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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	Fotona, LLC		
Entity	Corporation	Citizenship	Wyoming
Address	2307 Springlake Road Suite 518 Dallas, TX 74234 UNITED STATES		

Attorney information	Steven P. Hollman Sheppard Mullin Richter & Hampton, LLP 2099 Pennsylvania Avenue, NW, Suite 100 Washington, DC 20006-6801 UNITED STATES shollman@sheppardmullin.com 202-747-1941		
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Registration Subject to Cancellation

Registration No.	3898378	Registration date	01/04/2011
Registrant	Millennium Dental Technologies, Inc. 10945 South Street, Suite 306 Cerritos, CA 90703 UNITED STATES Email: docket@jacksontidus.com		

Goods/Services Subject to Cancellation

Class 041. First Use: 2003/01/01 First Use In Commerce: 2004/10/01 All goods and services in the class are subject to cancellation, namely: Educational services, namely, conducting programs in the field of laser dental procedures
Class 044. First Use: 2003/01/01 First Use In Commerce: 2004/10/01 All goods and services in the class are subject to cancellation, namely: Medical services, namely, laser dental procedures

Grounds for Cancellation

The mark is or has become generic	Trademark Act Section 14(3), or Section 23 if on Supplemental Register
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Related Proceedings	Millennium Dental Technologies, Inc. v. Dr. Allen Scott Terry and Fotona, LLC, Civil No. 8:18-cv-00348- DOC-KES (C.D. Cal.)
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Attachments	Fotona -- Petition for Cancellation 02.27.19.pdf(77692 bytes)
Signature	/Steven P. Hollman/
Name	Steven P. Hollman
Date	02/27/2019

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

FOTONA, LLC,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
MILLENNIUM DENTAL TECHNOLOGIES,)	
INC.,)	
)	
Respondent.)	
)	
In the matter of Registration No. 3898378)	
For the mark: LANAP)	
Date registered: January 4, 2011)	
_____)	

PETITION FOR CANCELLATION

Petitioner Fotona, LLC (“Petitioner” or “Fotona”), a limited liability corporation organized and existing under the laws of the State of Wyoming, having an address at 2307 Springlake Road #518, Dallas, Texas 74234, believes it is or will be damaged by the continued registration of the mark LANAP shown in Registration No. 3898378 for services in International Classes 41 and 44, registered January 4, 2011, by Respondent Millennium Dental Technologies, Inc. (“MDT”), a corporation organized and existing under the laws of the state of California and having an address at 10945 South Street, Suite 104A, Cerritos, California 90703, and hereby petitions to cancel the same.

As grounds for cancellation, Petitioner states and alleges the following:

1. Fotona is the exclusive United States distributor of a world leading medical laser manufactured by Fotona d.o.o. and recognized for its innovative award-winning laser systems for applications in aesthetics and dermatology, dentistry, surgery, and gynecology. Fotona d.o.o. is

the maker and creator of the LightWalker® dual-wavelength dental laser system featuring both an Er:YAG and Nd:YAG laser. The LightWalker® is designed to treat periodontal disease through a laser assisted new attachment procedure leading to periodontal regeneration, i.e. true regeneration of the attachment apparatus (new cementum, new periodontal ligament, and new alveolar bone) on a previously diseased root surface, along with a host of general dentistry applications including, but not limited to, cavity preparation, crown lengthening, endodontic treatment, and placing implants in cases of periodontitis. Fotona d.o.o. developed its first LightWalker® laser (then known as the Fotona Fidelis) in 1994 and has sold various iterations of the LightWalker® laser device since then.

2. Respondent MDT is the maker and creator of the PerioLase MVP-7 dental laser device (the “PerioLase”), an Nd:YAG laser designed to treat periodontal disease through a laser assisted new attachment procedure leading to periodontal regeneration, i.e. true regeneration of the attachment apparatus (new cementum, new periodontal ligament, and new alveolar bone) on a previously diseased root surface.

3. On July 1, 1997, MDT obtained United States Patent No. 5,642,997 (“the ‘997 Patent”), which relates to a laser assisted new attachment procedure used to perform periodontal therapy.

4. In addition, in 2004, MDT obtained clearance from the United States Food and Drug Administration (the “FDA”) for the patented LANAP protocol. *See* MDT Response to ADA Laser Position Statement (released Apr. 29, 2009) http://millenniumdental.com/MDT_Response_to_ADA_Laser_Position_Statement/Press_Release_for_ADA_Laser_StatementV3_2009.htm (last viewed Feb. 26, 2019) (“The LANAP protocol was ... patented in 1994 and FDA cleared in 2004.”). Specifically, MDT’s 510(k) submission to

the FDA (No. K030290) indicated that the intended use for the PerioLase laser device includes “laser assisted new attachment procedure (cementum-mediated periodontal ligament new-attachment to the root surface in the absence of long junctional epithelium).” MDT marketed its patented laser assisted new attachment procedure through the use of the simple acronym “LANAP” from at least as early as October of 2004.

5. On December 28, 2007, MDT filed with the Trademark Office its application for the subject LANAP mark. The application was assigned Serial No. 77360886. The term “LANAP” is an acronym for the generic term “Laser Assisted New Attachment Procedure.”

6. Along with that application, MDT provided specimens showing usage of the mark in commerce. In one specimen, a promotional letter from MDT founder Robert H. Gregg, MDT wrote that it had “developed the Laser Assisted New Attachment Procedure™, (LANAP™) . . . to treat moderate to severe periodontal disease.” A second specimen was a sheet explaining the “Laser Assisted New Attachment Procedure™/PerioLase MVP-7® Licensing Package” that elsewhere shortened “Laser Assisted New Attachment Procedure™” to “LANAP™.” *See* Specimens (2) attached to MDT TEAS Plus Application, December 28, 2007. Among other matters, these specimens highlighted the fact that “LANAP” is merely an acronym for “laser assisted new attachment procedure.” *See id.*

7. On March 31, 2008, the Trademark Office issued an Office Action refusing registration of the proposed mark. The Office Action explained that the proposed mark was “merely descriptive” because “[a]s shown by the attached Internet evidence, LANAP is a commonly used acronym for LASER ASSISTED NEW ATTACHMENT PROCEDURE and is used in a descriptive manner in connection with dental laser procedures.” *See* March 31, 2008, Office Action, Serial No. 77/360886.

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