

ESTTA Tracking number: **ESTTA1047498**

Filing date: **04/07/2020**

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	Power Systems International GmbH & Co. KG		
Entity	limited partnership	Citizenship	Germany
Address	Rauheckstraße 17 Abstatt, 74232 GERMANY		

Attorney information	Jonathan Myers LUCAS & MERCANTI, LLP 30 Broad Street 21st floor New York, NY 10004 UNITED STATES info@lmiplaw.com, JMmail@lmiplaw.com, lberrios@lmiplaw.com 2126618000		
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**Registration Subject to Cancellation**

Registration No.	5529743	Registration date	07/31/2018
Registrant	FRIZZLIFE INC 777 N DOWNING ST., CO 80218 UNITED STATES		

**Goods/Services Subject to Cancellation**


Class 011. First Use: 2016/02/10 First Use In Commerce: 2016/02/10 Goods and services in the class that are subject to cancellation: Outdoor lighting, namely, paver lights;
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**Grounds for Cancellation**

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

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	88533586	Application Date	07/24/2019
Registration Date	NONE	Foreign Priority Date	01/29/2019

Word Mark	FRIZ
Design Mark	
Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 0 First Use In Commerce: 0 Battery-operated, portable LED lights for use indoors and outdoors, in particular for the catering and events sectors; outdoor lighting; electric lights for festive decorations; accent lights for indoor and outdoor use; filters for use with lighting apparatus; garden lighting; standard lights; spotlights; table lamps

Attachments	88533586#TMSN.png( bytes ) Petition for Partial Cancellation.pdf(71199 bytes ) Exhibit A - 88533586 status info.pdf(21306 bytes )
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Signature	/jonathan myers/
Name	JONATHAN MYERS
Date	04/07/2020

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

In the matter of

US Trademark Reg. No.            5529743  
Registered:                            31 July 2018  
Serial No.:                             87735085  
Filed:                                    27 December 2017  
Int. Class:                             11

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POWER SYSTEMS INTERNATIONAL GMBH & CO. KG

Petitioner,

v.

Cancellation No.

FRIZZLIFE INC.,

Registrant  
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Trademark Trial and Appeal Board  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-145

PETITION FOR PARTIAL CANCELLATION UNDER 15 USC § 1068

Power Systems International GmbH & Co.KG (hereinafter Petitioner) is a limited partnership, organized and existing under the laws of Germany having a business address at Rauheckstrasse 17, Abstatt, Germany 74232 believes that it is damaged and will be continued to be damaged by US Trademark Registration 5529743 issued 31 July 2018 for the mark FRIZZLIFE in Class 11, registered to Frizzlife Inc. (hereinafter Registrant), a corporation organized and existing under the laws of the State of Colorado with an address at 777 N. Downing Street, Denver, Colorado 80218, and hereby petitions for partial cancellation of the registration with respect to the paver lights identified in Class 11 pursuant to 15 USC § 1068.

As grounds in support of the petition for cancellation, Petitioner asserts as follows:

1. Petitioner is the owner of US Trademark Application Serial No. 88533586 for the mark FRIZ , filed on 24 July 2019 covering in Class 11, “ Battery-operated, portable LED lights for use indoors and outdoors, in particular for the catering and events sectors; outdoor lighting; electric lights for festive decorations; accent light for indoor and outdoor use; filers for use with lighting apparatus; garden lighting; standard lights; spot lights; table lamps.”
2. Petitioner is being harmed by US Trademark Registration 5529743 directed to goods in Class 11, including paver lights, because the trademark examining attorney at the United States Patent and Trademark Office (USPTO) has refused to register the FRIZ mark in Serial No. 88533586 on the grounds that the FRIZ mark is likely to be confused with the mark FRIZZLIFE in the cited registration. See the attached office action in Serial No. 88533586 marked as Exhibit “A”.
3. Upon information and belief, Registrant claimed both the date of first use of its mark and the date of first use of its FRIZZLIFE mark in US commerce for all of its goods identified in US Trademark Registration 5529743 Class 11, including paver lights, as 10 February 2016.
4. According to the examining attorney in the attached office action in Serial No. 88533586 the “Battery-operated, portable LED lights for use indoors and outdoors, in particular for the catering and events sectors; outdoor lighting; electric lights for festive decorations; accent light for indoor and outdoor use; filers for use with lighting apparatus; garden lighting; standard lights; spot lights; table lamps”, identified by Petitioner in the FRIZ application and the “paver lights” identified in the Registrant’s US Trademark Registration 5529743 in Class 11 overlap or are closely related. See the examining attorney’s discussion under “Comparison of the Goods” in Exhibit “A” where the examining attorney argues that Applicant’s “outdoor lighting”, “accent lights for indoor use” and “garden lighting” all encompass Registrant’s “paver lights.” This is the basis for the examining attorney’s refusal to register the Applicant’s mark FRIZ on the grounds of “likelihood of confusion.”
5. US Trademark Registration 5529743 directed to “paver lights” in Class 11 contains no limitations as to the channels of trade through which these goods pass and so Registrant’s channels of trade for its “paver lights” overlap with the channels of trade through which Petitioner’s Class 11 goods pass.
6. Registrant’s FRIZZLIFE mark for its “paver lights” so resembles Petitioner’s FRIZ mark as to cause confusion, as to cause mistake, or to deceive as to the source, origin or sponsorship of the parties’ respective abovementioned Class 11 goods.
7. Upon information and belief, Registrant is not now using its FRIZZLIFE mark in interstate commerce within the United States or in international commerce with the United States in the sale of its “paver lights” identified in Class 11 of its registration, has discontinued use of its FRIZZLIFE mark in interstate commerce within the United States or in international commerce with the United States in the sale of its “paver lights” and/or has not used its

FRIZZLIFE mark in interstate commerce within the United States or in international commerce with the United States in the sale of its “paver lights” for a period of at least three years from today’s date, and has therefore abandoned US Trademark Registration 5529743 with respect to the “paver lights” identified therein in Class 11 .

8. Upon information and belief, Registrant has used its FRIZZLIFE trademark for the sale of “paver lights” identified in Class 11 on a sporadic or token basis only, so as not to amount to use of the mark in interstate commerce or in international commerce with the United States in the sale of these goods.
9. The continued registration by Registrant of its FRIZZLIFE mark for “paver lights” identified in Class 11 enables Registrant to indefinitely warehouse trademark rights in the mark FRIZZLIFE for “paver lights” when in fact Registrant is not using the FRIZZLIFE mark in interstate commerce or in international commerce with the United States in the sale of “paver lights” and the continued registration of Registrant’s FRIZZLIFE mark for “paver lights” injures Petitioner.
10. Registrant is not using the FRIZZLIFE mark on “paver lights” and these goods will be effectively excluded from Registrant’s US Trademark Registration 5529743 if Petitioner’s proposed restriction of US Trademark Registration 5529743 to exclude “paver lights” is granted.
11. The entry of Petitioner’s proposed restriction in the identification of goods in Class 11 of Registrant’s US Trademark Registration 5529743 for the mark FRIZZLIFE to delete “paver lights” will avoid a likelihood of confusion between Applicant’s mark FRIZ in Serial No. 88533586 and Registrant’s mark FRIZZLIFE in US Trademark Registration 5529743.

WHEREFORE Petitioner prays that US Trademark Registration 5529743 with respect to the “paver lights” in Class 11 be cancelled and be stricken from the Principal Register of the United States Patent and Trademark Office in accordance with Section 18 of the Trademark Act.

Respectfully submitted,  
Lucas & Mercanti, LLP,

/jonathan myers/

Jonathan Myers  
Attorneys for Petitioner

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Mark: FRIZ

# FRIZ

US Serial Number: 88533586

Application Filing Date: Jul. 24, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

**Status:** A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

**Status Date:** Oct. 21, 2019

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## Mark Information

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**Mark Literal Elements:** FRIZ

**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

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## Foreign Information

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**Priority Claimed:** Yes

**Foreign Application Number:** 018016679

**Foreign Application Filing Date:** Jan. 29, 2019

**Foreign Registration Number:** 018016679

**Foreign Registration Date:** Jun. 12, 2019

**Foreign Application/Registration Country:** EUROPEAN UNION

**Foreign Expiration Date:** Jan. 29, 2029

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## Goods and Services

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**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

**For:** Battery-operated, portable LED lights for use indoors and outdoors, in particular for the catering and events sectors; outdoor lighting; electric lights for festive decorations; accent lights for indoor and outdoor use; filters for use with lighting apparatus; garden lighting; standard lights; spotlights; table lamps

**International Class(es):** 011 - Primary Class

**U.S Class(es):** 013, 021, 023, 031, 034

**Class Status:** ACTIVE

**Basis:** 44(d) 44(e)

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## Basis Information (Case Level)

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**Filed Use:** No  
**Filed ITU:** No  
**Filed 44D:** Yes  
**Filed 44E:** Yes  
**Filed 66A:** No  
**Filed No Basis:** No

**Currently Use:** No  
**Currently ITU:** No  
**Currently 44E:** Yes  
**Currently 66A:** No  
**Currently No Basis:** No

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## Current Owner(s) Information

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**Owner Name:** Power Systems International GmbH & Co. KG  
**Owner Address:** Rauheckstraße 17  
Abstatt GERMANY 74232  
**Legal Entity Type:** LIMITED PARTNERSHIP  
**State or Country Where Organized:** GERMANY

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## Attorney/Correspondence Information

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### Attorney of Record

**Attorney Name:** JONATHAN MYERS  
**Attorney Primary Email Address:** [info@lmiplaw.com](mailto:info@lmiplaw.com)  
**Docket Number:** OSTE-1027-TM  
**Attorney Email Authorized:** Yes

### Correspondent

**Correspondent Name/Address:** JONATHAN MYERS  
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**Correspondent e-mail Authorized:** Yes

### Domestic Representative

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**Domestic Representative e-mail:** [info@lmiplaw.com](mailto:info@lmiplaw.com)  
**Domestic Representative e-mail Authorized:** Yes

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## Prosecution History

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Date	Description	Proceeding Number
Oct. 21, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Oct. 21, 2019	NON-FINAL ACTION E-MAILED	6325
Oct. 21, 2019	NON-FINAL ACTION WRITTEN	92834
Oct. 15, 2019	ASSIGNED TO EXAMINER	92834
Aug. 01, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jul. 29, 2019	NEW APPLICATION ENTERED IN TRAM	

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## TM Staff and Location Information

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### TM Staff Information

**TM Attorney:** ROSEN, AMANDA ROBYN  
**Law Office Assigned:** LAW OFFICE 121

### File Location

**Current Location:** TMO LAW OFFICE 121 - EXAMINING ATTORNEY ASSIGNED  
**Date in Location:** Oct. 21, 2019