLETPROOF” and “BULLETPROOF YOUR INVENTIONS” (the “BatchTest-Marks”) on or before December 2005, and used the BatchTest-Marks on consulting services and software products it offered to a client. DP-ICware had used the BatchTest-Mark for goods and services in commerce in Classes 9 and 42 until he transferred and assigned the BatchTest-Marks, the ICware Systems name and business, together with the goodwill associated with the BatchTest-Marks and business, to BatchTest in 2008.

4. Prior to filing of Registrant’s applications for the BD-Registration, BatchTest had established Common Law rights in and to the BatchTest-Marks through their use on goods and services in Classes 9 and 42 in interstate commerce, and the BatchTest-Marks and “BULLETPROOF IT!” mark have been in continuous use by BatchTest since the said applications were filed. BatchTest has applied for registrations of the BatchTest-Marks in International Classes 009 and 042 (Application Serial Numbers 88750328, 88750328, 88750920, and 88750879.)

5. Registrant filed application Serial Number 86128945 (the “BD-Application”) on November 25, 2013 to register the Mark with the USPTO. The BD-Application was filed under Section 1(a) of the Trademark Act in Class 042 for “Consulting services in the fields of biotechnology, pharmaceutical research and development, laboratory testing, diagnostics, and phramacogenetics”, claiming the date of First Use and First Use in Commerce as July 30, 2013.

6. The BD-Registration was issued to Registrant on March 10, 2015.

7. Registrant has been dissolved by the California Secretary of State since approximately September 30, 2019, and has ceased to exist.

8. After a detailed investigation, BatchTest has found no evidence that Registrant is still in business or has otherwise conducted any business using the BD-Marks at any time since approximately September 30, 2019.

9. Registrant’s phone number is inactive or no longer in use.

10. Registrant has an inactive website, and a domain no longer in use.

11. Facebook page of Registrant shows no recent activity by Registrant since approximately August 2014.

12. BatchTest has not found any evidence that Registrant has used the Mark at any time since at least 2016.

13. Accordingly, Registrant has not used the Mark in commerce anywhere in excess of three (3) years and there is a legal presumption of Registrant's abandonment of the Mark.

14. BatchTest has standing to petition to cancel the BD-Registration because it is being damaged and will continue to be damaged by the BD-Registration.

COUNT I

PRIORITY & LIKELIHOOD OF CONFUSION

15. BatchTest repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

16. Registrant's BULLETPROOF mark, consisting of "the word 'bulletproof' in lower case letters, with a continuous horizontal break and gap in each of the letters 'bullet' where the background shows through creating the horizontal break and gap", and with a line above and a line below the wording, was first used in commerce on July 30, 2013 according to the BD-Registration.

17. Registrant's BULLETPROOF mark is identical in its entirety as to spelling, sound and commercial impression to BatchTest's pre-existing use of mark "BULLETPROOF" in goods and services BatchTest has offered since 2005. The BatchTest-Marks, and "BULLETPROOF IT!" mark were used by BatchTest in commerce prior to Registrant's use of the Mark. In fact, BatchTest's and Registrant's marks are nearly identical with the only distinction being the format in Registrant's BULLETPROOF mark, which does not distinguish the word-marks to the public.

18. Since BatchTest's first use of the BatchTest-Marks and "BULLETPROOF IT!" mark, it has continuously and substantially used the said marks in connection with the promotion and sale of its goods.

19. BatchTest's common law rights in BULLETPROOF predate Registrant's alleged date of first use of July 30, 2013.

20. The consumers for Registrant's services are the same as the consumers for BatchTest's products and services. At least until its dissolution, Registrant and BatchTest were competing in the industry of Biotechnology for consulting services under International Class 042. Furthermore, BatchTest also offers related products and services to the same industry under class 9 under the BatchTest-Marks. As such, Petitioner's and Registrant's goods for the marks are in the same Class and almost identical, and there is a likelihood of confusion in the marketplace and ongoing damage to BatchTest, when the Mark is used in connection with their respective goods and services.

21. When Registrant's BULLETPROOF mark is used in connection with the goods set forth in the BD-Registration, it is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Registrant with BatchTest, or as to the origin, sponsorship, or approval of Registrant's goods by BatchTest, thereby causing damage to BatchTest as it has no control over the quality, safety, or reputation of Registrant's goods.

22. Registrant's continued use of the BULLETPROOF mark will handicap and damage the legitimate present and future activities of BatchTest with regard to its Mark.

23. Therefore, Registrant's use of the BULLETPROOF mark is likely to cause confusion with BatchTest's use of the BULLETPROOF mark, and because BatchTest has prior use of the Mark, BatchTest respectfully requests that the BD-Registration be canceled.

COUNT II

ABANDONMENT OF THE MARK, 15 U.S.C. § 1064

24. BatchTest repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

25. There exist valid grounds for the BD-Registration to be cancelled. On information and belief, Registrant has been dissolved and out of business since at least September 30, 2019 and does not intend to resume use of the Mark.

26. Further, for the at least the last three (3) consecutive years, Registrant has not used the Mark in connection with international class 42 for "Consulting services in the fields of

biotechnology, pharmaceutical research and development, laboratory testing, diagnostics, and phramacogenetics”, thereby constituting prima facie evidence of abandonment of the Mark.

27. In view of Registrant’s lack of use, lack of intent to resume use and, thus, abandonment of the Mark, pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3), Registrant is not entitled to continued registration of the Mark. As such, the BD-Registration should be cancelled by the Board.

28. BatchTest has been, and will continue to be, damaged by the continued registration of Registrant’s BULLETPROOF mark. Thus the BD-Registration should be cancelled as currently void and as void ab initio, and removed from the Principal Register.

WHEREFORE, as BatchTest has been damaged, continues to be damaged and will be damaged in the future, by the challenged registration, Petitioner prays that the BD-Registration be cancelled for the reasons set forth above.

Respectfully submitted,

BatchTest Corporation

Dated: March 10, 2020

/Dinesh Patel/

Dinesh Patel

President, BatchTest Corporation

2118 Walsh Ave, Suite 150

Santa Clara, CA 95050

(408) 454-8378

Batchtest_TM@BatchTest.com

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2020, I served a true and correct copy of the foregoing document to Registrant's counsel Jon R. Parsons by emailing said copy to "jon@jrplaw.com", and by mailing said copy via First Class Mail, postage prepaid to:

Jon R. Parsons
Jon R. Parsons Law Firm
2225 E. Bayshore Rd. #210
Palo Alto, California 94303

By: BatchTest Corporation

Signature: /Dinesh Patel/

Name: Dinesh Patel, President, BatchTest Corporation

Date: March 10, 2020