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

Proceeding	91216005
Party	Plaintiff Aquion, Inc.
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Submission	Motion to Compel Discovery
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Signature	/Johanna M. Wilbert/
Date	10/24/2014
Attachments	Aquion's Motion to Compel Discovery.pdf(22970 bytes ) Ex 1 - 2014-09-03 1st set of Interrogatories_.pdf(660127 bytes ) Ex 2 - 2014-09-03 1st Req for Prod of Docs_.pdf(817357 bytes ) Ex 3 - 2014-09-03 Ltr encl discovery requests.pdf(459732 bytes ) Ex 4 - 2014-09-03 Applicant's Email confirming response date.pdf(80668 bytes ) Ex 5 - 2014-10-15 E-mail to applicant.pdf(80597 bytes )

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

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In the Matter of Application Serial No. 79/121347: RAINSAFE and Design  
Published for Opposition March 25, 2014

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AQUION, INC.,

Opposer,

v.

Opposition No. 91216005

OZONE INDUSTRIES IRELAND LIMITED,

Applicant.

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**AQUION, INC.’S MOTION TO COMPEL OZONE INDUSTRIES IRELAND  
LIMITED’S ANSWERS TO AQUION’S FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS AND FIRST SET OF INTERROGATORIES**

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Aquion moves the Board to compel Ozone Industries Ireland Limited (“Applicant”) to respond to Aquion’s discovery requests, under Federal Rule of Civil Procedure 37(a) and Trademark Rule 2.120(e), 37 C.F.R. § 2.120(e). Eight weeks ago Aquion served Applicant with its first requests for production of documents and first set of interrogatories. Ignoring its discovery-related obligations, Applicant has refused to respond to the discovery requests, and rebuffed Aquion’s good faith efforts to communicate. Aquion now moves this Board to compel Applicant to respond, without objection, to both its requests for production of documents and interrogatories.

## BACKGROUND

Opposer Aquion specializes in the sale, installation, and repair of water treatment equipment and related products. Aquion has used its RAINSOFT trademark in conjunction with its water treatment and related products for over fifty years. Aquion owns a number of registrations for its RAINSOFT and RAINSOFT & Design trademarks. (*See* Notice of Opposition, ¶ 3). Based on these RAINSOFT trademarks, Aquion opposed Applicant's application to register its RAINSAFE & Design trademark for a variety of goods, including water treatment and related products. (*Id.* ¶ 3).

On September 3, 2014, Aquion served Applicant with its First Set of Interrogatories and First Set of Requests for the Production of Documents. (Copies of these documents are attached hereto as Exhibit 1 and Exhibit 2, respectively, and the cover letter accompanying the documents is attached hereto as Exhibit 3). The same day, Applicant's counsel sent an e-mail that acknowledged receipt of Aquion's discovery requests and confirmed that Applicant would have 35 days, or until October 8, 2014 to respond. (Attached hereto as Exhibit 4). The thirty-five day period elapsed with no response from Applicant.

On October 15, 2014, Aquion wrote to Applicant, through counsel, and inquired about Aquion's outstanding discovery requests. (Attached hereto as Exhibit 5). Applicant has remained silent, and has yet to produce any responses to Aquion's discovery requests.

Applicant has been uncommunicative, and has provided no discovery responses whatsoever. Because Aquion satisfied its obligations under Rule 2.120 and Fed. R. Civ. P. 26(a), and because Applicant has failed to respond to outstanding discovery requests and communications from Aquion's counsel, Aquion brought this motion.

## ARGUMENT

### **I. Filing a Motion to Compel is an Appropriate Action Against a Nonresponsive Party.**

The Rules, 37 C.F.R. 2.120(a)(3), require that Applicant respond to Aquion's interrogatories and document requests. Applicant's responses are now over two weeks late. Applicant has refused to respond to Aquion's inquiries as to when the responses will be forthcoming. It has made no commitments, offers, explanations, or requests for additional time. It has simply stood by silently.

If a party fails to produce a requested document, the requesting party may file a motion with the Board to compel production. 37 C.F.R. § 2.120(e); *see also* 9-400 Trademark Trial and Appeal Board Manual of Procedure ("TBMP") §§ 411.02, 523.01; *cf.* Fed. R. Civ. P. 37(a)(1). Similarly, if a party fails to answer an interrogatory, the requesting party may file a motion with the Board to compel an answer. 37 C.F.R. § 2.120(e); *see also* 9-400 TBMP §§ 411.02, 523.01; *cf.* Fed. R. Civ. P. 37(a)(3)(B)(iii). *See e.g., Johnson & Johnson and Roc Int'l S.A.R.L. v. Obschestvo s oranitchennoy; otvetstvennostiu "WDS"*, 2010 TTAB LEXIS 227, 95 U.S.P.Q.2d (BNA) 1567 (Trademark Trial & App. Bd. June 16, 2010) (granting motion to compel applicant to supplement interrogatory responses); *No Fear, Inc. v. Ruede D. Rule*, 2000 TTAB LEXIS 217, 54 U.S.P.Q.2d (BNA) 1551 (Trademark Trial & App. Bd. Mar. 30, 2000) (granting motion to compel applicant to respond to interrogatories and document requests).

### **II. Applicant Failed to Respond to Aquion's Discovery Requests.**

Aquion requests that the Board compel Applicant to respond to Aquion's discovery requests. In general, a party may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense. Fed. R. Civ. P. 26(b)(1). The interrogatories and requests for production comprising Aquion's discovery requests are relevant to Aquion's claim.

Moreover, to Aquion's knowledge, none of the requested documents enjoy privilege from discovery, because Applicant neglected to voice any objections. *See* Fed. R. Civ. P. 26(b)(5)(A) ("When a party withholds information otherwise discoverable by claiming that the information is privileged. . . the party must expressly make the claim; and describe the nature of the documents, communications, or tangible things not produced or disclosed . . ."). Aquion is therefore entitled to the discovery sought in its requests.

**A. Aquion's interrogatories seek relevant and discoverable information.**

The information sought in Aquion's interrogatories to Applicant is relevant and discoverable. Aquion served Applicant with twenty-three (23) interrogatories. All of the information sought in these interrogatories is relevant, because they relate to Applicant's:

- communications with Aquion that Applicant contends is relevant to this proceeding (Ex. 2, p. 5 ¶ 1);
- current and intended use of its mark (Ex. 2, pp. 5-6, 7 ¶¶ 2-6; 12-13);
- market studies, surveys, public opinion polls, or clearance searches related to Applicant's current and intended use of its mark (Ex. 2, pp. 6-7, 8 ¶¶ 7-8, 14);
- knowledge of and inquiries related to Aquion's marks (Ex. 2, pp. 7,8 ¶¶ 9, 15-18);
- agreements relating or referring to Applicant's mark (Ex. 2, p. 7 ¶ 10);
- Answer to Aquion's Notice of Opposition and its responses to Aquion's discovery requests (Ex. 2, pp. 7, 9, ¶¶ 11, 23);
- previous disputes regarding its use of its mark (Ex. 2, p. 8, ¶ 19);
- potential expert witnesses (Ex. 2, pp. 8-9, ¶ 20); and
- claims regarding its intent to use its mark, and that its use of its mark is not likely to cause confusion with Aquion's marks. (Ex. 2, p. 9 ¶¶ 21-22)

None of these interrogatories are privileged from discovery and, Applicant has made no objection to any of these interrogatories.

**B. Aquion's requests for production seek relevant and discoverable information.**

The information sought in Aquion's requests for production to Applicant is relevant and discoverable. Aquion served Applicant with thirty-five (35) requests for production. All of these requests are relevant, because they relate to Applicant's:

- documents and communications identified by Applicant in its responses to Aquion's interrogatories, and those documents it intends to rely on at any deposition, trial or hearing in this proceeding (Ex. 3, p. 7, 11 ¶¶ 1-2, 34);
- current and intended use of its mark or a mark featuring "rain," including advertising related to such use (Ex. 3, p. 7, 8, 11 ¶¶ 3-5, 10-14, 31);
- market studies, surveys, public opinion polls, or clearance searches related to its mark (Ex. 3, pp. 7-8, 10 ¶¶ 6-9, 26);
- documents referencing Aquion or its marks, any actual confusion between Aquion's and Applicant's marks, and the present opposition proceeding (Ex. 3, pp. 8-9, 10 ¶¶ 15-16, 18-21, 27, 29);
- decision making process related to applying to register Applicant's mark (Ex. 3, p. 9, ¶ 17);
- documents/communications involving third-parties regarding use of any name, mark, or designation containing the term rain (Ex. 3, pp. 9-10, ¶¶ 22-23);
- efforts to enforce its mark against anyone, and prosecution of its application to register its mark (Ex. 3, p. 10, ¶¶ 24-25, 28);

- agreements relating or referring to Applicant's mark, or use of rain (Ex. 3, pp. 10-11, ¶¶ 30-31);
- witnesses it intends to call at trial (Ex. 3, p. 11, ¶ 32);
- documents to support its contention regarding lack of confusion between Applicant's and Aquion's marks (Ex. 3, p. 11, ¶ 33); and
- document retention policy. (Ex. 3, p. 11, ¶ 35).

None of these documents are privileged from discovery and, again, Applicant has made no objection to any of these interrogatories.

### **III. Applicant Waived All Objections to Aquion's Discovery Requests.**

By choosing to not respond, Applicant waived all objections to Aquion's first set of requests for production of documents and first set of interrogatories. A party may forfeit its right to object to a discovery request on the merits if it fails to respond within the time allowed and is unable to show its failure was the result of excusable neglect. *See Crane Co. v. Shimano Indus. Co., Ltd.*, 1975 TTAB LEXIS6, 184 U.S.P.Q. (BNA) 691 (Trademark Trial & App. Bd. 1975) ("Inasmuch as applicant failed to respond to the interrogatories on or before [the requested date], or to request an extension of its time to do so prior to the aforesaid date, applicant has waived its right to object to the interrogatories on their merits and must reply to them as put."); *see also* TBMP § 403.03 ("A party which fails to respond to interrogatories or document requests during the time allowed therefore, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits.") and TBMP § 527.01(c) (untimely discovery response may forfeit right to object).

Here, if the Board allows five days for service, Applicant's discovery responses were due on or before October 8, 2014. *See* 37 C.F.R. § 2.120(a)(3) ("Responses to interrogatories, requests for production of documents and things . . . must be served within thirty days from the date of service of such discovery requests."); *see also* TBMP § 403.03. Applicant has not produced a single document or answered a single interrogatory. Nor has Applicant offered an excuse for its tardiness and non-responsiveness, or made an objection. Further, Applicant ignored Aquion's good faith effort to resolve this matter without involving the Board. The fact that Applicant missed its deadline to respond, coupled with its refusal to respond to Aquion's inquiries regarding when its responses might be forthcoming, precludes Applicant from claiming its neglect in failing to meet its discovery obligations is "excusable." Accordingly, Petitioner requests that this Board order Applicant to respond, without objections, to Aquion's discovery requests.

### CONCLUSION

For the reasons stated above, Aquion respectfully requests that the Board order Applicant to respond to its interrogatories, and to produce forthwith all responsive documents to its requests for production of documents within twenty (20) days of the date of this Board's order.

Respectfully submitted,

Dated: October 24, 2014

/s/ Johanna M. Wilbert  
Marta S. Levine  
David R. Cross  
Johanna M. Wilbert  
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**CERTIFICATE OF SERVICE**

The undersigned states that a copy of the foregoing AQUION, INC.'S MOTION TO  
COMPEL was served upon

Keith A. Weltsch  
Scully Scott Murphy & Presser PC  
400 Garden City Plaza, Suite 300  
Garden City, NY 11530  
*Attorney for Applicant*

via First Class Mail, this 24th day of October, 2014.

/s/ Johanna M. Wilbert  
Johanna M. Wilbert  
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# **EXHIBIT 1**

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

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In the Matter of Application Serial No. 79/121347: RAINSAFE and Design  
Published for Opposition March 25, 2014

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AQUION, INC.,

Opposer,

v.

Opposition No. 91216005

OZONE INDUSTRIES IRELAND LIMITED,

Applicant.

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**AQUION, INC.'S FIRST SET OF INTERROGATORIES  
TO OZONE INDUSTRIES IRELAND LIMITED**

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Pursuant to 37 C.F.R. § 2.120(d) and Fed. R. Civ. P. 33, Opposer, Aquion, Inc. (“Aquion”), by and through its undersigned counsel, hereby serves the following interrogatories upon Applicant, Ozone Industries Ireland Limited (“Ozone”) and requests that Ozone respond in writing under oath, separately and fully, within thirty (30) days of service.

**DEFINITIONS**

1. “Aquion,” or “Opposer” shall mean Opposer Aquion, Inc., as well as any of its parents, subsidiaries, divisions, officers, directors, employees, representatives, agents, advertising agents, consultants, attorneys, volunteers, representatives, affiliates and all other persons acting or purporting to act on behalf of or under the control of any of the foregoing.

2. “Ozone,” “Applicant,” “you” or “your” shall mean Applicant Ozone Industries Ireland Limited, as well as any of its parents, subsidiaries, divisions, officers, directors, employees, representatives, agents, advertising agents, consultants, attorneys, volunteers, representatives, affiliates and all other persons acting or purporting to act on behalf of or under

the control of any of the foregoing.

3. The terms “Opposer’s Marks,” “Aquion’s Marks,” or “RAINSOFT marks at issue” shall mean the following United States Trademarks, and any other mark owned by Aquion that includes the term RAINSOFT:

<b>Trademark</b>	<b>Registration No.</b>	<b>Issue Date</b>	<b>Goods/International Class</b>
RAINSOFT	715436	May 16, 1961	Water softeners and water filters (Class 11)
RAINSOFT	1632154	Jan. 22, 1991	Water filters, namely, iron filters, sediment filters, reverse osmosis filters; water treatment equipment, namely, acid neutralizing units, water purifiers, faucets which meter the flow of water (Class 11)
RAINSOFT	1950973	Jan. 23, 1996	Water-retaining metal tank used in association with water treatment equipment (Class 6)  Electrical ultraviolet light for use with or as water purification units (Class 11)
RAINSOFT	2033664	Jan. 28, 1997	Soaps and detergents, namely, skin bar soap, liquid hand soap, hair shampoo, automatic dishwasher detergent, liquid dish soap, and laundry detergent (Class 3)

Trademark	Registration No.	Issue Date	Goods/International Class
RAINSOFT Design 	4208977	Sep. 18, 2012	<p>Soaps and detergents, namely skin bar soap, liquid hand soap, hair shampoo, automatic dishwasher detergent, liquid dish soap and laundry detergent (Class 3)</p> <p>Water-retaining metal tank used in association with water treatment equipment (Class 6)</p> <p>Water treatment equipment, namely, water softeners and water filters; water filters, namely, iron filters, sediment filters, reverse osmosis filters, taste and odor filters; water treatment equipment, namely, acid neutralizing units, water purifiers, and faucets which meter the flow of water; electrical ultraviolet light for use with or as water purification units; water softening conditioning units, primarily for domestic use; water conditioning systems composed primarily of water filtration units and water conditioning units for domestic, commercial, and industrial use (Class 11)</p>

4. The term “Applicant’s Marks” or “Ozone’s Marks” shall mean the mark identified in United States Trademark Application No. 79/121,347 for the mark “RAINSAFE,” and any other mark that is owned by Applicant and includes the term “RAINSAFE.”

5. “Person” shall mean any natural person, group of natural persons, corporation, partnership, association, joint venture, sole proprietorship, firm or business enterprise, and any other artificial business or legal entity, as well as all divisions, subdivisions, bureaus, offices or other units thereof.

6. "Entity" or "entities" means firms, partnerships, corporations, organizations, and associations as well as all divisions, departments or other units thereof.

7. "Document" has the full meaning ascribed to it in Federal Rule of Civil Procedure 34 and includes all writings and records of every kind or description, however produced or reproduced, whether in hard copy or electronic form, whether draft or final, and whether original or reproduction, in the possession, custody or control of you or your attorneys, agents, representatives or assigns. Any document that contains any notation, addition, comment or marking of any kind that makes it different from the original in any way is a separate document.

8. "Relate to," "related to," "relates to," "regarding" or "concerning" will be used in their broadest sense and shall mean directly or indirectly mentioning or describing, pertaining to, constituting, evidencing, being connected with, or reflecting upon a stated subject matter, including but not limited to the particular category of information requested.

9. "And" and "or" shall be construed disjunctively or conjunctively, as necessary, in order to bring within the scope of each individual request all information which might otherwise be construed to be outside the scope.

10. "Communication" means any conversation, discussion, letter, memorandum, meeting, note, or other transfer of information whether written, oral, or by any other means and includes any documents which abstract, digest, transcribe, or record any such communication.

11. The use of the singular form of any word includes the plural and vice versa.

## INSTRUCTIONS

1. In responding to these interrogatories, you should disclose all information available to you and all persons acting on your behalf, including, but not limited to your attorneys, consultants, investigators, accountants, employees, agents and legal assistants.
2. Your obligation under these interrogatories shall be continuing, such that you must disclose any information called for herein that becomes available to you or any person acting on your behalf at any time after you first respond to these interrogatories.
3. If you contend that any requested information is privileged or subject to protection as work product or other similar doctrine, the response should state the following: (1) the privilege or doctrine asserted and the particular basis for asserting it; (2) the author(s) and date of any documents at issue; (3) the addressee(s) and persons to whom copies of any allegedly protected documents were delivered; (4) the identity of all other persons who have seen the allegedly protected documents or information; (5) the nature and general subject matter of the allegedly protected documents or information; (6) the date the allegedly protected document was created, sent and received.
4. If you believe any of these interrogatories are ambiguous, identify the ambiguity and set forth the construction chosen or used in responding to the interrogatory.

## INTERROGATORIES

**INTERROGATORY NO. 1:** Identify with specificity any communication between Applicant and Opposer that you contend is relevant to this proceeding, including without limitation the discussions between Applicant and Opposer identified in Ozone's initial disclosures. For each identified communication include a summary of the substance of the communication, the date of the communication, the people involved in the communication, the

relevance to this proceeding, and whether any documents were created that reflect the communication.

**INTERROGATORY NO. 2:** Describe in detail Applicant's use of the RAINSAFE trademark anywhere.

**INTERROGATORY NO. 3:** Describe Applicant's intentions or business plans regarding the use of the RAINSAFE trademark in the United States in connection with any product or service and identify any documents reflecting such intentions or business plans.

**INTERROGATORY NO. 4:** Describe the manner in which Applicant intends to market and sell products bearing the RAINSAFE trademark in the United States and identify any documents reflecting such intentions.

**INTERROGATORY NO. 5:** Describe the intended target customers for goods and services to be sold in connection with the RAINSAFE trademark in the United States.

**INTERROGATORY NO. 6:** Describe any use of the RAINSAFE trademark in the United States, including without limitation the date the RAINSAFE trademark was first used in the United States, the duration of use, the location of the use, the circumstances of that use, and the goods or services associated with that use.

**INTERROGATORY NO. 7:** Identify any market study, survey, or public opinion poll performed by or for Applicant reflecting or referring to the RAINSAFE trademark in connection with any product or service. Include in the identification the relevant date, the outcome, the format, and the circumstances surrounding the study, survey, or public opinion poll. To the extent there are relevant document, identify the relevant documents by production number.

**INTERROGATORY NO. 8:** Identify any market study, survey, or public opinion poll performed by or for Applicant reflecting or referring to Applicant's intentions to expand into the United States market in connection with any product or service identified in Application Serial No. 79/121347. Include in the identification the relevant date, the outcome, the format, and the circumstances surrounding the study, survey, or public opinion poll. To the extent there are relevant document, identify the relevant documents by production number.

**INTERROGATORY NO. 9:** State how and when Applicant first obtained knowledge of Opposer's Marks, and/or any use thereof, and identify each person connected or associated with Applicant who first learned of such use.

**INTERROGATORY NO. 10:** Identify all contracts, permissions, authorizations, licenses, or other agreements relating or referring to the RAINSAFE trademark, including to whom such permission, authorization, or license is/was granted and for what purpose.

**INTERROGATORY NO. 11:** Identify each person or entity that has knowledge of facts concerning any allegation set forth in Applicant's Answer.

**INTERROGATORY NO. 12:** Identify all goods or services that Applicant currently sells or distributes under the RAINSAFE trademark and for each good or service, state the geographic territory where the RAINSAFE trademark is used on that good or service, the dates the RAINSAFE trademark has been used, and describe the channels of trade for that good or service.

**INTERROGATORY NO. 13:** Identify the types of customers to whom Applicant currently provides products bearing the RAINSAFE trademark.

**INTERROGATORY NO. 14:** Identify all trademark clearance searches conducted by or on behalf of Applicant referring or relating to the RAINSAFE trademark.

**INTERROGATORY NO. 15:** With respect to the RAINSAFE trademark, describe any efforts taken by Applicant against others to enforce Applicant's alleged rights in the RAINSAFE trademark.

**INTERROGATORY NO. 16:** State whether Applicant has ever received any verbal or written inquiry or communication that mentions Opposer or Opposer's Marks and identify all documents relating to or referring to each inquiry or communication.

**INTERROGATORY NO. 17:** Identify any inquires, questions, or comments Applicant has received regarding Opposer, Opposer's Marks, or any of Opposer's products sold in connection with any of Opposer's Marks.

**INTERROGATORY NO. 18:** Identify all instances of actual confusion, if any, known to Applicant between the RAINSAFE trademark and Opposer's Marks, the dates upon which Applicant became aware of each instance of actual confusion, the circumstances under which the actual confusion arose, the persons with knowledge regarding each instance of actual confusion, and all documents relating to or referring to each instance of actual confusion.

**INTERROGATORY NO. 19:** Other than the instant proceeding, has any third-party objected to the use or registration of the RAINSAFE trademark, if so, identify and describe each such instance.

**INTERROGATORY NO. 20:** State the name, address, and telephone number of each expert that Applicant intends to use in connection with any matter concerning this proceeding

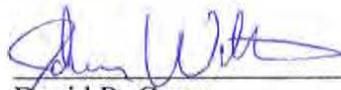
and, for each such expert, state each opinion as to which the expert will testify, the basis for each such opinion, and each document used as any part of the basis for each opinion.

**INTERROGATORY NO. 21:** State all facts and identify or produce all documents that Applicant contends support any claim that registrant has an intent to use the RAINSAFE trademark on the goods and services identified in the Application Serial No. 79/121347.

**INTERROGATORY NO. 22:** State all facts and identify or produce all documents that Applicant contends support its claim that its use of the RAINSAFE trademark is not likely to cause confusion with Opposer's Marks.

**INTERROGATORY NO. 23:** Identify each person or entity who was consulted, provided information or documents for, or otherwise participated in preparing Applicant's response to Opposer's Interrogatories.

Dated this 3rd day of September, 2014.



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Marta S. Levine  
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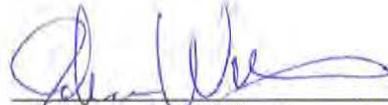
*Attorneys for Opposer Aquion, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2014, I served upon counsel of record the foregoing  
by causing the same to be delivered by U.S. mail and email to:

Keith A. Weltsch  
SCULLY, SCOTT, MURPHY &  
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Facsimile: (516) 742-4366  
Email: intprop@ssmp.com

Dated this 3rd day of September, 2014.



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# EXHIBIT 2

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

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In the Matter of Application Serial No. 79/121347: RAINSAFE and Design  
Published for Opposition March 25, 2014

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AQUION, INC.,

Opposer,

v.

Opposition No. 91216005

OZONE INDUSTRIES IRELAND LIMITED,

Applicant.

---

**AQUION, INC.'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO OZONE INDUSTRIES IRELAND LIMITED**

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Pursuant to 37 C.F.R. § 2.120(d) and Fed. R. Civ. P. 34, Opposer, Aquion, Inc. (“Aquion”), by and through its undersigned counsel, hereby directs Applicant, Ozone Industries Ireland Limited (“Ozone”) to produce the following documents within thirty (30) days of service.

**DEFINITIONS**

1. “Aquion,” or “Opposer” shall mean Opposer Aquion, Inc., as well as any of its parents, subsidiaries, divisions, officers, directors, employees, representatives, agents, advertising agents, consultants, attorneys, volunteers, representatives, affiliates and all other persons acting or purporting to act on behalf of or under the control of any of the foregoing.

2. “Ozone,” “Applicant,” “you” or “your” shall mean Applicant Ozone Industries Ireland Limited, as well as any of its parents, subsidiaries, divisions, officers, directors, employees, representatives, agents, advertising agents, consultants, attorneys, volunteers, representatives, affiliates and all other persons acting or purporting to act on behalf of or under the control of any of the foregoing.

3. The terms “Opposer’s Marks,” “Aquion’s Marks,” or “RAINSOFT marks at issue” shall mean the following United States Trademarks, and any other mark owned by Aquion that includes the term RAINSOFT:

<b>Trademark</b>	<b>Registration No.</b>	<b>Issue Date</b>	<b>Goods/International Class</b>
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RAINSOFT	1950973	Jan. 23, 1996	Water-retaining metal tank used in association with water treatment equipment (Class 6)  Electrical ultraviolet light for use with or as water purification units (Class 11)
RAINSOFT	2033664	Jan. 28, 1997	Soaps and detergents, namely, skin bar soap, liquid hand soap, hair shampoo, automatic dishwasher detergent, liquid dish soap, and laundry detergent (Class 3)

Trademark	Registration No.	Issue Date	Goods/International Class
RAINSOFT Design 	4208977	Sep. 18, 2012	<p>Soaps and detergents, namely skin bar soap, liquid hand soap, hair shampoo, automatic dishwasher detergent, liquid dish soap and laundry detergent (Class 3)</p> <p>Water-retaining metal tank used in association with water treatment equipment (Class 6)</p> <p>Water treatment equipment, namely, water softeners and water filters; water filters, namely, iron filters, sediment filters, reverse osmosis filters, taste and odor filters; water treatment equipment, namely, acid neutralizing units, water purifiers, and faucets which meter the flow of water; electrical ultraviolet light for use with or as water purification units; water softening conditioning units, primarily for domestic use; water conditioning systems composed primarily of water filtration units and water conditioning units for domestic, commercial, and industrial use (Class 11)</p>

4. The term “Applicant’s Marks” or “Ozone’s Marks” shall mean the mark identified in United States Trademark Application No. 79/121,347 for the mark “RAINSAFE,” and any other mark owned by Applicant which includes the term “RAINSAFE.”

5. “Person” shall mean any natural person, group of natural persons, corporation, partnership, association, joint venture, sole proprietorship, firm or business enterprise, and any other artificial business or legal entity, as well as all divisions, subdivisions, bureaus, offices or other units thereof.

6. "Entity" or "entities" means firms, partnerships, corporations, organizations, and associations as well as all divisions, departments or other units thereof.

7. "Document" has the full meaning ascribed to it in Federal Rule of Civil Procedure 34 and includes all writings and records of every kind or description, however produced or reproduced, whether in hard copy or electronic form, whether draft or final, and whether original or reproduction, in the possession, custody or control of you or your attorneys, agents, representatives or assigns. Any document that contains any notation, addition, comment or marking of any kind that makes it different from the original in any way is a separate document.

8. "Relate to," "related to," "relates to," "regarding" or "concerning" will be used in their broadest sense and shall mean directly or indirectly mentioning or describing, pertaining to, constituting, evidencing, being connected with, or reflecting upon a stated subject matter, including but not limited to the particular category of information requested.

9. "And" and "or" shall be construed disjunctively or conjunctively, as necessary, in order to bring within the scope of each individual request all information which might otherwise be construed to be outside the scope.

10. "Communication" means any conversation, discussion, letter, memorandum, meeting, note, or other transfer of information whether written, oral, or by any other means and includes any documents which abstract, digest, transcribe, or record any such communication.

11. The use of the singular form of any word includes the plural and vice versa.

## INSTRUCTIONS

1. In responding to these discovery requests, you should produce all information available to you and all persons acting on your behalf, including, but not limited to your attorneys, consultants, investigators, accountants, employees, agents and legal assistants. To the extent that any document is not presently within the possession, custody or control of the these parties or persons, you are hereby requested to execute such consents or other documents as may be required to permit production of such documents from third parties, or, in the alternative, to take such steps as may be necessary to procure their production.

2. Please identify all documents called for herein that have been destroyed, and state when and for what reason those documents were destroyed.

3. Your obligation under these discovery requests shall be continuing, such that you must produce any information called for herein that becomes available to you or any person acting on your behalf at any time after you first respond to these requests for production.

4. Please produce responsive documents, electronically as follows:

a. All documents should be produced in their native format and named with their bates number. The native file field in the DAT file must be populated.

b. All the applicable metadata fields listed below must be provided in a DAT file.

<b>Field Name</b>	<b>Description</b>	<b>Field Type</b>
ProdVolume	Production Volume Name	Limited Text
Begdoc	Beginning Document Bates Number	Limited Text
Enddoc	Ending Document Bates Number	Limited Text
BegAttach	Attachment, Beginning Bates Number	Limited Text
EndAttach	Attachment, Ending Bates Number	Limited Text
Custodian	Custodian	Limited Text
CustDeDupe	Custodial De-Dedupe if globally de-dupped collection	Limited Text
PageCount	Page Count	Numeric
Designation	Any special designation given to the document	Limited Text
DateSent	Sent Date	Date

DateCreated	Date Created	Date
DateLastMod	Date Last Modified	Date
DateReceived	Date Received	Date
FolderPath	Folder Path or Email Message Directory	Limited Text
Filename	File name	Limited Text
From	From	Limited Text
To	To	Limited Text
CC	CC	Limited Text
BCC	BCC	Limited Text
Subject	Email Subject	Limited Text
Author	Author	Limited Text
FileExt	File Extension	Limited Text
MD5Hash	Hash Value for file	Limited Text
AttachCt	Number of Attachments	Numeric
FileSize	Size of the File	Numeric
Native File	Path to the Native File in Production Volume	Limited Text

c. Redacted, paper, and hard copy documents should be provided as single page 300 dpi group IV tiff format for black/white or single page 300 dpi tiffs with LZW compression for color. All tiff images must have a corresponding opticon .opt or .log load file.

d. Extracted text or OCR text files must be provided for all documents produced. The OCR text file should be on the document level. An OCR load file must be included as either: a comma separated text file or a control list (.lst).

5. If you contend that any requested information is privileged, the response should state the following: (1) the privilege asserted and the particular basis for asserting the privilege; (2) the author(s) and date of any allegedly privileged documents at issue; (3) the addressee(s) and persons to whom copies of any allegedly privileged documents were delivered; (4) the identity of all other persons who have seen the allegedly privileged documents or information; (5) the nature and general subject matter of the allegedly privileged documents or information; (6) the date the allegedly privileged document was created, sent and received.

6. If you believe any of these discovery requests are ambiguous, identify the ambiguity and set forth the construction chosen or used in responding to the request.

**DOCUMENT REQUESTS**

**DOCUMENT REQUEST NO. 1:** Produce all documents identified in Applicant's responses to Opposer's Interrogatory Requests.

**DOCUMENT REQUEST NO. 2:** Produce all communications between Applicant and Opposer.

**DOCUMENT REQUEST NO. 3:** Produce documents sufficient to identify each product on which the RAINSAFE trademark has been used or affixed.

**DOCUMENT REQUEST NO. 4:** To the extent the RAINSAFE trademark has been used in the United States, produce documents representative of each such use.

**DOCUMENT REQUEST NO. 5:** Produce all documents evidencing Applicant's intentions regarding use of the RAINSAFE trademark in the United States in connection with any product or service.

**DOCUMENT REQUEST NO. 6:** Produce all documents referring or relating to any market study, survey, or public opinion poll regarding or referring to the RAINSAFE trademark.

**DOCUMENT REQUEST NO. 7:** Produce any market study, survey, or public opinion poll performed by or for Applicant reflecting or referring to Applicant's intentions to expand into the United States market in connection with any product or service identified in Application Serial No. 79/121347.

**DOCUMENT REQUEST NO. 8:** Produce any trademark clearance searches conducted

by or on behalf of Applicant referring or relating to the RAINSAFE trademark.

**DOCUMENT REQUEST NO. 9:** Produce all documents and things referring to Applicant's clearance of the RAINSAFE trademark for use in connection with the goods and services identified in Application Serial No. 79/121347.

**DOCUMENT REQUEST NO. 10:** Produce a sample of each different advertisement that has been or is currently being used in connection with the RAINSAFE trademark.

**DOCUMENT REQUEST NO. 11:** Produce documents sufficient to show the identity and/or profile of the intended purchaser of Applicant's products bearing the RAINSAFE trademark.

**DOCUMENT REQUEST NO. 12:** Produce all documents that refer or relate to Applicant's plans to use the RAINSAFE trademark in the United States in future advertising, marketing, or promotional activities.

**DOCUMENT REQUEST NO. 13:** Produce documents sufficient to identify any third party advertising agencies that have been or are currently being used by Applicant.

**DOCUMENT REQUEST NO. 14:** Produce documents sufficient to identify the people involved in the sales, advertising, marketing, and promoting of Applicant's products sold or intending to be sold in connection with the RAINSAFE trademark.

**DOCUMENT REQUEST NO. 15:** Produce all documents in Applicant's possession or control that refer or relate to Opposer.

**DOCUMENT REQUEST NO. 16:** Produce all documents in Applicant's possession or

control that refer or relate to Opposer's Marks.

**DOCUMENT REQUEST NO. 17:** Produce all documents and things referring or relating to Applicant's decision to file Application Serial No. 79/121347, including documents referring or relating to the selection of the mark and the selection of the categories of goods and services.

**DOCUMENT REQUEST NO. 18:** Produce all trademark search reports or watch notices in Applicant's possession or control referring or relating to any of Opposer's Marks.

**DOCUMENT REQUEST NO. 19:** Produce all documents and things referring or relating to any instance of actual confusion, mistake or deception between any of Opposer's Marks and the RAINSAFE trademark.

**DOCUMENT REQUEST NO. 20:** Produce all documents and things referring or relating to any inquiries received by or known to Applicant about whether Applicant, or any of Applicant's products or services, are affiliated or associated with, connected to, sponsored by, or otherwise related in any way to Opposer or any of Opposer's Marks.

**DOCUMENT REQUEST NO. 21:** Produce all documents that reflect or refer to any instance of actual or apparent confusion between Applicant's use of the RAINSAFE trademark and any other party's use of the term RAIN.

**DOCUMENT REQUEST NO. 22:** Produce all documents and things referring or relating to, or constituting, agreements Applicant has reached with third parties concerning the use and/or registration of any name, mark, or designation comprised of or containing the term "rain."

**DOCUMENT REQUEST NO. 23:** Produce documents sufficient to identify all judicial, administrative or other proceedings in any forum (not including this action), in which Applicant was or is a party or was or is involved in any way, the subject of which was or is related to any name, mark or designation comprised of or containing the term “rain.”

**DOCUMENT REQUEST NO. 24:** Produce documents evidencing or referring to any efforts taken by Applicant against others to enforce Applicant’s alleged rights in the RAINSAFE trademark.

**DOCUMENT REQUEST NO. 25:** Produce communications regarding and documents associated with the prosecution and application of the RAINSAFE trademark Application Serial No. 79/121347.

**DOCUMENT REQUEST NO. 26:** Produce all documents and things referring or relating to, or constituting, any research, reports, surveys, polls, investigations and/or studies conducted by or on behalf of Applicant concerning, reflecting, or referring to the RAINSAFE trademark.

**DOCUMENT REQUEST NO. 27:** Produce all documents that reflect or refer to the validity or enforceability of any of Opposer’s marks.

**DOCUMENT REQUEST NO. 28:** Produce all documents that reflect or refer to the validity or enforceability of the RAINSAFE trademark.

**DOCUMENT REQUEST NO. 29:** Produce all non-privileged documents that reflect or refer to Opposer, this opposition proceeding, or Opposer’s Marks.

**DOCUMENT REQUEST NO. 30:** Produce all contracts, permissions, authorizations,

agreements, or licenses regarding or referring to the use of the RAINSAFE trademark.

**DOCUMENT REQUEST NO. 31:** Produce all contracts, agreements, or licenses regarding the use of the term “rain” in a trademark or in any advertising or promotional material.

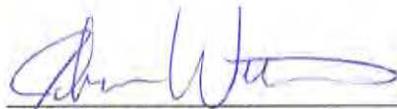
**DOCUMENT REQUEST NO. 32:** Produce all documents that any person whom Ozone intends to call to testify as an expert by affidavit, declaration, deposition, or at any trial or hearing in this matter has relied upon, prepared, or referred to in forming his or her opinions.

**DOCUMENT REQUEST NO. 33:** Produce all documents that tend to support or refute your position that the RAINSAFE trademark is not likely to cause confusion, mistake or to deceive consumers with respect to any of Opposer’s Marks.

**DOCUMENT REQUEST NO. 34:** Produce all documents and things that Applicant intends to use, refer to or rely upon at any deposition, trial, or hearing in this proceeding.

**DOCUMENT REQUEST NO. 35:** Produce a copy of Applicant’s document retention policy.

Dated this 3rd day of September, 2014.



---

David R. Cross  
Marta S. Levine  
Johanna M. Wilbert  
Quarles & Brady LLP  
411 East Wisconsin Avenue  
Suite 2040  
Milwaukee, Wisconsin 53202-4497  
Telephone: (414) 277-5495  
Facsimile: (414) 978-8942  
Email: DRC@quarles.com  
Email: marta.levine@quarles.com  
Email: jwilbert@quarles.com

*Attorneys for Opposer Aquion, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2014, I served upon counsel of record the foregoing  
by causing the same to be delivered by U.S. mail and email to:

Keith A. Weltsch  
SCULLY, SCOTT, MURPHY &  
PRESSER, P.C.  
400 Garden City Plaza  
Garden City, New York 11530  
Telephone: (516) 742-4343  
Facsimile: (516) 742-4366  
Email: intprop@ssmp.com

Dated this 3rd day of September, 2014.



---

Johanna M. Wilbert  
Quarles & Brady LLP  
411 E. Wisconsin Avenue  
Suite 2040  
Milwaukee, WI 53202-4497  
Phone: (414) 277-5000  
Facsimile: (414) 978-8942  
johanna.wilbert@quarles.com

# EXHIBIT 3



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Milwaukee, Wisconsin 53202-4426  
414.277.5000  
Fax 414.271.3552  
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Attorneys at Law in  
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Madison  
Milwaukee  
Naples  
Phoenix  
Tampa  
Tucson  
Washington, D.C.

Writer's Direct Dial: 414.277.5495  
E-Mail: johanna.wilbert@quarles.com

September 3, 2014

VIA E-MAIL AND U.S. MAIL  
KWELTSCH@SSMP.COM

Keith A. Weltsch  
Scully, Scott, Murphy & Presser, P.C.  
400 Garden City Plaza  
Garden City, New York 11530

RE: Aquion, Inc. v. Ozone Industries Ireland Limited  
Opposition No. 91216005

Dear Mr. Weltsch:

Enclosed and hereby served upon you are Opposer's First Set of Interrogatories and First Requests for Production of Documents to Ozone Industries Ireland Limited.

Very truly yours,

Johanna M. Wilbert

JWILBERT:ns  
Enclosures

cc: David R. Cross (*Via email w/out enclosures*)

# **EXHIBIT 4**

## Ingersoll, Matthew T. (CHI x6172)

---

**From:** Wilbert, Johanna [johanna.wilbert@quarles.com]  
**Sent:** Monday, September 08, 2014 1:11 PM  
**To:** 'Keith Weltsch'  
**Cc:** Cross, David R. (MKE x1669); Rafinski, Deena M. (MKE x1185); Levine, Marta S. (MKE x1675); Holly Manthey  
**Subject:** RE: RAINSAFE trademark opposition [QBLLP-ACTIVE.FID37188981]

Keith -

Sorry for the delayed response. Yes, I agree that we did not discuss service via e-mail. We served via e-mail as a courtesy in addition to the hard copy that you should have received. We would request you do the same, but agree that discovery response deadlines should be calculated with the additional 5 days for first class mail. We also calculate your deadline as October 8, 2014.

Best regards,  
Johanna

**Johanna M. Wilbert**  
Attorney  
**Quarles & Brady LLP**  
411 East Wisconsin Avenue  
Suite 2040  
Milwaukee, Wisconsin 53202-4497  
[www.quarles.com](http://www.quarles.com)  
P: (414) 277-5495  
F: (414) 978-8942  
[johanna.wilbert@quarles.com](mailto:johanna.wilbert@quarles.com)

---

**From:** Keith Weltsch [<mailto:kweltsch@ssmp.com>]  
**Sent:** Wednesday, September 03, 2014 12:32 PM  
**To:** Wilbert, Johanna M. (MKE x1495)  
**Cc:** Cross, David R. (MKE x1669); Rafinski, Deena M. (MKE x1185); Levine, Marta S. (MKE x1675); Holly Manthey  
**Subject:** Re: RAINSAFE trademark opposition [QBLLP-ACTIVE.FID37188981]

Dear Johanna,

We acknowledge receipt of these discovery requests. I do not believe that we discussed the service of discovery associated with the opposition with respect to service by e-mail. I presume therefore that service by e-mail is as a courtesy and that accordingly, our client's responses would be due on October 8, 2014 (30 days plus 5 for first class mail). Please confirm that you share this understanding.

Sincerely,

Keith A. Weltsch

Keith A. Weltsch, Esq.  
Scully, Scott, Murphy & Presser, P.C.  
400 Garden City Plaza

Suite 300  
Garden City, NY 11530  
Telephone- (516) 742 - 4343  
Facsimile- (516) 742 4366

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IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE CONTACT THE SENDER IMMEDIATELY AND DELETE AND DESTROY ALL COPIES OF THIS TRANSMISSION.> > > "Wilbert, Johanna M. (MKE x1495)"

<[johanna.wilbert@quarles.com](mailto:johanna.wilbert@quarles.com)> 9/3/2014 12:27 PM >>>

Keith -

Attached please find a cover letter and Opposer Aquion's first set of interrogatories and document requests. Please let us know if you have any questions.

Best regards,  
Johanna

**Johanna M. Wilbert**  
Attorney  
**Quarles & Brady LLP**  
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Suite 2040  
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# **EXHIBIT 5**

## **Ingersoll, Matthew T. (CHI x6172)**

---

**From:** Wilbert, Johanna [johanna.wilbert@quarles.com]  
**Sent:** Wednesday, October 15, 2014 9:51 AM  
**To:** 'Keith Weltsch'  
**Cc:** Cross, David R. (MKE x1669); Rafinski, Deena M. (MKE x1185); Levine, Marta S. (MKE x1675); Holly Manthey  
**Subject:** RE: RAINSAFE trademark opposition [QBLLP-ACTIVE.FID37188981]

Keith -

We have not received responses to Aquion's discovery requests served on September 3rd. If this is in error, please provide a pdf of your responses and proof of service today. If you have not yet responded, we consider objections to be waived. Please provide responses by Friday, October 17th. If we do not receive responses by Friday, we will prepare a motion to compel.

Best regards,  
Johanna

**Johanna Wilbert**  
**Quarles & Brady LLP**  
411 East Wisconsin Avenue  
Suite 2350  
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P: (414) 277-5000  
F: (414) 271-3552  
[johanna.wilbert@quarles.com](mailto:johanna.wilbert@quarles.com)

---

**From:** Keith Weltsch [<mailto:kweltsch@ssmp.com>]  
**Sent:** Wednesday, September 03, 2014 12:32 PM  
**To:** Wilbert, Johanna M. (MKE x1495)  
**Cc:** Cross, David R. (MKE x1669); Rafinski, Deena M. (MKE x1185); Levine, Marta S. (MKE x1675); Holly Manthey  
**Subject:** Re: RAINSAFE trademark opposition [QBLLP-ACTIVE.FID37188981]

Dear Johanna,

We acknowledge receipt of these discovery requests. I do not believe that we discussed the service of discovery associated with the opposition with respect to service by e-mail. I presume therefore that service by e-mail is as a courtesy and that accordingly, our client's responses would be due on October 8, 2014 (30 days plus 5 for first class mail). Please confirm that you share this understanding.

Sincerely,

Keith A. Weltsch

Keith A. Weltsch, Esq.  
Scully, Scott, Murphy & Presser, P.C.  
400 Garden City Plaza  
Suite 300

Garden City, NY 11530  
Telephone- (516) 742 - 4343  
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<[johanna.wilbert@quarles.com](mailto:johanna.wilbert@quarles.com)> 9/3/2014 12:27 PM >>>

Keith -

Attached please find a cover letter and Opposer Aquion's first set of interrogatories and document requests. Please let us know if you have any questions.

Best regards,  
Johanna

**Johanna M. Wilbert**

Attorney

**Quarles & Brady LLP**

411 East Wisconsin Avenue

Suite 2040

Milwaukee, Wisconsin 53202-4497

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