

ESTTA Tracking number: **ESTTA1062531**

Filing date: **06/17/2020**

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	Labor co.,ltd.		
Entity	Corporation	Citizenship	Republic of Korea
Address	1F, 127, Po Eun-ro Mapo-gu; Seoul, 0 KOREA, REPUBLIC OF		

Attorney information	Jeffrey H. Greger Hauptman Ham, LLP 2318 Mill Rd. Suite 1400 Alexandria, VA 22314 UNITED STATES jhgggroup@ipfirm.com, yshtrademarkgroup@ipfirm.com, docketing@ipfirm.com no phone number provided
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Registration Subject to Cancellation

Registration No.	5435475	Registration date	04/03/2018
International Registration No.	NONE	International Registration Date	NONE
Registrant	"LIVSI" OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOST'YU (LIVESEY INCORPORATED) VLADIMIRA NEVSKOGO, 25/6-39 RU-394005 VORONEZH RUSSIAN FED.		

Goods/Services Subject to Cancellation

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are subject to cancellation, namely: Abacuses; calculating machines; cell phone straps; circular slide rules; computer game software; computer hardware; computer keyboards; computer operating programs, recorded; covers for smartphones; computer peripheral devices; computers; data processing apparatus; decorative magnets; dictating machines; directional compasses; ear plugs for divers; electronic agendas; electronic book readers; DNAchips; eyeglass cases; eyeglass frames; eyeglasses; taximeters; goggles for sports; headphones; hourglasses; identity cards, magnetic; interfaces for computers; laptop computers; metronomes; mouse pads; pedometers; radios; record players; sleeves for laptops; smartphones; notebook computers; sound reproduction apparatus; speaking tubes; sunglasses; tablet computers; scales; semi-conductors; megaphones; telephone apparatus; time recording apparatus; bar code readers; downloadable ring tones for mobile phones; microprocessors; downloadable music files; sound recording apparatus; microphones, none of the foregoing being related to the business operation of labor unions
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Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)
Other	VOID AB INITIO

Attachments	Cancellation Petition.pdf(160507 bytes)
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Signature	/jhg/
Name	Jeffrey H. Greger
Date	06/17/2020

Cancellation Petition

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

In the matter of U.S. Registration No. 5,435,475



Mark: **Powerlabor**

Labor co.,ltd.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. T/B/A
)	
"LIVSI" OBSHCHESTVO S OGRANICHENNOY))	
OTVETSTVENNOST'YU))	
(LIVESEY INCORPORATED)))	
)	
Registrant.)	

PETITION TO CANCEL REGISTRATION

COMES NOW Petitioner Labor co.,ltd. a Corporation formed under the laws of the Republic of Korea, and having a business address at 1F, 127, Poeun-ro, Mapo-gu; Seoul Republic of Korea (hereinafter referred to as "Petitioner"), believing that it is being damaged by Registration No. 5,435,475, owned by "LIVSI" OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOST'YU (LIVESEY INCORPORATED), a Limited Liability Company with an address of Vladimira Nevskogo, 25/6-39 RU-394005 Voronezh Russian Federation, (hereinafter referred to as "Registrant") hereby petitions to cancel same on the following grounds.

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Facts Common to All Counts

1. Petitioner is the owner of U.S. trademark application, serial number, 79/267,704, currently pending in the United States Patent and Trademark Office, for the mark LABOR, covering goods in Class 9, namely *3D spectacles; spectacle lens blanks; spectacle frames made of metal or of a combination of metal and plastic; spectacle frames made of metal and of synthetic material; reading glasses; safety eyewear; sunglasses; frames for sunglasses; swimming goggles; eyeglasses; cords for spectacles and sunglasses; cases for eyeglasses and sunglasses; spectacle temples; spectacle lenses; eyeglass lenses; frames for spectacles and sunglasses; children's eye glasses; coated spectacle lenses; contact lenses; magnifying eyeglasses.* (hereinafter referred to as “the ‘704 application”).

2. During prosecution of the ‘704 application the USPTO Examiner has cited



Registration 5,435,475 (the ‘475 registration) for the mark **Powerlabor** as a basis for refusing Petitioner’s ‘704 application due to a perceived likelihood confusion.




3. The ‘475 registration for **Powerlabor** covers the following goods in Class 9: *Abacuses; calculating machines; cell phone straps; circular slide rules; computer game software; computer hardware; computer keyboards; computer operating programs, recorded; covers for smartphones; computer peripheral devices; computers; data processing apparatus; decorative magnets; dictating machines; directional compasses; ear plugs for divers; electronic agendas; electronic book readers; DNA chips; eyeglass cases; eyeglass frames; eyeglasses; taximeters; goggles for sports; headphones; hourglasses; identity cards, magnetic; interfaces for computers; laptop computers; metronomes; mouse pads; pedometers; radios; record players; sleeves for laptops; smartphones; notebook computers; sound reproduction apparatus; speaking tubes; sunglasses; tablet computers; scales; semi-conductors; megaphones;*

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telephone apparatus; time recording apparatus; bar code readers; downloadable ring tones for mobile phones; microprocessors; downloadable music files; sound recording apparatus; microphones, none of the foregoing being related to the business operation of labor unions

4. The '475 registration was matured from an application initially filed on February 20, 2017, based on the International Registration No. 1344841, and assigned U.S. application serial number 79/207,652. (the '652 application")




5. On information and belief the registered mark  has never been used on any of the long list of goods in the '652 application.

6. On information and belief Registrant does not currently sell any goods under the



 brand anywhere in the U.S.

7. On information and belief Registrant has never sold any goods under the  brand in past.

COUNT I – VOID AB INITIO

8. Petitioner repeats and incorporates all prior allegations by reference.
9. The '652 application which matured into the '475 registration included coverage in Class 9 for a diverse list of goods.

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10. The descriptions of goods in the '475 registration and the '652 application which forms the basis included coverages which are so diverse and cover goods which span the fields of so many different disciplines it would be not be possible as a practical matter for any entity to maintain a bona fide intent to use a trademark on such an expanse of goods.
11. The goods listed in the '475 registration span the gamut from the sophisticated – DNA Chips, semiconductors, computers, and microprocessor – to the simplistic – hour glasses, abacuses, and decorative magnets. The middle ground diverse products include eyewear which forms a basis for the USPTO refusal to register the Petitioner's mark and application because of a perceived likelihood of confusion based on the '475 registration and its presumption of validity – which it is not.
12. When executing the '652 application which matured in the '475 registration, the registrant declared it maintained a bona fide intent to use the mark in connection with all the goods in the application. This statement was objectively false on its face when the declaration was signed.
13. On information and belief Registrant has no plans and has no demonstrative plans or documents which could support a bona fide intent to use to the mark on all the goods as filed in the United States.
14. On information and belief Registrant never had plans or any demonstrative plans or documents which could support a bona fide intent to use to the mark in the United States, on all goods at or about the time the '652 application was filed.

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15. The declaration in support of the '652 application was patently false lacking the requisite bona fide intent as declared by registrant at the time of filing.
16. The '652 application which matured into the '475 registration is void *ab initio* and the '475 registration is therefore invalid and should not be maintained on the Principal Register where it impedes and blocks the Petitioner's '704 application and will likely continue to block future applications because of the vast erroneous list of goods.

COUNT II – ABANDONMENT

17. Petitioner repeats and incorporates all prior allegations by reference.
18. On information and belief Registrant has no intention to commence or recommence use in the U.S. on all the goods as filed.
19. On information and belief Registrant has no bona fide intent to use in U.S. commerce all the goods as filed and the filing was made merely to reserves rights in the mark.
20. On information Registrant has abandoned the mark as registered as per 15 U.S. Code Section 1127.

COUNT III – FRAUD ON THE PATENT AND TRADEMARK OFFICE

21. Petitioner repeats and incorporates all prior allegations by reference.

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22. On information and belief Applicant filed the '625 application and signed a knowingly false declaration, containing material misrepresentations, with intent to deceive the U.S. Patent and Trademark to rely on false and material misrepresentations to issue a registration.
23. The USPTO relied on false statements in the '625 application and issued the '475 registration based on false information.
24. On information and belief Applicant procured fraud on the U.S. Patent and Trademark when filing the application.

Wherefore, Petitioner believes that it will be damaged by the continued existence and the perceived validity of Registration No. 5,435,475, and prays that this Petition for Cancellation be sustained in favor of the Petitioner; that judgment be entered against the Registrant; and that the U.S Trademark Registration No. 5,435,475 be canceled.

Petitioner submits the applicable filing fee of \$400.00 with this Petition.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff Greger", with a horizontal line extending to the right.

Jeffrey H. Greger
Trademark Counsel for Petitioner