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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 | 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 | Opposition/Response to Motion |
| Filer's Name | Sarah E. Tallent, Esq. |
| Filer's e-mail | stallent@reinhardt-law.com |
| Signature | /Sarah/Tallent/ |
| Date | 04/18/2012 |
| Attachments | 04.18.12_Response to Motion Fourth to Compel.pdf (55 pages)(10617247 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")

OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO COMPEL

Opposer responds to Applicant Lavatec, Inc.'s Motion to Compel stating the following:

1. During the last 10 days, multiple discovery requests have been exchanged between the parties and Opposer has filed a Motion for Leave to Amend its Notice of Opposition.
2. Opposer and its counsel have been working actively on addressing all open issues and had Applicant's counsel been patient, it would have received responses to its email exchanges this week without having to file yet another Motion to Compel.
3. Since Applicant's counsel has not given Opposer sufficient time to respond, Opposer will take the opportunity to do so within the context of this Opposition rendering Applicant's Motion to Compel moot.

ADMISSION REQUEST 20

4. Admission Request No. 20 seeks an admission that Opposer does not have evidence that Lavatec GmbH delivered laundry equipment to designated customers in the United States prior to the formation of Lavatec, Inc. (the original Applicant) in February 1987.

5. Opposer denied the admission on the grounds that it believes that its predecessor in interest Lavatec GmbH did supply laundry equipment to customers in the United States prior to the formation of Lavatec, Inc. (the original Applicant) in February 1987.

6. Opposer's denial is based upon interviews of former employees of Lavatec GmbH who provided services to U.S. customers in the United States prior to February 1987. Opposer has been conducting interviews with said persons and sifting through great volumes of records located in Germany which date back over 20-years. Due to the Easter Holidays, the distance and the volume of records being analyzed, this process is not yet complete, however, we anticipate receiving further information in the next 7-15 days.

7. What Applicant fails to appreciate is that not all records are readily available for inspection and/or retrieval. The same is true for former employees who no longer work for Opposer.

8. Opposer has answered Request for Admission No. 20. Applicant is attempting to force an admission by Opposer, which Opposer believes to be false, and, therefore, such an admission would result in a misstatement. The fact that Opposer has not yet provided any documentation in response to Interrogatory No. 10 does not mean that Opposer is hiding any documents to "thrust them on Applicant at trial". It simply means that they are not yet available for presentation to Applicant and that Opposer will supplement its responses as soon as the information is delivered to Opposer's counsel. As a matter of fact, Opposer has already identified former employees of Lavatec GmbH who confirmed exactly the opposite of what Applicant's counsel would like Opposer to admit. Consequently, based on the information available to date, Opposer cannot

respond to Applicant's Request for Admission in any other way and, therefore, Opposer's responses to Applicant are complete and proper.

ADMISSION REQUESTS 21 AND 22

9. Admission Requests No. 21 and 22 concern a type of document of Lavatec GmbH, not Opposer, that in this case could more easily be obtained from the bankruptcy trustee of Lavatec GmbH. The bankruptcy trustee managed the relationship between Lavatec GmbH and Lavatec, Inc. and may be in possession of corporate records of Lavatec GmbH that were not sold to Opposer and/or his company Lavatec Laundry Technology GmbH. Moreover, Applicant never specified what it considers to be a document which would prevent Applicant from using or registering the mark LAVATEC in the United States. Applicant's question is, therefore, vague and overbroad.

10. Additionally, Applicant's request for admission is misleading since it is asking Opposer to admit the non-existence of a document whose existence was never contemplated, for the purpose of using a negative to prove a positive, i.e., that Lavatec, Inc. was authorized to register the LAVATEC trademark. The truth is that Lavatec, Inc., was always under the direct control of Lavatec GmbH, it was a mere distributor/ sales office of Lavatec GmbH's products and services and was set up for Lavatec GmbH's convenience. At no point in time was an assignment of the LAVATEC mark to Lavatec, Inc. ever contemplated (per the 8 affidavits already provided to Applicant during discovery and attached hereto as Exhibit A), therefore, Applicant's question is maliciously phrased. Applicant would like Opposer to admit the non-existence of a document to then say that because the document did not exist, then Lavatec, Inc., was authorized to register the mark, which is absolutely false. The question should be rephrased. The question should be whether there exists any document authorizing Lavatec, Inc. to register the LAVATEC mark in the United States. Per the attached affidavits, such an authorization was never contemplated and per Applicant's own Admissions no such document exists, therefore asking Opposer to admit that the document does not exist is a manipulation of the facts to create evidence that does not exist, which is not the purpose of discovery. Per the attached affidavits such an authorization would have required the consent of Lavatec GmbH's ownership.

11. As stated above, Applicant's Request for Admission is improperly phrased. The best answer that Opposer can give is that it is unlikely that such document exists since any such authorization would have required the consent of Lavatec GmbH and that such authorization was never contemplated for the reasons explained above. Assuming that such documents do not exist, it does not mean that Lavatec, Inc., was authorized to register the LAVATEC mark. Per the attached affidavits, the ownership of the LAVATEC mark by Lavatec GmbH was never called into question.

12. It should be noted that throughout discovery, Applicant's counsel has consistently attempted to force Opposer to admit facts through maliciously phrased Requests for Admission for the purpose of "creating" evidence that Applicant does not have. Applicant has not produced a single shred of evidence to support the grounds for its applicant and ownership of the mark and is desperately trying to prove its own case by forcing admissions to "loaded" questions. This is not the purpose of discovery. If Applicant does not like Opposer's answer, Applicant will have an opportunity to argue this at trial, however, Applicant cannot expect Opposer to admit something which is not true.

13. It should also be noted that whilst filing its Motions to Compel Discovery against Opposer, Applicant has itself consistently provided evasive and inadequate responses to Opposer's discovery requests, raising inappropriate objections at every turn. We hope that Applicant will be as diligent in responding to our discovery requests as it is in filing motions to compel.

RELIEF REQUESTED

As noted above, discovery in this case is not a straightforward domestic discovery process before the Board since it involves parties and records located overseas and located in old archives dating back to 1986. Opposer has never refused to respond to Applicant's discovery requests. On the contrary, Opposer has worked diligently throughout the discovery process to provide Applicant with all available requested information. All discovery requests have been answered, including those which are the subject-matter of this Motion to

Compel, thus making this Motion to Compel moot.

For the reasons contained herein, Opposer respectfully requests that the Board deny Applicant's Motion to Compel in its entirety and grant Opposer a protective order pursuant to Rule 26(c) ordering Applicant to withdraw Requests for Admission No. 21 and 22.

Dated: New York, New York

April 18, 2012

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 Opposition to Motion to Compel was served on Applicant at the correspondence address of record by email addressed to:

lind@ip-lawyers.com

On April 18, 2012

By: /s/ Sarah E. Tallent

EXHIBIT A

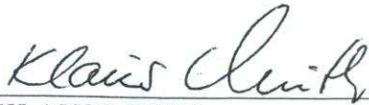
SWORN AFFIDAVIT OF KLAUS MUTH

I, KLAUS MUTH, being duly sworn, depose and say:

1. My name is KLAUS MUTH;
2. I am a German national;
3. I was shareholder and at the same time Head of IT and Controlling of Lavatec GmbH.
4. In my capacity as Head of IT and Controlling of Lavatec GmbH, I have direct knowledge of the facts stated herein and the same are true to my own knowledge except as to those matters herein stated to be upon information and belief and as to those matters I believe them to be true. The grounds of my belief as to all matters not stated upon my own knowledge are records of Lavatec GmbH or information that I have received in my capacity as Head of IT and Controlling of Lavatec GmbH.
5. Lavatec GmbH was the first company to sell, commercialize and promote goods manufactured by Lavatec GmbH in Germany and bearing the mark LAVATEC in the United States.
6. Lavatec, Inc. was incorporated by Lavatec GmbH after it was established that there was a market for Lavatec GmbH's German products in the U.S.;
7. Lavatec, Inc. marketed Lavatec GmbH's products using marketing material and literature prepared by Lavatec GmbH;

8. Lavatec, Inc. was under the direct control of Lavatec GmbH and all major decisions, including any transaction involving the "LAVATEC" trademark, would have required the consent of Lavatec GmbH's ownership; Lavatec, Inc. was a mere distributor of Lavatec GmbH's products and services and was set up for Lavatec GmbH's convenience;
9. Lavatec GmbH never intended to assign ownership of the "LAVATEC" trademark to Lavatec, Inc.;
10. Lavatec, Inc. was allowed to use the mark "LAVATEC" while operating in the U.S. solely based upon an implied license from Lavatec GmbH whose ownership of the "LAVATEC" trademark in the U.S. was never called into question;
11. Lavatec, Inc.'s registration of the "LAVATEC" trademark would have required the prior consent of Lavatec GmbH;
12. To the best of my knowledge, Lavatec GmbH never assigned its ownership of the "LAVATEC" trademark to Lavatec, Inc.

Executed on this 22nd day of November, 2010.


KLAUS MUTH



Urkundenrolle VIII UR 2174 / 2010

Notariat Heilbronn VIII* Tel. 07131/91560*Fax 07131/915619

VIII UZ 2575 /
2010

Authentication of Signature

I hereby certify that this document was signed in my presence by

Mister Klaus Johannes Sebastian Muth,
born on 1944-10-27,
residing in 74078 Heilbronn, Straßburger Straße 6,

- identified by identity card number 6219508081 -

Heilbronn, 2010-11-22

Notary public

(Funk)



Notariat Heilbronn VIII

Notar Funk

Speyerer Straße 13 ♦ 74078 Heilbronn-Frankenbach

Tel.: 07131/91560 ♦ Fax: 07131/915619



Notarial Certificate

The undersigned notary public Uwe Funk in Heilbronn hereby legalizes as authentic the present document. This is a true copie of the original by me sighted.

Heilbronn, 22th November 2010

Funk
Notary Public



APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Land: Bundesrepublik Deutschland

Diese öffentliche Urkunde

2. ist unterschrieben von Notar Funk in Heilbronn

3. in seiner Eigenschaft als Notar beim Notariat Heilbronn

4. Sie ist versehen mit dem Dienstsiegel des Notariats Heilbronn

Bestätigt

5. in Heilbronn

6. am 23.11.2010

7. durch den Präsidenten des Landgerichts in Heilbronn

8. unter Nr. 910 a - 1642/2010

9. Stempel

10. Unterschrift
Der Präsident des Landgerichts




Gönlich

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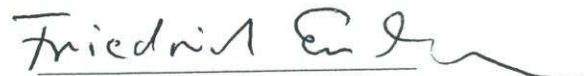
SWORN AFFIDAVIT OF FRIEDRICH ESSLINGER

I, FRIEDRICH ESSLINGER, being duly sworn, depose and say:

1. My name is FRIEDRICH ESSLINGER;
2. I am a German national;
3. I was shareholder and at the same time Vice President Sales of Lavatec GmbH.
4. In my capacity as Vice President Sales of Lavatec GmbH, I have direct knowledge of the facts stated herein and the same are true to my own knowledge except as to those matters herein stated to be upon information and belief and as to those matters I believe them to be true. The grounds of my belief as to all matters not stated upon my own knowledge are records of Lavatec GmbH or information that I have received in my capacity as Vice President Sales of Lavatec GmbH.
5. Lavatec GmbH was the first company to sell, commercialize and promote goods manufactured by Lavatec GmbH in Germany and bearing the mark LAVATEC in the United States.
6. Lavatec, Inc. was incorporated by Lavatec GmbH after it was established that there was a market for Lavatec GmbH's German products in the U.S.;
7. Lavatec, Inc. marketed Lavatec GmbH's products using marketing material and literature prepared by Lavatec GmbH;

8. Lavatec, Inc. was under the direct control of Lavatec GmbH and all major decisions, including any transaction involving the "LAVATEC" trademark, would have required the consent of Lavatec GmbH's ownership; Lavatec, Inc. was a mere distributor of Lavatec GmbH's products and services and was set up for Lavatec GmbH's convenience;
9. Lavatec GmbH never intended to assign ownership of the "LAVATEC" trademark to Lavatec, Inc.;
10. Lavatec, Inc. was allowed to use the mark "LAVATEC" while operating in the U.S. solely based upon an implied license from Lavatec GmbH whose ownership of the "LAVATEC" trademark in the U.S. was never called into question;
11. Lavatec, Inc.'s registration of the "LAVATEC" trademark would have required the prior consent of Lavatec GmbH;
12. To the best of my knowledge, Lavatec GmbH never assigned its ownership of the "LAVATEC" trademark to Lavatec, Inc.

Executed on this 22nd day of November, 2010.


FRIEDRICH ESSLINGER



Authentication of Signature

I hereby certify that this document was signed in my presence by

Mister Friedrich Esslinger,
born on 1954-07-07,
residing in 74906 Bad Rappenau, Treschklinger Straße 21,

- identified by identity card number 622529504 -.

Heilbronn, 2010-11-22

Notary public

(Funk)



Notariat Heilbronn VIII

Notar Funk

Speyerer Straße 13 ♦ 74078 Heilbronn-Frankenbach

Tel.: 07131/91560 ♦ Fax: 07131/915619



Notarial Certificate

The undersigned notary public Uwe Funk in Heilbronn hereby legalizes as authentic the present document. This is a true copie of the original by me sighted.

Heilbronn, 22th November 2010

Funk
Notary Public

A handwritten signature in black ink, appearing to be 'Uwe Funk', written over a horizontal line.



APOSTILLE

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1. Land: Bundesrepublik Deutschland

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3. in seiner Eigenschaft als Notar beim Notariat Heilbronn

4. Sie ist versehen mit dem Dienstsiegel des Notariats Heilbronn

Bestätigt

5. in Heilbronn

6. am 23.11.2010

7. durch den Präsidenten des Landgerichts in Heilbronn

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9. Stempel

10. Unterschrift
Der Präsident des Landgerichts




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aus 3000 €

-: 10.-- €

SWORN AFFIDAVIT OF UWE FLEISCHER

I, UWE FLEISCHER, being duly sworn, depose and say:

1. My name is UWE FLEISCHER;
2. I am a German national;
3. I was shareholder and at the same time Vice President Production of Lavatec GmbH.
4. In my capacity as Vice President Production of Lavatec GmbH, I have direct knowledge of the facts stated herein and the same are true to my own knowledge except as to those matters herein stated to be upon information and belief and as to those matters I believe them to be true. The grounds of my belief as to all matters not stated upon my own knowledge are records of Lavatec GmbH or information that I have received in my capacity as Vice President Production of Lavatec GmbH.
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6. Lavatec, Inc. was incorporated by Lavatec GmbH after it was established that there was a market for Lavatec GmbH's German products in the U.S.;
7. Lavatec, Inc. marketed Lavatec GmbH's products using marketing material and literature prepared by Lavatec GmbH;

8. Lavatec, Inc. was under the direct control of Lavatec GmbH and all major decisions, including any transaction involving the "LAVATEC" trademark, would have required the consent of Lavatec GmbH's ownership; Lavatec, Inc. was a mere distributor of Lavatec GmbH's products and services and was set up for Lavatec GmbH's convenience;
9. Lavatec GmbH never intended to assign ownership of the "LAVATEC" trademark to Lavatec, Inc.;
10. Lavatec, Inc. was allowed to use the mark "LAVATEC" while operating in the U.S. solely based upon an implied license from Lavatec GmbH whose ownership of the "LAVATEC" trademark in the U.S. was never called into question;
11. Lavatec, Inc.'s registration of the "LAVATEC" trademark would have required the prior consent of Lavatec GmbH;
12. To the best of my knowledge, Lavatec GmbH never assigned its ownership of the "LAVATEC" trademark to Lavatec, Inc.

Executed on this 22nd day of November, 2010.


UWE FLEISCHER



Authentication of Signature

I hereby certify that this document was signed in my presence by

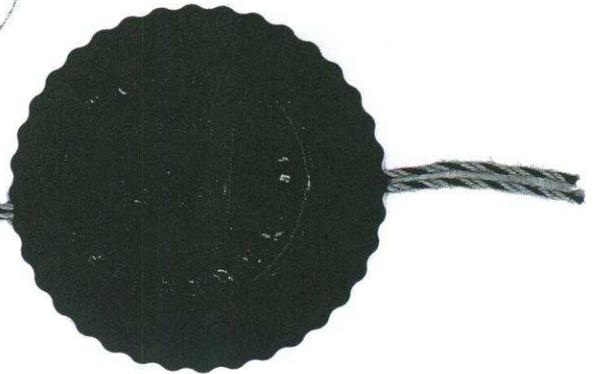
Mister Uwe Willi Fleischer,
born on 1951-01-08,
residing in 74219 Möckmühl, Roigheimer Straße 1,

- identified by identity card number 6249092972 -.

Heilbronn, 2010-11-22

Notary public

(Funk)



Notariat Heilbronn VIII

Notar Funk

Speyerer Straße 13 ♦ 74078 Heilbronn-Frankenbach
Tel.: 07131/91560 ♦ Fax: 07131/915619



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Heilbronn, 22th November 2010

Funk
Notary Public

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3. in seiner Eigenschaft als Notar beim Notariat Heilbronn

4. Sie ist versehen mit dem Dienstsiegel des Notariats Heilbronn

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5. in Heilbronn

6. am 23.11.2010

7. durch den Präsidenten des Landgerichts in Heilbronn

8. unter Nr. 910 a - 1648/2010

9. Stempel

10. Unterschrift
Der Präsident des Landgerichts



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Görlich

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Geb.gem. Nr. 1a lit. bb)

d.Geb.Verz.z.JVKostO

aus 3000 €

-: 10.-- €

SWORN AFFIDAVIT OF HELMUT ERB

I, HELMUT ERB, being duly sworn, depose and say:

1. My name is HELMUT ERB;
2. I am a German national;
3. I was shareholder and at the same time Vice President Engineering and Software Development of Lavatec GmbH.
4. In my capacity as Vice President Engineering and Software Development of Lavatec GmbH, I have direct knowledge of the facts stated herein and the same are true to my own knowledge except as to those matters herein stated to be upon information and belief and as to those matters I believe them to be true. The grounds of my belief as to all matters not stated upon my own knowledge are records of Lavatec GmbH or information that I have received in my capacity as Vice President Engineering and Software Development of Lavatec GmbH.
5. Lavatec GmbH was the first company to sell, commercialize and promote goods manufactured by Lavatec GmbH in Germany and bearing the mark LAVATEC in the United States.
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8. Lavatec, Inc. was under the direct control of Lavatec GmbH and all major decisions, including any transaction involving the "LAVATEC" trademark, would have required the consent of Lavatec GmbH's ownership; Lavatec, Inc. was a mere distributor of Lavatec GmbH's products and services and was set up for Lavatec GmbH's convenience;
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10. Lavatec, Inc. was allowed to use the mark "LAVATEC" while operating in the U.S. solely based upon an implied license from Lavatec GmbH whose ownership of the "LAVATEC" trademark in the U.S. was never called into question;
11. Lavatec, Inc.'s registration of the "LAVATEC" trademark would have required the prior consent of Lavatec GmbH;
12. To the best of my knowledge, Lavatec GmbH never assigned its ownership of the "LAVATEC" trademark to Lavatec, Inc.

Executed on this 22nd day of November, 2010.


HELMUT ERB



Authentication of Signature

I hereby certify that this document was signed in my presence by

Mister Helmut Friedrich Erb,
born on 1952-02-15,
residing in 74078 Heilbronn, Teutonenstraße 77,

- identified by identity card number 6219582021 -.

Heilbronn, 2010-11-22

Notary public

(Funk)



Notariat Heilbronn VIII

Notar Funk

Speyerer Straße 13 ♦ 74078 Heilbronn-Frankenbach
Tel.: 07131/91560 ♦ Fax: 07131/915619



Notarial Certificate

The undersigned notary public Uwe Funk in Heilbronn hereby legalizes as authentic the present document. This is a true copie of the original by me sighted.

Heilbronn, 22th November 2010

Funk
Notary Public

A handwritten signature in black ink, appearing to read 'Funk', written over a horizontal line.



APOSTILLE

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1. Land: Bundesrepublik Deutschland

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Bestätigt

5. in Heilbronn

6. am 23.11.2010

7. durch den Präsidenten des Landgerichts in Heilbronn

8. unter Nr. 910 a - 1647/2010

9. Stempel

10. Unterschrift
Der Präsident des Landgerichts



Görlich

Kosten:

Geb.gem. Nr. 1a lit. bb)

d.Geb.Verz.z.JVKostO

aus 3000 €

-: 10.-- €

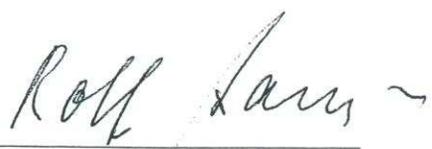
SWORN AFFIDAVIT OF ROLF ELLWANGER

I, ROLF ELLWANGER, being duly sworn, depose and say:

1. My name is ROLF ELLWANGER;
2. I am a German national;
3. I was shareholder and at the same time Senior Manager Purchasing of Lavatec GmbH
4. In my capacity as Senior Manager Purchasing of Lavatec GmbH, I have direct knowledge of the facts stated herein and the same are true to my own knowledge except as to those matters herein stated to be upon information and belief and as to those matters I believe them to be true. The grounds of my belief as to all matters not stated upon my own knowledge are records of Lavatec GmbH or information that I have received in my capacity as Senior Manager Purchasing of Lavatec GmbH.
5. Lavatec GmbH was the first company to sell, commercialize and promote goods manufactured by Lavatec GmbH in Germany and bearing the mark LAVATEC in the United States.
6. Lavatec, Inc. was incorporated by Lavatec GmbH after it was established that there was a market for Lavatec GmbH's German products in the U.S.;
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11. Lavatec, Inc.'s registration of the "LAVATEC" trademark would have required the prior consent of Lavatec GmbH;
12. To the best of my knowledge, Lavatec GmbH never assigned its ownership of the "LAVATEC" trademark to Lavatec, Inc.

Executed on this 22nd day of November, 2010.


ROLF ELLWANGER



Authentication of Signature

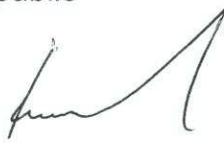
I hereby certify that this document was signed in my presence by

Mister Rolf Günter Ellwanger,
born on 1947-12-19,
residing in 74232 Abstatt, Schozachstraße 69,

- identified by identity card number 622307367 -.

Heilbronn, 2010-11-22

Notary public

(Funk) 



Notariat Heilbronn VIII

Notar Funk

Speyerer Straße 13 ♦ 74078 Heilbronn-Frankenbach
Tel.: 07131/91560 ♦ Fax: 07131/915619



Notarial Certificate

The undersigned notary public Uwe Funk in Heilbronn hereby legalizes as authentic the present document. This is a true copie of the original by me sighted.

Heilbronn, 22th November 2010

Funk
Notary Public

Handwritten signature of Uwe Funk.



APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Land: Bundesrepublik Deutschland

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Bestätigt

5. in Heilbronn

6. am 23.11.2010

7. durch den Präsidenten des Landgerichts in Heilbronn

8. unter Nr. 910 a - 1643/2010

9. Stempel

10. Unterschrift
Der Präsident des Landgerichts




Gölfich

Kosten:

Geb.gem. Nr. 1a lit. bb)
d.Geb.Verz.z.JVKostO
aus 3000 €
-: 10.-- €

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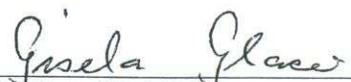
SWORN AFFIDAVIT OF GISELA GLASER

I, GISELA GLASER, being duly sworn, depose and say:

1. My name is GISELA GLASER;
2. I am a German national;
3. I was shareholder and at the same time Manager Human Resources of Lavatec GmbH.
4. In my capacity as Manager Human Resources of Lavatec GmbH, I have direct knowledge of the facts stated herein and the same are true to my own knowledge except as to those matters herein stated to be upon information and belief and as to those matters I believe them to be true. The grounds of my belief as to all matters not stated upon my own knowledge are records of Lavatec GmbH or information that I have received in my capacity as Manager Human Resources of Lavatec GmbH.
5. Lavatec GmbH was the first company to sell, commercialize and promote goods manufactured by Lavatec GmbH in Germany and bearing the mark LAVATEC in the United States.
6. Lavatec, Inc. was incorporated by Lavatec GmbH after it was established that there was a market for Lavatec GmbH's German products in the U.S.;
7. Lavatec, Inc. marketed Lavatec GmbH's products using marketing material and literature prepared by Lavatec GmbH;

8. Lavatec, Inc. was under the direct control of Lavatec GmbH and all major decisions, including any transaction involving the "LAVATEC" trademark, would have required the consent of Lavatec GmbH's ownership; Lavatec, Inc. was a mere distributor of Lavatec GmbH's products and services and was set up for Lavatec GmbH's convenience;
9. Lavatec GmbH never intended to assign ownership of the "LAVATEC" trademark to Lavatec, Inc.;
10. Lavatec, Inc. was allowed to use the mark "LAVATEC" while operating in the U.S. solely based upon an implied license from Lavatec GmbH whose ownership of the "LAVATEC" trademark in the U.S. was never called into question;
11. Lavatec, Inc.'s registration of the "LAVATEC" trademark would have required the prior consent of Lavatec GmbH;
12. To the best of my knowledge, Lavatec GmbH never assigned its ownership of the "LAVATEC" trademark to Lavatec, Inc.

Executed on this 22nd day of November, 2010.



GISELA GLASER



Urkundenrolle VIII UR 2176 / 2010
Notariat Heilbronn VIII*Tel. 07131/91560*Fax 07131/915619

VIII UZ 2579 /
2010

Authentication of Signature

I hereby certify that this document was signed in my presence by

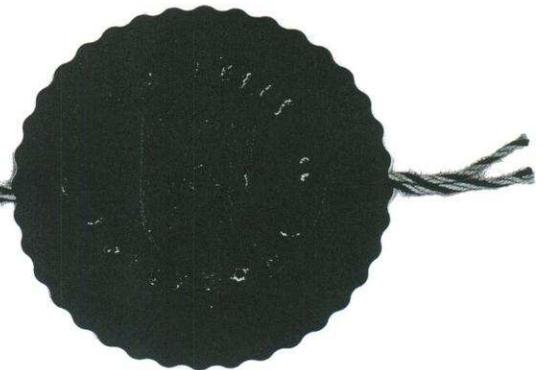
Miss Gisela Erika Glaser,
born on 1956-02-14,
residing in 74078 Heilbronn, Brechhausstraße 10/1

- identified by passport number C8J8LN01K -.

Heilbronn, 2010-11-22

Notary public

(Funk)



Notariat Heilbronn VIII

Notar Funk

Speyerer Straße 13 ♦ 74078 Heilbronn-Frankenbach
Tel.: 07131/91560 ♦ Fax: 07131/915619



Notarial Certificate

The undersigned notary public Uwe Funk in Heilbronn hereby legalizes as authentic the present document. This is a true copie of the original by me sighted.

Heilbronn, 22th November 2010

Funk
Notary Public



APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Land: Bundesrepublik Deutschland

Diese öffentliche Urkunde

2. ist unterschrieben von Notar Funk in Heilbronn

3. in seiner Eigenschaft als Notar beim Notariat Heilbronn

4. Sie ist versehen mit dem Dienstsiegel des Notariats Heilbronn

Bestätigt

5. in Heilbronn

6. am 23.11.2010

7. durch den Präsidenten des Landgerichts in Heilbronn

8. unter Nr. 910 a - 1644/2010

9. Stempel

10. Unterschrift
Der Präsident des Landgerichts



Görlich

Kosten:

Geb.gem. Nr. 1a lit. bb)

d.Geb.Verz.z.JVKostO

aus 3000 €

-: 10.-- €

SWORN AFFIDAVIT OF HELMUT NESPER

I, HELMUT NESPER, being duly sworn, depose and say:

1. My name is HELMUT NESPER;
2. I am a German national;
3. I was shareholder and at the same time Manager Software Development of Lavatec GmbH.
4. In my capacity as Manager Software Development of Lavatec GmbH, I have direct knowledge of the facts stated herein and the same are true to my own knowledge except as to those matters herein stated to be upon information and belief and as to those matters I believe them to be true. The grounds of my belief as to all matters not stated upon my own knowledge are records of Lavatec GmbH or information that I have received in my capacity as Manager Software Development of Lavatec GmbH.
5. Lavatec GmbH was the first company to sell, commercialize and promote goods manufactured by Lavatec GmbH in Germany and bearing the mark LAVATEC in the United States.
6. Lavatec, Inc. was incorporated by Lavatec GmbH after it was established that there was a market for Lavatec GmbH's German products in the U.S.;
7. Lavatec, Inc. marketed Lavatec GmbH's products using marketing material and literature prepared by Lavatec GmbH;

8. Lavatec, Inc. was under the direct control of Lavatec GmbH and all major decisions, including any transaction involving the "LAVATEC" trademark, would have required the consent of Lavatec GmbH's ownership; Lavatec, Inc. was a mere distributor of Lavatec GmbH's products and services and was set up for Lavatec GmbH's convenience;
9. Lavatec GmbH never intended to assign ownership of the "LAVATEC" trademark to Lavatec, Inc.;
10. Lavatec, Inc. was allowed to use the mark "LAVATEC" while operating in the U.S. solely based upon an implied license from Lavatec GmbH whose ownership of the "LAVATEC" trademark in the U.S. was never called into question;
11. Lavatec, Inc.'s registration of the "LAVATEC" trademark would have required the prior consent of Lavatec GmbH;
12. To the best of my knowledge, Lavatec GmbH never assigned its ownership of the "LAVATEC" trademark to Lavatec, Inc.

Executed on this 22nd day of November, 2010.


HELMUT NESPER



Urkundenrolle VIII UR 2177 / 2010
Notariat Heilbronn VIII* Tel. 07131/91560*Fax 07131/915619

VIII UZ 2580 /
2010

Authentication of Signature

I hereby certify that this document was signed in my presence by

Mister Helmut Eugen Nesper,
born on 1952-10-07,
residing in 74078 Heilbronn, Siedlungsstraße 13,

- identified by identity card number 621976845 -.

Heilbronn, 2010-11-22

Notary public

(Funk)



Notariat Heilbronn VIII

Notar Funk

Speyerer Straße 13 ♦ 74078 Heilbronn-Frankenbach
Tel.: 07131/91560 ♦ Fax: 07131/915619



Notarial Certificate

The undersigned notary public Uwe Funk in Heilbronn hereby legalizes as authentic the present document. This is a true copie of the original by me sighted.

Heilbronn, 22th November 2010

Funk
Notary Public

A handwritten signature in black ink, appearing to read 'Uwe Funk', written over a horizontal line.



APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Land: Bundesrepublik Deutschland

Diese öffentliche Urkunde

2. ist unterschrieben von Notar Funk in Heilbronn

3. in seiner Eigenschaft als Notar beim Notariat Heilbronn

4. Sie ist versehen mit dem Dienstsiegel des Notariats Heilbronn

Bestätigt

5. in Heilbronn

6. am 23.11.2010

7. durch den Präsidenten des Landgerichts in Heilbronn

8. unter Nr. 910 a - 1645/2010

9. Stempel

10. Unterschrift
Der Präsident des Landgerichts



Görlich

Kosten:

Geb.gem. Nr. 1a lit. bb)

d.Geb.Verz.z.JVKostO

aus 3000 €

-: 10.-- €

SWORN AFFIDAVIT OF HARTMUT KNOBLOCH

I, HARTMUT KNOBLOCH, being duly sworn, depose and say:

1. My name is HARTMUT KNOBLOCH;
2. I am a German national;
3. I was shareholder and at the same time Head of the Planning Department of Lavatec GmbH.
4. In my capacity as Head of the Planning Department of Lavatec GmbH, I have direct knowledge of the facts stated herein and the same are true to my own knowledge except as to those matters herein stated to be upon information and belief and as to those matters I believe them to be true. The grounds of my belief as to all matters not stated upon my own knowledge are records of Lavatec GmbH or information that I have received in my capacity as Head of the Planning Department of Lavatec GmbH.
5. Lavatec GmbH was the first company to sell, commercialize and promote goods manufactured by Lavatec GmbH in Germany and bearing the mark LAVATEC in the United States.
6. Lavatec, Inc. was incorporated by Lavatec GmbH after it was established that there was a market for Lavatec GmbH's German products in the U.S.;
7. Lavatec, Inc. marketed Lavatec GmbH's products using marketing material and literature prepared by Lavatec GmbH;

8. Lavatec, Inc. was under the direct control of Lavatec GmbH and all major decisions, including any transaction involving the "LAVATEC" trademark, would have required the consent of Lavatec GmbH's ownership; Lavatec, Inc. was a mere distributor of Lavatec GmbH's products and services and was set up for Lavatec GmbH's convenience;
9. Lavatec GmbH never intended to assign ownership of the "LAVATEC" trademark to Lavatec, Inc.;
10. Lavatec, Inc. was allowed to use the mark "LAVATEC" while operating in the U.S. solely based upon an implied license from Lavatec GmbH whose ownership of the "LAVATEC" trademark in the U.S. was never called into question;
11. Lavatec, Inc.'s registration of the "LAVATEC" trademark would have required the prior consent of Lavatec GmbH;
12. To the best of my knowledge, Lavatec GmbH never assigned its ownership of the "LAVATEC" trademark to Lavatec, Inc.

Executed on this 22nd day of November, 2010.


HARTMUTKNOBLOCH



Authentication of Signature

I hereby certify that this document was signed in my presence by

Mister Hartmut Walter Knobloch,
born on 1953-04-26,
residing in 74252 Massenbachhausen, Goethestraße 4,

- identified by identity card number 624806454 -.

Heilbronn, 2010-11-22

Notary public


(Funk)



Notariat Heilbronn VIII

Notar Funk

Speyerer Straße 13 ♦ 74078 Heilbronn-Frankenbach
Tel.: 07131/91560 ♦ Fax: 07131/915619



Notarial Certificate

The undersigned notary public Uwe Funk in Heilbronn hereby legalizes as authentic the present document. This is a true copie of the original by me sighted.

Heilbronn, 22th November 2010

Funk
Notary Public

A handwritten signature in black ink, appearing to be 'Uwe Funk', written over a horizontal line.



APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Land: Bundesrepublik Deutschland

Diese öffentliche Urkunde

2. ist unterschrieben von Notar Funk in Heilbronn

3. in seiner Eigenschaft als Notar beim Notariat Heilbronn

4. Sie ist versehen mit dem Dienstsiegel des Notariats Heilbronn

Bestätigt

5. in Heilbronn

6. am 23.11.2010

7. durch den Präsidenten des Landgerichts in Heilbronn

8. unter Nr. 910 a - 1646/2010

9. Stempel

10. Unterschrift
Der Präsident des Landgerichts



Goflich

Kosten:

Geb.gem. Nr. 1a lit. bb)

d.Geb.Verz.z.JVKostO

aus 3000 €

-: 10.-- €