

ESTTA Tracking number: **ESTTA1177349**

Filing date: **12/08/2021**

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	ACE SURGICAL SUPPLY CO., INC.		
Entity	Corporation	Citizenship	Massachusetts
Address	1034 PEARL STREET BROCKTON, MA 02301 UNITED STATES		
Attorney information	MARY A. DONOVAN COWAN, LIEBOWITZ & LATMAN, P.C. 114 WEST 47TH STREET NEW YORK, NY 10036 UNITED STATES Primary Email: trademark@cll.com Secondary Email(s): mad@cll.com, szd@cll.com, las@cll.com 2127909200		
Docket Number	31183.039		

**Registration Subject to Cancellation**

Registration No.	5115925	Registration date	01/03/2017
Registrant	Amendia, Inc. 1755 WEST OAK PARKWAY MARIETTA, GA 30062 UNITED STATES		

**Additional Registrant Information**

Additional registrant information provided by the petitioner	SPINAL ELEMENTS, INC. 3115 MELROSE DRIVE, SUITE 200 CARLSBAD, CA 92010 UNITED STATES patents@spinalelements.com 7606070121
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**Goods/Services Subject to Cancellation**

Class 005. First Use: 2016/10/12 First Use In Commerce: 2016/10/12  
All goods and services in the class are subject to cancellation, namely: Bone growth media consisting of biological materials for medical purposes

**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. Application No.	90446853	Application Date	01/04/2021
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ALLOOSS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2005/10/10 First Use In Commerce: 2005/10/10 Combination of natural collagen and minerals with bony structure of allograft (humane bone) to promote new bone formation		

Attachments	90446853#TMSN.png( bytes ) ALLOS Cancellation Action.pdf(18389 bytes )
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Signature	/madonovan/
Name	Mary A. Donovan
Date	12/08/2021

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

In re Registration No. 5115925  
Registered: January 3, 2017  
For Mark: ALLOS

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ACE SURGICAL SUPPLY CO., INC.	:	
	:	Cancellation No.
Petitioner,	:	
	:	
v.	:	<b><u>PETITION FOR</u></b>
	:	<b><u>CANCELLATION</u></b>
SPINAL ELEMENTS, INC.,	:	
	:	
Registrant.	:	
-----	X	

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

Petitioner, ACE Surgical Supply Co., Inc. (“Petitioner”), a Massachusetts corporation with offices at 1034 Pearl Street, Brocton, Massachusetts 02301, believes that it will be damaged by continued registration of the standard character word mark ALLOS, R.N. 5115925, filed in Class 5 by Spinal Elements, Inc., a Delaware corporation, located at 3115 Melrose Drive, Suite 200, Carlsbad, California 92010 (“Registrant’s Mark”) and hereby petitions to cancel the same.

As grounds for cancellation, it is alleged that:

1. Petitioner is a supplier of dental products to professional dentists. It has used the mark ALLOOSS continuously since 2005 for the product described herein.
2. Petitioner owned United States federal registration of ALLOOSS, R.N. 3232207, dated April 24, 2007, for “combination of natural collagen and minerals with bony structure of

allograft (human bone) to promote new bone formation.” This registration was inadvertently allowed to lapse in 2013.

3. On January 4, 2021, realizing that the earlier mark had lapsed, Petitioner filed a new Application Serial No. 90446853 for its ALLOOSS mark for “combination of natural collagen and minerals with bony structure of allograft (human bone) to promote new bone formation” later amended to add the phrase “for dental surgical procedures” (“Petitioner’s Application”).

4. On June 9, 2021, Petitioner received an Office Action in which the Examining Attorney rejected Petitioner’s Mark, based on Registrant’s Mark.

5. Registrant’s Mark was filed on February 2, 2016, after Petitioner’s earlier federal registration of ALLOOSS had lapsed. Registrant submitted a first use date of October 12, 2016. We believe that if Petitioner’s ALLOOSS mark had still been registered, the ALLOS application for virtually the same product description would have been rejected.

6. Petitioner used its ALLOOSS mark for many years before Registrant’s filing date and therefore has superior rights to Registrant.

7. Registrant’s Mark is not limited to any particular field of use and therefore could be used for bone graft media for use in dental surgery.

8. Registrant’s continued use and registration of the mark ALLOS is likely to lead to confusion as to the source of Petitioner’s ALLOOSS goods and to dilute the goodwill that Petitioner has established over many years of use.

9. Registrant’s continued use and registration of the mark ALLOS is likely to lead consumers to believe that their products are sponsored, approved or connected with Applicant because of the near identity of their respective marks.

10. Applicant is likely to be damaged because it does not control the nature or quality of the products sold under Registrant's Mark. This is particularly of concern where the goods are human health products.

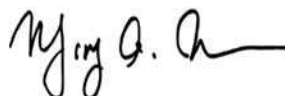
WHEREFORE, Petitioner believes that it will be damaged by continued registration of Registrant's Mark and requests that the Petition to Cancel be sustained and said registration be cancelled.

Dated: New York, New York  
December\_8\_, 2021

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.  
*Attorneys for Petitioner*

By:



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Shana Dunning

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