

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ULTRATECH INTERNATIONAL, INC., and
AQUA-LEISURE INDUSTRIES, INC.,
Plaintiffs and Counterclaim Defendants

v.

Case No. 3:05-cv-134-J-25MCR

SWIMWAYS CORPORATION,
Defendant and Counterclaim Plaintiff

FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs UltraTech International, Inc. ("UltraTech") and Aqua-Leisure Industries, Inc. ("Aqua-Leisure"), by their counsel, as and for their First Amended Complaint against defendant Swimways Corporation ("Swimways"), allege as follows:

PARTIES

1. UltraTech is a Florida corporation having a principal place of business at 11542 Davis Creek Court, Jacksonville, Duval County, Florida 32256.
2. Aqua-Leisure is a Massachusetts corporation having a principal place of business at 525 Bodwell Street, Avon, Massachusetts 02322.
3. Upon information and belief, Swimways is a Virginia corporation having a principal place of business at 5816 Ward Court, Virginia Beach, Virginia 23455. On information and belief, Swimways is doing business in this judicial district.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 USC § 1331 in that this First Amended Complaint sets forth a count for patent infringement under Title 35 of

the United States Code.

5. Venue is proper in this judicial district pursuant to 28 USC § 1391(b) and (c) and § 1400.

FACTS

6. UltraTech is the owner of U.S. Patent No. 5,429,437 entitled “Collapsible, Self-Expanding Liquid Container,” which Patent duly issued on July 4, 1995 (the ‘437 Patent). A true copy of the ‘437 Patent is attached hereto as Exhibit A.

7. UltraTech has granted to Aqua-Leisure and its trading partner, together, the exclusive right to make, use, offer for sale, and sell swimming pools embodying the invention of the ‘437 Patent.

8. On information and belief, Swimways has been and is making, using, offering for sale, and selling swimming pools embodying the invention of the ‘437 Patent, without authorization from the plaintiffs.

9. On or about February 9, 2005, counsel for the plaintiffs provided Swimways with a copy of the original complaint in this action, and demanded that Swimways cease and desist making, using, offering for sale, and selling swimming pools embodying the invention of the ‘437 Patent.

10. Despite such notice, at all times Swimways has continued to make, use, offer for sale, and sell swimming pools embodying the invention of the ‘437 Patent.

11. Instead of ceasing such conduct, on September 23, 2005 Swimways submitted to the USPTO a request for reexamination (“Reexamination”) of the ‘437 Patent based on certain prior publications. Swimways’ request was granted by the USPTO, and this Court stayed all proceedings in this litigation on October 20, 2005, pending the results of the Reexamination.

12. During the pendency of the Reexamination, Swimways continued to make, use, offer for sale, and sell swimming pools embodying the invention of the '437 Patent.

13. On June 24, 2008, the USPTO issued a Reexamination Certificate in which the USPTO confirmed the patentability of all eight (8) original claims of the '437 Patent, and added twelve new claims, submitted by UltraTech, to the '437 Patent, which new claims the USPTO determined to be patentable. A true copy of the Reexamination Certificate is attached hereto as Exhibit B.

14. Despite receiving notice of the issuance of the Reexamination Certificate confirming the patentability of 20 claims of the '437 Patent, Swimways has continued to make, use, offer for sale, and sell swimming pools embodying the invention of the '437 Patent.

15. The aforesaid actions of Swimways constitute an infringement of the '437 Patent under 35 USC § 271.

16. In addition, Swimways' actions in continuing to make, use, offer for sale, and sell swimming pools embodying the invention of the '437 Patent, despite notice of the '437 Patent and plaintiffs' claims, and despite notice of the confirmation of the claims of the '437 Patent as a result of the Reexamination, establish that Swimways is guilty of objective recklessness and disregard of an objectively high likelihood that its conduct infringes the '437 Patent.

17. As a result, Swimways has willfully infringed and continues to willfully infringe the '437 Patent.

WHEREFORE, Plaintiffs UltraTech International, Inc. and Aqua-Leisure Industries, Inc. demand judgment against Defendant Swimways as follows:

- (a) That Swimways be preliminary and permanently enjoined from the manufacture, use, offer for sale and sale of products that infringe the '437

Patent;

- (b) That Swimways be ordered to provide an accounting for damages regarding its manufacture, use, offer for sale, and sale of the infringing products;
- (c) That plaintiffs be awarded damages adequate to compensate for the infringement, including the profits that plaintiffs lost as a result of the infringing sales by Swimways;
- (d) Alternatively, that Swimways be ordered to pay a reasonable royalty to the plaintiffs for all infringing sales made by Swimways;
- (e) That the plaintiffs be awarded increased damages as a result of Swimways' willful infringement pursuant to 35 USC § 284;
- (f) That the plaintiffs be awarded attorney's fees, statutory interest and costs; and
- (g) That this Court grant such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), the plaintiffs hereby demand a trial by jury on all issues so triable.

THE PLAINTIFFS,
By their counsel,

/s/ Thomas E. Kenney
Robert R. Pierce (# 549172)
Thomas E. Kenney (# 561590)
Pierce & Mandell, P.C.
11 Beacon Street, Suite 800
Boston, MA 02108
(617) 720-2444 – Telephone
(617) 720-3693 - Facsimile

Harold S. Lippes, Esquire
Florida Bar No. 356591
Lippes & Bryan, P.A.
225 Water Street, Suite 2100
Jacksonville, FL 32202
(904) 633-8781 - Telephone
(904) 633-7570 - Facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 5, 2009, I electronically filed the foregoing instrument with the Clerk of the Court by using the CM/ECF system.

/s/Thomas E. Kenney