

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: _____

**CAYAGO TEC GMBH and
CAYAGO AMERICAS, INC.**

Plaintiffs,

v.

IAQUA (HONG KONG) LIMITED

Defendant.

_____ /

COMPLAINT

Plaintiffs, CAYAGO TEC, GmbH (“Cayago Tec”) and CAYAGO AMERICAS, INC., (“Cayago Americas”) by and through their undersigned attorneys for their Complaint against the Defendant IAQUA (Hong Kong) Limited (“iAqua China”) herein allege the following:

Jurisdiction, Venue, and Parties

1. Plaintiff Cayago Tec was and is a private limited liability company duly organized and existing under the laws of the Country of Germany, State of North Rhine-Westphalia with its principal place of business located at Benzstrasse 10, 32108 Bad Salzuflen, Germany.

2. Plaintiff Cayago Americas was and is a corporation duly organized and existing under the laws of the State of Florida with its principal place of business located at 1881 State Road 84 #104, Fort Lauderdale, Florida. Cayago Americas sells luxury sea toys and watercrafts/sea scooters known as the SEABOB® F5, F5S, and F5SR which will be referred to together herein as the SEABOB® F5 Series.

3. Upon information and belief, Defendant iAqua China is a limited company organized and existing under the laws of the Country of China, with its principal place of business located at Rooms 2102-3 China Insurance Group Building, 141 Des Voeux Road, Hong Kong.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338 and 28 U.S.C. § 1331.

5. This Court has personal jurisdiction over Defendant iAqua China, because iAqua China regularly conducts and transacts business in the State of Florida and in this District. Upon information and belief, iAqua China have manufactured, used, imported, offered to sell, and/or sold infringing products in the State of Florida and in this District.

6. Upon information and belief, Defendant iAqua China has entered into contracts with one or more residents of the State of Florida to supply products or services within the State of Florida, including in this District, including but not limited to i-Aqua USA.

7. Defendant iAqua China has harmed Cayago Tec and Cayago Americas by placing infringing products into the stream of commerce with the knowledge or understanding that such products are used, imported, offered for sale, and/or sold in the State of Florida, including in this District.

8. Defendant i-Aqua China has purposely availed itself to the jurisdiction of this Court by voluntarily appearing and testifying on behalf of i-Aqua USA, LLC, LUXURY WATER TOYS, LLC and RENE HEINEN in Cayago TEC GMBH v. i-Aqua USA, LLC, (S.D. Fla. Case No.: 0:21-cv-61035) in opposition Cayago TEC GMBH's and Cayago America's, Inc. Motion for Preliminary Injunction.

9. This Court has venue over this litigation pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

Background

10. Cayago Americas sells unique patented watercrafts known as the SEABOB[®] F5, F5S, and F5SR which will be referred to together herein as the SEABOB[®] F5 Series. In simple terms, the SEABOB[®] F5 Series are a one of kind combination of a surface water scooter (like a Jet Ski) and an underwater scooter.

11. iAqua China is the manufacturer of the infringing products.

12. iAqua China is located in China and does not maintain an office in the United States.

13. In 2019, Plaintiffs brought a lawsuit in this District, alleging among other things, patent and trademark infringement against iAqua Distribution LLC.

14. Upon information and belief, iAqua Distribution LLC had a dealer agreement with iAqua China.

15. The lawsuit was captioned Cayago Tec, GmbH et al v. iAqua Distribution LLC, Civil Action No. 0:19-cv-62689-KMW (“2019 Lawsuit”).

16. In late 2019, the parties (Plaintiffs and iAqua Distribution LLC) settled the 2019 Lawsuit.

17. Section 3 of the 2019 Lawsuit’s Settlement Agreement states:

PRODUCTION AND SALE OF INFRINGING PRODUCTS. The Parties agree that iAqua, its employees, officers and agents, including, but not limited to Charles Fultz, and those under their control are permanently enjoined and shall cease and desist in the making, using, sale, offering for sale, storing, or importing into the United States, its territories, bonded warehouses or Free Trade Zones located in United States or a territory thereof any watercraft infringing the '888 Patent or the '019 Patent including those branded as the Stingray One, Stingray Neo, Stingray Neo+, Stingray Eon, DiveJet, DiveJet Neo+, DiveJet Eon, DiveJet + and DiveJet One, and any other confusingly similarly named products. iAqua, its employees, officers and agents, including, but not limited to Charles Fultz, and those under their control are permanently enjoined and

shall cease and desist in the making, using, sale, offering for sale, storing, or importing into the United States, its territories, bonded warehouses or Free Trade Zones located in United States or a territory thereof any device that infringes the '888 Patent. iAqua, its employees, officers and agents, including, but not limited to Charles Fultz, and those under their control are permanently enjoined and shall cease and desist in the making, using, sale, offering for sale, storing, or importing into the United States, its territories, bonded warehouses or Free Trade Zones located in United States or a territory thereof any device that infringes the '019 Patent.

18. The Chinese manufacturer, iAqua, has a history of marketing its infringing products which blindly copy both the patented and unpatented features of the SEABOB® F5 Series. Along with the 2019 Lawsuit, iAqua has a history of using locally based distributors to market its infringing products. For example, using locally based distributors in Europe, iAqua entered the European market with its infringing StingRay Series scooters. iAqua was able to convince at least one European dealer to stop offering the SEABOB® F5 Series and to sell the infringing StingRay Series scooters.

19. The Cayago family of companies was forced to commence legal action in Germany, France, Spain, Turkey, and Mexico to enforce its foreign patents and successfully obtained an order preventing the sale of the Stingray Series in the European Union. The French action relating to the DiveJet Series is ongoing. The Stingray Series in the European Union and the DiveJet Series in France are other names for the SeaDart line of products.

The Patents

20. On September 26, 2017, United States Patent Number 9,774,019 (the “019 Patent”) was duly and legally issued by the United States Patent and Trademark Office after a full and fair examination in the name of Hans Peter Walpurgis for an invention entitled “Rechargeable Battery Unit for a Watercraft.” A true copy of the '019 Patent is annexed hereto as **Exhibit A**.

21. On June 21, 2011, United States Patent Number 7,963,814 (the “814 Patent”) was duly and legally issued by the United States Patent and Trademark Office after a full and fair examination in the name of Jürgen Grimmeisen for an invention entitled “Electric motor-driven watercraft, which is cooled by the surrounding water.” A true copy of the '814 Patent is annexed hereto as **Exhibit B**.

22. On July 4, 2017, United States Patent Number 9,694,888 (the “888 Patent”) was duly and legally issued by the United States Patent and Trademark Office after a full and fair examination in the name of Hans Peter Walpurgis for an invention entitled “Watercraft Comprising a Redundant Energy Accumulator.” A true copy of the '888 Patent is annexed hereto as **Exhibit C**.

23. Cayago Tec is the owner by assignment of the '019 Patent, the '814 Patent, and the '888 Patent with the right to bring suit to enforce these patents. The '019 Patent, '814 Patent, and '888 Patent are collectively referred to herein as “the Patents.”

24. Cayago Americas has the exclusive authority to, among other things, distribute, sell, and offer to sell the patented products in the United States.

25. The '019 Patent relates to a rechargeable battery unit, in particular for a watercraft.

26. The claims of the '019 Patent are valid and enforceable.

27. The '814 Patent relates to an electric motor-driven watercraft.

28. The claims of the '814 Patent are valid and enforceable.

29. The '888 Patent relates to a watercraft with a hull that has a flow duct, or is associated with a flow duct, a motor-driven water-acceleration arrangement is associated with the flow duct and the motor is connected to an energy accumulator. To improve user convenience, two energy accumulators are integrated into the hull. The energy accumulators are arranged on both sides of the center longitudinal plane running in the longitudinal direction of the hull.

30. The claims of the '888 Patent are valid and enforceable.

The Infringing Products

31. Upon information and belief, Defendant makes, uses, imports, sells, and/or offers to sell watercraft vehicles with rechargeable batteries under various models including the SeaDart Ace watercraft (“SeaDart”).

32. Upon information and belief, Defendant has and/or is making, using, importing, selling, and/or offering to sell the SeaDart watercraft that are covered by one or more claims of the '019 Patent and '814 Patent without the authority of Cayago Tec.

33. Upon information and belief, Defendant has made, used, sold, offered to sell, and/or imported self-propelled watercraft vehicles with rechargeable batteries under various models including Stingray One, Stingray Neo, Stingray Neo+, and Stingray Eon (collectively, “Stingray Series Watercraft”) and DiveJet, DiveJet Eon, DiveJet +, and DiveJet One (collectively, “DiveJet Series Watercraft”).

34. Upon information and belief, the Stingray Series Watercraft are essentially identical to each other with the differences consisting of maximum speed, maximum depth, maximum power output, maximum propulsive force, power modes, and run time.

35. Upon information and belief, the DiveJet Series Watercraft are essentially identical to each other with the differences consisting of maximum speed, maximum depth, maximum power output, maximum propulsive force, power modes, and run time.

36. Upon information and belief, the DiveJet Series Watercraft is essentially identical to the Stingray Series Watercraft with the main exception consisting of exterior components.

37. Upon information and belief, Defendant has made, used, sold, offered to sell, and/or imported the Stingray Series watercraft that are covered by one or more claims of the '888 Patent and the '019 Patent without the authority of Cayago Tec.

COUNT ONE- INFRINGEMENT OF THE '019 PATENT

38. Plaintiff restates and incorporates paragraphs 1 through 36 as if fully stated herein.

39. This cause of action arises under 35 U.S.C. § 101 et seq.

40. Upon information and belief, the SeaDart watercraft infringes one or more of the claims of the '019 Patent.

41. Defendant's infringement is occurring during the term of the '019 Patent.

42. Defendant has infringed and is currently infringing the '019 Patent in violation of 35 U.S.C. § 271 by making, using, importing, selling, and/or offering for sale, within the United States, Florida, and this judicial district, products embodying the inventions claimed in the '019 Patent, including without limitation the SeaDart watercraft identified above.

43. Defendant has infringed the '019 Patent in violation of 35 U.S.C. § 271 by making, using, importing, selling, and/or offering for sale, within the United States, Florida, and this judicial district, products embodying the inventions claimed in the '019 Patent, including without limitation the DiveJet Series Watercraft and Stingray Series Watercraft identified above.

44. The SeaDart watercraft, DiveJet Series Watercraft, and Stingray Series Watercraft infringe or infringed one of more claims of the '019 Patent. For example, the SeaDart watercraft, DiveJet Series Watercraft and Stingray Series Watercraft infringe or infringed at least Claim 1 of the '019 Patent which claims:

A rechargeable battery unit for a watercraft, the rechargeable battery unit comprising:

a holding arrangement including two holders, each holder having a plurality of receptacles;

a plurality of rechargeable batteries connected to one another by the holding arrangement to form a rechargeable battery cell, each of the rechargeable batteries having two poles;

at least one pole connector electrically coupling at least some of the rechargeable batteries to one another;

wherein two or more rechargeable battery cells are lined up with one another and electrically coupled to one another; and

wherein the two holders of the holding arrangement of each rechargeable battery cell are separated by a clearance distance, each holder receiving a respective one of the two poles of each rechargeable battery.

45. Upon information and belief, Defendant had actual knowledge of the '019 Patent, prior to manufacturing, marketing, using, importing, offering for sale, and/or selling products that infringe the '019 Patent.

46. Defendant's infringement of the '019 Patent is willful and deliberate.

47. Upon information and belief, Defendant has knowingly and willfully, aided, abetted, induced, and directed their manufacturers, customers, and users to infringe the '019 Patent in violation of 35 U.S.C. § 271(b).

48. Defendant has infringed and/or is currently infringing the '019 Patent by actively inducing others to make, use, import, sell, and/or offer for sale, within the United States, Florida, and this judicial district, products embodying the inventions claimed in the '019 Patent, including without limitation the SeaDart Watercraft, DiveJet Series Watercraft, and Stingray Series Watercraft identified above.

49. Defendant has knowingly and willfully aided, abetted, induced and directed their dealers, customers, and users to infringe the '019 Patent in violation of 35 U.S.C. § 271(c).

50. Defendant has infringed and/or is currently infringing the '019 Patent by contributing to the infringement by others, including without limitation by providing the SeaDart watercraft, DiveJet Series Watercraft and Stingray Series Watercraft.

51. Upon information and belief, Defendant will not cease committing the wrongful acts alleged in this Complaint without this Court's intervention.

52. As a direct and proximate result of Defendant's direct and indirect infringement of the '019 Patent, Cayago is suffering damages and irreparable injury for which it has no adequate remedy at law.

53. Plaintiffs have suffered, and will continue to suffer, irreparable injury as a result of Defendant's infringement of the '019 Patent.

54. Plaintiffs have been damaged and will continue to be damaged by Defendant's infringement of the '019 Patent, unless enjoined by this Court.

COUNT TWO- INFRINGEMENT OF THE '814 PATENT

55. Plaintiff restates and incorporates paragraphs 1 through 54 as if fully stated herein

56. This cause of action arises under 35 U.S.C. § 101 et seq.

57. Upon information and belief, the SeaDart watercraft infringes one or more of the claims of the '814 Patent.

58. Defendant's infringement is occurring during the term of the '814 Patent.

59. Defendant have infringed and are currently infringing the '814 Patent in violation of 35 U.S.C. § 271 by making, using, importing, selling, and/or offering for sale, within the United States, Florida, and this judicial district, products embodying the inventions claimed in the '814 Patent, including without limitation the SeaDart watercraft identified above.

60. The SeaDart watercraft infringes one of more claims of the '814 Patent. For example, the SeaDart watercraft infringes at least Claim 19 of the '814 Patent which claims:

A motor-driven watercraft, having a body on which a user at least partially rests or stands and having a flow channel extending through the body for containing a screw driven by an electric motor, wherein the electric motor, batteries, a control device for the electric motor and the screw are at least partially housed in the flow channel, the motor-driven watercraft comprising:

the electric motor (3) having an internal rotor,

a stator (21) in heat-conducting contact with a receiver housing (3.5) of the electric motor (3) by a heat-conducting unit (22),

in an area adjacent the heat-conducting unit (22) the receiver housing (3.5) formed at least partially of a material capable of conducting heat, and

the receiver housing (3.5) arranged at least partially in the flow channel (8).

61. Upon information and belief, Defendant had actual knowledge of the '814 Patent, prior to manufacturing, marketing, using, importing, offering for sale, and/or selling products that infringe the '814 Patent.

62. Defendant's infringement of the '814 Patent is willful and deliberate.

63. Upon information and belief, Defendant has knowingly and willfully, aided, abetted, induced, and directed its dealers, customers, and users to infringe the '814 Patent in violation of 35 U.S.C. § 271(b).

64. Defendant has infringed and is currently infringing the '814 Patent by actively inducing others to make, use, sell, and/or offer for sale, within the United States, Florida, and this judicial district, products embodying the inventions claimed in the '814 Patent, including without limitation the SeaDart watercraft identified above.

65. Defendant has knowingly and willfully aided, abetted, induced and directed their manufacturers, customers, and users to infringe the '814 Patent in violation of 35 U.S.C. § 271(c).

66. Defendant has infringed and is currently infringing the '814 Patent by contributing to the infringement by others, including without limitation by providing the SeaDart watercraft.

67. Upon information and belief, Defendant will not cease committing the wrongful acts alleged in this Complaint without this Court's intervention.

68. As a direct and proximate result of Defendant's direct and indirect infringement of the '814 Patent, Cayago is suffering damages and irreparable injury for which it has no adequate remedy at law.

69. Plaintiffs have suffered, and will continue to suffer, irreparable injury as a result of Defendant's infringement of the '814 Patent.

70. Plaintiffs have been damaged and will continue to be damaged by Defendant's infringement of the '814 Patent, unless enjoined by this Court.

COUNT THREE- INFRINGEMENT OF THE '888 PATENT

71. Plaintiff restates and incorporates paragraphs 1 through 69 as if fully stated herein.

72. Each of the DiveJet Series Watercraft and Stingray Series Watercraft have infringed one of more claims of the '888 Patent. For example, iAqua China infringed at least Claim 1 of the '888 Patent which claims:

A watercraft comprising:

a hull having a bow, a rear end, and a longitudinal axis extending between the bow and the rear end;

a flow duct arranged in the hull and formed by a hollow body extending between an intake opening and a jet outlet;
a propeller arranged within the flow duct;

a motor installed in the hull, the motor including an output shaft connected to the propeller;
a flooding chamber, separate from the flow duct, having a plurality of water passage openings in the hull; and

two energy stores installed in the flooding chamber and connected to the motor, the two energy stores disposed on both sides of the longitudinal axis, wherein the flooding chamber is configured to be flooded with water through the plurality of water passage openings to enable cooling of the two energy stores.

73. Upon information and belief, Defendant had actual knowledge of the '888 Patent, prior to manufacturing, marketing, using, importing, offering for sale, and/or selling products that infringe the '888 Patent.

74. Defendant's infringement of the '888 Patent is willful and deliberate.

75. Upon information and belief, Defendant had knowingly and willfully, aided, abetted, induced, and directed its dealers, customers, and users to infringe the '888 Patent in violation of 35 U.S.C. § 271(b).

76. Defendant has infringed the '888 Patent by actively inducing others to make, use, sell, and/or offer for sale, within the United States, Florida, and this judicial district, products embodying the inventions claimed in the '888 Patent, including without limitation the DiveJet Series Watercraft and Stingray Series Watercraft identified above.

77. Defendant has knowingly and willfully aided, abetted, induced, and directed their manufacturers, customers, and users to infringe the '888 Patent in violation of 35 U.S.C. §271(c).

78. Defendant has infringed the '888 Patent by contributing to the infringement by others, including without limitation by providing the DiveJet Series Watercraft and Stingray Series Watercraft.

79. Plaintiffs have been damaged by Defendant's infringement of the '888 Patent.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- a. for a judgment declaring that Defendant has infringed United States Patent No. 9,774,019;
- b. for a preliminary and permanent injunction restraining Defendant, its officers, agents, servants, employees, attorneys, subsidiaries, affiliates, and all other persons in active concert or participating with Defendant or with any of the foregoing from infringing United States Patent No. 9,774,019;
- c. for a judgment declaring that Defendant has infringed United States Patent No. 7,963,814;
- d. for a preliminary and permanent injunction restraining Defendant, its officers, agents, servants, employees, attorneys, subsidiaries, affiliates, and all other persons in active concert or participating with Defendant or with any of the foregoing from infringing United States Patent No. 7,963,814;
- e. for a judgment declaring that Defendant has infringed United States Patent No. 9,694,888;
- f. awarding Plaintiffs compensatory damages and the trebling of such damages pursuant to the 35 U.S.C. § 284.
- g. adjudging that the '019 Patent is valid and enforceable;
- h. adjudging that the '814 Patent is valid and enforceable;
- i. an assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs;
- j. an assessment of attorneys' fees and costs against Defendant pursuant to 35 U.S.C. § 285 and the Dealer Agreement; and
- k. for such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all claims and issues so triable.

DATED: February 1, 2022

Respectfully submitted,

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