

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

<div style="display: flex; justify-content: space-between;"><div style="width: 45%;"><p><b>UNITED MARINE MARKETING GROUP, LLC,</b></p><p style="text-align: center;"><b>Plaintiff,</b></p><p style="text-align: center;"><b>v.</b></p><p><b>JET DOCK SYSTEMS, INC., OCEAN INNOVATIONS. INC., W. ALLAN EVA, III, AND DAVID T. FABER,</b></p><p style="text-align: center;"><b>Defendants.</b></p></div><div style="width: 5%; text-align: center; font-size: 2em;">}</div></div>	)	<p><b>Civil No. 8:10-cv-2653-MSS-TBM Judge Mary S. Scriven Magistrate Judge Thomas B. McCoun, III</b></p> <p><b>THIRD AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND UNFAIR COMPETITION AND INJUNCTIVE RELIEF SOUGHT AND JURY TRIAL REQUESTED</b></p>
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Plaintiff United Marine Marketing Group, LLC ("UMMG") for its Third Amended 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 modular floats that can be assembled into docks, walkways and other marine structures 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 threatened liability of Plaintiff for alleged infringement of the '013, '833, '113, '050 and '106 Patents of Defendants.

7. This Court has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2201, and 1331, 1338 and 1367; and separate federal jurisdiction 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. Plaintiff UMMG's claims against Defendant 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 Third Amended 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.

### **PATENTS-IN-SUIT**

14. On July 11, 1995, Defendants Eva and Faber filed a patent application with the United States Patent and Trademark Office ("PTO") that issued on June 25, 1996 as United States Letters Patent No. 5,529,013 (the "'013 patent") entitled "Floating Drive-On Dry Dock Assembly." Upon information and belief, Defendant Ocean Innovations, Inc. is the owner by assignment of the '013 patent. Defendant Jet Dock Systems, Inc. is the sole licensee under the '013 patent. A true and correct copy of said '013 patent is attached hereto as Exhibit 1.

15. On June 21, 1996, Defendants Eva and Faber filed a patent application with the PTO that issued on November 4, 1997 as United States Letters Patent No. 5,682,833 (the "'833 patent"), entitled "Floating Drive-On Dry Dock Assembly." Jet dock

licensing, Inc. was the initial assignee of the '833. Upon information and belief, Defendant Ocean Innovations, Inc. is the subsequent owner by assignment of the '833 patent. Defendant Jet Dock Systems, Inc. is the sole licensee under the '833 patent. A true and correct copy of said '833 patent is attached hereto as Exhibit 2.

16. On September 12, 1997, Defendants Eva and Faber filed a patent application with the PTO that issued on August 3, 1999 as United States Letters Patent No. 5,931,113 (the "'113 patent"), entitled "Floating Drive-On Dry Dock Assembly Having a Supporting Beam." Defendant Ocean Innovations, Inc. is the owner by assignment of the '113 patent. Defendant Jet Dock Systems, Inc. is the sole licensee under the '113 patent. A true and correct copy of said '113 patent is attached hereto as Exhibit 3.

17. On October 29, 1997, Defendants Eva and Faber filed a patent application with the PTO that issued on September 7, 1999 as United States Letters Patent No. 5,947,050 (the "'050 patent"), which is entitled "Floating Drive-On Dry Dock Assembly." Defendant Ocean Innovations, Inc. is the owner by assignment of the '050 patent. Defendant Jet Dock Systems, Inc. is the sole licensee under the '050 patent. A true and correct copy of said '050 patent is attached hereto as Exhibit 4.

18. On July 8, 1999, Defendants Eva and Faber filed a patent application with the PTO that issued on August 13, 2002 as United States Letters Patent No. 6,431,106 (the "'106 patent"), entitled "Floating Drive-On Dry Dock Assembly Defendant Ocean Innovations, Inc. is the owner by assignment of the '106 patent. Defendant Jet Dock Systems, Inc. is the sole licensee under the '106 patent. A true and correct copy of said

'106 patent is attached hereto as Exhibit 5. All of the forgoing patents were in suit in the Ohio Lawsuit and are in suit in this action ("patents-in-suit").

#### **NORTHERN DISTRICT OF OHIO LAWSUIT**

19. 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) ("Ohio Lawsuit" or "Quarterberth case"), against various Defendants, which were involved with the manufacture, distribution, sale and purchase of individual modular floats sold under the Versadock brand, which were assembled into certain accused drive-on dock configurations. The Ohio Lawsuit is currently being appealed by all remaining parties in that action, including Defendant ERA Marine an earlier generation manufacturer and distributor of Versadock branded products.

20. 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.

21. The Versadock branded 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 branded product line also includes a "double float" which is a rectangular shaped float rather than a cubical float. JDSI does not make a V-float. JDSI does not make a double float. None of the forgoing individual floats are accused of infringing any of the Jet Dock patents-in-suit.

22. Plaintiff UMMG, which is the current U.S. distributor of Versadock branded product, was not a party to the Ohio Lawsuit.

#### **CASE OR CONTROVERSY**

23. The present action involves an actual dispute between Plaintiff and Defendants over Plaintiff's right to distribute, offer to sell and to sell floatation products, which when assembled into a drive-on dock that includes 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 publicly asserted that Plaintiff is perpetrating willful infringement of JDSI's aforesaid patents-in-suit.

24. On October 8, 2009, Defendants JDSI and OII as Plaintiffs in the Ohio Quarterberth case filed a Motion to for Leave to File Second Supplemental Complaint against the Ohio Defendants, which accused Versadock dock assemblies containing double floats of infringement of '013, '833, '113, '050 and '106 patents for Floating Drive-On Dry Dock Assembly. The Ohio Court denied said Motion.

25. On October 13, 2009, Defendants JDSI and OII as Plaintiffs in the Ohio Quarterberth case filed a Supplemental Motion for Preliminary Injunction against Ohio Defendants seeking to enjoin the sale of Versadock dock assemblies made with double floatation units that infringe claims 6 - 8 of the '050 patent and claims 6-8 of the '106 patent. The Ohio Court denied said Motion.

26. On October 13, 2009, Defendant Eva on behalf of Plaintiffs in the Ohio Quarterberth case filed a Declaration in support of the Supplemental Motion for

Preliminary Injunction. He reviewed the Versadock branded docking systems, which illustrated docks that had been and are being offered for sale by the Ohio defendants, and their distributors and dealers. A true and correct copy of said Versadock docking systems that include a double float is attached hereto as Exhibit 6. Plaintiff distributes float products that are assembled in the forgoing configurations, which have been accused of infringement by Defendants.

27. Defendant Eva on behalf of Plaintiffs in the Ohio Quarterberth case identified four representative Versadock branded docks that incorporated double full floats, specifically SWPC-133 (sic), SB-171, EMB-304, VMB-380, which JDSI and OII accused of literally infringing claims 6, 7, and 8 of the '050 patent. JDSI and OII further accused all the other Versadock docking systems in said Exhibit 6 to infringe the same claims and patent. Plaintiff distributes float products that are assembled in the forgoing configurations, which have been accused of infringement by Defendants.

28. Defendant Eva on behalf of Plaintiffs in the Ohio Quarterberth case identified four representative Versadock branded docks that incorporated double full floats, specifically SWPC-133 (sic), SB-171, EMB-304, VMB-380, which JDSI and OII accused of literally infringing claims 6, 7, and 8 of the '106 patent. JDSI and OII further accused all the other Versadock docking systems in said Exhibit 6 to infringe the same claims and patent. Plaintiff distributes float products that are assembled in the forgoing configurations, which have been accused of infringement by Defendants.

29. Defendants continue to assert that the float products distributed by Plaintiff that are configured into Versadock branded docking systems identified in



Exhibit 7 hereto infringe one or more claims of the '013, '833, '113, '050 and '106 patents.

30. Plaintiff UMMG denies that the floats it distributes, when assembled into the aforesaid accused Versadock docking systems with double floats infringe any of the claims of Defendants' patents.

31. Plaintiff UMMG denies that the aforesaid accused Versadock docking systems with double floats in Exhibit 6 infringe any of said claims 6, 7 and 8 in the '050 patent, because each of the said dock assemblies lacks each of the following required claim elements:

- a. Airtightness;
- b. Each float unit having a generally flat top or deck surface;
- c. Each float unit having a pivotable connection to the adjacent float unit;
- d. Each floatation unit connected to each other in series with connections that flex about at least two axes which are transverse to the direction of the water craft; and
- e. The floatation units defining a guiding surface.

32. Plaintiff UMMG denies that the aforesaid accused Versadock docking systems with double floats in Exhibit 6 infringe any of said claims 6, 7 and 8 in the '106 patent, because each of the said dock assemblies lacks each of the following required claim elements:

- a. Airtightness;

- b. Each float unit having a generally flat top or deck surface;
- c. Each float unit having a pivotable connection to the adjacent float unit;
- d. The pivoting movement required for flexing between a craft receiving position and craft supporting position;
- e. The rigidity of the dock assembly is not substantially changed during the operation of a water craft being ridden on the dock; and
- f. The plurality of floatation unit that form a pair of spaced apart support arms.

33. The present action involves an actual dispute between Plaintiff and Defendants over Plaintiff's right to distribute, offer to sell and to sell modular floats that can be assembled into floating drive-on docks that contain one or more Versadock double floats in configurations which Defendants have accused of infringement.

34. The present action further involves an actual dispute between Plaintiff and Defendants over Plaintiff's right to distribute, offer to sell and to sell modular floats that can be assembled into floating drive-on docks that are constructed with tall and V-floats in configurations which Defendants have accused Plaintiff of infringement.

35. The present action further involves an actual dispute between Plaintiff and Defendants over Plaintiff's right to distribute, offer to sell and to sell modular floats that can be assembled into floating drive-on docks that are constructed with all tall floats in configurations which Defendants have accused Plaintiff of infringement.

36. The corporate Defendants have taken affirmative acts against Plaintiff in connections with the patents-in-suit. These Defendants have served Plaintiff with a Rule 45 Subpoena seeking competitive information from Plaintiff.

37. The corporate Defendants have subpoenaed all contracts between Plaintiff and VersaDock International Ltd. (Doc. Req.11).

38. The corporate Defendants have subpoenaed competitive documents of all contracts between Plaintiff and Kyodo America (Doc. Req.12).

39. The corporate Defendants have subpoenaed competitive documents that pertain, refer or relate to Plaintiff's license of the "VersaDock" trade name and or trademark, including but not limited any contract between Plaintiff and any other party (Doc. Req.13).

40. The corporate Defendants have subpoenaed competitive documents of all patent license or patent assignment agreements to which Plaintiff is a party (Doc.Req.14).

41. The corporate Defendants have subpoenaed competitive documents that pertain, refer or relate to Plaintiff's ownership or use of molds or other tooling for Plaintiff's products, including any and all contracts relating to the same (Doc. Req.15)

42. Defendants have affirmatively asserted a legal claim against Plaintiff for res judicata in this legal action. (Dkt. 40,45.) Defendants have requested that this Court "bar United Marine's invalidity and unenforceability claims under the principle of res judicata." (Dkt.40, p.17.)

## **THE PATENTS-IN-SUIT ARE INVALID**

43. 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.

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

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

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

47. 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.

48. 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.

49. 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.

50. 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

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

52. 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.

53. 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.

54. 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.

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

56. Upon information and belief, Defendants Allan Eva and David Faber were and are the owners of Defendant Jet Dock Systems, Inc., since 1993. Defendants Allan Eva, David Faber and/or 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.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

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

64. 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.

65. 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.

66. 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.

67. 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.

68. 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.

69. 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.



70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. Defendant 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.

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

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

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

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

80. 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.

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

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

83. 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.

**THE PATENTS-IN-SUIT ARE UNENFORCEABLE**

84. The docks made and sold in 1993 by Defendants were not disclosed to the PTO during the pendency of their patent applications by Defendants and inventors Eva and Faber their attorney Gordon Kinder as was required.

85. 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 during the pendency of their patent applications by Defendants and inventors Eva and Faber or their attorney Gordon Kinder as was required.

86. Defendants and inventors Eva and Faber 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.

87. 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) ("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. The forgoing dock configurations were not disclosed to the PTO during the

pendency of Defendants' patent applications, which matured into the '113, '050 and '106 patents.

88. 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. However the forgoing sales records were not disclosed to the PTO during the pendency of Defendants' patent application, which mature into Defendants' patents-in-suit.

89. Defendants Allan Eva and David Faber were the inventors on the patent 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 during the prosecution of the '013 patent, which underlying patent application was filed on July 11, 1995, and which issued on June 25, 1996.

90. Defendants 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.

91. Defendants 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.

92. Defendants 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.

93. Defendants 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.

94. Defendants and listed inventors 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 Third Amended Complaint.

95. Defendants and listed inventors 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.

96. Defendants and listed inventors 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.

97. Defendants and listed inventors 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.

98. Defendants and listed inventors 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.

99. Upon information and belief, sometime after starting their business, Defendants and inventors 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.

100. 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 Third Amended Complaint.

101. Defendants 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.

102. 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.

103. 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.

104. 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.

105. 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.

106. 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.

107. 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).

108. As with their prior sales of drive on docks that encompass all of the essential elements of the claimed invention, Defendants and inventors Eva and Faber 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.

109. 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.

110. The omission of material information during the prosecution of the Jet Dock Patent applications was done with a deliberate specific 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.

111. Public policy is fostered by removing invalid and unenforceable patents. It is important to the public at large of resolving questions of patent validity.

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

113. 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.

#### **FEDERAL AND STATE UNFAIR COMPETITION AND DECEPTIVE TRADE PRACTICES**

114. 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%.

115. 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.

116. 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.

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

118. On their website 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.

119. 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 float product that are assembled into drive-on docks cannot be sold without infringing Defendants' Patents. The foregoing statements were false, because VERSADOCK branded floats can be assembled into docks and walkways, which Defendants have admitted do not infringe their patents. The foregoing false statements were made recklessly, intentionally and willfully and in bad faith.

120. At the 2010 Fort Lauderdale Boat Show Defendants' sales personnel represented to potential customers that the manufacturer of Versadock branded floats would be out of business by the end of the year as a result of the actions of JDSI. The foregoing false statements were made recklessly, intentionally and willfully and in bad faith.

121. On their website, Defendants have advertised that "There are several manufacturers of multi-section drive-on docking systems that violate the Jet Dock United States patents 5,529,013, 5,682,833, 5,931,113, 5,947,050, 6,431,106, 6,526,902, 6,745,714, Canadian Patent 2,174,705, and European Patents 0,837,815 and 1,440,003.

Patent infringement lawsuits have been filed in Federal Court to stop such illegal copying: *see Ocean Innovations, Inc. v. Zeppelin Marine, Inc.*, Case no. 5:98CV1515, US District Court, Northern District of Ohio, Eastern Division, and *Ocean Innovations, Inc. v. VersaDock*, Case no. 1-03CV0913, US District Court, id.” “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.” Upon information and belief, this representation is false, because Defendants have not sued any party for infringement of any of its international patents and is precluded from doing so in the United States. The foregoing false statements were made recklessly, intentionally and willfully and in bad faith.

122. Defendants have represented to potential customers that they themselves could be the subject of a lawsuit by Jet Dock if they purchase Versadock branded products that are assembled into docks which contain double floats.

123. Defendants have in fact sued a manufacturer, distributor, and customer of Versadock branded products that have been assembled into docks for patent infringement that were based on the patents-in-suit, which Defendants have known to be unenforceable and/or invalid.

124. Defendant JDSI’s employee and Defendant Eva’s counsel have asserted allegations of infringement against Plaintiff. For example, an email exchange between a potential customer and an employee of Defendant JDSI provides the following:

[Potential Customer] “Marc, I am looking at the Versa Dock through the United Marine Marketing Group but I read there was a lawsuit between you and them. In an earlier email you made reference to this. Is there any issue with buying their product?”

[Defendant JDSI's employee] "Some of their docks did violate our patents. If you purchase a dock from them that violates our patents then I would have to give your information to our lawyers in case they would need to ask you questions in the future or if they would need any picture of the dock."

However, Defendants subsequently have stated that "Defendants have made no claim for damages." The foregoing false statements were made recklessly, intentionally and willfully and constituted bad faith misconduct in the marketplace.

**COUNT I**  
**DECLARATORY JUDGMENT OF INVALIDITY OF THE '013 PATENT**

125. UMMG hereby realleges and incorporates paragraphs 14 and 43-83.

126. 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.

127. 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**

128. UMMG hereby realleges and incorporates paragraphs 15 and 43-83.

129. 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.

130. 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**

131. UMMG Marine hereby realleges and incorporates paragraphs 16 and 43-83.

132. 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.

133. 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**

134. UMMG hereby realleges and incorporates paragraphs 17 and 43-83.

135. 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.

136. 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**

137. UMMG hereby realleges and incorporates paragraphs 18 and 43-83.

138. 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.

139. 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**

140. UMMG hereby realleges and incorporates paragraphs 14 and 84-113.

141. 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 specific intent to mislead the Patent Office. The particulars of this inequitable conduct are as follows:

142. 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.

143. 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.

144. None of the aforementioned product information, including Jetfloat literature, invoices and assembly drawings in the possession of Defendants and inventors Allan Eva and David Faber, and including those described in Paragraphs 84-113 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 patents, including the dock assembly consisting of tall and short floats and the connections between them.

145. When an applicant or patentee fails to disclose prior art to the PTO, that prior art is but-for material if the PTO would not have allowed a claim had it been aware of the undisclosed prior art. 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. Defendants Jet Dock, Eva and Faber and their patent attorney Gordon D. Kinder, Esq. made a deliberate decision and specifically intended 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**

146. UMMG hereby realleges and incorporates paragraphs 15 and 84-113.

147. 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 specific intent to mislead the Patent Office. The particulars of this inequitable conduct are as follows.

148. 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

149. 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.

150. 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 84-113 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 patents, including the dock assembly consisting of tall and short floats and the connections between them.

151. When an applicant or patentee fails to disclose prior art to the PTO, that prior art is but-for material if the PTO would not have allowed a claim had it been aware of the undisclosed prior art. A patentee has an obligation to disclose to the PTO all information known to that individual to be material to patentability. Defendants Jet Dock, Eva and Faber and their patent attorney Gordon D. Kinder, Esq. made a deliberate

decision and specifically intended 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**

152. UMMG hereby realleges and incorporates paragraphs 16 and 84-113.

153. 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 specific intent to mislead the Patent Office. The particulars of this inequitable conduct are as follows.

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

155. 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).

156. 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.

157. None of the aforementioned product information, including those described in Paragraphs 84-113 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 patents, including the dock assembly consisting of tall and short floats and the connections between them.

158. When an applicant or patentee fails to disclose prior art to the PTO, that prior art is but-for material if the PTO would not have allowed a claim had it been aware of the undisclosed prior art. A patentee has an obligation to disclose to the PTO all information known to that individual to be material to patentability. Defendants Jet Dock, Eva and Faber and their patent attorney Gordon D. Kinder, Esq. made a deliberate decision and specifically intended 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**

159. UMMG hereby realleges and incorporates paragraphs 17 and 84-113.

160. 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 specific intent to mislead the Patent Office. The particulars of this inequitable conduct are as follows:

161. 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.

162. 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).

163. 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.

164. None of the aforementioned product information, including those described in Paragraphs 84-113 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.

165. When an applicant or patentee fails to disclose prior art to the PTO, that prior art is but-for material if the PTO would not have allowed a claim had it been aware of the undisclosed prior art. A patentee has an obligation to disclose to the PTO all information known to that individual to be material to patentability. Defendants Jet Dock, Eva and Faber and their patent attorney Gordon D. Kinder, Esq. made a deliberate decision and specifically intended 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**

166. UMMG hereby realleges and incorporates paragraphs 18 and 84-113.

167. 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 specific intent to mislead the Patent Office. The particulars of this inequitable conduct are as follows:

168. 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.

169. 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).

170. 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.

171. None of the aforementioned product information, including those described in Paragraphs 84-113 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.

172. When an applicant or patentee fails to disclose prior art to the PTO, that prior art is but-for material if the PTO would not have allowed a claim had it been aware of the undisclosed prior art. A patentee has an obligation to disclose to the PTO all information known to that individual to be material to patentability. Defendants Jet Dock, Eva and Faber and their patent attorney Gordon D. Kinder, Esq. made a deliberate decision and specifically intended 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**

173. UMMG Marine hereby realleges and incorporates paragraphs 14 and 23-42.

174. UMMG distributes float products that are assembled into various docks, including the Versadock docking systems with or without double floats that are identified in Exhibits 6 and 7, which Defendants have accused of infringing one or more claims of the '013 patent.

175. UMMG denies it is 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.

176. As a result of the forgoing, Plaintiff is incurring real and imminent injury.

**COUNT XII  
DECLARATORY JUDGMENT OF NON-INFRINGEMENT  
OF THE '833 PATENT**

177. UMMG hereby realleges and incorporates paragraphs 15 and 23-42.

178. UMMG distributes float products that are assembled into various docks, including the Versadock docking systems with or without double floats that are identified in Exhibits 6 and 7, which Defendants have accused of infringing one or more claims of the '833 patent.

179. UMMG denies it is 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.

180. As a result of the forgoing, Plaintiff is incurring real and imminent injury.

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

181. UMMG hereby realleges and incorporates paragraphs 16 and 23-42.

182. UMMG distributes float products that are assembled into various docks, including the Versadock docking systems with or without double floats that are identified in Exhibits 6 and 7, which Defendants have accused of infringing one or more claims of the '113 patent.

183. UMMG denies it is 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.

184. As a result of the forgoing, Plaintiff is incurring real and imminent injury.

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

185. UMMG hereby realleges and incorporates paragraphs 17 and 23-42.

186. UMMG distributes float products that are assembled into various docks, including the Versadock docking systems with or without double floats that are identified in Exhibits 6 and 7, which Defendants have accused of infringing claims 6, 7 and 8 of the '050 patent.

187. UMMG denies it is 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.

188. As a result of the forgoing, Plaintiff is incurring real and imminent injury.

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

189. UMMG hereby realleges and incorporates paragraphs 18 and 23-42.

190. UMMG distributes float products that are assembled into various docks, including the Versadock docking systems with or without double floats that are identified in Exhibits 6 and 7, which Defendants have accused of infringing claims 6, 7 and 8 of the '106 patent.

191 UMMG denies it is 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.

192. As a result of the forgoing, Plaintiff is incurring real and imminent injury.

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

193. UMMG hereby realleges and incorporates paragraphs 43-83 and 84-113.

194. 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**

195. UMMG hereby realleges and incorporates paragraphs 114-124.

196. Defendants' acts and false statements as previously alleged in Paragraphs 114 through 124 constitute unfair methods of competition arising under the Lanham Act, 15 U.S.C. §1125(a). The foregoing acts and false statements were done and made recklessly, intentionally and willfully and in bad faith.

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

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

**COUNT XVIII  
VIOLATION OF FLORIDA UNFAIR COMPETITION**

199. UMMG hereby realleges and incorporates paragraphs 114-124.

200. Defendants' acts and false statements as previously alleged in Paragraphs 114 through 124 constitute unfair methods of competition, interference with UMMG's existing and prospective business and contractual relationships. The actions of Defendants are unfair, unethical, deceptive, and unscrupulous and are in and affecting commerce in Florida. The foregoing acts and false statements were done and made recklessly, intentionally and willfully and in bad faith.

201. Defendants' unfair and deceptive acts are the direct and proximate cause of damages to Plaintiff, including lost profits and injury to Plaintiff's reputation in the marketplace and among its customer base, and loss of goodwill.

202. 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**

203. UMMG hereby realleges and incorporates paragraphs 114-124.

204. Defendants' acts as previously alleged in Paragraphs 114 through 124 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. The actions of Defendants are unfair, unethical,

deceptive, and unscrupulous and are in and affecting commerce in Florida. The foregoing acts and false statements were done and made recklessly, intentionally and willfully and in bad faith.

205. Defendants' unfair and deceptive acts are the direct and proximate cause of damages to Plaintiff, including lost profits and injury to Plaintiff's reputation in the marketplace and among its customer base, and loss of goodwill.

206. 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 and punitive damages.

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

March 17, 2013

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 2013, the foregoing was filed with the Clerk of the Court by using the CM/ECF system. Notice of this filing will be sent to all counsel of record registered to receive electronic service by operation of the court's electronic filing system.

s/ Vytas Rimas  
Vytas Rimas