

ESTTA Tracking number: **ESTTA1044682**

Filing date: **03/25/2020**

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	Medacta International S.A.		
Entity	soci�t� anonyme	Citizenship	Switzerland
Address	Strada Regina Castel San Pietro, 6874 SWITZERLAND		

Attorney information	Theodore R. Remaklus Wood, Herron & Evans, L.L.P. 441 Vine Street 2700 Carew Tower Cincinnati, OH 45202 UNITED STATES tremaklus@whe-law.com 5132412324		
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**Registrations Subject to Cancellation**

Registration No.	3308949	Registration date	10/09/2007
Registrant	ENCORE MEDICAL L.P. 9800 METRIC BLVD AUSTIN, TX 78758 UNITED STATES Email: ip@breakwaterlawgroup.com		

**Goods/Services Subject to Cancellation**

Class 010. First Use: 2005/07/00 First Use In Commerce: 2005/07/00 All goods and services in the class are subject to cancellation, namely: Medical and surgical instruments, namely, cut blocks, speed blocks, drill guides, bushings, retractors, pins, alignment guides and slaphammers used in knee arthroplasty; Medical and surgical instrument cases used in connection with knee arthroplasty; Orthopedic prostheses, namely, knee joint replacements and component parts thereof
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**Grounds for Cancellation**

Abandonment	Trademark Act Section 14(3)		
Registration No.	3331577	Registration date	11/06/2007
Registrant	ENCORE MEDICAL L.P. 9800 METRIC BLVD AUSTIN, TX 78758 UNITED STATES		

## Goods/Services Subject to Cancellation

Class 010. First Use: 2005/07/00 First Use In Commerce: 2005/07/00

All goods and services in the class are subject to cancellation, namely: Medical and surgical instruments, namely, cut blocks, speed blocks, drill guides, bushings, retractors, pins, alignment guides and slaphammers used in knee arthroplasty; Medical and surgical instrument cases used in connection with knee arthroplasty


## Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	petition to cancel.pdf(140309 bytes )
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Signature	/theodore r remaklus/
Name	Theodore R. Remaklus
Date	03/25/2020

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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\_\_\_\_\_) )  
MEDACTA INTERNATIONAL S.A., ) Cancellation No. \_\_\_\_\_  
) )  
Petitioner, ) Registration No. 3,308,949  
) Registered: October 9, 2007  
v. ) Mark: M.I.K.A.  
) )  
ENCORE MEDICAL L.P., ) Registration No. 3,331,577  
dba DJO SURGICAL, ) Registered: November 6, 2007  
) )  
Respondent. ) Mark   
\_\_\_\_\_) ):

**PETITION FOR CANCELLATION**

Petitioner, MEDACTA INTERNATIONAL, S.A., a Swiss company having a place of business at Strada Regina, Castel San Pietro, Switzerland 6874 ("Petitioner"), believes that it is and will continue to be damaged by the registration for the trademark **M.I.K.A.** of Registration No. 3,308,949 and the trademark **MIKA Minimally Invasive Knee Arthroplasty and Design** of Registration No. 3,331,577 and hereby petitions to cancel said registrations.

**GROUND FOR PETITION**

As grounds for this petition, Petitioner alleges as follows:

1. Petitioner is the owner of United States Trademark Application Serial No. 79/266,423 (hereinafter "the '423 Application"), filed May 14, 2019, under Section 66A of the Lanham Act, for the mark  (hereinafter "the **MIKA Design Mark**") for use in connection with " Medical and surgical apparatus and instruments; apparatus and instruments for orthopaedic surgery; prosthesis; orthopaedic implants; devices and instruments for fixing and

inserting prostheses and orthopaedic implants; plates in the nature of orthopaedic surgical implants; orthopaedic articles; suture materials" in International Class 10.

2. On September 17, 2019 (reported to WIPO September 28, 2019), the Examining Attorney of the '423 Application issued an Office Action refusing to register the MIKA Design Mark for the recited goods under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the grounds that the Examining Attorney concluded there was a likelihood of confusion with the trademark **M.I.K.A.** of Registration No. 3,308,949 (hereinafter "the '949 Registration") for use with "Medical and surgical instruments, namely, cut blocks, speed blocks, drill guides, bushings, retractors, pins, alignment guides and slaphammers used in knee arthroplasty; Medical and surgical instrument cases used in connection with knee arthroplasty; Orthopedic prostheses, namely, knee joint replacements and component parts thereof" in Class 10, and the trademark **MIKA Minimally Invasive Knee Arthroplasty and Design** of Registration No. 3,331,577 (hereinafter "the '577 Registration") for use with "Medical and surgical instruments, namely, cut blocks, speed blocks, drill guides, bushings, retractors, pins, alignment guides and slaphammers used in knee arthroplasty; Medical and surgical instrument cases used in connection with knee arthroplasty" in International Class 10.

3. As a result of the Office Action in the '423 Application refusing to register Petitioner's **MIKA Design Mark** for the recited goods under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), over the '949 Registration and '577 Registration, Petitioner is being damaged by those registrations within the meaning of 15 U.S.C. § 1064.

4. On information and belief, Respondent ENCORE MEDICAL L.P., dba DJO SURGICAL, is the owner of the '949 and '577 Registrations, and is a Delaware limited partnership with an address of 9800 Metric Blvd, Austin, Texas 78758.

5. On information and belief, Respondent is not currently using the trademark **M.I.K.A.** of the '949 Registration or the trademark **MIKA Minimally Invasive Knee Arthroplasty and Design** of the '577 Registration in connection with the recited goods, it ceased using those marks some time ago in connection with the recited goods, and it has no intent to use/resume use of the marks with those goods.

6. As a result, Respondent has abandoned the trademark **M.I.K.A.** of the '949 Registration and the trademark **MIKA Minimally Invasive Knee Arthroplasty and Design** of the '577 Registration within the meaning of 15 U.S.C. § 1064(3).

WHEREFORE, Petitioner prays that the Petition for Cancellation be sustained in favor of Petitioner and that U.S. Registration No. 3,308,949 for the trademark **M.I.K.A.** and U.S. Registration No. 3,331,577 for the trademark **MIKA Minimally Invasive Knee Arthroplasty and Design** be canceled.

Respectfully submitted,

MEDACTA INTERNATIONAL S.A.

Date: March 25, 2020

By: /s/ Theodore R. Remaklus  
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MEDACTA INTERNATIONAL S.A.