

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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**CAYAGO TEC GMBH and  
CAYAGO AMERICAS, INC.**

**Plaintiffs,**

**SECOND AMENDED  
COMPLAINT**

**-vs.-**

**Civil Action No. 3:21-cv-01212  
(FAB)**

**iAQUA PR LLC**

**Defendant.**

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Plaintiffs, CAYAGO TEC, GmbH (“Cayago Tec”) and CAYAGO AMERICAS, INC., (“Cayago Americas”) by and through their undersigned attorneys for their Second Amended Complaint against the Defendant iAqua PR LLC (“iAqua PR”) herein alleges the following:

**Jurisdiction, Venue, and Parties**

1. Plaintiff Cayago Tec was and is a private limited liability company duly organized and existing under the laws of the Country of Germany, State of North Rhine-Westphalia with its principal place of business located at Benzstrasse 10, 32108 Bad Salzuflen, Germany.

2. Plaintiff Cayago Americas was and is a corporation duly organized and existing under the laws of the State of Florida with its principal place of business located at 1881 State Road 84 #104, Fort Lauderdale, Florida. Cayago Americas sells luxury sea toys and watercrafts/sea scooters known as the SEABOB® F5, F5S, and F5SR which will be referred to together herein as the SEABOB® F5 Series.

3. Upon information and belief, Defendant iAqua PR is a limited liability company organized and existing under the laws of Puerto Rico, with its principal place of business located at 103 Ave De Diego Gallery Plaza, Local E, San Juan, Puerto Rico 00911.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1338 and 28 U.S.C. §1331.

5. This Court has personal jurisdiction over Defendant iAqua PR because iAqua PR has sufficient minimum contacts with the Commonwealth of Puerto Rico. For example, iAqua PR is a limited liability company registered in the Commonwealth of Puerto Rico.

6. iAqua PR regularly conduct and transact business in Puerto Rico and in this District. Upon information and belief, Defendant has imported into, used, offered to sell and/or sold infringing products in Puerto Rico.

7. Upon information and belief, Defendant has entered into contracts with one or more residents of Puerto Rico to supply products or services within Puerto Rico.

8. Defendant has harmed Cayago Tec and Cayago Americas by placing infringing products into the stream of commerce with the knowledge or understanding that such products are imported into, used, offered for sale and/or sold in Puerto Rico.

9. iAqua PR has purposefully availed itself of doing business in Puerto Rico.

10. This Court has venue over this litigation pursuant to 28 U.S.C. §§1391(b) and (c) and 1400(b).

### **Background**

11. Cayago Americas sells unique patented watercrafts known as the SEABOB<sup>®</sup> F5, F5S, and F5SR which will be referred to together herein as the SEABOB<sup>®</sup> F5 Series. In simple

terms, the SEABOB<sup>®</sup> F5 Series are a one of kind combination of a surface water scooter (like a Jet Ski) and an underwater scooter.

12. iAqua, the manufacturer of the infringing products, is located in Shenzhen, China and does not maintain an office in the United States.

13. In 2019, Plaintiffs brought a lawsuit in the United States District Court for the Southern District of Florida, alleging among other things, patent and trademark infringement against iAqua Distribution LLC. The lawsuit was captioned *Cayago Tec, GmbH et al v. iAqua Distribution LLC*, Civil Action No. 0:19-cv-62689-KMW (“2019 Lawsuit”).

14. In late 2019, the parties settled the 2019 Lawsuit.

15. Section 3 of the 2019 Lawsuit’s Settlement Agreement states:

PRODUCTION AND SALE OF INFRINGING PRODUCTS. The Parties agree that iAqua, its employees, officers and agents, including, but not limited to Charles Fultz, and those under their control are permanently enjoined and shall cease and desist in the making, using, sale, offering for sale, storing, or importing into the United States, its territories, bonded warehouses or Free Trade Zones located in United States or a territory thereof any watercraft infringing the '888 Patent or the '019 Patent including those branded as the Stingray One, Stingray Neo, Stingray Neo+, Stingray Eon, DiveJet, DiveJet Neo+, DiveJet Eon, DiveJet + and DiveJet One, and any other confusingly similarly named products. iAqua, its employees, officers and agents, including, but not limited to Charles Fultz, and those under their control are permanently enjoined and shall cease and desist in the making, using, sale, offering for sale, storing, or importing into the United States, its territories, bonded warehouses or Free Trade Zones located in United States or a territory thereof any device that infringes the '888 Patent. iAqua, its employees, officers and agents, including, but not limited to Charles Fultz, and those under their control are permanently enjoined and shall cease and desist in the making, using, sale, offering for sale, storing, or importing into the United States, its territories, bonded warehouses or Free Trade Zones located in United States or a territory thereof any device that infringes the '019 Patent.

16. The Chinese manufacturer, iAqua, has a history of marketing its infringing products which blindly copy both the patented and unpatented features of the SEABOB<sup>®</sup> F5 Series. Along with the 2019 Lawsuit, iAqua has a history of using locally based distributors to market its infringing

products. For example, using locally based distributors in Europe, iAqua entered the European market with its infringing StingRay Series scooters. iAqua was able to convince at least one European dealer to stop offering the SEABOB® F5 Series and to sell the infringing StingRay Series scooters.

17. The Cayago family of companies was forced to commence legal action in Germany, France, Spain, Tukey and Mexico to enforce its foreign patents and successfully obtained an order preventing the sale of the Stingray Series in the European Union. The French action relating to the DiveJet Series is still ongoing. The Stingray Series in the European Union and the DiveJet Series in France are other names for the SeaDart line of products.

18. The Chinese manufacturer iAqua has continued its bad faith infringing conduct, this time through the Defendant iAqua PR herein.

19. On or about November 16, 2020, iAqua PR was formed.

20. The iAqua PR product line (SeaDart Ace) competes directly with Plaintiffs' water scooters.

### **The Patents**

21. On September 26, 2017, United States Patent Number 9,774,019 (the "019 Patent") was duly and legally issued by the United States Patent and Trademark Office after a full and fair examination in the name of Hans Peter Walpurgis for an invention entitled "Rechargeable Battery Unit for a Watercraft". A true copy of the '019 Patent is annexed hereto as Exhibit A.

22. On June 21, 2011, United States Patent Number 7,963,814 (the "814 Patent") was duly and legally issued by the United States Patent and Trademark Office after a full and fair examination in the name of Jürgen Grimmeisen for an invention entitled "Electric motor-driven water craft, which is cooled by the surrounding water". A true copy of the '814 Patent is annexed hereto as Exhibit B.

23. On December 1, 2020, United States Design Patent Number RE48,329 (the “’329 Patent”) was duly and legally issued by the United States Patent and Trademark Office after a full and fair examination in the name of Hans Peter Walpurgis and Oliver Schweizer for an ornamental design of watercraft. A true copy of the ’329 Patent is annexed hereto as Exhibit C.

24. The ’019 Patent, ’814 Patent and ’329 Patent are collectively referred to herein as “the Patents”. Cayago Tec is the owner by assignment of the ’019 Patent, ’814 Patent and ’329 Patent with the right to bring suit to enforce the Patents.

25. Cayago Americas has the exclusive authority to, among other things, distribute, sell, and offer to sell the patented products in the United States, including but not limited to Puerto Rico.

26. The ’019 Patent relates to a rechargeable battery unit, in particular for a watercraft, having a plurality of rechargeable batteries which are connected to one another by means of a holding arrangement to form a rechargeable battery cell, wherein the holding arrangement has at least one holder which forms receptacles by means of which the rechargeable batteries are held in the region of a pole end, and that at least some of the rechargeable batteries are electrically coupled to one another in the region of their poles by means of a pole connector.

27. The claims of the ’019 Patent are valid and enforceable.

28. The ’814 Patent relates to an electric motor-driven watercraft including a fuselage, on which a user can at least partially lie or stand. The fuselage has a flow channel with a screw that is driven by an electric motor and contains the electric motor and batteries, in addition to a control device for the electric motor and the screw, and those items are housed at least partially in the flow channel. This invention provides a higher power for motor-driven watercraft of this type by locating the batteries in a water-tight housing. At least some sections of the batteries are in thermally

conductive contact with the housing. The housing can be at least partially of a thermally conductive material and/or the electric motor is an internal-rotor motor. The stator is in thermal conductive contact with a housing of the electric motor by a heat conducting unit. At least part of the region of the housing that is assigned to the heat conducting unit can be of a thermally conductive material and the housing can be located at least partially in the flow channel.

29. The claims of the '814 Patent are valid and enforceable.

30. The '329 Patent covers an ornamental design for a watercraft.

31. Cayago Americas has practiced the '329 Patent in connection with the commercialization of its Seabob<sup>®</sup> products and services, as shown for example in the side-by-side comparison below:



### **The Infringing Products**

32. Upon information and belief, Defendant uses, imports, sells and/or offers to sell watercraft vehicles with rechargeable batteries under various models including the SeaDart Ace watercraft ("SeaDart").

33. Defendant markets and offers to sell the SeaDart on its Facebook page and on its website, [www.iaquapr.com/](http://www.iaquapr.com/).

34. Upon information and belief, Defendant is using, importing, selling and/or offering to sell the SeaDart watercraft that are covered by one or more claims of the '019 Patent and '814 Patent without the authority of Cayago Tec.

35. The Chinese manufacturer, iAqua, copied Plaintiffs' patented design and upon information and belief, is using the Defendant to use, import, sell and/or offer to sell the SeaDart watercraft which are covered by the '329 Patent.

36. The ornamental features of the SeaDart watercraft are copied from Plaintiffs' patented watercraft design.

37. The watercraft designs are so similar as to be nearly identical such that an ordinary observer, giving such attention as a purchaser usually gives, would be so deceived by the substantial similarity between the designs so as to be induced to purchase Defendant's products believing them to be substantially the same as the watercraft design protected by the '329 Patent.

**COUNT ONE- INFRINGEMENT OF THE '019 PATENT**

38. Plaintiffs restate and incorporate paragraphs 1 through 37 as if fully stated herein.

39. This cause of action arises under 35 U.S.C. §101 et seq.

40. Upon information and belief, the SeaDart watercraft infringes one or more of the claims of the '019 Patent.

41. Defendant's infringement is occurring during the term of the '019 Patent.

42. Defendant has infringed and is currently infringing the '019 Patent in violation of 35 U.S.C. §271 by using, importing, selling, and/or offering for sale, within the United States, Puerto Rico, and this judicial district, products embodying the inventions claimed in the '019 Patent, including without limitation the SeaDart watercraft identified above.

43. The SeaDart watercraft infringes one of more claims of the '019 Patent. For example, the SeaDart watercraft infringes at least Claim 1 of the '019 Patent which claims:

A rechargeable battery unit for a watercraft, the rechargeable battery unit comprising:

a holding arrangement including two holders, each holder having a plurality of receptacles;

a plurality of rechargeable batteries connected to one another by the holding arrangement to form a rechargeable battery cell, each of the rechargeable batteries having two poles;

at least one pole connector electrically coupling at least some of the rechargeable batteries to one another;

wherein two or more rechargeable battery cells are lined up with one another and electrically coupled to one another; and

wherein the two holders of the holding arrangement of each rechargeable battery cell are separated by a clearance distance, each holder receiving a respective one of the two poles of each rechargeable battery.

44. Defendant's infringement of the '019 Patent is willful and deliberate.

45. Upon information and belief, Defendant has knowingly and willfully, aided, abetted, induced and directed its manufacturers, customers, and users to infringe the '019 Patent in violation of 35 U.S.C. §271(b).

46. Defendant has infringed and is currently infringing the '019 Patent by actively inducing others to make, use, import, sell, and/or offer for sale, within the United States, Puerto Rico, and this judicial district, products embodying the inventions claimed in the '019 Patent, including without limitation the SeaDart watercraft identified above.

47. Plaintiffs provided actual notice to Defendant of its infringement as early as May 2021, including without limitation the filing of this complaint.



48. Defendant has knowingly and willfully aided, abetted, induced and directed its manufacturers, customers and users to infringe the '019 Patent in violation of 35 U.S.C. §271(c).

49. Defendant has infringed and is currently infringing the '019 Patent by contributing to the infringement by others, including without limitation by providing the SeaDart watercraft.

50. Upon information and belief, Defendant will not cease committing the wrongful acts alleged in this Second Amended Complaint without this Court's intervention.

51. As a direct and proximate result of Defendant's direct and indirect infringement of the '019 Patent, Cayago is suffering damages and irreparable injury for which it has no adequate remedy at law.

52. Plaintiffs have suffered, and will continue to suffer, irreparable injury as a result of Defendant's infringement of the '019 Patent.

53. Plaintiffs have been damaged, and will continue to be damaged by Defendant's infringement of the '019 Patent, unless enjoined by this Court.

### **COUNT TWO- INFRINGEMENT OF THE '814 PATENT**

54. Plaintiffs restate and incorporate paragraphs 1 through 53 as if fully stated herein.

55. This cause of action arises under 35 U.S.C. §101 et seq.

56. Upon information and belief, the SeaDart watercraft infringes one or more of the claims of the '814 Patent.

57. Defendant's infringement is occurring during the term of the '814 Patent.

58. Defendant has infringed and is currently infringing the '814 Patent in violation of 35 U.S.C. §271 by using, importing, selling, and/or offering for sale, within the United States, Puerto Rico, and this judicial district, products embodying the inventions claimed in the '814 Patent, including without limitation the SeaDart watercraft identified above.

59. The SeaDart watercraft infringes one or more claims of the '814 Patent. For example, the SeaDart watercraft infringes at least Claim 19 of the '814 Patent which claims:

A motor-driven watercraft, having a body on which a user at least partially rests or stands and having a flow channel extending through the body for containing a screw driven by an electric motor, wherein the electric motor, batteries, a control device for the electric motor and the screw are at least partially housed in the flow channel, the motor-driven watercraft comprising:

the electric motor (3) having an internal rotor,

a stator (21) in heat-conducting contact with a receiver housing (3.5) of the electric motor (3) by a heat-conducting unit (22),

in an area adjacent the heat-conducting unit (22) the receiver housing (3.5) formed at least partially of a material capable of conducting heat, and

the receiver housing (3.5) arranged at least partially in the flow channel (8).

60. Defendant's infringement of the '814 Patent is willful and deliberate.

61. Upon information and belief, Defendant has knowingly and willfully, aided, abetted, induced and directed its manufacturers, customers, and users to infringe the '814 Patent in violation of 35 U.S.C. §271(b).

62. Defendant has infringed and is currently infringing the '814 Patent by actively inducing others to make, use, import sell, and/or offer for sale, within the United States, Puerto Rico, and this judicial district, products embodying the inventions claimed in the '814 Patent, including without limitation the SeaDart watercraft identified above.

63. Plaintiffs provided actual notice to Defendant of its infringement as early as May 2021, including without limitation the filing of this complaint.

64. Defendant has knowingly and willfully aided, abetted, induced and directed its manufacturers, customers and users to infringe the '814 Patent in violation of 35 U.S.C. §271(c).

65. Defendant has infringed and is currently infringing the '814 Patent by contributing to the infringement by others, including without limitation by providing the SeaDart watercraft.

66. Upon information and belief, Defendant will not cease committing the wrongful acts alleged in this Second Amended Complaint without this Court's intervention.

67. As a direct and proximate result of Defendant's direct and indirect infringement of the '814 Patent, Cayago is suffering damages and irreparable injury for which it has no adequate remedy at law.

68. Plaintiffs have suffered, and will continue to suffer, irreparable injury as a result of Defendant's infringement of the '814 Patent.

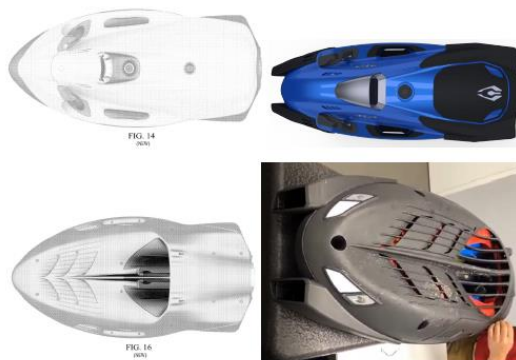
69. Plaintiffs have been damaged, and will continue to be damaged by Defendant's infringement of the '814 Patent, unless enjoined by this Court.

### **COUNT THREE- INFRINGEMENT OF THE '329 PATENT**

70. Plaintiffs restate and incorporate paragraphs 1 through 69 as if fully stated herein.

71. A side-by-side comparison of the '392 patented design and an exemplary specimen of the SeaDart watercraft is shown below:





72. Plaintiffs provided actual notice to Defendant of its infringement as early as May 2021, including without limitation the filing of this complaint.

73. Defendant has engaged in a pattern of conduct demonstrating its awareness of the '329 Patent, the objectively high likelihood that Defendant's actions constitute infringement of the '329 Patent and that the '329 Patent is valid and enforceable; and that this objectively defined risk was so obvious that Defendant knew or should have known it.

74. Defendant has infringed and continues to infringe the '329 Patent by, inter alia, using, importing into, offering to sell, and/or selling in the United States, including in the State of Puerto Rico and within this District, products infringing the ornamental design covered by the '329 Patent in violation of 35 U.S.C. § 271, including but not limited to the SeaDart watercraft products.

75. Defendant infringes the '329 Patent because, inter alia, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the watercraft design of the '329 Patent and the watercraft design of Defendant's SeaDart product are substantially the same, the resemblance being such as to deceive such an ordinary observer, inducing him to purchase one supposing it to be the other.

76. Defendant's acts of infringement of the '329 Patent were undertaken without authority, permission or license from Plaintiffs.

77. Defendant's infringing activities violate 35 U.S.C. § 271.

78. Defendant's infringement has damaged and continues to damage and injure Plaintiffs. Defendant's injury to Plaintiffs is irreparable and will continue unless and until Defendant is enjoined from further infringement.

79. Plaintiffs are entitled to a complete accounting of all revenue and profits derived by Defendant from the unlawful conduct alleged herein, including without limitation, Defendant's total profit pursuant to 35 U.S.C. § 289.

80. Defendant has engaged and is engaged in willful and deliberate infringement of the '329 Patent. Such willful and deliberate infringement justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. § 284 and further qualifies this action as an exceptional case supporting an award of reasonable attorney's fees pursuant to 35 U.S.C. § 285.

81. Plaintiffs are entitled to a permanent injunction preventing Defendant from further infringing the '329 Patent.

WHEREFORE, Plaintiff demands judgment as follows:

- a. for a judgment declaring that Defendant has infringed United States Patent No. 9,774,019;
- b. for a preliminary and permanent injunction restraining Defendant, its officers, agents, servants, employees, attorneys, subsidiaries, affiliates and all other persons in active concert or participating with Defendant or with any of the foregoing from infringing United States Patent No. 9,774,019;
- c. for a preliminary and permanent injunction restraining Defendant, its officers, agents, servants, employees, attorneys, subsidiaries, affiliates and all other persons in active concert or

participating with Defendant or with any of the foregoing from infringing United States Patent No. 7,963,814;

d. for a preliminary and permanent injunction restraining Defendant, its officers, agents, servants, employees, attorneys, subsidiaries, affiliates and all other persons in active concert or participating with Defendant or with any of the foregoing from infringing United States Patent No. United States Design Patent Number RE48,'329 Patent;

e. awarding Plaintiffs compensatory damages and the trebling of such damages pursuant to the 35 U.S.C. §284;

f. adjudging that the '019 Patent is valid and enforceable;

g. adjudging that the '814 Patent is valid and enforceable;

h. adjudging that the '329 Patent is valid and enforceable;

i. an assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs;

j. an assessment of attorneys' fees and costs against Defendant pursuant to 35 U.S.C. §285;

k. for such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial on all claims and issues so triable.

**I CERTIFY:** That on this same date that the above motion has been electronically filed with the Clerk of the Court using the CM/ECF system which in turn will simultaneously send notice of the filing to the other attorneys of record in this case.

DATED: November 9, 2021

Respectfully submitted,

s/ Jennifer L. Friedman

**SCHRÖDER, JOSEPH & ASSOCIATES,  
LLP**

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