

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Guillermo Cabrera (SBN 190303)  
**The Cabrera Firm, APC**  
600 West Broadway, Suite 700  
San Diego, CA 92101  
v. 619.500.4880  
f. 619.785.3380  
E-mail: gil@cabrerafirm.com

Manuel de la Cerra (SBN 189313)  
**The Law Office of Manuel de la Cerra**  
6885 Catamaran Drive  
Carlsbad, CA 92011  
v. 760.809.5520  
f: 760.269.3542  
E-mail: manny@delacerralaw.com

Attorneys for Plaintiff  
AMERICAN WAVE MACHINES, INC.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**'14CV2731 AJB NLS**

AMERICAN WAVE MACHINES, INC., a  
California Corporation,  
  
Plaintiff,

v.

ACTION-TEAM VERANSTALTUNGS-GMBH, a  
Foreign Corporation; and DOES 1-10,  
  
Defendant.

**COMPLAINT FOR PATENT  
INFRINGEMENT OF U.S. PAT. 7,568,859  
AND 8,602,685**  
  
**DEMAND FOR JURY TRIAL**

Plaintiff American Wave Machines, Inc. (“AWM”) hereby complains of Defendant  
Action-Team Veranstellungs-GmbH (“ATV”) for infringement of United States Patent Nos.  
7,568,859 (‘859 Patent) and 8,602,685 (‘685 Patent), and alleges as follows:

**PARTIES**

1. Plaintiff AWM is a California corporation with a principal place of business at  
224 South Cedros, Suite C, Solana Beach, CA 92075.
2. On information and belief, Defendant ATV is a foreign Corporation.
3. On information and belief, Defendant ATV is a German company.

**JURISDICTION AND VENUE**

1  
2 4. This Court has subject matter jurisdiction pursuant to the patent laws of the United  
3 States, 35 U.S.C. §§ 1 et seq., and pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4 5. Defendant ATV has had systematic and continuous business contacts with the  
5 State of California in this judicial district, has a business presence in the State of California, has  
6 committed the complained-of acts in the State of California, and has damaged Plaintiff in this  
7 judicial district.

8 6. This Court has personal jurisdiction over Defendant ATV under Fed. R. Civ. P.  
9 4(k)(1)(A) and California’s long-arm statute, Cal. Civ. Proc. Code § 410.10.

10 7. This Court further has jurisdiction over Defendant ATV under Fed. R. Civ. P.  
11 4(k)(2).

12 8. Venue is proper in this district under 28 U.S.C. § 1400(b), because Defendant ATV  
13 resides in this judicial district pursuant to 28 U.S.C. § 1391.

14  
15 **BACKGROUND FACTS**

16 9. On August 4, 2009, United States Patent No. 7,568,859, entitled “Wave Forming  
17 Apparatus and Method” (the ‘859 Patent), was duly and legally issued to Bruce McFarland. A  
18 true copy of the ‘859 Patent is attached hereto as Exhibit A.

19 10. The ‘859 Patent is valid and enforceable, and maintenance fees required therefore,  
20 if any, have been timely paid.

21 11. Plaintiff AWM is the owner by assignment of the ‘859 Patent with full and  
22 exclusive right to bring suit to enforce this patent. The assignment has been recorded with the  
23 USPTO at reel/frame 020263/0332.

24 12. The Abstract of the ‘859 Patent indicates that the patent relates generally to a “wave  
25 forming apparatus ha[ving] a channel for containing a flow of water with an inlet end connected  
26 to a water supply, a base, and spaced side walls.”

27 13. On December 10, 2013, United States Patent No. 8,602,685, entitled “Wave  
28 Generating Apparatus and Method” (the ‘685 Patent) was duly and legally issued to Bruce

1 McFarland. A true copy of the '685 Patent is attached hereto as Exhibit B.

2 14. The '685 Patent is valid and enforceable, and any maintenance fees required  
3 therefore have been timely paid.

4 15. Plaintiff AWM is the owner by assignment of the '685 Patent with full and  
5 exclusive right to bring suit to enforce this patent. The assignment has been recorded with the  
6 USPTO at reel/frame 031312/0259.

7 16. The Abstract of the '685 Patent indicates that the patent relates generally to a "wave  
8 forming apparatus ha[ving] a channel for containing a flow of water with an inlet end connected  
9 to a water supply, a floor, and spaced side walls."

10 17. Defendant ATV has been and is making, using, offering for sale, selling, or  
11 importing into the United States a wave-forming apparatus called "**THE WAVE.**"

12 18. Surf Lagoons Inc., a California resident based in San Clemente California, has  
13 infringed one or more of the claims of each of the '859 and '685 patents in California by making,  
14 using, offering for sale, selling, or importing into the United States Defendant ATV's wave-  
15 forming apparatus called "**THE WAVE.**"

16 19. Surf Lagoons is the subject of a lawsuit alleging infringement of the '859 and '685  
17 patents, currently venued in the Southern District of California and captioned: *American Wave*  
18 *Machines, Inc. v. Surf Lagoons*, 13-cv-03204-CAB-NLS. Defendant ATV is aware of this  
19 lawsuit and its CEO, Rainer Klimaschewski, has been served with a copy of the complaint in that  
20 lawsuit.

21 20. On information and belief, Surf Lagoons Inc. has been and is working with  
22 Defendant ATV to make, use, offer for sale, sell, or import "**THE WAVE**" wave-forming  
23 apparatus throughout the United States, including in this judicial district.

24 21. At least as early as June 2013, Plaintiff AWM informed Defendant ATV and Surf  
25 Lagoons, Inc. that Defendant ATV's "**THE WAVE**" wave-forming apparatus infringed the '859  
26 Patent, and Plaintiff AWM provided Defendant ATV and Surf Lagoons, Inc. with a detailed  
27 written infringement analysis explaining exactly why the apparatus infringes. Immediately after  
28

1 the issuance of the '685 in December 2013, Plaintiff AWM informed Defendant ATV of the  
2 infringement of that patent as well by the "THE WAVE" wave-forming apparatus.

3 22. After being provided with Plaintiff AWM's detailed infringement analysis  
4 described in the immediately preceding paragraph, Surf Lagoons Inc. and Defendant ATV  
5 executed a distribution agreement (signed by Rainer Klimaschewski) to promote, and sell from  
6 California, Defendant ATV's "THE WAVE" wave-forming apparatus throughout the United  
7 States and North America. Through the agreement, Defendant ATV required Surf Lagoons to  
8 aggressively market the "THE WAVE" wave-forming apparatus so that a minimum of five (5)  
9 units would be sold.

10 23. On information and belief, Defendant ATV provides instructional support for the  
11 design, construction, installation, maintenance, and operation of "THE WAVE" wave-forming  
12 apparatus.

13 24. Rainer Klimaschewski has been identified on the website  
14 <<<http://citywave.de/en/the-wave/>>> as the contact person for inquiries regarding Defendant  
15 ATV's "THE WAVE" wave-forming apparatus.

16 25. On information and belief, Rainer Klimaschewski is the CEO of Defendant ATV.

17 26. True and correct copies of the website <<<http://citywave.de/en/the-wave/>>> are  
18 attached to this Complaint as Exhibit C, as downloaded on June 25, 2013 and again on December  
19 17, 2013.

20 27. Contemporaneously while working with Surf Lagoons Inc. to make, use, offer for  
21 sale, sell, or import into the United States "THE WAVE" wave-forming apparatus, Defendant  
22 ATV knew or should have known that "THE WAVE" wave-forming apparatus infringed one or  
23 more claims of the '859 patent.

24 28. Contemporaneously while working with Surf Lagoons Inc. to make, use, offer for  
25 sale, sell, or import into the United States "THE WAVE" wave-forming apparatus, Defendant  
26 ATV knew or should have known that "THE WAVE" wave-forming apparatus infringed one or  
27 more claims of the '685 patent.  
28

1           29. Defendant ATV has and is knowingly and actively inducing Surf Lagoons Inc. to  
2 make, use, offer for sale, sell, or import into the United States Defendant ATV's wave-forming  
3 apparatus called "**THE WAVE**," with the specific intent to encourage Surf Lagoons Inc. to  
4 perform acts that constitute infringement of one or more of the claims of each of the '859 and  
5 '685 patents.

6           30. Additionally, Defendant ATV has and is knowingly and actively inducing end-  
7 customers or potential customers throughout the United States to make, use, offer for sale, sell, or  
8 import into the United States Defendant ATV's wave-forming apparatus called "**THE WAVE**,"  
9 with the specific intent to encourage them to perform acts that constitute infringement of one or  
10 more of the claims of each of the '859 and '685 patents.

11           31. For example, on information and belief, Defendant ATV has attended trade shows  
12 in the United States to promote and sell "**THE WAVE**" wave-forming apparatus, when  
13 Defendant ATV knew or should have known that its wave-forming apparatus infringes the '859  
14 and '685 Patents.

15           32. A true copy of the website <http://citywave.de/en/the-wave/> downloaded on June 25,  
16 2013 and again downloaded on December 17, 2013 is attached at Exhibit C. The representative  
17 contact provided on the website is Rainer Klimaschewski. *See* Exhibit C. On information and  
18 belief, Rainer Klimaschewski is the CEO of ATV.

19           33. Plaintiff is informed and believes, and on that basis alleges, that Surf Lagoons Inc.  
20 works with Defendant ATV to offer for sale, sell and import "**THE WAVE**" wave forming  
21 apparatus throughout the United States, including specifically, this judicial district. Surf Lagoons  
22 Inc. and Defendant ATV have executed a distribution agreement (signed by Rainer  
23 Klimaschewski) to promote and sell "**THE WAVE**" from California throughout the United  
24 States and North America.

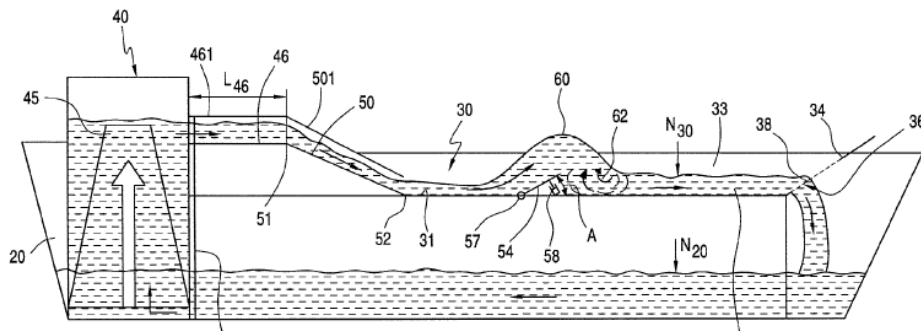
25           34. Plaintiff is informed and believes, and on that basis alleges, that Defendant ATV  
26 has had phone calls and written correspondence with residents in the United States specifically to  
27 offer to sell and to actively and knowingly induce the sale of "**THE WAVE**" wave forming  
28 apparatus that infringes the '859 and '685 Patents. On information and belief, these calls and

1 correspondence include directing United States residents to Surf Lagoons in California to obtain  
 2 “THE WAVE” wave-forming apparatus, which Defendant ATV knew or should have known  
 3 infringes the ‘859 and ‘685 Patents.

4 35. For example, on information and belief, Defendant ATV has contacted prospective  
 5 customers identified at the trade shows and provided them with the name and contact information  
 6 of Surf Lagoons, Inc. in California as a provider of Defendant ATV’s “**THE WAVE**” wave-  
 7 forming apparatus, when Defendant ATV knew or should have known that the apparatus  
 8 infringes the ‘859 and ‘685 Patents.

9 36. In one instance, on information and belief, Defendant ATV had business contacts  
 10 including phone calls and written correspondence with Mr. Don Rady of Value Real Estate in this  
 11 judicial district, and has actively and knowingly induced Mr. Rady to work with Surf Lagoons to  
 12 make and use “**THE WAVE**” wave-forming apparatus that Defendant ATV knew or should have  
 13 known infringes the ‘859 and ‘685 Patents.

14 37. Plaintiff AWM is informed and believes, and on that basis alleges, that “**THE**  
 15 **WAVE**” wave forming apparatus incorporates in substantial form the apparatus disclosed in  
 16 United States Patent No. 8,516,624 at FIG. 2, shown here:



17  
 18  
 19  
 20  
 21  
 22 38. This structure is consistent with the documents currently available to Plaintiff  
 23 AWM including the following true and correct copies of photographs of “**THE WAVE**” wave  
 24 forming apparatus:

25  
 26  
 27  
 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



FIGURE 1A



FIGURE 1B



FIGURE 1C



FIGURE 1D



FIGURE 1E



FIGURE 1F



FIGURE 1G



FIGURE 1H



FIGURE 1I



FIGURE 1J

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

39. According to the website <http://citywave.de/en/the-wave/> downloaded on June 25, 2013, and again on December 17, 2013, “The Wave” wave forming apparatus is described as: “The heart of **THE WAVE** are huge pump-units, which are produced by one of the worlds biggest manufacturer. The size and power of **THE WAVE** can be regulated by adjustable floaters, also the amount of water is levelled (sic). Therefore the wave can be adjusted perfectly for every target group: either create a suitable wave for beginner children or light people, or produce a perfect wave with maximum pressure and steepness for experts. In this deepwater wave, which is also perfect for bodysurfing, its (sic) even fun to dive into the water after a ride, just like in the ocean. To surf **THE WAVE** you don’t even need a special surfboard, the board you use in the ocean will be fine.” (Exhibit C.)

27  
28

40. Based on the above photos and on the information from the website <http://citywave.de/en/the-wave/> downloaded on June 25, 2013 and again downloaded on



1 December 17, 2013, “**THE WAVE**” wave forming apparatus infringes at least claims 22, 24, and  
2 29 - 35 of the ‘859 Patent and claims 1 – 19 of the ‘685 Patent. This is a preliminary assessment  
3 intended to place ATV on notice under Fed.R.Civ.P. Rule 8. Plaintiff AWM reserve the right to  
4 amend this allegation based on future discovery and litigation.

5 41. Defendant ATV has willfully infringed the ‘859 Patent and the ‘685 Patent by  
6 continuing its acts of infringement, both directly and by inducement, after being on notice of  
7 these patents.

8 **COUNT 1: INFRINGEMENT OF THE ‘859 PATENT**

9 42. Plaintiff AWM re-alleges and incorporates herein by reference all of the foregoing  
10 paragraphs as though fully set forth herein.

11 43. The ‘859 Patent is valid and subsisting and Plaintiff AWM owned the ‘859 Patent  
12 throughout the period of the Defendant ATV's infringing acts and still owns the ‘859 Patent.

13 44. Defendant ATV has directly infringed and is still infringing at least one claim of  
14 the ‘859 Patent, either literally or under the doctrine of equivalents, by making, using, selling,  
15 offering for sale, selling, or importing artificial surfing apparatus that embody the patented  
16 invention, and Defendant ATV will continue to do so unless enjoined by this Court.

17 45. Defendant ATV has infringed and is still infringing the ‘859 Patent by inducing at  
18 least one other person to directly infringe at least one claim of the ‘859 Patent, while Defendant  
19 ATV knew of the ‘859 Patent, and, nevertheless, knowingly induced that person to commit the  
20 acts that constitute infringement. Defendant ATV actually intended to cause the infringement of  
21 the ‘859 Patent and Defendant ATV knew or should have known that those acts would infringe  
22 the ‘859 Patent, and Defendant ATV will continue to do so unless enjoined by this Court.

23 46. Defendant ATV's infringement is willful, in that Defendant ATV has been aware  
24 of the ‘859 Patent, yet Defendant ATV continued to act despite an objectively high likelihood  
25 that its actions infringed a valid patent, which Defendant ATV either knew or should have  
26 known.

27 47. Plaintiff AWM has been damaged and is continuing to be damaged by Defendant  
28 ATV's infringement, losing past and future profits through any or all of lost sales, diminished

1 market share, price erosion, loss of collateral sales, increased costs of marketing, and other  
2 increased costs and reduced revenues, both tangible and intangible, the extent of which are  
3 presently unknown to Plaintiff and may be at least partially incalculable with precision. By  
4 reason of the aforesaid acts of infringement, Plaintiff AWM has been and will continue to be  
5 greatly and irreparably damaged.

6  
7 **COUNT 2: PATENT INFRINGEMENT OF THE '685 PATENT**

8 48. Plaintiff AWM re-alleges and incorporates herein by reference all of the foregoing  
9 paragraphs as though fully set forth herein.

10 49. The '685 Patent is valid and subsisting and Plaintiff AWM owned the '685 Patent  
11 throughout the period of the Defendant ATV's infringing acts and still owns the '685 Patent.

12 50. Defendant ATV has directly infringed and is still infringing at least one claim of  
13 the '685 Patent, either literally or under the doctrine of equivalents, by making, using, selling,  
14 offering for sale, selling, or importing artificial surfing apparatus that embody the patented  
15 invention, and Defendant ATV will continue to do so unless enjoined by this Court.

16 51. Defendant ATV has infringed and is still infringing the '685 Patent by inducing at  
17 least one other person to directly infringe at least one claim of the '685 Patent, while Defendant  
18 ATV knew of the '685 Patent, and, nevertheless, actively and knowingly induced that person to  
19 commit the acts that constitute infringement. Defendant ATV actually intended to cause the  
20 infringement of the '685 Patent, and Defendant ATV knew or should have known that those acts  
21 would infringe the '685 Patent, and Defendant ATV will continue to do so unless enjoined by  
22 this Court.

23 52. Defendant ATV's infringement is willful, in that Defendant ATV has been aware  
24 of the '685 Patent, yet Defendant ATV continued to act despite an objectively high likelihood  
25 that its actions infringed a valid patent, which Defendant ATV either knew or should have  
26 known.

27 53. Plaintiff AWM has been damaged and is continuing to be damaged by Defendant  
28 ATV's infringement, losing past and future profits through any or all of lost sales, diminished

1 market share, price erosion, loss of collateral sales, increased costs of marketing, and other  
2 increased costs and reduced revenues, both tangible and intangible, the extent of which are  
3 presently unknown to Plaintiff and may be at least partially incalculable with precision. By  
4 reason of the aforesaid acts of infringement, Plaintiff AWM has been and will continue to be  
5 greatly and irreparably damaged.

6 WHEREFORE, Plaintiff AWM prays for the following relief against Defendant ATV:

- 7 • a judgment that Defendant ATV has infringed the '859 Patent and '685 Patent  
8 under 35 U.S.C. § 271;
- 9 • a judgment that Defendant ATV's infringement was willful;
- 10 • a preliminary and permanent injunction against Defendant ATV, including its  
11 officers, agents, servants, employees, attorneys, all parent and subsidiary  
12 corporations, all assignees and successors in interest, and those persons in  
13 active concert or participation with Defendant ATV, enjoining it from  
14 continuing the acts that constitute infringement of the '859 Patent and '685  
15 Patent for the respective lives of those patents;
- 16 • an award of damages under 35 U.S.C. § 284 for Defendant ATV's  
17 infringement of the '859 Patent and '685 Patent, together with pre-judgment  
18 and post-judgment interest;
- 19 • an increase of up to three times of the award of damages, pursuant to 35  
20 U.S.C. § 284;
- 21 • a judgment that this case is exceptional, and an award to Plaintiff AWM of its  
22 attorneys' fees pursuant to 35 U.S.C. § 285;
- 23 • an award of the costs of this action; and
- 24 • any further relief that this Court deems just and proper.

25  
26 DATED: November 17, 2013

Respectfully submitted,  
**The Cabrera Firm, APC**

27 By: /s/ Guillermo Cabrera  
28 Guillermo Cabrera  
Attorney for Plaintiff  
AWM, a California Corporation.

**DEMAND FOR JURY TRIAL**

Plaintiff respectfully demands a trial by jury on all issues so triable.

DATED: November 17, 2013

Respectfully submitted,  
**The Cabrera Firm, APC**

By: /s/ Guilermol Cabrera  
Guillermo Cabrera  
Attorney for Plaintiff  
AWM, a California Corporation.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28