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Filing date: **04/18/2012**

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

Proceeding	91197754
Party	Defendant Lavatec, Inc.
Correspondence Address	JOHN C LINDERMAN MCCORMICK PAULDING HUBER LLP 185 ASYLUM STREET, CITY PLACE II HARTFORD, CT 06103-3410 UNITED STATES lind@ip-lawyers.com, twilley@ip-lawyers.com
Submission	Motion to Compel Discovery
Filer's Name	John C. Linderman
Filer's e-mail	lind@ip-lawyers.com
Signature	/John C. Linderman/
Date	04/18/2012
Attachments	Fourthmotioncompel.pdf (28 pages)(1064952 bytes)

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

In the matter of Trademark Application No. 76701998
for the mark: LAVATEC
Published on November 2, 2010

Wolf-Peter Graeser,)	
)	
Opposer)	
)	Opposition No. 91197754
v.)	
)	
Lavatec, Inc. (fka Laundry Acquisition Inc.)))	
)	
Applicant)	

APPLICANT'S FOURTH MOTION TO COMPEL

Applicant Lavatec, Inc., formerly known as Laundry Acquisition Inc., requests the Board to issue an Order compelling the Opposer to respond fully to Applicant's Interrogatory 10 as applied to Admission Request 20 (Exhibit 1), and compelling Opposer to respond substantively to Admission Requests 21 and 22 (Exhibits 2 and 3). If Request 21 or 22 is denied in whole or in part, Opposer should also respond completely and substantively to Interrogatory 10 as it applies to Request 21 or 22 without objection.

FACTUAL BACKGROUND

Applicant Lavatec, Inc. issued certain interrogatories, document requests and admission requests to Opposer on September 28, 2011. Interrogatory 10 requested an explanation for any admission request that was denied in whole or in part. Opposer responded on October 28, 2011 with a denial of Admission Request 20, and a series of improper objections to Admission Requests 21 and 22.

After a series of email exchanges between counsel, the denial of Request 20 remains unexplained as requested in Interrogatory 10, and the improper objections to Requests 21 and 22 have not been withdrawn by Opposer. Hence, with the discovery period about to close, Applicant has filed this Motion to Compel.

ADMISSION REQUEST 20

Admission Request 20 in conjunction with Interrogatory 10 (Exhibit 1) seeks confirmation that Opposer does not have any evidence that Opposer's claimed predecessor Lavatec GmbH had delivered laundry equipment to designated customers in the United States prior to the formation of Lavatec, Inc. (the original Applicant) in February 1987. Opposer has asserted the contrary. Applicant is reasonably confident that no such delivery ever took place, and that Admission Request 20 is a correct statement and should have been admitted.

Initially on October 28, 2012, Opposer responded to Admission Request 20 saying he was still gathering evidence. (Exhibit 1). His counsel was advised on November 28, 2011 to supplement the response. Weeks later on December 23, 2011 counsel responded pleading uncertainty (in red) and requesting clarification of the requested supplementation of Request 20. (Exhibit 4, a compilation of email exchanges over time - Atty. Tallent for Opposer in red and black, Atty. Linderman for Applicant in blue). For reasons that are unclear Applicant's counsel did not receive the claim of uncertainty until January 13, 2012 and politely stated the obvious, that Opposer's response to Request 20 was incomplete. (Exhibit 4 in blue). In fact no substantive response had been given.

After a further reminder on April 2, 2012 (Exhibit 5) Opposer's counsel finally responded on April 3, 2012 (Exhibit 6), but simply stated the belief, without explanation, that spare parts were delivered to the US prior to Applicant's incorporation. Applicant's counsel requested an explanation for the belief on April 4, 2012 (Exhibit 6) but has not received a response.

Opposer should either admit Admission Request 20, or in response to Interrogatory 10 as applied to Request 20, identify the evidence that rebuts the

statement of Request 20. Providing an unsubstantiated belief without evidence supporting the belief is an inadequate response.

ADMISSION REQUESTS 21 and 22

Admission Requests 21 and 22 are similar, and request Opposer to admit that he has no documents from his claimed predecessor Lavatec GmbH that prohibit Lavatec Inc. (the original Applicant) from using (Request 21 – Exhibit 2) or registering (Request 22 – Exhibit 3) the mark LAVATEC in the United States. Opposer would seem to have no such documents; otherwise, they would have been produced to assist Opposer in the Opposition. But instead of responding substantively, Opposer has been stonewalling and hiding damaging responses behind meritless objections, namely General Objections 3, 4, 5, and 6. (Exhibit 6).

General Objections 3 and 5 as stated in Exhibits 2 and 3 attempt to relieve Opposer from responding to the Requests for Admission on the grounds that the Requests require Opposer to apply law to fact and reach legal conclusions or opinions. But such Requests are specifically authorized by FRCP 36(a)(1) because many questions in a legal matter are mixed questions of law and fact. A party is not permitted to side step an admission request just because it must apply law to fact. In the present case the Requests seek the disclosure of documents in Opposer's possession or control, all of which are facts. Thus the Requests pose questions of fact, or at worst the application of law to fact, and are expressly permitted by FRCP 36(a)(1). Surely Opposer knows whether it has documents that would assertedly prohibit Applicant from using or registering the mark, and Opposer would obviously intend to use them against Applicant. Opposer should not be permitted to hide the documents during discovery and thrust them on Applicant at trial.

In any event the Requests are fact questions that require little in the way of legal analysis. Applicant is seeking documents with prohibitions, which may be an ultimate fact, but not a legal conclusion. That the fact sought may be an ultimate fact in reaching a decision does render the Requests improper. *Cereghino v. The Boeing Company*, 873 F. Supp. 398, 403 (D. Or. 1994).

General Objection 4 (confidential information of third parties) is not applicable to the Requests 21 and 22. Certainly if the identification of documents is not confidential, possession or control of identified documents is not confidential, even if the documents themselves contain confidential subject matter. See TBMP Section 414, Par. (1) and Note 1.

Citing General Objection 4 also appears to be a tacit admission that Opposer has documents responding to the Requests. However, Opposer never explains who the third party is or whether a request of the third party for release has been made. The third party, if there is such, could be Opposer's company over which Opposer has "full control". See Amended Complaint filed on April 11, 2012, Par. 13. In such a case Opposer has possession or control of the document(s), and cannot hide behind the third party interest. Pursuant to General Objection 4, Opposer should be ordered to provide a substantive response, and identify and produce the documents, if any, according to the terms of the Protective Order in this Opposition.

General Objection 6 (information publicly available, or more readily available from other sources, or in Applicant's possession) is sheer nonsense. The Requests are requests for admission relating to documents in Opposer's possession or control. It does not matter if a document is available elsewhere or already in Applicant's possession. Ultimately Applicant wants to know what, if any, document(s) Opposer has that support the contention that Applicant can not use or register the LAVATEC trademark.

If for some reason the Board should decide not to compel Opposer to respond substantively to Requests 21 and 22, then the Board is requested to issue an order prohibiting Opposer from presenting any documents at trial suggesting, implying, or indicating that Applicant cannot use or register the LAVATEC mark.

Relief Requested

In view of Opposer's failure to adequately respond, Applicant seeks an order compelling Opposer to provide complete responses to Applicant's Admission Requests

20, 21, and 22, and Interrogatory 10 as applied to the Requests, if a Request is denied in whole or in part.

If the Board decides not to compel Opposer to respond to Requests 21 or 22, then Applicant requests an Order prohibiting Opposer from introducing any documents at trial suggesting, implying, or indicating that Applicant cannot use or register the LAVATEC mark.

Respectfully requested
LAVATEC, INC., Applicant

By s/ John C. Linderman
John C. Linderman
Richard J. Twilley
McCormick, Paulding & Huber LLP
185 Asylum Street, CityPlace II
Hartford, CT 06103-3410
Ph. 860 549-5290
lind@ip-lawyers.com
twilley@ip-lawyers.com
Attorneys for Applicant

CERTIFICATE SERVICE

The undersigned hereby certifies that a copy of the foregoing

APPLICANT'S FOURTH MOTION TO COMPEL

was sent by electronic mail this 18th day of April 2012, to the following counsel of record:

Andrea Fiocchi
afiocchi@reinhardt-law.com
Sarah E. Tallent
stallent@reinhardt-law.com
Reinhardt LLP
44 Wall Street, 10th Floor
New York, NY 10005

By s/John C. Linderman
John C. Linderman

seek the identification of documents or information that constitutes sensitive business or financial information, confidential or personal information, or commercially valuable or proprietary information to the extent it is not protected by the applicable Protective Order pursuant to Fed.R.Civ.P.26(c).

3. Opposer objects to Applicant's Interrogatories to the extent they contain legal conclusions or the application of law or facts that are subject to dispute in this action.

4. Opposer objects to Applicant's Interrogatories to the extent that it requests information that is confidential information of a third party until and unless the third party consents or a suitable order of the Board requiring release of the information has issued.

5. Opposer objects to Applicant's Interrogatories to the extent they call for Opposer to reach legal conclusions in order to respond to particular requests.

6. Opposer objects to Applicant's Interrogatories to the extent they seek information that is publicly available and/or that is otherwise equally accessible to Applicant, that has been made available to Applicant, or that is more appropriately sought from other parties to whom requests have been made or may be made.

7. Opposer objects to Applicant's Interrogatories to the extent they seek information that is not within Opposer's possession, custody, or control.

8. Opposer objects to Applicant's Interrogatories to the extent that they seek information and/or documents regarding entities or individuals other than Opposer and Opposer's employees. Opposer is only responding on its behalf, and not on behalf of any other entity or individual.

9. Opposer objects to Applicant's Interrogatories to the extent they are vague and/or ambiguous, overbroad and/or sweeping, unduly burdensome, oppressive or harassing.

10. Opposer objects to Applicant's Interrogatories to the extent they are repetitive, cumulative, and/or duplicative.

11. The absence of an objection shall not be deemed to be an acknowledgement that documents and/or information responsive to Applicant's Interrogatories exist.

12. The fact that Opposer has responded to Applicant's Interrogatories does not constitute an admission or acknowledgment that the Interrogatories are proper, or that the information they seek is relevant, competent, necessary, or otherwise within the scope of appropriate discovery. To each of Opposer's specific answers and responses and objections, Opposer incorporates these general objections. Opposer is continuing its investigation of the subject matter covered by Applicant's Interrogatories.

13. By producing substantive information in response to an Interrogatory, Opposer does not admit that such information is relevant or otherwise admissible as evidence at trial or for any other purpose. Opposer reserves the right to object to the admissibility of any and all information provided in response to Applicant's Interrogatories, and to discovery of non-parties, including its parents and affiliates, on any and all grounds.

14. Opposer further reserves his right to amend, modify or supplement his answers and responses or objections or to move for a protective order, if necessary. Any supplemental answers provided in response to Applicant's Interrogatories shall not constitute a waiver of any privilege or objection Opposer has asserted or may assert herein.

15. Opposer's responses to Applicant's Interrogatories are made without in any way prejudicing, waiving or intending to waive, but, on the contrary, intending to preserve and preserving: (i) any objections as to the competency, authenticity, relevancy, materiality, privilege or admissibility as evidence, for any purpose, of any information produced in response to the Interrogatories and/or the subject matter of any information produced in response to the Interrogatories; (ii) the right to object on any ground to the use of the information produced in response to the Interrogatories at any hearing, trial, or at any other point during this action or any other action; (iii) the right to object on any ground at any time to a demand for further responses to the Interrogatories; (iv) the right to object on any ground at any time to other Interrogatories or discovery involving any produced information and/or the subject matter thereof; or (v) the right to amend, supplement, modify, or correct these responses and objections.

Subject to and without waiving these General Objections, or any other objection or claim of privilege, Opposer hereby answers and objects to Applicant's Third Set of Interrogatories as follows.

INTERROGATORIES

9. Identify the translators of each translation obtained by Opposer, or on behalf of Opposer, of any document relied upon or produced by Opposer in the present Opposition, including identification of the document translated by the translator and the relationship between the translator to Opposer and his attorneys.

Answer to Interrogatory No. 9: Opposer objects to this Request on the grounds set forth in General Objections No. 6, 7 and 8. Notwithstanding the objections, Opposer states that the translation contained in Opposer's Exhibit 1 was prepared by Mr. Dierk H. Reinhardt, J.D., LL.M., Rechtsanwalt, attorney for Opposer, and reviewed, edited and officially certified as to the accuracy of its contents by Mr. Bernhardt Jurgen Bleise, Honorary Consul of the Federal Republic of Germany, attorney at law admitted to practice in the Federal Republic of Germany and Colorado, in his official capacity as Honorary Consul.

10. If Opposer denied, in whole or in part, any of the Requests for Admission served by Applicant on September 28, 2011, please explain the denials.

Answer to Interrogatory No. 10

19. Prior to the formation of Lavatec, Inc. in February 1987, Lavatec GmbH had not manufactured any commercial laundry equipment for designated customers in the United States.

Answer to Interrogatory No. 10(19): Opposer is in the process of retrieving relevant information and will provide Applicant with an explanation shortly.

20. Prior to the formation of Lavatec, Inc. in February 1987, Lavatec GmbH had not delivered any commercial laundry equipment for designated customers in the United States.

Answer to Interrogatory No. 10 (20): Opposer is in the process of retrieving relevant information and will provide Applicant with an explanation shortly.

CERTIFICATION

I certify that the foregoing answers to interrogatories are true to the best of my knowledge and based on all of the information presently known to me. I make this certification based on my personal knowledge of the records available to me as they are kept in the ordinary course of business, information obtained from other employees upon whom I regularly rely in the ordinary course of business or my general knowledge of the business practices.

Dated: October 28, 2011

By: /s/ Wolf-Peter Graeser

CERTIFICATE OF SERVICE

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

lind@ip-lawyers.com

On October 28, 2011

By: /s/ Sarah E. Tallent

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

In the matter of Trademark Application No. 76701998
for the mark: LAVATEC
Published on November 2, 2010

_____)	
Wolf-Peter Graeser,)	
)	
Opposer)	
)	Opposition No. 91197754
v.)	
)	
Lavatec, Inc.)	
)	
Applicant)	
_____)	

**OPPOSER'S RESPONSES AND OBJECTIONS TO APPLICANT'S SECOND SET OF
REQUESTS FOR ADMISSIONS**

Pursuant to F.R.Civ.P. 33 and 37 C.F.R. §2.120(d), Opposer, Wolf-Peter Graeser, submits the following responses to Applicant, Lavatec, Inc., Requests for Admissions.

Definitions

The definitions in Opposer's Response to Applicant's First Set of Requests for Admission to Opposer also apply to Opposer's Response to Applicant's Second Set of Requests for Admission, and are incorporated herein by reference.

GENERAL OBJECTIONS

1. Opposer objects to Applicant's Requests for Admissions to the extent they may call for information that is protected from disclosure by either attorney-client privilege, attorney work product doctrine or other privilege.
2. Opposer objects to Applicant's Requests for Admissions to the extent that they seek the identification of documents or information that constitutes sensitive business or financial information, confidential or personal information, or

commercially valuable or proprietary information to the extent it is not protected by the applicable Protective Order pursuant to Fed.R.Civ.P.26(c).

3. Opposer objects to Applicant's Requests for Admissions to the extent they contain legal conclusions or the application of law or facts that are subject to dispute in this action.

4. Opposer objects to Applicant's Requests for Admission to the extent that it requests information that is confidential information of a third party until and unless the third party consents or a suitable order of the Board requiring release of the information has issued.

5. Opposer objects to Applicant's Requests for Admissions to the extent they call for Opposer to reach legal conclusions in order to respond to particular requests.

6. Opposer objects to Applicant's Requests for Admissions to the extent they seek information that is publicly available and/or that is otherwise equally accessible to Applicant, that has been made available to Applicant, or that is more appropriately sought from other parties to whom requests have been made or may be made.

7. Opposer objects to Applicant's Request for Admissions to the extent they seek information that is not within Opposer's possession, custody, or control.

8. Opposer objects to Applicant's Requests for Admissions to the extent that they seek information and/or documents regarding entities or individuals other than Opposer and Opposer's employees. Opposer is only responding on its behalf, and not on behalf of any other entity or individual.

9. Opposer objects to Applicant's Requests for Admissions to the extent they are vague and/or ambiguous, overbroad and/or sweeping, unduly burdensome, oppressive or harassing.

10. Opposer objects to Applicant's Requests for Admissions to the extent they are repetitive, cumulative, and/or duplicative.

11. The absence of an objection shall not be deemed to be an acknowledgement that documents and/or information responsive to Applicant's Requests for Admissions exist.

12. The fact that Opposer has responded to Applicant's Requests for

Admissions does not constitute an admission or acknowledgment that the Requests for Admissions are proper, or that the information they seek is relevant, competent, necessary, or otherwise within the scope of appropriate discovery. To each of Opposer's specific answers and responses and objections, Opposer incorporates these general objections. Opposer is continuing its investigation of the subject matter covered by Applicant's Requests.

13. By producing substantive information in response to a Request, Opposer does not admit that such information is relevant or otherwise admissible as evidence at trial or for any other purpose. Opposer reserves the right to object to the admissibility of any and all information provided in response to Applicant's Requests, and to discovery of non-parties, including its parents and affiliates, on any and all grounds.

14. Opposer further reserves his right to amend, modify or supplement his answers and responses or objections or to move for a protective order, if necessary. Any supplemental answers provided in response to Applicant's Requests shall not constitute a waiver of any privilege or objection Opposer has asserted or may assert herein.

15. Opposer's responses to Applicant's Requests for Admissions are made without in any way prejudicing, waiving or intending to waive, but, on the contrary, intending to preserve and preserving: (i) any objections as to the competency, authenticity, relevancy, materiality, privilege or admissibility as evidence, for any purpose, of any information produced in response to the Requests and/or the subject matter of any information produced in response to the Requests; (ii) the right to object on any ground to the use of the information produced in response to the Requests at any hearing, trial, or at any other point during this action or any other action; (iii) the right to object on any ground at any time to a demand for further responses to the Requests; (iv) the right to object on any ground at any time to other Requests or discovery involving any produced information and/or the subject matter thereof; or (v) the right to amend, supplement, modify, or correct these responses and objections.

Subject to and without waiving these General Objections, or any other

objection or claim of privilege, Opposer hereby answers and objects to Applicant's Second Set of Requests for Admissions as follows.

ADMISSION REQUESTS

19. Prior to the formation of Lavatec, Inc. in February 1987, Lavatec GmbH had not manufactured any commercial laundry equipment for designated customers in the United States.

Answer to Admission Request No. 19: Deny – Opposer does not admit that Lavatec GmbH had not manufactured any commercial laundry equipment for designated customers in the United States.

20. Prior to the formation of Lavatec, Inc. in February 1987, Lavatec GmbH had not delivered any commercial laundry equipment for designated customers in the United States.

Answer to Admission Request No. 20: Deny – Opposer does not admit that Lavatec GmbH had not delivered any commercial laundry equipment for designated customers in the United States.

21. Opposer has no documents from Lavatec GmbH prohibiting Applicant from using the LAVATEC trademark in the United States.

Answer to Admission Request No. 21: Object – See General Objections No. 3, 4, 5 and 6.

Respectfully submitted,

Wolf-Peter Graeser

Dated October 28, 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 RESPONSE AND OBJECTIONS TO APPLICANT'S SECOND SET OF REQUESTS FOR ADMISSION TO OPPOSER** was served on Applicant at the correspondence address of record by email addressed to:

lind@ip-lawyers.com

On October 28, 2011

By: /s/ Sarah E. Tallent

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

In the matter of Trademark Application No. 76701998
for the mark: LAVATEC
Published on November 2, 2010

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Wolf-Peter Graeser,)	
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Opposer)	Opposition No. 91197754
v.)	
)	
Lavatec, Inc.)	
)	
Applicant)	
_____)	

**OPPOSER'S RESPONSES AND OBJECTIONS TO APPLICANT'S THIRD SET OF
REQUESTS FOR ADMISSIONS**

Pursuant to F.R.Civ.P. 33 and 37 C.F.R. §2.120(d), Opposer, Wolf-Peter Graeser, submits the following responses to Applicant, Lavatec, Inc., Requests for Admissions.

Definitions

The definitions in Opposer's Response to Applicant's First Set of Requests for Admission to Opposer also apply to Opposer's Response to Applicant's Third Set of Requests for Admission, and are incorporated herein by reference.

GENERAL OBJECTIONS

1. Opposer objects to Applicant's Requests for Admissions to the extent they may call for information that is protected from disclosure by either attorney-client privilege, attorney work product doctrine or other privilege.
2. Opposer objects to Applicant's Requests for Admissions to the extent that they seek the identification of documents or information that constitutes sensitive business or financial information, confidential or personal information, or

commercially valuable or proprietary information to the extent it is not protected by the applicable Protective Order pursuant to Fed.R.Civ.P.26(c).

3. Opposer objects to Applicant's Requests for Admissions to the extent they contain legal conclusions or the application of law or facts that are subject to dispute in this action.

4. Opposer objects to Applicant's Requests for Admissions to the extent that it requests information that is confidential information of a third party until and unless the third party consents or a suitable order of the Board requiring release of the information has issued.

5. Opposer objects to Applicant's Requests for Admissions to the extent they call for Opposer to reach legal conclusions in order to respond to particular requests.

6. Opposer objects to Applicant's Requests for Admissions to the extent they seek information that is publicly available and/or that is otherwise equally accessible to Applicant, that has been made available to Applicant, or that is more appropriately sought from other parties to whom requests have been made or may be made.

7. Opposer objects to Applicant's Request for Admissions to the extent they seek information that is not within Opposer's possession, custody, or control.

8. Opposer objects to Applicant's Requests for Admissions to the extent that they seek information and/or documents regarding entities or individuals other than Opposer and Opposer's employees. Opposer is only responding on its behalf, and not on behalf of any other entity or individual.

9. Opposer objects to Applicant's Requests for Admissions to the extent they are vague and/or ambiguous, overbroad and/or sweeping, unduly burdensome, oppressive or harassing.

10. Opposer objects to Applicant's Requests for Admissions to the extent they are repetitive, cumulative, and/or duplicative.

11. The absence of an objection shall not be deemed to be an acknowledgement that documents and/or information responsive to Applicant's Requests for Admissions exist.

12. The fact that Opposer has responded to Applicant's Requests for

Admissions does not constitute an admission or acknowledgment that the Requests for Admissions are proper, or that the information they seek is relevant, competent, necessary, or otherwise within the scope of appropriate discovery. To each of Opposer's specific answers and responses and objections, Opposer incorporates these general objections. Opposer is continuing its investigation of the subject matter covered by Applicant's Requests.

13. By producing substantive information in response to a Request, Opposer does not admit that such information is relevant or otherwise admissible as evidence at trial or for any other purpose. Opposer reserves the right to object to the admissibility of any and all information provided in response to Applicant's Requests, and to discovery of non-parties, including its parents and affiliates, on any and all grounds.

14. Opposer further reserves his right to amend, modify or supplement his answers and responses or objections or to move for a protective order, if necessary. Any supplemental answers provided in response to Applicant's Requests shall not constitute a waiver of any privilege or objection Opposer has asserted or may assert herein.

15. Opposer's responses to Applicant's Requests for Admissions are made without in any way prejudicing, waiving or intending to waive, but, on the contrary, intending to preserve and preserving: (i) any objections as to the competency, authenticity, relevancy, materiality, privilege or admissibility as evidence, for any purpose, of any information produced in response to the Requests and/or the subject matter of any information produced in response to the Requests; (ii) the right to object on any ground to the use of the information produced in response to the Requests at any hearing, trial, or at any other point during this action or any other action; (iii) the right to object on any ground at any time to a demand for further responses to the Requests; (iv) the right to object on any ground at any time to other Requests or discovery involving any produced information and/or the subject matter thereof; or (v) the right to amend, supplement, modify, or correct these responses and objections.

Subject to and without waiving these General Objections, or any other

objection or claim of privilege, Opposer hereby answers and objects to Applicant's Third Set of Requests for Admissions as follows.

ADMISSION REQUESTS

22. Opposer has no documents from Lavatec GmbH prohibiting Applicant from registering the LAVATEC trademark in the United States.

Answer to Admission Request No. 22: Object – See General Objections No. 3, 4, 5 and 6.

Respectfully submitted,

Wolf-Peter Graeser

Dated October 28, 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 RESPONSE AND OBJECTIONS TO APPLICANT'S THIRD SET OF REQUESTS FOR ADMISSION TO OPPOSER** was served on Applicant at the correspondence address of record by email addressed to:

lind@ip-lawyers.com

On October 28, 2011

By: /s/ Sarah E. Tallent

----- Forwarded Message

From: Sarah Tallent <stallent@reinhardt-law.com>

Date: Wed, 28 Mar 2012 17:52:41 -0400

To: "John C. Linderman" <lind@ip-lawyers.com>

Cc: Andrea Fiocchi <afiocchi@reinhardt-law.com>, "Kai N. Livramento" <klivramento@reinhardt-law.com>

Subject: RE: Trade Secret/ Commercially Sensitive

Dear Mr. Linderman:

* * * * *

Please find below our response to your previous email communication in CAPS.

* * * * *

Very truly yours,

Sarah E. Tallent
Attorney at Law
Reinhardt LLP
44 Wall Street - 10th Fl.

From: John Linderman [<mailto:lind@ip-lawyers.com>]

Sent: Monday, January 16, 2012 11:35 AM

To: Sarah Tallent

Subject: Re: Trade Secret/ Commercially Sensitive

Ms. Tallent:

Thank you . For unknown reasons I have no record of your response.

Please see my replies below in blue italics to your statements and respond.

John C. Linderman

From: Sarah E. Tallent [<mailto:stallent@reinhardt-law.com>]

Sent: Friday, December 23, 2011 5:36 AM

To: 'John Linderman'

Cc: 'afiocchi@reinhardt-law.com' <afiocchi@reinhardt-law.com> '

Subject: Trade Secret/ Commercially Sensitive

Please see below [in red]

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
New York ♦ Denver ♦ Stuttgart

-----Original Message-----

From: John Linderman [<mailto:lind@ip-lawyers.com>]
Sent: Monday, November 28, 2011 11:09 AM
To: Sarah Tallent; Andrea Fiocchi
Subject: Graeser Opposition

Ms. Tallent/Mr. Fiocchi:

I am contacting you with regard to your responses to Applicant's discovery requests itemized below.

* * * * *

Responses to Interrogatory 10

Your responses to Interrogatory 10 relating to Admissions 19 and 20 are late. Please provide the requested information.

We're not quite sure what you mean. Please clarify.
Your responses are incomplete.

RFA #19 – In December 1986 Lavatec GmbH has already engineered and manufactured machinery for the U.S. market, namely three large dryers destined for delivery to Newark, USA.

Response to Admissions 21 and 22

Your responses to Admissions 21 and 22 are improper. Your General Objections 3 and 5 violate FRCP 36(a)(1)(A). Your General Objection 4 (confidential info) is not applicable since the Admissions concern the existence of documents in Opposer's possession, custody, or control, which is not confidential. Even if the responses were confidential, they would be governed by the Protective Order. General Objection 6 is not applicable.

Requests for Admissions 21 and 22 are unrelated to this matter. Furthermore, you are asking Opposer for records of Lavatec GmbH not Opposer. Therefore, your questions would be more accurately directed to Lavatec GmbH.

You have already waived objections based on relevancy by virtue of your previous responses. Moreover, your claim to be successor to Lavatec GmbH and allegations of prior use on the part of Lavatec GmbH make it appear that you are relying upon prior activities of Lavatec GmbH for your claims to priority. If I am wrong, please advise. The list of individuals and their knowledge set out in your Supplemental Disclosures also indicate you have available the information needed to respond to the Requests for Admission 21 and 22.

Accordingly, please supplement your responses with substantive information.

John C. Linderman

Subject: Re: Trade Secret/ Commercially Sensitive
Date: Monday, April 2, 2012 3:57 PM
From: John C. Linderman <lind@ip-lawyers.com>
To: Sarah Tallent stalent@reinhardt-law.com

Dear Ms. Tallent:

Which leads to the second part of your email that states you are supplementing your previous responses to Applicant's discovery requests as requested in my email of November 28, 2011. You have only provided supplementation to Interrogatory 10 as it relates to Admission 19. No supplementation of the response as it relates to Admissions 20, 21, and 22 has been provided. If the affidavits of Messrs. Butz and Fleischer were intended to supplement the responses, then the Admissions 20, 21, and 22 should have been admitted. Please provide corrected responses to the Admissions 20, 21, and 22.

John C. Linderman

From: Sarah Tallent <stalent@reinhardt-law.com>
Date: Wed, 28 Mar 2012 17:52:41 -0400
To: "John C. Linderman" <lind@ip-lawyers.com>
Cc: Andrea Fiocchi <afiocchi@reinhardt-law.com>, "Kai N. Livramento" <klivramento@reinhardt-law.com>
Subject: RE: Trade Secret/ Commercially Sensitive

Dear Mr. Linderman:

Subject: Re: Trade Secret/ Commercially Sensitive

Date: Wednesday, April 4, 2012 10:29 AM

From: John C. Linderman <lind@ip-lawyers.com>

To: Andrea Fiocchi afiocchi@reinhardt-law.com

Cc: Sarah Tallent stallent@reinhardt-law.com, Kai N. Livramento klivramento@reinhardt-law.com

Mr. Fiocchi:

With respect to supplementation of your response to Interrogatory 10 as it applies to Admission 20, your statement of a belief is not an adequate explanation of the denial of the admission. None of the evidence or affidavits you have provided supports such a belief. Now is the time to provide that evidence, or admit that no such evidence exists.

With respect to supplementation of your response to Interrogatory 10 as it applies to Admissions 21 and 22, your cursory response adhering to objections we already explained to be improper without addressing our explanations is not productive or consistent with your obligations to cooperate, as you were cautioned most recently in the Board's decision of March 27, 2012. Since you apparently do not have any documents supporting the denial of Admissions 21 and 22, please submit a revised response with the requests admitted instead of objected to. Otherwise we will be forced to file another motion to compel.

John C. Linderman

From: Andrea Fiocchi <afiocchi@reinhardt-law.com>

Date: Tue, 3 Apr 2012 14:42:18 -0400

To: "John C. Linderman" <lind@ip-lawyers.com>

Cc: Sarah Tallent <stallent@reinhardt-law.com>, "Kai N. Livramento" <klivramento@reinhardt-law.com>

Subject: Re: Trade Secret/ Commercially Sensitive

Dear Mr. Linderman:

As regards your request for supplementation to Interrogatory No. 10 as it relates to Requests for Admission #20, 21 and 22 please note the following:

#20 Opposer believes that commercial laundry equipment spare parts were supplied to U.S. customers prior to the incorporation of Applicant.

#21 Opposer stands by its objections.

#22 Opposer stands by its objections.

As regards your comment about the affidavits of Messrs. Butz and Fleischer, I am afraid that you missed the point. The affidavits are clearly not being provided in connection with your Requests for Admission #21, 21 and 22 (they have nothing to do with the call of those questions). They are being provided as a small preview of what your client will be facing at trial. Your client's resources would be better spent securing some type of limited right to use our client's trademark rather than trying to claim ownership of a trademark that undoubtedly belongs to Opposer, regardless of what your client wants to believe. Inconvenient facts should not be ignored...

Regards,

AF

Andrea Fiocchi

Attorney at Law

Reinhardt LLP

44 Wall Street - 10th Fl.

New York, NY 10005

Ph: (212) 710-0970

Fax: (212) 710-0971

Email: afiocchi@reinhardt-law.com