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Attorneys for Plaintiff Virtual Rain, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>VIRTUAL RAIN, INC. (a Delaware Corporation),</p> <p>Plaintiff</p> <p>vs.</p> <p>DUWA PRODUCTS LLC (a California Limited Liability Company),</p> <p>Defendant</p>	<p><b>COMPLAINT</b></p> <p>Civil No.: 1:09-cv-135</p> <p>Honorable: Judge Ted Stewart</p> <p><b>JURY TRIAL DEMANDED</b></p>
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Plaintiff, Virtual Rain, Inc. (“Virtual Rain”) by and through its attorneys, hereby complains of Defendant DuWa Products LLC (“DuWa”), and for causes of action allege as follows:

### **STATUS OF PARTIES**

1. Plaintiff, Virtual Rain, Inc. is a corporation organized and existing under the laws of the state of Delaware, and has a principal place of business at 172 West Rushton Street, Ogden, Utah 84401.

2. On information and belief, Defendant, DuWa Products LLC is a limited liability company organized and existing under the laws of the state of California, and has a principal place of business at 302 Almendra Avenue, Los Gatos, California 95030.

### **JURISDICTION AND VENUE**

1. This is an action for infringement under the patent laws of the United States, 35 U.S.C. § 271. This Court has subject matter jurisdiction over the patent related claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. This Court has personal jurisdiction over the Defendant because, on information and belief, Defendant has committed certain of the acts alleged herein within this Judicial District and because, on information and belief, defendant conducts business within this Judicial District.

3. Venue is proper in this Court under 28 U.S.C. §§ 1400(a)-(b) and 1391(c), because, on information and belief, Defendant has committed certain of the acts alleged herein within this Judicial District, and because Defendant is subject to personal jurisdiction in this state and, therefore, resides within this judicial district for purposes of venue.

## GENERAL ALLEGATIONS

4. Walter J. Edwards (hereinafter the “Inventor”) invented a duplex encoder/decoder for alternating current systems (the “Invention”).

5. The Inventor assigned all of the patent rights in the Invention, including the right to sue for infringement, to R CO Parts, Inc. The assignment was recorded in the United States Patent and Trademark Office on March 9, 1998 at Reel/Frame: 009036/0442.

6. On December 20, 1995, R CO Parts, Inc. caused United States provisional patent application serial number 60/008,970 (the “’970 application”) to be filed with the United States Patent and Trademark Office entitled “DUPLEX ENCODER/DECODER FOR ALTERNATING CURRENT SYSTEMS.”

7. On March 3, 2004, R CO Parts, Inc. caused a non-provisional patent application, claiming priority to the ‘970 application, entitled “DUPLEX ENCODER/DECODER FOR ALTERNATING CURRENT SYSTEMS” to be filed with the United States Patent and Trademark Office.

8. The non-provisional patent application issued as U.S. Patent No. 5,780,938 on July 14, 1998 (the “’938 patent”). A copy of the ‘938 patent is attached hereto as Exhibit A.

9. The ‘938 patent includes three independent claims, namely, claims 1, 2, and 5. Claims 1 and 3 are apparatus claims and claim 5 is a method claim.

10. On January 12, 1999, Virtual Rain, Inc. acquired R CO Parts, Inc., which included acquisition of the ‘938 Patent.

11. On October 14, 2009, Virtual Rain, Inc. caused to be recorded with the U.S.

Patent Office an assignment, which assigned the rights of the '938 Patent from R CO Parts, Inc. to Virtual Rain, Inc. The assignment was recorded in the United States Patent and Trademark Office on October 14, 2009.

12. Virtual Rain has invested substantial resources in the development of products embodying the inventions set forth in the '938 Patent.

13. Defendant DuWa manufactures, uses, sells and/or offers for sale various products under the mark IRRIGANDER. Specifically, DuWa has sold and offers for sale the Irrigander 4 Expander, Irrigander 4/2 Pro Expander, Irrigander 8 Expander, Irrigander 8 Pro Expander and Irrigander 8/2 Pro Expander (hereinafter referred to as "Irrigander Expander Products"). A copy DuWa's Installation & User Guide for the Irrigander 4 Expander is attached hereto as Exhibit B.

14. Each of the Irrigander Expander Products includes components that are covered by at least one claim of the '938 Patent.

15. Defendant has manufactured, used, sold and/or offered for sale at least one device that infringes at least one claim of the '938 Patent.

16. On information and belief, Defendant has manufactured, used, sold and/or offered for sale at least one device that infringes at least one claim of the '938 Patent within this judicial district.

17. On information and belief, Defendant has promoted and offered for sale at least one product that infringes at least one claim of the '938 Patent to customers and prospective customers in Utah.

**FIRST CLAIM FOR RELIEF**

(Patent Infringement - 35 U.S.C. § 271)

18. Plaintiff incorporates the allegations of each and every previous paragraph of this Complaint as if fully set forth herein.

19. All maintenance fees due for the '938 patent have been timely paid, and the '938 patent has at all time subsequent to its respective issue date been fully enforceable and is now fully enforceable.

20. Virtual Rain is the assignee of record and holds all right under the '938 patent, including the right to sue for patent infringement.

21. Defendant has been, and continues to be making, using, selling, and/or offering to sell, or causing others to make, use, sell, and/or offer to sell its Irrigander Expander Products, which come within the scope of one or more claims of the '938 Patent and infringe one or more claims of the '938 Patent.

22. Defendant has been, and continues to be making, using, selling, and/or offering to sell, or causing others to make, use, sell, and/or offer to sell its Irrigander Expander Products, which come within a range of equivalents of the claims of the '938 patent. Defendant has thereby infringed one or more claims of the '938 Patent.

23. The making, using, selling, offering to sell, or causing others to make, use, sell, and/or offer to sell infringing products by Defendant has been without authority or license from Virtual Rain and is in violation of Virtual Rain's exclusive rights, thereby infringing (either literally or through the doctrine of equivalents) the '938 Patent.

24. Defendant has caused and will continue to cause Virtual Rain substantial damage and irreparable injury by infringing the '938 Patent.

25. Virtual Rain will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendant is enjoined from infringing the '938 Patent.

26. Virtual Rain is entitled to recover from Defendant damages in an amount sufficient to compensate it for Defendant's infringement of the '938 patent, together with prejudgment interest thereon.

27. Upon information and belief, Defendant's infringement was and is willful, intentional, and deliberate. Accordingly, this case is exceptional under 35 U.S.C. § 285, and Virtual Rain is entitled to recover treble damages and its reasonable attorneys' fees, expenses, and costs incurred in this action.

### **SECOND CLAIM FOR RELIEF**

(Induced Infringement - 35 U.S.C. § 271(b))

28. Plaintiff incorporates the allegations of each and every previous paragraph of this Complaint as if fully set forth herein.

29. Defendant has been, and continues to be selling its Irrigander Expander Products.

30. The offer for sale, selling of or use of Defendant's Irrigander Expander Products by customers or third parties associated with Defendant comes within the scope of one or more claims of the '938 Patent and therefore constitutes patent infringement of one or more claims of the '938 Patent. Defendant has thereby induced others to infringe one or more claims of the '938 Patent.

31. Use of Defendant's Irrigander Expander Products by customers of or third parties associated with Defendant comes within a range of equivalents of the claims of the '938 patent. Defendant has thereby induced others to infringe one or more claims of the '938 Patent.

32. The selling of the Irrigander Expander Products by Defendant has been without authority or license from Virtual Rain and in violation of Virtual Rain's exclusive rights, thereby

inducing infringement (either literally or through the doctrine of equivalents) by others of the '938 Patent.

33. Defendant has caused and will continue to cause Virtual Rain substantial damage and irreparable injury by inducing others to infringe the '938 Patent.

34. Virtual Rain will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendant is enjoined from selling the Irrigander Expander Products.

35. Virtual Rain is entitled to recover from Defendant damages in an amount sufficient to compensate it for Defendant's inducement of infringement of the '938 Patent, together with prejudgment interest thereon.

36. Upon information and belief, Defendant's inducement of infringement was and is willful, intentional, and deliberate. Accordingly, this case is exceptional under 35 U.S.C. § 285, and Virtual Rain is entitled to recover treble damages and their reasonable attorneys' fees, expenses, and costs incurred in this action.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays that this Court enter judgment and relief against Defendant as follows:

1. That the Court adjudge that United States Patent No. 5,780,938 valid and infringed by the Defendant;
2. For a judgment that Defendant has induced others to infringe the '938 Patent;
3. For an order enjoining Defendant and its officers, agents, attorneys, servants, employees, parents, subsidiaries, affiliates, divisions, successors, and all persons in privity or

active concert or participation with them from infringing the '938 Patent;

4. For an order directing Defendant to file with this Court and serve on counsel for Plaintiff, within 30 days after service of any injunction in this case (or within such extended period as the Court may direct), a report in writing under oath setting forth in detail the manner and form by which they have complied with the injunction requested in paragraph 3 above;

5. For an order directing that all documents, materials, and things, including but not limited to products, advertising and promotional materials, sales and marketing plans, and the like, which infringe or otherwise violate Plaintiff's rights in the '938 Patent be delivered up to Plaintiff or destroyed;

6. For an order directing Defendant to file with this Court and serve on counsel for Plaintiff, within 30 days after this Court's Order, a statement in writing and under oath confirming that the material described in paragraph 5 above has been destroyed or delivered to Plaintiff;

7. For an award of compensatory and consequential damages in an amount subject to proof at trial, together with pre- and post-judgment interest thereon;

8. For an order directing Defendant to account for all revenue derived from the unlawful conduct alleged above;

9. For judgment of damages in an amount to be determined at trial, or in the alternative, a reasonable royalty;

10. For an order declaring that Defendant's infringement was and is willful and that this case is exceptional under 35 U.S.C. § 285 and awarding Plaintiff treble damages, its reasonable attorneys' fees, expenses, and costs incurred in this action;



11. For an order permanently enjoining Defendant from resuming its illegal and damaging conduct in the future; and

12. For an award of such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury for this action on all issues so triable.

DATED this 15th day of October, 2009.

s/Frank W. Compagni/  
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