

TTAB

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

In the matter of: Application Serial No. 76/461,157
Filed: October 18, 2002
For the mark: Miscellaneous Design
(Pipe Boot Product Design)
Applicant: H&C Milcor, Inc.
f/k/a Aquatico of Texas, Inc.
Class: International Class 19
Goods: Non-metal building materials, namely,
pipe flashing for use in sealing
openings for pipes
Published: December 25, 2007

ALPHA SYSTEMS, INC.,)
)
Opposer,)
)
v.) Opposition No. 91182064
)
H&C MILCOR, INC., f/k/a/)
AQUATICO OF TEXAS, INC.,)
)
Applicant.)

NOTICE OF FILING

TO: Van Dyke, Gardner, Linn & Burkhart, LLP
2851 Charlevoix Drive SE - Suite 207
P.O. Box 888695
Grand Rapids, MI 49588-8695

PLEASE TAKE NOTICE that on the 29th day of February, 2008, we filed by first-class mail with the United States Trademark Office before the Trademark Trial and Appeal Board, H&C MILCOR, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO ALPHA SYSTEMS, INC.'S NOTICE OF OPPOSITION, a copy of which is attached hereto.


Dennis V. Allen
Attorney for Applicant
Reg. No. 22,460

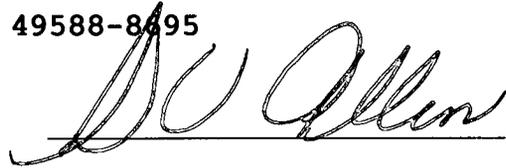


03-03-2008

CERTIFICATE OF SERVICE

I, Dillis V. Allen, state that a copy of H&C MILCOR, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO ALPHA SYSTEMS, INC.'S NOTICE OF OPPOSITION was served via first-class mail on February 29, 2008, addressed to:

Van Dyke, Gardner, Linn & Burkhart, LLP
2851 Charlevoix Drive SE - Suite 207
P.O. Box 888695
Grand Rapids, MI 49588-8895



Dillis V. Allen, Esq.
105 S. Roselle Road
Suite 101
Schaumburg, IL 60193
847/895-9100

I hereby certify that this correspondence,
Notice of Filing....., is being deposited
with the United States Postal Service
as First Class mail in an envelope
addressed to: Commissioner of
Patents and Trademarks, Washington,
D. C. 20231, on *February 29, 2008*.....



Attorney

February 29, 2008.....

Date

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United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

H&C MILCOR, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO
ALPHA SYSTEMS, INC.'S NOTICE OF OPPOSITION

NOW COMES Applicant, H&C MILCOR, INC.,¹ and in response
to Opposer, ALPHA SYSTEMS, INC.'S Notice of Opposition,
provides the following Answers and Affirmative Defenses:

1. H&C Milcor, Inc. is now Hart & Cooley, Inc.

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Notice of Opposition.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Notice of Opposition.

3. Applicant admits the allegations of Paragraph 3 except denies the allegations that Applicant "seeks to register the miscellaneous design of Applicant's Application" because it is not understood and denies the address location.

4. Applicant admits the allegations in Paragraph 4 of the Notice of Opposition.

5. Applicant admits the allegations in Paragraph 5 of the Notice of Opposition.

6. Applicant admits the allegations in Paragraph 6 of the Notice of Opposition.

7. Applicant admits the allegations in Paragraph 7 of the Notice of Opposition but denies it was an affirmative representation.

8. Applicant admits the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant admits the allegations in Paragraph 9 of the Notice of Opposition but denies it was an affirmative representation.

10. Applicant admits the allegations in Paragraph 10 of the Notice of Opposition.

11. Applicant admits the allegations in Paragraph 11 in the Notice of Opposition, but denies that it is an "affirmative representation".

12. Applicant admits the allegations in Paragraph 12 in the Notice of Opposition, but denies that it is an "affirmative representation".

13. Applicant admits the allegations in Paragraph 13 in the Notice of Opposition, but denies that it is an "affirmative representation".

14. Applicant admits the allegations in Paragraph 14 in the Notice of Opposition, but denies that it is an "affirmative representation".

15. Applicant admits the allegations in Paragraph 15 of the Notice of Opposition.

16. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Notice of Opposition.

17. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Notice of Opposition.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Notice of Opposition.

19. Applicant admits the allegations in Paragraph 19 of the Notice of Opposition.

20. Applicant admits the allegations in Paragraph 20 of the Notice of Opposition.

21. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Notice of Opposition.

22. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Notice of Opposition.

23. Applicant denies the allegations in Paragraph 23 of the Notice of Opposition.

24. Applicant denies the allegations in Paragraph 24 of the Notice of Opposition.

25. Applicant denies the allegations in Paragraph 25 of the Notice of Opposition.

26. Applicant denies the allegations in Paragraph 26 of the Notice of Opposition.

27. Applicant denies the allegations in Paragraph 27 of the Notice of Opposition.

28. Applicant denies the allegations in Paragraph 28 of the Notice of Opposition.

29. Applicant denies the allegations in Paragraph 29 of the Notice of Opposition.

30. Applicant denies the allegations in Paragraph 30 of the Notice of Opposition.

31. Applicant denies the allegations in Paragraph 31 of the Notice of Opposition.

32. Applicant denies the allegations in Paragraph 32 of the Notice of Opposition.

33. Applicant denies the allegations in Paragraph 33 of the Notice of Opposition.

34. Applicant denies the allegations in Paragraph 34 of the Notice of Opposition.

35. Applicant denies the allegations in Paragraph 35 of the Notice of Opposition.

36. Applicant denies the allegations in Paragraph 36 of the Notice of Opposition.

37. Applicant denies the allegations in Paragraph 37 of the Notice of Opposition.

38. Applicant denies the allegations in Paragraph 38 of the Notice of Opposition.

39. Applicant denies the allegations in Paragraph 39 of the Notice of Opposition.

40. Applicant denies the allegations in Paragraph 40 of the Notice of Opposition.

41. Applicant denies the allegations in Paragraph 41 of the Notice of Opposition.

42. Applicant admits the allegations in Paragraph 42 of the Notice of Opposition.

43. Applicant denies the allegations in Paragraph 43 of the Notice of Opposition.

44. Applicant admits the allegations in Paragraph 44 of the Notice of Opposition.

45. Applicant admits the allegations in Paragraph 45 of the Notice of Opposition, except denies the location of the cut line in the patent.

46. Applicant denies the allegations in Paragraph 46 of the Notice of Opposition.

47. Applicant denies the allegations in Paragraph 47 of the Notice of Opposition.

48. Applicant denies the allegations in Paragraph 48 of the Notice of Opposition.

49. Applicant denies the allegations in Paragraph 49 of the Notice of Opposition.

50. Applicant denies the allegations in Paragraph 50 of the Notice of Opposition.

51. Applicant denies the allegations in Paragraph 51 of the Notice of Opposition.

52. Applicant admits the allegations in Paragraph 52 of the Notice of Opposition.

53. Applicant denies the allegations in Paragraph 53 of the Notice of Opposition.

54. Applicant denies the allegations in Paragraph 54 of the Notice of Opposition.

55. Applicant admits the allegations in Paragraph 55 of the Notice of Opposition.

56. Applicant denies the allegations in Paragraph 56 of the Notice of Opposition because the depicted drawing has been altered.

57. Applicant denies the allegations in Paragraph 57 of the Notice of Opposition.

58. Applicant denies the allegations in Paragraph 58 of the Notice of Opposition.

59. Applicant denies the allegations in Paragraph 59 of the Notice of Opposition.

60. Applicant denies the allegations in Paragraph 60 of the Notice of Opposition.

61. Applicant denies the allegations in Paragraph 61 of the Notice of Opposition.

62. Applicant denies the allegations in Paragraph 62 of the Notice of Opposition.

63. Applicant denies the allegations in Paragraph 63 of the Notice of Opposition.

64. Applicant denies the allegations in Paragraph 64 of the Notice of Opposition.

65. Applicant denies the allegations in Paragraph 65 of the Notice of Opposition.

66. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66 of the Notice of Opposition.

67. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 of the Notice of Opposition.

68. Applicant denies the allegations in Paragraph 68 of the Notice of Opposition.

COUNT I

69. Applicant incorporates by reference its answers to Paragraphs 1 to 68 of the Notice of Opposition as if set forth fully herein.

70. Applicant denies the allegations in Paragraph 70 of the Notice of Opposition.

71. Applicant denies the allegations in Paragraph 71 of the Notice of Opposition.

72. Applicant denies the allegations in Paragraph 72 of the Notice of Opposition.

COUNT II

73. Applicant incorporates by reference its answers to Paragraphs 1 to 72 of the Notice of Opposition as if set forth fully herein.

74. Applicant denies the allegations in Paragraph 74 of the Notice of Opposition.

75. Applicant denies the allegations in Paragraph 75 of the Notice of Opposition.

76. Applicant denies the allegations in Paragraph 76 of the Notice of Opposition.

COUNT III

77. Applicant incorporates by reference its answers to Paragraphs 1 to 76 of the Notice of Opposition as if set forth fully herein.

78. Applicant denies the allegations in Paragraph 78 of the Notice of Opposition.

79. Applicant denies the allegations in Paragraph 79 of the Notice of Opposition.

80. Applicant denies the allegations in Paragraph 80 of the Notice of Opposition.

81. Applicant denies the allegations in Paragraph 81 of the Notice of Opposition.

COUNT IV

82. Applicant incorporates by reference its answers to Paragraphs 1 to 81 of the Notice of Opposition as if set forth fully herein.

83. Applicant denies the allegations in Paragraph 83 of the Notice of Opposition.

84. Applicant denies the allegations in Paragraph 84 of the Notice of Opposition.

85. Applicant denies the allegations in Paragraph 85 of the Notice of Opposition.

86. Applicant denies the allegations in Paragraph 86 of the Notice of Opposition.

87. Applicant denies the allegations in Paragraph 87 of the Notice of Opposition.

88. Applicant denies the allegations in Paragraph 88 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

AFFIRMATIVE DEFENSE I

89. Opposer's Notice of Opposition fails to state a claim upon which any relief may be granted.

AFFIRMATIVE DEFENSE II

90. Applicant's three-dimensional trademark has acquired distinctiveness through many years of use.

AFFIRMATIVE DEFENSE III

91. Applicant's three-dimensional trademark fulfills the requirements of the Trademark Act, including Sections 1, 2 and 45, 15 U.S.C. Sections 1051, 1052 and 1127.

AFFIRMATIVE DEFENSE IV

92. Applicant's three-dimensional trademark fulfills the requirements of the Trademark Act, including Section 2(E)(5), 15 U.S.C. Section 1052(E)(5).

AFFIRMATIVE DEFENSE V

93. Applicant properly made amendments to the drawings, in accordance with Trademark Rule 2.72, 37 C.F.R. Section 2.72, and Applicant's application is valid.

AFFIRMATIVE DEFENSE VI

94. Applicant complied with its duty of candor throughout the prosecution of U.S. Serial No. 76/461,157.

AFFIRMATIVE DEFENSE VII

95. Applicant's three-dimensional trademark has only minimal functional features and the mark as a whole is thus not de jur functional.

AFFIRMATIVE DEFENSE VIII

96. This Board lacks jurisdiction of the subject matter of the Notice of Opposition.

AFFIRMATIVE DEFENSE IX

97. This Board lacks personal jurisdiction over the Applicant.

AFFIRMATIVE DEFENSE X

98. The Opposer lacks standing to bring the Notice of Opposition.

AFFIRMATIVE DEFENSE XI

99. Applicant's three-dimensional trademark has acquired secondary meaning.

AFFIRMATIVE DEFENSE XII

100. Applicant's Registration of its three-dimensional trademark is not precluded by the Doctrine of Functionality.

AFFIRMATIVE DEFENSE XIII

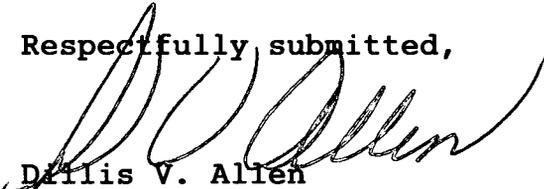
101. Opposer's claims are barred, in whole or in part, by the Doctrines of Waiver, Estoppel, and/or Laches.

AFFIRMATIVE DEFENSE XIV

102. The Opposer is merely an intermeddler and comes to this Board with unclean hands.

WHEREFORE, the Applicant asks the Board to dismiss Counts I to IV of the Notice of Opposition, and to grant one or more, or all, of Applicant's Affirmative Defenses.

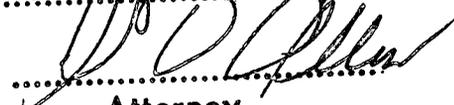
Respectfully submitted,


Dillis V. Allen
Attorney for Applicant
Reg. No. 22,460

Dated: February 29, 2008

Dillis V. Allen, Esq.
105 S. Roselle Road
Suite 101
Schaumburg, IL 60193
847/895-9100

I hereby certify that this correspondence, *NaC Milers' Answer & Affirmative Defenses* is being deposited with the United States Postal Service as First Class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D. C. 20231, on *February 29, 2008*.


.....
Attorney

February 29, 2008
.....
Date