

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**UNITED MARINE MARKETING
GROUP, LLC,**

Plaintiff,

v.

**JET DOCK SYSTEMS, INC.,
OCEAN INNOVATIONS. INC.,
W. ALLAN EVA, III, AND
DAVID T. FABER,**

Defendants.

Civil No.

**COMPLAINT FOR
DECLARATORY
JUDGMENT AND UNFAIR
COMPETITON AND
INJUNCTIVE RELIEF
SOUGHT AND
JURY TRIAL REQUESTED**

Plaintiff United Marine Marketing Group, LLC ("UMMG") for its Complaint against Defendants Jet Dock Systems, Inc. ("JDSI") Ocean Innovations. Inc. ("OII"), W. Allan Eva, III ("Eva") and David T. Faber ("Faber") (collectively "Defendants" or "Jet Dock") states and alleges as follows:

PARTIES

1. Plaintiff United Marine Marketing Group, LLC is a Florida Company, which has the registered address of 3105 59th Avenue Drive East Bradenton, Florida 34203. Plaintiff is a distributor of docks and accessories under the VERSADOCK trademarks.

2. Upon information and belief, Defendant Jet Dock Systems, Inc. is a Florida corporation. Its principal address is 500 SW 21 Terrace, B107, Ft. Lauderdale,

Florida 33312. Jet Dock is wholly owned by W. Allan Eva, III and David T. Faber. It manufactures and sells floating docking systems. JDSI pays a 4% royalty to Defendants Eva and Faber for each float sold by JDSI.

3. Upon information and belief, Defendant Ocean Innovations, Inc. is a Florida corporation. Its principal address is 790 SW 21 Terrace, Ft. Lauderdale, Florida 33312. Ocean Innovations is wholly owned by W. Allan Eva, III and David T. Faber. It holds and licenses patents exclusively to JDSI.

4. Upon information and belief, Defendant W. Allan Eva, III is resident of Bratenahl, OH. His residence is located at 190 Lakehurst Dr., Bratenahl, OH 44108

5. Upon information and belief, Defendant David T. Faber is resident of Fort Lauderdale Florida. His residence is located at 1301 West Lake Drive, Ft. Lauderdale FL 33316-2317.

JURISDICTION AND VENUE

6. This action arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, relating to the infringement of the '013, '833, '113, '050 and '106 Patents.

7. This Court has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2201, and 1331, 1338 and 1367; and over Plaintiff's Lanham Act claim under 15 U.S.C. § 1121; and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

8. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

9. UMMG's claims against JDSI are based, in part, on JDSI's transaction of business throughout the United States and in Florida, its causing tortious injury to UMMG by act or omission in Florida; and/or its causing tortious injury to UMMG in Florida by an act outside this state committed with the purpose of injuring persons, when it might reasonably have expected that some person would be injured thereby in this state. JDSI has sold Jet Dock products to potential customers through dealers located in Florida. Currently, JDSI sells its products directly to potential customers located in Florida. JDSI has a long standing and substantial business base in the State of Florida and all of the impermissible sales as addressed in this complaint took place in the state of Florida.

10. UMMG's claims against Ocean Innovations are based, in part, on OII's transaction of business throughout the United States and in Florida, its causing tortious injury to UMMG by act or omission in Florida; and/or its causing tortious injury to UMMG in Florida by an act outside this state committed with the purpose of injuring persons, when it might reasonably have expected that some person would be injured thereby in this state.

11. UMMG's claims against Eva are based, in part, on Eva's transaction of business throughout the United States and in Florida, his causing tortious injury to UMMG by act or omission in Florida; and/or his causing tortious injury to UMMG in Florida by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state.

12. UMMG's claims against Faber are based, in part, on Faber's transaction of business throughout the United States and in Florida, his causing tortious injury to UMMG by act or omission in Florida; and/or his causing tortious injury to in Florida by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state.

BACKGROUND ALLEGATIONS

13. This action involves patents held by the Defendants related to drive-on docking structures constructed with hollow plastic modular floats that are designed in such a way where any number of floats can be interconnected to form a floating platform.

14. One of the first companies that began producing modular floating docks from plastic cubes is Jetfloat International in Austria, which began operations in 1973. The founder of Jetfloat, Hermann Stranzinger, held U.S. Patent No. 3,834,644 ("Jetfloat patent"), which covered the Jet Float flotation module and connecting means. This patent issued on July 23, 1974 and expired in 1994.

15. Modular floating docks first appeared in North America through Jetfloat Canada, which began producing and selling Jetfloats in 1976.

16. The patents-in-suit involve the use of Jetfloat modules by the Defendants.

17. The Defendants were Jetfloat dealers from 1993 to 1995.

18. Jetfloat modules are roughly square in shape (measuring approximately 20 inches by 20 inches) and are offered in two heights (one is approximately 16 inches high the other approximately 9 inches high) which are commonly referred to as "tall" floats and "short" floats respectively. The short floats are typically used in situations where it is

desirable to have the top dock surface closer to the water which makes it easier to pull or drive a watercraft up onto the top surface of a dock.

19. Both the tall and the short floats are made with approximately a 1 inch round opening on one side of the float at about the midpoint of the float. This opening is called a “bung” hole. The bung hole is typically threaded and fitted with a threaded plastic plug which makes the float air tight.

20. As an alternative to using short floats many users, including the Defendants, would fill some of the tall floats on the outside edge of a dock assembly with water to lower the outside edge of the dock structure closer to the water and form a sloped surface, which makes it easier to pull or drive a watercraft up onto the top surface of the dock structure.

21. Jetfloat Canada developed the short floats in 1983 for use in the 1984 Summer Olympics in Los Angeles where a large Jetfloat dock structure comprised of tall and short floats was assembled to house rowing shells and other watercraft. The short floats are designed to be attached to the large floats so that the top surfaces of both floats are at the same level. Because of the difference in heights, the short floats form a sloped or ramp like surface when they are attached to a tall float

22. Numerous other dock structures have been made using a combination of Jetfloat tall and short floats.

23. Defendants Allan Eva and David Farber became involved in making drive on docking systems using Jetfloat modules in 1989 after Eva noticed Jetfloat docks in use.

24. As early as 1990 Eva and Farber constructed drive on docks by connecting Jetfloat floats together and filling some of the floats on the approach side of the dock with water so that they would be lower to the surface of the water to form a ramp which allowed a small watercraft to be driven up onto the dock.

25. In around the spring of 1993 Eva and Farber became aware of the short float module produced by Jetfloat and began incorporating them into their drive-on docks in lieu of filling the taller cubical floats with water.

26. In their patent claims and elsewhere, the Defendants allege that they were the first to attach short floats to tall floats.

27. Upon information and belief, Allan Eva and David Faber were and are the owners of Jet Dock Systems, Inc., since 1993. Allan Eva, David Faber and JDSI were a dealer of Jetfloat, Ltd. float products for assembling docks from approximately 1993-1995. Patent and trademark attorney Gordon D. Kinder, Esq., on behalf of JDSI filed a trademark application for JET DOCK that asserted a first use in commerce of JET DOCK on floating docks November 30, 1993, which issued as U.S. Trademark No. 1925475.

28. Upon information and belief, JDSI, Eva and/or Faber sold more than 20 floating drive on dock assemblies in the state of Florida consisting of Jetfloat tall and short floats in 1993. Several of the Jetfloat drive-on assemblies that were sold by Jet Dock between October 1993 and January 1994 are shown in the JDSI records.

29. Upon information and belief, commencing in the summer of 1993, JDSI, Eva and/or Faber sold and assembled a drive-on dock assemblies consisting of Jetfloat

tall floats on the bow end connected to two arms which included short floats for customers in Naples, Florida.

30. Upon information and belief, on October 1, 1993, JDSI, Eva and/or Faber sold a dock to a Nancy McGuire at 990 Caxambas Ct., Marco Island, Florida that included a total of 11 tall and 7 short Jetfloat floats for a purchase price of \$1,050. This drive-on dock was assembled with a base and projecting arms and a connecting member (an inverted short float) that is identical in all respects to the Figure 1 drawing of the '013 Patent.

31. Upon information and belief, on October 14, 1993, JDSI, Eva and/or Faber sold a dock to Francesco Morsilli at 3770 Rum Row, Naples, Florida for a purchase price of \$2,500. This drive-on dock includes 24 tall floats and 14 short Jetfloat floats that were arranged as a base and arms for receiving two watercrafts. It is in essence two of the same type of docks described in the Jet Dock patents connected together.

32. Upon information and belief, on December 7, 1993, JDSI, Eva and/or Faber sold a dock to Ariel Elesburg at 401 Alamanda Dr. in Hollandale, Florida for \$1,150. The drive-on dock sold to Ms. Elesburg was the same as the dock sold to Nancy McGuire as referenced above.

33. Upon information and belief, on January 10, 1994, JDSI, Eva and/or Faber sold a dock to Jack Eimerman/R.L. Ryerson Co at 875 Spyglass Ln, Naples, Florida for \$2,300. The drive-on dock sold to Mr. Eierman is the same as the dock sold to Francesco Morsilli as referenced above.

34. Upon information and belief, in 1994, JDSI, Eva and/or Faber sold approximately \$200,000 docks assembled with Jetfloat tall and short floats.

35. In the fall of 1994, Eva and Farber discovered that some of the float modules in docks that they had sold between October 1993 and January 1994 had taken on water and had partially sunk. They discovered that the reason that the float modules had taken on water was because the threads in the bung hole on some of the floats were improperly formed by the manufacturer thus allowing water to partially enter into the float.

36. In September 1994 Eva and Farber remedied the leaking float problem by heat sealing the plastic plug into the float module by using a small torch to partially melt the surface of the plug and plastic around the plug and then by pressing down on the melted plastic with the flat blade of a putty knife.

37. Defendants have stated that the docks they sold prior to September of 1994 “include every element” of the invention claimed in their patents except for the fact that the plastic plugs in the float modules were not heat sealed.

38. Defendants’ development of drive on docks over a period of five years prior to filing their first patent application utilized existing product from Jetfloat, which included flooding tall floats to create a ramp surface, and which had been practiced by others previously.

39. Defendants’ development of drive on docks over a period of five years prior to filing their first patent application utilized existing product from Jetfloat, which included utilizing short floats to create a ramp surface, and which was also practiced by

several other parties, including Jetfloat the developer, prior to Defendants' alleged invention.

40. Prior to July 11, 1994, Defendants designed, sold and used a number of drive on dock assemblies that satisfactorily allowed a watercraft to drive onto docks made with Jetfloat modules and to remain out of the water when the watercraft is resting on top of the dock.

41. It was only after a period of time after some of the docks that were installed by Defendants between October 1993 and January 1994 failed to properly support the watercraft because some of the float modules took on water due to improperly threaded bung holes.

42. Upon information and belief, Defendant Ocean Innovations, Inc. is the owner by assignment of United States Letters Patent No. 5,529,013 (the "'013 patent") entitled "Floating Drive-On Dry Dock Assembly," and issued by the United States Patent and Trademark Office on June 25, 1996. Defendant Jet Dock Systems, Inc. is the sole licensee under the '013 patent.

43. Upon information and belief, Defendant Ocean Innovations, Inc. is the owner by assignment of United States Letters Patent No. 5,682,833 (the "'833 patent"), entitled "Floating Drive-On Dry Dock Assembly," and issued by the United States Patent and Trademark Office on November 4, 1997. Defendant Jet Dock Systems, Inc. is the sole licensee under the '833 patent.

44. Upon information and belief, Defendant Ocean Innovations, Inc. is the owner by assignment of United States Letters Patent No. 5,931,113 (the "'113 patent"),

entitled "Floating Drive-On Dry Dock Assembly Having a Supporting Beam" and issued by the United States Patent and Trademark Office on August 3, 1999. Defendant Jet Dock Systems, Inc. is the sole licensee under the '113 patent.

45. Upon information and belief, Defendant Ocean Innovations, Inc. is the owner by assignment of United States Letters Patent No. 5,947,050 (the "'050 patent"), which is entitled "Floating Drive-On Dry Dock Assembly," and issued by the United States Patent and Trademark Office on September 7, 1999. Defendant Jet Dock Systems, Inc. is the sole licensee under the '050 patent.

46. Upon information and belief, Defendant Ocean Innovations, Inc. is the owner by assignment of United States Letters Patent No. 6,431,106 (the "'106 patent"), entitled "Floating Drive-On Dry Dock Assembly" and issued by the United State Patent and Trademark Office on August 13, 2002. Defendant Jet Dock Systems, Inc. is the sole licensee under the '106 patent.

47. Defendants Eva and Faber filed their first U.S. patent application on July 11, 1995. This first U.S. patent application was filed at least 22 months after their first commercial sale of drive-on docks that incorporate all of the essential elements of their claimed invention. This application resulted in the issuance of United States Letters Patent No. 5,529,013 (the '013 patent) entitled "Floating Drive-On Dock Assembly," on June 25, 1996.

48. Defendants Eva and Faber filed for several continuation patent applications that resulted in the patents in suit. The front page drawing on the '013 patent

and each of the continuation patents is identical in all material respects to the drawings disclosed in the JDSI records for those docks that were sold prior to January, 1994.

49. Defendants claim to have invented a drive-on dock assembly consisting in part of a base and a pair of arms extending from the base and the arms joined to each other so as to form a substantially rigid structure.

50. The docks that Defendants began making in 1990 as well as those docks that the Defendants sold beginning in 1993, consisted of a base and a pair of arms extending from the base and the arms joined to each other so as to form a substantially rigid structure.

51. Eva has testified that 80% of the products that JDSI sells have structure that is included in the scope of claims 1 and 15 of the '013 patent.

52. The docks made and sold in 1993 by Defendants were not disclosed to the PTO in any of their patent applications by Defendants or their attorney Gordon Kinder.

53. The docks made and sold in 1993 by Defendants are the closest (i.e. identical) prior art to Defendants' claimed invention and were not disclosed to the PTO in any of their patent applications by Defendants or their attorney Gordon Kinder as required.

54. Defendants have claimed that their invention was not "complete" until the fall of 1994 when they fixed some leaking floats.

55. Defendants have admitted that the docks they sold prior to July 11, 1994 were identical to the invention claimed in their patents except that they were not using permanently sealed airtight floats.

56. Defendants have further admitted that heat sealing floats is not part of their claimed inventions.

57. Defendants admit that Jetfloat modules are air tight if the threading in the hole of the float is properly manufactured.

58. Defendants had at least five years of experience with Jetfloat modules prior to filing their first patent application and they constructed, sold and used numerous floating structures that remained floating.

59. Many of Defendants' assembled tall and short Jetfloat dock assemblies prior to filing of their first patent application remained floating for a number of years.

60. Sealing a plug in a float that is leaking is an obvious solution.

61. Defendants prepared drawings of their invention and commercially sold numerous versions of it by at least September, 1993.

62. Defendants failed to disclose their sales of Jetfloat docks in 1993 and 1994 to the PTO, because they knew that it would result in a rejection of their first and subsequent patent applications.

63. In 1995, after expiration of the Jetfloat patent, JDSI terminated its dealer relationship with Jetfloat. In 1995, JDSI had its molds produced that essentially replicated the Jetfloat product line. In 1995, JDSI began having its own floats produced by a contract manufacturer.

64. Upon information and belief, on June 30, 1998, JDSI and Ocean Innovations commenced an action for patent infringement of the '833 Patent, entitled, *Ocean Innovations, Inc., et al. v. Archer, et al.*, Case No. 5:98CV1515 (N.D. Ohio)

(“Archer case”) , which is now closed. Gordon D. Kinder, Esq. was one of the attorneys representing Ocean Innovations and Jet Dock in that litigation. In said litigation, asserted prior art was disclosed to Jet Dock, Eva, Faber and their patent and litigation attorney Gordon D. Kinder, Esq. Various configurations of docks consisting of a plurality of floats, talls and shorts, and their means of connection were disclosed in the deposition of Erik Maydell, the owner of Jetfloat Canada, which was taken on behalf of Ocean Innovations and JDSI on April 14, 1999. In *Ocean Innovations, Inc., et al. v. Archer, et al. case*, JDSI disclosed selected records of sales made by JDSI between October 1993 and January 1994 in order to overcome an asserted priority claim, which include the impermissible sales as alleged herein.

66. In September, 2002 JDSI and Ocean Innovations commenced an action for patent infringement of the ‘013, ‘833, ‘113, ‘050 and ‘106 Patents entitled *Ocean Innovations., et al v. Quarterberth, ERA Marine et.al* Case No. 1:03CV0913 (N.D. Ohio) (“Quarterberth case”), which is ongoing. ERA Marine was an earlier distributor of Versadock products. The ERA Marine case has slowly worked its way through the Ohio court and several significant rulings have been made including Summary Judgment rulings on validity and infringement of certain claims. However, none of the issues brought in this present Complaint have been heard in the *Ocean Innovations, et al. v. Archer, et al.* or the *Ocean Innovations, et al. v. Quarterberth, et al.* cases. Due to the financial hardships of the lawsuit brought by JDSI, ERA Marine has substantially reduced the scope of its operations. The owner of ERA Marine was a partial owner of UMMG at its inception in 2009, but is no longer an owner.

67. The Versadock product line includes tall floats similar to JDSI tall floats. It also includes a patented “V-float” which provides a unique craft receiving area and can also serve as a short float. And, the Versadock product line also includes a “double float” which is a rectangular shaped float rather than a cubical float. JDSI does not make a double float.

68. In the *Ocean Innovations, et al. v. Quarterberth, ERA Marine et al.* case, the presiding judge has ruled that the issue of double floats would not be heard in that case at bar.

69. Allan Eva and David Faber were the inventors on the application that resulted in the ‘013 patent. Gordon D. Kinder was the patent attorney who handled the prosecution of said application. Upon information and belief, neither JDSI, Ocean Innovations, Allan Eva nor David Faber nor their patent attorney Gordon D. Kinder, Esq. disclosed information about their aforementioned sales of Jetfloat products to the U.S. Patent and Trademark Office (“PTO”) during the prosecution of the ‘013 patent, which underlying patent application was filed on July 11, 1995, and which issued on June 25, 1996.

70. Allan Eva and David Faber were the inventors on the application that resulted in the ‘833 patent. Gordon D. Kinder was the patent attorney who handled the prosecution of said application. Upon information and belief, neither JDSI, Ocean Innovations, Allan Eva nor David Faber nor their patent attorney Gordon D. Kinder, Esq. disclosed information about their aforementioned sales of Jetfloat products to the PTO

during the prosecution of the '833 patent, which underlying patent application was filed on June 21, 1996, and which issued on November 4, 1997.

71. Allan Eva and David Faber were the inventors on the application that resulted in the '113 patent. Gordon D. Kinder was the patent attorney who handled the prosecution of said application. Upon information and belief, neither JDSI, Ocean Innovations, Allan Eva nor David Faber nor their patent attorney Gordon D. Kinder, Esq. disclosed information about their aforementioned sales of Jetfloat products and/or prior art to the PTO during the prosecution of the '113 patent, which underlying patent application was filed on September 12, 1997, and which issued on August 3, 1999.

72. Allan Eva and David Faber were the inventors on the application that resulted in the '050 patent. Gordon D. Kinder was the patent attorney who handled the prosecution of said application. Upon information and belief, neither JDSI, Ocean Innovations, Allan Eva nor David Faber nor their patent attorney Gordon D. Kinder, Esq. disclosed information about their aforementioned sales of Jetfloat products and/or prior art to the PTO during the prosecution of the '050 patent, which underlying patent application was filed on October 29, 1997, and which issued on September 7, 1999.

73. Allan Eva and David Faber were the inventors on the application that resulted in the '106 patent. Gordon D. Kinder was the patent attorney who handled the prosecution of said application. Upon information and belief, neither JDSI, Ocean Innovations, Allan Eva nor David Faber nor their patent attorney Gordon D. Kinder, Esq. disclosed information about their aforementioned sales of Jetfloat products and/or prior

art to the PTO during the prosecution of the '106 patent, which underlying patent application was filed on July 8, 1999, and which issued on August 13, 2002.

74. The present action involves an actual dispute between Plaintiff and Defendants over Plaintiff's right to produce, offer to sell and to sell floatation products, which when assembled with a double float are in part the subject of accusation of infringement by Defendants of the claims of the '013, '833, '113, '050 and '106 patents for Floating Drive-On Dry Dock Assembly. JDSI has asserted that Plaintiff is perpetrating willful infringement of JDSI's patents.

75. The present action involves an actual dispute between Plaintiff and Defendants over Plaintiff's right to produce, offer to sell and to sell floating drive-on docks that contain one or more Versadock double floats.

76. The present action further involves an actual dispute between Plaintiff and Defendants over Plaintiff's right to produce, offer to sell and to sell floating drive-on docks that are constructed with tall and V-floats.

77. The present action further involves an actual dispute between Plaintiff and Defendants over Plaintiff's right to produce offer to sell and to sell floating drive-on docks that are constructed with all tall floats.

78. Defendants Eva and Faber and their attorney Gordon Kinder did not disclose to the Patent and Trademark Office ("PTO") the drive-on docking systems that Eva and Farber had been selling since 1993 at any time during the prosecution of each of the Eva and Farber patents that are referenced in this Complaint.

79. Defendants Eva and Faber and their attorney Gordon Kinder did not disclose to the PTO at any time during the prosecution of each of the Eva and Farber patents in suit that they considered the invention “complete” when they fixed some leaking floats prior to their first filed patent application.

80. Defendants Eva and Faber and their attorney Gordon Kinder did not disclose to the PTO at any time during the prosecution of each of the Eva and Farber patents in suit that their prior art dock assemblies that were sold prior to the critical date of July 11, 1994 (one year prior to the date that the Defendants’ first patent application was filed) include every element of the claimed invention except for heat sealed plugs.

81. Defendants Eva and Faber and their attorney Gordon Kinder did not disclose to the PTO at any time during the prosecution of each of the Eva and Farber patents in suit that their float modules that provide the benefits as claimed in their patents were inherent characteristics of the float modules invented by others.

82. Defendants Eva and Faber and their attorney Gordon Kinder have not at any time provided any plausible reason why such disclosures were not made.

83. Defendant Eva is an attorney who received a law degree from Case Western Reserve. He is an inactive member of the Ohio Bar and has testified that he is knowledgeable regarding patent law.

84. Defendants have represented that they enjoy an 85% market share for cubed drive on docks in the United States. During the period from January 1, 2003 through December 31, 2009, JDSI has claimed to have sold over 10,000 docks covered

by their patents, which yielded over \$40 million in sales. Defendant JDSI's gross profit on their above referenced sales is approximately 72%.

85. Defendant Eva has testified that the remaining 15% of the market for cubed drive on docks "are all infringers" and are therefore subject to patent infringement lawsuits that may be brought against them by JDSI.

86. There are several companies that produce and market modular floating docks. Several of these companies have elected not to market drive on docks because of the threat of lawsuit by JDSI, thus reducing the level of competition in the marketplace.

87. Defendants have in fact sued and threatened suit against several parties, many of which have gone out of business and have become financially ruined.

88. According to <http://www.jetdock.com/about-us.asp>: "The Jet Dock System and its assembly, designs and configurations depicted throughout this web site are protected by seven U.S. Patents, including U.S. Patent #5,529,013, #5,682,833, #5,931,113, #5,947,050, #6,431,106, #6,526,902, and #6,745,714. There are also pending United States and International patents. For more information on licensing and/or patent infringement clarification, please contact Jet Dock Systems, Inc." Said licensing is offered throughout the United States, including Florida. JDSI offers to sell and sells its patented dock system throughout the United States, including Florida via its website: <http://www.jetdock.com/>. Potential customers, including those located in Florida can purchase Jet Dock products directly from JDSI by either calling the JDSI phone number 1-800-538-3625 or by on line chat on JDSI's website.

89. Defendants have contacted potential customers and dealers of Plaintiff. Defendants have made statements to potential customers that VERSADOCK branded product will no longer be available for purchase. Defendants have made statements to potential customers that VERSADOCK drive-on docks cannot be sold without infringing Defendants' Patents. Defendants handed out superseded Court Orders to potential customers of VERSADOCK product at the Ft. Lauderdale boat show on October 29 through November 1, 2009.

90. At the recently completed 2010 Fort Lauderdale Boat Show Defendants' sales personnel represented to potential customers that Plaintiff will be out of business by the end of the year as a result of the JDSI action against ERA Marine in Ohio.

91. Defendants advertise on the home page of their website: "Jet Dock Systems Announces Victory in Patent Lawsuit" against Versadock and makes available on their website an actual copy of a superseded court order from the ERA Marine case.

92. Defendants have represented to potential customers that they themselves could be the subject of a lawsuit by Jet Dock if they purchase Versadock products.

93. Defendants have in fact sued customers of ERA Marine for patent infringement.

94. Defendants have received complaints relating to dangers or injuries resulting from slipping or falling into the open well found in many of Jet Dock docks.

95. Defendants Eva and Faber and their attorney Gordon Kinder had full knowledge of sales by JDSI of Jetfloat products prior to Defendants' first filed patent application. As these prior sales were the closest prior art to their alleged invention

Defendants and their attorney knew and understood that these prior sales were material to the prosecution of the application that resulted in the '013 Patent and the ensuing continuation patents. The information was deliberately withheld because they knew it would bar them from receiving a patent under 35 U.S.C. § 102(b). And the withholding of material information was done with intent to deceive as evidenced by the latter date excuse that heat sealing a leaking float constituted completion of their invention. Further, no plausible explanation whatsoever has been offered as to why JDSI prior sales were not disclosed to the PTO.

96. Upon information and belief, sometime after starting their business, Eva and Faber realized that the market for drive on docks could be quite lucrative. As stated, they realized over \$200,000 in sales in 1994, their first full year of business. By the spring of 1995 they realized that they should have applied for a patent to help protect the market. Unfortunately for them, the one year bar had passed by that time but they went ahead and filed an application for a patent anyway. Either then or at a later date (such as during the *Ocean Innovations, et al. v. Archer, Zeppelin* case) they realized that they needed to come up with a cover-up for the drive on docks that they sold prior to July 11, 1994. Because of the substantial number of impermissible commercial sales that had been made and because of the substantial similarities of the docks to the “invention” as claimed by their patents, they could not claim that the docks that they sold prior to July 11, 1994 were “experimental”. The best thing that they could come up with is to allege that their invention was not complete until they fixed leaking floats by heat sealing them.

Even if heat sealing floats somehow “completed” their invention, it does not excuse the inventors and their attorney from disclosing the most relevant prior art to the PTO.

97 Defendants Eva and Farber and their attorney Gordon Kinder have succeeded in furthering their deception through several lawsuits, including the *Ocean Innovations, et al. v. Archer* and *v. Quarterberth, ERA Marine* cases in Ohio. Never, however, have they had to answer charges of an on sale bar based upon the Defendants’ prior art dock sales. Even though evidence of the impermissible sales was disclosed by the Defendants in both the *Archer* and *Quarterberth* cases, the argument of an on sale bar based upon JDSI’s sales between October 1993 and January 1994 has not been plead or heard in the previous cases. Apparently the evidence was “hidden in plain sight” and overlooked because of Defendants’ deception of claiming their invention was “complete” when they heat sealed floats. However, just because the evidence was disclosed in previous cases does not mean it has been adjudicated as sought in this Complaint.

98 Eva and Farber and their attorney Gordon Kinder have engaged in inequitable conduct by deliberately withholding material information (the commercial sale of drive on docks prior to July 11, 1994 that are identical in all material respects to the claimed invention) which they had full knowledge of on July 11, 1995 and they withheld this information from the PTO with deliberate intent to deceive the PTO in order to receive patent protection, which has unjustly allowed defendants to garner a very profitable near monopoly in the marketplace, while at the same time their inequitable conduct has unfairly and financially ruined several legitimate would be competitors. This

inequitable conduct affects each and every of the Defendants' patent claims, all of which must be declared invalid and unenforceable.

99. In addition to an on sale bar which renders the Jet Dock patents invalid and unenforceable, Defendants further failed to disclose to the PTO that the fundamental components of their alleged invention were in fact developed by Jetfloat, which also renders the Jet Dock Patents invalid and unenforceable.

100. In particular, Defendants represent that the fundamental component of their patent claims "is basically about differential flexing". That is they claim an arrangement of floats that allows a dock assembly to flex more downward than upward. Defendants claim that this feature makes it easier for boats to climb up onto the dock, especially smaller watercraft, since the dock forms a ramp that can curve down to allow the boat to slide up an incline onto the dock.

101. The so-called differential flexing feature is created by attaching short floats to tall floats. The Defendants claim that when two or more tall floats are attached to each other the distance from the connecting tabs to the top and bottom surfaces of the float modules is approximately the same, thus allowing tall floats connected to each other to rotate downward about the same as they can rotate upward. When a short float is attached to a tall float the distance from the tab to the lower surface is less than the distance from the tab to the top surface, thus allowing a dock assembly comprised of short and tall floats to flex downward more than upward. Hence, by combining short floats and tall floats different sections of a dock will have different flexing potential.

102. In their patent applications Defendants present the differential flexing feature as though they invented it. What they failed to disclose to the PTO is that the differential flexing feature was invented by Jetfloat who developed the Jetfloat tall and short modules that the defendants used to create their alleged invention. When Defendants copied the Jetfloat modules to produce their own floats, they copied the Jetfloat design that provides for differential flexing.

103. Short floats were developed by Jetfloat in 1983 long before Defendants became Jetfloat dealers. The short floats are designed to be attached to tall floats. Therefore the means to create differential flexing as claimed in the Jet Dock patents was in fact developed and used by Jetfloat long before the alleged Jet Dock invention.

104. Defendants claim that Jetfloat does not recommend attaching short and tall Jetfloat modules together. However a dock assembly using Jetfloat tall and short floats was assembled and used during the 1984 Summer Olympics. Several other dock assemblies using Jetfloat tall and short floats had been practiced by others prior to the Defendant's alleged invention (including, of course the impermissible sales by the Defendants as described herein).

105. As with their prior sales of drive on docks that encompass all of the essential elements of the claimed invention, Defendants and their patent attorney, Gordon D. Kinder, did not disclose to the PTO that the short floats and the differential flexing feature as claimed in their invention were in fact invented by and incorporated into Jetfloat dock assemblies long before their claimed invention. By not disclosing the prior use of a combination of short and tall floats in Jetfloat dock assemblies, Defendants

created a false impression that they themselves created and/or were the first to combine short and tall floats to achieve differential flexing. Even if Defendants were unaware of earlier Jetfloat docks that combined short and tall floats at the time of the filing of their first patent application (which is unlikely) they did have knowledge of said docks during the course of the Archer and Quarterberth cases and yet failed to notify the PTO of this very material fact.

106. Defendants' representation that differential flexing is the principal intrinsic benefit to their claimed invention is a deceptive overstatement. The term differential flexing (and other such related terminology) is a term made up by the Defendants to create the impression of a more intricate invention. The actual benefit of combining short and tall floats is simply to create a sloped surface. Defendants claim to be the first to combine tall and short floats to create a ramp or sloped surface, which is not true. Notwithstanding, the use of short floats along with tall floats to create a sloped surface is both obvious and anticipated by dock assemblies where the floats on the leading edge are partially filled with water to create a sloped surface. Partially filling floats with water to create a sloped surface for boat storage docks was practiced by the Defendants and many others prior to the alleged invention.

107. The omission of material information during the prosecution of the Jet Dock Patent applications was done with a deliberate intent to deceive the PTO into believing that the Defendants invented the combination of short and tall floats. Defendants' use of the embellishing terms such as "differential flexing" to describe a dock with a sloping surface was done to further this deception. The deliberate failure to

disclose the fact that short floats and differential flexing (i.e. the ability to create a sloping dock surface) were created by Jetfloat render the Jet Dock patents invalid under 35 U.S.C. §§ 101, 102 and 103.

COUNT I
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘013 PATENT

108. UMMG hereby realleges and incorporates all preceding paragraphs.

109. Each claim of the ‘013 patent is invalid because the patent and the alleged invention therein fails to comply with the requirements of 35 U.S. C. §§ 101 et seq., including but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112.

110. Each claim of the ‘013 patent is invalid under the on-sale bar, 35 U.S.C. § 102(b), because JDSI, Eva and Faber sold Jetfloat dock assemblies that embodied the claims of the ‘013 patent prior to July 11, 1994.

COUNT II
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘833 PATENT

111. UMMG hereby realleges and incorporates all preceding paragraphs.

112. Each claim of the ‘833 patent is invalid because the patent and the alleged invention therein fails to comply with the requirements of 35 U.S. C. §§ 101 et seq., including but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112.

113. Each claim of the ‘833 patent is invalid under the on-sale bar, 35 U.S.C. § 102(b), because JDSI, Eva and Faber sold Jetfloat dock assemblies that embodied the claims of the ‘833 Patent prior to July 11, 1994.

COUNT III
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘113 PATENT

114. UMMG Marine hereby realleges and incorporates all preceding paragraphs.

115. Each claim of the ‘113 patent is invalid because the patent and the alleged invention therein fails to comply with the requirements of 35 U.S. C. §§ 101 et seq., including but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112.

116. Each claim of the ‘113 patent is invalid under the on-sale bar, 35 U.S.C. § 102(b), because JDSI, Eva and Faber sold Jetfloat dock assemblies that embodied the claims of the ‘113 patent prior to July 11, 1994.

COUNT IV
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘050 PATENT

117. UMMG hereby realleges and incorporates all preceding paragraphs.

118. Each claim of the ‘050 patent is invalid because the patent and the alleged invention therein fails to comply with the requirements of 35 U.S. C. §§ 101 et seq., including but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112.

119. Each claim of the ‘050 patent is invalid under the on-sale bar, 35 U.S.C. § 102(b), because JDSI, Eva and Faber sold Jetfloat dock assemblies that embodied the claims of the ‘050 patent prior to July 11, 1994.

COUNT V
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘106 PATENT

120. UMMG hereby realleges and incorporates all preceding paragraphs.

121. Each claim of the ‘106 patent is invalid because the patent and the alleged invention therein fails to comply with the requirements of 35 U.S. C. §§ 101 et seq., including but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112.

122. Each claim of the ‘106 patent is invalid under the on-sale bar, 35 U.S.C. § 102(b), because Jet Dock, Eva and Faber sold Jetfloat dock assemblies that embodied the claims of the ‘106 patent prior to July 11, 1994.

**COUNT VI
DECLARATORY JUDGMENT OF UNENFORCEABILITY
OF THE ‘013 PATENT**

123. UMMG hereby realleges and incorporates all preceding paragraphs.

124. UMMG alleges that the ‘013 patent is unenforceable because of each of Defendants’ failure to satisfy their duty of candor to the United States Patent and Trademark Office (“PTO”) during the prosecution of the ‘013 patent. This duty of candor rests with each inventor, each attorney who prepares or prosecutes the application and every other individual who is substantively involved in the preparation or prosecution of the application. The ‘013 patent is unenforceable because the patent was obtained by misrepresenting or withholding material information from the Patent and Trademark Office with the intent to mislead the Patent Office, in violation of 37 CFR § 1.56. The particulars of this inequitable conduct are as follows:

125. The ‘013 patent was filed on July 11, 1995, and the patent issued on June 25, 1996. The ‘013 patent is closely related to the ‘833, ‘050 and ‘106 patents

(collectively, “related Jet Dock patents”); which are divisionals of Patent Application Ser. No. 500,382. The subject matter of the related Jet Dock patents is the same as that of the ‘013 patent, namely a floating drive-on dry dock assembly.

126. Prior to the filing of the application leading to the issued ‘013 patent, Allan Eva and David Faber, the listed inventors on the ‘013 patent were dealers of Jetfloat floatation products, who assembled Jetfloat products into a floating, drive-on dry dock assemblies.

127. None of the aforementioned product information, including Jetfloat literature, invoices and assembly drawings in the possession of Allan Eva and David Faber, and including those described in Paragraphs 13-107 herein, were provided to the PTO during the prosecution of the ‘013 patent. Said Jetfloat information would be highly material to a patent examiner prosecuting the application that resulted in the ‘013 patent as they included information bearing directly on the patentability of the claims 1, 8, 9, 14 and 15 of the ‘013 patent, including the dock assembly consisting of tall and short floats and the connections between them.

128. Under 37 CFR § 1.56, a patentee has an obligation to disclose to the PTO all information known to that individual to be material to patentability. Additionally, the MPEP provides: where the subject matter for which a patent is being sought is or has been involved in litigation, the existence of such litigation and any other material information arising therefrom must be brought to the attention of the Patent and Trademark Office; such as, for example, evidence of possible prior public use or sales, questions of inventorship, prior art, allegations of ‘fraud,’ ‘inequitable conduct,’ or

violation of duty of disclosure. Such information might arise during litigation in, for example, pleadings, admissions, discovery including interrogatories, deposition, and other documents, and testimony. MPEP § 2001.06(c). Information, then, from a previous, related litigation is per se material covered by the duty of disclosure. In particular, information related to prior art, enablement and best mode is per se material under this rule, particularly when combined with a charge of inequitable conduct. Further, upon information and belief, Jet Dock and its patent attorney Gordon D. Kinder, Esq. made a deliberate decision to withhold these known material references from the Patent Office in failing to disclose this information during the prosecution of the application resulting in the '013 Patent. Jet Dock's failure to disclose the Jetfloat evidence pertaining to the floating drive-on assemblies constitutes inequitable conduct rendering the '013 patent unenforceable.

COUNT VII
DECLARATORY JUDGMENT OF UNENFORCEABILITY
OF THE '833 PATENT

129. UMMG hereby realleges and incorporates all preceding paragraphs.

130. UMMG alleges that the '833 patent is unenforceable because of each of Defendants' failure to satisfy its duty of candor to the PTO during the prosecution of the patent. This duty of candor rests with each inventor, each attorney who prepares or prosecutes the application and every other individual who is substantively involved in the preparation or prosecution of the application. The '833 patent is unenforceable because the patent was obtained by misrepresenting or withholding material information from the

PTO with the intent to mislead the Patent Office, in violation of 37 CFR § 1.56. The particulars of this inequitable conduct are as follows.

131. The '833 patent was filed on June 21, 1996, and the patent issued on November 4, 1997. The '833 patent is closely related to the '013, '050 and '106 patents

132. Prior to the filing of the application leading to the issued '833 patent, Allan Eva and David Faber, the listed inventors on the '833 patent were dealers of Jetfloat floatation products, who assembled Jetfloat products into drive-on dock assemblies.

133. None of the aforementioned product information, including Jetfloat literature, invoices and assembly drawings in the possession of Allan Eva and David Faber, and including those described in Paragraphs 13-107 herein, were provided to the PTO during the prosecution of the '833 patent. Said Jetfloat information would be highly material to a patent examiner prosecuting the application that resulted in the '833 patent as they included information bearing directly on the patentability of the claims 1 and 15 of the '833 patent, including the dock assembly consisting of tall and short floats and the connections between them.

134. Under 37 CFR § 1.56, a patentee has an obligation to disclose to the PTO all information known to that individual to be material to patentability. Upon information and belief, Jet Dock and its patent attorney Gordon D. Kinder, Esq. made a deliberate decision to withhold these known material references from the Patent Office in failing to disclose this information during the prosecution of the application resulting in the '833

patent. Jet Dock's failure to disclose the Jetfloat evidence pertaining to the floating drive-on assemblies constitutes inequitable conduct rendering the '833 patent unenforceable.

**COUNT VIII
DECLARATORY JUDGMENT OF UNENFORCEABILITY
OF THE '113 PATENT**

135. UMMG hereby realleges and incorporates all preceding paragraphs.

136. UMMG alleges that the '113 patent is unenforceable because of each of Defendants' failure to satisfy its duty of candor to the PTO during the prosecution of the patent. This duty of candor rests with each inventor, each attorney who prepares or prosecutes the application and every other individual who is substantively involved in the preparation or prosecution of the application. The '113 patent is unenforceable because the patent was obtained by misrepresenting or withholding material information from the PTO with the intent to mislead the Patent Office, in violation of 37 CFR § 1.56. The particulars of this inequitable conduct are as follows.

137. The '113 patent was filed on September 12, 1997, and the patent issued on August 3, 1999.

138. While the application leading to the issued '113 patent was still pending before the PTO, and prior to allowance, the Jet Dock '833 patent, which has an earlier filing date than the '133 patent, was the subject of patent infringement litigation commenced by Jet Dock on June 30, 1998, entitled, *Ocean Innovations, Inc., et al. v. Archer*, Case No. 5:98CV1515 (N.D. Ohio).

139. In the course of said litigation, evidence and testimony of prior art was presented, which was material to the issues of anticipation under 35 U.S.C. § 102 and obviousness under § 103.

140. None of the aforementioned product information, including those described in Paragraphs 13-107 herein, and the prior art obtained from the *Ocean Innovations, Inc., et al. v. Archer* case, was provided to the PTO during the prosecution of the '113 patent. Said information would be highly material to a patent examiner prosecuting the application that resulted in the '113 patent as they included information bearing directly on the patentability of the claims 1, 8, 15, 21 and 28 of the '113 patent, including the dock assembly consisting of tall and short floats and the connections between them.

141. Under 37 CFR § 1.56, a patentee has an obligation to disclose to the PTO all information known to that individual to be material to patentability. Upon information and belief, Jet Dock and its patent attorney Gordon D. Kinder, Esq. made a deliberate decision to withhold these known material references from the Patent Office in failing to disclose this information during the prosecution of the application resulting in the '113 patent. Jet Dock's failure to disclose the evidence from the *Ocean Innovations, Inc., et al. v. Archer* case pertaining to the floating drive-on assemblies constitutes inequitable conduct rendering the '113 patent unenforceable.

COUNT IX
DECLARATORY JUDGMENT OF UNENFORCEABILITY
OF THE '050 PATENT

142. UMMG hereby realleges and incorporates all preceding paragraphs.

143. UMMG alleges that the '050 patent is unenforceable because of each of the Defendants' failure to satisfy its duty of candor to the PTO during the prosecution of the Patent. This duty of candor rests with each inventor, each attorney who prepares or prosecutes the application and every other individual who is substantively involved in the preparation or prosecution of the application. The '050 patent is unenforceable because the patent was obtained by misrepresenting or withholding material information from the PTO with the intent to mislead the Patent Office, in violation of 37 CFR § 1.56. The particulars of this inequitable conduct are as follows:

144. The '050 patent was filed on October 29, 1997, and the patent issued on September 7, 1999. The '050 patent is closely related to the '013, '833 and '106 patents

145. While the application leading to the issued '050 patent was still pending before the PTO, and prior to allowance, the Jet Dock '833 patent, which has an earlier filing date than the '050 patent, was the subject of patent infringement litigation commenced by Jet Dock on June 30, 1998, entitled, *Ocean Innovations, Inc., et al. v. Archer*, Case No. 5:98CV1515 (N.D. Ohio).

146. In the course of the litigation, evidence and testimony of prior art was presented, which was material to the issues of anticipation under 35 U.S.C. § 102 and obviousness under § 103.

147. None of the aforementioned product information, including those described in Paragraphs 13-107 herein, and the prior art obtained from the *Ocean Innovations, Inc., et al. v. Archer* case, was provided to the PTO during the prosecution of the '050 patent. Said litigation information would be highly material to a patent

examiner prosecuting the application that resulted in the '050 patent as they included information bearing directly on the patentability of the claims 1, 3 and 6 of the '050 patent, including the dock assembly consisting of a plurality of floats, including to receive a watercraft and the connections between them.

148. Under 37 CFR § 1.56, a patentee has an obligation to disclose to the PTO all information known to that individual to be material to patentability. Upon information and belief, Jet Dock and its patent attorney Gordon D. Kinder, Esq. made a deliberate decision to withhold these known material references from the Patent Office in failing to disclose this information during the prosecution of the application resulting in the '050 patent. Jet Dock's failure to disclose the evidence from the *Ocean Innovations, Inc., et al. v. Archer* case pertaining to the floating drive-on assemblies constitutes inequitable conduct rendering the '050 patent unenforceable.

COUNT X
DECLARATORY JUDGMENT OF UNENFORCEABILITY
OF THE '106 PATENT

149. UMMG hereby realleges and incorporates all preceding paragraphs.

150. UMMG alleges that the '106 patent is unenforceable because of each of Defendants' failure to satisfy its duty of candor to the PTO during the prosecution of the Patent. This duty of candor rests with each inventor, each attorney who prepares or prosecutes the application and every other individual who is substantively involved in the preparation or prosecution of the application. The '106 patent is unenforceable because the patent was obtained by misrepresenting or withholding material information from the

PTO with the intent to mislead the Patent Office, in violation of 37 CFR § 1.56. The particulars of this inequitable conduct are as follows:

151. The '106 patent was filed on July 8, 1999, and the patent issued on August 13, 2002. The '106 patent is closely related to the '013, '833 and '050 patents.

152. While the application leading to the issued '106 Patent was still pending before the PTO, and prior to allowance, the Jet Dock '833 patent, which has an earlier filing date than the '050 patent, was the subject of patent infringement litigation commenced by Jet Dock on June 30, 1998, entitled, *Ocean Innovations, Inc., et al. v. Archer*, Case No. 5:98CV1515 (N.D. Ohio).

153. In the course of the litigation, evidence and testimony of prior art was presented, which was material to the issues of anticipation under 35 U.S.C. § 102 and obviousness under § 103.

154. None of the aforementioned product information, including those described in Paragraphs 13-107 herein, and the prior art obtained from the *Ocean Innovations, Inc., et al. v. Archer* case, was provided to the PTO during the prosecution of the '106 patent. Said information would be highly material to a patent examiner prosecuting the application that resulted in the '106 patent as they included information bearing directly on the patentability of the claims 1, 4 and 12 of the '106 patent, including the dock assembly consisting of a plurality of floats, including a craft receiving surface and the connections between them.

155. Under 37 CFR § 1.56, a patentee has an obligation to disclose to the PTO all information known to that individual to be material to patentability. Upon information

and belief, Jet Dock and its patent attorney Gordon D. Kinder, Esq. made a deliberate decision to withhold these known material references from the Patent Office in failing to disclose this information during the prosecution of the application resulting in the ‘106 patent. Jet Dock’s failure to disclose the evidence from the *Ocean Innovations, Inc., et al. v. Archer* case pertaining to the floating drive-on assemblies constitutes inequitable conduct rendering the ‘106 patent unenforceable.

COUNT XI
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF THE ‘013 PATENT

156. UMMG Marine hereby realleges and incorporates all preceding paragraphs.

157. UMMG’s sale of float products that included a double float when assembled into a dock did not infringe and is not now infringing either directly or indirectly, or literally or by application of the doctrine of equivalents any claim of the ‘013 patent.

158. UMMG’s sale of float products that included a double float when assembled into a dock has not and is not now inducing or contributing to the infringement of any claim of the ‘013 patent by others either directly or indirectly, or literally or by application of the doctrine of equivalents.

COUNT XII
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF THE ‘833 PATENT

159. UMMG hereby realleges and incorporates all preceding paragraphs.

160. UMMG's sale of float products that included a double float when assembled into a dock did not infringe and is not now infringing either directly or indirectly, or literally or by application of the doctrine of equivalents any claim of the '833 patent.

161. UMMG's sale of float products that included a double float when assembled into a dock has not and is not now inducing or contributing to the infringement of any claim of the '833 patent by others either directly or indirectly, or literally or by application of the doctrine of equivalents.

**COUNT XIII
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF THE '113 PATENT**

162. UMMG hereby realleges and incorporates all preceding paragraphs.

163. UMMG's sale of float products that included a double float when assembled into a dock did not infringe and is not now infringing either directly or indirectly, or literally or by application of the doctrine of equivalents any claim of the '113 patent.

164. UMMG's sale of float products that included a double float when assembled into a dock has not and is not now inducing or contributing to the infringement of any claim of the '113 patent by others either directly or indirectly, or literally or by application of the doctrine of equivalents.

**COUNT XIV
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF THE '050 PATENT**

165. UMMG hereby realleges and incorporates all preceding paragraphs.

166. UMMG's sale of float products that included a double float when assembled into a dock did not infringe and is not now infringing either directly or indirectly, or literally or by application of the doctrine of equivalents any claim of the '050 patent.

167. UMMG's sale of float products that included a double float when assembled into a dock has not and is not now inducing or contributing to the infringement of any claim of the '050 patent by others either directly or indirectly, or literally or by application of the doctrine of equivalents.

**COUNT XV
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF THE '106 PATENT**

168. UMMG hereby realleges and incorporates all preceding paragraphs.

169. UMMG's sale of float products that included a double float when assembled into a dock did not infringe and is not now infringing either directly or indirectly, or literally or by application of the doctrine of equivalents any claim of the '106 patent.

170. UMMG's sale of float products that included a double float when assembled into a dock has not and is not now inducing or contributing to the infringement of any claim of the '106 patent by others either directly or indirectly, or literally or by application of the doctrine of equivalents.

**COUNT XVI
EXCEPTIONAL CASE UNDER 35 U.S.C. § 285**

171. UMMG hereby realleges and incorporates all preceding paragraphs.

172. This case should be considered exceptional under 35 U.S.C. § 285 because Jet Dock has no bona fide basis to assert patents against UMMG and UMMG should be awarded its attorneys fees and all costs of suit from Jet Dock.

**COUNT XVII
VIOLATION OF FEDERAL UNFAIR COMPETITION**

173. UMMG hereby realleges and incorporates all preceding paragraphs.

174.. Defendants' acts constitute unfair methods of competition arising under the Lanham Act, 15 U.S.C. §1125(a).

175. UMMG has suffered injury as a result of Defendants' unfair, deceptive and misleading acts and practices.

176. UMMG is entitled to injunctive relief, and all other available statutory remedies including attorney fees and costs.

**COUNT XVIII
VIOLATION OF FLORIDA UNFAIR COMPETITION**

177. UMMG hereby realleges and incorporates all preceding paragraphs.

178. Defendants' acts constitute unfair methods of competition, interference with UMMG's existing and prospective business and contractual relationships.

170 UMMG has suffered injury as a result of Defendants' unfair, deceptive and misleading acts and practices.

180. UMMG is entitled to injunctive relief, and all other available common law remedies including attorney fees and costs.

**COUNT XIX
VIOLATION OF FLORIDA DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT**

181. UMMG hereby realleges and incorporates all preceding paragraphs.

182. Defendants' acts constitute deceptive and unfair trade practices arising under Fla. Stat. § 501.201, which prohibits, *inter alia*, disparaging the goods, services, or business of another by false or misleading representation of fact.

183. UMMG has suffered injury as a result of Defendants' deceptive acts and practices.

184. UMMG is entitled to injunctive relief, and all other available statutory remedies including attorney fees and costs pursuant to § 501.2105.

PRAYER FOR RELIEF

WHEREFORE, UMMG prays for judgment as follows:

A. That judgment be entered declaring the '013 patent is invalid and unenforceable and is not infringed by UMMG's sale of float products that included a double float when assembled into dock.

B. That judgment be entered declaring the '833 patent is invalid and unenforceable and is not infringed by UMMG's sale of float products that included a double float when assembled into dock.

C. That judgment be entered declaring the '113 patent is invalid and unenforceable is not infringed by UMMG's sale of float products that included a double float when assembled into dock.

D. That judgment be entered declaring the '050 patent is invalid and unenforceable and is not infringed by UMMG's sale of float products that included a double float when assembled into dock,

E. That judgment be entered declaring the '106 patent is invalid and unenforceable and not infringed by UMMG's sale of float products that included a double float when assembled into dock.

F. The Court issue an injunction against and prohibiting Defendants and anyone acting in privity or concert with them from charging infringement or instituting any legal action for infringement of Jet Dock patents against Plaintiff or anyone acting in privity with Plaintiff, including the successors, assigns, agents, suppliers, manufacturers, contractors, dealers and customers of UMMG.

G. That this case be deemed exceptional and UMMG be awarded its costs and expenses of this action including but not limited to its attorneys' fees as provided by 35 U.S.C. § 285 or otherwise.

H. That judgment be entered declaring that Defendants' acts constitute unfair methods of competition, interference with Plaintiff's existing and prospective business and contractual relationships and unfair and deceptive acts and practices, and award Plaintiff its damages in an amount to be determined.

I. The Court issue an injunction against and prohibiting Defendants and anyone acting in privity or concert with them from engaging in unfair competition, interference with Plaintiff's existing and prospective business and contractual relationships and unfair and deceptive acts and practices.

J. That UMMG be awarded such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff UMMG hereby demands a trial by jury on all the issues so triable.

RIMAS LAW FIRM, PLLC



November 23, 2010

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