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3:02-CV-02500 POLARIS POOL SYSTEMS V. HAYWARD POOL

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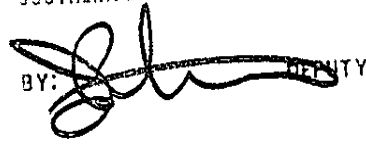
ORIGINAL

FILED

1 Frederick S. Berretta (State Bar No. 144,757)
James F. Herkenhoff (State Bar No. 211,342)
2 KNOBBE, MARTENS, OLSON & BEAR, LLP
550 West C Street
3 Suite 1200
San Diego, CA 92101
4 (619) 235-8550
(619) 235-0176 (FAX)

02 DEC 19 PM 4:01

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

5 Attorneys for Plaintiff
6 POLARIS POOL SYSTEMS, INC.

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

02 CV 2500 JM (LSP)

10 POLARIS POOL SYSTEMS, INC.,
a Delaware corporation,
11
12 Plaintiff,
13 v.
14 HAYWARD POOL PRODUCTS, INC.,
a New Jersey corporation,
15 Defendant.
16

) Civil Action No.
)
) **COMPLAINT FOR**
) **INFRINGEMENT OF**
) **U.S. PATENT NO. 4,618,420**
)
) **DEMAND FOR JURY TRIAL**
)
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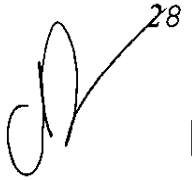
17 Plaintiff POLARIS POOL SYSTEMS, INC. (hereinafter, "Polaris" or "Plaintiff")
18 hereby complains of Defendant HAYWARD POOL PRODUCTS, INC. (hereinafter,
19 "Hayward" or "Defendant") and alleges as follows:

20 **JURISDICTION AND VENUE**

- 21 1. This is an action for patent infringement arising under the patent laws of the
22 United States, Title 35, United States Code, and more particularly 35 U.S.C. §§ 271 and 281.
23 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).
24 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c), and
25 28 U.S.C. § 1400(b).

26 **THE PARTIES**

- 27 4. Plaintiff Polaris is a Delaware Corporation with a principal place of business
28 located at 2620 Commerce Way, Vista, California.



1 5. Polaris is the owner by assignment of United States Patent No. 4, 618,420 (“the
2 ‘420 patent”), duly and lawfully issued on October 21, 1986. A copy of the ‘420 patent is
3 attached hereto as Exhibit A.

4 6. Polaris is informed and believes, and on that basis alleges, that Hayward is a
5 New Jersey corporation with a place of business at 900 Fairmount Avenue, Elizabeth, New
6 Jersey.

7 7. Polaris is informed and believes, and on that basis alleges, that Hayward does
8 business in this judicial district and has committed acts of infringement in this judicial district.

9 **FIRST CLAIM FOR RELIEF**

10 **(Direct Infringement Of The ‘420 Patent)**

11 8. Polaris hereby realleges and incorporates by reference the allegations set forth in
12 paragraphs 1 through 7.

13 9. Polaris is informed and believes, and on that basis alleges, that Hayward has been
14 and still is infringing the ‘420 patent under 35 U.S.C. § 271(a) by making, using, selling, and/or
15 offering for sale filter bags for pool cleaners claimed in the ‘420 patent. Polaris is further
16 informed and believes, and on that basis alleges, that Hayward’s infringement of the ‘420 patent
17 under 35 U.S.C. § 271(a) will continue unless enjoined by this Court.

18 10. Polaris is informed and believes, and on that basis alleges, that Hayward is
19 willfully, deliberately, and intentionally infringing the ‘420 patent under 35 U.S.C. § 271(a) with
20 full knowledge thereof, and will continue to do so unless enjoined by this Court.

21 11. Polaris is informed and believes, and on that basis alleges, that Hayward has
22 derived, received, and will continue to derive and receive from the aforesaid acts of infringement
23 gains, profits, and advantages, tangible and intangible, the extent of which are not presently
24 known to Polaris. By reason of the aforesaid acts of infringement, Polaris has been, and will
25 continue to be, greatly and irreparably damaged.

26 ///

27 ///

28 ///

SECOND CLAIM FOR RELIEF

(Inducing Infringement Of The '420 Patent)

12. Polaris hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 11.

13. Polaris is informed and believes, and on that basis alleges, that Hayward has been and still is knowingly and intentionally inducing others under 35 U.S.C. § 271(b) to directly infringe the '420 patent by supplying the claimed filter bags for pool cleaners and sufficient instructions to use the claimed filter bags for pool cleaners, thereby inducing infringement of the '420 patent under 35 U.S.C. § 271(b). Polaris is further informed and believes, and on that basis alleges, that Hayward's inducement of others under 35 U.S.C. § 271(b) to directly infringe the '420 patent will continue unless enjoined by this Court.

14. Polaris is informed and believes, and on that basis alleges, that Hayward is willfully, deliberately, and intentionally infringing the '420 patent under 35 U.S.C. § 271(b) with full knowledge thereof, and will continue to do so unless enjoined by this Court.

15. Polaris is informed and believes, and on that basis alleges, that Hayward has derived, received, and will continue to derive and receive from the aforesaid acts of infringement gains, profits, and advantages, tangible and intangible, the extent of which are not presently known to Polaris. By reason of the aforesaid acts of infringement, Polaris has been, and will continue to be, greatly and irreparably damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Polaris prays for relief as follows:

A. That Hayward be adjudged to have infringed the '420 patent under 35 U.S.C. § 271(a) and (b);

B. That Hayward, its affiliates, subsidiaries, officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with either of them be preliminarily and permanently restrained and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '420 patent;

///

1 C. That the Court award Polaris an accounting of all gains, profits, and advantages
2 derived by Hayward's patent infringement and recovery of damages to compensate Polaris for
3 Hayward's infringement of the '420 patent, pursuant to 35 U.S.C. § 284;

4 D. That Hayward be adjudged to have willfully infringed the '420 patent under
5 35 U.S.C. §§ 271(a) and (b), and that the Court treble the amount of actual damages pursuant to
6 35 U.S.C. § 284;

7 E. That this action be adjudged an exceptional case, and that the Court award
8 Polaris its attorneys' fees incurred in connection with this action, pursuant to 35 U.S.C. § 285;

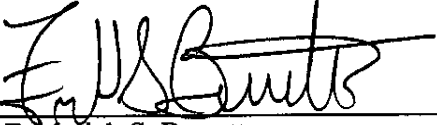
9 F. That the Court assess pre-judgment and post-judgment interests and costs of suit
10 against Hayward, and award such interests and costs to Polaris pursuant to 35 U.S.C. § 284; and

11 G. That Polaris have such other and further relief as this Court may deem just and
12 proper.

13 Respectfully submitted,

14 KNOBBE, MARTENS, OLSON & BEAR, LLP

15
16 Dated: December 19, 2002

17 By: 
18 Frederick S. Berretta

19 Attorneys for Plaintiff
20 POLARIS POOL SYSTEMS, INC.

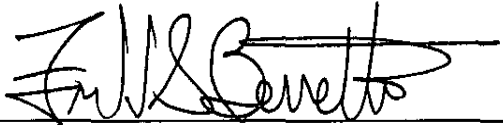
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DEMAND FOR JURY TRIAL

Plaintiff POLARIS POOL SYSTEMS, INC. hereby demands a trial by jury as to all issues triable by jury, specifically including, but not limited to, the infringement of United States Patent No. 4,618,420.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

By: 
Frederick S. Berretta

Dated: December 19, 2002

Attorneys for Plaintiff
POLARIS POOL SYSTEMS, INC.

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AO 120 (3/85)

TO: Commissioner of Patents and Trademarks Washington, D.C. 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT
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In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
02-CV-2500 JM(LSP)	12-19-02	United States District Court, Southern District of California
PLAINTIFF		DEFENDANT
Polaris Pool Systems, Inc.		Hayward Pool Products, Inc.
PATENT NO.	DATE OF PATENT	PATENTEE
1 4,618,420	10-21-86	Polaris Pool Systems, Inc.
2		
3		
4		
5		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT NO.	DATE OF PATENT	PATENTEE		
1				
2				
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Commissioner Copy 3 - Upon termination of action, mail this copy to Commissioner
 Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

ORIGINAL COVER SHEET

FILED

02 DEC 19 PM 4:01

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

I. (a) PLAINTIFFS

POLARIS POOL SYSTEMS, INC., a Delaware corporation

DEFENDANTS

HAYWARD POOL PRODUCTS, INC., a New Jersey corporation

'02 CV 2500 JM' (LSP)

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Union (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Knobbe, Martens, Olson & Bear, LLP 550 West "C" Street, Suite 1200

ATTORNEYS (IF KNOWN)

San Diego, CA 92101 619-235-8550

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business in This State, Incorporated and Principal Place of Business in Another State, Foreign Nation

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, and 35 U.S.C Sections 271 and 281. 35:0271 (JP)

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Land Condemnation, Personal Injury, etc.

VI. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding, 2 Removal from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district, 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint: JURY DEMAND: [X] YES [] NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ Docket Number _____

DATE December 19, 2002 SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of Frederick S. Berretta

Frederick S. Berretta

Handwritten notes: Pd \$150.00 12/19/02 #89705VB