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6 Attorneys for Plaintiff  
7 ZODIAC POOL SYSTEMS, INC.

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ZODIAC POOL SYSTEMS, INC., a  
11 Delaware corporation,  
12 Plaintiff,  
13 v.  
14 ZAG POOLS INC., a Florida  
15 corporation,  
16 Defendant.

**COMPLAINT FOR PATENT  
INFRINGEMENT (35 U.S.C. §§ 1 et  
seq., including 35 U.S.C. § 271)**

**'12CV0903 H JMA**

**DEMAND FOR JURY TRIAL**

17  
18 Plaintiff Zodiac Pool Systems, Inc., a Delaware corporation (“Zodiac”),  
19 hereby brings this complaint for patent infringement against Defendant Zag Pools  
20 Inc. (“Zag Pools”), a Florida corporation, and alleges as follows:

21 **PARTIES**

22 1. Plaintiff Zodiac is a Delaware corporation with its principal place of  
23 business at 2620 Commerce Way, Vista, California 92081.

24 2. On information and belief, Defendant Zag Pools is a Florida  
25 corporation with its principal place of business at 7401 Wiles Road, Suite 205,  
26 Coral Springs, Florida 33067.

27 3. On information and belief, Zag Pools conducts its business throughout  
28 the United States and in this judicial district by offering for sale and selling

1 swimming pool and spa products, including but not limited to, the “Zag Splasher”  
2 through such sources as their website, www.zagpools.com.

3 **JURISDICTION AND VENUE**

4 4. This action is for patent infringement under the Patent Laws of the  
5 United States of America, 35 U.S.C. §§ 1 *et seq.*, including 35 U.S.C. § 271.

6 5. This Court has subject matter jurisdiction over this lawsuit pursuant to  
7 28 U.S.C. §§ 1331 and 1338(a).

8 6. This Court has personal jurisdiction over Zag Pools. Among other  
9 reasons, and on information and belief, Zag Pools, through its advertising and sales  
10 to customers located in California and in this judicial district, is present in this  
11 judicial district, transacts business in this judicial district, and has committed and  
12 continues to commit acts of patent infringement in this judicial district upon which  
13 the claims asserted in this lawsuit are based, and has harmed and continues to harm  
14 Zodiac in this judicial district by, among other things, using, selling, and offering  
15 for sale infringement swimming pool cleaner products, including but not limited to,  
16 the Zag Splasher, through such sources as their website, www.zagpools.com.

17 7. Venue is proper in this judicial district under the provisions of 28  
18 U.S.C. §§ 1391(b) and (c) and 1400(b) because, among other reasons, Zag Pools is  
19 subject to personal jurisdiction and has committed acts of patent infringement in  
20 this district.

21 **GENERAL ALLEGATIONS**

22 8. On November 14, 1995, United States Patent No. 5,465,443 (“the ’443  
23 patent”) was issued by the USPTO for “Swimming Pool Cleaner Discs and  
24 Assemblies.” A copy of the ’443 patent is attached as Exhibit A.

25 9. Zodiac is the owner by assignment of the ’443 patent and has the right  
26 to bring an action for infringement of the ’443 patent.

27 10. On September 26, 2000, United States Patent No. 6,122,794 (“the ’794  
28 patent”) was issued by the USPTO for “Swimming Pool Cleaner Component.” A

1 copy of the '794 patent is attached as Exhibit B.

2 11. Zodiac is the owner by assignment of the '794 patent and has the right  
3 to bring an action for infringement of the '794 patent.

4 **COUNT 1**

5 **PATENT INFRINGEMENT OF THE '443 PATENT BY ZAG POOLS**

6 **(35 U.S.C. § 271)**

7 12. Zodiac restates and incorporates by reference each of the allegations of  
8 Paragraphs 1 through 11 as if fully set forth herein.

9 13. Zag Pools has infringed and continues to infringe -- directly,  
10 contributorily, and/or by active inducement -- one or more claims of the '443  
11 patent, by making, importing, offering to sell, selling, causing to be supplied, using  
12 and/or causing to be used, devices and/or systems and methods that embody or  
13 practice the inventions claimed in the '443 patent. Zag Pools' products that  
14 embody or practice the inventions claimed in the '443 patent include the Zag  
15 Splasher and/or other swimming pool cleaner products since or after November 14,  
16 1995.

17 14. On information and belief, Zag Pools' infringement of the '443 patent  
18 has been knowing and willful.

19 15. Zag Pools' infringement of the '443 patent has injured and continues  
20 to injure Zodiac, and will cause irreparable harm unless Zodiac's infringement is  
21 enjoined.

22 **COUNT 2**

23 **PATENT INFRINGEMENT OF THE '794 PATENT BY ZAG POOLS**

24 **(35 U.S.C. § 271)**

25 16. Zodiac restates and incorporates by reference each of the allegations of  
26 Paragraphs 1 through 15 as if fully set forth herein.

27 17. Zag Pools has infringed and continues to infringe -- directly,  
28 contributorily, and/or by active inducement -- one or more claims of the '794

1 patent, by making, importing, offering to sell, selling, causing to be supplied, using  
2 and/or causing to be used, devices and/or systems and methods that embody or  
3 practice the inventions claimed in the '794 patent. Zag Pools' products that  
4 embody or practice the inventions claimed in the '794 patent include the Zag  
5 Splasher and/or other swimming pool cleaner products since or after September 26,  
6 2000.

7 18. On information and belief, Zag Pools' infringement of the '794 patent  
8 has been knowing and willful.

9 19. Zag Pools' infringement of the '794 patent has injured and continues  
10 to injure Zodiac, and will cause irreparable harm unless Zodiac's infringement is  
11 enjoined.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Zodiac respectfully requests the following relief:

14 A. A judgment that Zag Pools has infringed the '443 and '794 patents;

15 B. An award of preliminary and permanent injunctions enjoining Zag  
16 Pools its officers, directors, agents, principals, divisions, representatives, servants,  
17 employees, associates, subsidiaries, affiliates, attorneys, successors and assigns, and  
18 all persons or entities acting by, through, under or in active concert or in  
19 participation with or controlled, either directly or indirectly, by any of them, from  
20 infringing directly or indirectly, inducing others to infringe and/or contributing to  
21 the infringement of the '443 and '794 patents;

22 C. A judgment that Zag Pools' infringement has been and is willful;

23 D. That Zag Pools account for and pay Zodiac the damages necessary to  
24 compensate it for Zag Pools' infringement of the '443 and '794 patents pursuant to  
25 35 U.S.C. § 284;

26 E. An award to Zodiac of enhanced damages for the willful infringement  
27 of the '443 and '794 patents pursuant to 35 U.S.C. § 284;

28

1 F. An award to Zodiac of its attorneys' fees, costs, expert witness fees,  
2 and expenses incurred by Zodiac in connection with this action pursuant to 35  
3 U.S.C. § 285;

4 G. Prejudgment and post-judgment interest; and

5 H. For any such further relief as the Court may deem just and appropriate.

6 **JURY DEMAND**

7 Zodiac hereby demands a jury trial pursuant to Rule 38(b) of the Federal  
8 Rules of Civil Procedure.

9  
10 Dated: April 12, 2012

McDERMOTT WILL & EMERY LLP  
DANIEL R. FOSTER  
MANDY H. KIM

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12  
13 By: s/Daniel Foster  
14 DANIEL R. FOSTER  
15 Attorneys for Plaintiff, Zodiac Pool  
16 Systems, Inc.

17 DM\_US 33017990-3.084586.0159

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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
 Zodiac Pool Systems, Inc., a Delaware corporation

**(b)** County of Residence of First Listed Plaintiff San Diego  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorney's (Firm Name, Address, and Telephone Number)  
 Daniel Foster, 4 Park Plaza, Suite 1700, Irvine, CA 92614,  
 (949) 851-0633

**DEFENDANTS**  
 Zag Pools Inc., a Florida corporation

County of Residence of First Listed Defendant Broward  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) '12CV0903 H JMA

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	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. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER 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 Loans (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	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal 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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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	<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"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <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 Acts <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 Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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**V. ORIGIN** (Place an "X" in One Box Only)

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7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
35 U.S.C. §§ 1 et seq., U.S.C. 271

Brief description of cause:  
Patent Infringement

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 04/12/2012 SIGNATURE OF ATTORNEY OF RECORD s/Daniel R. Foster

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RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_

JS 44 (Rev. 12/07)

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|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| 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 |
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DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

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(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/12/2012

SIGNATURE OF ATTORNEY OF RECORD

s/Daniel R. Foster

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RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_