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7

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10
11 FLYING HELIBALL, LLC a California
12 Limited Liability Company,
13 Plaintiff,
14 v.

15 SKYROCKET LLC, a California
16 Limited Liability Company; and
17 AMAZON.COM, INC., a Delaware
18 Corporation
19 Defendant.

Case No.: 2:23-cv-10411

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiff Flying Heliball, LLC (“Plaintiff”) by and through its undersigned
2 counsel, hereby complains against Defendant Skyrocket LLC, a California
3 Company (“Skyrocket”) and Defendant Amazon.com, Inc. (“Amazon.com”)
4 (collectively “Defendants”), and respectfully alleges as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action for infringement of Plaintiff's United States Patent
7 No. 7,100,866 under the Patent Act, 35 U.S.C. § 271, based on Defendants’
8 unauthorized commercial manufacture, use, importation, offer for sale, and sale of
9 its SKYVIPER Force Hand-Controlled Drone (“the Accused Product”) in the
10 United States.

11 **JURISDICTION AND VENUE**

12 2. This court has original jurisdiction over the subject matter of this
13 action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

14 3. Personal jurisdiction over Defendants is proper in this District because
15 of the Defendants’ presence in this judicial district, and they have availed itself of
16 the rights and benefits of the laws of California, and Defendants have derived
17 substantial revenue from the sales of the Accused Product in California, and it has
18 systematic and continuous business contacts with California.

19 4. Upon information and belief Defendant Skyrocket’s filings with the
20 California Secretary of State indicate Defendant Skyrocket has been headquartered
21 in California since 2010 and has regularly availed itself to the protections of this
22 jurisdiction during that time.

23 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and
24 1400(b).

25 **THE PARTIES**

26 6. Plaintiff Flying Heliball, LLC is a limited liability company formed
27 under the laws of California having a principal place of business at 28777
28 Witherspoon Parkway, Valencia, California 91355 (hereinafter “Flying Heliball” or

1 “Plaintiff”).

2 7. Upon information and belief, Defendant Skyrocket, LLC d/b/a
3 Skyrocket Toys LLC is a limited liability company that is organized in California
4 and has its regular and established place of business at 4054 Del Rey Ave. Suite
5 207, Marina Del Rey, California 90292 (hereinafter “Skyrocket”).

6 8. Upon information and belief, Defendant Amazon.com is a corporation
7 that is incorporated in Delaware. Amazon.com has corporate offices and employees
8 located at 40 Pacifica Suite 100, Irvine, California 92618. Amazon.com operates a
9 fulfillment center at 17871 Von Karman Ave, Irvine, California 92614 (hereinafter,
10 “Amazon.com”).

11 **FACTUAL BACKGROUND**

12 9. Flying Heliball and its parent corporation are international sellers and
13 distributors of toys and are largely focused on radio-controlled helicopters and other
14 flying vehicles.

15 10. United States Patent Number 7,100,866 (“the ‘866 Patent”), entitled
16 Control System for a Flying Vehicle, was duly and legally issued on September 5,
17 2006, and names Jeffrey Rehkemper, Nicholas Grisolia, Peter Greenley, and Bret
18 Gould as the inventors. Attached as **Exhibit A** is a true and correct copy of the ‘866
19 Patent.

20 11. The ‘866 Patent claims, among other things, in Claim 1, “A vehicle
21 having a means for propelling in a vertical direction, further comprising: a
22 transmitter positioned on the bottom of said vehicle for transmitting a signal from
23 the vehicle downwardly away from said vehicle; a receiver positioned on the bottom
24 of said vehicle for receiving said signal as it is bounced off of a surface, defined as
25 a bounced signal; and a control system that automatically sets a speed of the
26 propelling means in response to the receiver, said control system having a first
27 means to set the speed of the propelling means to a first speed when the receiver
28 receives the bounced signal and the control system having a second means to set

1 the speed of the propelling means to a second speed when the receiver does not
2 receive the bounced signal, the first speed being predefined as a speed that causes
3 the vehicle to gain altitude and the second speed being predefined as a speed that
4 causes the vehicle to lose altitude.”

5 12. ‘866 Patent claims, among other things, in Claim 10, “A system to
6 control a direction of movement of a flying vehicle, the control system comprising:
7 a transmitter/receiver pair positioned on the vehicle, the transmitter transmitting a
8 signal from the vehicle in a predetermined direction; a means to fly said vehicle in
9 a direction opposite of said predetermined direction when said signal is bounced off
10 of a surface and received back by the receiver; and a means to fly said vehicle in a
11 direction similar to said predetermined direction when said receiver does not receive
12 said signal.”

13 13. In 2022, the ‘866 Patent was assigned to Flying Heliball, which is the
14 owner of the entire right, title, and interest in the ‘866 Patent. The claims in the
15 ‘866 patent relate to a control system for a flying toy.

16 14. Defendant Skyrocket sell numerous products which infringe the ‘866
17 Patent including the SKYVIPER Force Hand-Controlled Drone. Collectively, these
18 are referred to herein as the “Accused Products.”

19 15. Defendant Skyrocket sells the Accused Products through third party
20 sellers including Target Corporation (“Target”), Amazon.com, Inc.
21 (“Amazon.com”), Penney OPCO LLC (“JC Penney”), Walmart, Inc. (“Walmart”),
22 and others (“the Third-Party Sellers”).

23 **Defendants’ Infringing Activities and Products**

24 16. Upon information and belief, Defendants have and continue to infringe
25 the ‘866 Patent by making, using selling, and offering for sale the Accused Products
26 in the United States. The Accused Products embody or use the inventions claimed
27 in the ‘866 Patent.

28 17. Briefly, the Accused Products have a controller that is electrically

1 connected to a battery, four propellers, a receiver, a lower transmitter, and several
2 transmitters on the device. When a signal from a transmitter bounces off a surface
3 and is received by the receiver, the controller adjusts electrical current from the
4 battery to the propeller to cause the Accused Product to fly away from the surface.

5 18. More detailed claim charts for claim 1 and claim 10 are attached to this
6 complaint in **Exhibit B**.

7 19. Upon information and belief, Defendant Skyrocket has been and is
8 inducing infringement of the '866 Patent by actively and knowingly inducing others
9 to make, use, sell, offer for sale, or import the Accused Product that embody or use
10 the inventions claimed in the '866 Patent.

11 20. Specifically, Defendant Skyrocket has induced the Third-Party Sellers
12 to sell the Accused Products knowing the Accused Products infringed the '866
13 Patent. Defendant Skyrocket actively encouraged infringement by reaching out to
14 buyers at the Third-Party Sellers and encouraging those buyers to purchase goods
15 that infringed the '886 Patent.

16 21. Upon information and belief, Defendants have known of the existence
17 of the '866 Patent, and these acts of infringement have been willful and in disregard
18 for the '866 Patent, without any reasonable basis for believing that it had a right to
19 engage in the infringing conduct. Specifically, Target has provided Skyrocket with
20 a copy of the '866 Patent and infringement allegations as shown in **Exhibit C**.

21 22. The SKYVIPER Force Hand-Controlled Drone is, and continues to be,
22 sold by the Third-Party Sellers of Defendant Skyrocket and infringes the '866
23 Patent in brick and motor stores at various websites such as:

- 24 a. By Target at: <https://www.target.com/p/sky-viper-force-hover-sphere/-/A-84796260>.
- 25
- 26 b. By Amazon.com at: <https://www.amazon.com/Sky-Viper-Force-Hover-Sphere/dp/B09V3J3C14>
- 27
- 28 c. By JC Penney at: <https://www.jcpenney.com/p/sky-viper-sky->

viper-force-hover-sphere/ppr5008235755?pTplType=regular

d. By Walmart at: <https://www.walmart.com/ip/Sky-Viper-Force-Hover-Sphere-Drone-with-Motion-Sensors-for-Stunts/3140833815>

23. All of these products are identical and infringe the ‘866 Patent for the same reasons as illustrated in **Exhibit B** and only vary from one another by slightly different packaging.

24. Flying Heliball has two licensees through which profits inexorably flow to Flying Heliball. Infringing marketplace participants add units into the marketplace, lower the price for each individual unit sold, and thus reduce the amount of revenue Flying Heliball makes from its licensees.

COUNT ONE (Patent Infringement)

25. Plaintiff repeats and realleges paragraphs 1 through 24 hereof, as if fully set forth herein.

26. Upon information and belief, Defendants have been and is infringing the ‘866 Patent by making, using, selling, or offering for sale in the United States, or importing into the United States, including within this judicial district, flying toys, including those sold under the name SKYVIPER Force Hand-Controlled Drone, in violation of 35 U.S.C. § 271(a).

27. Upon information and belief, Defendants have been and is inducing infringement of the ‘866 Patent by actively and knowingly inducing others to make, use, sell, offer for sale, or import flying toys that embody or use the invention claimed in the ‘866 Patent, including those sold under the name SKYVIPER Force Hand-Controlled Drone, in violation of 35 U.S.C. § 271(b).

28. Upon information and belief, Defendants has been and are infringing, and contributing to the infringement of the ‘866 Patent by making, using, selling, or offering for sale in the United States, or importing into the United States, including within this judicial district, flying toys, including those sold under the

1 name SKYVIPER Force Hand-Controlled Drone.

2 29. Defendants' infringement has been, and continues to be knowing,
3 intentional, and willful.

4 30. Defendants' acts of infringement of the '866 Patent have caused and
5 will continue to cause Plaintiff damages for which Plaintiff is entitled to
6 compensation pursuant to 35 U.S.C. § 284.

7 31. Defendants' acts of infringement of the '866 Patent have caused and
8 will continue to cause Plaintiff immediate and irreparable harm unless such
9 infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. Plaintiff
10 has no adequate remedy at law.

11 32. This case is exceptional and, therefore, Plaintiff is entitled to an award
12 of attorney fees pursuant to 35 U.S.C. § 285.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff requests judgment against Defendants as follows:

15 1. Adjudging that Defendants have infringed, and actively induced
16 infringement of the '866 Patent, in violation of 35 U.S.C. § 271(a) and (b)

17 2. Granting an injunction temporarily, preliminarily, permanently
18 enjoining Defendants, their employees, agents, officers, directors, attorneys,
19 successors, affiliates, subsidiaries, and assigns, and all of those in active concert
20 and participation with any of the foregoing persons or entities from infringing,
21 contributing to the infringement of, or inducing infringement of the '866 Patent;

22 3. Ordering Defendants to account and pay damages adequate to
23 compensate Plaintiff for Defendants' infringement of the '866 Patent, including for
24 any infringing acts not presented at trial, pre-judgment and post-judgment interest
25 and costs, pursuant to 35 U.S.C. § 284;

26 4. Ordering an accounting for any infringing sales not presented at trial
27 and an award by the court of additional damages for any such infringing sales;

28 5. Ordering that the damages award be increased up to three times the

1 actual amount assessed, pursuant to 35 U.S.C. § 284;

2 6. Declaring this case exceptional and awarding Plaintiff its reasonable
3 attorney fees, pursuant to 35 U.S.C. § 285; and

4 7. Awarding such other and further relief as this Court deems just and
5 proper.

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Dated: December 12, 2023

McKOWN BAILEY

By: /s/Aaron M. McKown
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DEMAND FOR JURY TRIAL

A jury trial is demanded pursuant to Fed. R. Civ. P. 38.

Dated: December 12, 2023

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