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

Proceeding	91197754
Party	Plaintiff Wolf-Peter Graeser
Correspondence Address	SARAH E TALLENT REINHARDT LLP 44 WALL STREET, 10TH FLOOR NEW YORK, NY 10005 UNITED STATES stallent@reinhardt-law.com
Submission	Motion to Compel Discovery
Filer's Name	Sarah E. Tallent, Esq.
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Signature	/Sarah/Tallent/
Date	09/09/2011
Attachments	09.09.2011_Motion to Compel.pdf (41 pages)(340938 bytes)

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

In the matter of trademark application Serial No.: 76701998

For the mark: LAVATEC
Published in the Official Gazette on November 2, 2010

Mr. Wolf-Peter Graeser,	)	
	)	
the "Opposer",	)	
	)	
v.	)	Opposition No.: 91197754
	)	
Lavatec, Inc.	)	
	)	
the "Applicant"	)	

MOTION TO COMPEL AND ORDER FOR ADMISSIONS

Opposer Wolf-Peter Graeser, requests the Board to issue an Order compelling the Applicant to respond to Opposer"s First Set of Interrogatories to Applicant (Exhibits 1) and Opposer's First Set of Document Requests to Applicant (Exhibit 2) without objections.

Applicant also requests an order from the Board declaring Opposer's First Set of Requests for Admission (Exhibit 3) to have been admitted pursuant to FRCivP 36(a)(3).

In support of this motion, Opposer shows the Board as follows:

1. On July 29, 2011, Opposer served its First Set of Interrogatories to Applicant, First Set of Document Requests to Applicant and First Set of Requests for Admission on Applicant (collectively the "Discovery Requests") by electronic transmission.

2. Electronic transmission had previously been requested by Applicant's counsel and consented to by Opposer's counsel.

3. Applicant's response to the Discovery Requests was due on August 29, 2011.

4. Since the parties agreed to electronic service, the five day grace period for responding to discovery requests provided for by TBMP 113.05 does not apply (*See* Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42250 (August 1, 2007))

5. On September 2, 2011, Opposer's counsel notified Applicant's counsel that the time for responding to the Discovery Requests had passed and that Applicant had neither requested an extension of the time to respond nor provided any response or update on the status of Applicant's responses (Exhibit 4).

6. Late on September 2, 2011, Applicant provided partial responses to the Discovery Requests via email, however, the documents received lacked any of the documents referenced in the responses, making the responses largely unintelligible.

7. It was not until September 6, 2011, that Opposer received hard copies of the documents referenced in Applicant's responses to the Discovery Requests via Federal Express. Despite the fact that the parties had previously agreed to exchange documents in electronic format where possible, Applicant only provided hard copies via Federal Express. The documents provided could have easily been transmitted in electronic format via email and/or on a CD Rom/Flash Drive, as Opposer had done for Applicant.

8. On September 6, 2011, Applicant's counsel admitted that Applicant's responses to the Discovery Requests were late (Exhibit 5).

9. On September 7, 2011, Opposer's counsel contacted Applicant's counsel to attempt discuss the issue of Applicant's tardy response to the Discovery Requests (Exhibit 6).

10. On September 8, 2011, in a display of what can only be described as double standards, Applicant's counsel had the audacity to request that Opposer's counsel grant a five-day extension to render Applicant's responses to the Discovery Requests timely (Exhibit 7).

11. It should be noted that on August 2, 2011, Applicant's counsel filed an unnecessary and purely retaliatory Motion to Compel and Order for Admissions against Opposer for Opposer's alleged untimely response to Applicant's first round of discovery requests ("Applicant's Motion"). Per Opposer's opposition to Applicant's Motion, Opposer maintains that Applicant filed Applicant's Motion prior to the expiration of the extension granted to Opposer by Applicant and that in any case, Applicant failed to act reasonably under the circumstances since Opposer was diligently working to respond to Applicant's discovery requests (which required time due to the fact that the requests covered the period from 1986 through 2011 and all records were in German and located in Germany).

12. On September 8, 2011, Opposer's counsel responded to Applicant's counsel by proposing a reasonable compromise whereby Applicant would withdraw Applicant's motion and Opposer would forego filing this Motion (Exhibit 8), thus continuing its good faith effort to resolve the issues before filing this Motion.

13. On September 8, 2011, Applicant's counsel summarily rejected Opposer's proposal and yet again slammed the door shut on a fair compromise that any reasonable attorney would have agreed to (Exhibit 9). Applicant's counsel's response was a clear indication that any further negotiation would be futile.

Relief Requested

In view of Applicant's failure to respond, Opposer seeks an order compelling Applicant to respond by providing complete responses to Opposer's First Set of Interrogatories and First Set of Document Requests pursuant to the Instructions and Definitions given and without interposing objections. Applicant also seeks an order deeming Applicant's First Set of Requests for Admission admitted pursuant to FRCivP 36(a)(3).

Dated: New York, New York

September 9, 2011

Respectfully submitted.

/s/ Andrea Fiocchi
Andrea Fiocchi, Esq.
Sarah E. Tallent, Esq.
44 Wall Street, 10th Fl
New York, NY 10005
(212) 710-0970

Attorneys for Opposer,
Wolf-Peter Graeser

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Compel and Order for Admissions was served on Applicant at the correspondence address of record by email addressed to:

lind@ip-lawyers.com

On September 9, 2011 By: /s/ Sarah E. Tallent

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

In the matter of trademark application Serial No.: 76701998

For the mark: LAVATEC
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the "Opposer",	)	
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v.	)	Opposition No.: 91197754
	)	
Lavatec, Inc.	)	
	)	
the "Applicant"	)	

OPPOSER'S FIRST SET OF INTERROGATORIES TO OPPOSER

Pursuant to F.R.Civ.P. 33 and 37 C.F.R. §2.120(d), Opposer, Wolf-Peter Graeser, sets forth below its First Set of Interrogatories, and requests that Applicant, Lavatec, Inc., answer the following interrogatories separately and fully, in writing, under oath.

Instructions

1. With respect to the answer to each interrogatory or subpart thereof, identify the source of the information given therein, including, without limitation, the nature, designation, and location of any files that contain such information and the custodian of the files, and identify each document which supports in whole or in part the answer to each interrogatory.

2. Where an identified document is in a language other than English, in whole or in part, and an English translation(s) exists in whole or in part, supply the original and the English translation of the document. If such a translation exists but

is not in control of the Applicant, supply the name and address of the person or entity who has possession of the translation.

3. If a request is made for production of documents which are no longer in the possession, custody and/or control of the Applicant, state when such documents were most recently in the possession, custody and/or control of the Applicant and what dispositions were made of them, when, why, and by whom, and include the identity of the person believed to be presently in possession, custody and/or control of the documents. If a document has been destroyed, state when such document was destroyed, identify the person who destroyed the document, and the person(s) who directed that the document be destroyed and the reasons the document was destroyed.

4. If you elect to avail yourself of the procedure for answering interrogatories authorized by Rule 33(d) of the Federal Rules of Civil Procedure, for each interrogatory and subpart thereof, specify the particular documents responsive to that specific interrogatory and subpart thereof and, for each document, specify the location or source of the document, the author, recipients, and the date of preparation if not apparent from the face of the document.

5. As to each record or document from which you obtained information used in answering these Interrogatories, please state:

a. A description sufficient for a subpoena duces tecum; and

b. The name and most recent available address and telephone number of each person and entity having custody of the original and any copy thereof.

6. Any Interrogatory propounded in the disjunctive shall be construed to include the conjunctive and vice versa.

7. Any Interrogatory propounded in the masculine shall be construed to include the feminine and neuter.

8. The use of the singular form of any word shall be construed to include the plural and vice versa.

9. Each Interrogatory which seeks information relating in any way to communications to, from, or within a business and/or corporate entity concerning particular subject matter should be construed to include all communications by and between representatives, employees, agents and/or servants of the business or corporate entity concerning that subject matter.

10. A draft or non-identical copy of a "document" constitutes a separate document and should be separately identified in a response to an Interrogatory or Request inquiring into documents.

11. "To identify" (with respect to persons) means to give, to the extent known, (a) the person's full name; (b) present or last known address; and (c) when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

12. "To identify" (with respect to documents) means to give, to the extent known, (a) the type of document; (b) general subject matter; (c) date of the document; (d) author(s), addressee(s), recipient(s) of the document; and (e) English translations thereof if the document is a non-English document.

13. "To identify" (with respect to acts) means to state how, when, and where the acts took place, and to identify the person(s) involved and all documents relating to and confirming the acts.

14. Responses to Interrogatories seeking the identity of documents should include the custodian of the documents.

15. When an Interrogatory calls upon a party to "state the basis" of or for a particular claim, assertion, allegation, contention, or other response, the party shall

a. identify with particularity each and every document (and, where pertinent, the section, article, or paragraph thereof), which forms any part of the source of the party's information regarding the alleged facts or legal conclusion referred to by the Interrogatory;

b. identify with particularity each and every communication which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the Interrogatory;

c. state separately the acts or omissions to act on the part of any person (identifying the acts or omissions to act by stating their nature, time, and place and identifying the person(s) involved) which form any part of the party's information regarding the alleged facts or legal conclusions referred to in the Interrogatory; and

d. state separately any other fact which forms the basis of the party's information regarding the alleged facts or conclusions referred to in the Interrogatory.

16. All Interrogatories propounded shall be deemed continuing and as such require supplementary answers if further or different information is learned after the filing of answers.

17. For each claim of privilege in connection with the withholding of a document, please identify each document by date, authors, recipients, the type of document (letter, memo, drawing, chart or e-mail), the general subject matter in sufficient detail to ascertain whether the document qualifies for withholding as privileged, and the custodian of the document.

Definitions

As used herein, the term(s):

1. "Document" or "record" is used in its broadest sense to mean every writing or recording of every type described in Rule 34 of the Federal Rules of Civil Procedure, and any written, typed, printed, recorded or graphic matter, however produced or reproduced, of any kind and description, whether sent, received, or neither, and all copies which differ in any way from the original (whether by interlineations, stamped received, notation, indication of copy sent or received, or otherwise) regardless of whether designated confidential, privileged or otherwise, and whether an original, master, duplicate or copy, including, but not limited to, papers, notes, account statements or summaries, ledgers, pamphlets, periodicals, books, advertisements, objects, letters, memoranda, notes or notations of conversations, contracts, agreements, drawings, telegraphs, tape recordings, communications, including interoffice and intra-office memoranda, delivery tickets,

bills of lading, invoices, quotations, claims documents, reports, records, studies, work sheets, working papers, corporate records, minutes of meetings, circulars, bulletins, notebooks, bank deposit slips, bank checks, canceled checks, check stubs, diaries, diary entries, appointment books, desk calendars, data processing cards, discs, CDs, and/or tapes, e-mails, facsimiles, computer readable database information, photographs, videotapes, transcriptions or sound recordings of any type of personal or telephone conversations, interviews, negotiations, meetings or conferences, or any other records similar to any of the foregoing.

2. "Things" shall have the meaning prescribed by Rule 34 of the Federal Rules of Civil Procedure.

3. "Person" refers to any natural person or any business, legal or government entity, or association.

4. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

5. "Communication" means any words heard, spoken, written or read, regardless of whether designated confidential, privileged or otherwise, and including, without limitation words spoken or heard at any meeting, discussion, interview, encounter, conference, speech, conversation or other similar occurrence, and words written or read from any document(s) as described above.

6. "Date" shall mean the exact day, month and year, if ascertainable, or if not, the best approximation thereof (including dating by relationship to other events).

7. "Explaining," "describing," "defining," "concerning," "reflecting" or "relating to" when used separately or in conjunction with one another mean directly

or indirectly mentioning, pertaining to, involving, being connected with or embodying in any way or to any degree the stated subject matter.

8. “Exhibit” means, unless otherwise indicated, all documentary, tangible or other similar things as defined above of any kind or character, within or outside the plaintiff’s possession, custody or control which will be used at trial to prove any claims.

9. “And” and “or” as used in this set of Interrogatories are not intended as words of limitation. Any verb in the present tense shall also be taken in the past, imperfect and future tenses, and vice-versa.

10. “Opposer” means Wolf-Peter Graeser, unless otherwise indicated.

11. “Applicant” means Lavatec, Inc., including all present or former directors, partners, officers, employees, and any attorney or third party acting on Applicant's behalf.

12. “Lavatec GmbH” refers to a German company and its predecessor Lavatec AG.

13. The "'998 Application" refers to Applicant's Trademark Application Serial No. 76/701,998 filed March 11, 2010 seeking registration of the mark LAVATEC in non-stylized form for the goods and/or services identified therein.

14. The "'139 Application" refers to Opposer's Trademark Application No.85/138,139 filed September 24, 2010 seeking registration of the mark LAVATEC in non-stylized form for the goods and/or services identified therein.

15. All other words, terms and phrases are to be given their normal meaning.

INTERROGATORIES

1. Please identify all persons who were consulted and/or provided information to answer these interrogatories, identifying by number the interrogatory or interrogatories for which he or she was consulted and provided information and identifying with specificity all documents obtained from such person.

2. Please identify all persons with knowledge of any of the allegations in Applicant's 998 Application.

3. Please describe in detail the history of the mark LAVATEC, including how Applicant designed the mark LAVATEC, how Applicant decided to adopt and use the mark LAVATEC, and all subsequent changes to the way the mark LAVATEC was depicted on Applicant's products and marketing and advertising materials, and identify each and every person with knowledge of such history.

4. Please explain in detail when and how Applicant first designed, manufactured and sold each of the following items: dry-cleaning machines; washing machines for clothing; folders, namely, electric clothes folding machines for commercial dry cleaning and laundry purposes; electric clothing pressing machines for commercial dry cleaning and laundry purposes including shirt press, collar and cuff press, utility press, legger press, drapery press, pants topper, mushroom topper, puff iron and clothes dryers, and identify each and every person with knowledge of such facts.

5. Please explain in detail how Applicant was using the mark LAVATEC on February 15, 1987, including where and by whom the materials and/or products bearing the mark LAVATEC were designed and produced.

6. Please identify all individuals affiliated with Applicant who had contact with Lavatec GmbH prior to February 15, 1987.

7. Please identify all individuals who contributed to the design of the LAVATEC mark and/or logo.

8. Please explain in detail where each of the products sold by Applicant under the mark LAVATEC was manufactured and/or purchased. From February 15, 1987 to date

9. Please explain how Applicant made it possible for the mark LAVATEC to acquire substantial customer recognition throughout the United States from February 15, 1987 to date.

10. Please explain how Applicant affixed the mark LAVATEC to the products sold from February 15, 1987 to date, including who designed and manufactured the product tags attached to the amendment to Application 998 submitted on August 25, 2010.

11. Please explain who designed the product brochure attached to the original Application 998, including: (i) where the machines photographed on pages 1,2,5,7 through 12 were designed, manufactured and located, (ii) why there is an image of Euro currency bills on the brochure, (iii) why all measurements are in metric units, rather than U.S. units and (iv) why Lavatec GmbH's brochures are identical to Applicants (bar the contact information).

12. Please explain the basis for Peter Thompson's declaration under penalty of perjury that nobody other than Applicant has a claim to ownership of the mark LAVATEC.

13. Please describe in detail the history of the relationship between Applicant and Lavatec GmbH from February 15, 1987 to date and identify each and every person with knowledge of such history.

14. Please explain how Applicant was authorized by Lavatec GmbH to make use of the Mark from February 15, February 15, 1897 to date.

15. Please explain what Applicant considers to be the source of the products sold under the LAVATEC mark.

16. Please explain who has controlled the nature and quality of each of the products sold under the LAVATEC mark since February 15, 1987.

17. Please describe in detail how and by whom sales literature, marketing material, trade show stands/booths, trade dress, packaging, labels, product designs, instruction manuals, catalogs, brochures, flyers, logos and all other sales, promotional and product information was designed and produced from 1987 to date.

18. Please explain how Applicant provided technical, start up and after sales product support to its customers from February 15, 1987 to date, including its use of technicians from Lavatec GmbH.

19. Please explain how and by whom Applicant's staff were trained regarding the characteristics of the products sold by the Applicant and how and by whom Applicant's service technicians were trained to start-up, service, diagnose and repair the products sold by Applicant.

20. Please explain how Applicant provided quotes for customers requesting custom designs or modifications to its products from February 15, 1987 to date, including whether communications were exchanged with Lavatec GmbH when preparing quotes.

21. Please explain why Applicant did not seek to register the LAVATEC mark prior to March 2010, if it believed it was the owner of the LAVATEC mark since February 15, 1987.

22. Please explain who authorized the filing of the 998 Application and what was the basis of Applicant's belief that it was authorized to register the LAVATEC mark without the consent of Lavatec GmbH.

Respectfully submitted,

Wolf-Peter Graeser

Dated July 29, 2011

By: s/ Andrea Fiocchi

Andrea Fiocchi, Esq.
Sarah E. Tallent, Esq.
44 Wall Street, 10th Fl
New York, NY 10005
(212) 710-0970

afiocchi@reinhardt-law.com
stallent@reinhardt-law.com

Attorneys for Opposer,
Wolf-Peter Graeser

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT** was served on Applicant at the correspondence address of record by email addressed to:

lind@ip-lawyers.com

On July 29, 2011

By: /s/ Andrea Fiocchi

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v.	)	Opposition No.: 91197754
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Lavatec, Inc.	)	
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the "Applicant"	)	

OPPOSER'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT

Pursuant to F.R.Civ.P. 34 and 37 C.F.R. §2.120(d), Opposer, Wolf-Peter Graeser., sets forth below its First Set of Document Requests, and requests that Applicant, Lavatec, Inc. answer the following interrogatories separately and fully, in writing, under oath.

Instructions

1. Where an identified document is in a language other than English, in whole or in part, and an English translation(s) exists in whole or in part, supply the original and the English translation of the document. If such a translation exists but is not in control of the Applicant, supply the name and address of the person or entity who has possession of the translation.

2. If a request is made for production of documents which are no longer in the possession, custody and/or control of the Applicant, state when such documents were most recently in the possession, custody and/or control of the

Applicant and what dispositions were made of them, when, why, and by whom, and include the identity of the person believed to be presently in possession, custody and/or control of the documents. If a document has been destroyed, state when such document was destroyed, identify the person who destroyed the document, and the person(s) who directed that the document be destroyed and the reasons the document was destroyed.

3. If you elect to avail yourself of the procedure for answering interrogatories authorized by Rule 33(d) of the Federal Rules of Civil Procedure, for each interrogatory and subpart thereof, specify the particular documents responsive to that specific interrogatory and subpart thereof and, for each document, specify the location or source of the document, the author, recipients, and the date of preparation if not apparent from the face of the document.

4. Any Request propounded in the disjunctive shall be construed to include the conjunctive and vice versa.

5. Any Request propounded in the masculine shall be construed to include the feminine and neuter.

6. The use of the singular form of any word shall be construed to include the plural and vice versa.

7. Each Request which seeks information relating in any way to communications to, from, or within a business and/or corporate entity concerning particular subject matter should be construed to include all communications by and between representatives, employees, agents and/or servants of the business or corporate entity concerning that subject matter.

8. A draft or non-identical copy of a "document" constitutes a separate document and should be separately identified in a response to a Request inquiring into documents.

9. "To identify" (with respect to persons) means to give, to the extent known, (a) the person's full name; (b) present or last known address; and (c) when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

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11. "To identify" (with respect to acts) means to state how, when, and where the acts took place, and to identify the person(s) involved and all documents relating to and confirming the acts.

12. All Requests propounded shall be deemed continuing and as such require supplementary answers if further or different information is learned after the filing of answers.

13. For each claim of privilege in connection with the withholding of a document, please identify each document by date, authors, recipients, the type of document (letter, memo, drawing, chart or e-mail), the general subject matter in sufficient detail to ascertain whether the document qualifies for withholding as privileged, and the custodian of the document.

Definitions

As used herein, the term(s):

1. "Document" or "record" is used in its broadest sense to mean every writing or recording of every type described in Rule 34 of the Federal Rules of Civil Procedure, and any written, typed, printed, recorded or graphic matter, however produced or reproduced, of any kind and description, whether sent, received, or neither, and all copies which differ in any way from the original (whether by interlineations, stamped received, notation, indication of copy sent or received, or otherwise) regardless of whether designated confidential, privileged or otherwise, and whether an original, master, duplicate or copy, including, but not limited to, papers, notes, account statements or summaries, ledgers, pamphlets, periodicals, books, advertisements, objects, letters, memoranda, notes or notations of conversations, contracts, agreements, drawings, telegraphs, tape recordings, communications, including interoffice and intra-office memoranda, delivery tickets, bills of lading, invoices, quotations, claims documents, reports, records, studies, work sheets, working papers, corporate records, minutes of meetings, circulars, bulletins, notebooks, bank deposit slips, bank checks, canceled checks, check stubs, diaries, diary entries, appointment books, desk calendars, data processing cards, discs, CDs, and/or tapes, e-mails, facsimiles, computer readable database information, photographs, videotapes, transcriptions or sound recordings of any type of personal or telephone conversations, interviews, negotiations, meetings or conferences, or any other records similar to any of the foregoing.

2. "Things" shall have the meaning prescribed by Rule 34 of the Federal Rules of Civil Procedure.

3. "Person" refers to any natural person or any business, legal or government entity, or association.

4. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

5. "Communication" means any words heard, spoken, written or read, regardless of whether designated confidential, privileged or otherwise, and including, without limitation words spoken or heard at any meeting, discussion, interview, encounter, conference, speech, conversation or other similar occurrence, and words written or read from any document(s) as described above.

6. "Date" shall mean the exact day, month and year, if ascertainable, or if not, the best approximation thereof (including dating by relationship to other events).

7. "Explaining," "describing," "defining," "concerning," "reflecting" or "relating to" when used separately or in conjunction with one another mean directly or indirectly mentioning, pertaining to, involving, being connected with or embodying in any way or to any degree the stated subject matter.

8. "Exhibit" means, unless otherwise indicated, all documentary, tangible or other similar things as defined above of any kind or character, within or outside the plaintiff's possession, custody or control which will be used at trial to prove any claims.

9. "And" and "or" as used in this set of Interrogatories are not intended as words of limitation. Any verb in the present tense shall also be taken in the past,

imperfect and future tenses, and vice-versa.

10. “Opposer” means Wolf-Peter Graeser, unless otherwise indicated.

11. “Applicant” or “You” means Lavatec, Inc., including all present or former directors, partners, officers, employees, and any attorney or third party acting on Applicant's behalf.

12. “Lavatec GmbH” refers to a German company and its predecessor Lavatec AG.

13. The "'998 Application" refers to Applicant's Trademark Application Serial No. 76/701,998 filed March 11, 2010 seeking registration of the mark LAVATEC in non-stylized form for the goods and/or services identified therein.

14. The "'139 Application" refers to Opposer's Trademark Application No.85/138,139 filed September 24, 2010 seeking registration of the mark LAVATEC in non-stylized form for the goods and/or services identified therein.

15. All other words, terms and phrases are to be given their normal meaning.

DOCUMENT REQUESTS

1. All documents referenced in or relating to the allegations contained in the 998 Application.

2. All documents referenced in or relating to the allegations contained in Applicant’s Answer.

3. All documents supporting Applicant’s allegations in the 998 Application that Applicant used the LAVATEC mark in commerce since February 15, 1987.

4. All documents supporting Applicant's allegations that it was the first to use the LAVATEC mark in the United States.

5. All documents, including communications, between Applicant and any third party (including Lavatec GmbH and the bankruptcy trustee of Lavatec GmbH) regarding ownership and/or registration of the LAVATEC mark.

6. All documents supporting Applicant's allegations that it uses the LAVATEC mark in connection with each of the products and services listed in the 998 Application.

7. All documents showing that Applicant designed the brochure attached to the 998 Application and who designed such brochure for Applicant.

8. All documents showing that Applicant designed the tags/labels attached to the amendment to the 998 Application and who designed such tags/labels for Applicant.

9. All documents indicating that Applicant has and had control over the nature and quality and appearance of all products and services sold by Applicant under the LAVATEC mark since 1987.

10. All documents indicating how Applicant used the LAVATEC mark in 1987.

11. All documents indicating from whom the products sold by Applicant under the mark LAVATEC were supplied.

12. All documents indicating how the mark LAVATEC and the LAVATEC logo were invented, developed, designed and/or adopted by Applicant.

11. All documents used by Applicant to market, publicize and/or promote products sold by Applicant under the LAVATEC mark that were produced without the direct or indirect input, contribution and/or approval of LAVATEC GmbH.

12. All documents, including communications, showing service calls to Applicant's customers which were carried out by staff, independent contractors and/or representatives of LAVATEC GmbH.

13. All documents, including communications, relating to the quoting, order and purchase of products and services sold under the LAVATEC mark by Applicant from LAVATEC GmbH and third parties.

14. All documents, including communications, relating to the shipment of goods sold by Applicant under the LAVATEC mark to Applicant's customers.

15. All documents showing Applicant's initial customer list in the United States and all documents showing how such list was devised.

16. All documents showing Applicant's design of its product labels and logos.

17. All documents supporting Applicant's claim of ownership of the LAVATEC mark.

18. All documents granting and/or indicating that Applicant has the exclusive right to use the LAVATEC mark in the United States.

19. All documents showing that Lavatec GmbH used the mark LAVATEC in the United States prior to February 15, 1987.

Respectfully submitted,

Wolf-Peter Graeser

Dated July 29, 2011

By: s/ Andrea Fiocchi

Andrea Fiocchi, Esq.
Sarah E. Tallent, Esq.
44 Wall Street, 10th Fl
New York, NY 10005
(212) 710-0970

afiocchi@reinhardt-law.com
stallent@reinhardt-law.com

Attorneys for Opposer,
Wolf-Peter Graeser

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT** was served on Applicant at the correspondence address of record by email addressed to:

lind@ip-lawyers.com

On July 29, 2011

By: /s/ Andrea Fiocchi

THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Mr. Wolf-Peter Graeser,	)	
	)	
the "Opposer",	)	
	)	
v.	)	Opposition No.: 91197754
	)	
Lavatec, Inc.	)	
	)	
the "Applicant"	)	

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

Pursuant to F.R.Civ.P. 36 and 37 C.F.R. §2.120, Opposer, Wolf-Peter Graeser., submits the following Requests for Admissions to be responded to by Applicant, Lavatec, Inc.

INSTRUCTIONS AND DEFINITIONS

The Instructions and Definitions in Opposer's First Set of Interrogatories to Applicant also apply to Applicant's First Set of Requests for Admission, and are incorporated herein by reference.

ADMISSION REQUESTS

1. Applicant never designed or manufactured any of the following: dry-cleaning machines; electric clothing pressing machines for commercial dry cleaning and laundry purposes including shirt press, collar and cuff press, utility press, legger press, drapery press, pants topper, mushroom topper, puff iron and clothes dryers.

2. Applicant never sold any dry-cleaning machines; electric clothing pressing machines for commercial dry cleaning and laundry purposes including shirt press, collar and cuff press, utility press, legger press, drapery press, pants topper, mushroom topper, puff iron and clothes dryers under the mark LAVATEC.

3. Applicant never manufactured or sold folders prior to 1991.

4. Applicant never manufactured any washer extractors prior to 1997.

5. Applicant manufactured no more than 8 washer extractors.

6. The washer extractors manufactured by Applicant were designed by Lavatec GmbH and not by Applicant.

7. Applicant made no further washer extractors after 1997.

8. Applicant never manufactured any other types of washing machines.

9. Prior to 1991 Applicant purchased all products sold bearing the mark LAVATEC from Lavatec GmbH.

10. Prior to January 1, 1997 and after December 31, 1997 Applicant purchased all products sold bearing the mark LAVATEC other than folding machines from Lavatec GmbH.

11. Applicant did not invent the tradename LAVATEC.

12. Applicant commenced using the tradename LAVATEC because that was the name of its sole shareholder.

13. Applicant did not design or modify any logo containing the mark LAVATEC.

14. Applicant was a distributor of products for Lavatec GmbH (and its predecessor).

15. Applicant followed instructions on business decisions from Lavatec GmbH.

16. Applicant's management reported to Lavatec GmbH.

17. Prior to 2009, Applicant's senior management was controlled by the same individual(s) as Lavatec GmbH.

18. Prior to 2009, Applicant never took any major business decisions without the authorization of the management of Lavatec GmbH.

19. Most products sold by Applicant to U.S. customers were shipped directly to the customers from Lavatec GmbH.

20. Applicant was dependent upon Lavatec GmbH for the design, manufacture and sale of products.

21. If Applicant's customers requested a custom product, Applicant contacted Lavatec GmbH to determine whether the customer's needs could be accommodated.

22. Staff from Lavatec GmbH were sent to service the needs of Applicant's customers in the United States.

23. Staff from Lavatec GmbH were sent to service the needs of customers in the United States prior to February 15, 1987.

24. Applicant is not the successor in interest of Lavatec GmbH.

25. Applicant never purchased the mark LAVATEC from Lavatec GmbH.

26. Applicant never discussed registration of the LAVATEC mark in the United States with Lavatec GmbH or the bankruptcy trustee of Lavatec GmbH.

27. Applicant never requested authorization to register the LAVATEC mark from Lavatec GmbH.

28. Applicant never received authorization to register the LAVATEC mark.

29. Lavatec GmbH never assigned the mark LAVATEC to Applicant.

30. Applicant never made independent use of the mark LAVATEC.

Respectfully submitted,

Wolf-Peter Graeser

Dated July 29, 2011

By: s/ Andrea Fiocchi

Andrea Fiocchi, Esq.
Sarah E. Tallent, Esq.
44 Wall Street, 10th Fl
New York, NY 10005
(212) 710-0970

afiocchi@reinhardt-law.com
stallent@reinhardt-law.com

Attorneys for Opposer,
Wolf-Peter Graeser

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT** was served on Applicant at the correspondence address of record by email addressed to:

lind@ip-lawyers.com

On July 29, 2011

By: /s/ Andrea Fiocchi

Sarah E. Tallent

From: Sarah E. Tallent [stallent@reinhardt-law.com]
Sent: Friday, September 02, 2011 11:18 AM
To: 'lind@ip-lawyers.com'
Cc: 'twilley@ip-lawyers.com'; 'Andrea Fiocchi'; 'Kai N. Livramento'
Subject: Lavatec Opposition - Discovery

Mr. Linderman:

Applicant's deadline to respond to Opposer' first round of discovery requests has come and gone and we have neither received any responses nor any request for an extension of the time to respond.

Please advise as soon as possible.

Very truly yours,

Sarah E. Tallent
Attorney at Law

Reinhardt LLP
44 Wall Street - 10th Fl.
New York, NY 10005

Ph: (212) 710-0970
Fax: (212) 710-0971
Email: stallent@reinhardt-law.com

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Sarah E. Tallent

From: John Linderman [lind@ip-lawyers.com]
Sent: Tuesday, September 06, 2011 10:09 AM
To: Sarah Tallent
Subject: Re: Lavatec Opposition - Discovery

Sarah:

My mistake. I was going by FRCivP 6(d). So what do you want to do?

John C. Linderman
+===+
Intellectual Property Law
Patents, Trademarks, Copyrights,
Computer Law, Trade Secrets,
Technology Transfer
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McCormick, Paulding & Huber
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185 Asylum Street
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Please visit our WEB SITE: http://www.ip-Lawyers.com
+===+
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+===+

From: Sarah Tallent <stallent@reinhardt-law.com>
Date: Fri, 2 Sep 2011 17:14:26 -0400
To: "John C. Linderman" <lind@ip-lawyers.com>
Cc: Andrea Fiocchi <afiocchi@reinhardt-law.com>
Subject: RE: Lavatec Opposition - Discovery

John:

Please see below:

403.03 Time for Service of Discovery Responses

37 CFR § 2.120(a)(3) ... Responses to interrogatories, requests for production of documents and things, and requests for admission must be served within thirty days from the date of service of such discovery requests. Chapter 400-28 Responses to interrogatories, requests for production of documents and things, and requests for admission must be served within thirty days after the date of service of the request for discovery. [Note 1.] If service of the request for discovery is made by first-class mail, "Express Mail," or overnight courier, the date of mailing or of delivery to the overnight courier is considered to be the date of service, and five extra days are allowed for responding to the request. [Note 2.] See TBMP § 113.05. If the parties agree to electronic service (e.g., by e-mail, facsimile) the five
extra day grace period does not apply. [Note 3.] Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42250 (August 1, 2007).

Our position is that your responses are not timely.

Very truly yours,

Sarah E. Tallent

Attorney at Law

Reinhardt LLP

44 Wall Street - 10th Fl.

New York, NY 10005

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From: John Linderman [mailto:lind@ip-lawyers.com]
Sent: Friday, September 02, 2011 5:10 PM
To: Sarah Tallent
Subject: Re: Lavatec Opposition - Discovery

Sarah:

I don't know what you are relying upon when you say the five days do not apply. The rules permit electronic service if the parties agree, as we did in our discovery conference. Nothing was stated about the service time not being extended the usual five days. See your email of March 2, 2011.

In our discovery conference we also agreed to permit electronic exchange of documents as long as the documents could be read by the receiving party, but nothing required electronic exchange. In fact that is sometimes not possible with certain documents, or can only be done with great difficulty, your own production of Exhibit 24 being an example. Again see your email of March 2, 2011.

Since we are producing our documents in hard copy and I don't have the production documents in electronic form, I will not be sending electronic copies.

John C. Linderman
+===+
Intellectual Property Law
Patents, Trademarks, Copyrights,
Computer Law, Trade Secrets,
Technology Transfer
+===+
McCormick, Paulding & Huber
CityPlace II
185 Asylum Street
Hartford, Connecticut 06103
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lind@ip-lawyers.com

Please visit our WEB SITE: http://www.ip-Lawyers.com
+===+
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+===+

From: Sarah Tallent <stallent@reinhardt-law.com>
Reply-To: Sarah Tallent <stallent@reinhardt-law.com>
Date: Fri, 2 Sep 2011 16:31:34 -0400
To: "John C. Linderman" <jlind@ip-lawyers.com>
Cc: Andrea Fiocchi <afiocchi@reinhardt-law.com>, Kai Livramento <klivramento@reinhardt-law.com>
Subject: Re: Lavatec Opposition - Discovery

John:30-days from July 29th is August 28th. Your response was due on August 29th at the latest.Opposer's discovery requests were made by electronic service, therefore, the 5-day grace period does not apply. Your responses are late.Can I presume that you are forwarding documents to us electronic format as agreed? Regards,Sarah E. TallentAttorneyReinhardt LLP44 Wall Street - 10th Fl.New York, NY 10005 Ph: (212) 710-0970Fax: (212) 710-0971Email: stallent@reinhardt-law.comWeb: www.reinhardt-law.com New York ♦ Denver ♦ StuttgartPRIVILEGED AND CONFIDENTIALNOTICE: This message (and any attachments) contains information that is confidential, privileged and/or protected from disclosure under applicable law and is intended for the exclusive use of the party named on the message. If you are not the intended recipient, disclosure, copying, use or distribution of the information included in this message (and any attachments) is not authorized and may be unlawful. If you have received this document in error, please notify the sender immediately by return email and then destroy the original and any electronic or paper copy of this message.The content of this email does not create an attorney-client relationship and the recipient of this email should not rely solely upon the information provided herein.TAX ADVICE DISCLAIMER: Please be aware that any advice contained in this email or any attachment hereto is not intended to be used, and cannot be used, either (a) for purposes of avoiding penalties imposed under the Internal Revenue Code, or (b) promoting, marketing, or recommending to another party any tax-related matter addressed herein.

Sent via BlackBerry by AT&T

Sarah E. Tallent

From: Sarah E. Tallent [stallent@reinhardt-law.com]
Sent: Wednesday, September 07, 2011 10:37 PM
To: 'John Linderman'
Cc: 'Esq.Andrea Fiocchi'
Subject: RE: Lavatec Opposition - Discovery

Mr. Linderman:

I believe we made our position regarding Applicant's failure to comply with its deadline clear last week. Under the circumstances, unless the parties stipulate otherwise, the appropriate course of action is to file a Motion to Compel and Order for Admissions.

Very truly yours,

Sarah E. Tallent
Attorney at Law

Reinhardt LLP
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Sarah E. Tallent

From: John Linderman [lind@ip-lawyers.com]
Sent: Thursday, September 08, 2011 9:04 AM
To: Sarah Tallent
Subject: Re: Lavatec Opposition - Discovery

Sarah:

I suggest that you do as I did when you were late and extend the professional courtesy of a five day extension. That would eliminate the motion practice and cost to your client.

John C. Linderman
+===+
Intellectual Property Law
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Computer Law, Trade Secrets,
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lind@ip-lawyers.com

Please visit our WEB SITE: http://www.ip-Lawyers.com
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+===+

Sarah E. Tallent

From: Sarah E. Tallent [stallent@reinhardt-law.com]
Sent: Thursday, September 08, 2011 1:54 PM
To: 'John Linderman'
Cc: 'Andrea Fiocchi'
Subject: RE: Lavatec Opposition - Discovery

Mr. Linderman:

You actually attempted to reduce our client's time to respond rather than granting any extension. Professional courtesy was certainly not extended by your Firm. Furthermore, you never asked for an extension, you simply failed to respond within the prescribed period.

Notwithstanding the foregoing, if you are prepared to withdraw your pending motion then we will request our client's consent to forego filing a motion with respect to your client's tardy responses. Otherwise we'll leave it up to the Board to settle this matter.

Please advise.

Sarah E. Tallent
Attorney at Law

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Sarah E. Tallent

From: John Linderman [lind@ip-lawyers.com]
Sent: Thursday, September 08, 2011 3:32 PM
To: Sarah Tallent
Cc: Andrea Fiocchi
Subject: Re: Lavatec Opposition - Discovery

Sarah:

The first two statements in your first paragraph are false. I will not consent to your attempt to rewrite history and will keep in mind your failure to recognize professional courtesy when it is extended to you.

I will not withdraw my pending motion for a number of reasons, not the least of which are your distortions.

John C. Linderman
+===+
Intellectual Property Law
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Computer Law, Trade Secrets,
Technology Transfer
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