

For their Declaratory Judgment Complaint against Defendant Hitek Aqua Systems, LLC d/b/a Aqualabz.com (“Hitek”), Plaintiffs Hayward Industries, Inc. (“Hayward”) and ConnectedYard, Inc. (“ConnectedYard”) allege that:

1. Hayward and ConnectedYard seek relief pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that Hayward and ConnectedYard do not infringe U.S. Patent No. 7,681,436 (the “436 patent”) and U.S. Patent No. 8,459,100 (the “100 patent”) (collectively, the “Asserted Patents”).

2. Hayward is a New Jersey corporation with a principal place of business located at 620 Division Street, Elizabeth, New Jersey 07201. Hayward is a market-leading manufacturer of swimming pool products.

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conditions. On or about April 2, 2018, Hayward acquired ConnectedYard which is now a wholly-owned subsidiary of Hayward.

4. Upon information and belief, Hitek is an entity organized under the laws of the State of Delaware with a principal place of business located at 940 S. Park Lane, Suite 3, Tempe, Arizona 85281.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the request of Hayward and ConnectedYard for declaratory judgment under 28 U.S.C. §§ 2201 and 2202. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, which are within the subject matter jurisdiction of this Court under 28 U.S.C. §§ 1331 and 1338(a).

6. In a letter to Hayward dated April 16, 2018, counsel for Hitek asserted that ConnectedYard's pHin® Smart Water Care solution (the "pHin® product") infringes the '436 patent and the '100 patent. Such an allegation made by Hitek gives rise to an actual and justiciable controversy between Hayward and ConnectedYard, on the one hand, and Hitek, on the other hand, as to the non-infringement of the Asserted Patents.

7. Hitek's infringement allegations threaten actual and imminent injury to Hayward and ConnectedYard that can be redressed by judicial relief, and that injury is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Absent a declaration of non-infringement, Hitek's continued wrongful assertion of infringement related to ConnectedYard's pHin® product will cause harm to Hayward and ConnectedYard.

8. Hitek is subject to personal jurisdiction in this judicial district based upon its purposeful, systematic and continuous contacts with Delaware, including its formation under the laws of Delaware.

9. Venue is proper in this Court under 28 U.S.C. § 1391 insofar as Hitek resides in

this judicial district and because Hitek is subject to personal jurisdiction in this judicial district.

FACTS

10. ConnectedYard's pHin® product includes a monitor and a mobile phone app, and has cloud-based server technology that continuously monitors swimming pool or hot tub water chemistry and temperature and notifies the owner via the mobile phone app when it is necessary to balance the water quality in the pool or hot tub in view of sensed water conditions.

11. Hitek purports to be the owner of the '436 patent which is entitled "In-Situ Water Analysis Method and System" and issued March 23, 2010. A copy of the '436 patent is attached as Exhibit A.

12. Hitek purports to be the owner of the '100 patent which is entitled "In-Situ Water Analysis Method and System" and issued June 11, 2013. A copy of the '100 patent is attached as Exhibit B.

13. In a letter to ConnectedYard dated November 16, 2017 – before Hayward had acquired ConnectedYard – counsel for Hitek notified ConnectedYard that its pHin® product "utilizes technology that is remarkably similar" to that disclosed in four Hitek patents, including the '436 patent and the '100 patent, and invited ConnectedYard to enter into a license for one or both of these patents.

14. In a letter to Hitek dated November 30, 2017, counsel for ConnectedYard denied that the pHin® product infringes any claims of the four identified patents, including the '436 patent and the '100 patent, explained some of the differences between the pHin® product and the patent claims, and expressed no interest in licensing any of the patents.

15. Nevertheless, in the April 16, 2018 letter to Hayward, counsel for Hitek unequivocally stated, "it is clear from the attached claim chart that the manufacture, sale, offer

for sale, importation or use of the pHin® [product] infringes, induces infringement of, and/or contributes to the infringement of” the ‘436 patent and the ‘100 patent.”

16. In their April 16 letter, counsel for Hitek demanded that by April 30, 2018, Hayward (a) “cease all manufacture, sale, offer for sale, importation and use of all infringing products, including [the] pHin® [product];” (b) inform counsel in writing of Hayward’s compliance with such demands; and (c) provide counsel “an accounting of all sales Hayward and/or ConnectedYard have engaged in using Hitek’s patents, including customer lists, invoices, models sold, and prices.”

17. Counsel for Hitek further warned Hayward in the letter that it “intends to fully enforce its patent rights and any continued infringement of one or more of its patents by Hayward and/or ConnectedYard will be used as evidence of willful infringement which can lead to a tripling of any patent infringement and an award for attorney’s fees.”

COUNT ONE
Declaratory Judgment of Non-Infringement of the ‘436 Patent

18. Hayward and ConnectedYard incorporate the foregoing paragraphs by reference as though set forth fully herein.

19. No claim of the ‘436 Patent has been or is infringed, either directly or indirectly, literally or under the doctrine of equivalents, by Hayward, ConnectedYard or the users of ConnectedYard’s pHin® product.

20. By way of example, ConnectedYard’s pHin® product (a) is not “configured to suggest the at least one acceptable threshold level specifically for the body of water in response to a parameter of a volume and a type of body of water entered;” (b) does not include “a control circuit coupled to the at least one sensor, wherein the transmitter is coupled to the control circuit,” “wherein the control circuit is programmable with at least one acceptable threshold level

of chemical composition for the body of water,” “wherein the floatation housing is coupled to the at least one sensor and the control circuit,” and “wherein the at least one sensor and the control circuit are configured to determine at least one amount of chemical needed to be added to the body of water in response to the parameter of the volume and the type of body of water entered in order to bring the chemistry information back within the at least one acceptable threshold;” (c) does not include a “control circuit and [] transmitter [] configured to automatically transmit at least one instruction to the at least one user interface to instruct a user the at least one amount of chemical needed to be added to the body of water;” and (d) does not include “a chemistry display panel coupled to the at least one sensor, wherein the chemistry display panel is configured to show at least the chemistry information, including in a graph form” in the manner recited in the claims of the ‘436 patent.

21. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality between Hitek, on the one hand, and Hayward and ConnectedYard, on the other hand, to warrant the issuance of a declaratory judgment that Hayward and ConnectedYard have not infringed, and do not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid claim of the ‘436 patent.

COUNT TWO

Declaratory Judgment of Non-Infringement of the ‘100 Patent

22. Hayward and ConnectedYard incorporate the foregoing paragraphs by reference as though set forth fully herein.

23. No claim of the ‘100 Patent has been or is infringed, either directly or indirectly, literally or under the doctrine of equivalents, by Hayward, ConnectedYard or the users of ConnectedYard’s pHin® product.

24. By way of example, ConnectedYard’s pHin® product (a) does not include “a

control circuit coupled to the at least one sensor,” where “the control circuit is programmable with at least one acceptable threshold level of chemical composition for the body of water;” and (b) is not “configured to suggest the at least one acceptable threshold level specifically for the body of water in response to a parameter of a volume and a type of the body of water entered” in the manner recited in the claims of the ‘100 patent.

25. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality between Hitek, on the one hand, and Hayward and ConnectedYard, on the other hand, to warrant the issuance of a declaratory judgment that Hayward and ConnectedYard have not infringed, and do not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid claim of the ‘100 Patent.

PRAYER FOR RELIEF

WHEREFORE, Hayward and ConnectedYard pray for:

- a. A declaration that Hayward and ConnectedYard have not infringed and are not infringing, either directly or indirectly, literally or under the doctrine of equivalents, any claim of the ‘436 patent or the ‘100 patent;
- b. An order that Hitek and each of its officers, employees, agents, attorneys, and any persons in active concert or participation with them are restrained and enjoined from further prosecuting or instituting any action against Hayward and ConnectedYard claiming that the ‘436 patent or the ‘100 patent are infringed or from representing that ConnectedYard’s pHin® product infringes the ‘436 patent or the ‘100 patent;
- c. A declaration that this is an exceptional case under 35 U.S.C. § 285;
- d. An award to Hayward and ConnectedYard of their costs and attorneys’ fees;
- e. Such other relief as this Court or a jury may deem proper and just under the circumstances.

JURY DEMAND

Hayward and ConnectedYard demand a trial by jury on all issues so triable.

Dated: April 30, 2018

Respectfully submitted,

McCARTER & ENGLISH, LLP

OF COUNSEL:

Scott S. Christie ([schristie@mccarter.com](mailto:christie@mccarter.com))

Thomas J. Goodwin (tgoodwin@mccarter.com)

Steven E. Halpern (shalpern@mccarter.com)

Mark E. Nikolsky (mnikolsky@mccarter.com)

McCARTER & ENGLISH, LLP

Four Gateway Center

100 Mulberry Street

Newark, New Jersey 07102

Telephone: (973) 622-4444

/s/ Brian Lemon

Brian Lemon (#4730)

Renaissance Centre

405 N. King Street, 8th Floor

Wilmington, Delaware 19801

Telephone : (302) 984-6300

blemon@mccarter.com

Counsel for Plaintiffs

Hayward Industries, Inc.

and ConnectedYard, Inc.