

United States District Court

SOUTHERN

DISTRICT OF

NEW YORK

AQUA PRODUCTS, INC.

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER: 06 Civ.

INTEX RECREATION CORP.

06 CV 1746

TO: (Name and address of defendant)

JUDGE PRESKA

INTEX RECREATION CORP.
4001 VIA ORO AVENUE
SUITE 210
LONG BEACH, CA 90810

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Jeffrey A. Schwab
Richard L. Crisona
ABELMAN, FRAYNE & SCHWAB
666 THIRD AVENUE
NEW YORK, NEW YORK 10017
(212) 949-9022

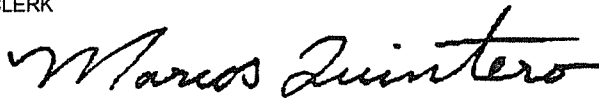
an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

MAR 06 2006

CLERK

DATE



(BY) DEPUTY CLERK

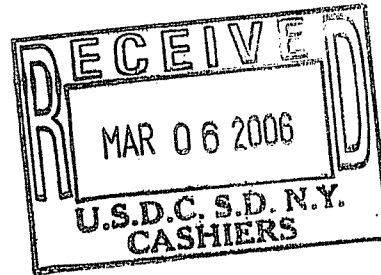
AO 440 (Rev. 10/93) Summons In a Civil Action -SDNY WEB 4/99

RETURN OF SERVICE		
Service of the Summons and Complaint was made by me ¹	DATE	
NAME OF SERVER (<i>PRINT</i>)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____ _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ _____		
<input type="checkbox"/> Returned unexecuted: _____ _____ _____		
<input type="checkbox"/> Other (<i>specify</i>): _____ _____ _____		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date</p> <p style="text-align: right;">_____ Signature of Server</p> <p style="text-align: right;">_____ Address of Server</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

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Attorneys for Plaintiff



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AQUA PRODUCTS, INC.,

Plaintiff,

-against-

INTEX RECREATION CORP.,

Defendant.



06 Civ. _____

**JURY TRIAL
DEMANDED**

**COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES
FOR PATENT INFRINGEMENT (35 U.S.C. §§ 271 and 281)**

Plaintiff Aqua Products, Inc. ("Aqua Products"), by its undersigned attorneys, states for its Complaint against defendant Intex Recreation Corp. ("Intex"), upon knowledge with respect to its own acts and upon information and belief with respect to all other matters, as follows:

NATURE OF THE CASE

1. This is an action seeking injunctive relief and damages for patent infringement arising from violations of the Patent Act of the United States, more particularly 35 U.S.C. §§ 271 and 281.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338 (patent, trademark and copyright).

3. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. Aqua Products is and was at all relevant times a corporation organized and existing under the laws of the State of Delaware, with offices at 25 Rutgers Avenue, Cedar Grove, New Jersey.

5. Aqua Products is a manufacturer and distributor of high quality, state-of-the art robotic pool cleaning devices for residential and commercial markets.

6. Upon information and belief, defendant Intex is and was at all relevant times a corporation organized under the laws of the State of California, with offices at 4001 Via Oro Avenue, Suite 210, Long Beach, California.

7. Intex manufactures and distributes swimming pool products, and has recently begun offering for sale and selling robotic pool cleaners. Intex is registered to do business in the State of New York, and does business within the State.

FACTS COMMON TO ALL CAUSES OF ACTION

8. For over 20 years, Aqua Products has developed and sold the most comprehensive line of high quality, state-of-the art robotic pool cleaners for residential and commercial markets in nearly 40 countries.

9. Aqua Products is a leader in the development of new technology to improve robotic pool cleaners and has patented many of its innovative technologies.

10. Aqua Products is the owner of U.S. Patent No. 6,412,133 (“‘133 Patent”), entitled “Water Jet Reversing Propulsion and Directional Controls for Automated Swimming Pool Cleaners.” A copy of the ‘133 Patent is attached as Exhibit 1.

11. Intex has undertaken to unlawfully compete with Aqua Products by copying Aqua Product’s patented innovations and products. Intex’s conduct includes its infringement of Aqua Products’ ‘133 Patent.

12. By this action, Aqua Products seeks to enjoin this deliberate infringement of its patent.

13. Aqua Products further seeks monetary damages for the injury incurred as a result of Intex’s infringing activities.

The ‘133 Patent

14. The ‘133 patent, issued on July 2, 2002, relates to water jet propulsion and directional controls for robotic swimming pool cleaners.

15. The ‘133 patent was duly and legally assigned to Aqua Products, its current owner.

16. The ‘133 patent relates to an apparatus for propelling automated or robotic swimming pool and tank cleaners and for controlling the scanning or traversing patterns of the automated cleaners with respect to the bottom and sidewalls of the pool or tank.

17. As specified as a preferred embodiment of the invention claimed in the ‘133 Patent, a directionally controlled water jet causes movement of the robotic cleaner across the surface to be cleaned. The water for the water jet is drawn from beneath the apparatus and passed through a filter medium to remove debris from the surface to be cleaned. The water jet is forced by a pump through a directional discharge conduit whose axis is aligned with the

longitudinal axis of the robotic cleaner. The resulting or reactive force of the discharged water jet propels the cleaner in the opposite direction. A valve is placed between the pump outlet and the discharge conduit to control the direction of movement of the water through one or the other of the of the opposing ends of the discharge conduit. The position of the valve, and therefore the direction of travel of the robotic pool cleaner, can be changed when the unit reaches a sidewall of the pool or after the cleaner has ascended a vertical sidewall.

18. Intex manufactures, imports, offers for sale, sells, or induces others to use and sell robotic pool cleaners which embody the subject matter protected under the '133 Patent. The robotic pool cleaner imported, offered for sale or sold by Intex is especially adapted for use in infringing the '133 Patent, and is not a staple article or commodity of commerce suitable for substantial non-infringing use.

19. Aqua Products has advised Intex of the existence of the '133 Patent, and has demanded that Intex consider its activities in light of the patent.

20. Intex has nevertheless continued its infringing activity.

**AS AND FOR A FIRST CLAIM FOR RELIEF FOR PATENT
INFRINGEMENT PURSUANT TO 35 U.S.C. §§ 271 AND
281 SEEKING INJUNCTIVE AND MONETARY RELIEF**

21. Aqua Products realleges paragraphs 1 through 20 as if fully set forth herein.

22. Intex has and is infringing the '133 Patent by manufacturing, importing, offering for sale or selling or inducing others to sell or use a robotic pool cleaner in the State of New York and elsewhere in the United States which embodies the subject matter of the patented invention of the '133 Patent, in violation of the patent laws of the United States.

23. Intex has actual notice of Aqua Products' patent rights.

24. Intex has continued to commit acts of infringement of the '133 Patent despite notice of Aqua Products' rights under the '133 Patent, and will continue to do so unless enjoined by this Court.

25. Despite knowledge of Aqua Products' rights under the '133 Patent, Intex has continued to actively induce infringement of the '133 Patent and to contribute to the infringement of the '133 Patent within the State of New York and elsewhere in the United States, and will continue to do so unless enjoined by this Court.

26. Aqua Products does not have an adequate remedy at law.

27. Intex's infringement and active inducement of and contributory infringement is willful, intentional and deliberate, and has deprived Aqua Products of sales and profits which lawfully belong to it and which it otherwise would have made.

28. On account of Intex's activities in this State, County and Southern District of New York, and throughout the United States, Aqua Products has been injured in an amount not yet ascertained and to be proven at trial.

29. This is an exceptional case within the provisions of 35 U.S.C. § 285, and Aqua Products is therefore, entitled to the recovery of its attorneys' fees upon prevailing in this action.

WHEREFORE, Aqua Products demands judgment:

i) finding that Intex has copied Aqua Product's patented innovations and products;

ii) preliminarily and permanently enjoining and restraining Intex, its agents, servants, employees, successors and assigns, and all those acting in concert or participation with it, from:

(1) manufacturing, producing, distributing, importing, purchasing or selling robotic swimming pool cleaners embodying the subject matter of the invention of the '133 Patent;

(2) engaging in any other activity constituting an infringement, inducement of infringement or contributory infringement of the '133 Patent;

(3) assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to herein;

iii) directing that Intex, at its sole expense, recall all robotic swimming pool cleaners that embody the inventions of the claims of the '133 Patent which were manufactured, distributed, imported, sold or shipped by it;

iv) directing that Intex deliver to Aqua Products' attorneys or representatives for destruction all products, molds, plates, dies and any other materials in their possession or under their control which embody the inventions of the claims of the '133 Patent;

v) directing that Intex file with the Court and serve on Aqua Products' counsel a report in writing and under oath setting forth in detail the manner in which he has complied with any temporary restraining order, or preliminary or permanent injunction entered herein within thirty (30) days of receipt of service of any such order or injunction;

vi) directing Intex to account to Aqua Products for actual damages suffered by it, including its lost sales, as a result of the infringement and the active inducement of and contributory infringement of the '133 Patent, directing that such damages be trebled because of the willful and deliberate nature and character of the infringement, together with an assessment of interest, and awarding Aqua Products judgment in that amount against Intex;

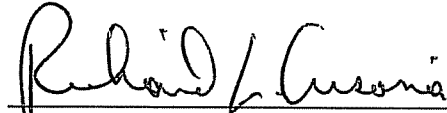
- vii) directing Intex to account to Aqua Products for Intex's unjustly received profits resulting from infringement of the '133 Patent;
- viii) for an assessment of costs, interest and attorneys' fees incurred by Aqua Products; and
- ix) for such other and further relief as the Court deems just and proper.

Jury Trial Demand

Plaintiff Aqua Products, Inc. hereby demands a trial by jury of this action.

Dated: March 6, 2006
New York, New York

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