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5 Attorneys for Plaintiff  
VACLESS SYSTEMS, INC.

7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION

11 VACLESS SYSTEMS, INC., a California  
12 Corporation

13 Plaintiff,

15 vs.

17 VAC-ALERT IP HOLDINGS, LLC, a Florida  
18 Company

19 Defendants

Case No:

CV10-9284 (SVW FFMx)

COMPLAINT FOR:

DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT OF  
PATENT

DEMAND FOR JURY TRIAL

1 **PRELIMINARY STATEMENT**

2 1. Plaintiff Vacless Systems, Inc. (hereinafter “VACLESS”) brings this action  
3 against Defendant VAC-Alert IP Holdings, LLC (hereinafter “VAC-Alert”) for  
4 declaratory judgment of non-infringement of one (1) United States Patent pursuant to the  
5 Declaratory Judgment Act, 28 U.S.C. §§2201-02, and the Patent Laws of the United  
6 States, 35 U.S.C. §100 *et seq.*, and for such other relief as the Court deems just and  
7 proper.

8 **JURISDICTION AND VENUE**

9 2. The Court has subject matter jurisdiction of the First Claim of this  
10 Complaint pursuant to 28 U.S.C. §§1331, 1338(a), 2201, and 2202, and the Patent Laws  
11 of the United States, 35 U.S.C. §1, *et seq.*

12 3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391 and  
13 1400.

14 4. VAC-Alert purports to be the owner of rights in U.S. Patent No. 5,682,624  
15 (hereinafter “’624 Patent”). Attached hereto as Exhibit A, and incorporated herein by  
16 reference, is a true and correct copy of the ‘624 Patent. Through a series of verbal and  
17 written communications dating back to February 17, 2006, VAC-Alert has asserted that  
18 the ‘624 Patent is infringed by VACLESS. VAC-Alert has threatened to sue VACLESS  
19 for infringement of the ‘624 Patent on numerous occasions since 2006, the latest being a  
20 verbal threat on or about November 5, 2010. VACLESS has not infringed and does not  
21 infringe, either directly or indirectly, any valid and enforceable claim of the ‘624 Patent,  
22 either literally or under the doctrine of equivalents, nor is it aware of any infringement of  
23 the ‘624 Patent. A substantial controversy exists between the parties which is of  
24 sufficient immediacy and reality to warrant declaratory relief.

25 5. This Court has personal jurisdiction over VAC-Alert. First, VAC-Alert has  
26 an administrative office located in California. Second, VAC-Alert has distributors and  
27 sales representatives in California and in this Judicial District. Third, VAC-Alert has  
28 regularly conducted substantial business in and directed to California and this Judicial

1 District, including, business pertaining to the '624 Patent. Fourth, VAC-Alert has  
2 engaged in various acts in and directed to California and this Judicial District. Fifth, on  
3 information and belief, VACLESS alleges that VAC-Alert has advertised, offered for  
4 sale, and sold products in California and in this Judicial District.

5 **THE PARTIES**

6 **A. Plaintiff VACLESS**

7 6. Plaintiff VACLESS is, and at all times mentioned herein was, a corporation  
8 organized and existing under the laws of the State of California, having a principal place  
9 of business at 12617 Foothill Blvd., Sylmar, CA 91342. VACLESS designs,  
10 manufactures, and sells products into the swimming pool industry.

11 **B. Defendant VAC-Alert**

12 7. Upon information and belief, Defendant VAC-Alert is, and at all time  
13 mentioned herein was, a company organized and existing under the laws of the State of  
14 Florida, having a principal place of business at 775 8<sup>th</sup> Court, Suite #4, Vero Beach, FL  
15 32962. VAC-Alert designs, manufactures, and sells products into the swimming pool  
16 industry.

17 **FACTUAL BACKGROUND**

18 8. On November 4, 1997, the '624 Patent was issued for a vacuum relief safety  
19 valve for a swimming pool filter pump system. Said safety valve is designed to prevent  
20 the entrapment of a swimmer by the drain cover located at the bottom of a swimming  
21 pool. Defendant VAC-Alert purports to be the owner of the '624 Patent.

22 9. Since 2005, VACLESS has been an innovator in the design, development,  
23 sale, and marketing of swimming pool products, including, vacuum relief safety valves  
24 known as Breather I and Breather II designed to prevent the entrapment of a swimmer by  
25 the drain cover located at the bottom of a swimming pool.

26 10. Upon information and belief, Plaintiff alleges that Defendant VAC-Alert  
27 does not manufacture or sell any relief safety valve or product covered by the '624 Patent.

28 11. Both the VAC-Alert safety valve of the '624 Patent and the VACLESS

1 safety valves Breather I and Breather II are designed to meet the same objective of  
2 preventing body entrapment by a drain cover of a swimming pool. However, the  
3 functionality and method of achieving this objective differs significantly between the  
4 VAC-Alert safety valve of the '624 Patent and the VACLESS safety valves Breather I  
5 and Breather II.

6 12. On February 17, 2006, VAC-Alert, through its counsel, contacted  
7 VACLESS requesting that it cease promotion and sale of its safety valves Breather I and  
8 Breather II based on the assertion that they infringe claim 11 of the '624 Patent. Attached  
9 hereto as Exhibit B, and incorporated herein by reference, is a true and correct copy of  
10 VAC-Alert's first cease and desist letter.

11 13. On March 27, 2006, VACLESS, through its counsel, responded to VAC-  
12 Alert's first cease and desist letter with a clear and complete explanation of non-  
13 infringement of the '624 Patent. Attached hereto as Exhibit C, and incorporated herein by  
14 reference, is a true and correct copy of VACLESS's response to VAC-Alert's first cease  
15 and desist letter.

16 14. On October 12, 2010, Mr. Hassan Hamza, president and founder of  
17 VACLESS, was verbally accused of infringing the '624 Patent by Mr. Paul Pennington,  
18 former president of VAC-Alert.

19 15. On October 18, 2010, VAC-Alert, through its counsel, contacted VACLESS  
20 again requesting that it cease promotion and sale of its Breather I safety valve based on  
21 the assertion that it infringes claim 11 of the '624 Patent. Attached hereto as Exhibit D,  
22 and incorporated herein by reference, is a true and correct copy of VAC-Alert's second  
23 cease and desist letter.

24 16. On November 4, 2010, VACLESS, through its counsel, responded to VAC-  
25 Alert's second cease and desist letter rejecting all allegations of patent infringement and  
26 requesting more details of the allegations so that the matter can be investigated more  
27 fully. Attached hereto as Exhibit E, and incorporated herein by reference, is a true and  
28 correct copy of VACLESS's response to VAC-Alert's second cease and desist letter.

1 17. On or around November 5, 2010, at a trade show in Las Vegas, Nevada,  
2 representatives of VAC-Alert verbally accused representatives of VACLESS of patent  
3 infringement and threatened with a lawsuit and permanent injunction.

4 18. On November 12, 2010, VAC-Alert, through its counsel, responded to  
5 VAC-Alert's request for more information with a video depicting the testing of  
6 VACLESS's Breather I safety valve under conditions that were, upon information and  
7 belief, wrongly manipulated to misrepresent its true functionality. Despite said  
8 manipulation, the video failed to show infringement of the '624 Patent.

9 19. On November 18, 2010, Mr. Hassan Hamza, president and founder of  
10 VACLESS, received an email from a well respected colleague in the swimming pool  
11 products industry inquiring about VAC-Alert's pending lawsuit. VAC-Alert's false and  
12 disparaging accusations were clearly communicated throughout the swimming pool  
13 products industry.

14 20. Upon information and belief, VACLESS alleges that Defendant VAC-Alert  
15 intends to file a patent infringement lawsuit against VACLESS despite VACLESS's  
16 attempts to explain its non-infringement of the '624 Patent.

17 21. Upon information and belief, VACLESS alleges that Defendant VAC-Alert  
18 has planned a lawsuit against VACLESS since 2006 but has waited for VACLESS's  
19 business to grow and the monetary damages to continuously accrue. Without a  
20 declaratory judgment of non-infringement, VACLESS is forced to continue to operate its  
21 business with a cloud of a lawsuit over its head.

22 **FIRST CLAIM FOR RELIEF**

23 **Declaration of Non-Infringement of U.S. Patent No. 5,682,624**

24 22. VACLESS repeats and hereby incorporates herein by reference, as though  
25 specifically pleaded herein, the allegations of paragraphs 1 through 21.

26 23. VACLESS has not infringed and does not infringe, directly or indirectly,  
27 any valid and enforceable claim of the '624 Patent.

28 24. As a result of the acts described in the foregoing paragraphs, there exists a

1 substantial controversy of sufficient immediacy and reality to warrant the issuance of a  
2 declaratory judgment.

3 25. A judicial declaration is necessary and appropriate so that VACLESS may  
4 ascertain its rights regarding the '624 Patent.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff VACLESS prays that this Court grant relief as follows:

7 A. For a judgment declaring that VACLESS has not infringed, directly or  
8 indirectly, any valid or enforceable claim of the '624 Patent;

9 B. For an order declaring that VACLESS is a prevailing party and that this is  
10 an exceptional case; awarding VACLESS its costs, expenses, disbursements, and  
11 reasonable attorneys' fees under 35 U.S.C. §285;

12 C. For an order that defendant VAC-Alert pay all costs associated with this  
13 action; and

14 D. For an award of any other relief as the Court deems just and proper.  
15  
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18 DATED: December 3, 2010



19  
20 By: \_\_\_\_\_

21 Louis F. Teran

22 Attorneys for Vacless Systems, Inc.  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: December 3, 2010



By: \_\_\_\_\_

Louis F. Teran

Attorneys for Vacless Systems, Inc.

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# **EXHIBIT A**





US005682624A

**United States Patent** [19]

[11] **Patent Number:** 5,682,624

**Ciochetti**

[45] **Date of Patent:** Nov. 4, 1997

[54] **VACUUM RELIEF SAFETY VALVE FOR A SWIMMING POOL FILTER PUMP SYSTEM**

[76] **Inventor:** Michael James Ciochetti, 1364 W. 62nd St., Hialeah, Fla. 33012

5,105,848	4/1992	Kallenbach	137/493.1
5,167,041	12/1992	Burkitt, III	4/541.2
5,236,581	8/1993	Perry	4/541.3
5,347,664	9/1994	Hamza et al.	4/509
5,363,877	11/1994	Frentzel et al.	137/526
5,499,406	3/1996	Chalberg et al.	4/541.2

[21] **Appl. No.:** 483,531

[22] **Filed:** Jun. 7, 1995

[51] **Int. Cl.<sup>6</sup>** ..... E04H 4/12

[52] **U.S. Cl.** ..... 4/509; 4/541.2; 137/526; 137/907; 251/51

[58] **Field of Search** ..... 4/504, 509, 541.1, 4/541.2; 137/524, 526, 493.1, 505.11, 907; 251/57

*Primary Examiner*—Henry J. Recla  
*Assistant Examiner*—Charles R. Eloslway  
*Attorney, Agent, or Firm*—Gary M. Hartman; Domenica N. S. Hartman

[57] **ABSTRACT**

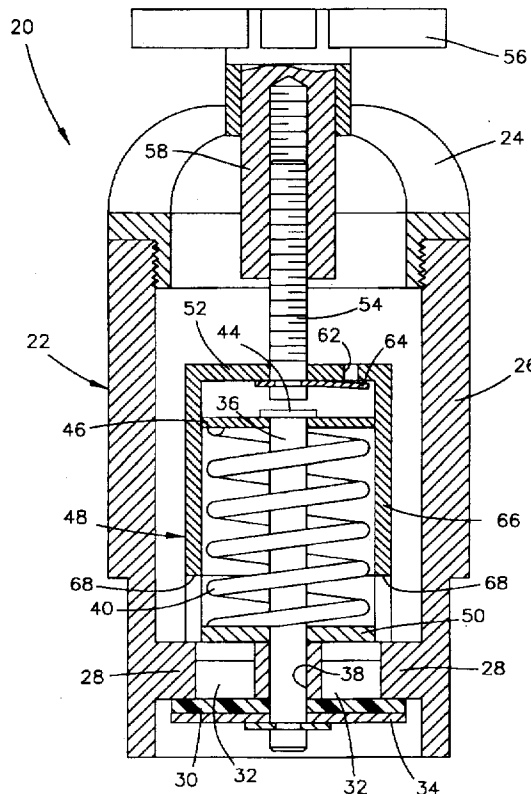
A method and device are provided for preventing a child or an object from being trapped by suction to a drain of a swimming pool filter pump system. The invention entails a safety valve capable of causing the filter pump to immediately lose its prime when a child or object becomes trapped against the drain of a swimming pool, so that the vacuum created by the filter pump is completely eliminated. The valve of this invention can be mounted directly to a suction line fluidically interconnecting the drain and the filter pump, and is constructed to permit air to rapidly flow into the suction line if a predetermined vacuum level is exceeded within the suction line, as is the case if the drain becomes partially or completely obstructed. The influx of air causes the filter pump to rapidly lose its prime, thereby completely eliminating the vacuum and the resulting hazardous condition.

[56] **References Cited**

**U.S. PATENT DOCUMENTS**

398,445	2/1889	Pratt	137/524
480,528	8/1892	Thoms	137/524
2,357,318	9/1944	Donaldson	50/23
2,431,457	11/1947	Bondurant	137/526
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3,145,724	8/1964	Pelzer	136/526
4,155,878	5/1979	Johnson et al.	4/509
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**14 Claims, 3 Drawing Sheets**





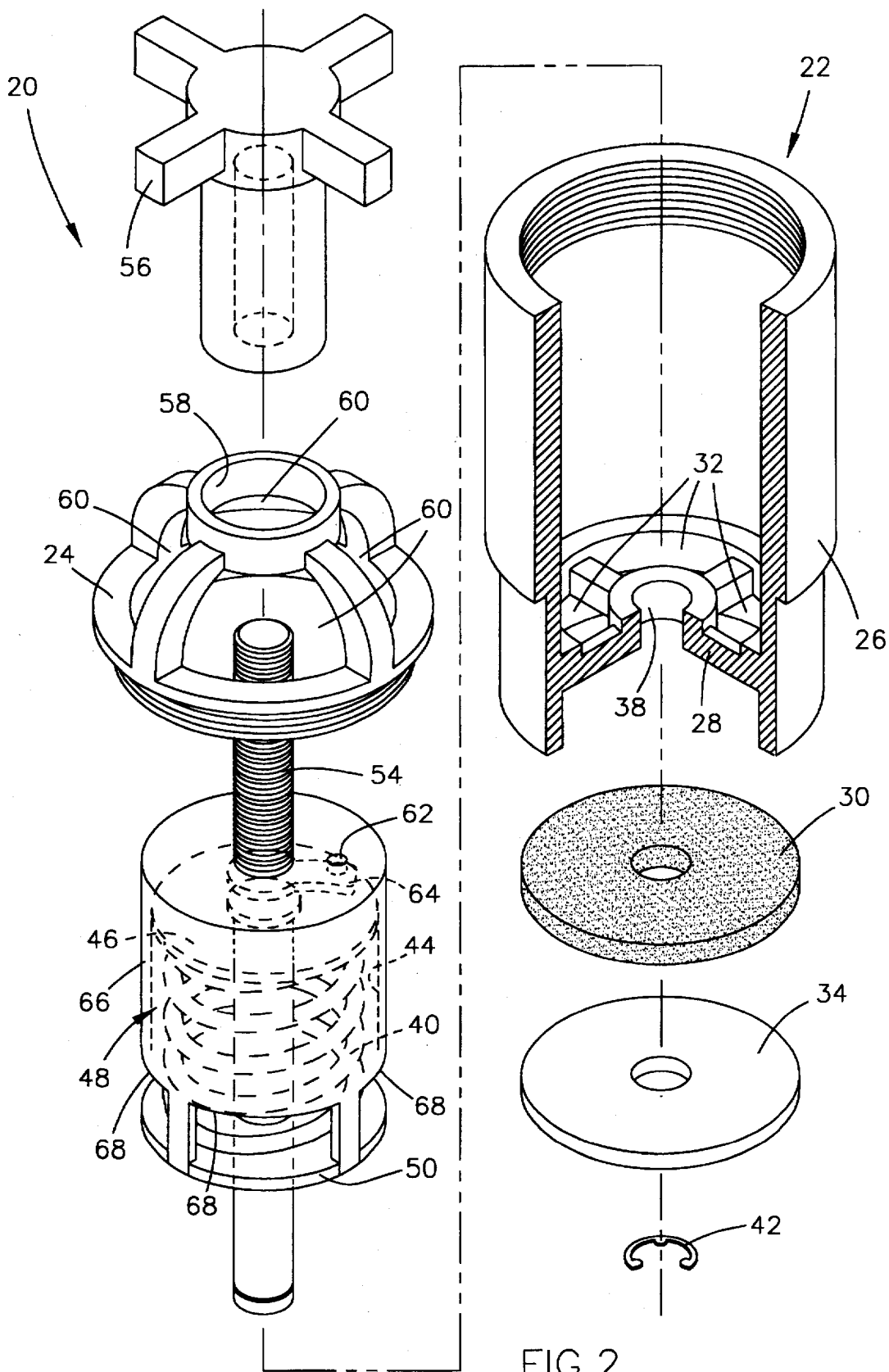


FIG. 2

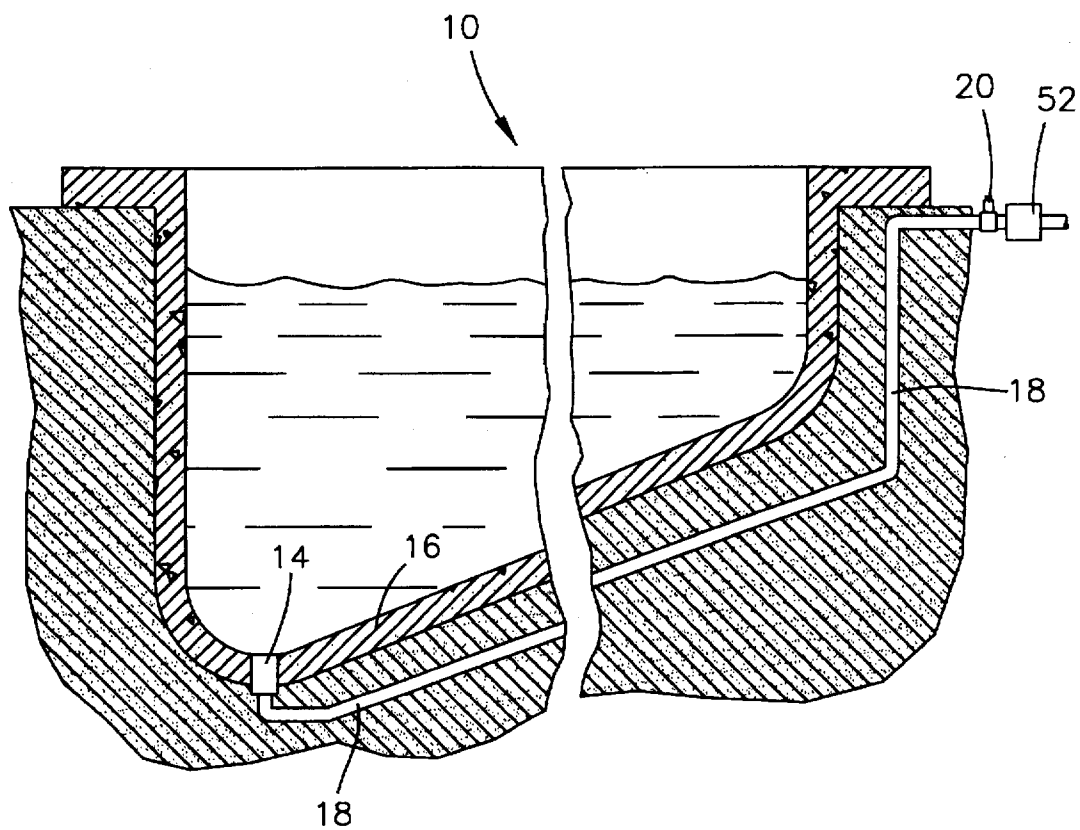


FIG. 3

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## VACUUM RELIEF SAFETY VALVE FOR A SWIMMING POOL FILTER PUMP SYSTEM

### BACKGROUND OF THE INVENTION

#### 1. Field of the Invention

The present invention generally relates to relief valves. More particularly, this invention relates to a vacuum relief safety valve adapted for use on a suction line of a swimming pool filter pump system, and particularly large pumping systems used in commercial pools. The safety valve causes the filter pump to lose its prime if a predetermined vacuum level is reached in the pump system, such as when an object obstructs the pool's main drain. Consequently, the safety valve serves as a safety device to eliminate pump suction if a child becomes trapped by the suction of the filter pump.

#### 2. Description of the Prior Art

To maximize enjoyment and maintain proper sanitary conditions, swimming pools must be constantly cleaned of debris, dirt and other contaminants. Such a requirement is particularly demanding in the case of large commercial pools that are used by a large number of people. For most pools, the primary task of cleaning is performed by a filter pump system that continuously draws water through a drain located at the bottom of the pool, typically at or near its deepest point, and through a number of suction lines located elsewhere, typically along the perimeter of the pool. As with all pools, but particularly commercial pools, a high rate of water flow must be achieved through a suitable tikiing medium in order to maintain an acceptable level of cleanliness. Consequently, a high capacity pump must be employed to draw the water from the pool, with a relatively larger pump generally being required as the size of the pool increases.

A significant hazard with the use of such large filter pumps is the potential for children to become drawn and trapped against the drain or a suction line as a result of the vacuum created by the pump when the drain or suction line inlet is obstructed. Occurrences of this type of accident have caused the pool industry to look for solutions that prevent a child from becoming drawn to and trapped at the drain, primarily by modifying the drain's construction. Examples of this approach include U.S. Pat. No. 4,658,449 to Martin, which is directed to a protective adapter for covering a pool drain, and U.S. Pat. No. 3,940,807 to Baker et al., which is directed to modifying the drain opening itself in order to more uniformly distribute the flow of water toward the center of the drain. While such approaches may be acceptable for many pool applications, a solution that is capable of being retrofitted to an existing pool without altering the appearance, size or construction of the drain is often more desirable and practical. Furthermore, these solutions only reduce the suction level at the drain. Safer operation of the pool could be achieved if the dangerous suction condition at the pool drain were completely eliminated immediately upon the drain being obstructed by a child.

### SUMMARY OF THE INVENTION

It is an object of this invention to provide a method for preventing a child or object from being trapped by suction to a drain or suction line of a swimming pool filter pump system.

It is a further object of this invention that such a method entail causing the filter pump to immediately lose its prime when an object obstructs the drain or a suction line of a swimming pool, so that the vacuum created by the filter pump is completely eliminated.

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It is another object of this invention that the filter pump system respond more quickly as the capacity of the pump system increases, such that the level of safety provided is commensurate with the potential hazard posed by the capacity of the pump operating the system.

It is yet another object of this invention that the above objects be accomplished by equipping the filter pump system with a valve immediately upstream of the filter pump, in which the valve is adapted to cause the filter pump to rapidly lose its prime if the drain becomes obstructed.

In accordance with a preferred embodiment of this invention, these and other objects and advantages are accomplished as follows.

According to the present invention, there is provided a method and device for preventing a child or an object from being trapped by suction to a drain or any other suction line of a swimming pool filter pump system. In particular, the invention entails a device capable of causing the filter pump to immediately lose its prime when a child or object obstructs or becomes trapped against the drain or suction line inlet of a swimming pool, so that the vacuum created by the filter pump is completely eliminated. The device of this invention is constructed as a vacuum relief valve that can be mounted directly to a suction line fluidically interconnecting the pool's main drain and suction lines with the pool's filter pump. The relief valve is constructed to permit air to rapidly flow into the drain and suction lines if a predetermined vacuum level is exceeded within the lines, as is the case if the drain or one of the pool's suction line inlets becomes partially or completely obstructed. The rapid influx of air eliminates the vacuum within the lines and, therefore, the resulting unsafe condition. The response of the valve is preferably damped such that the valve will remain open sufficiently long to cause the filter pump to completely lose its prime.

An advantageous aspect of this invention is that an existing pool can be readily retrofitted with the safety valve of this invention. In particular, the invention does not necessitate that the drain be modified or reconstructed, such that the benefits of the invention can be realized without draining the pool and performing extensive and potentially expensive structural work on the pool. Instead, the invention can be implemented by installing the safety valve in the main suction line outside of the pool and immediately upstream of the filter pump.

Another significant advantage of this invention is that the method of this invention does not seek to reduce or alter the flow characteristics at the drain in order to reduce the hazard level posed by a high capacity filter pump system, but instead serves to completely eliminate the hazard if the appropriate circumstances arise. Because the drain design does not detract or contribute significantly to the operation of the invention, the drain can be optimally designed to perform its intended function of efficiently removing water and debris from the floor of a pool.

Finally, another advantage of the invention is that the speed with which the safety valve responds to an obstruction actually increases with the use of larger capacity filter pump systems. As a result, the level of safety provided by the invention is always commensurate with the potential hazard posed by the capacity of the pump operating the system.

Other objects and advantages of this invention will be better appreciated from the following detailed description.

### BRIEF DESCRIPTION OF THE DRAWINGS

The above and other advantages of this invention will become more apparent from the following description taken in conjunction with the accompanying drawings, in which:

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FIG. 1 shows in cross-section a vacuum relief safety valve in accordance with a preferred embodiment of this invention;

FIG. 2 shows an exploded view of the safety valve of FIG. 1; and

FIG. 3 illustrates the installation of the safety valve of FIG. 1 in the main drain line of a swimming pool, in accordance with the preferred embodiment of this invention.

#### DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT

The invention illustrated in the Figures provides a method and device for preventing a child or an object from being trapped by suction to a drain or suction line inlet of a swimming pool filter pump system. Shown in FIG. 3 is a representation of a swimming pool 10 that is conventionally equipped with a filter pump 12 that draws water from the pool 10 and through a filtration system (not shown). The particular design of the filtration system is not critical to the design and operation of the invention, and therefore will not be discussed in detail. As illustrated, the pool 10 is equipped with a main drain 14 located in the pool floor 16 at its deepest point, though it is foreseeable that the pool 10 could be equipped with multiple drains and suction line inlets at various locations in the pool 10. The drain 14 illustrated in FIG. 3 is referred to as the pool's main drain to the extent that the majority of the water pumped from the pool 10 is drawn through the drain 14. As is conventional, a suction line 18 is provided that fluidically interconnects the drain 14 and the pump 12.

In accordance with this invention, the pool 10 is further equipped with a vacuum relief safety valve 20 as represented in FIG. 3, and shown in greater detail in FIGS. 1 and 2. The safety valve 20 is adapted to vent the suction line 18 to atmosphere in the event that the drain 14 becomes obstructed, such that the prime of the pump 12 is immediately and completely lost. As a result, the vacuum that would otherwise trap the obstruction against the drain 14 is immediately released, allowing the obstruction to be easily freed. In the situation where a child obstructs the drain 14, the child can then either swim to safety or be easily assisted by others.

FIGS. 1 and 2 illustrate a suitable construction for the safety valve 20, but not the only construction and design for the valve 20 in terms of performing the desired function. However, the valve 20 as illustrated embodies several design features that make the valve 20 particularly suited for its intended use. As shown, the valve 20 is generally constructed to include a two-piece housing 22 composed of a dome 24 vented by openings 60 and mounted to a casing 26. The dome 24 is shown as being threaded onto the casing 26, though other assembly methods could be employed. The casing 26 has a generally tubular shape, with the end of the casing 26 opposite the dome 24 being formed with a valve seat 28. The end of the casing 26 adjacent the seat 28 is adapted to be mounted to the suction line 18. A diaphragm 30 abuts against the lower surface of the seat 28, such that vents 32 formed in the seat 28 are closed by the diaphragm 30. The diaphragm 30 is preferably formed from an elastomeric material, such as a silicone rubber, such that an air-tight seal is achieved with the seat 28. The diaphragm 30 is mounted with a backup ring 34 on a shaft 36 that reciprocally extends through a central bore 38 formed in an annular-shaped portion of the seat 28. The lower end of the shaft 36 is equipped with a C-clip 42 that retains the diaphragm 30 and backup ring 34, while the upper end of the shaft 36 is formed to have a shoulder 44 that retains a washer

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46 and spring 40 on the shaft 36. The spring 40 is mounted on the shaft 36 and compressed by the washer 46 in order to bias the diaphragm 30 firmly against the surface of the seat 28, such that the vents 32 are normally closed in an air-tight manner.

According to the above construction, the vents 32 do not permit the passage of air through the valve 20 unless a counteracting force acts on the spring 40, such as a vacuum on the backside of the diaphragm 30 opposite the seat 28. In use, the valve 20 is mounted to the suction line 18, with its end nearest the seat 28 being in fluidic communication with the suction line 18. As such, the biasing force generated by the spring 40 is overcome if the suction line 18 is subject to a sufficiently high vacuum, such as when the drain 12 is blocked while the pump 12 continues to operate.

The vacuum level at which the diaphragm 30 is pulled away from its seat 28 is dependent on the biasing force generated by the spring 40. In a preferred embodiment, this biasing force can be adjusted in order to permit the valve 20 to be used under varying conditions influenced by the valve's proximity to the pump 12, the head pressure resulting from the vertical distance between the valve 20 and drain 12, and losses resulting from the number of fittings and bends in the suction line 18. As illustrated, an uncomplicated device for adjusting the spring's biasing force is to enclose the spring 40 in a cage 48, such that the end of the spring 40 nearest the diaphragm 30 is biased against one end 50 of the cage 48, while clearance is provided between the shaft 36 and spring 40 and an oppositely-disposed closed end 52 of the cage 48. The cage 48 is then rotatably attached to one end of a threaded shaft 54 that is threaded into a handle 56, which in turn is rotatably supported by a central bushing 58 formed in the dome 24. As such, rotation of the handle 56 causes the threaded shaft 54 to thread into or out of the handle 56, thereby causing the cage 48 to move toward or away from the seat 28. If the cage 48 is displaced away from the seat 28, the spring 40 is further compressed between the end 50 of the cage 48 and the washer 46, thereby increasing the biasing force such that a greater vacuum is required on the diaphragm 30 in order to lift the diaphragm 30 off of the seat 28. In contrast, moving the cage 48 toward the seat 28 reduces spring compression, such that the biasing force generated by the spring 40 is reduced, enabling a lesser vacuum to pull the diaphragm 30 off of the seat 28.

The closed end 52 of the cage is equipped with a check valve, shown here as being formed by an orifice 62 and flapper 64, though other types of one-way valves could foreseeably be used. The check valve operates in conjunction with the washer 46, which is sized to provide a minimal diametrical clearance between its perimeter and the interior walls of the cage 48. An optimal clearance can be readily determined experimentally for the purpose of sufficiently damping the operation of the valve 20 by reducing the speed at which the diaphragm 30 is permitted to return to its seat 28. Specifically, as the diaphragm 30 is pulled off its seat 28 by a high vacuum condition within the suction line 18, air is freely drawn into the suction line 18 through the open lower end of the cage 48 and the vents 32 in the seat 28. Simultaneously, air is also freely drawn into the chamber formed by the washer 46 and cage 48 through the orifice 62, such the movement of the washer 46 within the cage 48 is unimpeded. In contrast, the return of the diaphragm 30 to its closed position is retarded because the flapper 64 obstructs the orifice 62, necessitating that the air within the chamber be forced out between the washer 46 and the walls of the cage 48 before that diaphragm 30 can again be seated on the seat 28. In this manner, the diaphragm 28 is not permitted to

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reseat itself too quickly in response to a rapid drop in vacuum within the suction line 18 as air rushes into the suction line 18. As a result, rapid cycling of the valve 20 is prevented and a complete loss in prime can be achieved at the pump 52 if a sufficient obstruction occurs at the drain 14.

Use and operation of the safety valve 20 of this invention can be summarized as follows. Through experimentation or calibration, the valve 20 is adjusted with the handle 56 to enable the diaphragm 30 to lift of the seat 28 in response to a maximum allowable vacuum level. This vacuum level can be established experimentally or predicted based on the size of the drain 14 and the capacity of the pump 12. The valve 20 can then be installed on the suction line 18 in a convenient or accessible location, such as near the pump 12. If the casing 26 is formed from polyvinyl chloride (PVC) or another suitable plastic, the end of the valve 20 nearest the seat 28 can be glued into an opening formed in the suction line 18. Alternatively, the end of the casing 26 can be threaded, such that the valve 20 can be threaded into an appropriate fitting mounted in the suction line 18. This approach is particularly practical if the casing 26 is made from metal, such as steel or brass.

Once installed, the suction line 18 remains unvented by the diaphragm 30, enabling the swimming pool 10 and its filtration system to operate completely as designed and intended, until such time that the drain 14 becomes sufficiently obstructed to cause the vacuum level within the suction line 18 to exceed the maximum allowed level established by the valve 20. Once this pre-established level is exceeded, the valve 20 immediately permits air to be drawn into the suction line 18 through the openings 60 in the dome 24, the lower open end of the cage 48, and the vents 32 in the seat 28. The vacuum level within the line 18 will begin to drop as air enters the suction line 18, such that the diaphragm 30 may be permitted to slowly return to its seat 28 at a rate dictated by the escape of air within the cage 48 past the washer 48. If the obstruction is sufficiently brief, it is foreseeable that the pump 52 could regain its prime and continue to pump normally. However, as is the case where a child has become trapped at the drain 14, the diaphragm 30 will be sufficiently deterred from being reseated, such that a complete loss in prime at the pump 52 will occur. The resulting complete loss of vacuum within the suction line 18 enables the child to free himself or herself from the drain 14, or with the assistance of others.

Notably, the response time for the valve 20 is dependent on the rapidity with which the vacuum level increases within the suction line 18. Because higher capacity pumps of the type used in large commercial pools are capable of generating a vacuum more rapidly than lower capacity pumps, the response time for the valve 20 will be proportionately shorter for pools equipped with larger pumps. Advantageously, the valve 20 of this invention is therefore more responsive under conditions in which the greatest hazard is posed to children.

In view of the above, it can be seen that a significant advantage of this invention is that an existing pool can be readily retrofitted with the safety valve 20 of this invention by simply mounting the valve 20 to the pool's existing suction line. Consequently, this invention does not necessitate that the pool's drain be modified or reconstructed, such that the benefits of the invention can be realized without draining the pool and performing extensive and expensive structural work on the pool. Instead, the invention can be implemented by installing the safety valve 20 in a suction line outside of the pool, such as near the filter pump. Accordingly, a related advantage of this invention is that the

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flow characteristics at the pool drain are not reduced or altered in order to reduce the hazard level posed by a high capacity filter pump system. Instead, this invention serves to completely eliminate the hazard by venting the suction line to atmosphere if appropriate circumstances arise. Because the drain design does not detract or contribute significantly to the operation of the invention, the drain can be optimally designed to perform its intended function of efficiently removing water and debris from the pool. Finally, another advantage of the invention is that the speed with which the safety valve 20 responds to an obstruction actually increases for large capacity filter pump systems. As a result, the level of safety provided by the invention is always commensurate with the potential hazard posed by the capacity of the pump operating the system.

While our invention has been described in terms of a preferred embodiment, it is apparent that other forms could be adopted by one skilled in the art. For example, the particular construction of the valve 20 could be significantly altered or modified without changing its intended function, the manner in which the valve 20 is mounted in a filtration system and its location within the filtration system could be other than that shown, the type of suction line in which the valve 20 is employed could be other than a pool filtration system, and materials other than those mentioned could be employed to construct the valve 20. Accordingly, the scope of the invention is to be limited only by the following claims.

The embodiments of the invention in which an exclusive property or privilege is claimed are defined as follows:

1. A swimming pool equipped with a pump for drawing water from the pool and through a filter system, the swimming pool comprising:

an inlet disposed in the swimming pool;

a suction line in fluidic communication with the inlet and the pump such that the pump operates to draw water from the swimming pool through the inlet;

a vacuum relief safety valve mounted to the suction line, the vacuum relief safety valve being adapted to sense and respond to a vacuum level within the suction line so as to open and thereby deliver air to the suction line if a maximum allowed vacuum level within the suction line is exceeded; and

means for damping closing of the vacuum relief safety valve so as to promote the delivery of air to the suction line as the vacuum level within the suction line begins to drop.

2. A swimming pool as recited in claim 1 wherein the vacuum relief safety valve comprises means for enabling adjustment of the maximum allowed vacuum level at which air is delivered to the suction line.

3. A swimming pool as recited in claim 1 wherein the suction line is not vented to atmosphere unless the maximum allowed vacuum level is exceeded, and wherein the damping means is adapted to cause the vacuum relief safety valve to deliver air to the suction line until the pump completely loses its prime.

4. A swimming pool as recited in claim 1 wherein the vacuum relief safety valve comprises:

a housing adapted to be mounted to the suction line, the housing having a portion adapted for mounting to the suction line;

a vent disposed in the housing, the vent being adapted for fluidic communication with the suction line;

sealing means for closing the vent when the sealing means is disposed in a first position and opening the vent when the sealing means is disposed in a second position, such

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that a vacuum within the suction line is relieved when the sealing means is in the second position; and means for biasing the sealing means toward the first position such that the vent is normally closed, the biasing means enabling the sealing means to move toward the second position when the maximum allowed vacuum level is exceeded;

wherein the damping means delays movement of the sealing means when traveling from the second position to the first position.

5. A swimming pool as recited in claim 4 further comprising means for regulating the biasing means so as to enable adjustment of the maximum allowed vacuum level at which the sealing means initially moves toward the second position.

6. A swimming pool as recited in claim 5 wherein the regulating means comprises a retainer that houses the biasing means, the retainer being displaceable toward and away from the sealing means so as to enable adjustment of a biasing force generated by the biasing means.

7. A swimming pool as recited in claim 4 wherein the vent is disposed in the portion of the housing adapted for mounting to the suction line.

8. A swimming pool as recited in claim 4 wherein the damping means comprises:

a piston disposed in the retainer and movable with the sealing means; and

a one-way valve mounted on the retainer so as to be operably associated with the piston.

9. A swimming pool as recited in claim 8 wherein the one-way valve is adapted to open in response to the sealing means moving toward the second position and to close in response to the sealing means moving toward the first position.

10. A swimming pool as recited in claim 4 wherein the inlet is the main drain for the swimming pool and the suction line is the main drain line for the swimming pool.

11. A method for preventing an obstruction from being trapped by suction to an inlet of a swimming pool filter pump system, the method comprising the steps of:

providing a suction line between the inlet and the swimming pool filter pump system;

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generating a vacuum within the suction line with the swimming pool filter pump system so as to draw water through the inlet;

sensing the vacuum within the suction line;

delivering air to the suction line by opening a venting means if the vacuum within the suction line exceeds a maximum allowed vacuum level; and then

damping closing of the venting means so as to promote the delivery of air to the suction line as the vacuum within the suction line begins to drop.

12. A method as recited in claim 11 further comprising the step of adjusting the maximum allowed vacuum level at which vacuum is relieved in the suction line.

13. A method as recited in claim 11 wherein the generating step is accomplished by the suction line being unvented until the maximum allowed vacuum level is exceeded, at which time air is drawn into the suction line, and wherein the damping step causes the venting means to deliver air to the suction line until the swimming pool filter pump system completely loses its prime.

14. A method as recited in claim 11 wherein the relieving step is accomplished with a vacuum relief safety valve comprising:

a housing adapted to be mounted to the suction line of the swimming pool filter pump system, the housing having a portion adapted for mounting to the suction line;

a vent disposed in the housing, the vent being adapted for fluidic communication with the suction line;

sealing means for closing the vent when the sealing means is disposed in a first position and opening the vent when the sealing means is disposed in a second position, such that a vacuum within the suction line is relieved when the sealing means is in the second position;

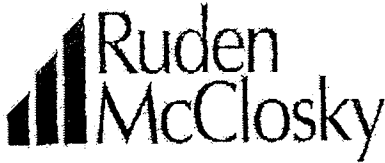
means for biasing the sealing means toward the first position such that the vent is normally closed, the biasing means enabling the sealing means to move toward the second position when the maximum allowed vacuum level within the suction line is exceeded; and

means for damping movement of the sealing means when traveling from the second position to the first position.

\* \* \* \* \*



# **EXHIBIT B**



222 LAKEVIEW AVENUE  
SUITE 800  
WEST PALM BEACH, FLORIDA 33401-8112

(561) 838-4512  
FAX: (561) 514-3412  
[STANLEY.KIM@RUDEN.COM](mailto:STANLEY.KIM@RUDEN.COM)

February 17, 2006

VIA FEDERAL EXPRESS

Mr. H. Hamza  
VacLess  
6358 Raylene Court  
Simi Valley, CA 93063-4352

Re: U.S. Patent No. 5,682,624  
U.S. Patent No. 5,991,939  
U.S. Patent No. 6,251,285

U.S. Patent No. 6,591,863  
U.S. Patent No. 6,779,205  
U.S. Publication No. 2005/0092946

Our File No. 46024-0011

Dear Mr. Hamza:

This firm represents VAC-Alert IP Holdings, LLC (VAC-Alert) in intellectual property matters. As you may know, VAC-Alert has made a significant investment in safety vacuum release systems and maintains a large patent portfolio covering many different aspects of these systems. Copies of these patents are enclosed.

Recently, we were provided with the enclosed marketing material indicating that VacLess Systems (VacLess) is offering for sale safety vacuum release systems termed BREATHER I SVRS and BREATHER II SVRS. From the description of these systems in the marketing material, it appears that they infringe one or more of VAC-Alert's patents. For example, both the BREATHER I SVRS and BREATHER II SVRS products appear to infringe claim 11 of U.S. Patent No. 5,682,624.

Accordingly, in order to mitigate further damage to our client, the following actions on your part are required:

- immediate discontinuance of the sale and offer for sale of the infringing products, and confirmation of same;
- destroying or turning over to our client all infringing products in your possession; and
- an accounting of all sales made to date of the infringing products.

APR-03-06 MON 10:28 AM PENNINGTON

FAX NO. 707 576 8286

P. 03

February 17, 2006

Mr. H. Hamza

- Page 2 -

Unless we receive your reply to this letter by February 28, 2006, we will presume that you do not intend to take the required steps. We await your prompt response.

Very truly yours,

RUDEN, McCLOSKEY, SMITH,  
SCHUSTER & RUSSELL, P.A.

Stanley A. Kim, Ph.D., Esq.

SAK:cp  
Encls.

# **EXHIBIT C**

# HOGAN & HARTSON LLP

LAURENCE H. PRETTY  
PARTNER  
(213) 557-6812  
LHPRETTY@HHLAW.COM

RECEIVED MAR 28 2006

BILTMORE TOWER  
500 SOUTH GRAND AVENUE, SUITE 1900  
LOS ANGELES, CALIFORNIA 90071  
TEL (213) 557-5700  
FAX (213) 557-6701  
WWW.HHLAW.COM

March 27, 2006

Via FedEx

Stanley A. Kim, Ph.D., Esq.  
Ruden McClosky  
222 Lakeview Avenue  
Suite 800  
West Palm Beach, Florida 33401-6112

Re: **Mr. H. Hamza and VacLess**  
**Your File No.: 46024-0011**  
**Our Client/Matter No.: 26455.0001**

Dear Dr. Kim:

I am now in a position to respond in substance to your February 17, 2006 letter.

**Summary:** U.S. Patent No. 5,682,624 (the '624 patent), its prosecution file, the cited art, and the VacLess BREATHER I and BREATHER II products have been carefully reviewed in relation to your charge. They establish that the VacLess products do not infringe claim 11 or any claim.

**The '624 Patent:** The '624 patent discloses a venting valve installed on a main suction line between a swimming pool inlet and a filter pump. The valve includes a movable member that is spring biased to a closed position against the lower side of a valve seat. A shaft extends between the valve member and a washer at the upper end of the shaft. The spring presses upwardly against the washer. If an obstruction blocks the suction inlet, rising suction in the suction line pulls the valve member down off its seat to open. Opening of the valve allows air to enter the suction line. As air enters the suction line, the suction decreases allowing the spring to reclose the valve. However, a damper prevents the valve member from closing too swiftly on its seat. The damper includes a cage enclosing the spring and shaft. The cage has a closed end wall with a small opening that can be closed by an

WASHINGTON, DC

BERLIN MUNICH BRUSSELS LONDON PARIS BUDAPEST PRAGUE WARSAW MOSCOW BEIJING TOKYO

\\LA-26455/0001-289696 NEW YORK BALTIMORE MCLEAN MIAMI DENVER BOULDER COLORADO SPRINGS LOS ANGELES

HOGAN & HARTSON L.L.P.

Stanley A. Kim, Ph.D., Esq.

March 27, 2006

Page 2

interior check valve. On opening, as the valve member is unseated, the check valve opens to let air enter the damping chamber. On reclosing, the check valve closes and the damping chamber only permits air to escape through a narrow gap between the peripheral edge of the washer and the cage wall, thereby delaying valve closing (col. 4: 48-55). Claim 11 is as follows:

11. A method for preventing an obstruction from being trapped by suction to an inlet of a swimming pool filter pump system, the method comprising the steps of:

providing a suction line between the inlet and the swimming pool filter pump system;

generating a vacuum within the suction line with the swimming pool filter pump system so as to draw water through the inlet;

*sensing the vacuum within the suction line;*

delivering air to the suction line by opening a venting means if the vacuum within the suction line exceeds a maximum allowed vacuum level; and then

**damping closing of the venting means so as to promote the delivery of air to the suction line as the vacuum within the suction line begins to drop. (emphasis added)**

Claim 11 (application claim 17 as originally filed) was rejected for obviousness over a patent to Chalberg, U.S. Patent No. 5,499,406. The Chalberg device relieved vacuum if the inlet opening of a suction fitting mounted in the wall of a whirlpool bath became obstructed. To overcome the Examiner's rejection, the applicant amended the claim to add the limitation of "*sensing the vacuum within the suction line*".<sup>1</sup>

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<sup>1</sup> Accompanying remarks noted that "applicant's claimed method entails generating a vacuum within the suction line 18 so as to draw water through the inlet 14. Notably, applicant's claimed method expressly recites sensing the vacuum within the suction line 18 and delivering air to the suction line 18 if the vacuum within the suction line 18 exceeds a maximum allowed level" (amendment at p. 7).

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Application claim 17 was rejected again, on a second office action, over a patent to Higginbotham, U.S. Pat. No. 4,596,656. Higginbotham's venting valve also relieved vacuum if a water inlet from a tub became obstructed. It did so by a spring loaded valve member which would be drawn away from its seat against the spring force to enable air to enter and relieve the suction. Significantly, Higginbotham's valve does not damp reclosing of the valve on its seat. To overcome the rejection, the applicant filed a second amendment which added the limitation concerning damping during reclosing shown in bold above. Applicant relied on the damping step on reclosing for arguing patentability over Higginbotham.<sup>2</sup> The patent then issued.

**The BREATHER I product:** The BREATHER I venting valve (Figs. A and B attached, closed and open, respectively) is threaded into the drain plug opening of a filter pump, not the suction line. It has a cylindrical main housing with a closed outer end, having a central air opening, and a closed inner end having a central annular boss threaded to fit the pump drain opening. A moving valve member equipped with a radially sealing O-ring slides axially within the outer casing guided by four depending, equally radially spaced legs. It is spring biased to a closed position axially sealing against an O-ring near the housing's outer end. If an obstruction at the pool inlet causes suction to rise in the pump housing, the suction pressure rises enough to pull the valve member from its closed position. Air enters through the central air opening and passes around the edge into the top ends of a series of radially spaced axial grooves in the housing wall. The grooves pass air through to the pump interior to break the vacuum. There is no damping of the moving member.

The BREATHER I product does not satisfy claim 11's third step of "*sensing the vacuum within the suction line*" because the step of sensing the vacuum is not performed within the suction line but within the pump housing. Therefore, there is not literal infringement. There is no basis to assert the Doctrine of Equivalents for

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<sup>2</sup> Applicant argued "Higginbotham does not disclose nor suggest an advantage to delaying the closure of the ball 134 against the seat 136. In contrast, applicant has taught that delaying the response of his valve 20 following delivery of air to the suction line provides additional time for an obstruction to be removed, prevents the valve 20 from closing prematurely in response to a rapid drop in vacuum within the suction line, 18, prevents rapid cycling of the valve 20 (which could damage the valve 20), and increases the likelihood that a complete loss in prime will result at the pump 52" (2d amendment, p. 8).

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Stanley A. Kim, Ph.D., Esq.

March 27, 2006

Page 4

a sensing location other than "*within the suction line*" because that would recapture the original scope of the claim which was surrendered by the addition of the limitation "*sensing the vacuum within the suction line*" to overcome the rejection on the Chalberg patent. That amendment creates a prosecution history estoppel which bars reliance on the Doctrine of Equivalents.

A second, independent reason for noninfringement is nonperformance of the final step of "**damping closing of the venting means so as to promote the delivery of air to the suction line as the vacuum within the suction line begins to drop**". In the BREATHER I product, the moving valve member moves on and off its sealing position only subject to the action of the spring without any damping, like the Higginbotham device. Accordingly, there is not literal infringement. The Doctrine of Equivalents is not available. First, because equivalents cannot satisfy a limitation for which a counterpart is entirely lacking. Second, because adding this final damping limitation to the claim was necessary to overcome the rejection on Higginbotham and that creates a prosecution history estoppel which bars application of equivalents.

**The BREATHER II Product:** This has the same features as the BREATHER I product with the addition that the legs of the movable valve member have inwardly projecting latches at their ends (Exhibits C, D and E<sup>3</sup> attached, closed and open, respectively). The latches snap over the edge of a lip extending internally around the interior of the housing near the base when the valve member reaches its open position. An annular, flat metal spring, positioned inside the legs, biases the legs outwardly. Once locked into the open position by the latches, the BREATHER II valve member cannot reclose itself when the vacuum ends, but must be reclosed manually. To do so, a person must manually pull on the free end of a connecting chain, secured to the moveable member and extending through the central air opening, with sufficient force to deflect the legs outwardly, over a chamfer adjacent to the lip, so that the latches release and the valve member is moved to its closed position.

The BREATHER II product does not infringe because it does not satisfy the limitation for "*sensing the vacuum within the suction line*", literally or by

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<sup>3</sup> The drawings A-E provided in this letter are confidential and provided only for the purpose of this response to your infringement charge. They are not to be used for commercial purposes nor disclosed to anyone other than your client, in confidence.



HOGAN & HARTSON L.L.P.

Stanley A. Kim, Ph.D., Esq.

March 27, 2006

Page 5

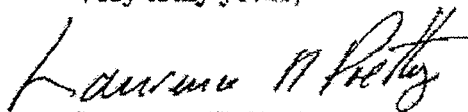
equivalents, for all of the same reasons that the BREATHER I product does not satisfy this limitation.

A second reason for noninfringement is that the BREATHER II product does not satisfy the final limitation of "damping closing of the venting means so as to promote the delivery of air to the suction line as the vacuum within the suction line begins to drop". The patent specification describes damping as "... reducing the speed at which the diaphragm 30 is permitted to return to its seat", as not permitting the valve "...to reseat itself too quickly in response to a rapid drop in vacuum ..." and ensuring that "the diaphragm 30 may be permitted to slowly return to its seat 28" (col. 4: 48-55; col. 4: 64-65; col. 5: 33-37). The amendment, quoted in footnote 2 above, describes "delaying the response". Damping is not locking. Accordingly, there is not literal infringement. Moreover, the step of reseating of the BREATHER II valve cannot be performed by the operation of the valve by itself but must be performed by a human being. For purposes of infringement, manual performance by a human being cannot satisfy a limitation to an action performed automatically in the claimed invention for purposes of infringement. *Davis v. U.S.*, 35 U.S.P.Q. 2d 1027, 1035 (U.S. Ct. Fed. Clms 1994). Nor can the Doctrine of Equivalents be relied upon because the addition of the damping limitation, to overcome the rejection re Higginbotham, creates a prosecution history estoppel. Finally, during the step of reclosing, there is no damping of the manual pull.

In sum, there is no infringement of claim 11, or any other claim of the '624 patent, by the BREATHER I and BREATHER II products. To continue to press infringement in the face of such overwhelming grounds of noninfringement would not be consistent with Rule 11, Fed.R.Civ.P.

You also enclosed a number of other patents but you did not charge infringement of any of them. None of them cover the VacLess products.

Very truly yours,



Laurence H. Pretty  
of HOGAN & HARTSON L.L.P.

LHP:ky  
Enclosures

# **EXHIBIT D**

CHRISTOPHER  
&  
WEISBERG, P.A.  
ATTORNEYS AT LAW

October 18, 2010

**VIA FEDEX**

Mr. Hassan Hamza  
Vacless Systems, Inc.  
12617 Foothill Blvd.  
Sylmar, CA 91342

Re: U.S. Patent No. 5,682,624  
Our File No.: 1328-3S

Dear Mr. Hamza:

Our firm represents VAC-Alert IP Holdings, LLC ("VAC-Alert") with respect to its intellectual property matters. As you know, VAC-Alert is the owner of U.S. Patent No. 5,682,624 ("the '624 Patent"), which is directed to a vacuum relief safety valve for a swimming pool pump system. On February 17, 2006, VAC-Alert, through its previous counsel, directed your attention to Claim 11 of the '624 Patent with respect to your "Breather I" and "Breather II" lines of safety vacuum release systems. Claim 11 of the '624 Patent states, in part, "A method for preventing an obstruction from being trapped by suction to an inlet of a swimming pool filter pump system, the method comprising the steps of...damping closing of the venting means so as to promote the delivery of air to the suction line as the vacuum within the suction line begins to drop."

On March 27, 2006, your counsel responded by alleging Vacless' "Breather I" and "Breather II" devices did not include the "damping" component of Claim 11. Instead, your counsel alleged that in the Breather I product, "the moving valve member moves on and off its sealing position only subject to the action of the spring without any damping." We understand the design of the Breather I device has been modified. This modification results in the operation of the Breather I device clearly including "damping closing of the venting means," as well as each and every other step of Claim 11. The Breather I device line<sup>1</sup> therefore infringes Claim 11 of the '624 Patent.

We further note that because you have been aware of the '624 Patent for quite some time, the Breather I device's infringement of Claim 11 can only be considered willful and intentional. In circumstances of willful infringement, U.S. Federal Law permits the patentee to recover up to three times its damages.

<sup>1</sup> Including both the "Breather I standard" and "Breather I adjustable" models.

Mr. H. Hamza  
Vacless Systems, Inc.  
October 18, 2010  
Page 2

We have also been informed that, on October 12, 2010, you met with Mr. Paul Pennington of the Pool Safety Council. During that meeting, you were shown a video of the Breather I device and its dampened operation. We further understand that you indicated the Breather I device was undergoing additional design modifications so that it will no longer dampen.

In order to mitigate further damage to our client, and because our client wishes to resolve this matter amicably, we require the following actions on your part:

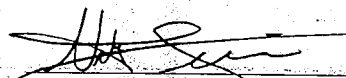
1. Immediately cease the sale, distribution, and offer for sale of the infringing Breather I devices;
2. Destroy or turn over all infringing products in your possession to our client;
3. Provide an accounting of all sales made to date of the infringing products;
4. Provide information regarding the design modifications to remove the dampening feature, including when the design modification will be incorporated into the devices.

Please indicate your intent to comply with these demands by countersigning this letter in the space provided below and sending us a copy. If we do not receive a reply indicating your agreement with the above actions by **November 08, 2010**, we will presume that you do not intend to take the required steps, and we may pursue any and all remedies available under applicable law. This offer of compromise is without prejudice to any claim for patent infringement, unfair competition, or damages that may be asserted on behalf of our client should this matter not be resolved promptly to our client's satisfaction.

Sincerely,

CHRISTOPHER & WEISBERG, P.A.

By: \_\_\_\_\_

  
Nicholas R. Lewis

NRL/rs

Enclosures: U.S. Pat. No. 5,682,624  
Feb. 17, 2006 Letter from S. Kim, Esq.  
March 27, 2006 Response from L. Pretty, Esq.

246494

CHRISTOPHER & WEISBERG, P.A.  
Attorneys at Law

Mr. H. Hamza  
Vacless Systems, Inc.  
October 18, 2010  
Page 3

**ACCEPTED AND AGREED:**

VACLESS SYSTEMS, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# **EXHIBIT E**

# Kelly Lowry & Kelley, LLP

Intellectual Property Attorneys

6320 Canoga Avenue, Suite 1650  
Woodland Hills, California 91367  
Tel: (818) 347-7900  
Fax: (818) 340-2859  
[www.KLKPatentLaw.com](http://www.KLKPatentLaw.com)

November 4, 2010

Nicholas R. Lewis, Esq.  
Christopher & Weisberg, P.A.  
200 E. Las Olas Blvd., Suite 2040  
Fort Lauderdale, FL 33301

Re: U.S. Patent No. 5,682,624  
Your File No. 1328-3S  
Our Docket No. HAMZA-48587

Dear Mr. Lewis:

Our firm represents Vacless Systems in matters pertaining to intellectual property, including patent and related litigation matters. This letter is in response to your October 18, 2010 letter to Mr. Hamza of Vacless Systems.

Your letter included the original "cease and desist" letter from Stanley A. Kim of Ruden McClosky dated February 17, 2006. Your letter also included the responsive letter from Mr. Laurence Pretty of Hogan & Hartson which very clearly laid out the reasons why neither the BREATHER I nor BREATHER II Vacless products infringe any claim of U.S. Patent No. 5,682,624.

In your October 18, 2010 letter, you have asserted that Vacless' BREATHER I device has been modified so as to include "damping closing of the venting means" and each and every other step of claim 11 of the '624 patent. Due to these modifications, you assert that Vacless' BREATHER I device infringes claim 11 of the '624 patent. In your October 18, 2010 letter you also indicate that Mr. Hamza met with Mr. Paul Pennington, of the Pool Safety Council. In your letter you assert "During that meeting, you [Mr. Hamza] were shown a video of the Breather I device and its dampened operation. We further understand that you [Mr. Hamza] indicated the Breather I device was undergoing additional design modifications so that it will no longer dampen."

Although Mr. Hamza did have a lunch meeting with Mr. Pennington, we dispute all assertions that the BREATHER I device has been modified in any manner so that it includes "damping closing of the venting means". So that we can more fully investigate this matter, I kindly ask that you forward to me a copy of the video Mr. Pennington showed Mr. Hamza (or any other video). I also kindly request that you specifically point

Nicholas R. Lewis, Esq.  
November 4, 2010  
Page 2

out the purported design changes of the BREATHER I device so that it now includes a "damping closing of the venting means".

Very truly yours,

KELLY LOWRY & KELLEY, LLP

Aaron T. Borrowman

ATB:nh  
cc: Vacless Systems



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Stephen V. Wilson and the assigned discovery Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

**CV10 - 9284 SVW (FFM~~x~~)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====:

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

VACLESS SYSTEMS, INC., a California Corporation

PLAINTIFF(S)

v.

VAC-ALERT IP HOLDINGS, LLC, a Florida  
Company

DEFENDANT(S).

CASE NUMBER

CV10-9284 SVW  
(FFMx)

SUMMONS

TO: DEFENDANT(S): NAMED ABOVE

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  \_\_\_\_\_ amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Louis F. Teran, whose address is Strategic Legal Counseling; 1055 East Colorado Blvd., Suite #500; Pasadena, CA 91106. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 12-3-10

By: TANYA DURANT  
Deputy Clerk



1188  
(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>  VACLESS SYSTEMS, INC., a California Corporation	DEFENDANTS  VAC-ALERT IP HOLDINGS, LLC, a Florida Company
--	---

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Louis F. Teran (SB #249494) Strategic Legal Counseling 1055 East Colorado Blvd, Suite 500; Pasadena, CA 91106; (818)484-3217 x200	Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)  <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding    
  2 Removed from State Court    
  3 Remanded from Appellate Court    
  4 Reinstated or Reopened    
  5 Transferred from another district (specify):    
  6 Multi-District Litigation    
  7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND:  Yes      No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23:  Yes      No    
 MONEY DEMANDED IN COMPLAINT: \$ \_\_\_\_\_

VI. 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.)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <hr/> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <hr/> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

CV10-9284

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  No  Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
VACLESS SYSTEMS, INC. - Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	VAC-ALERT IP HOLDINGS, LLC - Florida

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.  
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County, California	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Date

12/3/2010

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))