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

Proceeding	91182064
Party	Plaintiff AS Holdings, Inc.
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Submission	Opposition/Response to Motion
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Date	01/25/2011
Attachments	Opposer's Brief in Opposition to Applicant's Motion for Reconsideration.pdf (5 pages)(20654 bytes)

II. Applicant's Request for Reconsideration is in Error, Unsupported and Should Be Denied.

Applicant's motion does not point out an error of fact in the Board's decision for which reconsideration is sought or present new law or authorities relevant to the issue. Rather, Applicant's motion attempts to improperly introduce new materials, improperly introduce and argue new and unsupported facts, make incorrect representations with regard to the record and then rehash the same argument. Applicant's motion for reconsideration must be denied.

Applicant's motion for reconsideration argues at some length that in entering the subject order the Interlocutory Attorney was unaware of Applicant's objection to Opposer's Request No. 21. Applicant's reasoning is based upon the argument that the Interlocutory Attorney did not request submission by Applicant of any of Applicant's responses (see Applicant's Motion Brief page 3, 6). This presumed ignorance by the ruling Interlocutory Attorney is not correct or supportable. Submitted by Opposer as Exhibit E to Opposer's original Motion to Strike Exhibits and Testimony was relevant excerpts of Applicant's Responses to Opposer's First Set of Requests for Production of Documents and Things. This submission of Exhibit E with the original motion included Opposer's Request for Production of Documents No. 21 and the Applicant's Response to that request for production No. 21 in its entirety. Further, in Applicant's opposition to the Opposer's Motion to Strike Exhibits and Testimony mailed December 16, 2009, Applicant likewise submitted excerpts of Applicant's responses to Opposer's First Set of Requests for Production of Documents and Things, including Opposer's Request for Production for Documents and Things No. 21 and Applicant's Response to Request 21 in its entirety. (See Appendix page APP.43 to Applicant's Opposition to Opposer's Motion to Strike.) It is flatly untrue that the Interlocutory Attorney was unaware of this objection from the time of the initial filing of Opposer's Motion.

Applicant digresses from its arguments for reconsideration and improperly embarks on an argument on the merits with Applicant's unsubstantiated argument regarding pirating and copying (Applicant's Request page 5). Not only are these arguments unsupported on the record for the current motion, but constitute new alleged facts and argument. This is improper.

Applicant also submits with its motion for reconsideration a full set of Applicant's Responses to Requests for Production of Documents, regardless of whether these responses had previously been submitted on the original motion or response. A request or motion for reconsideration may not be used to introduce additional evidence. TBMP § 518 (page 500 – 334). Moreover, this submission of a new full set of Applicant's Responses to Document Requests is apparently an effort to support Applicant's untrue argument that the Interlocutory Attorney was somehow unaware of Applicant's response to Request 21, which effort is likewise improper.

Other than the Applicant's improper allegation of new and unsupported facts and erroneous characterization of the record, Applicant's request for reconsideration is nothing more than a rehash and re-argument of Applicant's original opposition to Opposer's Motion to Strike. A motion for reconsideration should not simply be a re-argument of the points presented in a brief on the original motion. TBMP § 518 (page 500 – 334). When considered in light of Applicant's motion that Applicant's motion for reconsideration be considered by a group of Board members different from the original Interlocutory Attorney, it is apparent that Applicant merely wants to reargue its case to a different judge in hopes of achieving a different result, all premised on the untrue representation that the original Interlocutory Attorney was ignorant of some alleged fact.

The Board's decision of December 20, 2010 was well grounded in the facts and

applicable rules of law and a re-argument of those same bases is unnecessary at this time.

Rather, the Board's decision is well supported and proper for the reasons set forth in the Board's written order of December 20, 2010 and for the reasons given by the Board during the telephone conference conducted December 20, 2010. Applicant's Motion for Reconsideration must be denied.

Respectfully submitted,

Dated: January 25, 2011

/Terence J. Linn/

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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 January 25, 2011, a true and correct copy of Opposer, AS Holdings, Inc.'s Brief in Opposition to Applicant's Motion for Reconsideration of the Board's December 20, 2010 Decision Under 37 C.F.R. 2.127(b) and Request to the Board Under 37 C.F.R. 2.127(c) was sent via First Class Mail, postage prepaid to Attorney for Applicant as follows:

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