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

| | |
|------------------------|--|
| Proceeding | 91177234 |
| Party | Plaintiff Cardinal Health 303, Inc. |
| Correspondence Address | Joseph R. Dreitler Bricker & Eckler LLP 100 S. Third Street Columbus, OH 43215-4291 UNITED STATES jdreitler@bricker.com |
| Submission | Motion to Amend Pleading/Amended Pleading |
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| Signature | /Mary R. True/ |
| Date | 11/07/2007 |
| Attachments | Amended Petition to Cancel.pdf (11 pages)(323359 bytes) |

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

- | | | |
|------------------------------|---|------------------------------|
| 1. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,234 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| 2. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,365 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| 3. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,366 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| 4. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,367 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| 5. CARDINAL HEALTH 303, INC. | : | |
| Petitioner | : | |
| v. | : | Cancellation No.: 92-048,172 |
| THE ALARIS GROUP, INC. | : | |
| Registrant. | : | |

AMENDED PETITION TO CANCEL

Pursuant to Rule 2.115(a) of the Trademark Rules of Practice of the Patent and Trademark Office, 27 C.F.R. §§ 2.115, and Federal Rule of Civil Procedure 15(a), Opposer/Petitioner Cardinal Health 303, Inc., is filing its Amended Petition to Cancel to cite an additional registration as basis for cancellation in the above-captioned matters. With this revision, and the certificate of service, the Petition to Cancel has not been otherwise modified.

Cardinal Health 303, Inc., (hereinafter "Petitioner"), a corporation organized under the laws of Delaware, located at and doing business at 10221 Wateridge Circle, San Diego, California 92121, is and will continue to be damaged by the above identified service mark registration (hereinafter "Registration"), in the name of The Alaris Group, Inc. (hereinafter "Registrant"), with a last known address of P.O. Box 24855 Edina, Minnesota 55424, and hereby petitions to cancel the same under 15 U.S.C. §1064.

As grounds therefore it is alleged:

COUNT ONE

1. For almost a decade, long prior to the Registrant's claimed date of its first offering in commerce of the services covered by the Registration, Petitioner has been engaged in the development, manufacture, advertising, distribution and sale in interstate commerce of a wide variety of goods and services, including but not limited to medical instruments and equipment, the service and repair of medical instruments, equipment and accessories, and the leasing and rental of medical instruments, equipment and accessories bearing the mark ALARIS, alone and in connection with its other marks.

2. As a result of Petitioner's widespread use and expenditure of resources to promote the goods and services offered under its ALARIS mark, as well as Petitioner's dedication to high quality goods and services, Petitioner has acquired significant goodwill in and to the mark. Petitioner's ALARIS mark has come to represent the highest quality goods, as well as excellent service, as used in connection with those goods, and consumers have come to count on Petitioner's ALARIS mark to represent superior medical instruments and equipment, superior servicing and leasing of medical instruments, equipment and accessories, and superior electronic medical equipment and software for patient care management.

3. Petitioner is the owner of U.S. Trademark Registration No. 2,279,724. ALARIS – registered on the Principal Register on September 21, 1999, for use in connection with:

Medical instruments and equipment, namely, infusion pumps and controllers, including volumetric infusion pumps, syringe pumps, programmable infusion pumps, programmable syringe pumps and the resident control programs; clinical vital signs measurement instruments, namely, thermometers for medical use, disposable thermometer covers, blood pressure measurement instruments, pulse rate measurement instruments, blood pressure cuffs, pulse oximetry instruments, namely, sensors and monitors, respiration measurement instruments, and ECG instruments; medical fluid administration sets for the delivery of medical fluids, namely, drug delivery tubing, clamps, flow control devices, drug infusion connectors, adapters, injection sites, needleless connectors, needleless ports, needleless injection sites, and medical valves; medical devices for the delivery of medical fluids, namely, drug delivery tubing, clamps, flow control devices, drug infusion connectors, adapters, injection sites, needleless connectors, needleless ports, needleless injection sites, and medical valves; intravenous fluid containers, monitors, alarms, rate meters; sphygmomanometers; enteric infusion pumps and bags therefor; medical instrument and intravenous fluid container stands and hanger devices; gastrointestinal feeding tubes; needle catheter jejunostomy kits, namely, tubing and needles; multiple specimen holders for medical use; cold and hot packs for chemically producing and absorbing heat for use in medical treatment and therapy in Class 010;

Service and repair of medical instruments, equipment and accessories in Class 037;

and

Leasing and rental of medical instruments, equipment, and accessories in Class 042.

The registration is valid, subsisting and incontestable. A copy of the certificate of Registration is attached as Exhibit A.

4. Opposer is the owner of U.S. Trade/Service Mark Registration No. 2,371,410, registered on the Principal Register July 25, 2000 in Class 9 directed to the mark ALARIS for use in connection with:

electronic equipment and accessories, namely, fluid monitors; fluid flow rate meters; metered infusion pumps; ammeters; computer programs for controlling and monitoring fluid flows and detecting obstructions to fluid flows; and computer programs for capturing, storing, integrating, and presenting data in patient care management systems in Class 009.

The registration is in all respects valid and subsisting, and has enjoyed incontestable status since September 30, 2005. A copy of the certificate of Registration is attached as Petitioner's Exhibit B.

5. The application that matured into Registrant's Registration No. 2,930,177 for the word mark ALARIS was filed on July 3, 2003, and is based on Registrant's contended use of the mark in commerce as early as January 1, 2001, for use in connection with:

Medical consulting services in the field of medical and vocational rehabilitation primarily responding to the needs of the workers compensation industry in Class 044.

6. The Registrant's ALARIS mark is identical to Petitioner's ALARIS trademarks and registrations; and the goods and services are identical or so similar or related to the goods and services sold by Petitioner and/or covered by Petitioner's registrations, common law marks and trade name rights that confusion is likely.

7. Upon information and belief, the Petitioner's goods and services are offered and promoted through the same channels of trade and use the same media as Registrant's ALARIS goods.

8. Upon information and belief, the Petitioner's goods and services are sold through the same channels to the same customers of medical products and services that use Registrant's products and services.

9. Registrant's registration of ALARIS and Petitioner's ALARIS trademarks and incontestable registrations are confusingly similar in sound, sight and overall commercial impression, and the goods and services are similar, so that one would reasonably expect them to emanate from Petitioner. The contemporaneous use thereof is likely to cause confusion, mistake or deception because the purchasing public is likely to believe the Registrant as a company and/or Registrant's goods and services emanate from or are in some way associated or connected

with, or sponsored, licensed or authorized by Petitioner, all to the damage of Petitioner.

Accordingly, Registrant's ALARIS registration should be cancelled under Section 2(d) of the Lanham Act.

10. Registration No. 2,930,177 is less than five (5) years old, is not incontestable and is subject to cancellation under Section 2(d) as being likely to be confused with Petitioner's prior use of ALARIS as a trademark. By reason of all of the foregoing, the Registrant possesses no valid rights in or to the said registration; and the same is therefore subject to cancellation under Sections 14 and 24 of the Trademark Act of 1946 (15 U.S.C. §1064 and 1092).

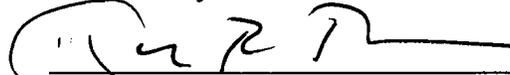
WHEREFORE, Petitioner prays that this Petition to Cancel be sustained and that Registration No. 2,930,177 – ALARIS – be cancelled.

Please recognize Joseph R. Dreitler and Mary R. True both members of the Bar of the State of Ohio, as its attorneys to prosecute this Petition to Cancel and to transact all business in the Patent and Trademark Office in connection herewith. Please address all communications to: Joseph R. Dreitler, c/o Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215, Telephone (614) 227-2347, Facsimile (614) 227-2390, E-mail: jdreitler@bricker.com. Please address correspondence to the said Joseph R. Dreitler.

Attachments – 2

Date: November 7, 2007

Respectfully submitted:



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Attorneys for Petitioner
Cardinal Health 303, Inc.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being filed electronically through on-line TTAB filing systems, ESTTA on November 7, 2007.

By: _____

A handwritten signature in black ink, consisting of a large, stylized 'Z' or 'S' shape with a loop at the bottom, positioned above a horizontal line.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via regular U.S. Mail and electronic mail this 7th day of November, 2007 upon the following attorney of record, according to the TARR Website:

Kristine M. Boyle, Esq.
Merchant & Gould
3200 IDS Center
80 South Eighth Street
Minneapolis MN 55402

Signed: _____


Melissa A. Hicks

Int. Cls.: 10, 37, and 42

Prior U.S. Cls.: 26, 39, 44, 100, 101, 103, and 106

Reg. No. 2,279,724

United States Patent and Trademark Office

Registered Sep. 21, 1999

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

ALARIS

**ALARIS MEDICAL SYSTEMS, INC. (DELAWARE CORPORATION)
10221 WATERIDGE CIRCLE
SAN DIEGO, CA 92121**

FOR: MEDICAL INSTRUMENTS AND EQUIPMENT, NAMELY, INFUSION PUMPS AND CONTROLLERS, INCLUDING VOLUMETRIC INFUSION PUMPS, SYRINGE PUMPS, PROGRAMMABLE INFUSION PUMPS, PROGRAMMABLE SYRINGE PUMPS AND THE RESIDENT CONTROL PROGRAMS; CLINICAL VITAL SIGNS MEASUREMENT INSTRUMENTS, NAMELY, THERMOMETERS FOR MEDICAL USE, DISPOSABLE THERMOMETER COVERS, BLOOD PRESSURE MEASUREMENT INSTRUMENTS, PULSE RATE MEASUREMENT INSTRUMENTS, BLOOD PRESSURE CUFFS, PULSE OXIMETRY INSTRUMENTS, NAMELY, SENSORS AND MONITORS, RESPIRATION MEASUREMENT INSTRUMENTS, AND ECG INSTRUMENTS; MEDICAL FLUID ADMINISTRATION SETS FOR THE DELIVERY OF MEDICAL FLUIDS, NAMELY, DRUG DELIVERY TUBING, CLAMPS, FLOW CONTROL DEVICES, DRUG INFUSION CONNECTORS, ADAPTERS, INJECTION SITES, NEEDLELESS CONNECTORS, NEEDLELESS PORTS, NEEDLELESS INJECTION SITES, AND MEDICAL VALVES; MEDICAL DEVICES FOR THE DELIVERY OF MEDICAL FLUIDS, NAMELY, DRUG DELIVERY TUBING, CLAMPS, FLOW CONTROL DEVICES, DRUG INFUSION CONNECTORS, ADAPTERS, INJEC-

TION SITES, NEEDLELESS CONNECTORS, NEEDLELESS PORTS, NEEDLELESS INJECTION SITES, AND MEDICAL VALVES; INTRAVENOUS FLUID CONTAINERS, MONITORS, ALARMS, RATE METERS; SPHYGMOMANOMETERS; ENTERIC INFUSION PUMPS AND BAGS THEREFOR; MEDICAL INSTRUMENT AND INTRAVENOUS FLUID CONTAINER STANDS AND HANGER DEVICES; GASTROINTESTINAL FEEDING TUBES; NEEDLE CATHETER JEJUNOSTOMY KITS, NAMELY, TUBING AND NEEDLES; MULTIPLE SPECIMEN HOLDERS FOR MEDICAL USE; COLD AND HOT PACKS FOR CHEMICALLY PRODUCING AND ABSORBING HEAT FOR USE IN MEDICAL TREATMENT AND THERAPY, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 7-24-1997; IN COMMERCE 7-24-1997.

FOR: SERVICE AND REPAIR OF MEDICAL INSTRUMENTS, EQUIPMENT AND ACCESSORIES, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 7-24-1997; IN COMMERCE 7-24-1997.

FOR: LEASING AND RENTAL OF MEDICAL INSTRUMENTS, EQUIPMENT, AND ACCESSORIES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-24-1997; IN COMMERCE 7-24-1997.

SN 75-234,438, FILED 1-31-1997.

JOAN LESLIE BISHOP, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,371,410

United States Patent and Trademark Office

Registered July 25, 2000

**TRADEMARK
PRINCIPAL REGISTER**

ALARIS

ALARIS MEDICAL SYSTEMS, INC. (DELAWARE
CORPORATION)
10221 WATERIDGE CIRCLE
SAN DIEGO, CA 92121

FOR: ELECTRONIC EQUIPMENT AND ACCESSORIES, NAMELY, FLUID MONITORS; FLUID FLOW RATE METERS; METERED INFUSION PUMPS; AMMETERS; COMPUTER PROGRAMS FOR CONTROLLING AND MONITORING FLUID FLOWS AND DETECTING OBSTRUCTIONS TO FLUID

FLOWS; AND COMPUTER PROGRAMS FOR CAPTURING, STORING, INTEGRATING, AND PRESENTING DATA IN PATIENT CARE MANAGEMENT SYSTEMS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 7-24-1997; IN COMMERCE 7-24-1997.

SN 75-223,900, FILED 1-10-1997.

JOAN LESLIE BISHOP, EXAMINING ATTORNEY