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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

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AQUAWOOD LLC, a California Limited Liability Company,) Case No.: CV11-03046-SJO (AGRx)
) [Hon. S. James Otero]

Plaintiff,

vs.

WIDE EYES MARKETING, LTD, a Canada Limited Liability Company; PETER A. SGROMO, an Individual,

Defendants.

SECOND AMENDED COMPLAINT FOR:

- (1) DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NUMBER 7,046,440;
 (2) DECLARATORY JUDGMENT OF NON-INFRINGEMENT DUE TO LICENSE;
 (3) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
 (4) CALIFORNIA COMMON LAW UNFAIR COMPETITION;
 (5) UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200; AND
 (6) UNJUST ENRICHMENT/RESTITUTION.

For its Second Amended Complaint, Plaintiff Aquawood LLC ("Aquawood"), hereby alleges against Defendants Wide Eyes Marketing, Ltd. ("WEM"), and Peter A. Sgromo ("Sgromo") (hereinafter collectively "Defendants") as follows:

JURISDICTION AND VENUE

1. This is an action, *inter alia*, for Declaratory Judgment of No Patent Infringement, pursuant to 28 U.S.C. §2201, *et seq.* This Court has Subject Matter Jurisdiction of this

1 Declaratory Judgment action pursuant to 28 U.S.C. §§1331, 1338 and 2201(a).

2 2. Venue is proper pursuant to 28 U.S. C. § 1391, as a substantial part of the events
3 described herein occurred in this judicial district, and Defendants are subject to personal
4 jurisdiction in this judicial district.

5 **PARTIES**

6 3. Plaintiff is a California Limited Liability Company, with its principal place of business in
7 Los Angeles, California.

8 4. Plaintiff is a creative designer, marketer, and independent sales representative of high
9 quality toys and other goods.

10 5. On information and belief, WEM is a Limited Liability Company existing under and by
11 virtue of the laws of Canada, and is closely held and controlled by Defendant Sgromo.

12 6. On information and belief, WEM has offices in California in the cities of Alameda and
13 Oakland and conducts substantial business in the State of California, and in this Judicial
14 District.

15 7. On information and belief, Peter A. Sgromo is the President and Founder of WEM, is a
16 resident of the State of California, and conducts substantial business in the State of
17 California, and in this Judicial District.

18 8. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1
19 to 5, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff
20 will amend this complaint to allege their true names and capacities when ascertained,
21 together with such other allegations as may be appropriate.

22 9. On information and belief, all Defendants sued herein as Does are in some manner
23 responsible for the acts herein alleged.

24 10. On information and belief, at all times mentioned herein, each of the Defendants,
25 including the Defendants named herein as Does, were the alter ego, agent, and/or
26 employee of each of the remaining Defendants and in doing the things mentioned herein
27 were acting within the scope of such agency and/or employment.
28

CONTROVERSY

11. This Complaint includes a claim for declaratory judgment relief pursuant to 28 U.S.C. §2201 and §2202, in which the Plaintiffs desire a declaration of rights in the form of a judgment against the Defendants.
12. An actual controversy exists between the Parties, in view of Defendants' February 17, 2011 email to Plaintiff, which alleges that Plaintiff is infringing Defendants' Patent and which threatens Plaintiff with litigation.

FACTUAL BACKGROUND

13. On February 6, 2009, Plaintiff and Defendants entered into a License Agreement ("the Agreement") in which Defendants licensed to Plaintiff the "3D Shark Bite Water Slide" invention (hereinafter referred to as the "3D Shark Slide"). A true and correct copy of the Agreement is attached to this Complaint as Exhibit 1.
14. Plaintiff developed the 3D Shark Slide, filed U.S. Patent Application No. 12/327,760 ("the '760 Application") on the 3D Shark Slide, and assigned the '760 Application to Manley Toys Limited ("Manley"). Sgromo was one of the named inventors of the '760 Application.
15. From 2009 to the present, Plaintiff has marketed the 3D Shark Slide, and has paid royalties on sales of the 3D Shark Slide, under the terms of the Agreement, to Defendants.
16. Part 7 of the Agreement specifically provides that Plaintiff "has the right, in its sole discretion, to modify" the 3D Shark Slide, and market the modified product under the terms of the Agreement.
17. In Part 13(c) of the Agreement WEM specifically warrants that the 3D Shark Slide does "not infringe any rights held by any person or entity."
18. On September 14, 2010, the '760 Application received an Office Action from the USPTO rejecting all of the claims of the Application. The Office Action concluded that the '760 Application was obvious in view of U.S. Patent No. 7,046,440 ("the '440 Patent"), issued to Kaehr, in view of U.S. Patent No. 5,482,510, issued to Ishii. A true and correct copy of

- 1 the '440 Patent is attached to this Complaint as Exhibit 2.
- 2 19. On information and belief, Defendants, one of which was a named inventor on the '760
3 Application, had actual knowledge of the September 14, 2010 Office Action, and
4 Defendants were aware that the '760 Application was rejected in part based on the '440
5 Patent.
- 6 20. On information and belief, on December 20, 2010, three months after the '760
7 Application received the Office Action rejection, title of the '440 Patent was purportedly
8 transferred to Defendant WEM.
- 9 21. The transfer of the '440 Patent was Recorded with the USPTO in an Assignment on
10 January 3, 2011. A true and correct copy of the USPTO Assignment Webpage showing
11 the transfer of the '440 Patent to Defendant WEM is attached to this Complaint as
12 Exhibit 3. Exhibit 3 fails to show the proper chain of title of the '440 Patent from
13 inventor Jeffrey L. Kaehr to Defendants, which is why it is only upon information and
14 belief that Defendants actually own the '440 Patent.
- 15 22. In or about January 2011, Plaintiff started marketing an inflatable pool with a three-
16 dimensional graphic on the pool ("3D Lagoon Pool"), which was developed by Plaintiff
17 as a modification to the 3D Shark Slide.
- 18 23. On February 17, 2011, Defendants sent a cease and desist letter via email to Plaintiff
19 accusing Plaintiff of infringing the very recently acquired '440 Patent. A true and correct
20 copy of the February 17, 2011 email is attached to this Complaint as Exhibit 4. The
21 February 17, 2011 email alleges that both the 3D Lagoon Pool and 3D Shark Slide
22 infringe the '440 Patent.
- 23 24. In the February 17, 2011 email, Defendants also threatened to contact Plaintiff's
24 customers regarding the alleged infringement.
- 25 25. In the February 17, 2011 email, Defendants also threatened to "just take over the [3D
26 Lagoon Pool and/or 3D Shark Slide] as [they] have already proven to [Toys'R'Us] and
27 Wal-Mart [they] can source vinyl and pass all their safety certification[s]."
- 28 26. Defendants concluded the February 17, 2011 email with the threat that, should Plaintiff

1 refuse to alter its alleged infringing activity, Defendants will enforce their patent rights to
2 “their full extent.”

3 27. On information and belief, Defendants followed through on their threats and filed a
4 lawsuit against Plaintiff’s customers alleging infringement of the ‘440 Patent.

5 28. Plaintiff is under a reasonable apprehension of lawsuit from Defendants because
6 Defendants have: (1) alleged that two of Plaintiff’s current products, the 3D Shark Slide
7 and the 3D Lagoon Pool, infringe the ‘440 Patent; (2) threatened to contact Plaintiff’s
8 customers regarding the infringement allegations; and (3) threatened to file a lawsuit
9 against Plaintiff for infringement of the ‘440 Patent.

10 29. Plaintiff denies that any of Aquawood’s and Manley’s products infringe any claim of the
11 ‘440 Patent, or any other Patent allegedly owned by Defendants. As such, an actual
12 controversy now exists between Plaintiff and Defendants, as to their respective rights and
13 responsibilities with respect to the ‘440 Patent.

14 30. Plaintiff also asserts that even if the ‘440 Patent is infringed by the 3D Shark Slide or the
15 3D Lagoon Pool, Plaintiff has a license from Defendants to market these products.

16 31. To resolve the legal and factual questions raised by Defendants, and to afford relief from
17 the uncertainty that has precipitated, Plaintiff is entitled to an order stating its rights under
18 28 U.S.C. §§ 2201-02, that its services, business practices and products do not infringe
19 any patent allegedly owned by Defendants, and/or that the ‘440 Patent is invalid and/or
20 unenforceable.

21 **FIRST CLAIM FOR RELIEF**

22 (Declaratory Judgment of Non-Infringement of U.S. Patent Number 7,046,440)

23 32. An actual controversy now exists between Plaintiff and Defendants, as to their respective
24 rights and responsibilities with respect to U.S. Patent No. 7,046,440 (“the ‘440 Patent”),
25 and any other patents foreign or domestic that claim priority from the filing of the ‘440
26 Patent.

27 33. Defendants have alleged that Plaintiff has committed certain acts that infringe the ‘440
28 Patent, and Plaintiff denies that any of its products infringe any claim of the ‘440 Patent.

34. To resolve the legal and factual questions raised by Defendants and to afford relief from the uncertainty that has precipitated, Plaintiffs are entitled to an order stating its rights under 28 U.S.C. §§ 2201-02, that its services, business practices, and products do not infringe any patent allegedly owned by Defendants, and/or that the '440 Patent is invalid and/or unenforceable.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement Due to License)

35. Plaintiff re-alleges and incorporates by reference the allegations set forth above in Paragraphs 1 through 34 inclusive, as though set forth in full.

36. Plaintiff and Defendants entered into the Agreement, in which Defendants licensed to Plaintiff the 3D Shark Slide and modifications thereof.

37. Plaintiff developed the 3D Shark Slide and filed the '760 Application on the 3D Shark Slide. Defendant Sgromo was one of the named inventors of the '760 Application.

38. From 2009 to the present, Plaintiff has marketed the 3D Shark Slide. Plaintiff has fulfilled its obligations under the Agreement, including the payment of royalties to Defendants on the sales of the 3D Shark Slide.

39. On September 14, 2010, the USPTO rejected all the claims of the '760 Application, based in part of the '440 Patent. Defendants, one of which was a named inventor of the '760 Application, had actual knowledge that the '760 Application was rejected in part based on the '440 Patent.

40. On information and belief and in an apparent attempt to circumvent the Agreement, Defendant Sgromo purchased the '440 Patent and purportedly transferred the '440 Patent to Defendant WEM.

41. In or about January 2011, Plaintiff started distributing the 3D Lagoon Pool, which is a modification to the 3D Shark Slide under Part 7 of the Agreement.

42. On February 17, 2011, Defendants sent a cease and desist letter via email to Plaintiff accusing Plaintiff of infringing the very recently acquired '440 Patent. On information and belief, Defendants eventually followed through on their threats and filed a lawsuit

1 against Plaintiff's customers alleging infringement of the '440 Patent.

2 43. Part 7 of the Agreement specifically provides that Plaintiff has the right to modify the 3D
3 Shark Slide. Because the 3D Lagoon Pool is a modification of the 3D Shark Slide under
4 Part 7 of the Agreement, Plaintiff has a valid license to manufacture, distribute, and sell
5 the 3D Lagoon Pool. Plaintiff's 3D Lagoon therefore does not infringe any claim of the
6 '440 Patent under the terms of the Agreement.

7 44. To resolve the legal and factual questions raised by Defendants, and to afford relief from
8 the uncertainty that has precipitated, Plaintiff is entitled to declaratory judgment that
9 Plaintiff's 3D Lagoon and 3D Shark Slide do not infringe the '440 Patent under Part 7 of
10 the Agreement.

11 **THIRD CLAIM FOR RELIEF**

12 (Intentional Interference With Prospective Economic Advantage)

13 45. Plaintiff re-alleges and incorporates by reference the allegations set forth above in
14 Paragraphs 1 through 44 inclusive, as though set forth in full.

15 46. Plaintiff has and had an expectancy in continuing and advantageous economic
16 relationships with current and prospective purchasers of the 3D Lagoon Pool, 3D Shark
17 Slide, and works derived therefrom.

18 47. These relationships contained the probability of future economic benefit in the form of
19 profitable sales of the 3D Lagoon Pool and 3D Shark Slide. Had Defendants refrained
20 from engaging in the unlawful and wrongful conduct described in this complaint, there is
21 a substantial probability that Plaintiff would have initiated or expanded contracts with
22 other potential customers to promote the 3D Lagoon Pool and 3D Shark Slide.

23 48. Defendants were aware of these economic relationships and intended to interfere with
24 and disrupt them by purchasing the '440 Patent and wrongfully filing suit against
25 Plaintiff for patent infringement of the 3D Lagoon Pool and 3D Shark Slide even though
26 Part 7 of the Agreement between Plaintiff and Defendant allowed Plaintiff to develop,
27 manufacture, and sell the 3D Lagoon Pool and 3D Shark Slide.

28 49. Defendants' allegations of patent infringement of the 3D Lagoon Pool and 3D Shark Slide

1 are objectively baseless and were made in bad faith.

2 50. As a direct and proximate result of Defendants' actions, Plaintiff has suffered economic
3 harm, including, but not limited to, loss of profits from sales to current or potential
4 customers of the 3D Lagoon Pool and 3D Shark Slide. Defendants' wrongful conduct
5 was as substantial factor in causing this harm.

6 51. Unless Defendants are restrained by injunctive and declaratory relief, their actions are
7 likely to recur and will cause Plaintiff irreparable injury for which there is no adequate
8 remedy at law.

9 52. Defendants' interference with Plaintiff's prospective economic advantage with its current
10 and future customers, as described above, was willful, malicious, oppressive, and in
11 conscious disregard of Plaintiff's rights, and Plaintiff is therefore entitled to an award of
12 punitive damages to punish their wrongful conduct and deter future wrongful conduct.

13 **FOURTH CLAIM FOR RELIEF**

14 (California Common Law Unfair Competition)

15 53. Plaintiff re-alleges and incorporates by reference the allegations set forth above in
16 Paragraphs 1 through 52 inclusive, as though set forth in full.

17 54. The acts and conduct of Defendants alleged above in this Complaint constitute unfair
18 competition pursuant to the common law of California.

19 55. Defendants have engaged in unfair trade practices and unfair competition in connection
20 with purchasing the '440 Patent and willfully filing suit against Plaintiff for patent
21 infringement despite Plaintiff's license to practice the 3D Lagoon Pool and 3D Shark
22 Slide.

23 56. Defendants allegations of patent infringement of the 3D Lagoon Pool and 3D Shark Slide
24 are objectively baseless and were made in bad faith.

25 57. Defendants' acts and conduct are likely to interfere with Plaintiff's economic
26 relationships with current and prospective purchasers of the 3D Lagoon Pool and 3D
27 Shark Slide in violation of Plaintiff's rights under the common law of unfair competition
28 of the State of California.

58. Defendants' acts and conduct as alleged above have damaged and will continue to damage Plaintiff's economic relationships and have resulted in losses to Plaintiff and an illicit gain of profit to Defendants from royalties paid in the Agreement.

FIFTH CLAIM FOR RELIEF

(Unfair Competition – Cal. Bus. & Prof. Code § 17200)

59. Plaintiff re-alleges and incorporates by reference the allegations set forth above in Paragraphs 1 through 58 inclusive, as though set forth in full.

60. Defendants have engaged in a pattern of unlawful, unfair, deceptive, and fraudulent business practices, contrary to public policy, based upon objectively baseless allegations of patent infringement and in bad faith, by interfering with business relationships, and other illegal acts and practices alleged, all in an effort to gain unfair competitive advantage over Plaintiff. These unlawful business acts or practices were committed pursuant to business activity related to development, manufacture, and sell of the 3D Lagoon Pool and 3D Shark Slide.

61. The acts and conduct of Defendants constitute fraudulent, unlawful, and unfair competition as defined by California Bus. & Prof. Code §§ 17200, *et seq.* Moreover, Defendants' conduct constitutes unfair competition under California Law.

62. Defendants have improperly and unlawfully taken commercial advantage of the 3D Lagoon Pool and 3D Shark Slide in violation of the Agreement. In light of Defendants' conduct, it would inequitable to allow Defendants to succeed in their patent infringement suit even though Plaintiff has a valid license pursuant to the Agreement.

63. As a direct and proximate cause of the aforementioned unfair and unlawful acts and practices, Defendants' conduct, as alleged herein, has interfered with Plaintiff's economic relationships and, consequently, constitutes a fraudulent business act or practice within the meaning of §17200, *et seq.*, of the California Business and Professions Code. Defendants' unfair business practices have unjustly minimized Plaintiff's competitive advantage and have caused and are causing Plaintiff to suffer damages. These wrongful acts have directly and proximately caused Plaintiff substantial injury, including loss of

1 customers, loss of goodwill, dilution, confusion of existing and potential customers,
2 injury to reputation, and diminution of the value of Plaintiff's services. Unless
3 Defendants are restrained from the unfair, unlawful, and/or fraudulent business practices
4 and unfair competition described herein, Plaintiff will continue to be irreparably harmed.

5 64. Plaintiff is informed and believes, and thereon alleges, that Defendants acquired from
6 Plaintiff royalties derived from the Agreement and profits and benefits amounting to a
7 substantial sum of money in this pattern of unlawful, unfair, and/or fraudulent business
8 acts and practices set forth in the preceding paragraphs of this Complaint, all to the
9 detriment of Plaintiff. This unjust enrichment continues to occur as Defendants continue
10 to engage in said unlawful, unfair, and/or fraudulent business acts and practices.

11 65. As a result, of such unfair competition, Plaintiff has also suffered irreparable injury and,
12 unless Defendants are enjoined from such unfair competition, will continue to suffer
13 irreparable injury, whereby Plaintiff has no adequate remedy at law.

14 66. Defendants committed these unfair business practices within one year prior to the filing
15 of this Complaint, and are continuing to commit these acts to this day.

16 67. Pursuant to California Business and Professions Code §17203, Plaintiff is entitled to
17 temporary restraining orders, restitution, disgorgement of Defendants' profits, and
18 preliminary and permanent restraining orders, restitution, and preliminary and permanent
19 injunctions against the behavior as alleged hereinabove of Defendants, their agents,
20 employees, representatives, and all persons acting in concert with them from engaging in
21 further acts of unfair competition and unfair business practices.

22 68. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive
23 relief against the Defendants, and each of them, and anyone associated with them, and
24 anyone who acts in concert with them, to restrain further acts of unfair competition and,
25 after trial or summary judgment, to recover any damages proven to have been caused by
26 reason of Defendants' aforesaid acts of unfair competition, and to recover enhanced
27 damages and attorneys' fees, based upon the willful, intentional, and/or grossly negligent
28 activities of the Defendants.

69. Pursuant to California Business & Professions Code Section 17203, Defendants are required to disgorge and restore to Plaintiff all profits and property acquired by means of Defendants' unfair competition with Plaintiff. Defendants should be compelled to permit Plaintiff to develop, manufacture, and sell the 3D Lagoon Pool and 3D Shard Slide in violation of California Business & Profession Code § 17200 *et seq.*, and should be enjoined from further unlawful, unfair, and deceptive business practices

SIXTH CLAIM FOR RELIEF

(Unjust Enrichment/Restitution)

70. Plaintiff re-alleges and incorporates by reference the allegations set forth above in Paragraphs 1 through 69 inclusive, as though set forth in full.

71. Defendants unjustly received benefits at the expense of Plaintiff through their wrongful conduct, including Defendants' interference with Plaintiff's business relationships, which took substantial time and money for Plaintiff to develop. Defendants continue to unjustly retain these benefits at the expense of Plaintiff. It would be unjust for Defendants to retain any value they obtained as a result of their wrongful conduct.

72. Plaintiff is accordingly entitled to full restitution of all amounts in which Defendants have been unjustly enriched at Plaintiff's expense.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the following relief and judgment be granted against Defendants, as follows:

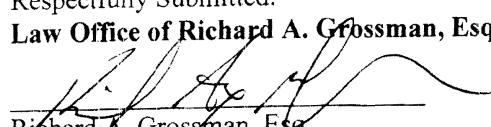
- A. For a judicial determination and order declaring that none of Plaintiff's products infringe any patent allegedly owned by Defendants, and/or that the '440 Patent is invalid and/or unenforceable.
- B. For an order enjoining Defendants and their agents and attorneys from further asserting patent rights against Plaintiffs and/or its customers.
- C. For an order awarding Plaintiff punitive damages in a sum to be determined at trial on the basis of Defendants' intentional interference with Plaintiff's prospective economic advantage;

- 1 D. For an order awarding restitution and disgorgement of all ill-gotten gains unjustly
2 obtained and retained by Defendants through the acts complained of here;
3 E. For a judgment against Defendants that they have engaged in unfair methods of
4 competition in violation of California common law; and otherwise injured the business
5 reputation and business of Plaintiff by Defendants' acts and conduct set forth in this
6 Complaint;
7 F. For a judgment that Defendants be required to pay over to Plaintiff damages suffered by
8 Plaintiff as a consequence of said acts complained of herein, and that those damages be
9 trebled as interference with economic relations and unfair business practices are
10 intentional, deliberate, and willful, together with costs and interest;
11 G. For the recovery of Plaintiff's full costs and reasonable attorneys fees; and
12 H. For such additional and further relief in law and equity, as the court may deem just and
13 proper.

14 Respectfully Submitted.

15 **Law Office of Richard A. Grossman, Esq.**

16 Dated: April 23, 2012

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Richard A. Grossman, Esq.

18 *Counsel for Plaintiff Aquawood, LLC.*
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2001 Shwartz Inc. v
#105
Winnipeg, CA 94501

LICENSE AGREEMENT

This LICENSE AGREEMENT ("the agreement") is made and entered into the 6th day of February, 2009, by and between Wide Eyes Marketing Ltd., Limited Liability Corporation in Vancouver, British Columbia CANADA with offices located at #203-2208 Carroll St., Oakland, CA, 94606 ("Licensor") and Aquawood LLC, a California corporation, having its principal place of business at 2229 Barry Ave. Los Angeles, CA 90064 ("Licensee").

WHEREAS, Licensor has invented and/or created, and believes that it is the sole and exclusive owner of all rights, including without limitation patent rights, trademarks, trade secrets, and copyrights in certain technology;

WHEREAS, Aquawood desires to obtain a license to the sole and exclusive rights to manufacture, have manufactured, market, promote, advertise, use, offer to sell, sell and distribute such certain technology;

NOW, THEREFORE, in consideration of the performance of the mutual covenants herein contained, it is agreed as follows:

1. LICENSE GRANT

(a) "Product" means the technology entitled the 3D SHARK BITE WATER SLIDE that is described and depicted on Exhibit A attached hereto and incorporated herein by reference.

(b) Licensor grants to Licensee the sole and exclusive rights (including without limitation all patent, trade secret, copyright, trademark, and other intellectual property rights), throughout the world, to manufacture, have manufactured, market, promote, advertise, use, offer to sell, sell and distribute the Product and any extensions, modifications or improvements thereto; and, in addition, grants to Licensee the sole and exclusive rights, throughout the world, to manufacture, have manufactured, market, promote, advertise, use, offer to sell, sell and distribute any invention which is embodied in the Product or which is the subject of any patents to issue from any patent applications which have been or may be filed covering all or any portion of the Product Licensor also grants to Licensee all merchandising rights in the Product including but not limited to the packaging, trademarks and copyrights.

(c) Licensor grants to Licensee the right to sublicense, throughout the world, all rights granted in Paragraph (b) of this Section.

2. PATENT/TRADEMARK/COPYRIGHT PROTECTION

(a) If Licensee in its sole discretion considers it necessary or desirable to obtain patent protection in the United States or any other country for the Product, Licensee shall notify Licensor of that decision and Licensor shall promptly execute any related patent application and return it to Licensee or Licensee's designated representative for filing. Licensee shall, during the term of this Agreement, pay the costs of prosecuting and maintaining any patent it requests for the Product. Licensor shall cooperate as reasonably requested by Licensee in obtaining patent protection requested by Licensee

(b) Licensor shall assign to Licensee any patent application or patent claiming the Product, or any aspects thereof, for the term of this Agreement.

(c) All trademarks and copyrights related to the Product and developed, created, or originated by the Licensor are hereby assigned to Licensee, and the Licensor agrees to execute any other documents necessary to effect or perfect the assignment of such trademarks and copyrights. All trademarks and copyrights related to the Product and developed, created, or originated by Licensee shall be the sole property of Licensee. Licensee is solely responsible, at its expense, for securing adequate protection for trademarks and copyrights related to the Product.

(d) Nothing contained in this Agreement shall require Licensee to seek patent or other protection for the Product except in Licensee's sole and absolute discretion.

3. ROYALTIES.

(a) "Net Wholesale Sales" shall mean Licensee's gross sales (i.e., the gross invoice amount billed customers) of Licensed Products, less any and all freight, discounts, allowances, credits and returns attributable to the Licensed Products. No other costs incurred directly or indirectly in the manufacturing, selling, advertising, and distribution of the Licensed Products shall be deducted nor shall any deduction be allowed for any uncollectible amounts or allowances. Total discounts, exclusive of returned or rejected items shall not exceed in the aggregate ten percent (10%) of gross sales based on a calendar year period. Net Wholesale Sales do not include products which Aquawood contributes to any charitable or like organization or institution and no royalties shall be payable with respect to any such contribution.

(b) ~~Product~~. Licensee shall pay to Licensor royalties of one percent (1%) of Net Wholesale Sales by Licensee of the Product during the term of this Agreement.

(c) ~~Sublicensees~~. Should Licensee or any affiliate, subsidiary or controlled company grant any approved sublicensees, Licensee shall pay Licensor TWENTY PERCENT (20%) of the gross income received by Licensee from such sublicensees. Licensee further agrees to pay Licensor 20% of any lump sum payment or advance against royalties received by Licensee from a sublicense at such time as the payment or advance is received by Licensee.

(d) Sales by Licensee and its affiliates, associates, or subsidiaries to one another shall not be deemed Net Wholesale Sales.

4. **ADVANCE.** Upon execution of this Agreement, Licensee shall pay to Licensor \$ 1.00. Further, upon Licensee's determination in its sole discretion, that it can produce Approved Samples.

5. **PAYMENTS.** Starting with the first calendar quarter in which sales of the Product commence, royalty payments due, under Section 3 hereof shall be calculated and paid quarterly and shall be due thirty (30) calendar days after the end of each calendar quarter for the previous quarter. Each royalty payment shall be accompanied by a written report, setting forth all information necessary for the calculation of such payment. Royalty payments on foreign sales shall be calculated and remitted in U.S. Dollars, net of any withholding taxes imposed by said country, using the prevailing exchange rate on the date the remittance is issued. Written reports shall be sent via e-mail to Licensor at psider@wideveasmarketing.com. Royalty payments shall be directly wired into Licensor's Account or paid by check to:

HSBC Bank Canada
888 West Georgia St.
Vancouver, B.C.
V6C-3G1
Canada
Account Name: Wide Eyes Marketing Ltd.
Account #: 270-074244-070
Swift Code: HKBCCATT

Or paid by check to:

Wide Eyes Marketing Ltd.
c/o Peter Saroma
2208 Carroll St., #203
Oakland CA
94606

6. **RECORDS.** Licensee shall keep and maintain complete and accurate records reflecting the information necessary to verify the accuracy of all royalty payments, and shall allow representatives of Licensor, upon at least ten (10) days prior written notice, during normal business hours and at reasonable intervals, but in no event more than once per year, to inspect and make extracts or copies of such records for the purpose of ascertaining the correctness of such payments. Licensor shall bear the full cost and expense of such audit, unless a discrepancy in excess of five percent (5%) in favor of Licensor is discovered, in which event Licensee shall bear the full cost and expense of such audit. Any challenge by Licensor to the accuracy of any payment of Licensee must be made by written notice from Licensor to Licensee within two (2) years from the date of the challenged payment.

7. **PRODUCT MODIFICATION**

(a) Licensee has the right, in its sole discretion, to modify the Product including, without limitation, the form of the Product, and to manufacture, promote, and sell the Product as modified. If such modification or change is later incorporated in an improved or modified product by Licensee, such improved product shall be a Licensed Product subject to the payment of a Royalty in accordance with the terms thereof. Licensee shall be the owner during and after the term of this Agreement of all intellectual property rights in any modifications, improvements, and enhancements to the Product made by Licensee. If Licensee (subject to Licensor's prior written approval and consent) incorporates any dominant feature of the Licensed Product in other products, such other products shall be a Licensed Product subject to the payment of a Royalty in accordance with the terms hereof.

(b) During the term of this Agreement, Licensor shall disclose to Licensee any product line extensions, modifications, or improvements to the Product developed by, or known to, Licensor.

8. **IDEMNITY**

(a) Licensee agrees to defend, indemnify and hold Licensor, its officers, directors, agents and employees, harmless against all costs, expenses and losses (including reasonable attorneys' fees) incurred by Licensor through claims of third parties against Licensor based on the manufacture, sale, advertising, promotion or other use

of the Licensed Products including, but not limited to, actions founded on product liability, but expressly excluding actions founded on intellectual property rights unless the intellectual property rights infringement is a result of a modification or change to the Product created by Licensee.

(b) Licensor agrees to indemnify and hold harmless Licensee, its officers, directors, agents, and employees from any loss arising from any legal action commenced against Licensee based on a claim that the licensed product infringes on a United States patent, copyright, trademark, or other recognized intellectual property right of a third party. In the event that the legal action is commenced against the Licensee, Licensor agrees that Licensee shall control the defense of the action and shall have the right to settle or otherwise terminate the proceedings related to that action. No indemnification by the Licensor shall be required where the claim of infringement is based on changes made by the Licensee to the licensed product.

9. **INFRINGEMENT.** Licensor shall promptly notify Licensee of any infringements, copies, or imitations by others which are like or similar to the Product. In the event of infringement of any patent or other right covering the Product, Licensee shall have the exclusive right to prosecute an infringement suit, in its name or in the name of Licensor, if appropriate, as determined in the sole discretion of Licensee after notice to Licensor of that intention. Licensee may then select legal counsel and shall bear all of the legal fees and costs, and shall retain all recovery.

10. **SELL-OFF.** Upon termination of this Agreement, Licensee shall have the right to dispose of any Products which are on hand or in-process for a period of one hundred eighty (180) days following such termination. Any Products sold or distributed by Licensee during the sell-off period shall be subject to the royalty set forth in Section 3 hereof.

11. **TERM.** This Agreement shall begin when executed by all parties and shall continue until terminated according to the provisions herein.

(a) This Agreement may be terminated by either party upon thirty (30) days written notice to the other party in the event of a breach of material provision of this Agreement by the other party, provided that, during the thirty (30) day period, the party in default fails to cure such breach or fails to commence cure and diligently pursue such cure.

(b) Licensee shall have the right to terminate this Agreement, in its sole discretion, upon thirty (30) days written notice to Licensor. In addition, Licensee shall have the right to immediately terminate this Agreement, with no obligation on the part of Licensee to pay any royalties under Section 3, upon written notice to Licensor, if Licensee determines, in its sole discretion, that it cannot produce safety-approved production samples of the Product ("Approved Samples").

(c) Licensee shall have the right to immediately terminate this Agreement upon written notice to Licensor, and with no further obligation on the part of Licensee to pay any royalties under Section 3 herein, if Licensor breaches any of the representations and warranties set forth in Section 13 herein. In the event Licensee terminates the Agreement pursuant to this Paragraph 12(c), Licensor shall immediately reimburse Licensee for any advance payments of royalties made by Licensee to Licensor pursuant to Section 4 herein that have not yet accrued pursuant to Section 3 herein.

(d) In the event of termination of this Agreement pursuant to this Section 12, all sums due hereunder to Licensor shall be due and payable within sixty (60) days. All rights herein granted to Licensee, except as otherwise provided herein, shall automatically revert to Licensor which shall be free to exploit same without any further obligation to Licensee.

(f) Upon termination of this Agreement for any reason, the provisions of Sections 8, 9, 10, 12, 13, 14 and 15 (as applicable) shall remain in full force and effect in accordance with their terms. Provisions of other Sections which, by their nature, must remain in effect beyond the termination of this Agreement shall survive.

(g) Immediate Right of Termination of License. Licensor shall have the right to immediately terminate this Agreement by giving notice to Licensee in the event that Licensee does any of the following:

(1) fails to obtain or maintain product liability insurance in the amount and of the type provided for herein; or

(2) files a petition in bankruptcy or is adjudicated a bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or if the Licensee discontinues or dissolves its business or if a receiver is appointed for the Licensee or for the Licensee's business and such receiver is not discharged within thirty (30) days.

(3) fails to meet the Product Introduction Date as specified herein or if, commencing February 1, 2009, Licensee fails to sell the Licensed Products in reasonable commercial quantities during any calendar year.

(4) fails to cure any non-payment of owed royalties within thirty days of receipt of notice from Licensor of such non-payment.

13. REPRESENTATIONS AND WARRANTIES

(a) Licensor represents and warrants that it owns the rights and powers granted to Licensee under this Agreement.

(b) Licensor represents and warrants that no person or entity has asserted, is asserting or has threatened to assert to Licensor any ownership interest in the Product.

(c) Licensor represents and warrants that, to the best of its knowledge, the Product, in the form originally submitted to Licensee by Licensor, together with any changes made by Licensor, do not infringe any rights held by any person or entity.

(d) Licensor represents and warrants that it has independently and solely conceived and developed the Product without derivation from any other product and that Licensor is under no obligation, either expressed or implied, to any person or entity that would restrict or limit the ability of Licensor to enter into this Agreement with Licensee or which would cause the Product to infringe the rights of any person or entity. Licensor has legal right, power and authority to license and transfer the rights hereunder and to enter into and perform its obligations under this Agreement. Licensor represents and warrants that the Product does not use or incorporate any trade secrets or copyrights of third parties and that Licensee's practice of the license confirmed herein shall not result in copyright infringement or trade secret misappropriation.

(e) Licensee represents and warrants that it will use its reasonable best efforts to promote, market, advertise, sell and distribute the Licensed Products in the Licensed Territory.

(f) Licensee shall introduce the Licensed Products on or before October, 2008 at the Toy Industry Association's Spring Preview in Dallas, TX. This is a material provision of the Agreement.

14. **LIMITATION ON LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF GOODWILL) ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

15. **INSURANCE.** Licensee shall, throughout the Term of the Agreement, obtain and maintain at its own cost and expense from a qualified insurance company licensed or authorized to do business in California, standard Product Liability Insurance naming Licensor, and Licensor's heirs, assigns and legal representatives, as additional insured. Such policy shall provide protection against all claims, demands, and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Products or any material used in connection therewith or any use thereof the amount coverage shall be Two Million Dollars (\$2,000,000). The policy shall provide for thirty (30) days notice to Licensor from the insurer in the event of any modification, cancellation or termination thereof. Licensee agrees to furnish Licensor a current certificate of insurance evidencing same, and in no event shall Licensee manufacture, distribute or sell the Licensed Products prior to receipt by Licensor of such evidence of insurance.

16. **SAMPLES.** Licensee shall supply to Licensor three (3) samples of each Licensed Product no more frequently than once per calendar year, at no charge to Licensor.

17. **NOTICES.** Any notice required to be given pursuant to this Agreement

shall be in writing and mailed by certified or registered mail, return receipt requested or delivered by a national overnight express service, to the parties at the addresses set forth herein above, or at such other address as provided by party hereto.

18. **MISCELLANEOUS**

(a) Confidential Terms Licensor shall not disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of Licensee.

(b) Exhibits: Modifications to Agreement. Any material contained in an exhibit to this Agreement shall be incorporated in this Agreement. From time to time, the parties may modify this Agreement, including the information specified in the exhibits. Such modifications, if in writing and executed by all parties, shall be incorporated in this Agreement and shall be binding on the parties.

(c) Governing Law. This Agreement shall be governed by and construed under the laws of the State of California and the United States without regard to conflicts of laws provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods.

(d) Dispute Resolution. Except where injunctive relief is sought pending arbitration, the parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement that are not resolved by their mutual agreement shall be submitted to final and binding arbitration before JAMS (Judicial Arbitration and Mediation Services/Endispute, or its successor, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq. Either party may commence the arbitration process called for in this Agreement by filing a written demand for arbitration with JAMS/Endispute's Comprehensive Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The parties will cooperate with JAMS/Endispute and with one another in selecting an arbitrator from JAMS/Endispute's panel of neutrals, and in scheduling the arbitration proceedings, such proceedings to be conducted in Los Angeles, California. The parties covenant that they will participate in the arbitration in good faith, and that they will share equally in its costs. The provisions of this Paragraph (d) may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

(e) Assignment. Licensor shall not assign or transfer, in whole or in part, this Agreement or its rights and obligations hereunder without the prior written consent of Aquawood.

(f) Agreement Binding on Successors. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

(g) No Joint Venture. Nothing contained herein shall be construed as a joint venture or shall make one party the agent of the other party.

(h) Headings. The headings used in this Agreement are for the convenience of the parties and for reference purposes only and shall not form a part or affect the interpretation of this Agreement.

(i) Integration. This Agreement constitutes the entire understanding of the parties, revokes and supersedes all prior agreements between the parties, and is intended as a final expression of their Agreement. This Agreement shall take precedence over any other documents which may be in conflict with said Agreement.

(j) Severability. If any part of this Agreement shall be declared invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity of the balance of this Agreement.

(k) Force Majeure. In the event of a force majeure event which prevents or hinders performance hereunder, no default or liability for non-compliance occasioned thereby during the continuance thereof shall exist or arise.

(l) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto will be deemed to be an original. Notwithstanding the foregoing, the parties will deliver original execution copies of this Agreement to one another as soon as practicable following execution thereof.

(m) Execution. The submission of this form of license agreement for examination and/or execution does not constitute an option and shall vest no right in either party. This document will become effective as a license agreement only upon execution and delivery thereof by all the parties hereto.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

LICENSEE:
Aquawood LLC.

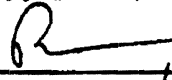
LICENSOR:
WIDEYES MARKETING

By:

Name: BRIAN DUBINSKY

Title: PRESIDENT

Dated:


3/5/09

By:

Name: Peter A. Sgromo

Title: President/Founder

Dated: 02-07-2009

US007046440B1

(12) **United States Patent**
Kaehr

(10) **Patent No.:** **US 7,046,440 B1**
(45) **Date of Patent:** **May 16, 2006**

(54) **3-D VISION SYSTEM FOR SWIMMING POOLS**

(76) **Inventor:** **Jeffrey L. Kaehr**, 5798 E. 1000 South, LaFontaine, IN (US) 46940

(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) **Appl. No.:** **10/238,181**

(22) **Filed:** **Sep. 10, 2002**

(51) **Int. Cl.**
G02B 27/22 (2006.01)

(52) **U.S. Cl.** 359/464; 359/472; 359/477

(58) **Field of Classification Search** 359/464, 359/472, 477; 4/494
See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

4,620,770 A 11/1986 Wexler

5,101,269 A 3/1992 Shelley et al.
5,271,106 A 12/1993 McClish et al.
5,363,151 A * 11/1994 Biays et al. 351/43
2001/0022563 A1 * 9/2001 Ishikawa 345/9

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* cited by examiner

Primary Examiner—Mark A. Robinson

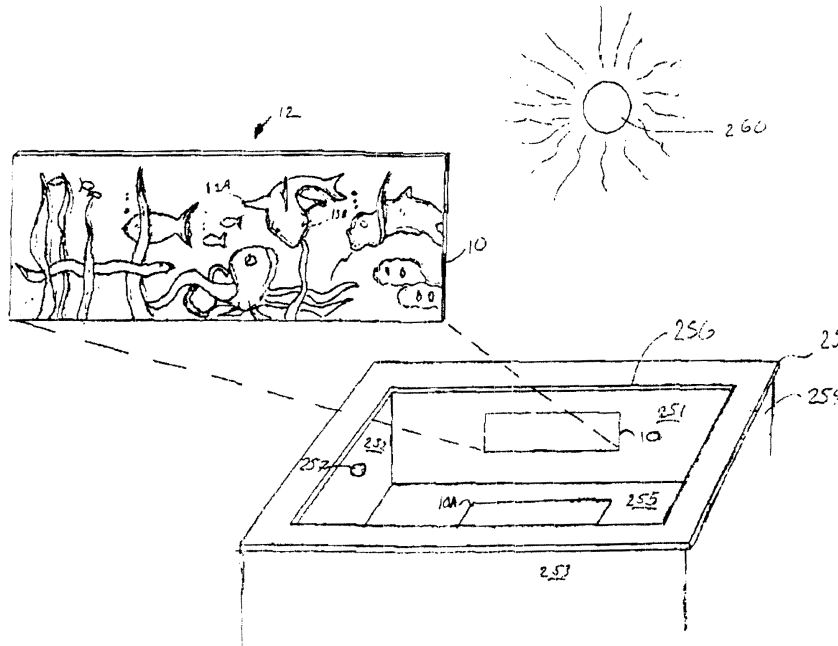
Assistant Examiner—Lee Fineman

(74) *Attorney, Agent, or Firm* Paul W. O'Malley; Susan L. Firestone

(57) **ABSTRACT**

A decorative treatment for swimming pools provides underwater anaglyphs for adhesion to the pool sides and filtering stereoscopic underwater goggles for use by swimmers in viewing the anaglyphs.

9 Claims, 5 Drawing Sheets

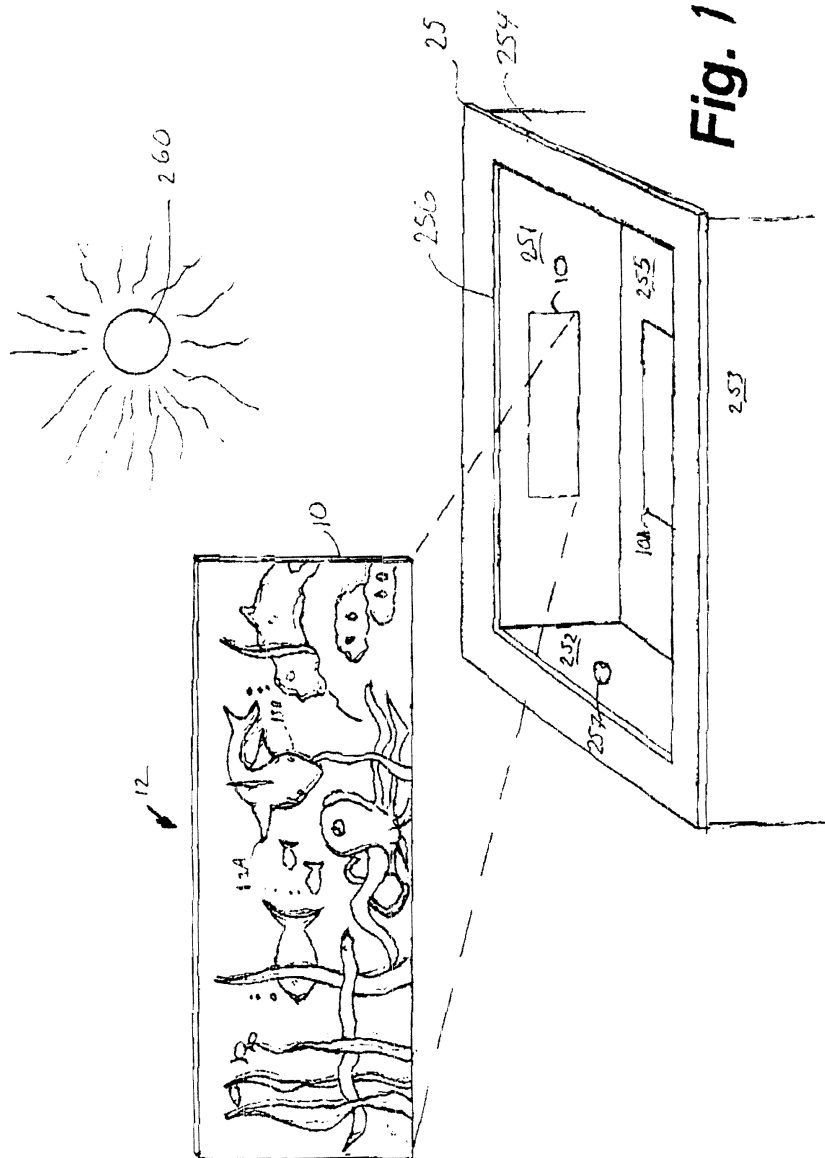


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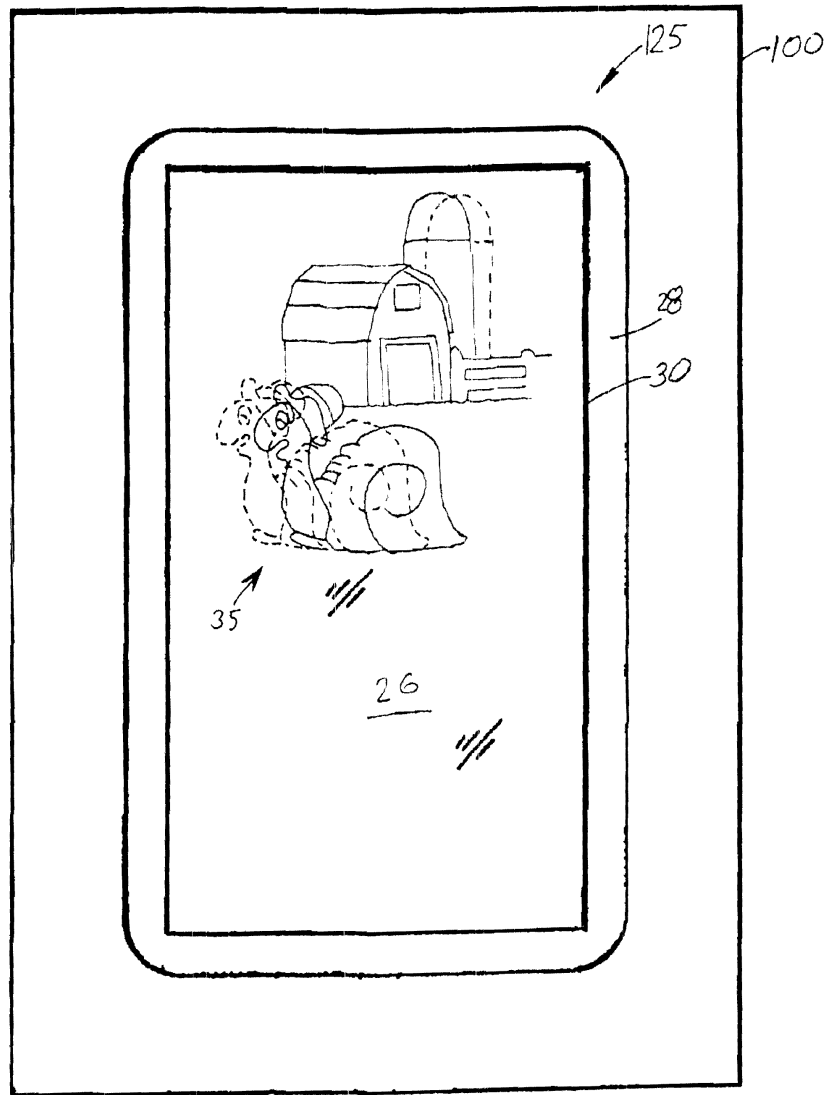


Fig. 2

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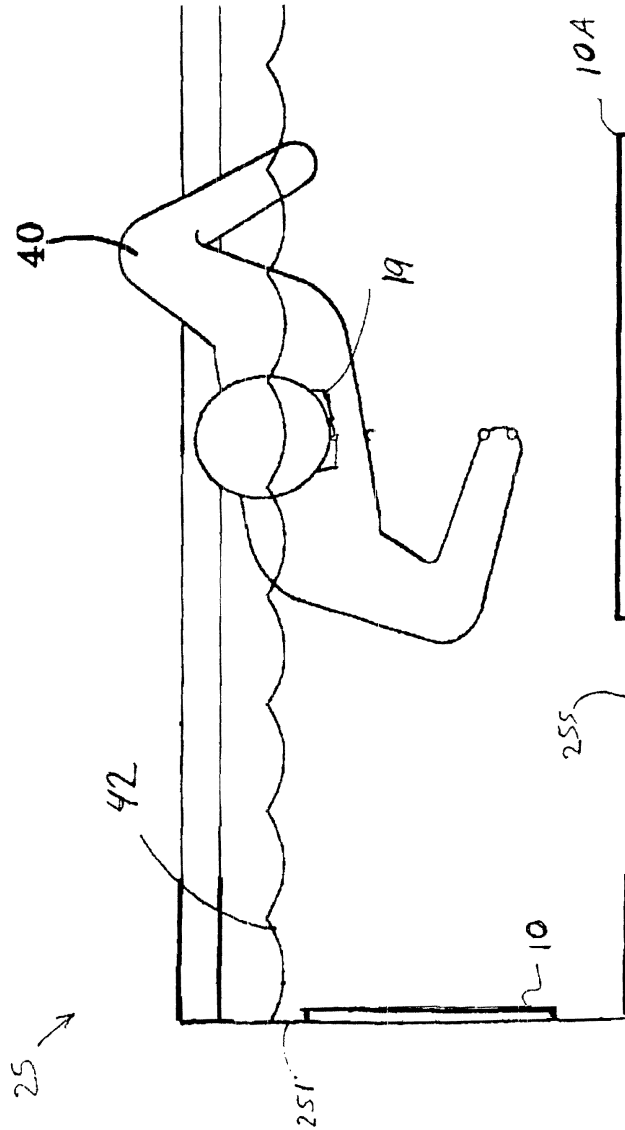


Fig. 3

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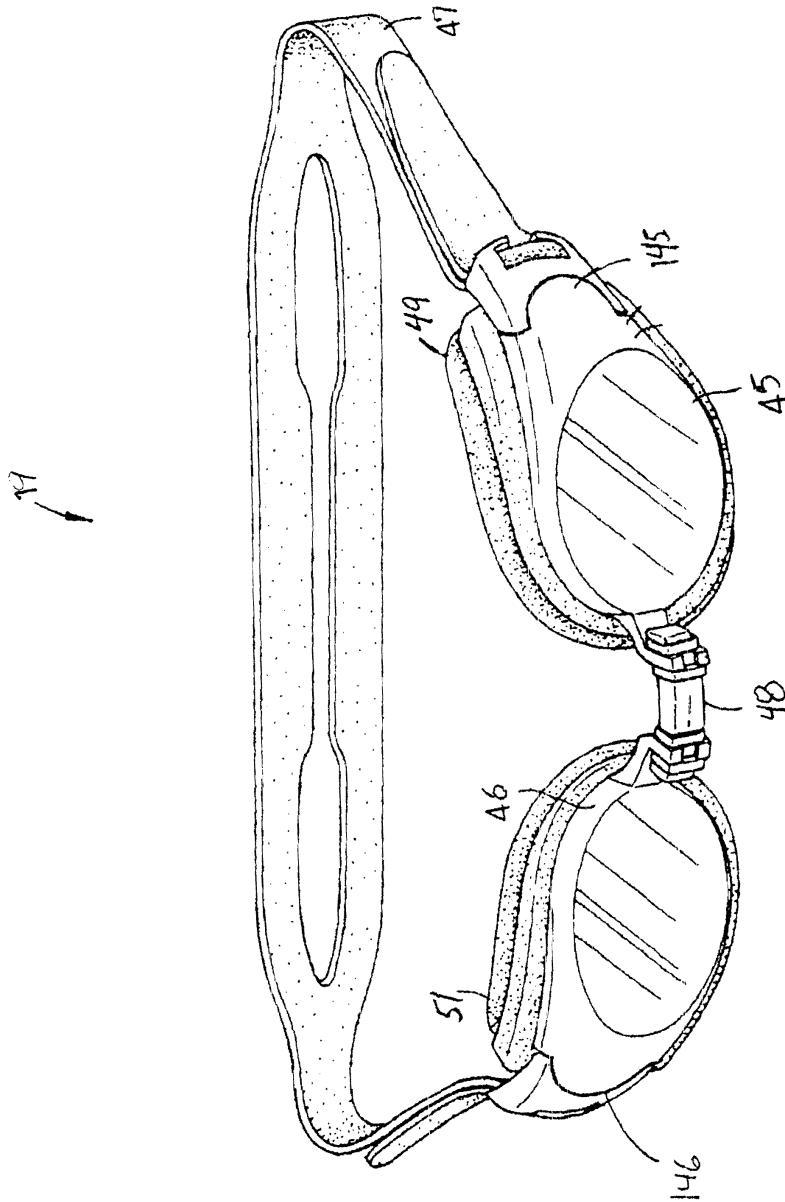


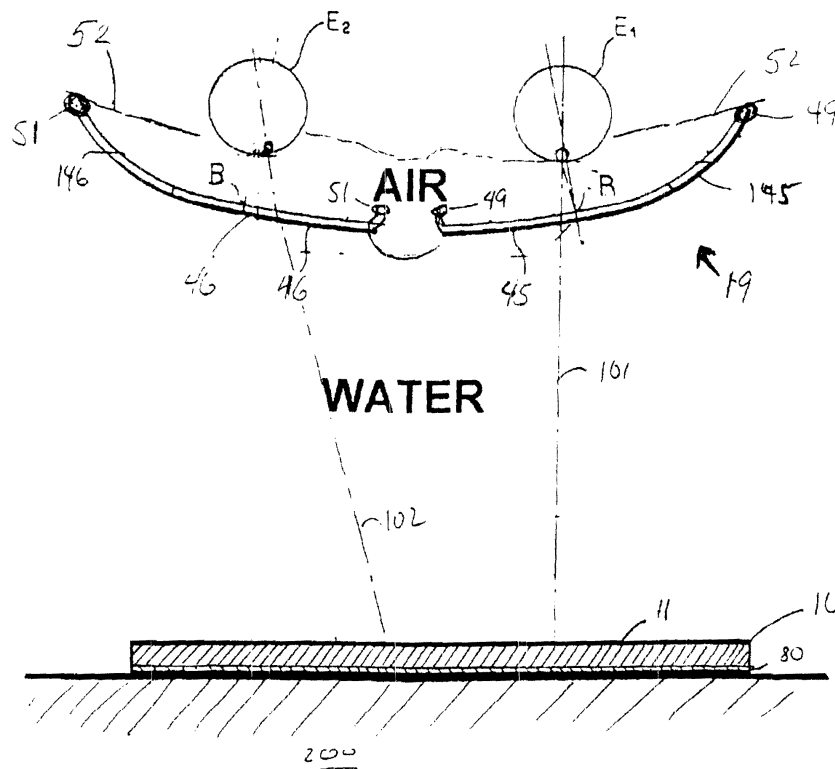
FIG. 4

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3-D VISION SYSTEM FOR SWIMMING POOLS

BACKGROUND OF THE INVENTION

1. Field of the Invention

The present invention relates to decorative enhancements for swimming pools and more particularly to a stereoscopic viewing system based on submerged anaglyphs in swimming pools and filtering stereoscopic goggles for use by swimmers in viewing the anaglyphs.

2. Description of the Problem:

Public stereoscopic viewing systems rely on presenting two slightly different views of a subject to each of a viewers' eyes. The anaglyph is a key element of such viewing systems. An anaglyph is a stereogram in which the two views of a subject are printed or projected, substantially superimposed, in complementary colors, usually red and blue. Transmission of the red view may be blocked using a red filter and the blue view can be blocked by blue filter. Placing one each of the appropriate filters in front of each eye results in each eye seeing only one of the two colored views. The filters are typically incorporated into spectacles so that when the anaglyph is viewed through the spectacles, an illusion of depth is produced because each eye is seeing elements of the subject from slightly different aspects.

The basic principal of presenting two horizontally shifted views of the same subject to each eye of the viewers can be implemented in other ways, such as using polarizing filters or projecting alternating views of a subject and supplying the viewers with head sets having synchronized shutters. Obviously, the quality of image produced can suffer somewhat due to the modifications required of the underlying images. U.S. Pat. No. 4,620,770 to Wexler addresses the tendency of color stereoscopic systems to appear monochromatic when viewed through filtering spectacles by adding one or more colors to one of images. The modified anaglyphs of Wexler appear more normally colored when viewed through filtering spectacles.

The systems described above are characterized as public to distinguish them from full color systems, such as the VIEWMASTER™ stereoscopic viewers, which use binocular type optical paths to deliver offset, but full color, views of a subject to each eye. This latter type of system, while providing an excellent image because the prints or projections are unmodified in terms of color or polarization, is inherently a private system being usable by only one person at a time.

Public stereoscopic image systems based on color, light polarization and shutter synchronization have been used with television and computer games, in movie theaters, and in books. In such settings, the reproduced image is largely the focus of the viewers' activities. Prior art public stereoscopic image systems have been based on the assumption that while people would choose to wear filtering spectacles for purposes of entertainment, they would not be likely to choose to wear such spectacles while active in other pursuits.

It is an object of the invention to apply to public stereoscopic image systems to environments where people can readily use filtering spectacles in the course of other activities.

It is a further object of the invention to provide a public stereoscopic image system which enhances the three dimensional effect of the image on viewers.

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It is yet another object of the invention to apply to public stereoscopic image systems as an ambiance enhancing element to swimming pools and other outdoor swimming environments.

SUMMARY OF THE INVENTION

According to the invention there is provided a public spectroscopic viewing system comprising a pool of water, an anaglyph submerged in the pool of water, an air/water barrier between the eyes of a viewer and the anaglyph and filter spectacles for the viewer to wear which pass differing views from the anaglyph to each of the viewer's eyes. The anaglyph is encased in, or applied to, a water proof sheet which may be in turn applied to an interior face of the pool. The sheet is preferably retained in place on the pool's face by an adhesive such as petroleum jelly.

Additional effects, features and advantages will be apparent in the written description that follows.

BRIEF DESCRIPTION OF THE DRAWINGS

The novel features believed characteristic of the invention are set forth in the appended claims. The invention itself however, as well as a preferred mode of use, further objects and advantages thereof, will best be understood by reference to the following detailed description of an illustrative embodiment when read in conjunction with the accompanying drawings, wherein:

FIG. 1 is an exploded, perspective view of a swimming pool illustrating positioning of a anaglyph structure.

FIG. 2 is a top plan view of a swimming pool with a anaglyph applied to the bottom surface thereof.

FIG. 3 is a cross sectional view of a swimming pool in which a swimmer can view anaglyphs positioned on the sides or bottom surfaces of the pool.

FIG. 4 is a perspective view of a pair of swimming goggles which incorporate filtering lenses in complementary colors.

FIG. 5 is a cross-section view of the stereoscopic image system of the present invention.

DETAILED DESCRIPTION OF THE INVENTION

Referring now to the figures and in particular to FIG. 1 there is illustrated a swimming pool 25 having four vertical sides 251, 252, 253 and 254 and a bottom 255. Swimming pool 25 is preferably an open air pool for illumination by the sun 260. While natural light gives the best results, the system can be implemented in an indoor pool or fountain, and be illuminated from other light sources, such as an underwater lamp 257 as shown installed in pool side 252. Attached to vertical side 251 and pool bottom 255 are anaglyph structures 10 and 10A. Anaglyph structures 10 and 11A are preferably vinyl sheets on which an anaglyph 12, which includes two horizontally separated but partially superimposed views 13A and 13B of a scene, may be printed or embossed. Anaglyph 12 may be a color anaglyph representing an underwater scene appropriate for decorating a pool. Anaglyph structures 10, 10A may be attached to pool sides or bottoms with the anaglyph oriented away from the supporting structure for viewing. Attachment of an anaglyph structure to a pool surface is effected using an adhesive. This allows the structures to be periodically changed allowing change in scenery. Pool 25 is designed to be filled with water to near the pool's edge 256. As is well known, air and water

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have differing indices of refraction, and objects submerged in water but viewed from across a water/air barrier can appear substantially magnified in size. Anaglyph 12 is illuminated by either natural or artificial light, both from outside the pool or in the pool.

Swimming pools may be lined with vinyl or they may have concrete sides. Referring now to FIG. 2, a second pool 125, having vinyl sides 30 and a vinyl bottom 26 is illustrated in which an anaglyph 35 has been directly incorporated into the vinyl of the pool bottom. Pool 125 is set in deck area 100 having a fascia 28 surrounding the pool.

In FIG. 3 a swimmer 40 floating in water 42 contained in pool 25 can view anaglyph structures 10 and 10A attached to the pool bottom 255 and pool side 251. Anaglyph structures 10 and 10A are fully submerged in water 42 and illuminated allowing swimmer 40 to see the anaglyphs on the exposed sides of the anaglyph structures 10 and 10A. Swimmer 40 wears swimming goggles 19 with differentially colored lenses to produce the three dimensional effect and thereby adding interest in the swimming experience.

Referring to FIG. 4 swimming goggles 19 are depicted having a left eye piece 145 and a right eye piece 146 held together in a loop by an adjustable elastic strap 47 and a nose bridge 48. Goggles 19 are illustrative of a type of eye wear that can be adapted for use as stereoscopic spectacles for use with a submerged anaglyph, and one that is advantageously employed with anaglyphs of the present invention because they can be adapted to provide the necessary optical filtering required to produce the three dimensional illusion of the stereoscopic viewing system while providing a barrier between water and air. As a result, the image seen by a user is magnified. Eyepieces 145 and 146 are backed by form fitting, pliable cushions 49 and 51, which fit around the eye sockets of the swimmer and trap air against a small portion of the wearer's face including the eyes. Lenses 45 and 46 form the front portion of eyepieces 145 and 146 and are made of clear plastic, with lens 45 being tinted red and lens 46 being tinted blue, which are the usual filter combinations for common anaglyphs.

Referring to FIG. 5 the cooperation of the elements of the stereoscopic viewing system of the present invention is illustrated. A anaglyph structure 10 is applied to a wall or other base 200 using a coating 80 of a water repelling but slow dissolving adhesive such as petroleum jelly. Structure 10 is submerged under water and oriented so that the anaglyph is on face 11 away from the wall. A viewer of the anaglyph is turned so that his eyes E1 and E2 are directed toward the anaglyph, but are separated from the water by a layer of air trapped against his face 52 by goggles 19. Goggles 19 comprise cushions 49 and 51 which are urged into sealing contact with face 52 by strap 47 and potentially by external water pressure on eyepieces 145 and 146. Lines of sight 101 and 102 from eyes E1 and E2 are illustrated as canted with respect to another to emphasize the parallax differences between the views presented in the anaglyph as perceived by the viewer's left and right eyes. These differences give the viewer the illusion of depth in the processed image. Line of sight 102 is further bent to indicate the difference in the refractive indices for water and air, which magnifies the image. Lens 45 is indicated by the letter R as being a red filter and lens 46 is indicated by the letter B as being a blue filter. The stereoscopic viewing system of the invention can be used with conventional stereoscopic spectacles worn by a viewer whose face is above the pool of water.

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The invention provides a public stereoscopic viewing system in a swimming environment where people can readily use goggles configured as filtering spectacles in the course of other activities. This allows the effective use of anaglyphs as decorative treatments in swimming pools. The water to air barrier provided by the goggles, or the atmosphere enhances the three dimensional effect of the image on viewers by magnifying the perceived image.

While the invention is shown in only two of its forms, it is not thus limited but is susceptible to various changes and modifications without departing from the spirit and scope of the invention.

What is claimed is:

1. A public stereoscopic image system, comprising:
 - a pool of water;
 - an anaglyph of a still scene submerged in the pool of water; and
 - filtering spectacles having first and second lenses to be worn by a viewer of the anaglyph, the filtering spectacles being made of a pliable material shaped to form fit to a portion of the face of the viewer so as to trap air between the face of the viewer and the first and second lenses and thus position an air/water barriers between the anaglyph and each of a viewer's eyes to magnify the still scene as seen by the viewer through the first lens over one eye and the second lens over the remaining eye.
2. A public stereoscopic image system as set forth in claim 1, wherein the anaglyph comprises first and second images of the still scene in complementary first and second colors and the first lens filters out the first color and the second lens filters out the second color.
3. A public spectroscopic image system as set forth in claim 2, further comprising, the pool of water being open for exposure to natural light.
4. A public stereoscopic image system as set forth in claim 3, further comprising:
 - a plurality of sides to the pool of water; and
 - the anaglyphs being disposed on at least one of the sides.
5. A public stereoscopic image system as set forth in claim 4, wherein the anaglyph is imprinted on a flexible water proof backing.
6. A public stereoscopic image system as set forth in claim 5, wherein the flexible water proof backing being retained on a surface of the pool of water by a slow dissolving adhesive.
7. A public stereoscopic viewing system comprising:
 - a pool of water;
 - an anaglyph having a plurality of views of a scene submerged in the pool of water;
 - an air barrier adjacent each of the eyes of a viewer of the anaglyph relative to the anaglyph effecting magnification of the scene as seen by a viewer; and
 - filter spectacles for the viewer to wear which pass a different one of the plurality of differing views of the scene to each of the viewer's eyes.
8. A public stereoscopic viewing system, as set forth in claim 7, further comprising:
 - a vinyl water proof sheet on which the anaglyph is embossed.
9. A public stereoscopic viewing system, as set forth in claim 8, wherein the vinyl water proof sheet is retained in place on a support surface by a slow dissolving adhesive.

* * * * *

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Patent Assignment Abstract of Title

***NOTE: Results display only for issued patents and published applications.
For pending or abandoned applications please consult USPTO staff.***

Total Assignments: 1

Patent #: 7046440

Issue Dt: 05/16/2006

Application #: 10238181

Filing Dt: 09/10/2002

Inventor: Jeffrey L. Kaehr

Title: 3-D VISION SYSTEM FOR SWIMMING POOLS

Assignment: 1

Reel/Frame: 025575/0699

Recorded: 01/03/2011

Pages: 6

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: SELLS HOMANN, JAQUILINE

Exec Dt: 12/20/2010

Assignee: WIDE EYES MARKETING LTD.

323 RICHMOND STREET EAST

SUITE 907

TORONTO, ON, CANADA M5A3R3

Correspondent: WIDE EYES MARKETING LTD., P.A. SGROMO

323 RICHMOND STREET EAST

SUITE 907

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<http://assignments.uspto.gov/assignments/q?db=pat&qt=pat&reel=&frame=&pat=7046440...> 3/30/2011

EXHIBIT 3 PAGE 29

From: Peter Sgromo
To: Peter Magalhaes
Cc: Brian Dubinsky; Mostafa Fazel; Toni Corliss
Subject: 3D Shark Lagoon
Date: Thursday, February 17, 2011 8:16:25 AM
Importance: High

Peter,

I sent you a text but this is to follow-up. I was very disappointed on your understanding of our meeting at Toy Fair. I expected you to have reviewed my patent and how it reads on your 3D Shark Lagoon before we met at Toy Fair ready to discuss a settlement. After discussing this with my legal team and investors we have decided to just direct our legal discussions with all the retailers. I have sent you the patent and it is not up to me or my legal team to educate you on a patent infringement. The infringement is so direct and so clear there really isn't anything to discuss. The patent is issued and 3D Shark Lagoon is a direct infringement and I never entered a licensing discussion with you nor did you ever let me know you were interested in this item. A patent search by your legal team would have revealed this not only for this item but for 3D Shark Bite. 3D Shark Bite patent will not be issued as my patent covers any 3D image in a pool of water (which reads on Shark Bite). Here is my offer to you and you have until tomorrow COB to decide:

- I will enter a 1 year agreement (for the 2011 season only) on 3d Shark Lagoon
 - We may enter a renewal based on performance and if we can drastically improve the poor 3D quality of this item
 - This includes using the Chromadepth lens and NOT the inferior knock-off you are currently using
 - Improving the 3D image using my artists
 - There is no guarantee here and not an automatic renewal option will be considered in the agreement
- We will split the gross margin dollars 50/50
 - This means you will forward on a quarterly basis (AT LEAST 30 days after each quarter) half the gross margin dollars
 - This will be the 50% FOB YT invoice price the retailer sends less the cost from the factory
 - I will need the quote sheets for all the key retailers
 - I will also need the factory contacts so that I can have my guy in China inspect the factory and do audits and confirm costs
 - I will also need any third party suppliers such as goggle suppliers
- I will need an advance and guarantee of \$25K paid immediately to cover our costs we have lost in this item due to your infringement

And since this patent covers 3D Shark Lagoon and 3D Shark Bite and you will not be expanding this item I have decided to terminate the license rights. You of course can take the full year to sell off any inventory.

I will also be back to you regarding the other issues, especially the shortfall on royalties for 3D SharkBite for too many discounts and same as well as missing the WEM logo on the back for Toy Story (both clearly outlined in the agreement). As I mentioned in my text, it doesn't make business sense for me to start spending \$1,000 an hour on my attorney to talk to you and then only have to spend that money all over again to send letters to TRU, Target, Wal-Mart and all other retailers. We have already heard back from

Joel Tennenburg on the Aqua Leisure infringement and expect the same for Shark Lagoon.

I think my offer is more than fair considering we can just take over the item as we have already proven to TRU and Wal-Mart we can source vinyl and pass all their safety certification.

Ball is in your court. I just want to be clear that while I would rather work with you I will enforce my patent rights to their full extent.

Best,
Peter A Sgromo