

Matthew D. Francis (6978)
Adam P. McMillen (10678)
WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511
Telephone: 775-324-4100
Facsimile: 775-333-8171
Attorneys for Plaintiff Jed Margolin

REC'D & FILED
2012 OCT 30 AM 11:29
ALAN GLOVER
BY **HIGGINS** CLERK

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

JED MARGOLIN, an individual,

Plaintiff,

vs.

**OPTIMA TECHNOLOGY CORPORATION,
a California corporation, OPTIMA
TECHNOLOGY CORPORATION, a Nevada
corporation, REZA ZANDIAN aka
GOLAMREZA ZANDIANJAZI aka
GHOLAM REZA ZANDIAN aka REZA JAZI
aka J. REZA JAZI aka G. REZA JAZI aka
GHONONREZA ZANDIAN JAZI, an
individual, DOE Companies
1-10, DOE Corporations 11-20, and DOE
Individuals 21-30,**

Defendants.

Case No.: 090C00579 1B

Dept. No.: 1

**DECLARATION OF JED MARGOLIN
IN SUPPORT OF APPLICATION FOR
DEFAULT JUDGMENT**

I, Jed Margolin do hereby declare and state as follows:

1. I am the named inventor on United States Patent No. 5,566,073 ("the '073 Patent"), United States Patent No. 5,904,724 ("the '724 Patent"), United States Patent No. 5,978,488 ("the '488 Patent") and United States Patent No. 6,377,436 ("the '436 Patent") (collectively "the Patents").

2. Attached as Exhibit 1 is a true and correct copy of the Amended Answer, Counterclaims, Cross-Claims and Third-Party Claims filed in the action captioned *Universal*

1 *Avionics Systems Corporation v. Optima Technology Group, Inc.*, No. CV 07-588-TUC-RCC
2 (the "Arizona Action").

3 3. Attached as Exhibit 2 is a true and correct copy of the August 18, 2008 Order
4 from the Arizona Action.

5 4. After Defendant Zandian filed the forged and invalid assignment document
6 with the USPTO relating to the Patents, I was forced to spend \$90,000 in attorneys' fees in the
7 Arizona Action where the Court ordered that the USPTO correct record title to the Patents.
8 Attached as Exhibit 3 are true and correct copies of the records from my bank showing three
9 transfers of \$30,000 each. Two transfers went to Optima Technology Group and one transfer
10 went directly to the attorneys representing Optima Technology Group and myself. The three
11 transfers were for the payment of attorneys' fees in the Arizona Action.
12

13 5. I was to be paid \$210,000 pursuant to a patent purchase agreement that failed
14 as a result of the Defendants' actions as stated in the Amended Complaint. I cannot publicly
15 provide documentation or specific details of the actual purchase agreement because of the
16 confidentiality provisions in the agreement. Although, I am more than willing to provide the
17 Court with documentation of the agreement so the Court can review the agreement *in camera*.
18 However, on April 14, 2008, Optima Technology Group entered into a purchase agreement to
19 sell the '073 and '724 Patents to another entity which would have netted me \$210,000 on the
20 purchase price of the subject Patents alone. The purchase agreement also included a provision
21 for post patent sale royalty payments which would have provided me with additional
22 substantial income. Finally, the April 14, 2008 purchase agreement provided the purchasing
23 entity an opportunity to conduct due diligence regarding the Arizona Action. On June 13,
24 2008, the purchasing entity wrote Optima Technology Group and stated that they had
25 completed their due diligence investigation and determined that the Patents and/or the Arizona
26
27
28

1 Action were not acceptable and therefore the purchase agreement was terminated. Simply put,
2 the purchase agreement was terminated because of Defendants' actions.

3 I declare under penalty of perjury that the foregoing is true and correct to the best of
4 my knowledge.

5 Dated: October 29, 2012


6
7 By: —/S/ Jed Margolin
8 JED MARGOLIN
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: October 29, 2012.

BY: _____


Matthew D. Francis (6978)
Adam P. McMillen (10678)
WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511
Telephone: 775-324-4100
Facsimile: 775-333-8171
Attorneys for Plaintiff Jed Margolin

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Watson Rounds, and that on
3 this date, I deposited for mailing, in a sealed envelope, with first-class postage prepaid, a true
4 and correct copy of the foregoing document, **DECLARATION OF JED MARGOLIN IN**
5 **SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT**, addressed as follows:

6 Reza Zandian
7 8775 Costa Verde Blvd. #501
8 San Diego, CA 92122

9 Optima Technology Corp.
10 A California corporation
11 8775 Costa Verde Blvd. #501
12 San Diego, CA 92122

13 Optima Technology Corp.
14 A Nevada corporation
15 8775 Costa Verde Blvd. #501
16 San Diego, CA 92122

17 Dated: October 29th, 2012

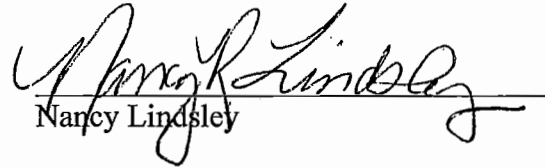
18 
19 Nancy Lindsley

Exhibit 1

Exhibit 1

1 **CHANDLER & UDALL, LLP**
2 **ATTORNEYS AT LAW**
3 **4801 E. BROADWAY BLVD., SUITE 400**
4 **TUCSON, ARIZONA 85711-3638**
5 **Telephone: (520) 623-4353**
6 **Fax: (520)792-3426**

7 Edward Moomjian II, PCC # 65050, SBN 016667
8 Jeanna Chandler Nash, PCC # 65674, SBN 022384
9 Attorneys for Defendants Adams, Margolin and Optima Technology Inc. a/k/a Optima
10 Technology Group, Inc.

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 **UNIVERSAL AVIONICS SYSTEMS**
14 **CORPORATION,**

15 **Plaintiff,**

16 **vs.**

17 **OPTIMA TECHNOLOGY GROUP, INC.,**
18 **OPTIMA TECHNOLOGY CORPORATION,**
19 **ROBERT ADAMS and JED MARGOLIN,**

20 **Defendants**

NO. CV-00588-RC

AMENDED ANSWER,
COUNTERCLAIMS, CROSS-
CLAIMS AND THIRD-PARTY
CLAIMS OF OPTIMA
TECHNOLOGY INC. A/K/A
OPTIMA TECHNOLOGY
GROUP, INC.

21 **OPTIMA TECHNOLOGY INC. a/k/a**
22 **OPTIMA TECHNOLOGY GROUP, INC., a**
23 **corporation,**

24 **Counterclaimant,**

25 **vs.**

26 **UNIVERSAL AVIONICS SYSTEMS**
CORPORATION, an Arizona corporation,

Counterdefendant

JURY TRIAL DEMANDED

Assigned to: Hon. Raner C. Collins

OPTIMA TECHNOLOGY INC. a/k/a
OPTIMA TECHNOLOGY GROUP, INC., a
corporation,

Cross-Claimant,

vs.

OPTIMA TECHNOLOGY CORPORATION,
a corporation,

Cross-Defendant

1
2 OPTIMA TECHNOLOGY INC. a/k/a
3 OPTIMA TECHNOLOGY GROUP, INC., a
4 corporation,

Third-Party Plaintiff,

vs.

5 JOACHIM L. NAIMER and JANE DOE
6 NAIMER, husband and wife; and FRANK E.
7 HUMMEL and JANE DOE HUMMEL,

Third-Party Defendants.

8 Defendant/Counterclaimant/Cross-Claimant/Third-Party Plaintiff Optima Technology
9 Inc. a/k/a Optima Technology Group Inc. (hereinafter "Optima"), by and through undersigned
10 counsel, hereby submits its *Amended Answer* to the Plaintiff's *Complaint* herein, including its
11 *Counterclaims, Cross-Claims* and *Third-Party Claims* herein.

12 As stated in Optima's original *Answer*, due to its contemporaneously-filed *Motion to*
13 *Dismiss* asserting that Counts V, VI and VII fail to state a claim against Optima, Optima
14 answers herein the general allegations of the *Complaint*, and those of Counts I-IV, and will
15 amend this *Answer* to answer Counts V, VI and/or VII at such time, and to the extent that, the
16 Court herein denies that *Motion* in whole or in part. *See* Rule 12(a)(4), Fed.R.Civ.P.¹

17 The following paragraphs are in response to the allegations of the correspondingly
18 numbered paragraphs of the *Complaint*:

19 **INTRODUCTORY PARAGRAPH**

20 Deny the allegations of Plaintiff's Introductory Paragraph (page 1 line 19 through page
21

22
23 ¹ The District of Arizona has adopted the majority view "that even though a pending
24 motion to dismiss may only address some of the claims alleged, the motion to dismiss tolls the
25 time to respond to all claims." *Pestube Systems, Inc. v. Hometeam Pest Defense, LLC.*, 2006
26 WL 1441014 *7 (D.Ariz. 2006). However, because this is an unpublished decision, and only
to avoid any potential dispute with Plaintiff whether a failure to answer the allegations of
Counts I-IV of the *Complaint* (i.e., those claims that are not the subject of the *Motion to*
Dismiss) could be deemed a failure to defend those allegations for purposes of a default,
Optima proceeds to answer those allegations and claims herein.

1 2 line 3 of the *Complaint*).

2 **NATURE OF THE ACTION**

3 1. Admit that the *Complaint* seeks declarations of invalidity and non-infringement
4 of U.S. Patent Nos. 5,566,073 (the “’073 patent”) and 5,904,724 (the “’724 patent”).² Admit
5 that the *Complaint* asserts claims for breach of contract, unfair competition and negligent
6 interference. Deny validity of all such assertions and claims. Deny all remaining allegations.

7 **THE PARTIES**

8 2. Deny for lack of knowledge.

9 3. Admit. Affirmatively allege that Optima Technology Group Inc. is also known
10 and has been and does business as Optima Technology Inc.

11 4. Denied. Affirmatively allege that Optima Technology Corporation (hereinafter
12 “OTC”) has no relationship whatsoever to Optima.

13 5. Denied. Affirmatively alleged that Defendant Robert Adams (“Adams”) is the
14 Chief Executive Officer of Optima.

15 6. Denied.

16 7. Denied.

17 **JURISDICTION AND VENUE**

18 8. Admit that the *Complaint* seeks declarations of invalidity and non-infringement
19 of the ‘073 patent and the ‘724 patent, and asserts claims for breach of contract, unfair
20 competition and negligent interference. Deny validity of all such assertions and claims. Deny
21 all remaining allegations.

22 9. Admit that the Court has original jurisdiction over Counts I-IV of the *Complaint*
23 asserting non-infringement and invalidity of the Patents (although Optima denies the assertions
24 and validity of those claims) as to Defendant Optima. Affirmatively allege that co-Defendant
25

26 ² The ‘073 patent and the ‘724 patent are collectively referred to herein as the “Patents.”

1 OTC, to the extent that it purportedly exists, does not own or have any other interest in the
2 Patents. Deny that the Court has jurisdiction over Counts V, VI and VII of the *Complaint*, and
3 affirmatively allege that Plaintiff lacks Article III standing with respect thereto. Affirmatively
4 allege that Counts V, VI and VII fail to state a claim against Optima as asserted in Optima's
5 *Motion to Dismiss*. Deny that the Court has supplemental jurisdiction over Counts V, VI and
6 VII of the *Complaint*. Deny all remaining allegations.

7 10. Deny.

8 **THE PATENTS-IN-SUIT**

9 11. Admit that the '073 patent is duly and legally issued and is valid. Admit that a
10 copy of the '073 patent is attached as Exhibit 1 to the *Complaint*. Admit the '073 patent was
11 assigned to Optima which is the current owner of the '073 patent. Deny that OTC has any right
12 or interest in the '073 patent. Deny all remaining allegations.

13 12. Admit that the '724 patent is duly and legally issued and is valid. Admit that a
14 copy of the '724 patent is attached as Exhibit 2 to the *Complaint*. Admit the '724 patent was
15 assigned to Optima which is the current owner of the '724 patent. Deny that OTC has any right
16 or interest in the '724 patent. Deny all remaining allegations.

17 13. Admit that Defendant Jed Margolin at one time granted a Power of Attorney to
18 Optima. Admit that a copy of the Power of Attorney is attached as Exhibit 3 to the *Complaint*.
19 Admit that the Power of Attorney appointed "Optima Technology Inc. - Robert Adams, CEO"
20 as Margolin's agent with respect to the Patents. Affirmatively allege that OTC has and had no
21 right or interest under the Power of Attorney. Affirmatively allege that the Power of Attorney
22 was superseded by an assignment of the Patents to Optima prior to the filing of the *Complaint*
23 herein. Affirmatively allege that the Power of Attorney was subsequently revoked and is no
24 longer valid or in force. Deny all remaining allegations.

25 **FACTS**

26 14. Admit that Adams communicated (as CEO of Optima) with Plaintiff's counsel.

1 Affirmatively allege that the text of Exhibit 4 to the *Complaint* speaks for itself. Deny all
2 remaining allegations.

3 15. Admit that Jed Margolin communicated with Adams (as CEO of Optima), and
4 that Adams (as CEO of Optima) communicated with Plaintiff's counsel. Affirmatively allege
5 that the text of Exhibit 5 to the *Complaint* speaks for itself. Deny all remaining allegations.

6 16. Admit. Affirmatively allege that Adams' alleged actions as described in
7 Paragraph 16 of the *Complaint* were in his capacity as CEO of Optima.

8 17. Admit that Plaintiff is/was infringing on the Patents. Admit that Adams (as CEO
9 of Optima) communicated with Plaintiff's counsel. Affirmatively allege that the text of
10 Exhibit 5 to the *Complaint* speaks for itself. Deny all remaining allegations.

11 18. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
12 counsel. Admit that Plaintiff is/was infringing on the Patents. Affirmatively allege that the text
13 of Exhibit 5 to the *Complaint* speaks for itself. Deny all remaining allegations.

14 19. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
15 counsel. Admit that Plaintiff is/was infringing on the Patents. Deny all remaining allegations.

16 20. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
17 counsel. Affirmatively allege that the text of Exhibit 6 to the *Complaint* speaks for itself.
18 Deny all remaining allegations.

19 21. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
20 counsel. Affirmatively allege that the text of Exhibit 7 to the *Complaint* speaks for itself.
21 Deny all remaining allegations.

22 22. Admit. Affirmatively allege that Adams' alleged actions as described in
23 Paragraph 22 of the *Complaint* were in his capacity as CEO of Optima.

24 23. Admit. Affirmatively allege that the text of Exhibit 8 to the *Complaint* speaks
25 for itself. Affirmatively allege that Plaintiff, through its actions, has waived its rights under
26 Exhibit 8 to the *Complaint*.

1 24. Affirmatively allege that the text of Exhibit 9 to the *Complaint* speaks for itself.
2 Deny all remaining allegations.

3 25. Admit second sentence of Paragraph 25 of the *Complaint* to the extent it asserts
4 that the following persons attended the meeting on behalf of Plaintiff: Donald Berlin, Andria
5 Poe, Paul DeHerrera, Frank Hummel, Michael P. Delgado, and Scott Bornstein. Deny all
6 remaining allegations.

7 26. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
8 counsel. Deny all remaining allegations.

9 27. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
10 counsel. Deny all remaining allegations.

11 28. Deny.

12 29. Admit that Jed Margolin communicated with Plaintiff. Deny all remaining
13 allegations.

14 30. Admit that OTC, which is upon information and belief owned and controlled by
15 Reza Zandian a/k/a Gholamreza Zandianjazi, may have been involved in filing numerous
16 and/or frivolous state court lawsuits. Deny all remaining allegations. Affirmatively allege that
17 OTC, and any such lawsuits, are completely unrelated to Optima.

18 31. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
19 counsel. Affirmatively allege that the text of Exhibit 10 to the *Complaint* speaks for itself.
20 Deny all remaining allegations.

21 32. Deny for lack of knowledge.

22 33. Deny Plaintiff's "conclusion" for lack of knowledge. Deny all remaining
23 allegations.

24 34. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
25 counsel. Affirmatively allege that the text of Exhibits 11 and 12 to the *Complaint* speak for
26 themselves. Deny all remaining allegations.

1 45. Deny that Optima made an "unreasonable" licensing demand of Plaintiff.
2 Otherwise admit with respect to Optima. Deny that OTC has any right or interest in the
3 Patents. Deny all remaining allegations.

4 46. Deny.

5 47. Admit that Plaintiff seeks a declaration as described in Paragraph 47 of the
6 *Complaint*. Deny that Plaintiff is entitled to such a declaration. Deny all remaining allegations.

7 **COUNT TWO**

8 **Declaratory Judgment of Invalidity of the '073 Patent**

9 48. Optima repeats and restates the statements of paragraphs 1-47 above as if fully
10 set forth herein.

11 49. Deny that Optima made an "unreasonable" licensing demand of Plaintiff. Admit
12 with respect to Optima. Deny that OTC has any right or interest in the Patents. Deny all
13 remaining allegations.

14 50. Deny.

15 51. Admit that Plaintiff seeks a declaration as described in Paragraph 51 of the
16 *Complaint*. Deny that Plaintiff is entitled to such a declaration. Deny all remaining allegations.

17 **COUNT THREE**

18 **Declaratory Judgment of Non-Infringement of the '724 Patent**

19 52. Optima repeats and restates the statements of paragraphs 1-51 above as if fully
20 set forth herein.

21 53. Deny that Optima made an "unreasonable" licensing demand of Plaintiff.
22 Otherwise admit with respect to Optima. Deny that OTC has any right or interest in the
23 Patents. Deny all remaining allegations.

24 54. Deny.

25 55. Admit that Plaintiff seeks a declaration as described in Paragraph 55 of the
26 *Complaint*. Deny that Plaintiff is entitled to such a declaration. Deny all remaining allegations.

1 Optima hereby reserves the right to amend this *Answer* at any time that discovery, disclosure
2 or additional events reveal the existence of additional affirmative defenses):

3 1. With respect to Counts V, VI and VII of the *Complaint*, Defendant Optima
4 asserts those Rule 12(b)(6) defenses raised in its contemporaneously filed *Motion to Dismiss*
5 including but not limited to: waiver; failure to plead in accordance with the standards
6 expressed under *Bell Atlantic Corp. v. Twombly*, ___ U.S. ___, 127 S.Ct. 1955 (2007); failure
7 to establish Article III standing; lack of jurisdiction; inapplicability of California law to
8 Optima; and failure to establish "unlawful" or "fraudulent" conduct as a predicate act to a claim
9 of California statutory Unfair Competition (California Business and Professions code § 17200
10 *et seq*);

11 2. Laches;

12 3. Waiver; and,

13 4. Estoppel.

14 **JURY TRIAL DEMAND**

15 Defendant Optima demands a jury trial on all claims and issues to be litigated in this
16 matter.

17 **PRAYER FOR RELIEF**

18 WHEREFORE Defendant Optima requests that the Court enter judgment in its favor on
19 Plaintiff's claims, deny Plaintiff any relief herein, grant Optima its attorneys' fees and costs
20 pursuant to applicable law, including but not limited to 35 U.S.C. § 285, and grant Optima such
21 other and further relief as the Court deems reasonable and just.

22 **COUNTERCLAIMS, CROSS-CLAIMS & THIRD-PARTY CLAIMS³**

23 Counterclaimant/Cross-Claimant/Third-Party Plaintiff Optima brings this civil action
24 against Counterdefendant Universal Avionics Systems Corporation ("UAS"), against

25 _____
26 ³ Except where otherwise noted, all capitalized terms herein are as defined in the
foregoing *Amended Answer*.

1 Cross-Defendant Optima Technology Corporation, a corporation ("OTC"), and against
2 Third-Party Defendants Joachim L. Naimer and Jane Doe Naimer, husband and wife, and Frank
3 E. Hummel and Jane Doe Hummel.

4 **THE PARTIES**

- 5 1. Counterclaimant Optima is, and at all times relevant hereto has been, a Delaware
6 corporation engaged in the business of the design, conception and invention of synthetic
7 vision systems. Optima is the owner of the '073 patent and '724 patent.
- 8 2. Counterdefendant UAS is, upon information and belief, an Arizona corporation who is
9 headquartered and does business in Arizona.
- 10 3. Cross-Defendant Optima Technology Corporation ("OTC") is, upon information and
11 belief, a California corporation.
- 12 4. Third-Party Defendants Joachim L. Naimer and Jane Doe Naimer (individually and
13 collectively "Naimer") are, upon information and belief, husband and wife who reside
14 in California. At all times relevant hereto, Naimer was acting for the benefit of his
15 marital community, and was acting as an agent, employee, servant and/or authorized
16 representative of UAS, and within the course and scope of such agency, employment,
17 service and/or representation. Upon information and belief Naimer is the President and
18 Chief Executive Officer of UAS.
- 19 5. Third-Party Defendants Frank E. Hummel and Jane Doe Hummel (individually and
20 collectively "Hummel") are, upon information and belief, husband and wife who reside
21 in Washington. At all times relevant hereto, Hummel was acting for the benefit of his
22 marital community, and was acting as an agent, employee, servant and/or authorized
23 representative of UAS, and within the course and scope of such agency, employment,
24 service and/or representation. Upon information and belief, Hummel is an officer or
25 managing agent of UAS. Upon information and belief, Hummel is the Vice
26 President/General Manager of Engineering Research and Development for UAS.

- 1 6. Upon information and belief, UAS, Naimer, and Hummel have transacted business in
2 and/or committed one or more acts in Arizona which give rise to the claims herein.

3 **JURISDICTION AND VENUE**

- 4 7. The statements of all of the foregoing paragraphs are incorporated herein by reference
5 as if fully set forth herein.
- 6 8. The Counterclaim, Cross-Claim and Third-Party Claim include claims for patent
7 infringement and for declaratory judgment relating to ownership/rights in patents, which
8 arise under the United States Patent Laws, 35 U.S.C. §101 et seq. The amount in
9 controversy is in excess of \$1,000,000.
- 10 9. Jurisdiction of this Court is pursuant to 28 U.S.C. §§ 1331, 1367, 1338(a) and (b), and
11 2201 *et seq.*

12 **FACTS**

- 13 10. The statements of all of the foregoing paragraphs are incorporated herein by reference
14 as if fully set forth herein.
- 15 11. Upon information and belief, with actual and/or constructive knowledge of the Patents
16 UAS has sold and/or manufactured and/or used and/or advertised/promoted one or more
17 products including those products designated by UAS as the Vision-1, UNS-1 and
18 TAWS Terrain and Awareness & Warning systems all of which infringe one or the
19 other of the Patents in suit ("Infringing Products").
- 20 12. Optima informed UAS that the Infringing Products infringed upon the Patents prior to
21 the filing of the *Complaint* herein. Upon information and belief, despite such
22 notification UAS has continued to sell and/or manufacture and/or use and/or
23 advertise/promote the Infringing Products.
- 24 13. Upon information and belief:
25 a. Naimer was the moving force who originated UAS's concept of the Infringing
26 Products; and/or

- 1 b. Naimer was and is the Chief Executive Officer of UAS, thereby controlling UAS
2 and its actions, including UAS's decision to create, develop, manufacture,
3 market and sell the Infringing Products; and/or
4 c. Naimer knew and/or should have known of the Patents prior to this lawsuit;
5 and/or
6 d. Naimer knew of Optima's allegations that UAS infringed upon the Patents prior
7 to this lawsuit; and/or
8 e. Naimer knew of UAS's actions in the nature of those described in Paragraphs 25,
9 31 and 33 of the *Complaint* and participated in and/or directed those UAS
10 actions/efforts; and/or
11 f. It was at all times within Naimer's authority and/or ability to stop UAS's
12 continued design, development, manufacturing, marketing and selling of the
13 Infringing Products but, after Naimer knew of the Patents, the allegations that
14 UAS infringed on the Patents and/or UAS's actions in the nature of those
15 described in Paragraphs 25, 31 and 33 of the *Complaint*, he did not stop UAS's
16 continued design, development, manufacturing, marketing and selling of the
17 Infringing Products; and/or
18 g. It was at all times within Naimer's authority and/or ability to direct UAS to
19 redesign, revise and/or redevelop the Infringing Products such that they would
20 no longer infringe on the Patents but, after Naimer knew of the Patents, the
21 allegations that UAS infringed on the Patents and/or UAS's actions in the nature
22 of those described in Paragraphs 25, 31 and 33 of the *Complaint*, he did not
23 direct UAS to redesign, revise and/or redevelop the Infringing Products such that
24 they would no longer infringe on the Patents; and/or
25 h. Naimer has continued to direct UAS's design, development, manufacturing,
26 marketing and selling of the Infringing Products while knowing and/or intending

- 1 for UAS to infringe on the Patents.
- 2 14. Upon information and belief:
- 3 a. Hummel was and is the Vice President/General Manager of Engineering
- 4 Research and Development of UAS, thereby controlling UAS's design,
- 5 development and/or manufacture of the Infringing Products; and/or
- 6 b. Hummel was intimately involved in UAS's design and/or development of the
- 7 Infringing Products; and/or
- 8 c. Hummel knew and/or should have known of the Patents prior to this lawsuit;
- 9 and/or
- 10 d. Hummel knew of Optima's allegations that UAS infringed upon the Patents prior
- 11 to this lawsuit; and/or
- 12 e. Hummel knew of UAS's actions in the nature of those described in Paragraphs
- 13 25, 31 and 33 of the *Complaint* and participated in and/or directed those UAS
- 14 actions/efforts; and/or
- 15 f. It was at all times within Hummel's authority and/or ability to stop UAS's
- 16 continued design, development and/or manufacturing of the Infringing Products
- 17 but, after Hummel knew of the Patents, the allegations that UAS infringed on the
- 18 Patents and/or UAS's actions in the nature of those described in Paragraphs 25,
- 19 31 and 33 of the *Complaint*, he did not stop UAS's continued design,
- 20 development and/or manufacturing of the Infringing Products; and/or
- 21 g. It was at all times within Hummel's authority and/or ability to direct UAS to
- 22 redesign, revise and/or redevelop the Infringing Products such that they would
- 23 no longer infringe on the Patents but, after Naimer knew of the Patents, the
- 24 allegations that UAS infringed on the Patents and/or UAS's actions in the nature
- 25 of those described in Paragraphs 25, 31 and 33 of the *Complaint*, he did not
- 26 direct UAS to redesign, revise and/or redevelop the Infringing Products such that

- 1 they would no longer infringe on the Patents; and/or
- 2 h. Hummel has continued to direct UAS's design, development and/or
- 3 manufacturing of the Infringing Products while knowing and/or intending for
- 4 UAS to infringe on the Patents.
- 5 15. UAS and Optima entered into the contract attached as Exhibit 8 to the *Complaint* herein
- 6 (hereinafter the "Contract"). Pursuant to and under the terms of the Contract, Optima
- 7 provided to UAS a confidential power of attorney (hereinafter the "Power of Attorney")
- 8 that Jed Margolin ("Margolin"), as the inventor and then-owner of the Patents, had
- 9 previously executed. The Power of Attorney provided, *inter alia*, that Margolin
- 10 appointed "Optima Technology Inc. - Robert Adams CEO" as his attorney-in-fact with
- 11 respect to (*inter alia*) the Patents. Under its express terms, the Power of Attorney could
- 12 only be exercised by "Optima Technology Inc. - Robert Adams CEO" and could only
- 13 be exercised by a signature in the following form: "Jed Margolin by Optima
- 14 Technology, Inc., c/o Robert Adams, CEO his attorney in fact." Optima had not and has
- 15 not at any time placed the Power of Attorney in the public domain or otherwise provided
- 16 a copy of it, or made it available, to OTC.
- 17 16. UAS, through its duly authorized agents, employees and/or attorneys, provided the
- 18 Power of Attorney (or a copy thereof) to OTC principal, director, officer and/or agent
- 19 Gholamreza Zandianjazi a/k/a Reza Zandian ("Zandian"). As of that time, neither
- 20 Zandian nor OTC had ever received, been privy to, obtained or had knowledge of the
- 21 Power of Attorney.
- 22 17. OTC does not have, and has never had, any right, interest or valid claim to any right,
- 23 title or interest in or to either the Patents or the Power of Attorney.
- 24 18. UAS, by and through its authorized agents and attorneys Scott Bornstein ("Bornstein")
- 25 and/or Greenberg Traurig, LLP ("GT"), informed, directed, advised, assisted,
- 26 associated, agreed, conspired and/or engaged in a mutual undertaking with

- 1 Zandian/OTC to record the Power of Attorney with the U.S. Patent and Trademark
2 Office ("PTO") in the name of OTC.
- 3 19. UAS knew or should have known that the Power of Attorney could not be rightfully
4 exercised by OTC/Zandian and/or recorded with the PTO as:
- 5 a. UAS had been advised and/or knew that OTC was a different corporate entity
6 than "Optima Technology, Inc" as listed in the Power of Attorney; and/or
7 b. UAS had been advised and/or knew that "Robert Adams" was not an agent or
8 employee of OTC and, thus, the Power of Attorney could not be rightfully
9 exercised by Zandian on behalf of OTC; and/or
10 c. UAS had been advised and/or knew that OTC had no right or interest whatsoever
11 in the Patents or the Power of Attorney.
- 12 20. Based upon the information, direction, advice and assistance of UAS, Zandian/OTC
13 proceeded to publish and record the Power of Attorney to and with the PTO (in
14 Virginia) as a document in support of a claim of assignment of the Patents to OTC (the
15 "Assignment"). As a result thereof, the Assignment/Power of Attorney have become
16 part of the public PTO record on which the U.S. Patent Office, the public and third
17 parties rely for information regarding title to the Patents.
- 18 21. Robert Adams and Optima did not execute, record or authorize the execution or
19 recording of any documents purporting to assign or transfer title and/or any interest in
20 the Patents to OTC with the PTO.
- 21 22. Upon information and belief, Zandian executed such documents by (*inter alia*) utilizing
22 his signature on behalf of OTC and mis-stating that Zandian/OTC was exercising the
23 Power of Attorney as the "attorney in fact" of Margolin.
- 24 23. Had UAS not provided the Power of Attorney to Zandian/OTC, OTC would not have
25 been able to record it as a purported Assignment with the PTO.
- 26 24. The recording of the Assignment and Power of Attorney with the PTO:

- 1 a. Are circumstances under which reliance upon such recordings by a third person
- 2 is reasonably foreseeable as the open public records of the PTO are regularly and
- 3 normally referred to and/or relied upon by persons in determining legal rights
- 4 with respect to patents (including assignments, transfers of rights and licenses
- 5 relating thereto), and evaluating such rights with respect to valuation, negotiation
- 6 and purchase of rights with respect to patents (including assignments, transfers
- 7 of rights and licenses relating thereto); and/or
- 8 b. Create a cloud of title, an impairment of vendibility, and/or an appearance of
- 9 lessened desirability for purchase, lease, license or other dealings with respect
- 10 to the Patents and/or Power of Attorney; and/or
- 11 c. Prevent and/or impair sale and/or licensing of the Patents; and/or
- 12 d. Otherwise impair and/or lessen the value of the Patents and/or any licenses to be
- 13 issued with respect to them; and/or
- 14 e. Cast doubt upon the extent of Optima's interests in the Patents and/or under the
- 15 Power of Attorney relating thereto and/or upon Optima's power to make an
- 16 effective sale, assignment, license or other transfer of rights relating thereto;
- 17 and/or
- 18 f. Caused damage and harm to Optima; and/or
- 19 g. Reasonably necessitated and/or forced Optima to prepare and record documents
- 20 with the PTO attempting to correct the public record regarding Optima's rights
- 21 with respect to the Patents and/or the Power of Attorney for which Optima
- 22 incurred substantial expenses (attorneys' fees and costs) in the preparation and
- 23 recording thereof; and/or
- 24 h. Irrespective of Optima's filings with the PTO, created a continuing cloud of title,
- 25 impairment of vendibility, etc. (as discussed in the foregoing paragraphs) and
- 26 continuing harm to Optima reasonably necessitating and forcing Optima to bring

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

its declaratory judgment cross-claim against OTC herein to declare and establish true and proper title to the Patents, for which Optima has incurred and will incur substantial expenses (attorneys' fees and costs) in the prosecution thereof.

25. Upon information and belief, UAS provided additional information to Zandian/OTC regarding, or of the same nature as that discussed in, Paragraph 33 of and Exhibits 14, 15 and 17 to the *Complaint* herein.

26. UAS made the disclosures (*inter alia*) as acknowledged in its *Complaint* herein.

27. Upon information and belief, UAS also made the disclosures alleged in Paragraph 34 of, and in Exhibit 12 attached to, the *Complaint*.

28. By filing its *Complaint* as part of the open public record in this case, UAS disclosed the content thereof and the Exhibits attached thereto.

29. The actions of UAS and OTC herein were motivated by spite, malice and/or ill-will toward Optima and were for the purpose of and/or were intended to intermeddle with, interfere with, trespass upon and/or cause harm to Optima's rights in the Patents and/or under the Power of Attorney, and/or with knowledge that such intermeddling, interference, trespass and/or harm was substantially certain to occur.

30. Upon information and belief, OTC intends to continue to compete, interfere, and/or attempt to compete and/or interfere with Optima regarding the Patents and/or the Power of Attorney. At this time, however, Optima is unaware of any actual attempts yet made by OTC to purportedly license, sell or otherwise transfer rights regarding the Patents under its purported Assignment/Power of Attorney (as recorded with the PTO). If and when Optima becomes aware of such actions, it will timely seek to amend and supplement the Counterclaims, Cross-Claims, Third-Party Claims and/or remedies herein as necessary and applicable.

.....
.....

COUNT 3

**BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
40. The statements of all of the foregoing paragraphs are incorporated herein by reference as if fully set forth herein.
41. This is a cause of action for breach of the implied covenant of good faith and fair dealing against UAS pursuant to Arizona law.
42. Under Arizona law, every contract contains an implied covenant of good faith and fair dealing.
43. UAS's actions constitute one or more breaches of covenant of good faith and fair dealing present and implied in the contract attached as Exhibit 8 to the *Complaint* herein.
44. As a result thereof, Optima has suffered and will continue to suffer immediate and ongoing harm and monetary damage in an amount to be proven at trial.

COUNT 4

NEGLIGENCE

45. The statements of all of the foregoing paragraphs are incorporated herein by reference as if fully set forth herein.
46. This is an cause of action for negligence against UAS pursuant to the law of New York, Delaware, California, Virginia or Arizona.
47. UAS owed a duty of care to Optima as a result of Exhibit 8 to the *Complaint* herein, and the obligations created therein and/or relating thereto.
48. UAS breached these duties through its foregoing actions as alleged herein, including but not limited to:
- a. UAS's inclusion in an openly-accessible public record the allegations of its *Complaint*; and/or

1 invalid and void, and ordering the PTO to correct and expunge its records with respect
2 to any such claim made by OTC.

3 **COUNT 6**

4 **INJURIOUS FALSEHOOD/SLANDER OF TITLE**

5 56. The statements of all of the foregoing paragraphs are incorporated herein by reference
6 as if fully set forth herein.

7 57. This is a cause of action for injurious falsehood and/or slander of title against OTC and
8 UAS pursuant to the law of New York, Delaware, California, Virginia or Arizona.

9 58. The actions of OTC and/or UAS, as alleged above:

10 a. Are/were false and/or disparaging statement(s) and/or publication(s) resulting in
11 an impairment of vendibility, cloud of title and/or a casting of doubt on the
12 validity of Optima's right of ownership in the Patents and/or rights under the
13 Power of Attorney; and/or

14 b. Are/were an effort to persuade third parties from dealing with Optima, and/or to
15 harm to interests of Optima, regarding the Patents and/or the Power of Attorney;
16 and/or

17 c. Are/were actions for which OTC and UAS foresaw and/or should have
18 reasonably foreseen that the false and/or disparaging statement(s) and/or
19 publication(s) would likely determine the conduct of a third party with respect
20 to, or would otherwise cause harm to Optima's pecuniary interests with respect
21 to, the purchase, license or other business dealings regarding Optima's right in
22 the Patents and/or rights under the Power of Attorney; and/or

23 d. Are/were with knowledge that the statement(s) and/or publication(s) was/were
24 false; and/or

25 e. Are/were with knowledge of the disparaging nature of the statements; and/or

26 f. Are/were in reckless disregard of the truth or falsity of the statement(s) and/or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- publication(s); and/or
- g. Are/were in reckless disregard with being in the nature of disparagement(s); and/or
- h. Are/were motivated by ill will toward Optima; and/or
- i. Are/were motivated by an intent to injure Optima; and/or
- j. Are/were committed with an intent to interfere in an unprivileged manner with Optima's interests; and/or
- k. Are/were committed with negligence regarding the truth or falsity of the statement and/or publication and/or with being in the nature of a disparagement.

59. As a result thereof, Optima has suffered and will continue to suffer immediate and ongoing harm and monetary damage in an amount to be proven at trial.

COUNT 7

TRESPASS TO CHATTELS

- 60. The statements of all of the foregoing paragraphs are incorporated herein by reference as if fully set forth herein.
- 61. This is a cause of action for trespass to chattels against OTC and UAS pursuant to the law of New York, Delaware, California, Virginia or Arizona.
- 62. The actions of OTC and/or UAS, as alleged above:
 - a. Are/were intentional physical, forcible and/or unlawful interference with the use and enjoyment of rights to the Patents and/or Power of Attorney possessed by Optima without justification or consent; and/or
 - b. Are/were possession of and/or the exercise of dominion over rights to the Patents and/or Power of Attorney possessed by Optima without justification or consent; and/or
 - c. Are/were intentional use and/or intermeddling with rights to the Patents and/or Power of Attorney possessed by Optima without authorization; and/or

- 1 d. Resulted in deprivation of Optima's use of and/or rights in the Patents and/or
- 2 Power of Attorney for a substantial time; and/or
- 3 e. Resulted in impairment of the condition, quality and/or value of Optima's use of
- 4 and/or rights in the Patents and/or Power of Attorney; and/or
- 5 f. Resulted in harm to the legally protected interests of Optima.
- 6 63. As a result thereof, Optima has suffered and will continue to suffer immediate and
- 7 ongoing harm and monetary damage in an amount to be proven at trial.

8 **COUNT 8**

9 **UNFAIR COMPETITION**

- 10 64. The statements of all of the foregoing paragraphs are incorporated herein by reference
- 11 as if fully set forth herein.
- 12 65. This is a cause of action for unfair competition against OTC and UAS pursuant to the
- 13 common law of New York, Delaware, California, Virginia or Arizona.
- 14 66. The actions of OTC and/or UAS, as alleged above:
 - 15 a. Are/were an unfair invasion and/or infringement of Optima's property rights of
 - 16 commercial value with respect to the Patents and/or the Power of Attorney;
 - 17 and/or
 - 18 b. Are/were a misappropriation of a benefit and/or property right belonging to
 - 19 Optima with respect to the Patents and/or the Power of Attorney; and/or
 - 20 c. Are/were a deceit and/or fraud upon the public with respect to the true ownership
 - 21 and other rights of Optima relating to the Patents and/or the Power of Attorney;
 - 22 and/or
 - 23 d. Are/were likely to cause confusion of the public with respect to the true
 - 24 ownership and other rights of Optima relating to the Patents and/or the Power of
 - 25 Attorney; and/or
 - 26 e. Will cause and/or are likely to cause an unfair diversion of trade whereby any

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

potential purchaser of a license or other rights from OTC with respect to the Patents and/or Power of Attorney will be cheated into the purchase of something which it is not in fact getting; and/or

f. Are likely to divert the trade of Optima; and/or

g. Are likely to cause substantial and irreparable harm to Optima.

67. As a result thereof, Optima has suffered and will continue to suffer immediate and ongoing harm and monetary damage in an amount to be proven at trial.

COUNT 9

UNFAIR AND DECEPTIVE COMPETITION/BUSINESS PRACTICES

68. The statements of all of the foregoing paragraphs are incorporated herein by reference as if fully set forth herein.

69. This is a cause of action for unfair and deceptive competition/business practices against OTC and UAS, pursuant to the statutory law of Delaware, 6 Del.C. §2531 *et seq.* to the extent such statutory scheme applies in this matter.

70. The actions of OTC and/or UAS, as alleged above:

a. Are/were those of a person engaged in a course of a business, vocation, or occupation; and/or

b. Constitute a deceptive trade practice; and/or

c. Cause a likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another; and/or

d. Represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have; and/or

e. Represent that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and/or

- 1 f. Disparage the goods, services, or business of another by false or misleading
2 representation of fact; and/or
3 g. Were conduct which similarly creates a likelihood of confusion or of
4 misunderstanding.
- 5 71. As a result thereof, Optima has suffered and will continue to suffer immediate and
6 ongoing harm and monetary damage in an amount to be proven at trial.
- 7 72. To the extent Optima is entitled to damages under Delaware common-law it is further
8 entitled to treble damages pursuant to 6 Del.C. §2533(c).
- 9 73. Optima is entitled to injunctive relief pursuant to 6 Del.C. §2533(a).
- 10 74. The acts were a willful deceptive trade practice entitling Optima to its attorneys' fees
11 and costs pursuant to 6 Del.C. §2533(b).
- 12 75. This matter is an "exceptional" case also entitling Optima to its attorneys fees pursuant
13 to 6 Del.C. §2533(b).

14 **COUNT 10**

15 **UNLAWFUL CONSPIRACY TO INJURE TRADE OR BUSINESS**

- 16 76. The statements of all of the foregoing paragraphs are incorporated herein by reference
17 as if fully set forth herein.
- 18 77. This is a cause of action for unlawful conspiracy to injure trade or business against OTC
19 and UAS pursuant to the statutory law of Virginia, Va. Code Ann. § 18.2-499 and
20 § 18.2-500, to the extent such statutory scheme applies in this matter.
- 21 78. The actions of OTC and UAS, as alleged above, were those of two or more persons who
22 combined, associated, agreed, mutually undertook and/or acted in concert together for
23 the purpose of willfully and maliciously injuring Optima and its trade and/or business.
- 24 79. As a result thereof, Optima has suffered and will continue to suffer immediate and
25 ongoing harm and monetary damage in an amount to be proven at trial.
- 26 80. Optima is entitled to treble damages plus attorneys' fees and costs under Va. Code

1 Ann. § 18.2-500,

2 **COUNT 11**

3 **UNFAIR AND DECEPTIVE COMPETITION/BUSINESS PRACTICES**

4 81. The statements of all of the foregoing paragraphs are incorporated herein by reference
5 as if fully set forth herein.

6 82. This is a cause of action for unfair and deceptive competition/business practices against
7 OTC and UAS pursuant to the statutory law of California, California Business and
8 Professions Code § 17200 *et. seq.*, to the extent such statutory scheme applies in this
9 matter.

10 83. The actions of OTC and/or UAS, as alleged above, constitute one or more unlawful,
11 unfair or fraudulent business acts or practices including but not limited to the following:

- 12 a. The acts/practices are/were “fraudulent” as they are/were untrue and/or are/were
13 likely to deceive the public; and/or
- 14 b. The acts/practices are/were “unfair” as they constituted conduct that significantly
15 threatens or harms competition; and/or
- 16 c. The acts/practices are/were “unfair” as they constitute conduct that offends an
17 established public policy or when the practice is immoral, unethical, oppressive,
18 unscrupulous or substantially injurious to consumers; and/or
- 19 d. The acts/practices are/were “unlawful” as they are/were in violation of the
20 common-law duties that were owed to Optima; and/or
- 21 e. The acts/practices are/were “unlawful” as they are/were in violation of the legal
22 principles expressed in the other Counts herein; and/or
- 23 f. The acts/practices are/were “unlawful” as they are/were in committed violation
24 of Va. Code Ann. § 18.2-172 (a class 5 felony); and/or
- 25 g. The acts/practices are/were “unlawful” as they are/were in committed violation
26 of Va. Code Ann. § 18.2-499 (a class 1 misdemeanor).

1 84. As a result thereof, Optima has suffered and will continue to suffer immediate and
2 ongoing harm and monetary damage.

3 85. Optima is without an adequate remedy at law.

4 86. Unless enjoined the acts of OTC and UAS will continue to cause further, great,
5 immediate and irreparable injury to Optima.

6 87. Optima is entitled to injunctive relief and restitutionary disgorgement pursuant to
7 California Business and Professions Code § 17203.

8 **COUNT 12**

9 **UAS LIABILITY**

10 88. The statements of all of the foregoing paragraphs are incorporated herein by reference
11 as if fully set forth herein.

12 89. In addition to any other liability existing as to the acts of UAS described herein UAS
13 is additionally liable under Counts 6-11 herein because:

14 a. OTC acted as the agent and/or servant of UAS; and/or

15 b. UAS aided and abetted the wrongful conduct of OTC through one or more of the
16 following:

17 i. UAS provided aid to OTC in its commission of a wrongful act that caused
18 injury to Optima; and/or

19 ii. UAS substantially assisted and/or encouraged OTC in the principal
20 violation/wrongful act; and/or

21 iii. UAS was aware of its role as part of overall illegal and/or tortious activity
22 at the time it provided the assistance; and/or

23 iv. UAS reached a conscious decision to participate in tortious activity for
24 the purpose of assisting OTC in performing a wrongful act; and/or

25 c. UAS engaged in a civil conspiracy with OTC through an agreement to
26 accomplish an unlawful purpose and/or to accomplish a lawful object by

- 1 unlawful means, one of whom committed an act in furtherance thereof, thereby
2 causing damages to Optima; and/or
- 3 d. UAS and OTC acted in concert; and/or
- 4 e. UAS provided affirmative aid and/or encouragement to the wrongful conduct of
5 OTC; and/or
- 6 f. UAS directed, ordered and/or induced the wrongful conduct of OTC while
7 knowing (or should having known) of circumstances that would have made the
8 conduct tortious if it were UAS's; and/or
- 9 g. UAS advised OTC to commit the wrongful conduct which resulted in a legal
10 wrong and/or harm to Optima; and/or
- 11 h. UAS acted together with OTC to commit the wrongful conduct pursuant to a
12 common design; and/or
- 13 i. UAS knew that the OTC's conduct would constitute a breach of duty and gave
14 substantial assistance or encouragement to OTC so to conduct itself; and/or
- 15 j. UAS gave substantial assistance to OTC in accomplishing a tortious result and
16 UAS's own conduct, separately considered, constitutes a breach of duty to
17 Optima; and/or
- 18 k. UAS knowingly participated in the wrongful action of OTC.
- 19 90. As a result thereof, UAS is jointly and severally liable for any such damages awarded
20 to Optima under Counts 6-11 herein.

21 **COUNT 13**

22 **PUNITIVE DAMAGES**

- 23 91. The statements of all of the foregoing paragraphs are incorporated herein by reference
24 as if fully set forth herein.
- 25 92. This is a claim for punitive damages against OTC and UAS pursuant to the common law
26 and/or statutory law of New York, Delaware, California, Virginia or Arizona.

- 1 93. Through their actions referenced herein, OTC and UAS:
- 2 a. Acted with an intent to injure Optima and/or consciously pursued a course of
- 3 conduct knowing that it created a substantial risk of significant harm to Optima;
- 4 and/or
- 5 b. Acted with an "evil hand" guided by an "evil mind"; and/or
- 6 c. Engaged in intentional and deliberate wrongdoing and with character of outrage
- 7 frequently associated with crime; and/or
- 8 d. Engaged in conduct that may be characterized as gross and morally reprehensible
- 9 and of such wanton dishonesty as to imply criminal indifference to civil
- 10 obligations; and/or
- 11 e. Acted with conduct so reckless and wantonly negligent as to be the equivalent
- 12 of a conscious disregard of the rights of others; and/or
- 13 f. Acted with a fraudulent and/or evil motive; and/or
- 14 g. Acted with aggravation and outrage; and/or
- 15 h. Acted with outrageous conduct with evil motive and/or reckless indifference to
- 16 rights of others; and/or
- 17 i. Acted with wilful and/or wanton disregard for the rights of others; and/or
- 18 j. Were aware of probable dangerous consequences of their conduct and willfully
- 19 and deliberately failed to avoid those consequences; and/or
- 20 k. Acted with the intent to vex, injury or annoy, or with a conscious disregard of the
- 21 right of others; and/or
- 22 l. Engaged in reprehensible and/or fraudulent conduct; and/or
- 23 m. Acted in blatant violation of law or policy; and/or
- 24 n. Acted with extreme indifference to the rights of others; and/or
- 25 o. Are guilty of oppression, fraud and/or malice, as defined by and pursuant to
- 26 Cal.Civ.Code § 3294; and/or

- 1 p. Acted with wilful and wanton conduct so as to evince a conscious disregard of
- 2 the rights of others; and/or
- 3 q. Acted with recklessness and/or negligence so as to evince a conscious disregard
- 4 of the rights of others; and/or
- 5 r. Engaged in malicious conduct; and/or
- 6 s. Engaged in misconduct and/or actual malice.

7 94. As a result thereof, Optima is entitled to an award of punitive damages against OTC and
8 UAS herein in an amount to be determined by a jury.

9 **EXCEPTIONAL CASE**

10 This is an exceptional case under 35 U.S.C. § 285 in which Counterclaimant and
11 Cross-Claimant Optima is entitled to its attorneys' fees and costs incurred in connection with
12 this action.

13 **JURY TRIAL DEMAND**

14 Counterclaimant Optima demands a jury trial on all claims and issues to be litigated in
15 this matter.

16 **PRAYER FOR RELIEF**

17 WHEREFORE Optima requests that the Court enter judgment in favor of Optima, and
18 against UAS, OTC, Naimer, and Hummel, on the Counterclaims, Cross-Claims and Third-Party
19 Claims, as follows:

- 20 1. Declaring that the Infringing Products, and all other of UAS's products shown to be
- 21 encompassed by one or more claims of the asserted Patents infringe said Patents;
- 22 2. Awarding Optima its monetary damages, and a doubling or trebling thereof, incurred
- 23 as a result of Defendants' willful infringement and unlawful conduct, as provided under
- 24 35 U.S.C. § 284;
- 25 3. Declaring that this is an exceptional case pursuant to 35 U.S.C. § 285 and awarding
- 26 Optima its attorneys fees incurred in having to prosecute this action;

- 1 4. Ordering that all of the Counterdefendants, Crossdefendants and Third-Party
2 Defendants, and all those in active concert or privity with them be temporarily,
3 preliminarily and permanently enjoined from further infringement of U.S. Patent No.
4 5,566,073 (the '073 patent) and U.S. Patent No. 5,904,724 (the '724 patent);
- 5 5. Awarding Optima its actual, special, compensatory, economic, punitive and other
6 damages, including but not limited to:
 - 7 a. A reasonable royalty and/or lost profits attributable to defendants' past, present
8 and ongoing infringement of the Patents;
 - 9 b. The reduced value of the Patents and/or licenses with respect thereto;
 - 10 c. Optima's attorneys' fees and costs incurred in preparing and recording filings
11 with the PTO; and
 - 12 d. Optima's ongoing attorneys' fees and costs incurred in filing and prosecuting the
13 cross-claims against OTC herein to establish the invalidity, void nature, etc., of
14 its filing of the Assignment with the PTO and claim of any right or interest in the
15 Power of Attorney and/or the Patents, and to otherwise remove the cloud of title,
16 impairment of vendibility, etc., with respect to Optima's rights in the Patents
17 and/or the Power of Attorney;
- 18 6. Declaring that OTC has no interest or right in the Patents or the Power of Attorney;
- 19 7. Declaring that the Assignment OTC filed with the PTO is forged, invalid, void, of no
20 force and effect, should be struck from the records of the PTO, and that the PTO correct
21 its records with respect to any such claim made by OTC with respect to the Patents
22 and/or the Power of Attorney;
- 23 8. Enjoining OTC from asserting further rights or interests in the Patents and/or Power of
24 Attorney;
- 25 9. Enjoining UAS and OTC from further acts of unfair competition;
- 26 10. Granting Optima its attorneys' fees and costs pursuant to applicable law, including but

Exhibit 2

Exhibit 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNIVERSAL AVIONICS SYSTEMS CORPORATION,

Plaintiff,

vs.

OPTIMA TECHNOLOGY GROUP, INC.,
OPTIMA TECHNOLOGY CORPORATION, ROBERT ADAMS and JED MARGOLIN,

Defendants.

OPTIMA TECHNOLOGY INC. a/k/a OPTIMA TECHNOLOGY GROUP, INC.,
a corporation,

Counterclaimant,

vs.

UNIVERSAL AVIONICS SYSTEMS CORPORATION, an Arizona corporation,

Counterdefendant,

OPTIMA TECHNOLOGY INC. a/k/a OPTIMA TECHNOLOGY GROUP, INC.,

Cross-Claimant,

vs.

OPTIMA TECHNOLOGY CORPORATION,

Cross-Defendant.

No. CV 07-588-TUC-RCC

ORDER

1 This Court, having considered the Defendants' Application for Entry of Default
2 Judgment against Cross-Defendant Optima Technology Corporation, finds no just reason to
3 delay entry of final judgment.

4 Therefore, IT IS HEREBY ORDERED:

5 Final Judgment is entered against Cross-Defendants Optima Technology Corporation,
6 a California corporation, and Optima Technology Corporation, a Nevada corporation, as
7 follows:

8 1. Optima Technology Corporation has no interest in U.S. Patents Nos. 5,566,073 and
9 5,904,724 ("the Patents") or the Durable Power of Attorney from Jed Margolin dated July
10 20, 2004 ("the Power of Attorney");

11 2. The Assignment Optima Technology Corporation filed with the USPTO is forged,
12 invalid, void, of no force and effect, and is hereby struck from the records of the USPTO;

13 3. The USPTO is to correct its records with respect to any claim by Optima
14 Technology Corporation to the Patents and/or the Power of Attorney; and

15 4. OTC is hereby enjoined from asserting further rights or interests in the Patents
16 and/or Power of Attorney; and

17 5. There is no just reason to delay entry of final judgment as to Optima Technology
18 Corporation under Federal Rule of Civil Procedure 54(b).

19 DATED this 18th day of August, 2008.

20
21
22 

23 **Raner C. Collins**
24 **United States District Judge**

Exhibit 3

Exhibit 3

Section I: Requester/Originator Information						
Name Jed Margolin		Telephone # 847 7845		Date Wire to be Sent 1/15/08		
Address 1981 Empire Rd		City Reno		State NV	Zip 89521	
Customer ID Type 1. DL	ID# [REDACTED]	Issue State/Country 1. NV	Issue Date 1. 1-6-06	Expiration Date 1. 2/20/10		
2. BACC		Method of Signature Verification (If Applicable) Sig card				
Section II: Associate Accepting Wire						
Associate Name KMAZZA		Phone and Fax # 32560216034		Unit Co#/CC# 8557	Date 1/15/08	Time 1:40
Callback Required if Phone, Fax or Letter <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A		Name/Number of Person Contacted		Date/Time	Approval (required)/Market Approval (if required)	
Callback Completed by:						
Section III: Domestic Payment Instructions						
Amount of Wire \$ 30,000	Debit Account Type (circle one) CHKG SAV ICA GL		Serial # (For ICA/GL) or Repetitive ID#		Source <input checked="" type="checkbox"/> OTC <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input type="checkbox"/> Letter	
Account to Debit [REDACTED]	State NV	Available Balance \$	Account Title Jed Margolin			
Overdraft Amount \$	Overdraft Approved by (Name & Signature)			Date	Wire Fee \$ 25	
Section IV: International Payment Instructions <input checked="" type="checkbox"/> Check here if funds must be sent in US Dollars						
USD Amount of Wire \$	Country	Rate	Foreign Currency Code		Foreign Currency Amount	
Debit Account Type (circle one) CHKG SAV ICA GL	Serial # (For ICA/GL) or Repetitive ID#		FX Reference ID (If Applicable)		Source <input type="checkbox"/> OTC <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input type="checkbox"/> Letter	
Account to Debit [REDACTED]	State	Available Balance \$	Account Title			
Overdraft Amount \$	Overdraft Approved by (Name & Signature)			Date	Wire Fee \$	
Section V: Wire Information						
Beneficiary Name Merrill Lynch			Beneficiary Account # OR IBAN (IBAN, no further Beneficiary Bank information is required) [REDACTED]			
Beneficiary Address: Street		City	State	Country	Zip	
Beneficiary Bank Name Mellon Bank				ABA # or SWIFT or National ID 043000261		
Beneficiary Bank Address: Street		City	State	Country	Zip	
Additional Instructions (Attention To, Phone Advise, Customer Reference, Contact Upon Arrival) F/C to Optima Technology acct 223-07406						
Send Thru Bank/IBK (if available)				ABA # or SWIFT or National ID		
Send Thru Bank Address: Street		City	State	Country	Zip	
Section VI: Customer Approval						
I authorize Bank of America to transfer my funds as set forth in the instructions noted herein (including debiting my account if applicable), and agree that such transfer of funds is subject to the Bank of America standard transfer agreement (see reverse side) and applicable fees. If this is a foreign currency wire transfer, I accept the conversion rate provided in Section IV, or, if no rate is entered, the rate provided by Bank of America at the time the wire transfer is sent.						
Customer's Signature: Jed Margolin				Date of Request: 1-15-2008		
Section VII: Wire System Entry/Verification						
BAT Approval Authorization # (if applicable)						
Wire Entered by: Name/Signature (attach BFT screens prints) Print: KMAZZA Signature: KMAZZA		BFT System Time 124544	BFT Sequence # 01080115005656			
Date of Entry and Verification 1-15-08	Verified By (Name/Signature) (Print Verification Screen) Print: Jed Margolin Signature: Jed Margolin		BFT System Time 17:49:07			

Note: Purpose of Wire must be disclosed if sent to an OFAC blocked country - See OFAC in PRO

Section I: Requester/Originator Information				
Name <i>Jed Margolin</i>	Telephone # <i>847-7845</i>	Date Wire to be Sent <i>3-26-08</i>		
Address <i>1981 Empire Rd</i>	City <i>Reno</i>	State <i>NV</i>	Zip <i>89521</i>	
Customer ID Type 1. <i>Driver's Lic</i>	ID# [REDACTED]	Issue State/Country 1. <i>Nevada</i>	Issue Date <i>1-6-06</i>	Expiration Date <i>1-2/20/10</i>
2. _____ Method of Signature Verification (If Applicable)				

Section II: Associate Accepting Wire				
Associate Name <i>Janet Saldana</i>	Phone and Fax # <i>725-325-6021</i>	Unit Co#/CC# <i>336/8557</i>	Date <i>3-26-08</i>	Time
Callback Required if Phone, Fax or Letter <input type="checkbox"/> Yes <input type="checkbox"/> N/A	Name/Number of Person Contacted	Date/Time	Approval (required)/Market Approval (if required)	
Callback Completed by: _____				

Section III: Domestic Payment Instructions				
Amount of Wire <i>\$30,000-</i>	Debit Account Type (circle one) CHKG <input type="checkbox"/> SAV <input checked="" type="checkbox"/> ICA <input type="checkbox"/> GL <input type="checkbox"/>	Serial # (For ICA/GL) or Repetitive ID#	Source <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input type="checkbox"/> Letter	<input checked="" type="checkbox"/> OTC
Account to Debit [REDACTED]	State	Available Balance \$ _____	Account Title <i>Jed Margolin</i>	
Overdraft Amount \$ _____	Overdraft Approved by (Name & Signature) _____		Date _____	Wire Fee \$ <i>25-</i>

Section IV: International Payment Instructions: <input type="checkbox"/> Check here if funds must be sent in US Dollars				
USD Amount of Wire \$ _____	Country	Rate	Foreign Currency Code	Foreign Currency Amount
Debit Account Type (circle one) CHKG <input type="checkbox"/> SAV <input type="checkbox"/> ICA <input type="checkbox"/> GL <input type="checkbox"/>	Serial # (For ICA/GL) or Repetitive ID#	FX Reference ID (If Applicable)	Source <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input type="checkbox"/> Letter	<input type="checkbox"/> OTC
Account to Debit [REDACTED]	State	Available Balance \$ _____	Account Title	
Overdraft Amount \$ _____	Overdraft Approved by (Name & Signature) _____		Date _____	Wire Fee \$ _____

Section V: Wire Information				
Beneficiary Name <i>Merrill Lynch</i>	Beneficiary Account # OR IBAN (if IBAN, no further Beneficiary Bank information is required) [REDACTED]			
Beneficiary Address: Street	City	State	Country	Zip
Beneficiary Bank Name <i>Mellon Bank</i>	ABA # or SWIFT or National ID <i>01223-07406</i>		City	Zip <i>043000261</i>
Additional Instructions (Attention To, Phone Advise, Customer Reference, Contact Upon Arrival) <i>F/CR to Optima Technology Group 223-07406</i>				
Send Thru Bank/IBK (if available)	ABA # or SWIFT or National ID			
Send Thru Bank Address Street	City	State	Country	Zip

Section VI: Customer Approval	
I authorize Bank of America to transfer my funds as set forth in the instructions noted herein (including debiting my account if applicable), and agree that such transfer of funds is subject to the Bank of America standard transfer agreement (see reverse side) and applicable fees. If this is a foreign currency wire transfer, I accept the conversion rate provided in Section IV, or, if no rate is entered, the rate provided by Bank of America at the time the wire transfer is sent.	
Customer's Signature: <i>Jed Margolin</i>	Date of Request: <i>3-26-08</i>

Section VII: Wire System Entry/Verification		BAT Approval Authorization # (if applicable)	
Wire Entered by: Name/Signature (attach BFT screens prints) Print: <i>Janet Saldana</i> Signature: <i>Janet Saldana</i>	BFT System Time <i>13:33:53</i>	BFT Sequence # <i>01080326006579</i>	
Date of Entry and Verification	Verified By (Name/Signature) (Print Verification Screen) Print: _____	Signature: _____	
		BFT System Time	

Note: Purpose of Wire must be disclosed if sent to an OFAC blocked country - See OFAC in PRO

Section I: Requester/Originator Information

Name <i>Ted Margolin</i>		Telephone # <i>775-847-7845</i>	Date Wire to be Sent <i>6-18-08</i>	
Address <i>1981 Empire Rd</i>		City <i>Reno</i>	State <i>NV</i>	Zip <i>89521-7430</i>
Customer ID Type <i>1. DRIVER License</i>	ID# <i>[REDACTED]</i>	Issue State/Country <i>1. Nevada</i>	Issue Date <i>1. 01-06-06</i>	Expiration Date <i>1. 02-20-2010</i>
Method of Signature Verification (If Applicable) <i>2. BoFA - ATM 5124 EXP 5/2010</i>				

Section II: Associate Accepting Wire

Associate Name <i>Janet Saldana</i>	Phone and Fax # <i>775-325-6001</i>	Unit Co#/CC# <i>336/8557</i>	Date <i>6-18-08</i>	Time <i>9:32</i>
Callback Required if Phone, Fax or Letter <input type="checkbox"/> Yes <input type="checkbox"/> N/A	Name/Number of Person Contacted		Date/Time	Approval (required)/Market Approval (if required)
Callback Completed by: _____				

Section III: Domestic Payment Instructions

Amount of Wire <i>\$ 30,000.-</i>	Debit Account Type (circle one) CHKG <input type="checkbox"/> SAV <input checked="" type="checkbox"/> ICA <input type="checkbox"/> GL <input type="checkbox"/>	Serial # (For ICA/GL) or Repetitive ID#	Source <input checked="" type="checkbox"/> OTC <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input type="checkbox"/> Letter
Account to Debit <i>[REDACTED]</i>	State	Available Balance <i>\$ 42,339.52</i>	Account Title <i>Ted Margolin</i>
Overdraft Amount <i>\$</i>	Overdraft Approved by (Name & Signature)		Date <i>6-18-08</i> Wire Fee <i>\$ 25.-</i>

Section IV: International Payment Instructions: Check here if funds must be sent in US Dollars

USD Amount of Wire <i>\$</i>	Country	Rate	Foreign Currency Code	Foreign Currency Amount
Debit Account Type (circle one) CHKG <input type="checkbox"/> SAV <input type="checkbox"/> ICA <input type="checkbox"/> GL <input type="checkbox"/>	Serial # (For ICA/GL) or Repetitive ID#		FX Reference ID (If Applicable)	Source <input type="checkbox"/> OTC <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input type="checkbox"/> Letter
Account to Debit <i>[REDACTED]</i>	State	Available Balance <i>\$</i>	Account Title	
Overdraft Amount <i>\$</i>	Overdraft Approved by (Name & Signature)		Date	Wire Fee <i>\$</i>

Section V: Wire Information

Beneficiary Name <i>Snell & Wilmer Trust Acct</i>	Beneficiary Account # OR IBAN (if IBAN, no further Beneficiary Bank information is required) <i>411-9025</i>			
Beneficiary Address: Street <i>[REDACTED]</i>	City <i>[REDACTED]</i>	State <i>[REDACTED]</i>	Country <i>[REDACTED]</i>	Zip <i>[REDACTED]</i>
Beneficiary Bank Name <i>J.P. Morgan Chase NA/Phoenix Trust Acct</i>	ABA # or SWIFT or National ID <i>021000021</i>			
Beneficiary Bank Address: Street <i>501 N. Central Ave</i>	City <i>Phoenix</i>	State <i>AZ</i>	Country <i>US</i>	Zip <i>85004</i>
Additional Instructions (Attention To, Phone Advise, Customer Reference, Contact Upon Arrival) <i>Attn: Jeff Willis Client: Optima Technology Group/Ted Margolin</i>				
Send Thru Bank/IBK (if available)	ABA # or SWIFT or National ID			
Send Thru Bank Address: Street <i>[REDACTED]</i>	City <i>[REDACTED]</i>	State <i>[REDACTED]</i>	Country <i>[REDACTED]</i>	Zip <i>[REDACTED]</i>

Section VI: Customer Approval

I authorize Bank of America to transfer my funds as set forth in the instructions noted herein (including debiting my account if applicable), and agree that such transfer of funds is subject to the Bank of America standard transfer agreement (see reverse side) and applicable fees. If this is a foreign currency wire transfer, I accept the conversion rate provided in Section IV, or, if no rate is entered, the rate provided by Bank of America at the time the wire transfer is sent.

Customer's Signature: *Ted Margolin* Date of Request: *6-18-08*

Section VII: Wire System Entry/Verification

Wire Entered by: Name/Signature (attach BFT screens prints) Print: <i>Janet Saldana</i> Signature: <i>[Signature]</i>		BFT System Time <i>12.02.54</i>	BFT Sequence # <i>01080618004513</i>
Date of Entry and Verification	Verified By (Name/Signature) (Print Verification Screen) Print: <i>[Signature]</i>	Signature: _____ BFT System Time	

Note: Purpose of Wire must be disclosed if sent to an OFAC blocked country - See OFAC in PRO