

ESTTA Tracking number: **ESTTA422907**

Filing date: **08/02/2011**

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 UNITED STATES lind@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	08/02/2011
Attachments	motiontocompel.pdf ( 32 pages )(1156319 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	)	

---

**MOTION TO COMPEL AND ORDER FOR ADMISSIONS**

Applicant Lavatec, Inc., formerly known as Laundry Acquisition Inc., whose succession to the above referenced mark and application for registration thereof from the original applicant is of record, requests the Board to issue an Order compelling the Opposer to respond to Applicant's First and Second Set of Interrogatories to Opposer (Exhibits 1 and 2), and Applicant's First Set of Document Requests to Opposer (Exhibit 3) without objections.

Applicant also requests an order from the Board declaring Applicant's First Set of Requests for Admission (Exhibit 4) to have been admitted pursuant to FRCivP 36(a)(3).

**FACTUAL BACKGROUND**

On June 17, 2011 the then-Applicant served Applicant's First Set of Interrogatories, First Set of Document Requests, and First Requests for Admission on the Opposer by electronic transmission and US Mail. Electronic transmission had previously been agreed to by the parties. On June 22, 2011 Applicant served its

Second Set of Interrogatories by electronic transmission and US Mail on Opposer. The dates for responses to all the discovery requests have come and gone with no responses or objections to any of the discovery requests.

On July 14, 2011 Atty. Tallent for Opposer requested of Atty. Linderman for Applicant a 30-day extension of time to respond to the discovery requests because of the large volume of documents involved. Atty. Linderman stated he would speak with the Applicant regarding the extension request and get back to Atty. Tallent. On the same day Atty. Linderman spoke with the Applicant and replied to Atty. Tallent by phone and email explaining that the extensions granted in the past have been used by the Opposer to spread false and disparaging statements about Applicant to the laundry industry where the mark is used. Hence an extension would be granted to August 19, 2011 on condition that the false and disparaging statements by Opposer be stopped. See Exhibit 5. Atty. Tallent asked for clarification (Exhibit 6), and the clarification with cited examples was sent on July 18, 2011 (Exhibit 7). In the meantime Atty Tallent had apparently spoken with the Opposer, and on July 18, 2011 she denied anything improper and effectively indicated the Opposer would continue his false and disparaging remarks. See Exhibit 8.

When no timely responses had been received by July 25, 2011, Atty. Linderman wrote to Atty. Tallent reminding her that the discovery responses were overdue, and consent to the conditions of an extension was still lacking (Exhibit 9). Atty. Tallent responded without the missing consent (Exhibit 10), and at that point Atty. Linderman said he would only grant Opposer an extension to July 29, 2011 (Exhibit 11). That grant was summarily rejected by Atty. Fiocchi for the Opposer on the same day (Exhibit 12).

To date no responses to Applicant's discovery requests have been received. However on July 29, 2011 Atty Tallent did serve interrogatories, document requests, and requests for admission on Applicant on behalf of Opposer.

It is submitted that the attached Exhibits 5 – 12 support Applicant's unsuccessful attempt to reach a resolution of the discovery dispute regarding Applicant's discovery requests.

It is appropriate to mention that Atty. Linderman, as early as the initial attorneys conference in February 2011, told Opposer's attorneys that he wanted a copy of a sale agreement upon which Opposer apparently lays his claim to the US trademark rights in the LAVATEC mark. That document was not produced as part of Opposer's Initial Disclosures in May 2011 even though Opposer's attorneys stated the document was in their possession. Nor has it been produced in response to Applicant's unanswered First Set of Document Requests. The withholding of the document casts doubt upon the validity of Opposer's claims to rights in the LAVATEC mark and any damage from registration of the mark by Applicant.

It is also relevant that Opposer has requested substantial extensions of time with little active pursuit of the Opposition proceedings. Initially Opposer sought an immediate 60-day extension of the whole Scheduling Order. Applicant consented to that request. When Opposer requested an additional 30 days to respond to Applicant's discovery requests, Applicant was rightfully concerned that Opposer would continue to use the extension to spread false and disparaging rumors about Applicant through the laundry industry while the Opposition languished. Three blatant examples of the falsehoods and rumors spread by Opposer are that Applicant can not supply spare parts, that Applicant will be out of business within a matter of weeks, and that Opposer is the original Lavatec. See Exhibit 7. Opposer's attorneys dismissal of the charges as "bickering" and going to the merits of the Opposition indicate that the falsehoods and rumors from their client will continue. Hence Applicant had valid grounds for refusing a 30-day extension and granting only a one-week extension beyond the due date for Opposer to respond.

### **Relief Requested**

In view of Opposer's failure to respond, Applicant seeks an order compelling Opposer to respond by providing complete responses to Applicant'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).

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](mailto:lind@ip-lawyers.com)  
[twilley@ip-lawyers.com](mailto:twilley@ip-lawyers.com)  
Attorneys for Applicant

CERTIFICATE SERVICE

The undersigned hereby certifies that a copy of the foregoing

**MOTION TO COMPEL AND ORDER FOR ADMISSIONS**

was sent by email and served by First Class U.S. Mail, postage prepaid this 2nd day of August 2011, to the following counsel of record:

Andrea Fiocchi, Esq.  
Sarah E. Tallent, Esq.  
44 Wall Street, 10<sup>th</sup> Fl  
New York, NY 10005

By s/John C. Linderman  
John C. Linderman

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	)	
_____	)	

**APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER**

Pursuant to F.R.Civ.P. 33 and 37 C.F.R. §2.120(d), Applicant, Lavatec, Inc., sets forth below its First Set of Interrogatories, and requests that Opposer, Wolf-Peter Graeser, 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 Opposer, 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 Opposer, state when such documents were most recently in the possession, custody and/or control of the Opposer 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 or Request propounded in the disjunctive shall be construed to include the conjunctive and vice versa.

7. Any Interrogatory or Request 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 or 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.

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 and Requests 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., the applicant in this Opposition, 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. Lavatec Laundry Technology Inc. refers to the Connecticut corporation having a place of business at 49 Lancaster Drive, Beacon Falls, CT 06403, including all present or former directors, partners, officers, employees, parent and subsidiary corporations, predecessors, and any attorney or third party acting on Applicant's behalf

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

#### INTERROGATORIES

1. State the basis for the allegation in the Notice of Opposition that Lavatec GmbH (f/k/a Lavatec AG) is Opposer's predecessor in interest.

2. Identify all assets of Lavatec, Inc. acquired or otherwise obtained by Opposer from Lavatec GmbH, or any other entity, and the circumstances surrounding the acquisition, including the date of acquisition.

3. State how Opposer and Lavatec GmbH have been engaged in the commercial laundry business in the United States since 1986, as alleged in Par. 1 of the Notice of Opposition.

4. State how Opposer and Lavatec GmbH used the mark LAVATEC in connection with advertising, marketing, sales, and services in the United States, as alleged in Par. 2 of the Notice of Opposition.

5. Explain how Opposer and Lavatec GmbH made it possible for the mark LAVATEC to acquire substantial customer recognition throughout the United States, as alleged in Par. 5 of the Notice of Opposition.

6. Identify Opposer's sales office referred to in Par. 23 of the Notice of Opposition, and opposer's relationship with the office.

7. Explain Opposer's relationship, if any, with Lavatec Laundry Technology Inc., including any ownership, financial, managerial, and licensing relationships.

Respectfully

LAVATEC, INC.

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](mailto:lind@ip-lawyers.com)

[twilley@ip-lawyers.com](mailto:twilley@ip-lawyers.com)

Attorneys for Applicant

CERTIFICATE SERVICE

The undersigned hereby certifies that a copy of the foregoing

**APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER**

was sent by electronic mail and served by First Class United States Mail, postage pre-paid, this 17th day of June, 2011, to the following counsel of record:

Andrea Fiocchi, Esq.  
Sarah E. Tallent, Esq.  
Reinhardt LLP  
44 Wall Street, 10th Floor  
New York, NY 10005

By s/John C. Linderman  
John C. Linderman

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	)	
_____	)	

**APPLICANT'S SECOND SET OF INTERROGATORIES TO OPPOSER**

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

INSTRUCTIONS AND DEFINITIONS

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

INTERROGATORIES

8. If Opposer denied, in full or in part, any of the Requests For Admission, served on June 17, 2011, please explain the denials.

Respectfully

LAVATEC, INC.

By s/ Richard J. Twilley

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](mailto:lind@ip-lawyers.com)

[twilley@ip-lawyers.com](mailto:twilley@ip-lawyers.com)

Attorneys for Applicant

CERTIFICATE SERVICE

The undersigned hereby certifies that a copy of the foregoing

**APPLICANT'S SECOND SET OF INTERROGATORIES TO OPPOSER**

was sent by electronic mail and served by First Class United States Mail, postage pre-paid, this 22nd day of June, 2011, to the following counsel of record:

Andrea Fiocchi, Esq.  
Sarah E. Tallent, Esq.  
Reinhardt LLP  
44 Wall Street, 10th Floor  
New York, NY 10005

By s/Richard J. Twilley

Richard J. Twilley

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	)	
_____	)	

**APPLICANT'S FIRST SET OF DOCUMENT REQUESTS TO OPPOSER**

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

Instructions and Definitions

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

DOCUMENT REQUESTS

1. All documents supporting Opposer's allegations in the Notice of Opposition that Lavatec GmbH (f/k/a Lavatec AG) is Opposer's predecessor in interest.
2. All documents identifying any assets of Lavatec, Inc. acquired or otherwise obtained by Opposer.

3. Documents indicating Opposer or Lavatec GmbH have made contact with customers in the United States in connection with a commercial laundry business since 1986, including any sales or service of commercial laundry equipment.

4. All documents indicating that the mark LAVATEC as used in the United States was sold to Opposer as alleged in Par. 5 of the Notice of Opposition.

5. Documents indicating that the mark LAVATEC has been identified with Opposer or Lavatec GmbH in the United States as alleged in Par. 3 of the Notice of Opposition.

6. Documents reflecting first use of the mark LAVATEC by Lavatec GmbH or its German subsidiaries in the United States.

Respectfully

LAVATEC, INC.

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](mailto:lind@ip-lawyers.com)

[twilley@ip-lawyers.com](mailto:twilley@ip-lawyers.com)

Attorneys for Applicant

#### CERTIFICATE SERVICE

The undersigned hereby certifies that a copy of the foregoing

#### **APPLICANT'S FIRST SET OF DOCUMENT REQUESTS TO OPPOSER**

was sent by electronic mail and served by First Class United States Mail, postage prepaid, this 17th day of June, 2011, to the following counsel of record:

Andrea Focchi, Esq.  
Sarah E. Tallent, Esq.  
Reinhardt LLP  
44 Wall Street, 10th Floor  
New York, NY 10005

By s/John C. Linderman  
John C. Linderman

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.	)	June 17, 2011
	)	
Applicant	)	
_____	)	

**APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSION TO OPPOSER**

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

INSTRUCTIONS AND DEFINITIONS

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

ADMISSION REQUESTS

1. Opposer never acquired all assets of Lavatec GmbH (f/k/a Lavatec AG) as alleged in Par. 20 of the Notice of Opposition.
2. Opposer never acquired any stock of Lavatec, Inc.

3. Opposer was never a creditor of Lavatec, Inc.
4. Opposer never acquired any assets of Lavatec, Inc.
5. Under the proceedings of Chapter 11 (Reorganization) of the United States Bankruptcy Code cited in Par. 24 of the Notice of Opposition, Applicant Lavatec, Inc. became a debtor-in-possession of all Lavatec, Inc. assets.
6. Under the proceedings of Chapter 11 (Reorganization) of the United States Bankruptcy Code cited in Par. 24 of the Notice of Opposition, no receiver was appointed to take control of Lavatec, Inc. assets.
7. At the time of acquisition of any assets of Lavatec GmbH, Opposer was aware of the Chapter 11 (Reorganization) proceedings of Applicant Lavatec, Inc., and that Applicant Lavatec, Inc. was a debtor-in-possession of Lavatec, Inc. assets.
8. At the time of purchase of any assets of Lavatec GmbH by Opposer, Lavatec GmbH was aware of the Chapter 11 (Reorganization) proceedings of Applicant Lavatec, Inc., and that Applicant Lavatec, Inc. was a debtor-in-possession of Lavatec, Inc. assets.
9. All sales of laundry equipment for use in the United States by Lavatec GmbH and its German subsidiaries were to Lavatec, Inc.
10. Lavatec GmbH and its German subsidiaries never sold laundry equipment directly to customers in the United States.
11. Lavatec GmbH and its German subsidiaries never sold laundry equipment to customers in the United States prior to the formation of Lavatec, Inc.
12. Lavatec GmbH and its German subsidiaries never performed services on laundry equipment in the possession of customers in the United States.
13. Lavatec GmbH and its German subsidiaries never performed services on laundry equipment in the possession of customers in the United States prior to the formation of Lavatec, Inc.
14. The first sale of laundry equipment bearing the LAVATEC mark to a customer in the United States was by Lavatec, Inc.

15. Opposer never acquired exclusive rights to the LAVATEC trademark for use in the United States on any type of laundry equipment.

16. Opposer has no documents granting Opposer exclusive rights to the LAVATEC trademark for use in the United States on any type of laundry equipment.

17. Prior to any acquisition of assets of Lavatec GmbH by Opposer, Lavatec GmbH informed Opposer that Lavatec GmbH did not have an exclusive right to the LAVATEC name to convey to Opposer.

18. Prior to any acquisition of assets of Lavatec GmbH by Opposer, Lavatec GmbH informed Opposer that Applicant Lavatec Inc. had the right to use the name LAVATEC in conducting its business.

Respectfully

LAVATEC, INC.

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](mailto:lind@ip-lawyers.com)

[twilley@ip-lawyers.com](mailto:twilley@ip-lawyers.com)

Attorneys for Applicant

CERTIFICATE SERVICE

The undersigned hereby certifies that a copy of the foregoing

**APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSION TO OPPOSER**

was sent by electronic mail and served by First Class United States Mail, postage pre-paid, this 17th day of June, 2011, to the following counsel of record:

Andrea Fiocchi, Esq.

Sarah E. Tallent, Esq.  
Reinhardt LLP  
44 Wall Street, 10th Floor  
New York, NY 10005

By s/John C. Linderman  
John C. Linderman

John C. Linderman

Thursday, July 14, 2011 3:53 PM

Subject: LAVATEC Opposition

Date: Thursday, July 14, 2011 3:53 PM

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

To: Sarah Tallent stallent@reinhardt-law.com

Sarah:

I left a voice message on your phone a half hour ago that we would agree to an extension of time to August 19, 2011 for you to respond to our discovery requests, provided that Mr. Graeser stops broadcasting that he is the owner of the LAVATEC mark in the US and that Lavatec Inc. will disappear from the marketplace for laundry equipment.

The extensions that we have agreed to in the past have been used by Mr. Graeser to disparage and undermine Lavatec, Inc. while the opposition is effectively stalled. If you want extensions, then stop disparaging Lavatec's position.

Please let me have a confirmation.

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  
Phone: 860.549.5290 Ext. 1004  
Fax: 860.527.0464

lind@ip-lawyers.com

Please visit our WEB SITE: <http://www.ip-Lawyers.com>

+=====  
The information contained in this e-mail communication may contain confidential and/or privileged information. The information is only for the use of the individual or entity named. If you are not the intended recipient of the information, or the employee or agent responsible to deliver it to the intended recipient, you are notified that your review, use, dissemination, disclosure, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by return e-mail, and destroy any physical and electronic copies of the communication.  
+=====

**John C. Linderman**

Tuesday, August 2, 2011 11:00 AM

**Subject:** RE: LAVATEC Opposition

**Date:** Thursday, July 14, 2011 6:19 PM

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

**To:** John C. Linderman lind@ip-lawyers.com

**Cc:** Andrea Fiocchi afiocchi@reinhardt-law.com

John:

I got your message. Can you kindly clarify what exactly you had in mind? I'll run this past our client and get back to you.

Regards,

Sarah

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

**Subject:** Re: LAVATEC Opposition

**Date:** Monday, July 18, 2011 1:15 PM

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

**To:** Sarah Tallent stallent@reinhardt-law.com

**Cc:** Andrea Fiocchi afiocchi@reinhardt-law.com

Sarah:

Here are several examples of disparaging and false remarks from Mr. Graeser that we want stopped.

Recently at the trade show CLEAN SHOW 2011, Mr. Graeser was telling customers that they should not be doing business with Lavatec, Inc. because Lavatec, Inc. would be out of business in 6 weeks. The 6-week reference was obviously based on the scheduled bankruptcy sale which he knows will result in the continuation of the Lavatec business in the US market under new ownership with whom he seeks a business relationship. So while on the one hand he curries favor with the new owners, on the other hand he is attempting to scuttle the business rollover.

I also attach a letter dated 20th April 2011 in which Graeser falsely asserts to customers that Lavatec Laundry Technology Inc. is the legitimate successor to Lavatec GmbH when in fact he acquired no assets of the US subsidiary, Lavatec, Inc., and he knew that Lavatec, Inc. is an active US company.

The letter goes on to state that Lavatec, Inc. "has no access to original spare parts for Lavatec machinery", when in fact Lavatec, Inc. has a huge inventory of original spare parts, has access to still more parts, and still manufactures its own folders and washer extractors.

The letter is also attempts to pass Lavatec Laundry Technology off as the "traditional Lavatec" that has been in business "since 1986" when in fact it is a Lavatec, Inc. that is the original Lavatec and has served US customers since 1986. This statement is a deliberate attempt to trade upon the goodwill and reputation of Lavatec, Inc. and create confusion among customers in the industry.

I also attach a recent advertisement by Lavatec Laundry Technology that appeared prior to the CLEAN SHOW 2011 in American Laundry News, a North American trade publication. In the ad this time Lavatec Laundry Technology falsely claims to be "the legitimate successor to the previous Lavatec GmbH worldwide", when Graeser acquired no interest in the active US subsidiary Lavatec, Inc. LLT also makes the false and misleading claim to be "the original", again attempting to pass itself off as Lavatec, Inc. Then again LLT falsely states that it "offers full service and maintenance for all Lavatec products since 1986 (founding of the company)",

and is "the only company offering the complete line of spare parts", when Lavatec, Inc. also has spare parts and LLT has no access to folders or spare parts for the folders.

These are a few examples of Mr. Graeser's false and misleading statements and advertising that must stop. I look forward to hearing from you after you have touched base with your client.

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  
Phone: 860.549.5290 Ext. 1004  
Fax: 860.527.0464

[lind@ip-lawyers.com](mailto:lind@ip-lawyers.com)

Please visit our WEB SITE: <http://www.ip-Lawyers.com>

+=====+

The information contained in this e-mail communication may contain confidential and/or privileged information. The information is only for the use of the individual or entity named. If you are not the intended recipient of the information, or the employee or agent responsible to deliver it to the intended recipient, you are notified that your review, use, dissemination, disclosure, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by return e-mail, and destroy any physical and electronic copies of the communication.

+=====+

---

**From:** Sarah Tallent <stallent@reinhardt-law.com>  
**Date:** Mon, 18 Jul 2011 12:11:51 -0400  
**To:** "John C. Linderman" <lind@ip-lawyers.com>  
**Cc:** Andrea Fiocchi <afiocchi@reinhardt-law.com>  
**Subject:** RE: LAVATEC Opposition

Dear John:

We spoke with our client who denies your client's allegations below.

His position is that he is the registered owner of the Mark in Europe and that current opposition proceeding will not be concluded until some time next year. I cannot see how this position can be objectionable.

Regards,

Sarah

**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

John C. Linderman

Monday, August 1, 2011 3:34 PM

Subject: LAVATEC Opposition

Date: Monday, July 25, 2011 4:00 PM

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

To: Sarah Tallent stalent@reinhardt-law.com

Dear Sarah:

Your discovery response date has passed and we received nothing as either responses or confirmation that Mr. Graeser's misrepresentations and falsehoods have stopped. In fact he just recently sent a baseless and harrasing demand letter to a Lavatec, Inc. employee.

Unless I hear from you by July 29, 2011 we will seek a motion to compel.

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  
Phone: 860.549.5290 Ext. 1004  
Fax: 860.527.0464

lind@ip-lawyers.com

Please visit our WEB SITE: <http://www.ip-Lawyers.com>

+=====+  
The information contained in this e-mail communication may contain confidential and/or privileged information. The information is only for the use of the individual or entity named. If you are not the intended recipient of the information, or the employee or agent responsible to deliver it to the intended recipient, you are notified that your review, use, dissemination, disclosure, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by return e-mail, and destroy any physical and electronic copies of the communication.  
+=====+

**Subject:** RE: LAVATEC Opposition

**Date:** Monday, July 25, 2011 4:09 PM

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

**To:** John C. Linderman lind@ip-lawyers.com

**Cc:** Andrea Fiocchi afiocchi@reinhardt-law.com

Dear Mr. Linderman:

I was not able to review the materials referred to since they were not attached to the email.

I do, however, note the following:

(i) our client has no knowledge that the business of Lavatec, Inc. will be continued in the U.S., since this information is not contained in any public document and we're not even sure that this is the case,

(ii) our client has not claimed that Lavatec Laundry Technology, Inc. is the successor of Lavatec, Inc.; you are confusing Lavatec, Inc. with Lavatec GmbH, and

(iii) our client is not attempting to pass itself off as Lavatec, Inc., instead it is merely continuing its existing Lavatec business. On the contrary, your client keeps confusing the market by claiming to be the "real Lavatec" when they neither manufacture nor own the Lavatec trademark.

I believe that most of the allegations contained in your email relate to the heart of the dispute between the parties and the pending opposition proceeding, therefore, they should be dealt with within the context thereof.

We will proceed with discovery as previously agreed. You should expect our client's comprehensive discovery requests shortly.

Finally, as regards your threat of filing a motion to compel, please be reminded that you agreed to an extension and we acted accordingly. If you wish to file a motion we'll gladly respond and file our own concerning your insufficient initial disclosures, that clearly lack the required specificity. We could have filed this motion previously, however, had hoped we could avoid over-lawyering on procedural issues

You now seek to confuse the issues of the Opposition Proceeding with other baseless grievances that your client appears to have. I'd suggest we focus on the proceeding at hand.

Very truly yours,

Sarah

**Subject:** Re: LAVATEC Opposition  
**Date:** Monday, July 25, 2011 5:21 PM  
**From:** John C. Linderman <lind@ip-lawyers.com>  
**To:** Sarah Tallent stallent@reinhardt-law.com  
**Cc:** Andrea Fiocchi afiocchi@reinhardt-law.com

Sarah:

Your reply below does not merit a detailed response here and now. However, I must briefly respond to two of your statements.

If you really needed the documents, you didn't bother to ask for them.

I did not agree to an extension without conditions, the conditions being that Mr. Graeser must refrain from his false and misleading statements and activities. Refer to my email of July 14, 2011 that you questioned and my detailed reply on July 18, 2011. You rejected the conditions. Hence no extension was agreed to. Under the present circumstances I will agree to an extension to Friday July 29, 2011.

John C. Linderman

**From:** Sarah Tallent <stallent@reinhardt-law.com>  
**Date:** Mon, 25 Jul 2011 16:09:57 -0400  
**To:** "John C. Linderman" <lind@ip-lawyers.com>  
**Cc:** Andrea Fiocchi <afiocchi@reinhardt-law.com>  
**Subject:** RE: LAVATEC Opposition

Dear Mr. Linderman:

I was not able to review the materials referred to since they were not attached to the email.

I do, however, note the following:

- (i) our client has no knowledge that the business of Lavatec, Inc. will be continued in the U.S., since this information is not contained in any public document and we're not even sure that this is the case,
- (ii) our client has not claimed that Lavatec Laundry Technology, Inc. is the successor of Lavatec, Inc.; you are confusing Lavatec, Inc. with Lavatec GmbH, and
- (iii) our client is not attempting to pass itself off as Lavatec, Inc., instead it is merely continuing its existing Lavatec business. On the contrary, your client keeps confusing the market by claiming to be the "real Lavatec" when they neither manufacture nor own the Lavatec

**Subject:** RE: LAVATEC Opposition

**Date:** Monday, July 25, 2011 5:31 PM

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

**To:** John C. Linderman lind@ip-lawyers.com, Sarah Tallent stalent@reinhardt-law.com

Mr. Linderman:

Your client's allegations are preposterous (our client has a long list of similar allegations against your client) and your "condition" is mere lawyer's bickering. Your extension to July 29th is hereby rejected as unreasonable under the circumstances, including, without limitation, the lack of specificity of your original requests.

Feel free to file motions. We will respond in kind.

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

Skype: afiocchi

Web: www.reinhardt-law.com <<http://www.reinhardt-law.com>>

New York ♦ Denver ♦ Stuttgart