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Filing date: **10/22/2008**

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

| | |
|------------------------|---|
| Proceeding | 92048271 |
| Party | Plaintiff Rhino Linings USA, Inc. |
| Correspondence Address | David A., Harlow Nelson Mullins Riley & Scarborough LLP 4140 Parklake AvenueGlenLake One, Suite 200 Raleigh, NC 27612 UNITED STATES david.harlow@nelsonmullins.com |
| Submission | Other Motions/Papers |
| Filer's Name | Joseph S. Dowdy |
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| Signature | /Joseph S. Dowdy/ |
| Date | 10/22/2008 |
| Attachments | Submission 4.pdf (44 pages)(2702823 bytes) |

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

In the Matter of Registration No. 1,698,407
Date of Issue: June 30, 1992

| | | |
|------------------------------|---|---------------------------|
| RHINO LININGS USA, INC., |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Cancellation No. 92048271 |
| |) | |
| RAPID RACK INDUSTRIES, INC., |) | |
| Registrant. |) | |
| |) | |

**PETITIONER'S BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

**EXHIBITS TO BRIEF IN SUPPORT OF PETITIONER'S MOTION
FOR SUMMARY JUDGMENT CONTINUED**

Exhibits E, F, and G

(an un-redacted version of Exhibit G
has been filed under seal)

EXHIBIT E

(to Petitioner's Brief in Support of its Motion for
Summary Judgment)

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

In the Matter of Registration No. 1,698,407
Date of Issue: June 30, 1992

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| RHINO LININGS USA, INC., |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Cancellation No. 92048271 |
| |) | |
| RAPID RACK INDUSTRIES, INC., |) | |
| Applicant. |) | |
| |) | |

AFFIDAVIT OF EDGAR L. BRIDGES

Edgar L. Bridges, being first duly sworn, states the following:

1. I am over the age of eighteen (18), am under no legal disability, and am otherwise competent to testify to the matters set forth in this Affidavit. The subject matter of this affidavit is set forth based on my personal knowledge.

2. I am citizen and resident of Georgia, and private investigator licensed by the State of Georgia. In my capacity as a private investigator, I was retained by Marksmen intellectual property investigation services in early October 2007 to investigate whether Rapid Rack Industries, Inc. ("Rapid Rack"), located at 14421 Bonelli Street, City of Industry, CA 91746 - tel. (626) 333-7225, was distributing products in connection with the RHINO RACK Mark of Registration No. of Registration No. 1,698,407.

3. Between October 4, 2007 and October 12, 2007, I performed an investigation of whether Rapid Rack was distributing products in connection with a RHINO RACK tagline or trademark. The results of that investigation are in the paragraphs that follow. Unless otherwise

specified herein, the time period referred to in this Affidavit is from October 4, 2007 through October 12, 2007.

4. I began my investigation by searching the United States Patent and Trademark Office trademark databases and found information regarding the mark RHINO RACK as referenced in the investigation request. The trademark was registered on June 30, 1992 under registration number 1698407 by Rapid Rack of the City of Industry, California address. The goods associated with the mark are defined as "work tables with and without wheels, work benches, industrial shelving, storage racks, and component parts therefor," with a claimed first use date of January 8, 1991.

5. According to national business directories, Rapid Rack is headquartered at the City of Industry, California address and operates as a manufacturer of partitions, fixtures, shelving and lockers. The company reports 200 employees and annual sales of over \$21 million. The president and CEO is identified as Michael Briggs. The phone number found in business directories is (626) 333-7225.

6. According to the records of the California Secretary of State's office, Rapid Rack was incorporated in California on May 11, 1987. The business address on file is the City of Industry address set forth above. The CEO is Jim Redding at the same address. The company's nature of business is defined as "manufacture of shelving." There is no record of a corporate name change. The California corporation is considered active and in good standing.

7. I searched the Internet and found references to a business in California called Rapid Rack, including the company's website at *www.rapidrack.com*. Internet domain registries indicate that the domain name *rapidrack.com* was registered by Rapid Rack of the City of Industry address. This record was created on December 21, 1997.

8. The website at *www.rapidrack.com* prominently displays the names Rapid Rack and Gorilla Rack. The website indicates that Rapid Rack has “manufactured material handling storage equipment for industrial and commercial applications” for over fifty years, including several varieties of shelving, and “workbenches, carts, drawers and other accessories.” According to the website, Rapid Rack is located at the City of Industry address set forth above.

9. I searched the *rapidrack.com* website, but found no reference to products or services being marketed with the name RHINO RACK. I searched the Internet at large and found other references to Rapid Rack, but none of the web pages I found specifically indicate that the company is marketing products with the name RHINO RACK.

10. Other online references include a page on a Find Owner Search website, *www.findownersearch.com/owner/89190/*, which indicates that Rapid Rack of the City of Industry address set forth above is the owner of several brand names including Rapid Rack, Gorilla Rack, Silver Back, Silver Fox, and RHINO RACK. The information on this website is based on trademark registrations and does not necessarily reflect actual use in commerce. I found no other online references to Rapid Rack’s use of the name RHINO RACK.

11. I searched Lexis-Nexis news databases and found references to a business in California called Rapid Rack dating back as far as 1990, but none of the articles I found mention the company’s use of the name RHINO RACK.

12. I searched the regional telephone directory databases and found a listing for Rapid Rack at the City of Industry, California address set forth above. When I contacted Rapid Rack using the local area phone number, (626) 333-7225, the telephone was answered “Rapid Rack Industries.” I spoke with Jana (surname not given) in the administrative office, who informed me that I had reached the headquarters of Rapid Rack Industries, Inc. in City of Industry,

California. Jana stated that Rapid Rack manufactures shelving for industrial and consumer applications, but she stated that she was not familiar with any of the company's products being marketed with the name RHINO RACK.

13. I then spoke with Angela (surname not given) in the customer service department, who informed me that Rapid Rack markets shelving and racks for a wide variety of commercial, industrial, and personal uses. She said that consumer shelving is marketed under the brand name GORILLA RACK and the industrial shelving is marketed under the brand name RAPID RACK. Angela indicated that she normally works with industrial shelving, and she said that she is not familiar with shelving or any other products from Rapid Rack being marketed in connection with the name RHINO RACK. She said that all of the company's products are available nationwide, and she said that the consumer shelving is sold by such retailers as Sam's Club, Home Depot, and Ace Hardware.

14. I then spoke with Adriana (surname not given) in the customer service department for consumer products, who informed me that Rapid Rack has been in business for over twenty years and operates as a manufacturer of shelving that is sold throughout the United States. She said that the company has a website at www.gorillarack.com, and added that all of the consumer shelving made by Rapid Rack is available online and is sold by such retailers as Sam's Club and Ace Hardware. Adriana said that she is familiar with Rapid Rack's use of the name RHINO RACK, but she said, "We did RHINO RACK years ago. I don't think we have it anymore." Adriana said that RHINO RACK was the name of a line of light duty metal laminate shelving that was sold to consumers. She said, however, that the product line was discontinued "at least three of four years ago."

15. I then spoke with Sylvia Huerta in the sales department, who informed me that Rapid Rack has resumed sales of its RHINO RACK line of lightweight consumer shelving. Huerta said that RHINO RACK is the name of a line of galvanized metal shelving that is intended for light use. She said that the units are sold unassembled, and can hold a maximum of "about fifty pounds per shelf." According to Huerta, the RHINO RACK line of consumer shelving was formerly sold by Rapid Rack for several years, but she said that "we did away with it about five years ago" because the product line "wasn't selling very well." Huerta added, however, that "we brought back RHINO RACK about six months ago." She said that the product line is once again available nationwide, and is sold by several retail chains including Ace Hardware, Tru-Value, and Sam's Club.

16. After contacting Rapid Rack, I searched nationwide telephone directory databases and found listings for Ace Hardware stores in several U.S. locations. Using the listed phone numbers, I contacted Ace Hardware retail stores at the following addresses in the New York, Miami, Atlanta, Chicago, and Los Angeles areas, but was told that none of those stores carry RHINO RACK shelving from Rapid Rack:

- 545 8th Avenue, New York, NY 10018 – tel. (212) 947-7846
- 610 Columbus Avenue, New York, NY 10024 – tel. (212) 749-3632
- 8285 Southwest 124th Street, Miami, FL 33156 – tel (305) 235-9341
- 1550 West 84th Street, Hialeah, FL 33014 – tel. (305) 819-4444
- 2983 North Druid Hills Road, Atlanta, GA 30329 – tel. (404) 325-8000
- 1248 West Paces Ferry Road, Atlanta, GA 30327 – tel. (404) 261-6000
- 8337 South Pulaski Road, Chicago, IL 60652 – tel. (773) 735-8787
- 4200 West 63rd Street, Chicago, IL 60629 – tel.(773) 767-7049

- 3935 West Irving Park Road, Chicago, IL 60618 – tel. (773) 463-1671
- 2318 North Cicero, Chicago, IL – tel. (773) 237-8020
- 515 South Western Avenue, Los Angeles, CA 90020 – tel. (213) 389-6529
- 20552 Eat Arrow Highway, Covina CA 91724 – tel. (626) 339-6116
- 12 Village Loop Road, Pomona, CA 91766 – tel. (909) 622- 7330

17. Between October 16 and October 20, 2008, I searched Internet archive databases, which indicate that there has been an active website at the rapidrack.com domain since October 1999. Archived versions of the rapidrack.com website dating back as far as 1999 promote the captioned company's industrial shelving, workbenches and wire racks sold under various brand names (Profile I, Sammons, AS/RS), as well as a "Consumer Products" link to the website at www.gorillarak.com. I searched all available archived versions of the rapidrack.com website from October 1999 through November 2007 and found no use of a RHINO RACK Mark, tagline, or brand and no reference to a product or line of products referred to as RHINO RACK on any of the archived Web pages at the rapidrack.com domain.

18. Internet archive databases indicate that there has been a Web site up and running at the gorillarak.com domain since March 2000. Archived versions of the Web site dating back as far as 2000 promote Rapid Rack's consumer shelving and workbenches sold under various brand names, including Gorilla Rack, Silver Back Series, and Z-Beam Storage Rack System. I searched all available archived versions of the Web site from March 2000 through March 2007, but and found no use of a RHINO RACK Mark, tagline, or brand and no reference to a product or line of products referred to as RHINO RACK on any of the archived Web pages at the gorillarak.com domain.

Further Affiant Sayeth Not.

Edgar L. Bridges

Edgar L. Bridges

STATE OF GEORGIA

COUNTY OF DeKalb

I, Sandra A. Clarke, a notary public for the County of DeKalb, Georgia, hereby certify that Edgar L. Bridges personally appeared before me on the 22nd day of October, 2008 and did swear to and subscribe the foregoing document in my presence.

Witness my hand and notarial seal this 22nd day of October, 2008.

Sandra A. Clarke

My commission expires: **NOTARY PUBLIC, DEKALB COUNTY, GEORGIA**
COMMISSION EXPIRES JANUARY 18, 2010

EXHIBIT F

(to Petitioner's Brief in Support of its Motion for
Summary Judgment)



Steel Shelving Galvanized Units

GRL100 and GRL110

4 and 5 SHELF UNIT INSTRUCTIONS FOR UNIT ASSEMBLY

PARTS INVENTORY CHECKLIST

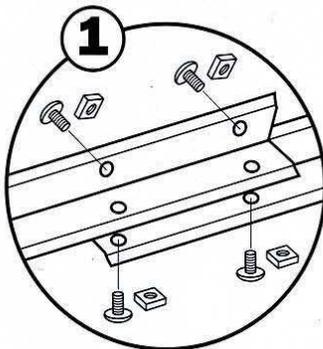
| |
|--------------------------------------|
| 4 Shelves (4 Shelf Unit Purchase) OR |
| 5 Shelves (5 Shelf Unit Purchase) |
| 8 Angled Side Lengths |
| 4 Safety Feet |
| 1 Bag of Bolts and Nuts |
| 10 Corner Angle Brackets |

TOOLS FOR THE JOB

- Phillips Head or Plain Screwdriver
- Small Adjustable Spanner or Pliers

SAFETY TIPS

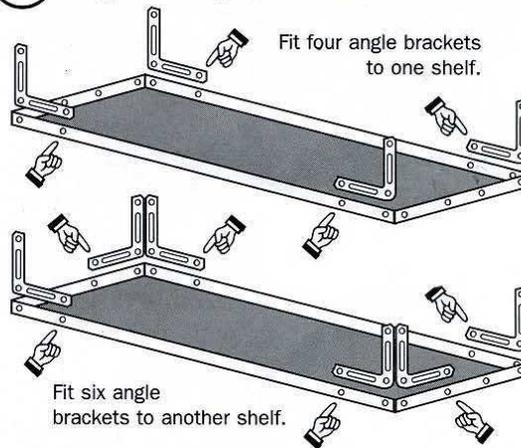
- Please Handle Sharp Metal Edges Carefully
- Attach Unit to a Wall if Filling to Capacity
- Evenly Distribute Loads Across the Shelves
- Place Heavier Items on the Lower Shelves



Overlap two angled side lengths by two holes and bolt together tightly as illustrated. Follow this procedure with the other six angled side lengths.

2

Fit the angle brackets to the inside of shelves. Finger tighten at the points indicated with one nut and bolt.



3

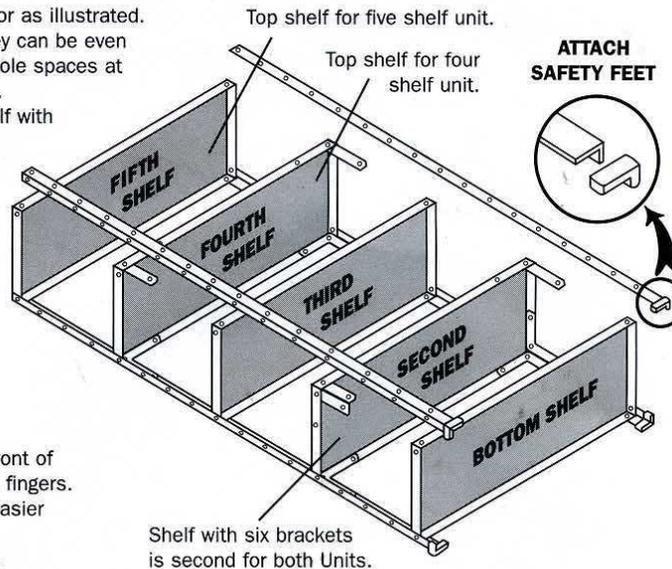
Place two assembled side lengths on the floor as illustrated. Position your shelves to suit your needs. They can be even or at different distances apart, leaving two hole spaces at the bottom for shelf clearance from the floor.

For the **four shelf unit assembly** use the shelf with the four angle brackets as the top shelf and the shelf with six angle brackets as the shelf second from the bottom.

For the **five shelf unit assembly** use the shelf with the four angle brackets as the fourth shelf from the bottom and the shelf with six brackets as the second shelf from the bottom. Attach other shelves and tighten nuts and bolts with your fingers.

4

Fit the two remaining angle lengths on the front of the unit with nuts and bolts and tighten with fingers. Stand the unit upright but upside down for easier access and firmly tighten all nuts and bolts. Finally fit the plastic feet to the bottom legs.



**Need Assistance?
Call Gorilla Rack Customer Service.**

1-800-736-7225

8:00 a.m. to 5:00 p.m. Weekdays (Pacific Time)

www.GorillaRack.com

EXHIBIT G

(to Petitioner's Brief in Support of its Motion for
Summary Judgment)

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

RHINO LININGS USA, INC.

Petitioner,

v.

PATRIARCH PARTNERS AGENCY
SERVICES, LLC (RAPID RACK
INDUSTRIES, INC.)

Registrant.

Cancellation No. 92048271

Registration No. 1,698,407

Date of Issue: June 30, 1992

**REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF
INTERROGATORIES**

Registrant, Rapid Rack Industries, Inc ("Rapid Rack"), based on its current knowledge, understanding and belief of the facts and the information available to it on the date on which these responses are made, hereby responds as follows to the First Set of Interrogatories propounded by Petitioner, Rhino Linings USA, Inc. ("Rhino Linings").

GENERAL OBJECTIONS

The following objections are deemed to apply to each of Rhino Linings' Interrogatory Requests:

1. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they are inconsistent with or purport to impose a duty of disclosure that is greater than or different from that required under the applicable Federal Rules of Civil

Procedure, the Trademark Rules of Practice, Title 37 of the Code of Federal Regulations, or the Trademark Trial and Appeal Board Manual of Procedure.

2. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they purport to require the disclosure of information that is protected by attorney-client privilege, work-product doctrine or other applicable privilege or protection from disclosure. Such information shall not be disclosed in response to Rhino Linings' Interrogatories, and any inadvertent disclosure thereof shall not be a waiver of any privilege with respect to such information or of any work product protection which may attach thereto.

3. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they purport to require the disclosure of information that is not relevant to the claim or defense of any party or is not reasonably calculated to lead to the discovery of admissible evidence.

4. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they purport to require the disclosure of information that constitutes or contains trade secrets or other confidential research, development, proprietary or commercial information of Rapid Rack and/or third parties, or information that Rapid Rack is under an obligation to a third party to not disclose. Any responses containing such information are provided strictly subject to the Standard Protective Order in force pursuant to 37 C.F.R. § 116(g).

5. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they purport to require the disclosure information that does not exist or is not in Rapid Rack's possession, custody or control.

6. Rapid Rack objects to the requests generally, and to each request contained therein, to the extent that they seek legal conclusions or information regarding Rapid Rack's

legal theories or strategies.

7. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they impose on Rapid Rack an unreasonable burden or expense.

8. Rapid Rack objects to Rhino Linings' definitions, instructions and interrogatories to the extent that they give meanings to words different than their ordinary English meaning or definitions set forth in applicable statutes or rules.

9. Rapid Rack objects to the definition of "Registrant" as overly broad, overly burdensome, harassing and oppressive to the extent that it encompasses persons or entities over which Rapid Rack has no control.

10. Rapid Rack's responses to these requests, while based on diligent inquiry and investigation by Rapid Rack, necessarily reflect only the current state of Rapid Rack's knowledge, understanding and belief based upon the information reasonably available to it at this time. Discovery is ongoing, and review of further documents or information may change Rapid Rack's legal position and/or its responses to these requests. Without in any way obligating itself to do so, Rapid Rack reserves the right to modify, supplement, revise or amend these responses and to correct any errors or omissions which may be contained herein, in light of information which it may subsequently obtain or discover. Rapid Rack's responses to these requests are provided without prejudice to Rapid Rack's using, relying on at trial or at any hearing, or otherwise relying on subsequently discovered facts or information, or facts or information omitted from these responses as a result of mistake, error or oversight.

Subject to and without waiver of the foregoing general objections, each of which is incorporated into each individual response below, Rapid Rack responds to Rhino Linings' First Set of Interrogatories as follows:

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify all products which Registrant provides, has provided, or intends to provide under Registrant's Mark, including the date(s) of first use in commerce and in interstate commerce of Registrant's Mark for each product identified.

RESPONSE TO INTERROGATORY NO. 1:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack also objects to the extent the request seeks information regarding Rapid Rack's future intentions that are not currently known. Rapid Rack further objects to the extent the request is overly broad, unduly burdensome, and harassing. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack has used the mark identified in United States Trademark Registration No. 1,698,407 on the goods identified in that registration since at least as early as January 1991. Part numbers for storage racks bearing the RHINO RACK Mark include at least the following:

GRL-100

GRL-110

GRL-3012-5

RR 2412

RR 4805

RR 301230

RR 301260

RR 361572

RR 361672

RR 361872-1

RR 361872-2

INTERROGATORY NO. 2:

Identify all states in which Registrant provides products under Registrant's Mark.

RESPONSE TO INTERROGATORY NO. 2:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Racks further objects to this request on the basis that the request is overly broad, unduly burdensome and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects on the basis the term "states" is vague and ambiguous because the request does not indicate which country is referenced with respect to the term "states." Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack provides products bearing the mark shown in U.S. Trademark Registration No. 1,698,407 throughout the United States and the world.

INTERROGATORY NO. 3:

Identify the individuals who are most knowledgeable concerning the use of Registrant's Mark between 2000 and the present, and describe each such individual's involvement with respect to Registrant's Mark.

RESPONSE TO INTERROGATORY NO. 3:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Racks further objects to this request on the basis that the request is overly broad, unduly burdensome and harassing. Rapid Rack further objects that this request seeks information neither relevant to

the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Individuals possessing knowledge concerning the use of the mark shown in U.S.

Trademark Registration No. 1,698,407 include:

| <u>Name</u> | <u>Title</u> |
|----------------|-------------------------|
| Dana Coelho | Marketing Specialist |
| Bruce Meredith | VP Sales and Marketing |
| Brian Eustace | Director of Engineering |

INTERROGATORY NO. 4:

For each of the products identified in Response to Interrogatory No. 1, state the number of units in dollar volume of monthly sales from January 1, 2000 to the present, and the price of an average sale.

RESPONSE TO INTERROGATORY NO. 4:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

[REDACTED]

INTERROGATORY NO. 5:

For each of the products identified in Response to Interrogatory No. 1, describe in detail how Registrant uses or used Registrant's Mark in connection with the goods.

RESPONSE TO INTERROGATORY NO. 5:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack at least uses the mark shown in U.S. Trademark Registration No. 1,698,407 to identify Rapid Rack as the source of goods bearing such mark.

INTERROGATORY NO. 6:

For each of the products listed in Response to Interrogatory No. 1, explain in detail the channels of distribution in which Registrant distributed such products in 2000, and identify representative outlets (such as specific retailers, wholesalers, or distributors) through which Registrant sold these products in 2000.

RESPONSE TO INTERROGATORY NO. 6:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

[REDACTED]

INTERROGATORY NO. 8:

For each of the products listed in Response to Interrogatory No. 1, explain in detail the channels of distribution in which Registrant distributed such products in 2002, and identify representative outlets (such as specific retailers, wholesalers, or distributors) through which Registrant sold these products in 2002.

RESPONSE TO INTERROGATORY NO. 8:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

[REDACTED]

INTERROGATORY NO. 9:

For each of the products listed in Response to Interrogatory No. 1, explain in detail the channels of distribution in which Registrant distributed such products in 2003, and identify representative outlets (such as specific retailers, wholesalers, or distributors) through which Registrant sold these products in 2003.

RESPONSE TO INTERROGATORY NO. 9:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack

Registrant sold these products in 2004.

RESPONSE TO INTERROGATORY NO. 10:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

INTERROGATORY NO. 11:

For each of the products listed in Response to Interrogatory No. 1, explain in detail the

channels of distribution in which Registrant distributed such products in 2005, and identify representative outlets (such as specific retailers, wholesalers, or distributors) through which Registrant sold these products in 2005.

RESPONSE TO INTERROGATORY NO. II:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

INTERROGATORY NO. 12:

For each of the products listed in Response to Interrogatory No. 1, explain in detail the channels of distribution in which Registrant distributed such products in 2006, and identify representative outlets (such as specific retailers, wholesalers, or distributors) through which Registrant sold these products in 2006.

RESPONSE TO INTERROGATORY NO. 12:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

[REDACTED]

INTERROGATORY NO. 13:

For each of the products listed in Response to Interrogatory No. 1, explain in detail the

[REDACTED]

INTERROGATORY NO. 14:

Identify the five (5) largest purchases of Registrant's products provided under Registrant's Mark for each separate year between and including 2000 and 2007, and state the annual dollar amount of products sold to each such purchaser in each such year.

RESPONSE TO INTERROGATORY NO. 14:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

[REDACTED]

INTERROGATORY NO. 15:

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2000 for each of the products identified in Response to

Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 15:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

INTERROGATORY NO. 16:

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2001 for each of the products identified in Response to Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 16:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response

when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

INTERROGATORY NO. 17:

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2002 for each of the products identified in Response to Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 17:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

INTERROGATORY NO. 18:

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2003 for each of the products identified in Response to Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 18:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack

further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

INTERROGATORY NO. 19:

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2004 for each of the products identified in Response to Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 19:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

INTERROGATORY NO. 20:

List all periodicals, trade journals, radio and/or television advertisements, and internet

websites where Registrant advertised in 2005 for each of the products identified in Response to Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 20:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

INTERROGATORY NO. 21:

List all periodicals, trade journals, radio and/or television advertisements, and internet websites where Registrant advertised in 2006 for each of the products identified in Response to Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 21:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available. Some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005.

INTERROGATORY NO. 22:

List all periodicals, trade journals, radio and/or television advertisements, and Internet websites where Registrant advertised in 2007 for each of the products identified in Response to Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 22:

Rapid Rack incorporates its general objections as if stated fully herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other applicable objections, Rapid Rack responds as follows:

Rapid Rack's investigation is continuing and Rapid Rack will supplement this response when and if such information becomes available.

INTERROGATORY NO. 23:

Identify all persons who participated in any way in the preparation of responses to these Interrogatories, specify for each person the specific Interrogatory Responses on which the person participated in preparing a response.

RESPONSE TO INTERROGATORY NO. 23:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack

further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

Subject to and without waiving these objections, Rapid Rack responds as follows:

| <u>Name</u> | <u>Title</u> |
|----------------|-------------------------|
| Dana Coelho | Marketing Specialist |
| Dennis Chen | IT Manager |
| Bruce Meredith | VP Sales and Marketing |
| Brian Eustace | Director of Engineering |

INTERROGATORY NO. 24:

Identify all persons who participated in any way in locating or providing documents or things in Response to Petitioner's First Set of Requests for Production of Documents and Things, specify for each person the specific Requests on which the person participated in preparing a response.

RESPONSE TO INTERROGATORY NO. 24:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege. Subject to and without waiving these objections, Rapid Rack responds as follows:

| <u>Name</u> | <u>Title</u> |
|----------------|-------------------------|
| Dana Coelho | Marketing Specialist |
| Dennis Chen | IT Manager |
| Bruce Meredith | VP Sales and Marketing |
| Brian Eustace | Director of Engineering |

INTERROGATORY NO. 25:

Identify all persons having knowledge or information regarding the issues raised in Petitioner's Petition for Cancellation or Registrant's Answer thereto, and provide a summary of the knowledge or information that each such person has.

RESPONSE TO INTERROGATORY NO. 25:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack additionally objects to the extent this requests seeks information beyond Rapid Rack's possession, custody or control. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

INTERROGATORY NO. 26:

Identify each expert that you expect to call as a witness in this proceeding and state with specificity the qualifications of each expert, the subject matter on which each expert is expected to testify, the substance of the experts' opinion, and the grounds of each opinion.

RESPONSE TO INTERROGATORY NO. 26:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege. Subject to and without waiving these objections, Rapid Rack responds as follows:

Rapid Rack will supplement the response to this interrogatory if and when Rapid Rack identifies an expert witness.

INTERROGATORY NO. 27:

Identify any period(s) of time between January 1, 2000 and the present during which the manufacturing, advertising, production and sales of any of the products identified in Response to Interrogatory No. 1 were discontinued (permanently or temporarily), and specify the nature of and reasons for any such discontinuance.

RESPONSE TO INTERROGATORY NO. 27:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to multiple interrogatories contained within this request and will count such multiples against the number of interrogatories allowed under Federal Rule of Civil Procedure 33(a).

[REDACTED]

INTERROGATORY NO. 28:

Describe in detail all meetings and discussions held by Registrant with respect to whether Registrant would continue to manufacture, advertise, produce, and/or sell any of the products identified in Response to Interrogatory No. 1, stating when such meetings or discussions were held and who was present at each such meeting or discussion.

RESPONSE TO INTERROGATORY NO. 28:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege. Rapid Rack also objects to multiple interrogatories contained within this request and will count such multiples against the number of interrogatories allowed under Federal Rule of Civil Procedure 33(a).

INTERROGATORY NO. 29:

If Registrant advertises or distributes or has advertised or distributed any work tables (with or without wheels), work benches, industrial shelving, storage racks, component parts for these items under any other mark than Registrant's Mark, identify the other mark(s) under which such goods are or were advertised or distributed and specify the particular products which are or were so advertised and/or distributed and when those products were advertised or distributed.

RESPONSE TO INTERROGATORY NO. 29:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 30:

If Registrant advertises or distributes or has advertised or distributed any work tables (with or without wheels), work benches, industrial shelving, storage racks, component parts for these items under any other mark than Registrant's Mark, describe in detail all meetings or discussions held with respect to which mark such goods are or would be advertised or distributed, stating when such meetings or discussions were held and who was present at each meeting or discussion.

RESPONSE TO INTERROGATORY NO. 30:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any

party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

Rapid Rack also objects to multiple interrogatories contained within this request and will count such multiples against the number of interrogatories allowed under Federal Rule of Civil Procedure 33(a).

INTERROGATORY NO. 31:

Identify the individuals who are most knowledgeable concerning Registrant's decision to advertise or distribute any work tables (with or without wheels), work benches, industrial shelving, storage racks, component parts for these items under any other mark than Registrant's Mark.

RESPONSE TO INTERROGATORY NO. 31:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

INTERROGATORY NO. 32:

Describe with specificity any and all proceedings (lawsuits, oppositions, cancellations) between Registrant and any other entity (other than the present Petitioner) which in any way involve Registrant's use of Registrant's Mark between January 1, 2001 and the present.

RESPONSE TO INTERROGATORY NO. 32:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege. Rapid Rack also objects to the extent the request seeks information available and accessible to Rhino Linings.

INTERROGATORY NO. 33:

Identify the person employed by Registrant who has primary responsibility for maintenance and protection of Registrant's Mark.

RESPONSE TO INTERROGATORY NO. 33:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

INTERROGATORY NO. 34:

Provide the complete factual basis for the averment that Registrant's Mark was in use by Registrant as of March 26, 2002, as set forth and contained in the document styled "Combined Declaration of Use in Commerce and Application for Renewal of Trademark" filed by Registrant

with the United States Patent and Trademark Office on April 9, 2002.

RESPONSE TO INTERROGATORY NO. 34:

Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

INTERROGATORY NO. 35:

To the extent not previously stated in your responses to the preceding Interrogatories, state all facts underlying or supporting the allegations contained in your Answer to the Petition for Cancellation filed in this matter.

RESPONSE TO INTERROGATORY NO. 35:

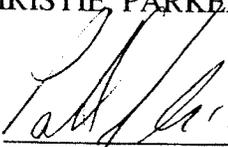
Rapid Rack incorporates its general objections as if fully stated herein. Rapid Rack objects to this request as being overly broad, unduly burdensome, and harassing. Rapid Rack further objects that this request seeks information neither relevant to the claim or defense of any party in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Rapid Rack also objects to this request to the extent it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

Opposition No. Cancellation No. 92048271

Respectfully submitted,

CHRISTIE PARKER & HALE, LLP

Date 6-24-08

By 

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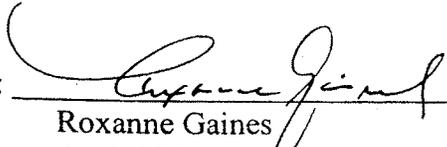
TRADEMARK
Docket No. 110.2*1/R643
Cancellation No. 92048271
Registration No. 1,698,407

CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that on June 24, 2008, the foregoing document REGISTRANT'S RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES is being served by mailing a copy thereof by first-class mail addressed to:

David A. Harlow
Joe Dowdy
GlenLake One, Suite 200
NELSON, MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Avenue
Raleigh, North, Carolina 27612

By: _____


Roxanne Gaines
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Pasadena, CA 91109-7068