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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	Other Motions/Papers
Filer's Name	Mary R. True
Filer's e-mail	trademarks@bricker.com
Signature	/Mary R. True/
Date	01/09/2008
Attachments	Alertis01092008.pdf (23 pages)(593128 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. | : | |
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| v. | : | Opposition No.: 91-177,366 |
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| 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. | : | |

**MOTION OF OPPOSER/PETITIONER FOR ENLARGEMENT OF TIME IN WHICH
TO SERVE RESPONSES TO WRITTEN DISCOVERY, TO SUSPEND PROCEEDINGS
AND RESET DISCOVERY AND TRIAL DATE**

Pursuant to Rule 2.120(a)(3) of the Trademark Rules of Practice of the Patent and Trademark Office, 27 C.F.R. §§ 2.120(a)(3), Opposer/Petitioner Cardinal Health 303, Inc. (“Cardinal Health”), respectfully requests the Board to enlarge the time in which Opposer/Petitioner can serve its responses and produce documents responsive to Applicant/Registrants The Alaris Group, Inc.’s (“Alaris Group”) Second Set of Interrogatories and Requests for Production of

Documents, which were served on December 14, 2007,¹ to suspend the proceedings in this matter and to reset all discovery and trial dates, pending resolution of this Motion. Cardinal Health regrets the necessity of this Motion; however, when Counsel for Cardinal Health contacted Counsel for Alaris Group to request a thirty-day extension, that request was refused. Counsel for Alaris Group did not respond to Counsel for Cardinal Health's request to reconsider her refusal, necessitating this Motion. *See* January 7-8 email exchange between Mary R. True and Kristine Boylan, attached to the True Declaration as Exhibit B.

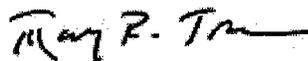
As set forth in the email, on Monday, January 7, 2008, Counsel for Cardinal Health requested a brief extension of up to thirty (30) days in which to respond to Alaris Group's discovery requests, because the requests were served less than two weeks before the Christmas holiday, at a time period in when the majority of Cardinal Health personnel who would be assisting in assembling the responses and documents were out of the office on vacation for one or more days. Also as set forth in the email, Cardinal Health personnel are currently working diligently on responding to the requests and assembling responsive documents from departments throughout the Alaris Products division, but it is unlikely that they will have everything assembled and ready to serve by January 14, 2008. Clearly, the request for additional time was not for the purpose of delay, and should not be prejudicial to Alaris Group. Indeed, the discovery period in this matter is not even set to close until April 12, 2008, which would have given the Alaris Group nearly two months after the responses were served to review the materials.

For all the foregoing reasons, Opposer/ Petitioner respectfully requests a 30 day enlargement of time from the date of the Board's decision on this Motion in which to serve their responses to Applicant/Registrant's Second Set of Interrogatories and Requests for Production of Documents, to

¹ A copy of Applicant/Registrant's Second Set of Interrogatories and Requests for Production of Documents is attached to the declaration of Mary R. True ("True Declaration") as Exhibit A.

suspend the proceedings in this matter and to reset all discovery and trial dates, pending resolution of this Motion.

Respectfully submitted:



Joseph R. Dreitler
Mary R. True
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2347
Facsimile: (614) 227-2390
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 January 9, 2008.

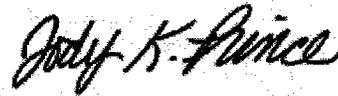
A handwritten signature in black ink that reads "Jody K. Prince". The signature is written in a cursive style with a large initial "J" and "P".

By: Jody K. Prince

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via electronic and regular U.S. Mail this 9th day of January, 2008:

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



Signed: _____

Jody K. Prince

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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| Registrant. | : | |

DECLARATION OF MARY R. TRUE

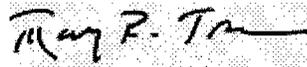
I, Mary R. True, state as follows:

1. I am a partner with the law firm of Bricker & Eckler LLP and am one of the attorneys representing Opposer/Petitioner Cardinal Health 303, Inc. ("Cardinal Health") in these proceedings.

2. Attached hereto as Exhibit A are true and accurate copies of Applicant/Registrants The Alaris Group, Inc.'s ("Alaris Group") Second Set of Interrogatories and Requests for Production of Documents, which were served on me on December 14, 2007.

3. Attached hereto as Exhibit B is a true and accurate copy of a January 7-8 email exchange between myself and Counsel for Alaris Group, Kristine Boylan.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge



Mary R. True

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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- | | | |
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5. CARDINAL HEALTH 303, INC.	:	
	:	
Petitioner	:	
	:	
v.	:	Cancellation No. 92-048,172
	:	
THE ALARIS GROUP, INC.	:	
	:	
Registrant	:	

**REGISTRANT/APPLICANT’S SECOND SET OF INTERROGATORIES
TO PETITIONER/OPPOSER**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Registrant/Applicant The Alaris Group, Inc. (“Applicant”) hereby requests that Petitioner/Opposer Cardinal Health 303, Inc. (“Opposer”) answer the interrogatories set forth below (“Interrogatories”) separately and fully in writing and under oath. The requested discovery should be served within 30 days of the date of service in accordance with Trademark Rules 2.119 and 2.120.

The Interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing consistent with the Federal Rules and Trademark Rules of Practice so that any additional information relating in any way to the subject matter of any of these Interrogatories and requests which Opposer acquires or which become known to Opposer up to and including the time of trial shall be furnished to Applicant immediately after such information is acquired or becomes known.

For the convenience of the Board and the parties, Applicant requests that each Interrogatory be quoted in full immediately preceding the response.

The singular form or masculine gender, when used herein, shall include respectively, the plural and feminine or neuter as appropriate.

DEFINITIONS

The following words and terms, when used in these Interrogatories, shall have the following meanings:

A. "Applicant" shall mean The Alaris Group, Inc., the Applicant/Registrant.

B. "Opposer," "you" or "your" shall mean Cardinal Health 303, Inc., all predecessors (including Alaris Medical Group, Inc.), and all other persons acting or purporting to act on behalf of it.

C. The term "document" shall have the broadest and most comprehensive meaning permitted by Rule 34 of the Federal Rules of Civil Procedure.

D. The terms "identify," to give the "identity" of, to "state," or to "describe" mean, in general, to give the fullest description known or ascertainable by Opposer, whether or not in the possession of Opposer and whether or not alleged to be privileged.

E. "Person" and "persons" shall include, but not be limited to, any natural person; business or corporation, whether for profit or not; partnership; firm; associate; or other form of business entity; charitable, educational, governmental, or other non-profit institution, foundation body, or other organization; and shall include the entity itself, its officers, directors, employees, staff members, agents, representatives of all kinds (including, but not limited to legal representatives), and consultants.

F. “Applicant’s Marks” means collectively the marks Applicant seeks to register in the Applications and the mark covered by the Registration.

G. “State” when used with a reference to a particular subject matter means to declare and describe all facts that are known to you which refer or relate to that subject matter.

H. “Refers or relates” or “referring or relating” means embodying, pertaining to, concerning, constituting, comprising, reflecting, discussing, or having any logical or factual connection whatsoever with the subject matter in question.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons (including business and legal personnel) you believe may have knowledge of facts relevant to your claims in the Amended Petition to Cancel and in the Amended Notices of Opposition, and describe the issues upon which they may have knowledge.

INTERROGATORY NO. 2: Identify all persons (including business and legal personnel) you believe may have knowledge of facts relevant to your claimed use of ALARIS prior to Cardinal Health’s 2004 purchase of Alaris Medical Systems, Inc. and describe the issues upon which they may have knowledge.

INTERROGATORY NO. 3: Identify the person at Alaris Medical Systems who was most knowledgeable about its ALARIS mark prior to the 2004 purchase of Alaris Medical Systems by Cardinal Health.

INTERROGATORY NO. 4: Identify the person who had primary decision-making authority for the wholly owned subsidiary making any offering under the

ALARIS name after Alaris Medical Systems was acquired by Cardinal Health in approximately 2004.

INTERROGATORY NO. 5: State whether you have conducted any search or investigation to determine the strength of your ALARIS mark, either before or after 2004.

INTERROGATORY NO. 6: State whether you are aware of any instances of actual confusion by the relevant consuming public between Applicant and Opposer and, if so, identify each instance.

INTERROGATORY NO. 7: Identify: (1) each good you offer under the ALARIS name and (2) the date of first use in commerce in connection with each good.

INTERROGATORY NO. 8: Describe the relevant purchasers of each of goods identified in your Answer to Interrogatory No.8, including but not limited to the level of sophistication (e.g., job title, familiarity with your goods, etc.) and education of such relevant purchasers.

INTERROGATORY NO. 9: Describe the conditions under which your customers purchase the goods identified in your Answer to Interrogatory No.8, including but not limited to the manner in which customers are presented with an opportunity to purchase (e.g., in a store, by a catalog, or in-person sales presentation); the presence of any of your personnel or agents at the time customers are presented with an opportunity to purchase; the location where negotiations are held and/or sales are finalized; and the approximate time it takes for a purchaser to finalize a sale after being presented with an opportunity to purchase your goods.

INTERROGATORY NO. 10: Identify: (1) each service you offer under the ALARIS name and (2) the date of first use in commerce in connection with each good.

INTERROGATORY NO. 11: Describe the relevant purchasers of each of the services identified in your Answer to Interrogatory No.10, including but not limited to the level of sophistication (e.g., job title, familiarity with your services, etc.) and education of such relevant purchasers.

INTERROGATORY NO. 12: Describe the conditions under which your customers purchase the services identified in your Answer to Interrogatory No.10, including but not limited to the manner in which customers are presented with an opportunity to purchase (e.g., in a store, by a catalog, or in-person sales presentation); the presence of any of your personnel or agents at the time customers are presented with an opportunity to purchase; the location where negotiations are held and/or sales are finalized; and the approximate time it takes for a purchaser to finalize a sale after being presented with an opportunity to purchase your services.

INTERROGATORY NO. 13: Describe the overlap that you perceive to exist between your customers and those of Applicant/Registrant.

INTERROGATORY NO. 14: Describe the channels of trade that each of your goods are sold, including but not limited to the method or manner by which your goods are distributed, marketed, promoted, or advertised.

INTERROGATORY NO. 15: Describe the channels of trade that each of your services are sold, including but not limited to the method or manner by which your services are distributed, marketed, promoted, or advertised.

INTERROGATORY NO. 16: State all facts and identify all documents relating to your marketing, advertisement and/or promotion efforts for offerings under the

ALARIS mark, including but not limited to business plans, marketing plans, product literature, catalogs, advertisements, budgets, invoices, and expenditures.

INTERROGATORY NO. 17: Identify each media outlet you use to promote, market, or advertise offerings under the ALARIS mark.

INTERROGATORY NO. 18: For each media outlet identified, state your annual expenditure (since 1999) for each media outlet.

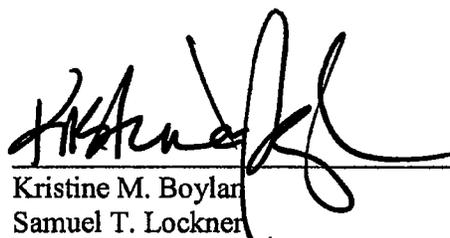
INTERROGATORY NO. 19: Describe the steps you have taken since 1999 to monitor and enforce your trademark rights, including but not limited to the implementation of a formal or informal trademark or intellectual property enforcement policy, the use of any third-party watch service, or the use of outside counsel.

INTERROGATORY NO. 20: State whether you are relying on any common law rights in any claimed trademark in this proceeding.

INTERROGATORY NO. 21: Identify all fact witnesses you expect to call and describe the anticipated testimony.

INTERROGATORY NO. 22: Identify all expert witnesses you expect to call and describe the anticipated testimony.

12/14/07
Date



Kristine M. Boylan
Samuel T. Lockner
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, MN 55402-2215
Telephone: (612) 332-5300

*Attorneys for the Applicant/Registrant
The Alaris Group, Inc.*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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v.

THE ALARIS GROUP, INC.

Applicant

Opposition No. 91-177,234

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Opposer

v.

THE ALARIS GROUP, INC.

Applicant

Opposition No. 91-177,367

For purposes of Applicant's Second Set of Requests for Production of Documents and Things to Opposer, Applicant adopts the definitions set forth in Applicant's Second Set of Interrogatories to Opposer.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST NO. 1: All documents reviewed and/or relied upon in responding to Applicant's Second Set of Interrogatories.

REQUEST NO. 2: All documents identified, referenced or described in your Answers to Interrogatories.

REQUEST NO. 3: An organizational chart for Alaris Medical Systems for each year starting in 1997 until the purchase of Alaris Medical Systems by Cardinal Health in approximately 2004.

REQUEST NO. 4: An organizational chart for that portion of Cardinal Health related to the offerings under the ALARIS mark from the time of the 2004 purchase of Alaris Medical Systems, Inc through the present.

REQUEST NO. 5: All documents relating to your selection and adoption of each of its Marks, including any clearance opinions or searches performed for each.

REQUEST NO. 6: All documents summarizing and showing any search or investigation results conducted at any time with respect to the ALARIS mark, including those identified in any of your Answers to Interrogatories.

REQUEST NO. 7: All business plans and related documents relating to the offerings under the ALARIS mark after the 2004 purchase of Alaris Medical Systems by Cardinal Health.

REQUEST NO. 8: All business plans and related documents relating to any intended expansion of offerings under the ALARIS mark after the 2004 purchase of Alaris Medical Systems by Cardinal Health.

REQUEST NO. 9: Documents sufficient to identify (1) each good and service identified in your Answers to Interrogatories; and (2) the dates of first use identified in your Answers to Interrogatories.

REQUEST NO. 10: Documents sufficient to show that your claimed uses of the ALARIS mark have been continuously used in commerce.

REQUEST NO. 11: Documents sufficient to show the channels of trade for your offerings.

REQUEST NO. 12: Documents sufficient to identify the customers of your goods and services under the ALARIS mark.

REQUEST NO. 13: All documents relating to characteristics or the demographics of potential customers or customers of your goods and services.

REQUEST NO. 14: All documents relating to the relevant purchaser(s) of each of your goods and services.

REQUEST NO. 15: All documents relating to the conditions under which customers purchase your goods and services.

REQUEST NO. 16: All documents relating to your marketing, advertisement and/or promotion efforts for offerings under the ALARIS mark.

REQUEST NO. 17: Documents sufficient to identify annual expenditures in promoting, marketing, or advertising for offerings under the ALARIS mark since 1999 through the present.

REQUEST NO. 18: Documents sufficient to identify each media outlet used by you to promote, market or advertise the sale of any of your goods or services and the annual expenditures.

REQUEST NO. 19: All documents relating to your first knowledge of Applicant, Applicant's Goods, or any of Applicant's Marks.

REQUEST NO. 20: All documents relating to the steps you have taken since 1999 to monitor and enforce its trademark rights, including but not limited to the implementation of a formal or informal trademark or intellectual property enforcement policy, the use of any third-party watch service, or the use of outside counsel.

REQUEST NO. 21: All documents concerning any market studies or surveys concerning confusion, mistake or deception likely to arise or arising because of the similarity of Applicant's and your Marks.

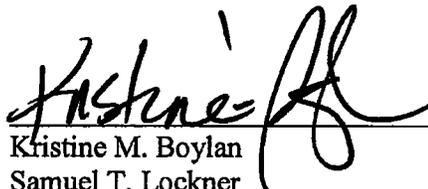
REQUEST NO. 22: All documents which refer or relate to the qualifications, field of specialization and expert testimony of any expert you have consulted regarding any issues in the Opposition.

REQUEST NO. 23: All documents relating to any instance(s) of actual confusion between Applicant and Opposer.

REQUEST NO. 24: All documents relating to any instance(s) where you believe, or have believed, there to be a likelihood of confusion between Applicant and Opposer.

Date

12/14/07


Kristine M. Boylan
Samuel T. Lockner
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, MN 55402-2215
Telephone: (612) 332-5300

*Attorneys for the Applicant/Registrant
The Alaris Group, Inc.*

EXHIBIT B

Prince, Jody

Subject: FW: Cardinal/Alaris discovery requests

From: True, Mary
Sent: Tuesday, January 08, 2008 1:52 PM
To: 'Kristine M. Boylan'
Subject: RE: Cardinal/Alaris discovery requests

I'm sorry to hear that Kristine. You served this discovery on us in the middle of the December holiday season (when my client's offices were closed for more than a week), which has essentially cut the actual time my client has to respond in half. So I think your refusal is unreasonable, and if I don't hear that you have reconsidered by the end of business today, we will file a Motion with the TTAB seeking additional time, advising the Board that you have refused our request and asking the interlocutory to hear us on the motion. I have no idea what you are talking about with "prejudice to your client", since this is not a civil case seeking expedited relief.

Mary R. True
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
614.227.4873
mtrue@bricker.com

From: Kristine M. Boylan [mailto:KBoylan@merchantgould.com]
Sent: Tuesday, January 08, 2008 12:46 PM
To: True, Mary
Subject: RE: Cardinal/Alaris discovery requests

Mary – As I indicated in our previous correspondence – my client continues to be prejudiced by any delay. I cannot agree to any extension of time in connection with the discovery requests. Kristine

Kristine Boylan
Merchant & Gould, PC
3200 IDS Center
80 South 8th Street
Minneapolis, Mn 55402
Phone: 612-371-5295
Fax: 612-332-9081
Email: kboylan@merchantgould.com

From: True, Mary [mailto:mtrue@bricker.com]
Sent: Monday, January 07, 2008 10:55 AM
To: Kristine M. Boylan
Subject: Cardinal/Alaris discovery requests

Kristine -

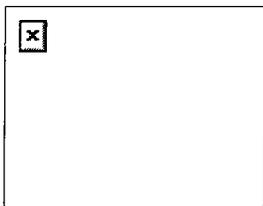
Hope you had a good holiday season and are having a great new year. I was wondering if we could get an extra 30 days to respond to your discovery requests. As you might imagine, there weren't many people around at my

1/9/2008

client's during the last two weeks of December. My in-house person has been working diligently, and I may be able to get you the responses sooner than 30 days, but just want to make sure we can have a little more time.

Thanks -

Mary



Mary R. True

Direct Dial 614.227.4873
mtrue@bricker.com

V-CARD BIO

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