

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

PERSONAL WATERCRAFT PRODUCT  
SARL,

Plaintiff,

v.

BRANDON ROBINSON,

FLYDIVE, INC.,

Defendants.

**Case No. 0:16-cv-62972-FAM**

**FIRST AMENDED  
COMPLAINT**

**DEMAND FOR JURY  
TRIAL**

Pursuant to the Order dated May 15, 2017 (Dkt. 22), Plaintiff Personal Watercraft Product SARL ("Plaintiff"), by and through its undersigned counsel, hereby alleges against Defendants Brandon Robinson ("Defendant Robinson") and Flydive, Inc. ("Defendant Flydive") (Defendant Robinson and Defendant Flydive, together, "Defendants") as follows:

**NATURE OF THE ACTION**

1. This action arises from Plaintiff's Chief Executive Officer, Franky Zapata ("Zapata"), disclosing inventive subject matter to Defendant Robinson, and Defendant Robinson then fraudulently claiming such subject matter as his own in U.S. patent filings which later issued to Defendant Robinson under U.S. Patent Nos. 9,145,206 and 9,440,714 (the "Misappropriated Patents"). Defendant Robinson thereafter commenced a patent infringement litigation against Plaintiff, and later assigned the Misappropriated Patents to Defendant Flydive (a direct competitor of Plaintiff).

2. By this action, Plaintiff asks this Court to justifiably reform the Misappropriated Patents to properly reflect Zapata as sole inventor thereunder and to rule that the Misappropriated

Patents are unenforceable by the Defendants based on Defendant Robinson's fraud before the U.S. Patent and Trademark Office ("USPTO").

### **THE PARTIES**

3. Plaintiff PWC is a French *société à responsabilité limitée* (SARL, limited liability company) with a principal place of business in Le Rove, France.

4. Upon information and belief, Defendant Robinson is an individual residing at 36404 Lake Unity Road, Fruitland Park, FL 34731.

5. Upon information and belief, Defendant Flydive is a Delaware corporation having a principal place of business at 4630 Santa Fe, San Diego CA 92109, and having an agent for receipt of service of process c/o GKL Corporate/Search, Inc., One Capitol Mall, STE 660, Sacramento, CA 95814.

6. Upon information and belief, Defendant Flydive is a successor-in-interest to Defendant Robinson, including without limitation as it relates to ownership of the Misappropriated Patents.

### **RELEVANT NON-PARTIES**

7. Zapata is an individual residing in France and, throughout all relevant time periods, has been a principal officer of Plaintiff.

8. Defendant Robinson is the son of an individual named Lowell Kim Robinson ("Defendant Robinson's Father").

9. At all relevant times, Flyboard, Inc. was a Florida corporation owned by Defendant Robinson's Father.

## **JURISDICTION AND VENUE**

10. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq., and the Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

11. This Court has personal jurisdiction over the defendants pursuant to Florida's long-arm statute F.S. §48.193 (1)(b), (f)(1)-(2) in that each of the Defendants is (a) operating, conducting, engaging or carrying on a business in the State of Florida; (b) committing tortious acts within the State of Florida; and (c) engaging in substantial and not isolated activity within the State of Florida.

12. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b).

## **STATEMENT OF FACTS**

### **Historical Relationship Between the Parties and Non-Parties**

13. Zapata is the inventor of numerous water-propelled recreational devices (also known as "hydroflight products"), including without limitation those commonly marketed under the Flyboard® brand. Such hydroflight products use pressurized water from a personal watercraft (such as a jetski) to propel an individual rider into the air, where the rider can perform various acrobatic tricks and feats, or simply fly above and/or under the water.

14. Zapata's hydroflight products have garnered widespread international media attention and acclaim, have YouTube® videos receiving tens of millions of views, and have achieved millions of dollars of sales throughout the world.

15. Zapata has filed for and obtained numerous patents around the world directed towards hydroflight products, including, for example, U.S. Patent Nos. 8,336,805; 8,608,104; and 8,979,017 (collectively, the "Zapata Patents"). Each of the Zapata Patents has a priority filing date as early as September 2011.

16. Through an intermediary holding company, Plaintiff is owned substantially in part by Zapata and Zapata is an officer of Plaintiff. Plaintiff is, and at all relevant times has been, the exclusive licensee of the Zapata Patents, and Plaintiff has commercialized and sold products covered by the Zapata Patents.

17. In or about February 2012, Plaintiff entered into a distribution agreement with Defendant Robinson's Father and Flyboard, Inc. pursuant to which Plaintiff granted Defendant Robinson's Father and/or Flyboard, Inc. certain rights to distribute Flyboard® branded hydroflight products in the United States (the "Distribution Agreement").

18. In connection with entry into the Distribution Agreement, Zapata traveled to Florida during the summer of 2012 to train Defendant Robinson on the instruction and use of Plaintiff's hydroflight products. During this time period, Defendant Robinson was an employee of Defendant Robinson's Father and/or Flyboard, Inc.

19. During extensive one-on-one training time between Zapata and Defendant Robinson, Zapata confidentially disclosed to Defendant Robinson many of Zapata's ideas for developing and improving hydroflight products, and further disclosed to Defendant Robinson the concepts and inventions underlying additional hydroflight products that Zapata had conceived of for future commercialization.

20. In or around October 2012, Defendant Robinson's Father and Flyboard, Inc. materially breached numerous provisions of the Distribution Agreement, including without limitation violations of restrictions on branding, logos, and intellectual property; improper disclosure of confidential information; engaging in prohibited modification of Flyboard® brand devices; engaging in unscrupulous and fraudulent sales practices; ignoring geographical sales

restrictions; and blatant misrepresentation of Defendant Robinson and Defendant Robinson's Father as "co-founders" of Plaintiff and the Flyboard® brand device.

Defendant Robinson's Fraudulent Patent Filings

21. Later in October 2012 and unbeknownst to Plaintiff or Zapata, Defendant Robinson filed multiple patent applications with the USPTO that were exclusively based on Zapata's inventions as Zapata had disclosed them to Defendant Robinson, but which fraudulently identify Defendant Robinson rather than Zapata as the inventor. Those applications include without limitation applications which later matured into the Misappropriated Patents, true and correct copies of which are annexed hereto as Exhibits 1 (U.S. Patent No. 9,145,206) and 2 (U.S. Patent No. 9,440,714). Defendant Robinson has numerous other patent applications claiming Zapata's inventions that remain pending before the USPTO, all of which contain fraudulent representations by virtue of the fact that there too Defendant Robinson falsely claims himself rather than Zapata as the inventor.

22. The Zapata Patents all pre-date the Misappropriated Patents.

23. Defendant Robinson deliberately concealed, misrepresented, and omitted material inventorship information and misled the USPTO during the examination of the applications for the Misappropriated Patents.

The Utah Patent Infringement Lawsuit and Purported Transfer of the Misappropriated Patents

24. On July 29, 2016, Robinson commenced an action against Plaintiff in the U.S. District Court for the District of Utah alleging that Plaintiff infringed one of the Misappropriated Patents (the "Utah Litigation").<sup>1</sup>

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<sup>1</sup> Dist. Utah Case No. 2:16-cv-00842 (Defendant Robinson there named "Zapata Racing" as the defendant, such being Plaintiff's d/b/a)

25. On November 1, 2016, Defendant Flydive issued a press release stating that it had acquired a “patent portfolio in the Hydroflight space.”

26. Upon information and belief, Plaintiff purported to transfer the Misappropriated Patents to Defendant Flydive.

27. On December 1, 2016, Plaintiff received a copy of a letter from Defendant Flydive’s counsel stating that Defendant Flydive was now the owner of one of the Misappropriated Patents.

28. The Utah Litigation was voluntarily dismissed by Defendant Robinson, but Plaintiff remains under an imminent threat of infringement accusations from the Defendants, arising from claims threatened under the Misappropriated Patents

**COUNT I**  
**CORRECTION OF INVENTORSHIP**

29. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 28 as if fully set forth herein.

30. Zapata conceived of the subject matter claimed in the Misappropriated Patents. Plaintiff has a direct and justiciable interest in the correction of the inventorship and ownership of the Misappropriated Patents as the exclusive licensee of Zapata’s intellectual property.

31. Defendant Robinson erred (and made materially false representations to the USPTO) when he named himself, rather than Zapata, as the sole inventor therein

32. The error in omitting Zapata as a named inventor arose without any knowledge or deceptive intent on Zapata’s (or Plaintiff’s) part.

33. Zapata is the rightful sole inventor and owner of the subject matter claimed in the Misappropriated Patents, and the Court should direct the Commissioner of Patents of the USPTO to replace Defendant Robinson with Zapata as the sole inventor of the Misappropriated Patents.

**COUNT II**  
**DECLARATORY JUDGMENT OF UNENFORCEABILITY**

34. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 28 as if fully set forth herein.

35. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. A judicial declaration is necessary and appropriate so that Plaintiff may ascertain its rights.

36. Defendant Robinson committed inequitable and/or fraudulent conduct before the USPTO in the prosecution of the applications from which the Misappropriated Patents issued.

37. Plaintiff is entitled to a declaratory judgment declaring that the Misappropriated Patents are unenforceable by Defendant Robinson and/or any of his successors-in-interest including without limitation Defendant Flydive.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- (a) That the Court enter an order finding that Defendant Robinson is not an inventor of the subject matter claimed in the Misappropriated Patents;
- (b) That the Court enter an order finding that Zapata is the sole inventor and owner of the subject matter claimed in the Misappropriated Patents;
- (c) That the Court order the Director of the USPTO to correct inventorship by replacing Defendant Robinson with Zapata as the sole inventor of the Misappropriated Patents;
- (d) That ownership of the Misappropriated Patents be transferred to Zapata;
- (e) That Defendants be directed to maintain the Robinson Patents in full force and effect until the aforementioned actions can be implemented by the Director of the USPTO;

- (f) That judgment be entered declaring that the Misappropriated Patents are unenforceable by Defendant Robinson and/or any of his successors-in-interest;
- (g) That judgment be entered awarding Plaintiff the costs and disbursements of this action, together with interest and reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and
- (h) That this Court grants such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury for all issues so triable.

Dated: May 24, 2017

Respectfully Submitted,

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