

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MHL CUSTOM, INC.,	)	
	)	
Plaintiffs,	)	C.A. No.: 21-091-RGA
v.	)	
	)	
WAYDOO USA, INC. and SHENZHEN	)	
WAYDOO INTELLIGENCE	)	
TECHNOLOGY CO., LTD.,	)	
	)	
Defendants.	)	

DEFENDANTS' ANSWER AND COUNTERCLAIMS

Defendants Waydoo USA, Inc. and Shenzhen Waydoo Intelligence Technology Co., Ltd. (“Shenzhen Waydoo”) (collectively “Defendants”), by and through their attorneys, answer the Complaint of Plaintiff MHL Custom, Inc. (“MHL”), as follows:

INTRODUCTION

1. Defendants admit that this Complaint purports to state an action arising under the patent laws of the United States but otherwise deny the remaining allegations in Paragraph 1 of the Complaint.

THE PARTIES

2. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint, and therefore denies them.

3. The Defendants admit that Shenzhen Waydoo is a limited liability company organized under the laws of China, but otherwise deny the remaining allegations in Paragraph 3 of the Complaint.

4. Denied.

JURISDICTION AND VENUE

5. The Defendants admit that jurisdiction is proper but otherwise deny the remaining allegations in Paragraph 5 of the Complaint.

6. The allegations in Paragraph 6 of the Complaint call for legal conclusions for which no response is required. However, if a response is required, the Defendants do not contest venue for the purpose of MHL's claims in this case.

7. The allegations in Paragraph 7 of the Complaint set forth a legal conclusion for which no response is required.

8. The allegations in Paragraph 8 of the Complaint set forth a legal conclusion for which no response is required.

THE PATENTS-IN-SUIT

9. The Defendants admit that the cover page of U.S. Patent No. 9,359,044 ("the '044 Patent") identifies the date of issuance as June 7, 2016. The Defendants admit that the cover page of the '044 Patent identifies that the '044 Patent issued from Application No. 14/509,289 having a filing date of October 8, 2014. The Defendants admit that Exhibit A to the Complaint is purportedly a copy of the '044 patent. The Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 9, and therefore, deny the remaining allegations.

10. The Defendants admit that the cover page of U.S. Patent No. 9,586,659 ("the '659 Patent") identifies the date of issuance as March 7, 2017. The Defendants admit that the cover page of the '659 Patent identifies that the '659 Patent issued from Application No. 15/064,521 having a filing date of March 8, 2016. The Defendants admit that Exhibit B to the Complaint is purportedly a copy of the '659 patent. The Defendants lack knowledge or information sufficient

to form a belief about the truth of the remaining allegations contained in paragraph 10, and therefore, deny the remaining allegations.

11. The Defendants deny that “MHL has rights in the Patents-In-Suit” and that “MHL has the right to exclude others from practicing the inventions claimed in the Patents-In-Suit and/or from manufacturing, using, selling, offering to sell or importing into the United States the inventions claimed in the Patents-In-Suit.” The remaining allegations in Paragraph 11 are vague and ambiguous and, therefore, the Defendants deny them.

THE ACCUSED PRODUCTS AND NOTICE OF INFRINGEMENT

12. The Defendants admit that the Shenzhen Waydoo makes and sells the “Waydoo Flyer” and the “Waydoo Flyer One” but otherwise deny the remaining allegations.

13. Denied.

14. The Defendants admit that the Shenzhen Waydoo makes and sells the Accused Products but otherwise deny the remaining allegations.

15. The Defendants admit that Waydoo USA was incorporated on July 2, 2020, that Boyang Zhang is identified as the sole director of Waydoo USA in its Certificate of Incorporation, that Boyang Zhang is identified as a resident of Shenzhen, China, and that Boyang Zhang served as Shenzhen Waydoo’s Sales Director from April 2019-September 2020. The Defendants deny the remaining allegations in Paragraph 15.

16. The allegations in Paragraph 16 are vague and ambiguous and, therefore, the Defendants deny them.

17. Denied.

MHL’S COMMERCIAL EMBODIMENT

18. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint, and therefore deny them.

19. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint, and therefore deny them.

20. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint, and therefore deny them.

FIRST CLAIM FOR RELIEF

Infringement of the '044 Patent by both Defendants

21. The Defendants repeat and incorporate by reference each of its responses to paragraphs 1 through 20 of the Complaint as if fully set forth herein.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. The Defendants admit that Paragraph 27 appears to be claim 1 of the '044 Patent. The Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 27, and therefore, deny the remaining allegations.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. The allegations in Paragraph 34 of the Complaint call for legal conclusions for which no response is required. However, if a response is required, the Defendants deny the allegations in Paragraph 34.

35. The allegations in Paragraph 35 of the Complaint call for legal conclusions for which no response is required. However, if a response is required, the Defendants deny the allegations in Paragraph 35.

36. The allegations in Paragraph 36 of the Complaint call for legal conclusions for which no response is required. However, if a response is required, the Defendants deny the allegations in Paragraph 36

COUNT II: INFRINGEMENT OF THE '144 PATENT

37. The Defendants repeat and incorporate by reference each of its responses to paragraphs 1 through 36 of the Complaint as if fully set forth herein.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. The Defendants admit that Paragraph 43 appears to be claim 1 of the '659 patent. The Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 43, and therefore, denies the remaining allegations.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. The allegations in Paragraph 50 of the Complaint call for legal conclusions for which no response is required. However, if a response is required, the Defendants deny the allegations in Paragraph 50.

51. The allegations in Paragraph 51 of the Complaint call for legal conclusions for which no response is required. However, if a response is required, the Defendants deny the allegations in Paragraph 51.

52. The allegations in Paragraph 52 of the Complaint call for legal conclusions for which no response is required. However, if a response is required, the Defendants deny the allegations in Paragraph 52.

PRAYER FOR RELIEF

53. The Defendants deny that Plaintiff is entitled to any damages or other relief, including subparagraphs A-I of the Prayer for Relief.

WHEREFORE, the Defendants demand judgment dismissing Plaintiff's Complaint in its entirety, with prejudice, and such further relief as the Court may deem proper.

DEFENSES

Responding to MHL's Complaint, without any admission as to the burden of proof or as to any of the averments in the Complaint, and without prejudice to the Defendants' right to plead additional defenses as discovery into the facts of the matter warrants, Waydoo sets forth the following defenses:

FIRST DEFENSE
(Lack of Standing)

On information and belief, MHL is not the owner or assignee of either the '044 Patent or the '659 Patent. Consequently, MHL does not have standing to bring a suit alleging infringement of either the '044 Patent or the '659 Patent.

SECOND DEFENSE
(Noninfringement)

The Defendants have not infringed, do not infringe, and will not infringe, directly or indirectly, either literally or under the doctrine of equivalents, any valid claims of the '044 Patent or the '659 Patent.

THIRD DEFENSE
(Invalidity)

The claims of the '044 Patent and the '659 Patent are invalid, void, or unenforceable because they fail to comply with the requirements of patentability set forth in at least one of 35 U.S.C. §§ 101, 102, 103, 112 and/or 116.

FOURTH DEFENSE
(Failure to State a Claim)

The Complaint fails to state a claim upon which relief may be granted.

FIFTH DEFENSE
(Limitation on Damages)

MHL is barred in whole or in part from recovering damages for failing to satisfy the marking or notice provisions in 35 U.S.C. § 287.

SIXTH DEFENSE
(Assertion of an Invalid Claim)

MHL is barred from recovering costs associated with this action under 35 U.S.C. § 288.

SEVENTH DEFENSE
(Not an Exceptional Case)

MHL has not alleged any basis for and cannot prove that this is an exceptional case justifying an award of attorney's fees against the Defendants under 35 U.S.C. § 285.

EIGHTH DEFENSE
(No Willful Infringement)

MHL has not alleged any basis for a finding of willful infringement and the Defendants have not willfully or deliberately infringed any claim of the '044 Patent or the '659 Patent.

NINTH DEFENSE
(No Injunctive Relief)

MHL has not alleged any basis for a preliminary or permanent injunction. Such an injunction would be improper in this case because, on information and belief: (a) MHL has not suffered irreparable injury; (b) adequate remedies at law exist to compensate MHL for its alleged injury; (c) the balance of hardships between the Defendants and MHL strongly favors the Defendants; and (d) the granting of injunctive relief to MHL would not serve the public interest.

COUNTERCLAIMS FOR DECLARATORY JUDGMENT

Counterclaim Plaintiff Shenzhen Waydoo Intelligence Technology Co., Ltd. ("Shenzhen Waydoo") alleges the following:

1. This is a declaratory judgment action seeking a declaration of noninfringement and/or invalidity of United States Patent Nos. 9,359,044 ("the '044 Patent") and 9,586,659 ("the '659 Patent") (collectively referred to as the "Asserted Patents").

2. On information and belief, the United States Patent and Trademark Office issued the '044 Patent, entitled "Weight-Shift Controlled Personal Hydrofoil Watercraft" on June 7, 2016. On information and belief, MHL Custom Inc. ("MHL") is an exclusive licensee of the '044 Patent.

3. On information and belief, the United States Patent and Trademark Office issued the '659 Patent, entitled "Powered Hydrofoil Board" on March 7, 2017. On information and belief, MHL is the exclusive licensee of the '659 Patent.

PARTIES

4. Shenzhen Waydoo is a limited liability company organized under the laws of china, with an address at Office Building A101, No. 3 Keji Road, Zhukeng Community, Longtian Street, Pingshan District, Shenzhen, China.

5. On information and belief, MHL is a corporation organized and existing under the laws of Puerto Rico, having its principal place of business at 500 Barrio Bajuras, Isabela, Puerto Rico 00662.

JURISDICTION AND VENUE

6. These claims arise under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Shenzhen Waydoo seeks declaratory relief, i.e., a declaration that: (a) the Asserted Patents are not infringed; and (b) the Asserted Patents are invalid. Thus, Shenzhen Waydoo asserts substantial claims arising under the United States Patent Act, 35 U.S.C. § 1 *et seq.*

7. This Court has subject matter jurisdiction based on 28 U.S.C. §§ 1331 and 1338(a), 2201, and 2202.

8. This Court has personal jurisdiction over MHL because MHL has consented to jurisdiction by bringing suit against Shenzhen Waydoo in this District.

9. Venue is proper because the matters alleged arise from MHL's Complaint.

FACTUAL BACKGROUND

10. MHL alleges ownership of the Asserted Patents.

11. On January 27, 2021, MHL filed a Complaint in this Court accusing Shenzhen Waydoo of infringing the Asserted Patents.

12. MHL, by such actions, has created an actual and justiciable case or controversy between MHL and Shenzhen Waydoo concerning whether the Asserted Patents are valid and/or infringed by Shenzhen Waydoo.

COUNT I
(Declaratory Judgment of Noninfringement of the '044 Patent)

13. Shenzhen Waydoo repeats and incorporates by reference each of the preceding paragraphs of these counterclaims as if fully set forth herein.

14. MHL has asserted the '044 Patent against Shenzhen Waydoo. MHL maintains—and Shenzhen Waydoo denies—that the '044 Patent covers any of Shenzhen Waydoo's products or services.

15. Shenzhen Waydoo's products and/or services do not infringe any valid claim of the '044 Patent in any manner under 35 U.S.C. § 271, willfully or otherwise, either literally or under the doctrine of equivalents.

16. By way of example only, Shenzhen does not supply a product corresponding to a passively stable, weight-shift controlled personal hydrofoil watercraft, comprising a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface, wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position, the flotation device having a forward section, a middle section, and a rear section, and the flotation device being controlled via weight shift of the user; a strut having an upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device; a hydrofoil fixedly interconnected with the lower end of the strut, the hydrofoil having no movable surface

and designed to provide passive static stability controlled solely by weight shift of the user; a propulsion system for propelling the watercraft in a body of water, wherein the propulsion system is connected to the hydrofoil; and the watercraft having no movable steering system, as recited in claim 1.

17. Thus, Shenzhen Waydoo has not infringed and will not infringe the '044 Patent by making, using, selling, offering for sale, marketing, or importing any of its products and/or services.

18. MHL and Shenzhen Waydoo have adverse legal interests, and there is a substantial controversy between MHL and Shenzhen Waydoo of sufficient immediacy and reality to warrant the issuance of a declaratory judgment regarding the noninfringement of the '044 Patent.

19. Shenzhen Waydoo is entitled to a judicial declaration that any making, using, selling, offering for sale, marketing, or importation of its products and/or services, including the "Waydoo Flyer" and the "Waydoo Flyer ONE" watercraft do not infringe the '044 Patent.

COUNT II
(Declaratory Judgment of Noninfringement of the '659 Patent)

20. Shenzhen Waydoo repeats and incorporates by reference each of the preceding paragraphs of these counterclaims as if fully set forth herein.

21. MHL has asserted the '659 Patent against Shenzhen Waydoo. MHL maintains—and Shenzhen Waydoo denies—that the '659 patent covers any of Shenzhen Waydoo's products or services.

22. Shenzhen Waydoo's products and/or services do not infringe any valid claim of the '659 Patent in any manner under 35 U.S.C. § 271, willfully or otherwise, either literally or under the doctrine of equivalents.

23. By way of example only, Shenzhen Waydoo does not supply a product corresponding to a passively stable, weight-shift controlled personal hydrofoil watercraft, comprising a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface, wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position, the flotation device having a forward section, a middle section, and a rear section; a strut having an upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device; a hydrofoil fixedly interconnected with the lower end of the strut, the hydrofoil having no movable surface; a propulsion system for propelling the watercraft in a body of water, wherein the propulsion system is connected to the hydrofoil; and the watercraft having no movable steering system, as recited in claim 1.

24. Thus, Shenzhen Waydoo has not infringed and will not infringe the '659 Patent by making, using, selling, offering for sale, marketing, or importing any of its products and/or services.

25. MHL and Shenzhen Waydoo have adverse legal interests, and there is a substantial controversy between MHL and Shenzhen Waydoo of sufficient immediacy and reality to warrant the issuance of a declaratory judgment regarding the noninfringement of the '659 Patent.

26. Shenzhen Waydoo is entitled to a judicial declaration that any making, using, selling, offering for sale, marketing, or importation of its products and/or services, including the "Waydoo Flyer" and the "Waydoo Flyer ONE" watercraft do not infringe the '659 Patent.

27. Shenzhen Waydoo repeats and incorporates by reference each paragraph of these counterclaims.

COUNT III
(Declaratory Judgment of Invalidity of the '044 Patent)

28. Shenzhen Waydoo repeats and incorporates by reference each paragraph of these counterclaims.

29. The '044 Patent and each of its claims are invalid under at least one of 35 U.S.C. §§ 101, 102, 103, 112, and/or 116.

30. MHL maintains—and Shenzhen Waydoo denies—that the '044 Patent is valid.

31. For example, the '044 Patent is invalid under 35 U.S.C. §§ 102 and 103 because one or more prior art references disclose and/or teach all limitations of the claims in the '044 Patent.

32. For example, MHL's own products are prior art to the '044 Patent and also disclose and/or teach all limitations of the claims in the '044 Patent. Therefore, MHL's own products render the '044 Patent invalid.

33. For example, Evolo e-Foil publications from 2009 are prior art to the '044 Patent and also disclose and/or teach all limitations of the claims in the '044 Patent. Therefore, the Evolo e-Foil publications from 2009 render the '044 Patent invalid.

34. For example, other patents, e.g., U.S. Patent Nos. 5,544,607 and 7,047,901 and French Patent 2,945,025, are prior art to the '044 Patent and also disclose and/or teach (individually or in combination) all limitations of the claims in the '044 Patent. Therefore, the other patents render the '044 Patent invalid.

35. An actual case or controversy has arisen between MHL and Shenzhen Waydoo regarding the validity of the '044 Patent.

36. A declaration of rights is both necessary and appropriate to establish that the '044 Patent is invalid under at least one of 35 U.S.C. §§ 101, 102, 103, 112, and/or 116.

COUNT IV
(Declaratory Judgment of Invalidity of the '659 Patent)

37. Shenzhen Waydoo repeats and incorporates by reference each paragraph of these counterclaims.

38. The '659 Patent and each of its claims are invalid under at least one of 35 U.S.C. §§ 101, 102, 103, 112, and/or 116.

39. MHL maintains—and Shenzhen Waydoo denies—that the '659 Patent is valid.

40. For example, the '659 Patent is invalid under 35 U.S.C. §§ 102 and 103 because one or more prior art references disclose and/or teach all limitations of the claims in the '659 Patent.

41. For example, MHL's own products are prior art to the '659 Patent and also disclose and/or teach all limitations of the claims in the '659 Patent. Therefore, MHL's own products render the '659 Patent invalid.

42. For example, Evolo e-Foil publications from 2009 are prior art to the '659 Patent and also disclose and/or teach all limitations of the claims in the '659 Patent. Therefore, the Evolo e-Foil publications from 2009 render the '659 Patent invalid.

43. For example, other patents, e.g., U.S. Patent Nos. 5,544,607 and 7,047,901 and French Patent 2,945,025, are prior art to the '659 Patent and also disclose and/or teach (individually or in combination) all limitations of the claims in the '659 Patent. Therefore, other patents render the '659 Patent invalid.

44. An actual case or controversy has arisen between MHL and Shenzhen Waydoo regarding the validity of the '659 Patent.

45. A declaration of rights is both necessary and appropriate to establish that the '659 Patent is invalid under 35 U.S.C. §§ 102 *et seq.*, including §§ 102, 103, and/or 112.

REQUEST FOR JURY TRIAL

Shenzhen Waydoo requests a trial by jury under Federal Rule of Civil Procedure 38.

PRAYER FOR RELIEF

WHEREFORE, Shenzhen Waydoo respectfully requests judgment in its favor against Plaintiff-Counterclaim Defendant MHL as follows:

- a. Denying each request for relief made by MHL;
- b. Declaring the Asserted Patents not infringed by any of Shenzhen Waydoo's products and/or services and not infringed by the making, using, selling, offering for sale, marketing, or importation of any of Shenzhen Waydoo's products and/or services;
- c. Declaring each of the Asserted Patents invalid;
- d. Enjoining MHL, its officers, directors, principals, agents, servants, employees, successors, assigns, affiliates, and all that are in active concert or participation with MHL from threatening to assert or otherwise attempting to enforce the Asserted Patents against Shenzhen Waydoo, its customers, suppliers, or anyone in privity with Shenzhen Waydoo.
- e. Adjudging that this case is exceptional in accordance with 35 U.S.C. § 285 and awarding Shenzhen Waydoo its attorney's fees;
- f. Awarding Shenzhen Waydoo the costs of this suit, including reasonable attorney's fees; and
- g. Awarding Shenzhen Waydoo such other relief as the Court deems just and proper.

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Dated: May 20, 2021

/s/ Kelly E. Farnan

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