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Filing date: **02/17/2009**

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 requests to cancel indicated registration.

Petitioner Information

Name	Dell Inc.		
Entity	Corporation	Citizenship	Delaware
Address	One Dell Way Round Rock, TX 78681 UNITED STATES		

Attorney information	Dana C. Jewell Dell Inc. One Dell way Round Rock, TX 78681 UNITED STATES dana_jewell@dell.com, anna_kuhn@dell.com Phone:512-723-5659		
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Registration Subject to Cancellation

Registration No	2404976	Registration date	11/21/2000
International Registration No.	NONE	International Registration Date	NONE
Registrant	PSION TEKLOGIX INC. 2100 MEADOWVALE BOULEVARD MISSISSAUGA, ONTARIO, L5N 7J9 CANADA		

Goods/Services Subject to Cancellation

Class 009. All goods and services in the class are cancelled, namely: LAPTOP COMPUTERS

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Genericness	Trademark Act section 23
Abandonment	Trademark Act section 14

Attachments	Cancellation.pdf (4 pages)(86019 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Dana C. Jewell/
Name	Dana C. Jewell
Date	02/17/2009

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

In re Registration No. 2,404,976
Mark: Netbook
Issued: November 21, 2000

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Cancellation No. _____

DELL INC.,

Petitioner,

v.

PSION TECKLOGIX, INC.,

Registrant.

PETITION FOR CANCELLATION

Dell Inc. ("Petitioner"), a Delaware corporation having its principal place of business at One Dell Way, Round Rock, Texas 78681, believes that it is damaged by Registration No. 2,404,976, and hereby petitions to cancel the same under the provisions of 15 U.S.C. §1064(3). As grounds for cancellation, Petitioner asserts that:

1. Petitioner is a leading manufacturer and seller of computer systems, servers, accessories, and other information technology products. Along with the sale of computer systems and peripherals, Petitioner also offers services related to computers and other information technology products, including comprehensive consulting and support services tailored specifically for its products.

2. Upon information and belief, Psion Teklogix Inc. is a Canadian corporation with its principal place of business at 2100 Meadowvale Boulevard, Mississauga, Ontario, L5N 7J9, Canada (the "Registrant").

3. On December 18, 1996, Registrant filed an application to register the mark NETBOOK (as a standard character mark) under Sections 1(b) and 44(d) of the Lanham Act, 15 U.S.C. § 1051(a). On September 20, 2000, Registrant amended its application to delete the Section 1(b) filing basis and proceed

only under Section 44 based upon an issued United Kingdom registration for the same mark. Based on this application, Registrant obtained U.S. Registration No. 2,404,976 (the "Registration"), which issued on November 21, 2000 for the term Netbook used on "laptop computers" in International Class 9.

4. On November 17, 2006, Registrant filed with the U.S. Trademark Office a Combined Declaration of Use and Incontestability under Section 8 & 15 in which Registrant claimed that it ". . . has used the above-identified mark in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with all goods listed in the above-identified registration."

First Basis for Cancellation – Abandonment

5. Psion claims that it began offering laptop computers under the mark Netbook in approximately 1999.

6. Upon information and belief, Psion is not currently offering laptop computers under the Netbook trademark.

7. Upon information and belief, Psion intends not to resume bona fide use of the Netbook name in the ordinary course of trade.

8. Psion has abandoned the "Netbook" mark.

Second Basis for Cancellation – Fraud

9. On November 17, 2006, Registrant filed with the U.S. Trademark Office a Combined Declaration of Use and Incontestability under Section 8 & 15 which included a sworn declaration signed under penalty of perjury by Mr. Herb Turzer, Senior Product Management for Registrant.

10. Mr. Turzer swore that Registrant was, as of November 17, 2006, using the Netbook trademark "in commerce on or in connection with all goods listed in the above-identified registration," and that Registrant "has used the above-identified trademark in commerce for five (5) consecutive years after the date of registration [November 21, 2000]." Upon information and belief, such statements were false at the time that they were made.

11. In support of its November 17, 2006 Combined Declaration of Continued Use and Incontestability, Registrant attached a specimen of use consisting of an advertisement for Registrant's Netbook laptop computer, the sale of which, on information and belief, had already been discontinued by Registrant for three (3) years.

12. Upon information and belief, as of November 17, 2006, Registrant was not using the Netbook trademark in commerce on laptop computers.

13. Upon information and belief, as of November 17, 2006, Registrant had not used the Netbook trademark in commerce for five consecutive years following the date of registration.

14. Upon information and belief, as of November 17, 2006, the advertisement which Registrant submitted with its Combined Declaration of Continued Use and Incontestability was not currently being used by Registrant to advertise its Netbook brand laptop computers.

15. Upon information and belief, Registrant knew that its statements regarding use of the Netbook trademark were false at the time such statements were made.

16. Upon information and belief, Registrant knew that the specimen of use that it submitted on November 17, 2006 was not a current specimen showing Registrant's current use of the Netbook trademark at that time.

17. The U.S. Patent and Trademark Office relied upon Registrant's material false statements and false specimen in allowing the continued registration of the Netbook mark. The U.S. Patent and Trademark Office would not have allowed Registration No. 2,404,976 to remain valid absent Registrant's knowingly false statements and false specimen.

Third Basis for Cancellation – Genericness

18. The term "netbook" has been widely used by computer manufacturers, retailers, the media, and consumers to refer to a particular subset of "notebook" computers which are small and inexpensive.


19. Many companies make netbooks, including Dell, Hewlett-Packard, Lenovo, Acer, Asus, Sony, Sylvania, Samsung, MS Wind, LG, and Fujitsu, among others.

20. The term "netbook" has become generic in that the primary significance of the term to the relevant public is as the name for small and inexpensive laptop computers.

WHEREFORE, Petitioner prays that Registration No. 2,404,976 be cancelled pursuant to 15 U.S.C. §§ 1064(3) because: (1) the Netbook trademark has been abandoned by Registrant, (2) the Registration has been maintained via fraudulent representations to the Trademark Office, and (3) because the word Netbook has become the generic name for the goods named in the Registration.

Dated: February 17, 2009

Respectfully submitted,



Dana C. Jewell, Esq.
Anna Kuhn, Esq.

DELL, INC.
One Dell Way
Round Rock, TX 78681
(512) 723-5659

CERTIFICATE OF SERVICE

Pursuant to C.R.F. § 2.111, I hereby certify that a true and correct copy of the foregoing Petition for Cancellation was served, via overnight courier, on Registrant Psion Teklogix Inc. at the following address:

2100 Meadowvale Boulevard
Mississauga, Ontario
L5N 7J9
CANADA



Dana C. Jewell