

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

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

*APPLICANT'S MOTION TO EXTEND THE DISCOVERY PERIOD
UNDER 37 CFR 2.127*

Discovery is set to close on September 30, 2008 by Order of the Board dated January 24, 2008. Applicant requests that discovery be extended 60 days to and including November 29, 2008, and that the succeeding dates that are keyed to discovery be correspondingly extended.

Opposer's "First" set of discovery documents were served on Applicant on May 7, 2008, including Opposer's First Set of Requests for Admissions to Applicant; First Set of Requests for Production of Documents and Things, and First Set of Interrogatories to Applicant. By agreement of the parties, the normal 30 day response time was extended to 60 days.



09-25-2008

Applicant served its responses on July 9, 2008, including Applicant's Responses to Opposer's First Set of Requests for Admissions to Applicant; Responses to Opposer's First Set of Requests for Production of Documents and Things, and Responses to Opposer's First Set of Interrogatories to Applicant, but did not actually produce the requested documents until about August 25, 2008.

Applicant served its "First" set of discovery documents on Opposer on June 24, 2008, including H&C Milcor's First Set of Interrogatories Nos. 1-31 to Alpha Systems, Inc; H&C Milcor, Inc.'s First Set of Requests for Admissions to Alpha Systems, Inc.; and H&C Milcor, Inc.'s First Request for Production of Documents and Things to Alpha Systems, Inc. The Opposer served its Responses to Applicant's First Set of discovery documents on August 28, 2008, including Opposer's Objections and Responses to Applicant's First Request for Production of Documents and Things to Alpha Systems, Inc.; Opposer's Responses to Applicant's First Set of Interrogatories Nos. 1-31 to Alpha Systems, Inc., and Opposer's Objections and Responses to Applicant's First Set of Requests for Admissions served on July 24, 2008. Opposer, to this day, has not produced any documents.

On August 26, 2008, Opposer served a 30(b)(6) Notice of Deposition on Applicant setting the deposition for September 18, 2008. This counsel informed Opposer's counsel that a Milcor representative would not be available that day. To the present day, Applicant's attorney, despite efforts, has been unable to directly talk with the selected Milcor representative due to his traveling schedule the past ten days -- but he will continue with those efforts.

On September 23, 2008, Applicant served Opposer with six Notices of Depositions scheduled for September 29, 2008 and September 30, 2008 (the closing of discovery) including the following six employees of AS Holdings:

David Smith on September 29, 2008 at 11:00 a.m.
Christopher Kintzele on September 29, 2008 at 3:00 p.m.
Joseph Merryman on September 30, 2008 at 11:00 a.m.
David Smith, III on September 30, 2008 at 1:30 p.m.
Timothy Larson on September 30, 2008 at 2:30 p.m.
Michael Hubbard on September 30, 2008 at 3:30 p.m.

It is not practical or even possible to schedule and complete these depositions within the present discovery period. Since at the present time Applicant has not received any of the requested documents, and Opposer has not been given any dates for his 30(b)(6) deposition, and it is not practical to complete the six employee depositions of AS

Holding within a short time - - - Applicant believes a 30 day extension is insufficient and that at least 60 days is needed.

Opposer's counsel believes an extension is desirable, but has not as yet agreed to the 60 day extension.

For the above reasons, Applicant asks the Board to extend discovery to and including November 29, 2008, and to reset the other dates that hinge on discovery cut-off appropriately.



Dillis V. Allen
Reg. No. 22,460
Attorney for H&C MILCOR, INC.

DATED: September 24, 2008

CERTIFICATE OF SERVICE

This is to certify that on September 24, 2008, Applicant's Motion to Extend the Discovery Period Under 37 CFR 2.127, was filed via Federal Express with the Trademark Trial and Appeal Board and a true and correct copy of said Motion was sent on September 24, 2008, via first-class mail, postage prepaid, to Opposer's counsel as follows:

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