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

Proceeding	91177234
Party	Defendant Alaris Group, Inc., The
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Date	01/10/2008
Attachments	2008 01 10 Response to Motion to Enlarge Discovery Time.pdf (9 pages) (213734 bytes)

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|------------------------------|---|---------------------------|
| 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	:	

RESPONSE TO MOTION TO ENLARGE TIME TO ANSWER DISCOVERY

This tribunal should deny the Cardinal Health (CH) Motion for Enlargement of Time.

The claims asserted in this proceeding are old. They are old enough that CH should already have had the information needed to respond to the discovery at issue. CH slept on its rights for well over seven years before taking any action to protect its now-claimed rights to the ALARIS mark. Indeed, it was *eight years ago* that The Alaris Group® started use of ALARIS and *seven years ago* that The Alaris Group® first filed for a trademark registration. The Alaris Group® has naturally grown and expanded over time – without ever a word from CH or its predecessor Alaris Medical Systems, Inc. Indeed, it was not until well after seven years of use, and more than five years after registration by The Alaris Group® that CH initiated any form of opposition to the ALARIS mark

Discovery is set to close in just three months - on April 12, 2008. The Alaris Group® has little confidence that CH will actually produce information and evidence relevant to the claims and defenses in this Consolidated Proceeding, so any delay is of concern. Even after The Alaris Group® agreed to an extension of time for CH to answer its first set of discovery, CH’s responses and production were woefully deficient. See Exh. A (November 29, 2007 letter). For

example, Cardinal Health references responsive yet privileged documents, yet has never produced a privilege log and has never responded to a request to do so. *Id.* CH, moreover, produced only 64 pages of what-appear-to-be marketing materials and 22 pages of a spreadsheet with redacted customer information. With only three months remaining in the discovery period, CH still has yet to identify even one person with information relevant to the claims and defenses in this action. The Alaris Group® is already at a significant disadvantage. If this tribunal grants the enlargement requested, The Alaris Group® would only have two short months prior to the close of discovery to assess the information provided and to complete discovery to defend these claims.

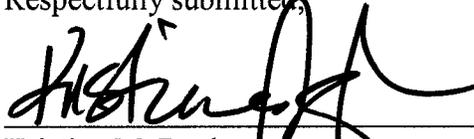
CH does not contend that the second set of discovery is overly broad, unduly burdensome or directed at information that is hard to locate. At issue, in fact, are answers and responses to only 22 interrogatories and 24 requests for documents, neither of which go beyond the scope of relevant discovery or present an undue burden. In fact, the 22 interrogatories and 24 document requests are very much like the first round of discovery served by CH and already answered by The Alaris Group® in a timely fashion. Had the Oppositions been filed just a few months later in 2007, CH would have been required to provide Initial Disclosures under the new Rules on some of the very questions subject of the second set of discovery. *See, e.g.,* The Alaris Group® Second Set of Interrogatories Nos. 1, 2, 3 and 4 (attached as Exh. A to the CH Motion for Enlargement of Time). The reality that the Christmas holiday fell during the time that responsive information would be assembled cannot constitute a reason for enlargement of time, particularly given the fact here - that CH should have had this information months or even years ago.

Trademark Rule of Practice 2.120 is exactly the type of Rule that should be construed and administered to secure a just, speedy, and inexpensive determination of the proceeding. *See*

Yamaha Int'l Corp v. Hoshino Gakki Co., 840 F.2d 1572, 6 USPQ2d 1001, 1004 (Fed. Cir. 1998); Fed.R.Civ.P. 1.

The motion for enlargement of time should be denied, because additional delay in discovery will do anything but secure a just or speedy determination of this proceeding.

Respectfully submitted,



Kristine M. Boylan
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Telephone: (612) 332-5300

Dated: January 10, 2008

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

CERTIFICATE OF MAILING

I hereby certify that this Response to Motion for Enlargement of Time is being filed electronically through on-line TTAB filing systems, ESTTA on January 10, 2008.


By: Kristine M. Boylan

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to the Motion for Enlargement of Time has been served on counsel for Opposer via regular U.S. Mail this 10th day of January, 2008 as follows:

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Date: 1/10/08

Miriam Sindt
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Exhibit A

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November 29, 2007

Via Email: mtrue@bricker.com

Mary True
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Columbus, OH 43215-4291

Re: *Cardinal Health 303, Inc. v. The Alaris Group, Inc.*
Opposition Nos.: 91-177,234; 91-177,367; 91-177,366; and 91-177,365
Cancellation No. 92-048,172
M&G No. 15711.00000001

Dear Mary:

I write regarding discovery deficiencies in Cardinal Health's recent discovery responses:

1. Cardinal Health's Responses to Applicant's Request for Production of Documents Nos. 10 and 11 references responsive yet privileged, documents.

No privilege log has been produced. Please produce it.

2. The only documents produced consist of 64 pages of what-appear-to-be marketing materials and 22 pages of a spreadsheet with redacted customer information. This is insufficient. Among other things, there are no documents showing dates of first uses or demonstrating channels of trade. Document Request No. 12, for example, seeks "documents sufficient to demonstrate the channels of trade that Opposer uses to provide the goods and services bearing Opposer's mark." Cardinal Health responded that responsive, non-privileged documents would be produced, yet this 87 page production fails to include any document evidencing channels of trade.

Minneapolis/St. Paul
Denver
Seattle
Atlanta
Washington, DC

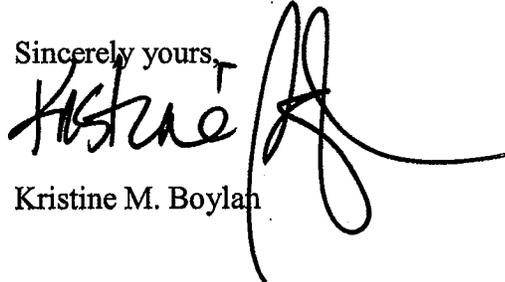
November 29, 2007

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3. Finally, Cardinal Health's service of these discovery responses was untimely and specifically in contravention of our agreement – which was already extended out of courtesy between counsel as a sign of good faith on the part of The Alaris Group - that Cardinal Health would serve responses by November 23, 2007. While the several-day delay on its own may not seem significant, The Alaris Group has had its trademarks delayed from registration for almost six months now due to an apparently ill-thought-out opposition proceeding. The Alaris Group agreed to the good faith extension on the basis that the parties could still consider settlement. It was also expressly stated that although the extension was granted, The Alaris Group does not want any delay in reaching a resolution of this case. I ask that you respond to the discovery deficiencies and make supplemental productions as necessary to appropriately respond within 10 days.

We look forward to your prompt reply and supplementation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kristine M. Boylan", with a long, sweeping horizontal line extending to the right.

Kristine M. Boylan

KMB:mks

Enclosures