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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
Correspondence Address	Kristine M. Boylan Merchant & Gould P.C. 80 South Eighth Street, Ste 3200 Minneapolis, MN 55402-2215 UNITED STATES kboylan@merchantgould.com, misaacson@merchantgould.com, dockmpls@merchantgould.com, kandresen@bssda.com
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Signature	/Kristine M. Boylan/
Date	04/09/2008
Attachments	2008 04 09 Alaris Reply Brief in support of Motion for Summary Judgment.pdf (67 pages)(2675068 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE 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.

THE ALARIS GROUP, INC.

Registrant

Cancellation No. 92-048,172

**THE ALARIS GROUP'S REPLY BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

There is no merit to Petitioner/Opposer's ("Cardinal Health" or "CH") claims. CH admits there is no actual confusion in the market and there is no likelihood of confusion as CH and The Alaris Group have different channels of trade, use different media to market their goods and services and have different customers. The Alaris Group has offered the same consulting services since its inception in 1999, primarily focusing on workers compensation industry. As its business grew in size, The Alaris Group offered more and more of the same consulting services. At no time has CH offered those same or even similar consulting services – instead, CH has always offered medical instruments, equipment and accessories,¹ which are completely different from consulting services. Likewise, at no time in the past eight years did CH or its predecessor ever raise an issue about The Alaris Group's ALARIS trademark usage. CH was silent while The Alaris Group developed its brand.

¹ CH also offers repair services of its medical instruments, equipment and accessories as well as leasing or rental services of its medical instruments, equipment and accessories. CH clearly does not offer consulting services similar to The Alaris Group's consulting services.

This consolidated action should be dismissed in its entirety on grounds of laches and estoppel; CH's attempted defense of the progressive encroachment doctrine is specious and does not salvage its delay.

ARGUMENT

A. The Alaris Group's Services Are The Same And Have Not Changed.

The Alaris Group's services have never changed. The Alaris Group started offering consulting services in 1999, as listed in the original THE ALARIS GROUP, INC application and registration. The Alaris Group offers the same consulting services today, as listed on the challenged applications and registrations.² The Alaris Group also provides its consulting services through a franchise model and provides support for its services with a computer software program.³ The Alaris Group's business offerings are not different in nature, nor are they expanded in nature. The Alaris Group has grown as a company, with more people, more revenue and more work in more geographic areas. Its business of consulting services has not changed.

CH and its predecessor, on the other hand, have never offered any consulting services or even these same consulting services, namely consulting services primarily focusing on workers compensation. CH and its predecessor instead at all times have offered medical instruments, equipment and accessories to hospitals. CH has never provided any evidence to establish that its goods offered under the ALARIS mark are in

² Notably, the only difference in the services descriptions between the challenged applications and the original registration for consulting services is the addition of the word "medical" to the recitation. *Compare*: "Medical consulting services in the field of medical and vocational rehabilitation primarily responding to the needs of the workers compensation industry" (U.S. Trademark App. No. 78/945352) with "Consulting services in the field of medical and vocational rehabilitation primarily responding to the needs of the workers compensation industry" (U.S. Trademark Reg. No. 2510667). CH makes much ado about the addition of "Medical" (see Opp. Brf at 9, 14-15), but the original description of services already included "in the field of MEDICAL" (emphasis added.)

³ Hence, the ALARISWARE, ALARIS ADVANTAGE and ALARIS applications subject of CH's challenge list computer software and franchise services.

any way related to services offered under The Alaris Group's ALARIS mark. Oslick Decl. at 5. CH claims use of ALARIS for "a wide variety of goods and services sold in the medical field," Opp. Brf at p. 10, but its only Registration for ALARIS is for a narrow field of goods involving medical instruments, equipment and accessories. *Id.*; see U.S. Trademark Reg. No. 2930177. Moreover, the documents CH has produced in discovery to support its case show very narrow use. Oslick Decl. at ¶6, attaching CH Response to Second Set of Interrogatories, Interrogatory No. 7 (disclosing only use of the ALARIS mark narrowly with medical instruments, equipment and accessories). The Alaris Group has not expanded its offerings to conflict in any way with CH, which does not offer any services or even goods close to those services offered by The Alaris Group.

Accordingly, CH cannot prevail on the merits. The parties' offerings under their respective ALARIS mark are completely dissimilar. Even CH's Opposition Brief is wholly based on *argued dissimilarities* in the goods and services and in the marks themselves.⁴ Aside from the fact that the mark subject of the Petition to Cancel (ALARIS) is identical to the mark subject of CH's registration (ALARIS), there is no other theory available to support CH's likelihood of confusion claim. CH has admitted it is not aware of any actual confusion in the market.⁵ The channels of trade are not the same.⁶ The media used by the parties are not the same.⁷ The purchasers are not the

⁴ Yet, CH's case in chief against The Alaris Group is wholly based on *alleged similarities* in the parties' goods/services and the marks.

⁵ CH Response to Second Set of Interrogatories, Interrogatory No. 6, attached as Exh. A to the Oslick Decl.

⁶ "Alaris Group does not market its services through any of these three channels of trade specific to the sale of medical instruments, equipment and accessories, including: the Needle-free OSHA legislation information campaign, evaluations, installations, trade-ins, repairs, instrument exchanges and other opportunities arising through Alaris Services operations; Field visits to customer operations, national product and sales tours; and Alaris service centers." Caven Supp. Decl. at ¶4. The majority of the "channels of trade" cited by CH are used by practically every company in the United States to market its goods (e.g. websites, brochures, catalogs, promotional mailers, sales presentations, sales agents and sales

same,⁸ and both parties' purchasers are sophisticated. *See, e.g., In re Team Health, Inc.*, 2002 TTAB 653, *4 (T.T.A.B. Oct. 8, 2002) (permitting registration of ACCESS NURSE even though ACCESS NURSING SERVICES was already registered to another party because there was no overlap in customers and because health care providers are "a highly intelligent and discriminating public.") CH's goods and The Alaris Group's services have absolutely no proximity in the marketplace. There have never been – nor will there ever be -- even a single instance of confusion, as already admitted by CH.⁹ There was never any factual support underlying the claims in the Petition to Cancel or in the Notices of Opposition, and there is none now. CH cannot prevail on the merits of its claims.

B. Even If There Were Grounds For CH's Claims, CH Is Equitably Estopped From Proceeding.

CH has no way of getting around the plain point here -- too much time has passed to allow CH to interfere with The Alaris Group's ALARIS trademark rights. There is unreasonable delay. The Board views a period as short as three years and eight months from the date of constructive notice to the assertion of a claim to qualify as unreasonable delay. *See Teledyne Techs., Inc. v. W. Skyways, Inc.*, 78 U.S.P.Q.2d (BNA) 1203, 1210 (T.T.A.B. 2006) (delay of three years and eight months was unreasonable to support finding of laches). Here, it was *eight years ago* that The Alaris Group started use of ALARIS, *seven years ago* that The Alaris Group first filed for an ALARIS trademark

calls). Only the three noted above appear to be specific to Cardinal Health's medical instruments, equipment and accessories.

⁷ Alaris Group does not market its services through any of the media listed in Cardinal Health's Response to The Alaris Group's Second Set of Interrogatories No. 17. Caven Supp. Decl. at ¶5.

⁸ Alaris Group does not market its services to any of the customers listed in Cardinal Health's Response to The Alaris Group's Second Set of Interrogatories No. 8. Caven Supp. Decl. at ¶3.

⁹ *See supra* FN 5.

registration, and *six years ago* that The Alaris Group's first trademark application was registered.

CH's delay cannot be excused by the doctrine of progressive encroachment because this is not a case of progressive encroachment. The Alaris Group's services have never changed. CH points to the different classification of the recitation of The Alaris Group's consulting services -- from International Class 42 (in Registration No. 2,510,667) to International Class 44 (in the challenged registration and applications) -- as significant evidence showing an expansion and change in The Alaris Group's goods and services, Opp. Brf at 14, but this argument is based on a defective premise. The reclassification of Applicant's consulting services in the subsequent registration and applications was not the result of a change in the actual nature of The Alaris Group's consulting services. Rather, the reclassification was solely the result of a change in the International Classification system under the Nice Agreement.¹⁰ Had the original application to register THE ALARIS GROUP, INC. been filed after January 1, 2002, the consulting services in that registration would also have been classified in International Class 44 -- the subject of those consulting services is, was and always has been medical and vocational rehabilitation. Oslick Decl. at ¶8.

CH's delay, moreover, cannot be excused on its assertion that it just became aware of The Alaris Group's registrations and applications in approximately March

¹⁰ Effective January 1, 2002, the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks ("Nice Agreement") was amended to add three new service classes, namely, International Classes 43 through 45. TMEP § 1401.09. Under the 8th Edition of the Nice Agreement, medical services, previously classified in International Class 42, were reclassified in newly added International Class 44. See The US Acceptable Identification of Goods and Services Manual entry for "medical services" and corresponding "Note" for that entry, both dated April 3, 2008 and attached as Exh. B to the Oslick Decl.

2007.¹¹ First, the standard under which delay is judged does not depend on a date of actual knowledge. Registration on the Principal Register is constructive notice of the registrant's claim of ownership of the trademark.¹² Second, the application for The Alaris Group's now-registered ALARIS mark (U.S. Trademark Reg. No. 2930177) was published for Opposition on March 23, 2004 – within only a few months of the purchase of ALARIS by Cardinal Health.¹³ It is disingenuous for CH to claim that the due diligence investigation surrounding that purchase did not uncover The Alaris Group or its published ALARIS application.¹⁴ Delay based on this claimed-ignorance is inexcusable and insufficient.

The policy underlying the doctrine of progressive encroachment is not at play here either. It recognizes that the rule of encroachment “allows a plaintiff to tolerate *de minimus* or low-level infringements” and that “a reasonable businessman should be afforded some latitude to assess both the impact of another’s use of an allegedly infringing trademark as well as the wisdom of pursuing litigation on the issue.” Opp. Brf at 8 (citing cases). But this is not the case here, where CH claims it had no “actual

¹¹ See Supplemental Response to Interrogatory No. 8, dated March 25, 2008 and Opp.Brff at 4. Cardinal Health appears to say two different things at several points in their response and in prior documents. Cardinal Health asserts: “Cardinal became aware of the ALARIS SELECT application in early 2007 through its Counsel's monitoring of the Official Gazette, and likewise learned of the ALARIS, ALARIS ADVANTAGE and ALARISWARE application upon their publication.” Cardinal Health then says it did not have actual knowledge of the Alaris mark until March 2007, notwithstanding the publication in the Official Gazette on March 23, 2004, the presumed due diligence and discovery Cardinal Health as a Fortune 50 Company must have undertaken during its purchase of Alaris Medical Systems, Inc. and the associated intellectual property including marks completed May 28, 2004 (see Boylan Decl to SJ Brf at 4, dated 2/20/08), or the subsequent registration of the Alaris mark on March 8, 2005.

¹² *Bridgestone/Firestone*, 245 F.3d 1359, 1362 (Fed. Cir. 2001), 58 U.S.P.Q.2d (BNA) at 1462-63 (citing 15 U.S.C. §1072).

¹³ Boylan Decl to SJ Brf at 4, dated 2/20/08. *See also*, Opp. Brf. at Statement of Facts (“Cardinal became aware of the ALARIS SELECT application in early 2007 through its Counsel’s monitoring of the Official Gazette”).

¹⁴ CH refuses to disclose this highly relevant information, as it claimed privilege in response to an Interrogatory seeking information about the due diligence conducted around the purchase, and failed to list any responsive document on its privilege log.

knowledge” of The Alaris Group’s ALARIS mark until March 2007. Opp. Brf. at I.B. CH’s delay was not the result of a “reasoned assessment” as contemplated by the progressive encroachment doctrine, but rather a wholesale failure to adequately police its mark. It was not the product of prudent business judgment, but rather inexcusable neglect. The progressive encroachment doctrine is inapplicable.¹⁵

Plainly put, CH has either made an after-the-fact decision to try to claim trademark rights it does not possess or CH slept on its rights. The multitude of discrepancies and inconsistencies proffered by CH are astonishing and do little to help its case-in-chief.¹⁶ There is no change to indicate that The Alaris Group’s applications to register ALARIS ADVANTAGE, ALARIS SELECT, ALARISWARE and ALARIS¹⁷ bring The Alaris Group “more squarely into conflict with Cardinal.” See Opp. Brf at 9.

¹⁵ Even if the progressive encroachment doctrine applied, there has been no encroachment where the services are exactly the same as they were in 1999.

¹⁶ For example, Cardinal Health says “discovery is in its early stages”, but then states they “consented to extend discovery” and the TTAB record will show multiple extensions to the discovery dates. Cardinal Health has filed one set of interrogatories and one set of document requests on November 5, 2007 which were timely answered in December 2007. There have been no additional requests for the last three months. Discovery was set to end on April 12, 2008 until the Order suspending proceedings was entered (just issued on April 2, 2008).

Cardinal Health also says its failure to timely respond to Alaris Group’s second set of interrogatories and second set of discovery requests was based on everyone else’s fault, but their own (e.g. Alaris Group is at fault for serving the second set in December before a holiday, Alaris Group is at fault for failing to agree to an extension.) For the record, the second set of interrogatories and discovery requests were served on December 14, 2007, due on January 14, 2008 and even with the 30 day extension they requested due on February 13, 2008. By Cardinal Health’s own admission, they did not produce the responsive documents to the second request for documents until February 15, 2008 and did not answer the second set of interrogatories until even later on February 19, 2008 by email (with the mailed versions arriving days later).

Cardinal Health concludes in their response that discovery needs to be extended for 90 days to allow for discovery on the merits, this despite their purported fact that “discovery is in its early stages.”

¹⁷ The other descriptions (franchise services and computer software) in the challenged applications are even farther from CH’s goods (medical instruments, equipment and accessories) than The Alaris Group’s original registration and rights for consulting services. “Franchise services, namely, offering technical and business management assistance in the establishment and operation of medical consulting primarily for the workers compensation industry” (ALARIS ADVANTAGE, U.S. Trademark App. Ser. No.: 78/945,025) and “Computer software for the collection, editing, organizing, modifying, book marking, transmission, storage, reporting and sharing of data and information namely in the field of medical consulting” (ALARISWARE, U.S. Trademark App. Ser. No. 78/937,067).

CH's delay is unreasonable and supports a ruling of summary judgment in The Alaris Group's favor.

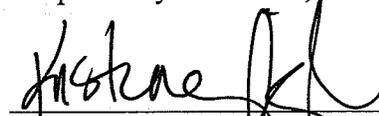
There is particularly true because there is economic prejudice. The Alaris Group has grown to become a 200+ person, nine-state organization in 2007 with revenues in 2006 totaling over \$15 million where all development and growth have centered around consistent use and development of the brand ALARIS. This satisfies Board requirements for laches. *See e.g. Christian Broad. Network*, 84 U.S.P.Q.2d (BNA) 1560, 1572 (T.T.A.B. 2007) (finding economic prejudice for laches). CH's actions should all be dismissed.

CONCLUSION

These motions should be granted, and Orders dismissing the Oppositions and Cancellation against The Alaris Group are appropriate.

Dated: April 9th, 2008

Respectfully submitted,



Kristine M. Boylan (MN Bar #284634)

Scott M. Oslick

MERCHANT & GOULD P.C.

80 South Eighth Street, Suite 3200

Minneapolis, MN 55402-2215

Telephone: (612) 332-5300

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

CERTIFICATE OF FILING

I hereby certify that THE ALARIS GROUP'S REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT is being filed electronically through on-line TTAB filing systems, ESTTA on April 9th, 2008.


By: Kristine M. Boylan

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing THE ALARIS GROUP'S REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT has been served on counsel for Applicant by first class mail, postage prepaid, this 9th of April, 2008 as follows:

Mary True
Bricker & Eckler LLP
100 S. Third Street
Columbus, OH 43215-4291

Date: 4/9/08


Miriam Sindt

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

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|------------------------------|---|---------------------------|
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| v. | : | Opposition No. 91-177,365 |
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Petitioner	:	
	:	
v.	:	Cancellation No. 92-048,172
	:	
THE ALARIS GROUP, INC.	:	
	:	
Registrant	:	

SUPPLEMENTAL DECLARATION OF NANCY CAVEN

I, Nancy J. Caven, declare as follows:

1. I am Officer of Sales and Government Relations of The Alaris Group, Inc. I make this declaration on my own information, knowledge and belief.
2. I have reviewed Opposer/Petitioner’s (“Cardinal Health”) response to our second set of interrogatories received on February 19, 2008.
3. The Alaris Group Inc. does not market its services to any of the customers listed in Cardinal Health’s Response to Interrogatory No. 8 of our second set of interrogatories, namely: “Opposer states that the relevant purchasers of Alaris goods include acute care hospitals, nursing homes, ambulatory care centers, surgical centers, infusion centers, cancer centers, dental offices, doctors, pharmacies, laboratories, research clinics, schools, other health care facilities, and home care professionals.”
4. The Alaris Group Inc. does not market its services to any of the following channels of trade listed in Cardinal Health’s Response to Interrogatory No. 9 of our second set of interrogatories:

- a. Needle-free OSHA legislation information campaign, evaluations, installations, trade-ins, repairs, instrument exchanges and other opportunities arising through Alaris Services operations;
 - b. Field visits to customer operations, national product and sales tours; and
 - c. Alaris service centers.
5. The Alaris Group Inc. does not market its services through any of the media listed in Cardinal Health's Response to Interrogatory No. 17 of our second set of interrogatories, namely:
- "1. SmartSite News, Alaris Publications
 2. Journal of Nursing Administration (Lippincott, Williams & Wilkins, Inc. Publications
 3. Newslite Journal
 4. Nursing Economics - The Journal for Health Care Leaders, Janetti Publications
 5. Society of General Internal Medicine Journal for the 2001 Annual Meeting
 6. Alaris Medical Systems White Paper Report, Alaris Publications
 7. HealthCare Purchasing News Journal
 8. Material Management in Health Care, American Hospital Publishing
 9. Hospital Pharmacy Journal
 10. APSF Newsletter
 11. Smart Living, St. Joseph's/Candler Publications
 12. Hospital & Health Networks
 13. American Journal of Nursing
 14. Medical Product Manufacturing News".

I declare under penalty of perjury that the foregoing is correct.

Dated this 4th day of April, 2008.


Nancy J. Caven

CERTIFICATE OF FILING

I hereby certify that the SUPPLEMENTAL DECLARATION OF NANCY CAVEN is being filed electronically through on-line TTAB filing systems, ESTTA on April 9th, 2008.

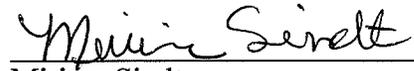

By: Kristine M. Boylan

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing SUPPLEMENTAL DECLARATION OF NANCY CAVEN has been served on counsel for Applicant by first class mail, postage prepaid, this 9th day of April, 2008 as follows:

Mary True
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Columbus, OH 43215-4291
mtrue@bricker.com

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Miriam Sindt

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5. CARDINAL HEALTH 303, INC.

Petitioner

v.

THE ALARIS GROUP, INC.

Registrant

Cancellation No. 92-048,172

DECLARATION OF SCOTT M. OSLICK

I, Scott M. Oslick, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registrations resulting therefrom, declare that all statements made of my own knowledge are true, and all statements made on information and belief are believed to be true. I have personal knowledge of the matters contained in this declaration.

1. My name is Scott M. Oslick. I am an associate in the firm of Merchant & Gould, 3200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402, and I am one of the attorneys that represent Applicant/Registrant The Alaris Group, Inc., in this matter.

2. I have practiced trademark law continuously and exclusively since January, 1998, and worked as a Trademark Examining Attorney at the United States Patent and Trademark Office from January, 1998 until September, 2006.

3. I have reviewed all of the documents submitted to date by Opposer/Petitioner Cardinal Health 303, Inc. in response to Applicant/Registrant's discovery requests.

4. The documents produced by Opposer/Petitioner do not show use of the claimed ALARIS mark for every good and/or service listed in Registration No. 2,279,724.

5. None of the aforementioned documents show that Opposer/Petitioner's use of the ALARIS mark is in any way related to The Alaris Group's claimed goods/services, namely franchise services, computer software to support consulting services or consulting services.

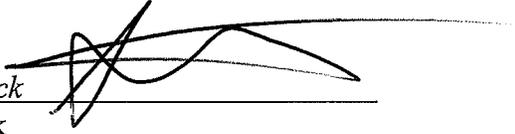
6. The documents produced by Opposer/Petitioner show very narrow use of its claimed ALARIS mark. Such use is limited to the field of medical instruments, equipment and accessories, all of which are provided to health care facilities, and none of which are provided directly to the recipients of medical services or medical consulting services.

7. Attached hereto as Exhibit A is a true and correct copy of Opposer/Petitioner's responses to discovery. Objections on the basis of privilege were made to a number of requests. These include, but are not limited to, requests for information regarding when Opposer/Petitioner first became aware of Applicant/Registrant's mark, information regarding Opposer/Petitioner's strategies for policing and protecting its mark and documents to demonstrate Opposer/Petitioner's channels of trade. The Privilege Log produced by Opposer/Petitioner as Exhibit B to Opp. Brf., dated March 25, 2008, contains only one entry.

8. Had Applicant/Registrant filed its application to register its THE ALARIS GROUP, INC. mark that is the subject of Registration No. 2,510,667 after January 1, 2002, the consulting services identified in that registration would have been classified in International Class 44.

9. Attached hereto as Exhibit B is a true and correct copy of the US Acceptable Identification of Goods and Services Manual entry for "medical services" and corresponding "Note" for that entry, both dated April 3, 2008.

Dated: April 4, 2008

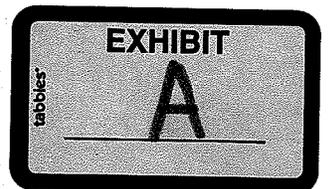

s/Scott M. Oslick
Scott M. Oslick

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**OPPOSER'S RESPONSES TO APPLICANT'S THE ALARIS GROUP, INC.'S
FIRST SET OF INTERROGATORIES**

In accordance to Rule 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Opposer Cardinal Health 303, Inc. ("Opposer") hereby submits the following answers and objections to Applicant's First Set of Interrogatories in the above-caption Oppositions. ("Interrogatories").



FILED
FBI

GENERAL OBJECTIONS

1. Investigation and discovery on behalf of Oppose are continuing and are not complete. This response is based upon the investigation and discovery conducted to date and is not intended as a complete summary of the facts upon which Opposer will rely at trial or at other hearings in this action. As discovery and investigation proceed, facts, witnesses and evidence may be discovered which are not set forth in this response but which may be responsive to the interrogatories set forth below.

Opposer expressly reserves the right to offer into testimony in this matter any further or different fact, information, document, or evidence concerning matters inquired into by the Interrogatories which may develop or are subsequently discovered, and to assert additional objections, and to supplement or amend these responses. In faith, may not be included in this response. Opposer reserves all rights to conduct investigation and discovery with reference to, or offer into testimony in this action, any and all facts witnesses and evidence, notwithstanding the absence of references to such facts, witnesses and evidence. In addition, Opposer also reserves the right to object to the further disclosure of any document and/or information. Further, the production of any information, document or thing in response to these Interrogatories does not constitute an admission that such information, document or thing is responsive to the Interrogatories.

2. Opposer objects to Interrogatories to the extent that they purport to impose upon Opposer objections beyond those imposed under the Federal Rules of Civil Procedure or the Rules of this Board.

3. Opposer objects to the "Instructions" and "Definitions" contained in the Interrogatories to the extent that they purport to require Applicant to do more than required by Rules 26 and 33 of the Federal Rules of Civil Procedure.

4. Opposer objects to the use of the term "all documents" in the Interrogatories to the extent the term requires more than is required under the Federal Rules of Civil Procedure, and to the extent that the term makes the Interrogatories overly broad, unduly burdensome, and/or to the extent that the term would result in the production of documents and information that are merely cumulative. Moreover, Opposer objects to the use of the term "all documents" to the extent it requires Opposer to identify documents not within its possession, custody or control.

5. Opposer objects to the Interrogatories to the extent that they seek discovery that is irrelevant, or not material and necessary to this action, and is not reasonably calculated to lead to the discovery of admissible evidence.

6. Opposer objects to the Interrogatories to the extent that they require Opposer to provide information in a form other than the form in which Opposer keeps the information in the ordinary course of business. Opposer will produce non-privileged, responsive information in the form in which Opposer keeps it in the ordinary course of business.

7. Opposer objects to the Interrogatories to the extent that they are overly broad, unduly burdensome, vague and/or ambiguous.

8. Opposer objects to the Interrogatories as overly broad and unduly burdensome to the extent that they seek information for an unlimited period of time, and are not properly limited

in time, geography or scope. Opposer will not provide documents or information pertaining to activities outside of the United States of America.

9. Opposer objects to Interrogatories to the extent that they call for information or documents protected from discovery or disclosure by any privilege or doctrine, including without limitation, the attorney-client privilege, or the work product doctrine, or any other applicable privilege or exemption, including without limitation, information that (i) was prepared for, or in anticipation of litigation; (ii) constitutes attorney work product; (iii) reflects attorney-client communications; or (iv) is otherwise privileged or protected from disclosure. Such information shall not be disclosed in response to Applicant's Interrogatories, and any inadvertent disclosure thereof shall not be a waiver of any privilege with respect to such information or of any work product protection that may attach thereto.

10. Opposer objects to Interrogatories to the extent that they request proprietary or trade secret information in Opposer's possession that is confidential and proprietary information of non-parties, or information that Opposer is under an obligation to a third party to not disclose.

11. Opposer objects to the Interrogatories to the extent they seek information that is confidential, proprietary or otherwise sensitive information belonging to Opposer. Such confidential information will only be produced in accordance with the Stipulated Protective Order entered into in this proceeding.

12. Opposer objects to the Interrogatories to the extent they seek production of information that is contained in the files of Opposer's counsel, or other information obtained after the commencement of this proceeding, on the grounds that such information is protected

from disclosure by the attorney-client and attorney work product privileges, and other applicable privileges and exemptions.

13. Opposer objects to the Interrogatories on the ground that each and every one is overly burdensome and oppressive to the extent that it seeks facts and information equally available to Applicant from documents in its own files or from public sources.

14. Opposer objects to the Interrogatories to the extent they are overly broad and unduly burdensome.

15. Opposer objects to the Interrogatories to the extent that they seek to have Opposer identify documents in lieu of or in addition to producing such documents. Subject to its general and specific objections, Opposer will produce the documents requested by Applicant unless otherwise immune from discovery. To the extent that documents are withheld as attorney-client privilege or subject to work-product immunity, they will be identified in accordance with Rule 26(b)(5) of the Federal Rules of Civil Procedure.

Each of the above General Objections shall be deemed continuing and is incorporated into the specific responses set forth below, whether or not specifically stated in response to each Interrogatory, and are not waived or in any way limited by the responses below.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons Opposer believes may have knowledge of facts relevant to Opposer's "COUNT TWO," as set forth in paragraphs 9-12 of the Notice of Opposition, including but not limited to, knowledge of facts relating the duration and

extent Opposer's Mark has been used in connection with Opposer's goods and services, the duration and extent of advertising and publicity of Opposer's Mark, and the geographical extent of the trading area in which Opposer's Mark is used, and describe the issues upon which Opposer believes such persons may have knowledge.

RESPONSE: Inasmuch as Opposer has amended its Notices of Opposition to delete Count Two, no response to this Interrogatory is required.

INTERROGATORY NO. 2: State all facts and identify all documents Opposer believes supports its "COUNT TWO," as set forth in paragraphs 9-12 of the Notice of Opposition, including but not limited to, facts and documents relating to the duration and extent Opposer's Mark has been used in connection with Opposer's goods and services, the duration and extent of advertising and publicity of Opposer's Mark, and the geographical extent of the trading area in which Opposer's Mark is used.

RESPONSE: Inasmuch as Opposer has amended its Notices of Opposition to delete Count Two, no response to this Interrogatory is required.

INTERROGATORY NO. 3: State the earliest date upon which you contend Opposer's Mark became "famous," as alleged in paragraph 10 of the Notice of Opposition, and state all facts and identify all documents supporting such contention.

RESPONSE: Inasmuch as Opposer has amended its Notices of Opposition to delete Count Two, no response to this Interrogatory is required.

INTERROGATORY NO. 4: State all facts and identify all documents relating to Opposer's advertising and promotional activities for Opposer's Mark since Opposer's date of first use until the present, including but not limited to, facts and documents relating to the extent of circulation or dissemination of such advertising and promotion, and the geographic scope of such advertising and promotion.

RESPONSE: Subject to the foregoing General Objections, Opposer states that its investigation is ongoing and that it will supplement its response to this Interrogatory.

INTERROGATORY NO. 5: State Opposer's monthly expenditures (in U.S. dollars) for the advertisement and promotion of Opposer's Mark since Opposer's date of first use, and identify documents sufficient to support such monthly expenditures.

RESPONSE: Subject to the foregoing General Objections, Opposer states that its investigation is ongoing and that it will supplement its response to this Interrogatory.

INTERROGATORY NO. 6: Identify all third parties that Opposer is aware of that use or have used "alaris" as a trademark or service mark or as part of a trademark or service mark in connection with any good or service, and state the date upon which Opposer first became aware of such third party use.

RESPONSE: Subject to the foregoing General Objections, in addition to the marks that are the subject of the above-captioned Opposition and Cancellation actions, Opposer is aware of a company called Alaris Consulting, in Elmhurst, Illinois, that registered the mark ALARIS CONSULTING on January 17, 2006 for "consultation in the field of manufacturing optimization" in Class 40 and "business consultation services in the fields of procurement, transportation logistics, supply chain logistics, and sales implementation" in Class 35. Opposer is aware of a company known as Alaris, Inc., in Fremont, California, that owns registration of ALARIS for "Computer hardware, namely computers and printed circuit boards; portable listening devices, namely, MP3 players, cameras and computer peripherals" in Class 9 which registered on March 11, 2003. Finally, Opposer is aware of a company called Evans Consoles, Corp., of Alberta, Canada that owns a registration of ALARIS for "equipment consoles and

workstations for command and control room environments comprising desks with some or all of fixed and/or adjustable-height work surfaces, shelves and racks for computers and video monitors, turrets for communication and other electronic equipment, drawers, cabinets, fixed and roll out shelves and overhead gantries, sold together, and parts therefor for all of the aforesaid" in Class 20, which registered on December 23, 2003.

INTERROGATORY NO. 7: State all facts and identify all documents relating to any and all enforcement efforts by Opposer against any person using a mark containing "alaris."

RESPONSE: Subject to the foregoing General Objections, Opposer states that it has not taken any action against the third party users of ALARIS identified in Interrogatory No. 6 because none of those third party users are making using of the mark in the medical or healthcare field.

INTERROGATORY NO. 8: State when Opposer first became aware of Applicant's Mark.

RESPONSE: Subject to the foregoing General Objections, Opposer states that it first became aware of Applicant's marks in March of 2007.

Dated: November 26, 2007

Respectfully submitted,

By: 

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Attorneys for Opposer
Cardinal Health 303, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon the following attorney of record for Applicant by electronic and First Class Mail, this 26 day of November, 2007:

Kristine Boylan
Merchant & Gould
3200 IDS Center
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Minneapolis, Minnesota 55402
kboylan@merchantgould.com



Melissa A. Hicks

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

**OPPOSER'S WRITTEN RESPONSE TO APPLICANT THE ALARIS GROUP, INC.'S
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

In accordance with Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Cardinal Health 303, Inc. ("Opposer"), by and through its attorneys, hereby submits the following written responses to Applicants First Set of Requests for Production of Documents and Things (the "Requests"):

GENERAL OBJECTIONS

1. Investigation and discovery on behalf of Opposer are continuing and are not complete. This response is based upon the investigation and discovery conducted to date and is not intended as a complete production of all documents responsive to Applicant's Requests or a complete production of all documents upon which Opposer will rely at trial or at other hearings in this action. Opposer expressly reserves the right to offer into evidence in this matter any further documents concerning matters inquired into by the Requests which may develop or are subsequently discovered, and to assert additional objections, and to supplement or amend these responses. Opposer reserves all rights to conduct investigation and discovery with reference to, or offer into testimony in this action, any and all facts witnesses and evidence, notwithstanding the absence of references to such facts, witnesses and evidence. In addition, Opposer also reserves the right to object to the further disclosure of any document and/or information. Further, the production of any information, document or thing in response to these Requests does not constitute an admission that such information, document or thing is responsive to the Requests.

2. Opposer objects to the Requests to the extent that they purport to impose upon Opposer obligations beyond those imposed under the Federal Rules of Civil Procedure or the Rules of this Board.

3. Opposer objects to the "Instructions" and "Definitions" contained in the Requests to the extent that they purport to require Opposer to do more than required by Rules 26 and 34 of the Federal Rules of Civil Procedure.

4. Opposer objects to the use of the term "all documents" in the Requests to the extent the term requires more than is required under the Federal Rules of Civil Procedure, and to the extent that the term makes the Requests overly broad, unduly burdensome, and/or to the extent that the term would result in the production of documents and information that are merely cumulative. Moreover, Opposer objects to the use of the term "all documents" to the extent it requires Opposer to identify documents not within its possession, custody or control.

5. Opposer objects to the Requests to the extent that they seek discovery that is irrelevant, or not material and necessary to this action, and is not reasonably calculated to lead to the discovery of admissible evidence.

6. Opposer objects to the Requests to the extent that they require Opposer to provide information in a form other than the form in which Opposer keeps the information in the ordinary course of business. Opposer will produce non-privileged, responsive information in the form in which Opposer keeps it in the ordinary course of business.

7. Opposer objects to the Requests to the extent that they are overly broad, unduly burdensome, vague and/or ambiguous.

8. Opposer objects to the Requests as overly broad and unduly burdensome to the extent that they seek information for an unlimited period of time, and are not properly limited in time, geography or scope. Applicant will not provide documents or information pertaining to activities outside of the United States of America.

9. Opposer objects to Requests to the extent that they call for information or documents protected from discovery or disclosure by any privilege or doctrine, including without

limitation, the attorney-client privilege, or the work product doctrine, or any other applicable privilege or exemption, including without limitation, information that (i) was prepared for, or in anticipation of litigation; (ii) constitutes attorney work product; (iii) reflects attorney-client communications; or (iv) is otherwise privileged or protected from disclosure. Such information shall not be disclosed in response to Applicant's Requests, and any inadvertent disclosure thereof shall not be a waiver of any privilege with respect to such information or of any work product protection that may attach thereto.

10. Opposer objects to Requests to the extent that they request proprietary or trade secret information in Opposer's possession that is confidential and proprietary information of non-parties, or information that Opposer is under an obligation to a third party to not disclose.

11. Opposer objects to the Requests to the extent they seek information that is confidential, proprietary or otherwise sensitive information belonging to Opposer. Such confidential information will only be produced in accordance with the Stipulated Protective Order entered into in this proceeding.

12. Opposer objects to the Requests to the extent they seek production of information that is contained in the files of Opposer's counsel, or other information obtained after the commencement of this proceeding, on the grounds that such information is protected from disclosure by the attorney-client and attorney work product privileges, and other applicable privileges and exemptions.

13. Opposer objects to the Requests on the ground that each and every one is overly burdensome and oppressive to the extent that it seeks facts and information equally available to Applicant from documents in its own files or from public sources.

Each of the above General Objections shall be deemed continuing and is incorporated into the specific responses set forth below, whether or not specifically stated in response to each Request, and are not waived or in any way limited by the responses below.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST NO. 1: All documents identified by Opposer in its Answers to Applicant's First Set of Requests.

RESPONSE: Subject to the foregoing General Objections, responsive, non-privileged documents will be produced.

REQUEST NO. 2: All documents reviewed and/or relied upon in responding to Applicant's First Set of Requests.

RESPONSE: Subject to the foregoing General Objections, responsive, non-privileged documents will be produced.

REQUEST NO. 3: Documents sufficient to identify all persons having knowledge of facts relevant to Opposer's "COUNT TWO," as set forth in paragraphs 9-12 of the Notice of Opposition, including but not limited to, knowledge of facts relating the duration and extent Opposer's Mark has been used in connection with Opposer's Services, the duration and extent of advertising and publicity of Opposer's Mark, and the geographical extent of the trading area in which Opposer's Mark is used, and describe the issues upon which Opposer believes such persons may have knowledge.

RESPONSE: Inasmuch as Opposer has amended its Notices of Opposition to delete Count Two, no response to this Request is required.

REQUEST NO. 4: Documents sufficient to demonstrate each and every state that Opposer has distributed, or currently distributes, goods and services bearing Opposer's Mark.

RESPONSE: Subject to the foregoing General Objections and possible supplementation at a later date, responsive, non-privileged documents will be produced.

REQUEST NO. 5: All documents referring or relating to third parties using the term "alaris" in connection with the sale of any good or service.

RESPONSE: Subject to the foregoing General Objections, Opposer has no documents responsive to this Request.

REQUEST NO. 6: All documents concerning any enforcement efforts made by Opposer directed towards third parties based on Opposer's Mark, including, but not limited to, correspondence, pleadings, and settlements.

RESPONSE: Subject to the foregoing General Objections, Opposer has no documents responsive to this Request.

REQUEST NO. 7: All documents concerning any enforcement efforts made by Opposer directed towards third parties based on the term "alaris," including, but not limited to, correspondence, pleadings, and settlements.

RESPONSE: Subject to the foregoing General Objections, Opposer has no documents responsive to this Request.

REQUEST NO. 8: All documents concerning any enforcement efforts received by Opposer from third parties based on Opposer's Mark, including but not limited to correspondence, pleadings, and settlements.

RESPONSE: Subject to the foregoing General Objections, Opposer has no documents responsive to this Request.

REQUEST NO. 9: All documents concerning any enforcement efforts received by Opposer from third parties based on the term "alaris," including but not limited to correspondence, pleadings, and settlements.

RESPONSE: Subject to the foregoing General Objections, Opposer has no documents responsive to this Request.

REQUEST NO. 10: Documents sufficient to show when Opposer first became aware of Applicant's Mark.

RESPONSE: Subject to the foregoing General Objections, Opposer has no documents responsive to this Request that are not protected from production by the attorney-client privilege.

REQUEST NO. 11: Documents sufficient to show when Opposer first became aware of Applicant.

RESPONSE: Subject to the foregoing General Objections, Opposer has no documents responsive to this Request that are not protected from production by the attorney-client privilege.

REQUEST NO. 12: Documents sufficient to demonstrate the channels of trade that Opposer uses to provide the goods and services bearing Opposer's Mark.

RESPONSE: Subject to the foregoing General Objections and possible supplementation at a later date, responsive, non-privileged documents will be produced.

REQUEST NO. 13: Documents sufficient to show that the public associates the term "alaris" with Opposer even when the public encounters the term apart from Opposer's goods and services, including but not limited, instances of actual confusion with Applicant, Applicant's Mark, or other third parties using a mark containing the term "alaris."

RESPONSE: Subject to the foregoing General Objections and possible supplementation at a later date, Opposer has no documents responsive to this Request.

REQUEST NO. 14: All documents relating to the degree of inherent or acquired distinctiveness or the degree of recognition of Opposer's Mark, including but not limited to, any surveys, market studies, or expert analyses or reports.

RESPONSE: Subject to the foregoing General Objections and possible supplementation at a later date, Opposer has no documents responsive to this Request.

REQUEST NO. 15: 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.

RESPONSE: Subject to the foregoing General Objections and possible supplementation at a later date, Opposer has no documents responsive to this Request.

REQUEST NO. 16: All documents concerning any license, permission, or consent to use Opposer's Mark by a third party.

RESPONSE: Subject to the foregoing General Objections, Opposer has no documents responsive to this Request.

REQUEST NO. 17: All documents concerning any communications and/or negotiations concerning the possibility of any license, permission, or consent to use Opposer's Mark by a third party.

RESPONSE: Subject to the foregoing General Objections, Opposer has no documents responsive to this Request.

REQUEST NO. 18: Documents sufficient to demonstrate the first use of Opposer's Mark in connection with each good or service listed in Int'l Class 10.

RESPONSE: Subject to the foregoing General Objections and possible supplementation at a later date, responsive, non-privileged documents will be produced.

REQUEST NO. 19: Documents sufficient to demonstrate the first use of Opposer's

Mark in connection with each good or service listed in Int.'l Class 37.

RESPONSE: Subject to the foregoing General Objections and possible supplementation at a later date, responsive, non-privileged documents will be produced.

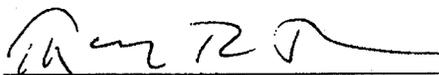
REQUEST NO. 20: Documents sufficient to demonstrate the first use of Opposer's

Mark in connection with each good or service listed in Int.'l Class 42.

RESPONSE: Subject to the foregoing General Objections and possible supplementation at a later date, responsive, non-privileged documents will be produced.

Dated: November 26, 2007

Respectfully submitted,

By: 

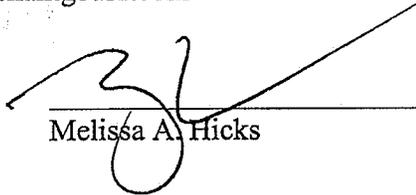
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Facsimile: (612) 227-2390
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mtrue@bricker.com

Attorneys for Opposer
Cardinal Health 303, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon the following attorney of record for Applicant by electronic and First Class Mail, this 26 day of November, 2007:

Kristine Boylan
Merchant & Gould
3200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
kboylan@merchantgould.com



Melissa A. Hicks

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE 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	:	

**PETITIONER/OPOSER'S RESPONSES TO REGISTRANT/APPLICANT'S
SECOND SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Petitioner/Oposer Cardinal Health 303, Inc. ("Opposer") submits the following responses to Registrant/ Applicant The Alaris Group, Inc.'s ("Applicant") Second Set of Interrogatories.

Opposer incorporates by reference herein its General Objections asserted in response to Applicant's First Set of Interrogatories.

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.

RESPONSE: Opposer objects to this Interrogatory to the extent it seeks the identification of legal personnel. Subject to and without waiving any objections, and subject to Opposer's right to supplement this response as its investigation continues, Opposer identifies the following individuals:

Claudia Russell (marketing)
Rick Crass (marketing, sales, name selection)
Dave Chiero (marketing, sales, name selection)
Tim Vanderveen (marketing, sales)
Gary Jollon (marketing, name selection)

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.

RESPONSE: Opposer objects to this Interrogatory to the extent it seeks the identification of legal personnel. Subject to and without waiving any objections, and subject to Opposer's right to supplement this response as its investigation continues, Opposer identifies the following individuals

Rick Crass (marketing, sales, name selection)
Dave Chiero (marketing, sales, name selection)
Tim Vanderveen (marketing, sales)
Gary Jollon (marketing, name selection)

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.

RESPONSE: Opposer objects to this Interrogatory to the extent it seeks the identification of legal personnel, and to the extent it seeks the subjective identification of one person who is "most knowledgeable." Subject to and without waiving any objections, and subject to Opposer's right to supplement this response as its investigation continues, Opposer identifies the following individuals:

Rick Crass (marketing, sales, name selection)
Dave Chiero (marketing, sales, name selection)
Tim Vanderveen (marketing, sales)
Gary Jollon (marketing, name selection)

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.

RESPONSE: Objection. This Interrogatory, as presently drafted, is vague because the phrase "making any offering under the ALARIS name" is unclear. Subject to and without waiving any objections, and subject to Opposer's right to supplement this response upon receiving additional clarification, Opposer states that Claudia Russell has held executive positions in the Alaris products division of Cardinal Health following the acquisition of Alaris Medical Systems by Cardinal Health.

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.

RESPONSE: Objection. This Interrogatory, as presently drafted, is vague in its undefined use of the phrase "determine the strength of your ALARIS mark", and objectionable to the extent it seeks information protected by the attorney client privilege. Subject to and without waiving any objections, Opposer states that it conducted trademark searches prior to its selection of the ALARIS mark.

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.

RESPONSE: Opposer is not aware of any instances of actual confusion at this time, but reserves the right to supplement this response if necessary should the course of its investigation and discovery in this matter reveals any such instances.

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.

RESPONSE: Opposer objects to this Interrogatory as overly broad in its request for all goods offered under the ALARIS name. Subject to and without waiving any objections, Opposer states that it has offered the following categories of products and services under the ALARIS name since 1997:

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; service and repair of medical instruments, equipment and accessories; leasing and rental of medical instruments, equipment, and accessories; and 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.

The following is a non-exhaustive list of specific product names for each of the above-identified categories:

Signature Edition GOLD

1. IVAC Signature Edition Gold Infusion System
 - a. IVAC Signature Edition Gold Infusion System
 - b. Accessories
2. IVAC Signature Edition Gold Administration Sets
 - a. SmartSite Needle-Free Sets
 - b. VersaSafe Needle-Free Injection Port Sets
 - c. Standard Port Sets

Gemini

1. IMED Gemini Infusion Management System
 - a. IMED GEMINI Family and Accessories
2. IMED Gemini Administration Sets
 - a. SmartSite Needle-Free Valve Port Sets
 - b. VersaSafe Needle-Free Injection Port Sets
 - c. Standard Port Sets

MedSystem III

1. IVAC MedSystem III Multichannel Infusion System
 - a. MedSystem III Multichannel Infusion System and Accessories

2. IVAC MedSystem III IV Administration Sets
 - a. SmartSite Needle-Free Sets
 - b. Standard Sets

Non-Dedicated Disposables

1. Secondary Administration Sets
 - a. Secondary Sets Needle-Free
 - b. Secondary Sets Protected Needle
 - c. Secondary Sets
2. Components and Extension Sets
3. SmartSite Components and Extension Sets
4. SmartSite Gravity IV Administration Sets
 - a. SmartSite Needle-Free Administration Sets
 - b. Standard Administration Sets

Other Dedicated Disposables

1. IVAC 52 Series IV Administration Sets
 - a. SmartSite Needle-Free Sets
 - b. SmartSite Needle-Free Sets with Flow Stop Mechanism
2. IVAC 59 Series IV Administration Sets
 - a. SmartSite Needle-Free Sets
3. IV Stands

Alternate Site

1. ReadyMED Elastomeric Ambulatory Infusion System
 - a. Ready MED Infusion Devices
2. PreSets Rate Controlled Gravity Sets
 - a. Rate Controlled Gravity Sets

Stands

1. IV Stands

Patient Monitoring

1. IVAC Thermometry
 - a. TURBO TEMP Electronic Thermometer and Accessories
 - b. TEMP PLUS II Electronic Thermometer and Accessories
 - c. CORE CHECK Tympanic Thermometer System and Accessories
2. IVAC VITAL CHECK Vital Signs Monitor – Model 4200 Series
 - a. VITAL CHECK Vital Signs Monitor
 - b. Diversa Cuf Disposable Blood Pressure Cuffs
 - c. VITAL CHECK Re-Usable Blood Pressure Cuffs
 - d. VITAL CHECK Vital Signs Monitor – Model 4200 Accessories
3. VITAL CHECK Vital Signs Monitor – Model 4400 Series
 - a. VITAL CHECK Vital Signs Monitor and Accessories
 - b. VITAL CHECK Non-Invasive Blood Pressure Accessories

1. Reusable Blood Pressure Cuffs
2. Diversa Cuf Disposable Blood Pressure Cuffs
3. Diversa Cuf Neonatal Disposable Blood Pressure Cuffs
4. VITAL CHECK Non-Invasive Blood Pressure Hoses
- c. VITAL CHECK Model 4400 SpO2 Accessories
 1. Reusable Sensors and Cables
 2. Disposable Sensors
 3. Multi-Site Sensor Accessories
- d. VITAL CHECK Temperature Accessories
- e. VITAL CHECK Power Accessories
- f. VITAL CHECK Printer Supplies

Medley Medication Safety System

1. Medley Medication Safety System
 - a. Medley Medication Safety System Family
2. Medley System Administration Sets
 - a. SmartSite Needle-Free Valve Port Sets
 - b. Sets with No Injection Ports
 - c. VersaSafe Needle-Free Injection Port Sets
 - d. Standard Port Sets
3. Medley Syringe Module Administration Sets
 - a. Medley Syringe Module Administration Sets
4. Medley Medication Safety System
 - a. Medley Syringe Module Administration Sets

MedSystem III Infusion System

1. MedSystem III Multichannel Infusion System
 - a. MedSystem III Multichannel Infusion System and Accessories
 - b. MedSystem III Multichannel Infusion Software
2. MedSystem III Infusion System Administration Sets
 - a. SmartSite Needle-Free Valve Port Sets
 - b. Needle-Free with No Injection Port Sets
 - c. Standard Port Sets

SmartSite Needle-Free Components & Extension Sets

1. SmartSite Needle-Free Valve Access Devices and Accessories
 - a. Access Devices and Accessories
2. SmartSite Needle-Free Valve Extension Sets
 - a. Extension Sets
3. SmartSite PLUS Needle-Free Valve and Administration Extension Sets
 - a. SmartSite Plus Needle-Free Valve and Extension Sets
4. Standard Extension Sets
 - a. Standard Extension Sets

b. Standard Extension Sets/Secondary Sets

SmartSite Needle-Free IV Gravity Sets

1. SmartSite Needle-Free Valve Gravity Sets
 - a. SmartSite Needle-Free Valve Gravity Sets
 - b. SmartSite Needle-Free Valve Gravity Sets and Add-On Burette Sets
 - c. Gravity Sets with no Injection Ports

DEHP Free Administration Sets

1. DEHP Free IV Sets Product Offering
 - a. Components and Extension Sets
 - b. Gravity Sets
 - c. Add On Burette Sets

Software Applications

1. Guardrails Safety Software for the Medley Medication Safety System
 - a. Guardrails Safety Software Suite
2. The Guardrails Safety Software for the Medley Medication System
 - a. Guardrails Safety Software
3. The Guardrails Safety Software for the Signature Edition Gold Infusion System
 - a. Guardrails Safety Software
 - b. Guardrails CQI Software

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.

RESPONSE: Opposer objects to this Interrogatory to the extent it seeks information regarding the level of sophistication of the relevant purchasers of Opposer's products that is not within Opposer's custody or control. Subject to and without waiving any objections, Opposer states that the relevant purchasers of Alaris goods include acute care hospitals, nursing homes, ambulatory care centers, surgical centers, infusion centers, cancer centers, dental offices, doctors, pharmacies, laboratories, research clinics, schools, other health care facilities, and home care professionals.

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.

RESPONSE: Opposer objects to this Interrogatory as vague and overbroad, and to the extent it seeks to over-generalize the sales process. Subject to and without waiving any objections, Opposer states that potential customers are presented with an opportunity to purchase Alaris goods and services in a variety of ways including:

1. Websites
2. Brochures, brochures w/samples
3. Sales catalog
4. Product manual, product reference guides, white papers
5. Promotional mailers
6. Product videos and CD-ROM
6. Press releases
7. Sales presentation
8. Sales personnel + agents
9. Needle-free OSHA legislation information campaign, evaluations, installations, trade-ins, repairs, instrument exchanges and other opportunities arising through Alaris Services operations.
10. Training opportunities and materials.
11. Phone sales calls
12. Field visits to customer operations, national product and sales tours
13. Annual marketing and sales campaigns
14. Alaris service centers

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.

RESPONSE: Opposer objects to this Interrogatory as overly broad in its request for all goods offered under the ALARIS name. Subject to and without waiving any objections, Opposer states that since 1997 it has offered services such the Alaris Training Program for clinical personnel, validation of competency for new products training, training Materials, on-site instrument repairs, depot instrument repairs, preventative maintenance programs, time and

material instrument repairs, biomedical parts agreements, part sales, V.I.P. implementation services for evaluations, installations and trade-ins, and instrument exchange programs, and Needle-Free OSHA Legislation Information under the ALARIS name.

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.

RESPONSE: See Response to Interrogatory No. 8, above.

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.

RESPONSE: See Response to Interrogatory No. 9, above.

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

RESPONSE: Opposer objects to this Interrogatory to the extent it seeks information regarding Applicant's customers that is not in Opposer's custody or control. Subject to and without waiving any objections, Opposer states that to the extent Applicant is offering goods or services to any persons in the medical/healthcare industry, or to any consumers of health care or medical services, there is an overlap between Opposer's customer base and Applicant's.

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.

RESPONSE: See Response to Interrogatory No. 9, above.

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.

RESPONSE: See Response to Interrogatory No. 9, above.

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.

RESPONSE: Pursuant to F.R.C.P. 33(d), Opposer submits the business records produced herewith at Bates Nos.

CHAL 00150 – CHAL 00221
CHAL 00331 – CHAL 00406
CHAL 00460 – CHAL 00482
CHAL 00487 – CHAL 00519
CHAL 00862 – CHAL 00895
CHAL 01729 – CHAL 01730
CHAL 01340 – CHAL 01607
CHAL 01739 – CHAL 02089
CHAL 01340 – CHAL 01356
CHAL 01393 – CHAL 01412
CHAL 01731 – CHAL 01732

CHAL 00523 – CHAL 00771
CHAL 00778 – CHAL 00856
CHAL 00977 – CHAL 01300
CHAL 02090 – CHAL 02203
CHAL 02212 – CHAL 02416
CHAL 02425 – CHAL 02599
CHAL 01671 – CHAL 01732
CHAL 00859 – CHAL 00861
CHAL 02351 – CHAL 02416
CHAL 02426 – CHAL 02524

INTERROGATORY NO. 17: Identify each media outlet you use to promote, market, or

advertise offerings under the ALARIS mark.

RESPONSE: Opposer objects to this Interrogatory as overly broad in its request for the identification of all medial outlets Opposer has ever used. Subject to and without waiving and objections, Opposer offers the following representative list of media outlets it has used to promote its goods and services offered under the ALARIS mark:

1. SmartSite News, Alaris Publications
2. Journal of Nursing Administration (Lippincott, Williams & Wilkins, Inc. Publications
3. Newslite Journal
4. Nursing Economics – The Journal for Health Care Leaders, Janetti Publications
5. Society of General Internal Medicine Journal for the 2001 Annual Meeting
6. Alaris Medical Systems White Paper Report, Alaris Publications
7. HealthCare Purchasing News Journal
8. Material Management in Health Care, American Hospital Publishing
9. Hospital Pharmacy Journal
10. APSF Newsletter
11. Smart Living, St. Joseph's/Candler Publications
12. Hospital & Health Networks
13. American Journal of Nursing
14. Medical Product Manufacturing News

INTERROGATORY NO. 18: For each media outlet identified, state your annual

expenditure (since 1999) for each media outlet.

RESPONSE: Opposer objects to this Interrogatory as overly broad and unduly burdensome to the extent it requires Opposer to assemble responsive information that is not readily available because such information is not customarily maintained in the format in which Applicant has requested it. Opposer reserves the right to supplement its response to this Interrogatory as information becomes available during the course of its investigation.

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.

RESPONSE: Opposer objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege. Subject to and without waiving any objections, Opposer states that it uses a third-party watch service.

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

RESPONSE: Opposer objects to this Interrogatory to the extent it is duplicative and states that the rights upon which Opposer is relying are set forth in the Petition for Cancellation and Notices of Oppositions filed in the above-captioned proceedings.

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

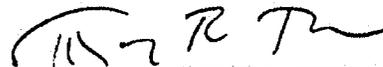
RESPONSE: Opposer does not yet know who all its fact witnesses will be and will supplement its response to this Interrogatory within the time frame established by the Board.

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

RESPONSE: Opposer does not yet know the identities of its expert witnesses, if any, and will supplement its response to this Interrogatory within the time frame established by the Board.

Dated: February 19, 2008

Respectfully submitted,



Joseph R. Dreitler (0012441)

Mary R. True (0046880)

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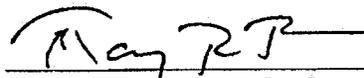
mtrue@bricker.com

Attorneys for Opposer/Petitioner

Cardinal Health 303, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposer/Petitioner's Responses to Applicant/Registrant's Second Set of Interrogatories was served this 19th day of February, 2008 by first class mail, postage prepaid, and electronic mail on:



One of the Attorneys for Opposer/Petitioner
Cardinal Health 303, Inc.

VERIFICATION

I have reviewed the foregoing responses to Opposer/Petitioner's Responses to Applicant/Registrant's Second Set of Interrogatories and find them to be true, accurate, and complete to the best of my knowledge, information, and belief.



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this ___th day of February, 2008 by first class mail, postage prepaid, and electronic mail on:

Kristine Boylan
Merchant & Gould
3200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
kboylan@merchantgould.com

One of the Attorneys for
Opposer/Petitioner
Cardinal Health 303, Inc.

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

1. CARDINAL HEALTH 303, INC.

Opposer

v.

THE ALARIS GROUP, INC.

Applicant

Opposition No. 91-177,234

2. CARDINAL HEALTH 303, INC.

Opposer

v.

THE ALARIS GROUP, INC.

Applicant

Opposition No. 91-177,365

3. CARDINAL HEALTH 303, INC.

Opposer

v.

THE ALARIS GROUP, INC.

Applicant

Opposition No. 91-177,366

4. CARDINAL HEALTH 303, INC.

Opposer

v.

THE ALARIS GROUP, INC.

Applicant

Opposition No. 91-177,367

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.

RESPONSE: Opposer has not been able to locate responsive documents at this time, inasmuch as such documents may have been purged pursuant to standard corporate document retention policies. Opposer will continue trying to locate responsive documents and reserves the right to supplement this Response within the timeframe allotted by the Board.

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.

RESPONSE: Responsive, non privileged documents are produced at Bates Nos.

CHAL 02639 – CHAL 02640.

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.

RESPONSE: Responsive, non privileged documents are produced at Bates Nos.

CHAL 02689 – CHAL 02695

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.

RESPONSE: Opposer objects to this Request to the extent it seeks the production of materials covered by the attorney-client privilege. Responding further, Opposer states that it conducted trademark searches prior to its adoption of the ALARIS mark, but that the search reports have been purged pursuant to standard corporate document retention policies.

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.

RESPONSE: Opposer objects to this Request as presently drafted on the grounds that it is overly broad and vague in its request for undefined "business plans" and "related documents" with respect to "offerings under the ALARIS mark". Because Opposer is unsure of what types of documents Applicant is seeking, Opposer cannot determine whether it has produced responsive documents in its present production.

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.

RESPONSE: Opposer objects to this Request as presently drafted on the grounds that it is overly broad and vague in its request for undefined "business plans" and "related documents" with respect to "offerings under the ALARIS mark". Because Opposer is unsure of what types of documents Applicant is seeking, Opposer cannot determine whether it has produced responsive documents in its present production.

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.

RESPONSE: Responsive, non privileged documents are produced at Bates Nos.

CHAL 00150 - CHAL 00221
CHAL 00233 - CHAL 00327
CHAL 00358 - CHAL 00402

CHAL 00407 - CHAL 00853
CHAL 02641 - CHAL 02686

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

RESPONSE: Responsive, non privileged documents are produced at Bates Nos.

CHAL 01062 - CHAL 01066.

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

RESPONSE: Responsive, non privileged documents are produced at Bates Nos.

CHAL 00150 - CHAL 00221
CHAL 00233 - CHAL 00327

CHAL 01031 - CHAL 01033
CHAL 01090 - CHAL 01107

CHAL 00337 – CHAL 00456

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

RESPONSE: Opposer objects to this request to the extent it seeks the identification of specific customers. Responsive, non privileged documents are produced at Bates Nos.

CHAL 00407 – CHAL 00456
CHAL 00862 – CHAL 00873
CHAL 01073 – CHAL 01089
CHAL 02079
CHAL 02138 – CHAL 02168
CHAL 02190
CHAL 01739 – CHAL 01799

CHAL 02417 – CHAL 02425
CHAL 01968 – CHAL 02078
CHAL 01413 – CHAL 01424
CHAL 01567 – CHAL 01607
CHAL 01701 – CHAL 01703
CHAL 01729 – CHAL 01731
CHAL 02636 – CHAL 02637

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

RESPONSE: Responsive, non privileged documents are produced at Bates Nos.

CHAL 00407 – CHAL 00456
CHAL 00862 – CHAL 00873
CHAL 01073 – CHAL 01089
CHAL 02138 – CHAL 02168

CHAL 02425
CHAL 01413 – CHAL 01424
CHAL 01567 – CHAL 01607

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

RESPONSE: Opposer objects to this request to the extent it seeks the identification of specific customers. Subject to and without waiving any objections, responsive, non privileged documents are produced at Bates Nos.

CHAL 00407 – CHAL 00456
CHAL 00862 – CHAL 00873
CHAL 01073 – CHAL 01089
CHAL 02079
CHAL 02138 – CHAL 02168
CHAL 02190
CHAL 01739 – CHAL 01799

CHAL 02417 – CHAL 02425
CHAL 01968 – CHAL 02078
CHAL 01413 – CHAL 01424
CHAL 01567 – CHAL 01607
CHAL 01701 – CHAL 01703
CHAL 01729 – CHAL 01731
CHAL 02636 – CHAL 02637

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

RESPONSE: Opposer objects to this Request as presently drafted on the grounds that it is overly broad and vague. Subject to and without waiving any objections, responsive, non privileged documents are produced at Bates Nos.

CHAL 00977 – CHAL 01005
CHAL 01022 – CHAL 01030
CHAL 01034 – CHAL 01041

CHAL 01053 – CHAL 01061
CHAL 01066 – CHAL 01068
CHAL 01090 – CHAL 01107

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

RESPONSE: Responsive, non privileged documents are produced at Bates Nos.

CHAL 00150 – CHAL 00221
CHAL 00331 – CHAL 00406
CHAL 00460 – CHAL 00482
CHAL 00487 – CHAL 00519
CHAL 00862 – CHAL 00895
CHAL 01729 – CHAL 01730
CHAL 01340 – CHAL 01607
CHAL 01739 – CHAL 02089

CHAL 00523 – CHAL 00771
CHAL 00778 – CHAL 00856
CHAL 00977 – CHAL 01300
CHAL 02090 – CHAL 02203
CHAL 02212 – CHAL 02416
CHAL 02425 – CHAL 02599
CHAL 01671 – CHAL 01732
CHAL 00859 – CHAL 00861

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.

RESPONSE: Responsive, non privileged documents are produced at Bates Nos.

CHAL 01340 – CHAL 01356
CHAL 01393 – CHAL 01412
CHAL 01731 – CHAL 01732

CHAL 02351 – CHAL 02416
CHAL 02426 – CHAL 02524

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.

RESPONSE: Responsive, non privileged documents are produced at Bates Nos.

CHAL 00487 – CHAL 00514
CHAL 00561 – CHAL 00732
CHAL 00772 – CHAL 00777

CHAL 00781 – CHAL 00790
CHAL 00857 – CHAL 00858

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

RESPONSE: Opposer objects to this Request to the extent it seeks the production of materials covered by the attorney-client privilege.

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.

RESPONSE: Opposer objects to this Request to the extent it seeks the production of materials covered by the attorney-client privilege.

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.

RESPONSE: Opposer has no responsive documents at this time.

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.

RESPONSE: Opposer has no responsive documents at this time, but will supplement this Response within the timeframe allotted by the Board.

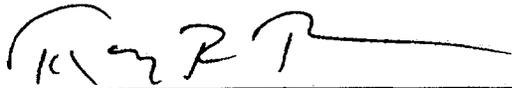
REQUEST NO. 23: All documents relating to any instance(s) of actual confusion between Applicant and Opposer.

RESPONSE: Opposer has no responsive documents at this time.

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.

RESPONSE: Opposer has no responsive documents at this time.

Date: February 14, 2008



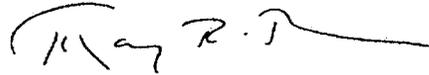
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(614) 227-2300

*Attorneys for the Opposer/Applicant
Cardinal Health 303, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon the following attorney of record for Applicant by electronic and First Class Mail, this 14th day of February, 2008:

Kristine Boylan
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kboylan@merchantgould.com



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

CARDINAL HEALTH 303, INC.'S PRIVILEGE LOG OF DOCUMENTS
RESPONSIVE TO THE ALARIS GROUP, INC.'S REQUESTS FOR
DOCUMENTS FOR WHICH A CLAIM OF ATTORNEY/CLIENT PRIVILEGE
AND/OR ATTORNEY WORK PRODUCT IS MADE

Doc. Prod. No.	Description	Date
CHAL02741- CHAL02758	Thomas A. Runk, Esq. to Obi Iloputaife, Esq.	3/30/2007

Dated: March 25, 2008

By: _____



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Cardinal Health 303, Inc.

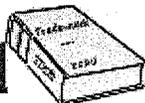


United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Acceptable Identification of Goods & Services

Trademark ID Manual



Refine Search: MEDICAL AND SERVICES

Submit Query

Documents: 1 - 46 of 46

Hit No.	Class	Description	Status	Effective Date	Type	Note	Trilateral
1	010	Ceiling service units specially adapted for mounting medical apparatus, for feeding electricity to medical apparatus and for supplying signals and/or liquids and/or gases to and transferring signals and/or liquids and/or gases from medical apparatus	A	13 Mar 08	G	N	
2	035	Business consulting service in the field of medical imaging centers	A	08 Mar 07	S	N	
3	035	Business services, namely, independent medical management services for self-funded major medical health plans	A	17 Jan 08	S	N	
4	035	Interactive record-keeping services for use in risk management and regulatory compliance by insurers and professionals in the medical field	A	01 Jun 04	S	N	
5	035	Medical billing support services	A	19 Apr 07	S	N	
6	035	Medical claims management services, namely, receiving, data entering, and re-pricing of transactions that are originated by physicians, hospitals, and ancillary medical care providers	A	19 Apr 07	S	N	
7	035	Medical claims management services, namely, electronic re-pricing of physician, hospital, and ancillary medical care provider transactions via the global information network	A	19 Apr 07	S	N	
8	035	Medical transcription services	A	01 Oct 94	S	N	
9	035	Providing advertising, marketing and promotional services for the pharmaceutical and medical products of others	A	01 Feb 06	S	N	
10	035	Providing advertising, marketing and promotional services for the pharmaceutical and medical industry	A	01 Feb 06	S	N	
11	037	Medical waste, blood and bodily fluid cleaning and disposal services	A	26 Apr 07	S	N	
12	037	Medical waste, blood and bodily fluid disinfection services	A	26 Apr 07	S	N	
13	039	Biomedical services, namely, the storage of human cells for medical use	A	01 Sep 02	S	N	
14	039	Medical tourism services, namely, making transportation reservations and bookings for travel to another country in order to obtain health care	A	23 Aug 07	S	N	
15	040	Medical waste, blood and bodily fluid decontamination services	A	26 Apr 07	S	N	
16	041	Consulting services in the field of medical education, namely, comprehensive postgraduate medical placement services for international medical graduates	A	28 Feb 08	S	N	
17	042	Medical and scientific research services in the field of cancer treatment and diagnosis	A				
18	044	Charitable services, namely, providing medical services to underdeveloped	A				



		countries					
19	044	Charitable services, namely, providing medical equipment and services to underserved communities	A	13 Mar 08	S	N	
20	044	Emergency medical response services	A	04 Jan 06	S	N	
21	044	Interactive medical monitoring and alert service for reminding clients of medical information, namely, medicinal dosage, allergic sensitivity, and prescription refills	A	01 Nov 04	S	N	
22	044	Medical assistance services	A	01 Jul 06	S	N	T
23	044	Medical clinic day care services for sick children	A	01 Jul 04	S	N	
24	044	Medical consulting services in the field of disease infection control	A	21 Feb 08	S	N	
25	044	Medical evaluation services, namely, functional assessment program for patients receiving medical rehabilitation services for purposes of guiding treatment and assessing program effectiveness	M	01 Jan 02	S	Y	
26	044	Medical imaging services	A	01 Mar 03	S	N	
27	044	Medical imaging services, namely, consulting services in the field of using and operating medical imaging apparatus including X-ray, computed tomography, magnetic resonance imaging, ultrasound, and positron emission tomography apparatus	A	19 Oct 06	S	N	
28	044	Medical radiology services	A	01 Nov 05	S	N	
29	044	Medical services	M	01 Jan 02	S	Y	T
30	044	Medical services, namely, in vitro fertilization	M	01 Jan 02	S	Y	
31	044	Medical services, namely, {indicate field of medical care}	A	01 Jul 06	S	N	
32	044	Medical services, namely, pre-employment drug screening	A	31 May 07	S	N	
33	044	Medical services, namely, artificial liver support	A	09 Aug 07	S	N	
34	044	Medical testing services, namely, fitness evaluation	A	01 Aug 04	S	N	
35	044	Pet care services, namely, dog walking, dog bathing, non-medicated pet grooming and in-home medical care	A	09 Nov 06	S	N	
36	044	Providing an online, patient-initiated, patient-authorized, fee-for-service, medical profile and medical record analysis service designed to provide patients with custom tailored information about the range of possible diagnoses and therapies associated with a defined set of symptoms	A	06 Mar 08	S	N	
37	044	Providing medical information, consultancy and advisory services	A	01 May 06	S	N	
38	044	Providing medical services to indigenous populations outside the U.S.	A	01 Oct 05	S	N	
39	044	Providing medical services to human limb amputees	A	01 Dec 05	S	N	
40	044	Providing online medical record analysis services designed to provide patients with custom tailored information about the range of possible diagnoses and therapies associated with a defined set of symptoms	A	31 Jan 08	S	N	
41	045	Case management services, namely, the coordination of necessary medical services, vocational issues and educational services for persons injured at work	A	27 Jul 06	S	N	
42	045	Consulting services concerning legal matters in the medical field	M	01 Jan 07	S	Y	
43	045	Legal services and legal consultation for medical imaging centers	M	01 Jan 07	S	Y	
44	045	Providing non-medical assisted living services for personal purposes in the nature of scheduling appointments; answering the telephone; checking messages; mail sorting, handling and receiving; and secretarial and clerical services	A	24 May 07	S	N	
45	045	Providing non-medical personal assistant services for others in the nature of planning, organizing, coordinating, arranging and assisting individuals to perform daily tasks	A	16 Aug 07	S	N	
46	045	Providing personal support services for families of patients with life threatening disorders, namely, companionship, help with medical forms, counseling and emotional support	A	01 Sep 04	S	N	

044 Medical services

This entry was transferred from Class 42 to Class 44 due to the restructuring of Class 42 that was implemented in the 8th edition of the Nice Agreement.