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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY

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Attorneys for Plaintiffs
AQUAWOOD, LLC, MANLEY TOY DIRECT, LLC
MANLEY TOYS LTD.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

AQUAWOOD, LLC, a California limited liability company, MANLEY TOY DIRECT LLC, an Iowa limited liability company, MANLEY TOYS LTD., a Hong Kong Corporation

Plaintiff,

v.

TROPICAL VENTURES, LLC, a New York limited liability company

Defendants.

CASE NO. CV09-3686 MMM (MANx)

COMPLAINT FOR DECLARATORY RELIEF OF NON-INFRINGEMENT AND INVALIDITY

Plaintiffs AquaWood, LLC ("Aquawood"), Manley Toy Direct LLC ("Manley Direct"), and Manley Toys Ltd. ("Manley Toys") collectively "Plaintiffs" for their Complaint against Defendant Tropical Ventures, LLC ("Tropical Ventures"), allege as follows:

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1. This is an action for declaratory relief.

THE PARTIES

2. Plaintiff Aquawood is a limited liability company organized under the laws of the State of California, with its principal place of business in Los Angeles, California. As part of its business, Plaintiff Aquawood designs and markets in the U.S. water toys including the BANZAI Vortex Blast Water Slide.

3. Manley Direct is a limited liability company organized and existing under the laws of the State of Iowa, with its principal of business in Indianola, Iowa.

4. Manley Toys is a corporation organized and existing under the laws of Hong Kong, having principal place of business in Kowloon, Hong Kong.

5. Defendant Tropical Ventures is a limited liability company organized under the laws of the State of New York, and with its principal place of business in Hempstead, New York.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under the provisions of the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and under 28 U.S.C. § 1338(a) in that the cause of action arises under the Patent Laws of the United States. Jurisdiction is also proper under 28 U.S.C. § 1331 (federal question).

7. Without limiting the foregoing, Defendant has conducted business in the judicial district, in the State of California and has purposely directed its actions as alleged herein into the judicial district and at Plaintiff, Aquawood.

FACTUAL BACKGROUND

8. Defendant has accused Plaintiffs Aquawood, Manley Direct, and Manley Toys of infringing its rights in Patent No. 7,530,474 B2 ("the '474 patent).

9. Plaintiffs contend that the BANZAI Vortex Blast Water Slide does not infringe any claims of the '474 patent and/or that the '474 patent is not valid and/or not enforceable.

FIRST CLAIM FOR RELIEF

(Declaration of Non-Infringement)

10. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 9 above.

11. An actual and justiciable controversy has arisen and exists between the parties because Defendant alleges that Plaintiffs infringe the '474 patent, which Plaintiffs deny. Plaintiffs desire a judicial determination and declaration of the respective rights and duties of the parties herein in accordance with the contentions above. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties regarding the '474 patent. Absent a declaration of noninfringement or invalidity or unenforceability, Defendant will continue to wrongfully assert the '474 patent

12. Plaintiffs have not infringed any valid and enforceable claims of the '474 patent in any manner, willfully or otherwise, and are entitled to a declaration to that effect.

13. This is an exceptional case entitling Plaintiffs to an award of their attorneys' fees and costs incurred in connection with this action pursuant to 35 U.S.C. § 285.

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SECOND CLAIM FOR RELIEF

(Declaration of Invalidity and Unenforceability)

14. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 9 above.

15. An actual and justiciable controversy exists between the parties with respect to the validity and/or enforceability of the '474 patent because Defendant contends that Plaintiffs infringe the '474 patent, which Plaintiffs deny. Absent a declaration of invalidity and/or unenforceability, Defendant will continue to wrongfully assert the '474 patent against Plaintiffs, and thereby cause Plaintiffs irreparable injury and damage.

16. Each and every claims of the '474 patent is unenforceable and/or invalid under the provisions of Title 35 of the United States Code, including, but not limited to, Sections 102, 103 and/or 112, and Plaintiffs are entitled to a declaration to that effect.

17. This is an exceptional case entitling Plaintiffs to an award of their attorneys' fees and costs incurred in connection with this action pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a judicial determination and a declaration that they have not infringed, contributed to the infringement of, or induced the infringement of any valid claim of the '474 patent

2. For a judicial determination and a declaration that each and every claim of the '474 patent is either unenforceable or not valid.

3. That pursuant to 35 U.S.C. § 285 and/or other applicable laws that this action is an exceptional cases and that Plaintiffs be awarded their attorneys' fees incurred in connection with this action;

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4. That Plaintiffs be awarded its costs of suit incurred herein; and

5. For such other and further relief as the Court deems just and proper.

DATED: May 20, 2009

JEFFER, MANGELS, BUTLER & MARMARO LLP
ROD S . BERMAN
STANLEY M. GIBSON

By: _____
ROD S. BERMAN
Attorneys for Plaintiffs AQUAWOOD, LLC, MANLEY TOY DIRECT, LLC MANLEY TOYS LTD.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Margaret M. Morrow and the assigned discovery Magistrate Judge is Margaret A. Nagle.

The case number on all documents filed with the Court should read as follows:

CV09- 3686 MMM (MANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division** **312 N. Spring St., Rm. G-8** **Los Angeles, CA 90012**	[ ] **Southern Division** **411 West Fourth St., Rm. 1-053** **Santa Ana, CA 92701-4516**	[ ] **Eastern Division** **3470 Twelfth St., Rm. 134** **Riverside, CA 92501**

Failure to file at the proper location will result in your documents being returned to you.

Rod S. Berman (Bar No. 169344)
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1900 Avenue of the Stars, 7th Floor
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AQUAWOOD, LLC, a California limited liability company, MANLEY TOY DIRECT LLC, an Iowa limited liability company, MANLEY TOYS LTD., a Hong Kong Corporation PLAINTIFF(S) V. TROPICAL VENTURES, LLC, a New York limited liability company DEFENDANT(S).	CASE NUMBER CV09-3686 MMM (MANx) **SUMMONS**

TO:DEFENDANT(S): TROPICAL VENTURES, LLC, a New York limited liability company

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Rod S. Berman, whose address is _____. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: MAY 22 2009

By: NATALIE LONGORIA
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

1198

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
AQUAWOOD, LLC, a California limited liability company, MANLEY TOY DIRECT LLC, an Iowa limited liability company, MANLEY TOYS LTD., a Hong Kong Corporation

DEFENDANTS
TROPICAL VENTURES, LLC, a New York limited liability company

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Rod S. Berman (Bar No. 105444), rberman@jmbm.com
Stanley M. Gibson (Bar No. 162329), smg@jmbm.com
JEFFER, MANGELS, BUTLER & MARMARO LLP
1900 Avenue of the Stars, 7th Floor, Los Angeles, California 90067-4308
310-203-8080 tel 310-203-0567 fax

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)
☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No ☐ **MONEY DEMANDED IN COMPLAINT: $** _____

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Declaratory Relief of Non-Infringement and Invalidity of a patent. 28 U.S.C. §§1338(a), 2201,2202

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Act
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Info. Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Fed. Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury-Med Malpractice
☐ 365 Personal Injury-Product Liability
☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
☐ 462 Naturalization Application
☐ 463 Habeas Corpus-Alien Detainee
☐ 465 Other Immigration Actions

TORTS PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

BANKRUPTCY
☐ 22 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 445 American with Disabilities – Employment
☐ 446 American with Disabilities – Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence Habeas Corpus
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus/ Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/ PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R.& Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety /Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

PROPERTY RIGHTS
☐ 820 Copyrights
☒ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 61 HIA(1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW 405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS-Third Party 26 USC 7609

CV09-3686

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes
If yes, list case number(s): Case No. CV 08-07068 DDP (PLA)

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)
☒ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Aquawood LLC, Los Angeles County	MANLEY TOY DIRECT LLC, an Iowa limited liability company, MANLEY TOYS LTD., a Hong Kong Corporation

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	TROPICAL VENTURES, LLC, a New York limited liability company

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** May 22, 2009
ROD S. BERMAN

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

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