

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

GOODMAN BALL, INC.

Plaintiff,

vs.

MACH II AVIATION, INC.;
ESCAPE VELOCITY OF TAMPA BAY,
INC.; JOHN STANTON; WALTER
HOLMICH; PETER ARGER; and Does 1-
10, inclusive,
Defendants.

Case No.: 3:10-CV-01249-WHA

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND
BREACH OF CONTRACT**

DEMAND FOR JURY TRIAL

**DATE:
TIME:
CTRM:**

Judge: The Honorable William H. Alsup

FIRST AMENDED COMPLAINT

Plaintiff Goodman Ball, Inc. (“GBI”) for its First Amended Complaint (“FAC”) against defendants Mach II Aviation, Inc. (“Mach II”), Escape Velocity of Tampa Bay, Inc. (“Escape Velocity”) (Collectively, “Corporate Defendants”), John Stanton (“Stanton”), Walter Holmich (“Holmich”) and Peter Arger (“Arger”) (Collectively, “Individual Defendants”) (Together, Collectively “Defendants”) for patent infringement and breach of contract alleges as follows:

INTRODUCTION AND BACKGROUND

1. Plaintiff Goodman Ball, Inc. (“GBI”) files this complaint against defendants Mach II Aviation, Inc. (“Mach II”), Escape Velocity of Tampa Bay, Inc. (“Escape Velocity”) (Collectively, “Corporate Defendants”), John Stanton (“Stanton”), Walter Holmich (“Holmich”) and Peter Arger (“Arger”) (Collectively, “Individual Defendants”) (Together, Collectively “Defendants”) for patent infringement and breach of contract.

2. This case follows the patent infringement action that was filed on February 26, 2007 in the United States District Court, Northern District of California, Case No. 3:07-CV-01148-BZ (“Prior Litigation”).

3. The Prior Litigation, through a jurisdictional discovery, revealed that Corporate Defendants sold thirty six (36) infringing water purification units to the U.S. Navy (“Navy”) in Port Hueneme, California, and Gulfport, Mississippi. (Prior Litigation, Docket No. 37, Exhs. 2-5).

4. The Prior Litigation also revealed that two of the Individual Defendants control/own/operate a number of business entities to effectuate their operation. Specifically, as of the time of the jurisdictional discovery, Stanton and Holmich together

1 controlled/owned/operated about sixty five (65) business entities including the Corporate
2 Defendants and SolarDiesel Corporation (“SolarDiesel”) (Collectively, “Business Entities”).
3 (*Id.*, Exhs. 1 and 9). The prior litigation also revealed that as of said time, there had been thirty
4 eight (38) lawsuits filed against Corporate Defendants.

5
6 5. The Prior Litigation also revealed that twenty two (22) additional infringing
7 water purification units (“the Remaining Units”) remained in the possession of SolarDiesel,
8 controlled/owned/operated by one or more of the Individual Defendants. (*Id.*)

9
10 6. On February 13, 2008, the parties, to wit, GBI, Escape Velocity, and Mach II,
11 attended a Court ordered mediation where they agreed to settle the case which resulted in a
12 memorandum of understanding (“MOU”) that was executed by the parties, SolarDiesel and
13 their counsels on the same day. (Exhibit A).

14
15 7. The MOU provided for injunction and damages against Corporate Defendants
16 but allowed for limited permission for the Defendants to sell the Remaining Units “only to non-
17 U.S. military purchasers outside of the United States.” (Exhibit A ¶4.)

18
19 8. In or about October 2008, GBI learned that SolarDiesel had filed for bankruptcy,
20 had declared sixteen (16) of the Remaining Units as personal property in its bankruptcy
21 proceeding, and that six (6) of the Remaining Units had been sold to the Navy in violation of
22 the MOU.

23
24 9. On December 3, 2008, GBI filed its motion to reopen the case in order to
25 vindicate its patent rights and its contract rights under the MOU to the extent practicable.
26
27
28

10. Several motions later, on December 4, 2009, the honorable magistrate judge Bernard Zimmerman (“Judge Zimmerman”) dismissed the case without prejudice stating that the Court did not have jurisdiction and the breach of the MOU would have to be pursued in a separate action which prompted GBI to file the present suit.

11. This patent infringement and breach of contract action seeks relief to enforce the MOU to the extent practicable, to obtain relief for Defendant's willful sale and disposal of the Remaining Units, and to stop Defendants' unauthorized and infringing sale, offer to sell, use, and importation of products incorporating GBI's patented inventions. GBI seeks injunctive relief to stop the Defendants from continuing to infringe GBI's valuable patent rights, as well as monetary damages.

PARTIES

12. Plaintiff GBI is a corporation existing and organized under the laws of the state of California and has its principal place of business at 3639 Haven Avenue, Menlo Park, California 94025.

13. Mach II is a corporation existing and organized under the laws of the State of Florida and has its principal place of business at Mach II Aviation, Inc., 3110 Falkenburg Road, Tampa, FL 33619.

14. Escape Velocity is a corporation existing and organized under the laws of the State of Florida and has its principal place of business at Escape Velocity of Tampa Bay, Inc., 6324 S.R. 579, Tampa FL 33623.

1 15. Upon information and belief, defendant Stanton is an individual residing in the
2 city of Tampa in the State of Florida and does business in this judicial district as the controlling-
3 shareholder/owner/officer of Business Entities including Corporate Defendants.

4
5 16. Upon information and belief, defendant Holmich is an individual residing in the
6 city of Plant City in the State of Florida and does business in this judicial district as the
7 controlling-shareholder/owner/officer of Business Entities including Corporate Defendants.

8
9 17. Upon information and belief, defendant Arger is an individual residing in the city
10 of Tampa in the State of Florida and does business in this judicial district as the controlling-
11 shareholder/owner/officer of Business Entities including Corporate Defendants.

12
13 **JURISDICTIONAL BASIS**
14

15 18. This action for patent infringement arises under the Patent Laws of the United
16 States, in particular 35 U.S.C. §§ 271, 281, 283, 284 and 285. This court has jurisdiction over
17 the subject matter of this action under 28 U.S.C. §1338(a).

18
19 19. Upon information and belief, in the alternative, this action arises between
20 completely diverse parties and the amount in controversy exceeds \$75,000. As such, the court
21 has jurisdiction under 28 U.S.C. §1332(a).

22
23 20. Upon information and belief, this Court has supplemental jurisdiction over the
24 Defendants with respect to the California state law breach of contract claim pursuant to 28
25 U.S.C. §1367(a).

1 21. This Court has personal jurisdiction over the Defendants, and venue is proper in
2 this Court pursuant to 28 U.S.C. §§ 1391 and 1400. Defendants have conducted and do conduct
3 business in the State of California, and each directly or through intermediaries, ships,
4 distributes, offers for sale, sells, and advertises its products in the United States, including in the
5 State of California, and has caused injury in this judicial district by acts both within and outside
6 of this district. Specifically, Corporate Defendants litigated the Prior Litigation in the State of
7 California and in this judicial district and executed the MOU at the U.S. District Court, N.D. of
8 California, in the city of San Francisco in the State of California. Furthermore, Arger, as agent,
9 servant, and/or employee of the Corporate Defendants, SolarDiesel, and two of the Individual
10 Defendants, to wit, Stanton, and Holmich, negotiated the terms of the MOU at the mediation
11 hearing which lasted over eight (8) hours and resulted in the execution of the MOU.
12 Furthermore, the present causes of actions arise out of the breach of the MOU.

13
14 22. Upon information and belief, each Individual Defendant directs and controls the
15 infringing conduct of one or more of the Business Entities including Corporate Defendants.

16
17 23. Upon information and belief, each of the Individual Defendants, as controlling-
18 shareholder/owner/officer of one or more of the Business Entities including Corporate
19 Defendants, are personally liable for the infringing conduct of Business Entities including
20 Corporate Defendants because either they personally took part in the infringement, or they
21 specifically directed other officers, agents or employees of the Business Entities including
22 Corporate Defendants to commit the infringement.

COUNT ONE: PATENT INFRINGEMENT
(AGAINST ALL DEFENDANTS)

24. Plaintiff incorporates the allegations contained in Paragraphs 1 through 23, and all of the foregoing, as though fully set forth herein

25. GBI is the assignee of United States Patent No. 5,399,260, entitled Field Portable Water Purification System, which was duly and legally issued on August 5, 1992 (“the ‘260 patent”). Ron C. Ball, the former chief executive officer, and William A. Eldredge, the director of engineering of GBI, are named inventors on the ‘260 patent. A true and correct copy of the ‘260 patent is attached as Exhibit B.

26. Plaintiff GBI advertises, manufactures, and sells a product called the “GBI 3000 Diesel Water Purification Unit” (hereinafter “DWPU”) which incorporates the technology described in the ‘260 patented.

27. Upon information and belief, Defendants manufacture, use, offer to sell, sell, and import a product called the “DE 6000 Water Purification Unit, and/or DSI 3000C Portable Water Purification Unit, and/or CW 1500/3000 Portable Water Purification Unit” (Collectively “PWPU”).

28. Upon information and belief, Defendants’ PWPU products are identical copies of plaintiff’s DWPU product.

29. By making, using, offering to sell, selling, and importing the PWPU products, Defendants have infringed and continue to infringe the ‘260 patent in violation of 35 U.S.C. §271.

1 30. By their actions alleged above, Defendants have caused third parties to literally
2 infringe in the '260 patent and by so doing induced these third parties to infringe the '260 patent
3 or contributed to the infringement by these third parties, and will continue to induce or
4 contribute these third parties to infringe the '260 patent.

5
6 31. Defendants have been given notice of their infringing activities as early as
7 January 31, 2006 when GBI, through its attorney, sent a letter to Defendants informing them of
8 the fact of infringement and requesting that Defendants cease and desist from all further acts of
9 infringement.

10
11 32. Defendants have also been given notice of their infringing activities in light of
12 their involvement in the Prior Litigation.

13
14 33. Upon information and belief, Defendants continue to manufacture, use, offer to
15 sell, sell, and import the PWPU products since receiving the January 31, 2006 cease and desist
16 letter.

17
18 34. Upon information and belief, Defendants have sold and offered to sell one or
19 more of the Remaining Units, and have sold six (6) of the Remaining Units to the Navy.

20
21 35. Upon information and belief, Defendants caused one or more of the Business
22 Entities, including SolarDiesel and third parties, to directly infringe the plaintiff's patent rights
23 by selling and offering to sell the Remaining Units, and sale of the six (6) of the Remaining
24 Units to the Navy, in violation of the terms of the MOU and 35 U.S.C. §271(b).

1 36. Upon information and belief, Defendants each actively supervised, directed,
2 participated in, and/or approved the infringing activities of the one or more of the Business
3 Entities, including SolarDiesel and third parties.

4
5 37. Upon information and belief, Defendants knowingly induced, possessed the
6 specific intent to induce, and aided and abetted the one or more of the Business Entities,
7 including SolarDiesel and third parties, to sell the Remaining Units, including the sale of the six
8 (6) of the Remaining Units to the Navy, in violation of the terms of the MOU and 35 U.S.C.
9 §271(b).

10
11 38. Upon information and belief, Corporate Defendants caused Individual
12 Defendants to directly infringe the plaintiff's patent rights by selling and offering to sell the
13 Remaining Units, and sale of the six (6) of the Remaining Units to the Navy, in violation of the
14 terms of the MOU and 35 U.S.C. §271(b).

15
16 39. Upon information and belief, Corporate Defendants each actively supervised,
17 directed, participated in, and/or approved the infringing activities of the Individual Defendants.

18
19 40. Upon information and belief, Corporate Defendants knowingly induced,
20 possessed the specific intent to induce, and aided and abetted the Individual Defendants to sell
21 the Remaining Units, including the sale of the six (6) of the Remaining Units to the Navy, in
22 violation of the terms of the MOU and 35 U.S.C. §271(b).

23
24 41. Upon information and belief, Individual Defendants caused Corporate
25 Defendants to directly infringe the plaintiff's patent rights by selling and offering to sell the
26 Remaining Units, and sale of the six (6) of the Remaining Units to the Navy, in violation of the
27 terms of the MOU and 35 U.S.C. §271(b).

1 42. Upon information and belief, Individual Defendants each actively supervised,
2 directed, participated in, and/or approved the infringing activities of the Corporate Defendants.

3
4 43. Upon information and belief, Individual Defendants knowingly induced,
5 possessed the specific intent to induce, and aided and abetted the Corporate Defendants to sell
6 the Remaining Units, including the sale of the six (6) of the Remaining Units to the Navy, in
7 violation of the terms of the MOU and 35 U.S.C. §271(b).

8
9 44. Upon information and belief, Defendants' aforementioned infringement of the
10 '260 patent has been willful, knowing and deliberate.

11
12 45. As a direct and proximate result of Defendants' infringement, GBI has suffered
13 damages in an amount which cannot yet be fully ascertained, but which is believed to far exceed
14 the sum of \$75,000.

15
16 46. Unless permanently enjoined, Defendants will continue their infringing acts, and
17 GBI will be irreparably harmed by Defendants' aforementioned infringement of the '260 patent
18 as GBI has no adequate remedy at law to cause the Defendants to cease their infringing acts.

19
20 47. Upon information and belief, Defendants had knowledge of the '260 patent when
21 they copied the plaintiff's DWPU product and this is an exceptional case under 35 U.S.C. §285.

22
23 **COUNT TWO: BREACH OF CONTRACT**
24 **(AGAINST CORPORATE DEFENDANTS)**

25
26 48. Plaintiff incorporates the allegations contained in Paragraphs 1 through 47, and
27 all of the foregoing, as though fully set forth herein.
28

1 49. As noted, on February 13, 2008, the Corporate Defendants and SolarDiesel
2 entered into the MOU with the plaintiff, which formed a contract.

3
4 50. The MOU permitted sale of the Remaining Units “only to non-U.S. military
5 purchasers outside of the United States.” (Exhibit A ¶4.)

6
7 51. Upon information and belief, in violation of the MOU, Defendants caused
8 SolarDiesel to file for bankruptcy and to relinquish sixteen (16) of the Remaining Units to its
9 bankrupt estate.

10
11 52. Upon information and belief, in violation of the MOU, Defendants have sold six
12 (6) of the Remaining Units to the Navy.

13
14 53. The MOU further provided for Corporate Defendants to make installment
15 payments to GBI.

16
17 54. Specifically, the terms of the MOU required Corporate Defendants to pay the
18 plaintiff \$35,000 by April 15, 2008; \$30,000 by August 15, 2008; \$25,000 by February 15,
19 2009; and \$20,000 by August 15, 2009.

20
21 55. The Corporate Defendants ceased making payments under the MOU after the
22 August 15, 2008 installment, never paying the remaining last two installments, equaling
23 \$45,000.00 that they owe plaintiff.

24
25 56. Wherefore Plaintiff prays for judgment that:
26
27
28

ON COUNT ONE – PATENT INFRINGEMENT:

A. The claims of United States Patent No. 5,399,260 are infringed by Defendants;

B. A preliminary injunction be entered enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice thereof, from directly or indirectly infringing, or inducing or contributing to the infringement of U.S. Patent No. 5,399,260, said injunction to be made permanent following trial;

C. GBI be awarded damages sufficient to compensate it for Defendants' infringement but in no event less than a reasonable royalty and that such damages be awarded with prejudgment interest;

D. GBI be awarded treble damages pursuant to 35 U.S.C. § 284 and § 285 for willful, knowing and deliberate infringement;

E. GBI be awarded its attorney fees, costs and expenses incurred in this action; and

F. GBI be awarded such other and further relief as the Court may deem just.

ON COUNT TWO – BREACH OF CONTRACT:

G. The Corporate Defendants have breached the contract embodied in the MOU dated February 13, 2008.

1 H. GBI be awarded damages sufficient to compensate it for the breach of
2 contract.

3
4 I. GBI be awarded its attorney fees, costs and expenses incurred in this
5 action; and

6
7 J. GBI be awarded such other and further relief as the Court may deem just.
8
9
10

11 Date: October 27, 2010.

12 AHMADSHAHI & ASSOCIATES

13
14 Respectfully Submitted,

15 /S/ Michael M. Ahmadshahi

16 Michael M. Ahmadshahi
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff GBI demands a trial by jury on all matters to which it is entitled by law.

Date: October 27, 2010.

/S/ Michael M. Ahmadshahi
Michael M. Ahmadshahi, Esq.

AHMADSHAHI & ASSOCIATES
Michael M. Ahmadshahi, Esq. (Bar No. 219933)
Shana L. Villoria, Esq. (Bar No.261342)
600 Anton Blvd., Ste. 1100
Costa Mesa, CA 92626
Telephone: 714.371.4321
Facsimile: 714.371.4221
Email: mahmadshahi@mmaiplaw.com
Email: svilloria@mmaiplaw.com

Attorney for Plaintiff,
GOODMAN BALL, INC.

CERTIFICATE OF SERVICE

I, Michael M. Ahmadshahi, certify under penalty of perjury that the foregoing was served on the interested parties listed below, via the Court's Electronic Filing Program, United States Mail, Electronic Mail, and/or any other manner permitted by the Federal Rules of Civil Procedure on October 27, 2010.

/S/ Michael M. Ahmadshahi
Michael M. Ahmadshahi, Esq.

AHMADSHAHI & ASSOCIATES
Michael M. Ahmadshahi, Esq. (Bar No. 219933)
Shana L. Villoria, Esq. (Bar No.261342)
600 Anton Blvd., Ste. 1100
Costa Mesa, CA 92626
Telephone: 714.371.4321
Facsimile: 714.371.4221
Email: mahmadshahi@mmailaw.com
Email: svilloria@mmailaw.com

Attorney for Plaintiff,
GOODMAN BALL, INC.

Arthur H. Barends
Joe Hariton
Law Offices of Arthur H. Barends
10209 Santa Monica Blvd.
Los Angeles, CA 90067
Telephone: (310) 557-0444
Facsimile: (310) 557-1432
Email: barenslaw@aol.com
Email: jhariton@barenslaw.com

John E. Johnson
Janelle A. Weber
Shutts & Bowen LLP
100 S. Ashley Drive, Ste. 1500
Tampa, FL 33602
Telephone: (813) 229-8900
Facsimile: (813) 229-8901

Attorneys for Defendants Mach II and Escape Velocity in Case No. 3:07-CV-01148-BZ; and
Attorneys for Defendants Escape Velocity, Stanton, and Arger in Case No. 3:10-CV-01249-
WHA.