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*Attorneys for Plaintiff  
Orbit Irrigation Products, Inc.*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION**

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ORBIT IRRIGATION PRODUCTS, INC., a  
Utah corporation,

Plaintiff,

v.

YUAN MEI CORPORATION, a foreign  
Taiwan corporation; AMAGINE GARDEN,  
INC., a foreign Taiwan corporation; AQUA  
STAR INDUSTRIES, INC., a California  
corporation; GARY WANG, an individual and  
JOHN DOES 1-5,

Defendants.

**AMENDED COMPLAINT**

Civil No. 1:01 CV 0051 BSJ

Judge: Bruce S. Jenkins

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YUAN MEI CORPORATION, a Taiwan corporation; and Amagine Garden, Inc., a Taiwan Corporation,

Counter-Claimants,

v.

ORBIT IRRIGATION PRODUCTS, INC., a Utah corporation; CHEWINK CORP., a Taiwan corporation; SHIN TAI SPURT WATER OF THE GARDEN TOOLS CO., LTD., a Taiwan Corporation; K.C. ERICKSEN, an individual; C.Y. CHENG, an individual, S.T. Pong, an individual, and DOES 1-15,

Counter-Defendants.

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**COMES NOW**, Plaintiff, above-named, who complains of Defendants, above-named, as follows:

1. Defendant, Yuan Mei Corporation, is a manufacturer and distributor of lawn and garden products whose principle place of business is located at No. 1, Lane 288, Sen., Lu Ho Road, Lu Kang, Chang Hua Hsien, Taiwan, R.O.C., hereinafter referred to as Yuan Mei.

2. Defendant, Amagine Garden, Inc., and/or dba Yuan Mei, is a manufacturer and distributor of lawn and garden products whose principle place of business is located at No. 21, Lane 409, Sec. 1, Lu Ho Road, Lu Kang, Chang Hua Hsien, Taiwan, R.O.C., hereinafter referred to as Amagine.

3. Defendant, Aqua Star Industries, Inc., is a California corporation and is a manufacturer and distributor of lawn and garden products whose principle place of business is located at 5775 Jurupa Street, Ontario, California, U.S.A., hereinafter referred to as Aqua Star.

4. Defendant, Gary Wang, as an individual, is the president/owner or serves in various capacities of Yuan Mei, Amagine and Aqua Star, and at all material times giving rise to the complaints of Plaintiff, controlled and directed the actions of all Defendants named herein.

5. Plaintiff is a Utah corporation whose principle place of business is in the State of Utah, who is in the business of manufacture and distribution of lawn and garden equipment.

6. That jurisdiction in this case is based on a Federal Question of non-infringement of U.S. Patent Law, *Title 28, U.S.C.A., Sections 1331, 1332(a)(2) and 1338(b)*; restraint of trade in Interstate Commerce *Section 1125(a)* as well as total diversity between the parties pursuant to *Title 28, U.S.C.A., Section 1332* and *Title 28, U.S.C.A., Section 1391(d)*. Likewise, with respect to the claims of patent infringement, subject matter jurisdiction is proper pursuant to 28 U.S.C. § 1338 and/or other federal statutes.

7. That the amount in controversy exceeds \$75,000.00 exclusive of costs.

8. To the extent that this is an action for declaratory judgment of non-infringement by Orbit of any patent, unfair competition, or other rights of Defendants, above-named, it is brought pursuant to *Title 28, U.S.C.A., 2201, 2202 and Rule 57, Federal Rules of Civil Procedure*.

9. This is also an action for unfair competition in the nature of false advertising brought under *Title 15, U.S.C.A., 1125(a)*.

10. This is also an action for Restraint of Trade under *Title 28, U.S.C.A., Section 1338(b)*.

11. This is also an action for patent infringement under the United States Patent laws, 35 U.S.C. § 101 *et seq.*

12. Jurisdiction over the Defendants is proper because, on information and belief, the Defendants have, used, sold, and/or offered for sale the infringing products in the United States and in this Judicial District.

13. Venue is proper in this District pursuant to *Title 28, U.S.C.A., Section 1391 and/or Section 1400*.

14. Since March 1996, Plaintiff has marketed sprinkler irrigation products throughout the United States and in several foreign countries.

15. Commencing in approximately 1997, Orbit entered into an agreement with Defendants to manufacture and ship various lawn and garden products directly to Orbit's principle places of business or directly to its customers who Orbit disclosed to Defendants.

16. Based on the agreement of the parties, Defendants commenced to ship products to Orbit or Orbit's customers on Orbit's behalf.

17. There has arisen an actual controversy between the parties as to whether products that Orbit buys from others, infringe on various U.S. Patents held by Defendants. Defendants have detained Orbit shipments, have threatened Orbit's suppliers with litigation and have notified Orbit of its claims against it of Patent infringement.

18. There exists an actual controversy between the parties as to their rights and obligations pursuant to their course of dealings, interpretation of contracts, applicable industry standards of dealings, as well as the rights of the parties pursuant to State and Federal law such that each party claims that the other owes it in excess of \$300,000.00 for breach of contract.

19. There exists an actual controversy between the parties and the matter is ripe for determination by the Court.

20. Further, Plaintiff is the owner of United States Design Patent No. D 432,628 (hereinafter the “D’628 design patent”) which was duly and legally issued by the United States Patent and Trademark Office on October 24, 2000.

21. On information and belief, Defendants have made, used, sold, and/or imported into the United States and in this Judicial District the products referred to as product numbers 70102 (“70102 product”), 93705 (“93705 product”), and 93707 (“93707 product”). On information and belief, the 70102 product, the 93705 product, and the 93707 product infringe the D’628 design patent.

22. On information and belief, the Defendants have directly infringed, contributorily infringed, and/or actively induced others to infringe the D’628 design patent through their actions with respect to the 70102 product, the 93705 product, and the 93707 product. Such actions have been performed without the authority, consent or approval of Plaintiff. Accordingly, such actions constitute patent infringement in violation of the United States Patent laws 35 U.S.C. § 100 *et seq.*

23. On account of the activities of Defendants, Plaintiff has been damaged in an amount not as yet ascertained.

24. As a result of Defendants’ infringement, Plaintiff is now suffering and will continue to suffer irreparable injury for which it has no adequate remedy at law.

25. Defendants have had actual notice of their infringement of the D’628 design patent but have continued, notwithstanding such notice, to willfully or intentionally infringe the D’628 design patent. Moreover, Defendants will continue to commit such acts of infringement unless they are enjoined by this Court.

26. Plaintiff is also the owner of United States Design Patent No. D 412,356 (hereinafter the “D’356 design patent”) which was duly and legally issued by the United States Patent and Trademark Office on October 24, 2000.

27. On information and belief, Defendants have made, used, sold, and/or imported into the United States and in this Judicial District a product referred to as product number 70101 (“70101 product”). On information and belief, the 70101 product infringes the D’356 design patent.

28. On information and belief, the Defendants have directly infringed, contributorily infringed, and/or actively induced others to infringe the D’356 design patent through their actions with respect to the 70101 product. Such actions have been performed without the authority, consent or approval of Plaintiff. Accordingly, such actions constitute patent infringement in violation of the United States Patent laws 35 U.S.C. § 100 *et seq.*

29. On account of the activities of Defendants, Plaintiff has been damaged in an amount not as yet ascertained.

30. As a result of Defendants’ infringement, Plaintiff is now suffering and will continue to suffer irreparable injury for which it has no adequate remedy at law.

31. Defendants have had actual notice of their infringement of the D’356 design patent but have continued, notwithstanding such notice, to willfully or intentionally infringe the D’356 design patent. Moreover, Defendants will continue to commit such acts of infringement unless they are enjoined by this Court.

32. Plaintiff is also the owner of United States Design Patent No. D 461,225 (hereinafter the “D’225 design patent”) which was duly and legally issued by the United States Patent and Trademark Office on August 6, 2002.

33. On information and belief, Defendants have made, used, sold, and/or imported into the United States and in this Judicial District a product referred to as product number 70104 (“70104 product”). On information and belief, the 70104 product infringes the D’225 design patent.

34. On information and belief, the Defendants have directly infringed, contributorily infringed, and/or actively induced others to infringe the D’225 design patent through their actions with respect to the 70104 product. Such actions have been performed without the authority, consent or approval of Plaintiff. Accordingly, such actions constitute patent infringement in violation of the United States Patent laws 35 U.S.C. § 100 *et seq.*

35. On account of the activities of Defendants, Plaintiff has been damaged in an amount not as yet ascertained.

36. As a result of Defendants’ infringement, Plaintiff is now suffering and will continue to suffer irreparable injury for which it has no adequate remedy at law.

37. Defendants have had actual notice of their infringement of the D’225 design patent but have continued, notwithstanding such notice, to willfully or intentionally infringe the D’225 design patent. Moreover, Defendants will continue to commit such acts of infringement unless they are enjoined by this Court.

**COUNT I**  
**Declaratory Action for Non-Infringement**

38. Plaintiff incorporates by reference, all of the preceding paragraphs and allegations as set forth above.

39. Commencing in the Fall of 1997, Orbit ordered from Defendants and other third parties, not subject to this lawsuit, certain lawn and garden sprinkler products.

40. Defendants have made allegations to Shin Tai, one of Orbit's suppliers, and Orbit that Orbit products infringe of Defendants' U.S. Patent Nos. 6,007,003; 5,566,886; 5,772,121 and 5,992,762, and indicated that Shin Tai products to Orbit "*may infringe other Yuan Mei patents.*" Attached and incorporated by reference herein as Exhibit No. 1 is a letter to Orbit's supplier of allegations of infringement. This letter will be referred to herein as the "Yap Letter."

41. When Shin Tai tried to ship certain products from Taiwan, R.O.C., to Orbit, Defendants brought a commercial restraining order under the laws of Taiwan, R.O.C, that held Orbit goods bound for Orbit in the ports of Taiwan, R.O.C., under a claim that the goods in question infringed on Defendants' U.S. and Taiwan patents. These goods were impounded at one time in Taiwan.

42. Of the products exported by Orbit, it believes that none of its products infringe Defendants' patents, including but not limited to the following:

- a. Orbit Products Nos. 58590 and 58527, alleged to infringe Defendants' U.S. Patent Nos. 6,007,003; 5,566,886; 5,772,121; 5,992,762 and 5,598,978; and
- b. Orbit products by implication but not disclosed in the Yap Letter.

43. Orbit has manufacturers in other countries around the world that manufacture or could manufacture similar Orbit products, however, Defendants have expressed similar threats

concerning shipments and have notified Orbit's customers of alleged patents causing a chill in Orbit's business relations with its customers.

44. Orbit alleges that none of its products infringe on the U.S. patents iterated in the Yap Letter, nor to its knowledge, any other Yuan Mei patent.

45. That a controversy exists between the parties and that Orbit has suffered and will continue to suffer irreparable damage and harm unless the Court reviews the patents in dispute and renders its decision of non-infringement and orders Defendants from further restraining Orbit's trade and goodwill.

**COUNT II**  
**Declaratory Relief Contract (Defective Goods)**

46. Plaintiff incorporates by reference, all of the preceding paragraphs and allegations as set forth above.

47. On or about May 1997, the parties commenced to do commercial business, whereby Orbit would order and Defendants would manufacture lawn and garden products for Orbit and its customers.

48. On July 14, 1997, Defendants quoted Orbit prices and Orbit placed its first orders in the fall of 1997 for shipment in 1998.

49. At all material times, Defendants expressly or impliedly warranted that the good shipped to Orbit would be merchantable and fit for their specific purpose as provided in *Sections 70A-2-313, 70A-2-314 and 70A-2-315, U.C.A., (1953 as amended)* of the *Utah Uniform Commercial Code* and submitted a purchase order to Defendants that contained the language that it accepted liability for all defective products.

50. During the time period of Fall 1997 through March 2000, Defendants shipped products to Orbit or directly to Orbit's customers in a defective condition such that they were not marketable or fit for the intended purpose within the meaning of the *Utah Uniform Commercial Code* and State and Federal common law.

51. Currently, Defendants owe to Orbit a sum in excess of \$400,000, which is the cost of the defective products received due to defects plus such other damages pursuant to *Section 70A-2-714, U.C.A.*, (1953 as amended) including breach of warranties and incidental and consequential damages as a result of said breach.

52. Orbit owes Defendants approximately \$300,000.00 as part of the price due for the goods and has given Defendants notice pursuant to *Section 70A-2-717, U.C.A.* (1953 as amended) that it intends to deduct the price of defective products including all other damages recoverable under law from the amounts due and owing to Defendants.

53. There exists an actual controversy that is ripe for decision by the Court.

**COUNT III**  
**Patent Infringement Of The D'628 Design Patent**

54. Plaintiff incorporates by reference, all of the preceding paragraphs and allegations as set forth above.

55. Plaintiff owns the D'628 design patent, which patent is valid and enforceable. Defendants have either (1) directly infringed the D'628 design patent by making, using, selling, offering to sell, and/or importing into the United States the 70102 product, the 93705 product, and the 93707 product; (2) contributorily infringed this patent; and/or (3) have actively induced others to infringe the D'628 design patent.

56. Plaintiff believes that such acts of infringement were done willfully and/or intentionally and that such acts of infringement will continue unless enjoined by this Court.

57. Plaintiff has been damaged by such acts of infringement in an amount that will be proved at trial. Likewise, Plaintiff has been and continues to be irreparably harmed by Defendants' acts.

**COUNT IV**  
**Patent Infringement Of The D'356 Design Patent**

58. Plaintiff incorporates by reference, all of the preceding paragraphs and allegations as set forth above.

59. Plaintiff owns the D'356 design patent, which patent is valid and enforceable. Defendants have either (1) directly infringed the D'356 design patent by making, using, selling, offering to sell, and/or importing into the United States the 70101 product; (2) contributorily infringed this patent; and/or (3) have actively induced others to infringe the D'356 design patent.

60. Plaintiff believes that such acts of infringement were done willfully and/or intentionally and that such acts of infringement will continue unless enjoined by this Court.

61. Plaintiff has been damaged by such acts of infringement in an amount that will be proved at trial. Likewise, Plaintiff has been and continues to be irreparably harmed by Defendants' acts.

**COUNT V**  
**Patent Infringement Of The D'225 Design Patent**

62. Plaintiff incorporates by reference, all of the preceding paragraphs and allegations as set forth above.

63. Plaintiff owns the D'225 design patent, which patent is valid and enforceable. Defendants have either (1) directly infringed the D'225 design patent by making, using, selling, offering to sell, and/or importing into the United States the 70104 product; (2) contributorily infringed this patent; and/or (3) have actively induced others to infringe the D'225 design patent.

64. Plaintiff believes that such acts of infringement were done willfully and/or intentionally and that such acts of infringement will continue unless enjoined by this Court.

65. Plaintiff has been damaged by such acts of infringement in an amount that will be proved at trial. Likewise, Plaintiff has been and continues to be irreparably harmed by Defendants' acts.

**WHEREFORE**, Plaintiff prays for the following relief:

**AS TO PLAINTIFF'S FIRST CAUSE OF ACTION**

1. That this Court enter a judgment for Declaratory Relief finding that Orbit products do not infringe Defendants' U.S. Patents as identified in the above Complaint;
2. That Orbit may move for such further relief as is justified;
3. For costs and reasonable attorneys' fees against Defendants, the case being an exceptional case; and
4. For such other and further relief as is justified.

**AS TO PLAINTIFF'S SECOND CAUSE OF ACTION**

1. That the Court enter a judgment for Declaratory Relief, finding that the parties had an enforceable contract or business relationship under the Uniform Commercial Code for the State of Utah and that Defendants breached the agreement by providing defective merchandise;
2. That Orbit may proceed to prove such further damages as are just in this case including breach of warranty and incidental and consequential damages and that the Court will award the same against Defendants;
3. For costs and reasonable attorneys' fees; and
4. For such other and further relief as is justified.

**AS TO PLAINTIFF'S THIRD CAUSE OF ACTION**

1. That the Court enter a judgment against Defendants declaring
  - a. That the D'628 design patent is valid, enforceable and infringed by one or more of the actions of Defendants;
  - b. That such infringement was willful;
2. That the Court enter a preliminary and permanent injunction enjoining Defendants and its officers, agents, employees, affiliates, subsidiaries, and all persons or entities acting in concert with any of them, from infringing the D'628 design patent.
3. An award of Plaintiff's lost profits and other damages, in an amount to be proven at trial, pursuant to at least 35 U.S.C. § 100 *et seq.*, for all acts of infringement of the D'628 design patent for which Defendants are liable such that Plaintiff is fully compensated therefor.
4. An award of a reasonable royalty to Plaintiff, in an amount to be proven at trial.

5. Prejudgment interest.
6. Postjudgment interest.
7. That the Court find this action for patent infringement exceptional and that Plaintiff is entitled to an award of attorneys' fees.
8. An award of Plaintiff's costs in bringing this action.
9. For such other and further relief as the Court deems just and equitable.

**AS TO PLAINTIFF'S FOURTH CAUSE OF ACTION**

1. That the Court enter a judgment against Defendants declaring
  - a. That the D'356 design patent is valid, enforceable and infringed by one or more of the actions of Defendants;
  - b. That such infringement was willful;
2. That the Court enter a preliminary and permanent injunction enjoining Defendants and its officers, agents, employees, affiliates, subsidiaries, and all persons or entities acting in concert with any of them, from infringing the D'356 design patent.
3. An award of Plaintiff's lost profits and other damages (including Defendants' profits), in an amount to be proven at trial, pursuant to at least 35 U.S.C. § 100 *et seq.*, for all acts of infringement of the D'356 design patent for which Defendants are liable such that Plaintiff is fully compensated therefor.
4. An award of a reasonable royalty to Plaintiff, in an amount to be proven at trial.
5. Prejudgment interest.
6. Postjudgment interest.

7. That the Court find this action for patent infringement exceptional and that Plaintiff is entitled to an award of attorneys' fees.

8. An award of Plaintiff's costs in bringing this action.

9. For such other and further relief as the Court deems just and equitable.

**AS TO PLAINTIFF'S FIFTH CAUSE OF ACTION**

1. That the Court enter a judgment against Defendants declaring

a. That the D'225 design patent is valid, enforceable and infringed by one or more of the actions of Defendants;

b. That such infringement was willful;

2. That the Court enter a preliminary and permanent injunction enjoining Defendants and its officers, agents, employees, affiliates, subsidiaries, and all persons or entities acting in concert with any of them, from infringing the D'225 design patent.

3. An award of Plaintiff's lost profits and other damages, in an amount to be proven at trial, pursuant to at least 35 U.S.C. § 100 *et seq.*, for all acts of infringement of the D'225 design patent for which Defendants are liable such that Plaintiff is fully compensated therefor.

4. An award of a reasonable royalty to Plaintiff, in an amount to be proven at trial.

5. Prejudgment interest.

6. Postjudgment interest.

7. That the Court find this action for patent infringement exceptional and that Plaintiff is entitled to an award of attorneys' fees.

8. An award of Plaintiff's costs in bringing this action.

9. For such other and further relief as the Court deems just and equitable.

DATE: October 21, 2005

/s/ Robert S. Rapp

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Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on the October 21, 2005, I served the foregoing **Amended Complaint**  
on the following in the manner outlined below:

**Via U.S. Mail, Postage Prepaid**

Michael A. Oswald

John D. Tran

**Oswald & Yapp**

16148 Sand Canyon Avenue

Irvine, California 92618

/s/ Robert S. Rapp