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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
JAN 10 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

SARTEK LLC : CASE No: 3:04-CV-0098
33 W. First Street, Suite 600 :
Dayton, OH 45402 : JUDGE WALTER H. RICE

and :

SARTEK INDUSTRIES, INC. :
3661-M Horseblock Road :
Medford, NY 11763 :

Plaintiffs, :

v. :

LAMARTEK, INC., d/b/a :
DIVE-RITE :
Guy W. Norris, Esq. :
Statutory Agent :
201 N. Marion Street, Suite 301 :
Lake City, FL 32055 :

and :

DIVE-RITE MANUFACTURING, INC. :
Mark D. Leonard Enterprises, Inc. :
Mark D. Leonard, Registered Agent :
Route 4 Box 410 :
Lake City, FL 32024 :

and :

UNDERWATER KINETICS, INC. :
Alan K. Uke, Statutory Agent :
1020 Linda Vista Drive :
San Marcos, CA 92069 :

FIRST AMENDED COMPLAINT
FOR DAMAGES, PATENT
INFRINGEMENT AND RELATED
CLAIMS; JURY DEMAND
ENDORSED HEREON

and :

HALCYON MANUFACTURING, INC. :
Jarrod Jablonski, Statutory Agent :
15 S. Main Street :
High Springs, FL 32643 :

and :

EXTREME EXPOSURE, INC. :
Jarrod Jablonski, Statutory Agent :
15 S. Main Street :
High Springs, FL 32643 :

and :

OCEAN MANAGEMENT SYSTEMS, INC. :
John M. Griffiths, Chairman or CEO :
23 Factory Street :
Montgomery, NY 12549 :

and :

LIGHT & MOTION INDUSTRIES, INC. :
Barrett Heywood, Statutory Agent :
617 Granite Street :
Pacific Grove, CA 93950 :

and :

NITERIDER DIVE LIGHTS, INC. :
Thomas E. Carroll, Statutory Agent :
8205 Ronson Road, Suite E :
San Diego, CA 92111 :

and :

DIVE LIGHTS INTERNATIONAL, INC. :
Thomas Carroll, Statutory Agent :
8205 Ronson Road, Suite H :
San Diego, CA 92111 :

**AMERICAN UNDERWATER :
LIGHTING, INC.**

Arnold T. Jackson, Jr., Statutory Agent :
7825 Jackson's River Road :
Leesburg, FL 34788 :

and :

D.P.V. REPAIR :
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Leesburg, FL 34788 :

and :

ARNOLD T. JACKSON :
7825 Jackson's River Road :
Leesburg, FL 34788 :

and :

TERKEL DIVE EQUIPMENT, INC. :
19119 136th Avenue NE :
Woodinville, WA 98072 :

and :

AQUAVIDEO PRODUCTIONS, INC. :
Michael S. Hastings, Statutory Agent :
2265 Columbia :
Weston, FL 33326 :

and :

HAWES LIGHTS :
Daryl Hawes, Statutory Agent :
16516 SE Mill Street :
Portland, OR 97233 :

and :

AMPHIBICO, INC. :
459 Deslauriers :
Montreal, QC, Canada H4N 1W2 :

and :

MANTA INDUSTRIES, INC. :
355 Market Street :
Kenilworth, NJ 07033 :

and :

REVA INTERNATIONAL, LTD. :
P.O. Box 20099 :
Reno, NV 89515, :

and :

WELCH ALLYN, INC. :
4341 State Street Road :
Skaneateles Falls, New York 13153 :

Defendants.

:

Now come the Plaintiffs, Sartek LLC and Sartek Industries, Inc., and for their Complaint against the Defendants, Lamartek, Inc., and Dive-Rite Manufacturing, Inc. (collectively "Dive-Rite"); Underwater Kinetics, Inc. ("UK"); Halcyon Manufacturing, Inc. ("Halcyon"); Extreme Exposure, Inc. ("Extreme Exposure"); Ocean Management Systems, Inc. ("OMS"); Light & Motion Industries, Inc. ("Light & Motion"); NiteRider Dive Lights, Inc. ("NiteRider"); Dive Lights International, Inc., ("DLI"); American Underwater Lighting, Inc. ("AUL"); D.P.V. Repair ("D.P.V. Repair"); Arnold Jackson ("Jackson"); Terkel Dive Equipment, Inc. ("Terkel"); AquaVideo Productions, Inc. ("AquaVideo"); Hawes Lights ("Hawes"); Amphibico, Inc. ("Amphibico"); Manta Industries, Inc. ("Manta"); Reva International, Ltd. ("Reva"); and Welch Allyn, Inc. ("Welch Allyn") allege as follows:

I. **PARTIES**

1. Plaintiff, Sartek LLC is a limited liability company organized and existing under the laws of the State of Ohio.

2. Plaintiff, Sartek Industries, Inc., is a corporation organized and existing under the laws of the State of New York.

3. Defendants Lamartek, Inc. and Dive-Rite Manufacturing, Inc. ("Dive-Rite") are, on information and belief, corporations organized and existing under the laws of the State of Florida.

4. Defendant Underwater Kinetics, Inc. ("UK") is, on information and belief, a corporation organized and existing under the laws of the State of California.

5. Defendant Halycon Manufacturing, Inc. ("Halycon") is, on information and belief, a corporation organized and existing under the laws of the State of Florida.

6. Defendant Extreme Exposure, Inc. ("Extreme Exposure") is, on information and belief, a corporation organized and existing under the laws of the State of Florida.

7. Defendant Ocean Management Systems, Inc. ("OMS") is, on information and belief, a corporation organized and existing under the laws of the State of New York.

8. Defendant Light & Motion Industries, Inc. ("Light & Motion") is, on information and belief, a corporation organized and existing under the laws of the State of California.

9. Defendant NiteRider Dive Lights, Inc. ("NiteRider") is, on information and belief, a corporation organized and existing under the laws of the State of California.

10. Defendant Dive Lights International, Inc. ("DLI") is, on information and belief, a corporation organized and existing under the laws of the State of California.

11. Defendant American Underwater Lighting, Inc. ("AUL") is, on information and belief, a corporation previously organized and existing under the laws of the State of Florida.

12. Defendant D.P.V. Repair ("D.P.V. Repair") is, on information and belief, the successor company to American Underwater Lighting, Inc., existing in the State of Florida.

13. Defendant Arnold Jackson is, on information and belief, an individual who resides in the State of Florida.

14. Defendant Terkel Dive Equipment, Inc. ("Terkel") is, on information and belief, a corporation organized and existing under the laws of the State of Washington.

15. Defendant AquaVideo Production, Inc. ("AquaVideo") is, on information and belief, a corporation organized and existing under the laws of the State of Florida.

16. Defendant Hawes Lights ("Hawes") is, on information and belief, a corporation organized and existing under the laws of the State of Oregon.

17. Defendant Amphibico, Inc. ("Amphibico") is, on information and belief, a foreign company organized and existing in Canada.

18. Defendant Manta Industries, Inc. ("Manta") is, on information and belief, a corporation organized and existing under the laws of the State of New Jersey.

19. Defendant Reva International, Ltd. ("Reva") is, on information and belief, a corporation organized and existing under the laws of the State of Nevada.

20. Defendant Welch Allyn, Inc. ("Welch Allyn") is, on information and belief, a corporation organized and existing under the laws of the State of New York.

II. JURISDICTION AND VENUE

20. Jurisdiction of this Court over the claims for relief set forth herein arises under 28 U.S.C. § 1338(a).

21. Venue is proper within this judicial district under 28 U.S.C. §§ 1391 and 1400(b). The Defendants do business within this judicial district, including advertising and selling infringing high intensity discharge (HID) lamps with integral ballast and underwater lighting systems incorporating the same in this district.

III. OPERATIVE FACTS.

22. Carl Saieva ("Saieva") is the President of Plaintiff Sartek Industries, Inc. and the inventor of a high intensity discharge (HID) lamp with an integral ballast capable of being used underwater in the diving industry.

23. Commencing in 1995, Saieva began experimenting with HID lighting systems that had just become available for various luxury automobiles.

24. Saieva continued to experiment with HID lights in order to perfect a system that would reliably work in a scuba diving environment.

25. Saieva revolutionized the diving industry in developing the first reliable HID light system that could be utilized while scuba diving.

26. On February 18, 2000, Saieva filed with United States Patent and Trademark Office Provisional Application serial number 60/183,767.

27. On January 20, 2004, Saieva's invention was granted protection under United States Patent Number 6,679,619 entitled "High Intensity Discharge (HID) Lamp with Integral Ballast and Underwater Lighting Systems Incorporating Same." A copy of said patent (hereinafter "the '619 patent") together with a recently recorded disclaimer is attached hereto as Exhibit A.

28. Notice has been given to the public pursuant to 35 U.S.C. § 287 by fixing the word patent together with the number of the patent on all HID light products manufactured by Sartek since the patent was granted on January 20, 2004.

29. In addition, Sartek has utilized the patent and patent number in all of its marketing materials for HID light systems.

30. Saieva has assigned his rights to the patent to Sartek LLC, a copy of the assignment as recorded is attached as Exhibit B.

31. Sartek LLC has given Sartek Industries, Inc. a license to manufacture the patented product, a copy of the License Agreement is attached hereto as Exhibit C.

32. Plaintiffs are informed and believe that the Defendants are all engaged in the manufacture, advertisement, offering for sale, sale and/or distribution of HID light systems or components of which infringe the '619 patent.

33. On information and belief, the trade names under which the Defendants' infringing products have been manufactured, advertised, offered for sale, sold and/or distributed, include, but may not be limited to Dive-Rite Wreck Series, Dive-Rite Slim Line Series, Dive-Rite MLS 1 Series, UK Light Cannon 100, Halycon Helios Primary Light Systems, Halycon Apollo Video Light Systems, Halycon Proteus Light Systems, Halycon Extreme Exposure, OMS Phantom Dive Light, OMS Phantom Mini Dive Light, Light & Motion Sun Ray-X Pro, Light & Motion Sun Ray-X Elite, Light & Motion Sun Ray-S Mini Pro, Light & Motion Sun Ray-S Pro, Light & Motion Sun Ray Pro-S, NiteRider HID, NiteRider HID Video Light, NiteRider HID Pro Video Light, NiteRider HID Dive Light, NiteRider HID Pro Dive Light, AUL 10 watt HID head, Terkel Sollys Modular HID canister light, AquaVideo SuperNova HID, Hawes Adventurer 10 watt HID, Hawes Explorer 10 watt HID, Amphibico VLAL0010 10 watt Arc Light HID Technology, Amphibico VLALHIDG (gold) 35 watt "HID", Amphibico VLALHIDS (silver) 35 watt "HID", Manta Green Force I HID, Manta Green Force II HID, Manta Green Force III HID, Reva Long Arm RI-2400, Reva Long Arm

RI-1800, Welch Allyn Solarc lamp, Welch Allyn 10 watt Ballast, and Welch Allyn 10 watt Developers Kit.

IV. CLAIMS FOR RELIEF

First Claim For Relief (Infringement)

34. The Plaintiffs repeat the allegations made in paragraphs 1 through 33 as if fully rewritten herein and say that each of the Defendants has directly infringed the '619 patent.

35. As a direct and proximate result of the Defendants' infringing acts, the Plaintiffs have been damaged in an amount not presently ascertained but believed to be in excess of Thirty Million Dollars (\$30,000,000.00).

Second Claim for Relief (Willful Infringement)

36. The Plaintiffs repeat the allegations made in paragraphs 1 through 35 as if fully rewritten herein and say that each of the Defendants' direct infringement of the '619 patent was willful.

37. As a result of the willful infringement, the Plaintiffs are entitled to an increase in damages and an award of attorney fees and costs pursuant to 35 U.S.C. §§ 284 and 285.

Third Claim For Relief (Contributory Infringement)

38. The Plaintiffs repeat the allegations made in paragraphs 1 through 37 as if fully rewritten herein and say that Defendant Welch Allyn has contributorily infringed the '619 patent by having knowingly sold and offered to sell, and presently selling and offering to sell within the United States a component of the invention of the '619 patent.

39. Welch Allyn has knowingly sold, offered to sell, and is presently selling lamps and ballasts that are components of the '619 patent.

40. Welch Allyn has additionally knowingly sold, offered to sell, and is presently selling a product named "10-W Developers kit", which includes five 10 watt lamps and ballasts, a power supply, a power cord, a lite kit CD, and a 10-W quick instruction card. A copy of Welch Allyn's description and order form for the 10-W Developers Kit is attached hereto as Exhibit D.

41. Welch Allyn's contributory infringement has been willful and deliberate, causing damage to Plaintiffs in an amount not presently ascertained but believed to be in excess of Thirty Million Dollars (\$30,000,000.00).

Fourth Claim For Relief
(Active Inducement of Infringement)

42. The Plaintiffs repeat the allegations made in paragraphs 1 through 39 as if fully rewritten herein and say that Defendant Welch Allyn has infringed and is presently infringing the '619 patent by actively inducing others to infringe the '619 patent.

43. In addition to and incident to selling the 10-W Developers Kit, Welch Allyn provides instructions for using its components to manufacture HID lights which infringe the '619 patent. A copy of these instructions are attached hereto as Exhibit E.

44. Welch Allyn's inducement of infringement has been willful and deliberate, causing damage to Plaintiffs in an amount not presently ascertained but believed to be in excess of Thirty Million Dollars (\$30,000,00.00)

Fifth Claim for Relief
(Injunctions)

45. The Plaintiffs repeat the allegations made in paragraphs 1 through 41 as if fully rewritten herein and say that as a result of each of the Defendants' infringing acts, the Plaintiffs are suffering and, unless, the Defendants' infringing acts are enjoined, they will continue to suffer irreparable and incalculable damage.

46. The Plaintiffs are therefore entitled to and request a preliminary and permanent injunction under 35 U.S.C. § 283 barring each of the Defendants and all parties acting by, through or on behalf of any of the Defendants from engaging in any further manufacture, use, sale, offering for sale, or exploitation of any products or devices which infringe the '619 patent.

Sixth Claim for Relief
(Accounting)

47. The Plaintiffs repeat the allegations made in paragraphs 1 through 43 as if fully rewritten herein and say that they are informed and believe that each of the Defendants have realized income as a result of their acts.

48. The Plaintiffs request that each of the Defendants be ordered to furnish a full accounting of all such income or other value realized from their acts.

Seventh Claim for Relief
(Imposition of Constructive Trust)

49. The Plaintiffs repeat the allegations made in paragraphs 1 through 45 as if fully rewritten herein and say that they are informed and believe that each of the Defendants have realized and continue to realize income from their infringing acts.

50. The Plaintiffs request that all income realized by each of the Defendants from their infringing acts be placed in a constructive trust for the benefit of the Plaintiffs.

Eighth Claim for Relief
(Misappropriation of Confidential Trade Secret Information)

51. The Plaintiffs repeat the allegations made in paragraphs 1 through 47 as if fully rewritten herein and say that in the development and creation of the HID light at issue, each of the Defendants have misappropriated and converted to their own use trade secret information shared with them or others on a confidential basis by the Plaintiffs.

52. As a direct and proximate result of the Defendants' misappropriation and conversion of trade secret information, the Plaintiffs have been damaged to an extent not presently ascertained but believed to be in excess of Thirty Million Dollars (\$30,000,000.00).

Ninth Claim for Relief
(Unfair Competition)

53. The Plaintiffs repeat the allegations made in paragraphs 1 through 49 as if fully rewritten herein and say that the conduct of each of the Defendants in obtaining and converting trade secret information from the Plaintiffs and in violating the patent rights of the Plaintiffs in relation to the HID underwater dive light system developed by Saieva constitutes unfair competition in the marketplace for this newly developed product.

54. As a direct and proximate result of the Defendants' unfair competition, the Plaintiffs have been damaged in an amount not presently ascertained but believed to be in excess of Thirty Million Dollars (\$30,000,000.00).

Tenth Claim for Relief
(Unjust Enrichment)

55. The Plaintiffs repeat the allegations made in paragraphs 1 through 51 as if fully rewritten herein and say that each of the Defendants have been unjustly enriched by obtaining trade secret information shared by the Plaintiffs on a confidential basis.

56. As a direct and proximate result of the Defendants' unjust enrichment, the Plaintiffs are entitled to an amount not presently ascertained but believed to be in excess of Thirty Million Dollars (\$30,000,000.00).

Eleventh Claim for Relief

(Tortious Interference with Business Relationships)

57. The Plaintiffs repeat the allegations made in paragraphs 1 through 57 as if fully rewritten herein and say that the conduct of Welch Allyn in selling components of the invention of the '619 patent, providing instructions on how to manufacture HID lights that infringe the '619 patent, and in obtaining and converting trade secret information amounts to a tortious interference with the Plaintiffs' business relationships.

58. The Plaintiffs' relationships with customers, potential customers, and other businesses have been impaired and impeded by the acts of Welch Allyn.

59. As a direct and proximate result of Defendant Welch Allyn's tortious interference with business relationships, the Plaintiffs have been damaged to an extent not yet ascertained but believed to be in an amount in excess of Thirty Million Dollars (\$30,000,000.00).

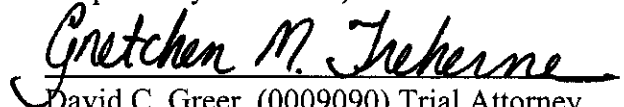
Twelfth Claim for Relief

(Punitive Damages)

60. The Plaintiffs repeat the allegations made in paragraphs 1 through 53 as if fully rewritten herein and say that the conduct of each of the Defendants has been intentional, willful and malicious entitling the Plaintiffs to an award of punitive damages and attorney fees.

WHEREFORE, the Plaintiffs demand judgment against the Defendants in an amount in excess of Thirty Million Dollars (\$30,000,000.00) as compensatory damages, treble damages, Thirty Million Dollars (\$30,000,000.00) in punitive damages, costs, attorneys fees and injunctive relief, aggregately designed to prevent each of the Defendants from further infringement of the Plaintiffs' patent rights and barring each of the Defendants and all persons acting by, through, or on their behalf, from using, making, distributing, selling or offering for sale any devices currently sold or any other devices which infringe the '619 patent.

Respectfully submitted,



David C. Greer, (0009090) Trial Attorney

James H. Greer, (0046555)

John F. Haviland, (0029599)

Gretchen M. Treherne, (0074376)

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Attorney for Plaintiffs Sartek LLC and Sartek
Industries, Inc.

JURY DEMAND

Now come the Plaintiffs Sartek LLC and Sartek Industries, Inc., and demand a jury trial on all issues presented by the Plaintiffs' Amended Complaint which are triable by jury.

*Gretchen M. Fuherne (*0074376) for*
David C. Greer, (0009090) Trial Attorney
BIESER, GREER & LANDIS LLP

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served upon the following this *22nd* day of October, 2004 via ordinary mail.

LAMARTEK, INC.
DIVE-RITE MANUFACTURING
LIGHT & MOTION INDUSTRIES, INC.
AMPHIBICO

MANTA INDUSTRIES
REVA INTERNATIONAL
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LIGHTING, INC.**

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BIESER GREER & LANDIS LLP

By: 