

ESTTA Tracking number: **ESTTA305015**

Filing date: **09/08/2009**

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

Proceeding	91182064
Party	Plaintiff AS Holdings, Inc.
Correspondence Address	Terence J. Linn Van Dyke, Gardner, Linn & Burkhart, LLP. 2851 Charlevoix Drive SE, Ste 207 Grand Rapids, MI 49546 UNITED STATES linn@vglb.com, anne@vglb.com
Submission	Other Motions/Papers
Filer's Name	Terence J. Linn
Filer's e-mail	linn@vglb.com, anne@vglb.com, kendall@vglb.com
Signature	/Terence J. Linn/
Date	09/08/2009
Attachments	Opposer's Notice of Previously Offered Testimony and Evidence.pdf (7 pages) (288358 bytes)

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

AS HOLDINGS, INC.)
)
Opposer,)
)
v.) Opposition No. 91182064
)
H&C MILCOR, INC. f/k/a)
AQUATICO OF TEXAS, INC.) Serial Number: 76/461,157
) Mark: Miscellaneous Design:
Applicant.) (Pipe Boot Product Design)
)
_____)

**OPPOSER AS HOLDINGS, INC.'S NOTICE OF
PREVIOUSLY OFFERED TESTIMONY AND EVIDENCE**

Opposer AS Holdings, Inc. hereby gives notice that the Opposer previously filed the following testimony and documents with the Trademark Trial and Appeal Board during the original testimony period for Opposer AS Holdings, Inc., which materials were ruled in the Board's order of July 9, 2009 as having been timely submitted.

DEPOSITIONS

Deposition of Sean Steimle – Public and Confidential Transcripts

Deposition of Christopher Carl Kintzele – Public and Confidential Transcript

Deposition of Michael John Hubbard – Public and Confidential-Trade Secret Transcript

OPPOSER'S EXHIBITS FROM THE DEPOSITION OF SEAN STEIMLE

1. Second Renotice of Deposition of Applicant Pursuant to Fed.R.Civ. P. 30(b)(6)
2. Portals Plus Product Catalog
3. Portals Plus Medium Pipe Boot Specification
4. Portals Plus Medium Pipe Boot Specification
5. Milcor and Portals Plus Ad, Snips Publication, January 2008, Vol 77, No. 1

6. Portals Plus Installation Instructions
7. Excerpts from websites for Milcor and Portals Plus
8. Product List from Portal Plus website
9. Portals Plus Pipe Flashings Technical Product Information
10. Portals Plus Adapter Rings Technical Product Information
11. Drawing and description from application file
12. U.S. Patent No. 4,211,423 Resech for Roof Seal Device
13. Portals Plus Installation Instructions for Pipe Boots
14. Hand drawn sketch of left side of pipe boot drawn by Dillis Allen with points A and B added by Terence Linn

APPLICANT'S EXHIBITS FROM THE DEPOSITION OF SEAN STEIMLE

1. Hand drawn sketch of left side of pipe boot drawn by Dillis Allen

OPPOSER'S EXHIBITS FROM THE DEPOSITION OF CHRIS KINTZELE

20. 1 color photograph of 13-inch base pipe boot with "ALPHA SYSTEMS EPDM 1" stamped on base
21. 1 color photograph depicting base of black pipe boot with stamping of "CUT ABOVE RIB"
22. 1 color photograph depicting white pipe boot
23. 1 color photograph depicting black pipe boot with the stamping "BFDP EPDM" on the bottom horizontal ring
24. 1 color photograph depicting small pipe boot with the stamping of "ALPHA SYSTEMS EPDM 2"
25. 1 color photograph of black pipe boot with the stamping on the base of "cut above rib"
26. 1 color photograph of base of black pipe boot with stamping of "CUT ABOVE RIB"
27. 1 color photograph of black pipe boot with the stamping on base "FBPCO"

28. 1 color photograph of black pipe boot with the stamping on base "pipe flashing ½-1-1 ½- 2 ½ epdm"
29. GenFlex Roofing Systems – 9 pages from website

APPLICANT'S EXHIBITS FROM THE DEPOSITION OF CHRIS KINTZELE

1. Color photograph of physical exhibit - White 13-inch base pipe boot with stamping on base "Alpha Systems EPDM 1"
2. Color photograph of physical exhibit - Black, 13-inch base pipe boot with stamping on base "Alpha Systems EPDM 1"
3. Color photograph of physical exhibit - Black, 9-inch base pipe boot with stamping on base "Alpha Systems EPDM 2"
4. Color photograph of physical exhibit - Black, 13-inch base pipe boot with stamping on the bottom horizontal circumference of "BFDP EPDM"
5. Color photograph of physical exhibit - Black, 9-inch base pipe boot with the stamping of "BFPCO" and "PIPE FLASHING ½-1-1 ½ - 2 ½, EPDM"
6. 1 – color photograph of pipe boot stamped "PFDP EPDM" on bottom horizontal circumference
7. 1 – color photograph of pipe boot, 13-inch base depicting stamp on base "Alpha Systems EPDM 1"
8. 1 – color photograph of white 13-inch base pipe boot
9. 1 – page, hand drawn document depicting steps on pipe boot, dated 11/12/08, Labeled "Exh A"
10. 1 – page, document labeled as "Exh B", dated 11 (12 13) 08, hand-drawn diagram depicting steps of pipe boot
11. CONFIDENTIAL-TRADE SECRET – 26 pages, documents from Maple Mold Technologies
12. 52-pages, Portals Plus website printouts
13. 222-pages, United States Patents on various seals for roof vent pipes or similar articles

OPPOSER'S EXHIBITS FROM THE DEPOSITION OF MICHAEL JOHN HUBBARD

29. GenFlex Roofing Systems – 9 pages from website

30. U.S. Patents of Michael J. Hubbard – 18 pages
31. Firestone Technical Information Sheets for pipe boots and flashings (5 pages)
32. Color photograph of physical exhibit Applicant's No. 4 – depicting with clamp
33. Color photograph of Applicant's physical Exhibit 4, depicting with clamp
34. Color photograph depicting Applicant's physical Exhibit 2 with clamp
35. Color photograph of Applicant's physical Exhibit 2 with clamp
36. Color photograph of Applicant's physical Exhibit 3, depicting clamp placement
37. Color photograph of Applicant's physical Exhibits 2 and 3
38. Color photograph of Applicant's physical Exhibit 4, with clamp placement

APPLICANT'S EXHIBITS FROM THE DEPOSITION OF MICHAEL JOHN HUBBARD

1. Color photograph of physical exhibit - White 13-inch base pipe boot with stamping on base "Alpha Systems EPDM 1"
2. Color photograph of physical exhibit - Black, 13-inch base pipe boot with stamping on base "Alpha Systems EPDM 1"
3. Color photograph of physical exhibit - Black, 9-inch base pipe boot with stamping on base "Alpha Systems EPDM 2"
4. Color photograph of physical exhibit - Black, 13-inch base pipe boot with stamping on the bottom horizontal circumference of "BFDP EPDM"
5. Color photograph of physical exhibit - Black, 9-inch base pipe boot with the stamping of "BFPCO" and "PIPE FLASHING ½-1-1 ½ - 2 ½, EPDM"
9. 1-page, hand-drawn document depicting steps on pipe boot, dated 11-12-08, labeled "Exh A"
10. 1 – page, document labeled as "Exh B", dated 11 (12 13) 08, hand-drawn diagram depicting steps of pipe boot
11. CONFIDENTIAL-TRADE SECRET – 26 pages, documents from Maple Mold Technologies
12. 52-pages, Portals Plus website printouts

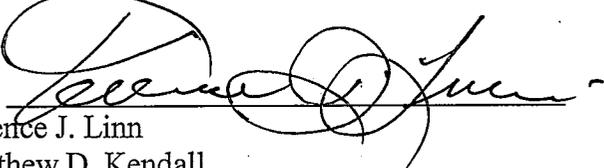
14. 21-pages, Portals Plus website printouts.
15. 1-page, hand drawing of EPDM, TPO & PVC for GenFlex Mold Types by Mr. Hubbard.

OPPOSER'S SECOND NOTICE OF RELIANCE

Patent Number	Issue Date	First Named Inventor/Title
U.S. Patent No. 4,211,423	07/08/1980	Resech/ Roof Seal Device
U.S. Patent No. Des 269,454	06/21/1983	Houseman/ Seal for Roof Vent Pipe or Similar Article
U.S. Patent No. Des. 287,872	01/20/1987	Eriksson/ Sealing Device for Surrounding the Point of Emergence of a Pipe from a Wall or Floor
U.S. Patent No. 917,167	04/06/1909	Shaw/ Roof Flashing
U.S. Patent No. 2,985,465	05/23/1961	Church/ Roof Flange Construction
U.S. Patent No. 3,704,894	12/05/1972	Didszuhn/ Bellows Sleeve
U.S. Patent No. 3,807,110	04/30/1974	Kaminski/ Multipurpose Roof Penetrating Curb
U.S. Patent No. 4,010,578	03/08/1977	Logsdon/ Roof Flashing Structure
U.S. Patent No. 4,211,423	07/08/1980	Resech/ Roof Seal Device
U.S. Patent No. 4,318,547	03/09/1982	Ericson/ Device Used for the Connection of Pipes
U.S. Patent No. 4,342,462	08/03/1982	Carlesimo/ Adjustable Seal Member for Conduit to Manhole Junction
U.S. Patent No. 4,535,998	08/20/1985	Katz/ Sealing Device for Hydraulic Energy Dissipator of the Telescopic Type
U.S. Patent No. 4,570,943	02/18/1986	Houseman/ Sealing Flashing for Buildings with Interlocking Ring Members
U.S. Patent No. 4,574,548	03/11/1986	Tupman/ Column Reglet
U.S. Patent No. 4,664,390	05/12/1987	Houseman/ Weather Seal Device for Conduit Extending through Ridge Surface
U.S. Patent No. 4,673,034	06/16/1987	Hansen/ Cased Water Wells Having Flexible Pad
U.S. Patent No. 4,676,513	06/30/1987	Tiegs/ One-Piece Split Boot for Universal Joint
U.S. Patent No. 4,730,421	03/15/1988	Leeland/ Pitch Box
U.S. Patent No. 4,937,991	07/03/1990	Orth/ Flashing Unit for Sealing Roof Penetrations
U.S. Patent No. 5,067,291	11/26/1991	Evensen/ Pass-Through Roof Seal System
U.S. Patent No. 5,176,408	01/05/1993	Pedersen/ Seal Device for Pipes Passing Through Roof Structures
U.S. Patent No. 5,826,919	10/27/1998	Bravo/ Flexible Penetration Fitting
U.S. Patent No. 5,988,698	11/23/1999	Bravo/ Flexible Penetration Fitting
U.S. Patent No. 6,353,184	03/05/2002	Daoud/ Low Profile Adapter for Variable Size Heat Shrink Tubing Joint
U.S. Patent No. 6,362,427	03/26/2002	Daoud/ Low Profile Adapter for Variable Size Tubing
U.S. Patent No. 6,591,561	07/15/2003	Evensen/ Waterproof Roof Deck Post Construction
U.S. Patent No. 6,640,503	11/04/2003	Evensen/ Waterproof Roof Deck Post Construction and Method
U.S. Patent No. 6,647,682	11/18/2003	Bishop/ Drain Pipe Connector

AS Holdings, Inc.

Dated: September 8, 2009

By: 
Terence J. Linn

Matthew D. Kendall

Van Dyke, Gardner, Linn & Burkhart, LLP

2851 Charlevoix Drive SE, Suite 207

Grand Rapids, Michigan 49546

Attorneys for the Opposer AS Holdings, Inc.

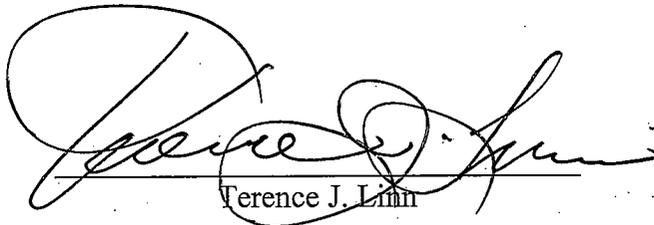
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AS HOLDINGS, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91182064
)	
H&C MILCOR, INC. f/k/a)	
AQUATICO OF TEXAS, INC.)	Serial Number: 76/461,157
)	Mark: Miscellaneous Design:
Applicant.)	(Pipe Boot Product Design)
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2009, a true and correct copy of Opposer AS Holdings, Inc's Notice of Previously Offered Testimony and Evidence was sent via First Class Mail, postage prepaid to Attorney for Applicant as follows:

Dillis V. Allen
105 S Roselle Rd, Suite 101
Schaumburg, IL 60193



Terence J. Linn