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IN THE SUPREME COURT OF THE STATE OF NEVADA

REZA ZANDIAN A/K/A/ GOLAMREZA
ZANDIANJAZI A/K/A GHOLAM REZA
ZANDIAN A/K/A REZA JAZI A/K/A J.
REZA JAZI, A/K/A/ G. REZA JAZI
A/K/A/ GHONOREZA ZANDIAN JAZI,
AN INDIVIDUAL,

Appellant,

vs.

JED MARGOLIN, AN INDIVIDUAL,

Respondent.

**Nevada Supreme Court
Case No. 65960**

District Court Case No.
090C005791B

Appeal from the First Judicial District Court of the State of Nevada
In and For Carson City
The Honorable James T. Russell, District Judge

**RESPONDENT'S APPENDIX
Volume I
(Part 2 of 3)**

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		INCORRECT CASE NUMBER AND DOCUMENT NOT IN COMPLIANCE WITH LRCiv 7.1(c). ATTORNEY NOTICED). (Entered: 01/07/2008)
01/07/2008	<u>20</u>	SEALED LODGED Proposed Memorandum in Support of Adams Motion to Dismiss for Lack of Personal Jurisdiction re: 18 MOTION to Seal Document re Memorandum in Support of Motion To Dismiss. Document to be filed by Clerk if Motion to Seal is granted. Filed by Robert Adams. (Chandler, Jeanna) (Entered: 01/07/2008)
01/07/2008	<u>21</u>	MOTION to Dismiss Case for Lack of Jurisdiction by Jed Margolin. (Chandler, Jeanna) Modified on 1/9/2008 (SSU, DOCUMENT FILED WITH INCORRECT CASE NUMBER AND DOCUMENT NOT IN COMPLIANCE WITH LRCiv 7.1(c). ATTORNEY NOTICED). (Entered: 01/07/2008)
01/07/2008	<u>24</u>	SEALED LODGED Proposed Memorandum in Support of Margolins Motion to Dismiss re: 22 MOTION to Seal Document re Memorandum in Support of Margolins Motion to Dismiss. Document to be filed by Clerk if Motion to Seal is granted. Filed by Jed Margolin. (Chandler, Jeanna) (Entered: 01/07/2008)
01/07/2008	<u>27</u>	ANSWER to <u>1</u> Complaint, with Jury Demand by Optima Technology Group, Inc..(Chandler, Jeanna) Modified on 1/9/2008 (SSU, DOCUMENT FILED WITH INCORRECT CASE NUMBER AND DOCUMENT NOT IN COMPLIANCE WITH LRCiv 7.1(c). ATTORNEY NOTICED). (Entered: 01/07/2008)
01/07/2008	<u>28</u>	Corporate Disclosure Statement by Optima Technology Group, Inc. (Chandler, Jeanna) TEXT Modified on 1/8/2008 (SSU, DOCUMENT FILED WITH INCORRECT CASE NUMBER). (Entered: 01/07/2008)
01/08/2008	<u>29</u>	MOTION for Leave to File Excess Pages by Optima Technology Group, Inc., Robert Adams. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order) (Chandler, Jeanna) Modified on 1/9/2008 (SSU, DOCUMENT FILED WITH INCORRECT CASE NUMBER AND DOCUMENT NOT IN COMPLIANCE WITH LRCiv 7.1(c). ATTORNEY NOTICED). (Entered: 01/08/2008)
01/08/2008	<u>31</u>	ORDER granting 14 Motion to Seal Document ; granting 18 Motion to Seal Document ; granting 22 Motion to Seal Document. Signed by Judge Raner C Collins on 1/8/08.(SGG,) (Entered: 01/09/2008)
01/08/2008	<u>32</u>	Sealed Document: Memorandum Per Order <u>31</u> filed by Optima Technology Group, Inc., Robert Adams. (SGG,) (Entered: 01/09/2008)
01/08/2008	<u>33</u>	Sealed Document: Memorandum Per Order <u>31</u> filed by Robert Adams. (SGG,) (Entered: 01/09/2008)
01/08/2008	<u>34</u>	Sealed Document: Memorandum Per Order <u>31</u> filed by Jed Margolin. (SGG,) (Entered: 01/09/2008)
01/09/2008	<u>30</u>	ORDER granting <u>29</u> Motion for Leave to File Excess Pages. Signed by Judge Raner C Collins on 1/9/08.(SSU,) (Entered: 01/09/2008)

01/22/2008	<u>36</u>	First MOTION for Extension of Time Extension of Deadline under Rule 14 (A)(1) <i>Unopposed</i> by Optima Technology Group, Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Moomjian, Edward) DOCUMENT NOT IN COMPLIANCE WITH LRCiv7.1(c). ATTORNEY NOTICED. Modified on 1/24/2008 (SSU,). (Entered: 01/22/2008)
01/23/2008	<u>37</u>	ORDER granting <u>36</u> Motion for Extension of Time. Deadline for filing third party claims as a right is extended until and including 1/24/08. Signed by Judge Raner C Collins on 1/22/08.(SSU,) (Entered: 01/23/2008)
01/24/2008	<u>38</u>	AMENDED ANSWER to <i>COMPLAINT</i> , THIRD PARTY COMPLAINT against JOACHIM L. NAIMER, JANE DOE NAIMER, FRANK E. HUMMEL, JANE DOE HUMMEL, CROSSCLAIM against Optima Technology Corporation, COUNTERCLAIM against Universal Avionics Systems Corporation by Optima Technology Group, Inc.. (Moomjian, Edward) DOCUMENT FILED WITH INCORRECT CASE NUMBER. TEXT Modified on 1/25/2008 (SSU,). (Entered: 01/24/2008)
01/24/2008	<u>39</u>	SEALED ORDER granting <u>35</u> Motion to Seal Document ; denying <u>25</u> Motion to Seal Document. Signed by Judge Raner C Collins on 01/23/08. (DNO,) (Entered: 01/25/2008)
01/30/2008	<u>40</u>	Notice re Summons by Optima Technology Group, Inc. (Attachments: # <u>1</u> Summons)(Moomjian, Edward) (Entered: 01/30/2008)
01/30/2008	<u>41</u>	Summons Issued as to Optima Technology Group, Inc., Optima Technology Corporation. (Attachments: # <u>1</u> Summons)(BJW,). *** IMPORTANT: You must select "Document and stamps" or "Document and comments" on the print screen in order for the court seal to appear on the summons you print. (Entered: 01/30/2008)
02/06/2008	<u>42</u>	Notice re Summons to Frank E. Hummel by Optima Technology Group, Inc. (Attachments: # <u>1</u> Summons Jane Doe Hummel, # <u>2</u> Summons Joachim L. Naimer, # <u>3</u> Summons Jane Doe Naimer)(Chandler, Jeanna) (Entered: 02/06/2008)
02/06/2008	<u>43</u>	Summons Issued as to Joachim L Naimer, Jane Doe Naimer, Frank E Hummel, Jane Doe Hummel. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Summons)(BJW,). *** IMPORTANT: You must select "Document and stamps" or "Document and comments" on the print screen in order for the court seal to appear on the summons you print. (Entered: 02/06/2008)
02/11/2008	<u>48</u>	SEALED MOTION to Seal Document by Universal Avionics Systems Corporation. (DNO,) (Entered: 02/15/2008)
02/13/2008	<u>44</u>	AFFIDAVIT of Phyllis Callahan re <i>Affidavit of Process Server as to Service Upon Reza Zardian (Statutory Agent) for Optima Technology Corporation</i> by Cross Claimant Optima Technology Group, Inc.. (Chandler, Jeanna) (Entered: 02/13/2008)
02/13/2008	<u>45</u>	MOTION for Extension of Time to File Answer re Counterclaims and Third-Party Claims by Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Supplement Stipulation re Enlargement of Time for Plaintiff

		Counterdefendant and Third-Party Defendants to Answer or Otherwise Respond to Counterclaims and Third-Party Claims, # 2 Text of Proposed Order Order Enlarging Time)(Walsh, E) (Entered: 02/13/2008)
02/13/2008	<u>46</u>	Corporate Disclosure Statement by Universal Avionics Systems Corporation. (Walsh, E) (Entered: 02/13/2008)
02/14/2008	<u>47</u>	ORDER granting <u>45</u> Motion for Extension of Time to Answer. Joachim L Naimer answer due 4/14/2008; Jane Doe Naimer answer due 4/14/2008; Frank E Hummel answer due 4/14/2008; Jane Doe Hummel answer due 4/14/2008; Universal Avionics Systems Corporation answer due 3/18/2008. Signed by Judge Raner C Collins on 2/14/08.(SSU,) (Entered: 02/14/2008)
02/15/2008	<u>49</u>	SUMMONS Returned Executed by Universal Avionics Systems Corporation. Jed Margolin served on 11/26/2007. (Walsh, E) (Entered: 02/15/2008)
02/15/2008	<u>50</u>	SUMMONS Returned Executed by Universal Avionics Systems Corporation. Optima Technology Corporation served on 11/28/2007. (Walsh, E) (Entered: 02/15/2008)
02/15/2008	<u>51</u>	SEALED ORDER granting <u>48</u> Motion to Seal Document. Signed by Judge Raner C Collins on 02/15/08.(SGG,) (Entered: 02/20/2008)
02/15/2008	<u>52</u>	SEALED RESPONSE to Motion re <u>13</u> MOTION to Dismiss Case filed by Universal Avionics Systems Corporation., Sealed per Order <u>51</u> . (SGG,) (Entered: 02/20/2008)
02/15/2008	<u>53</u>	SEALED RESPONSE to Motion re <u>17</u> MOTION to Dismiss Case for Lack of Jurisdiction filed by Universal Avionics Systems Corporation. Sealed per Order <u>51</u> . (SGG,) (Entered: 02/20/2008)
02/15/2008	<u>54</u>	SEALED RESPONSE to Motion re <u>21</u> MOTION to Dismiss Case for Lack of Jurisdiction filed by Universal Avionics Systems Corporation. Sealed per Order <u>51</u> . (SGG,) (Entered: 02/20/2008)
02/15/2008	<u>55</u>	SEALED MOTION to Expedite Discovery by Universal Avionics Systems Corporation. Sealed per Order <u>51</u> . (SGG,) (Entered: 02/20/2008)
02/15/2008	<u>56</u>	Sealed Document: Memorandum and Support of <u>55</u> filed by Universal Avionics Systems Corporation. Sealed per Order <u>51</u> . (SGG,) (Entered: 02/20/2008)
02/15/2008	<u>57</u>	Sealed Document: Declaration filed by Universal Avionics Systems Corporation. Sealed per Order <u>51</u> (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(SGG,) (Entered: 02/20/2008)
02/15/2008	<u>58</u>	Sealed Document: Declaration filed by Universal Avionics Systems Corporation. Sealed per Order <u>51</u> . (SGG,) (Entered: 02/20/2008)
02/28/2008	<u>59</u>	MOTION to Expedite Motion for Extension of Time by Optima Technology Group, Inc., Robert Adams, Jed Margolin. (Moomjian, Edward) (Entered: 02/28/2008)
02/28/2008	<u>60</u>	MOTION for Extension of Time Extension of Time <i>Motion for Extension of Time to Submit Replies</i> by Optima Technology Group, Inc., Robert Adams,

		Jed Margolin. (Attachments: # <u>1</u> Text of Proposed Order)(Moomjian, Edward) (Entered: 02/28/2008)
02/28/2008	<u>61</u>	ORDER granting <u>59</u> Motion to Expedite.; granting <u>60</u> Motion for Extension of Time. Dfts have 30 days up to and including 3/31/08 to file their replies in support of Motions to Dismiss and Response/Opposition to the Motion for Expedited Discovery. Signed by Judge Raner C Collins on 2/28/08.(SSU,) (Entered: 02/28/2008)
02/28/2008	<u>62</u>	MEMORANDUM re: In Opposition to Motion for Extension of Time by Plaintiff Universal Avionics Systems Corporation. (Walsh, E) (Entered: 02/28/2008)
03/03/2008	<u>64</u>	SEALED ORDER granting <u>63</u> Motion to Withdraw. Signed by Judge Raner C Collins on 02/28/08.(DNO,) (Entered: 03/05/2008)
03/18/2008	<u>65</u>	ANSWER to <u>38</u> Amended Answer to Complaint, Third Party Complaint, Crossclaim, Counterclaim,,,, by Universal Avionics Systems Corporation. (Walsh, E) (Entered: 03/18/2008)
04/01/2008	<u>66</u>	NOTICE of Appearance by Jeffrey Lynn Willis on behalf of Optima Technology Group, Inc., Robert Adams, Jed Margolin (Willis, Jeffrey) (Entered: 04/01/2008)
04/01/2008	<u>67</u>	STIPULATION for <i>72-Hour Extension of Time to File Replies in Support of Motions to Dismiss and Response to Plaintiff's Motion for Expedited Discovery (Second Request)</i> by Optima Technology Group, Inc., Robert Adams, Jed Margolin. (Attachments: # <u>1</u> Text of Proposed Order)(Willis, Jeffrey) (Entered: 04/01/2008)
04/01/2008	<u>68</u>	ORDER re <u>67</u> STIPULATION for 72-Hour Extension of Time to File Replies in Support of Motions to Dismiss and Response to Plaintiff's Motion for Expedited Discovery, due 4/3/08. Signed by Judge Raner C Collins on 4/1/08. (KMF,) (Entered: 04/01/2008)
04/02/2008	<u>69</u>	NOTICE of Appearance by Jeffrey Lynn Willis on behalf of Optima Technology Group, Inc., Robert Adams, Jed Margolin (Willis, Jeffrey) (Entered: 04/02/2008)
04/02/2008	<u>70</u>	APPLICATION for Entry of Default by Defendants Optima Technology Group, Inc., against Optima Technology Corporation, Inc.. (Attachments: # <u>1</u> Text of Proposed Order Proposed Entry of Default)(Willis, Jeffrey) Modified on 4/2/2008 to correct applicant (BJW,). (Entered: 04/02/2008)
04/03/2008	<u>71</u>	REPLY in Support re <u>21</u> MOTION to Dismiss Case for Lack of Jurisdiction <i>and Request for Stay of Proceedings on Motion to Dismiss</i> filed by Optima Technology Group, Inc., Robert Adams, Jed Margolin. (Willis, Jeffrey) (Entered: 04/03/2008)
04/03/2008	<u>72</u>	REPLY in Support re <u>13</u> MOTION to Dismiss Case filed by Optima Technology Group, Inc., Robert Adams, Jed Margolin. (Willis, Jeffrey) (Entered: 04/03/2008)
04/03/2008	<u>73</u>	RESPONSE to Motion re <u>55</u> MOTION to Expedite Discovery filed by

		Optima Technology Group, Inc., Robert Adams, Jed Margolin. (Willis, Jeffrey) (Entered: 04/03/2008)
04/07/2008	<u>74</u>	Clerk's ENTRY OF DEFAULT as to Optima Technology Corporation (PAB,) (Entered: 04/07/2008)
04/09/2008	<u>75</u>	ORDER granting <u>13</u> Motion to Dismiss Case and as amended by <u>72</u> Reply; Counts 5, 6, 7 of Plaintiff's Complaint are dismissed without prejudice to Plaintiff refiling thises claims in state court. Counts 2-4 and 7-12 of Defendants' state law counterclaims, cross-claims and third-party claims are dismissed without prejudice. Ordered denying as moot <u>17</u> Motion to Dismiss Case for Lack of Jurisdiction; dft Adams is dismissed. Ordered denying <u>21</u> Motion to Dismiss Case for Lack of Jurisdiction and <u>71</u> Request for a Stay of Proceedings. Signed by Judge Raner C Collins on 4/9/08.(SSU,) (Entered: 04/09/2008)
04/10/2008	<u>76</u>	APPLICATION for Entry of Default by Defendant Optima Technology Group, Inc. against Optima Technology Corporation. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Text of Proposed Order)(Willis, Jeffrey) (Entered: 04/10/2008)
04/14/2008	<u>77</u>	Clerk's ENTRY OF DEFAULT as to Optima Technology Corporation. (SSU,) (Entered: 04/14/2008)
04/29/2008	<u>78</u>	STIPULATION by Optima Technology Group, Inc., Optima Technology Corporation, Universal Avionics Systems Corporation, Robert Adams, Jed Margolin. (Attachments: # <u>1</u> Text of Proposed Order Order)(Walsh, E) (Entered: 04/29/2008)
05/06/2008	<u>79</u>	ORDER denying <u>55</u> Motion to Expedite, pursuant to Stipulation <u>78</u> . Pla Universal Avionics Systems Corporation may file an amended complaint to reflect the effect of this Court's 4/9/08 Order on or before 5/9/08. Dfts Optima Technology Group and Jed Margolin will respond to the amended complaint within ten days of service. Universal will file a reply to any counterclaims within ten days after being served with such counterclaims. Any and all responsive pleadings that were or may have been due before the date of this Order are vacated in favor of the schedule set forth herein. Signed by Judge Raner C Collins on 4/29/08.(JEMB,) (Entered: 05/06/2008)
05/13/2008	<u>82</u>	**PHRASE "OR PATENT TROLL" PG1 LINE 24, & PARAGRAPHS 37-43 STRIKEN PER ORDER <u>101</u> **Sealed Document: FIRST AMENDED COMPLAINT filed by Universal Avionics Systems Corporation. (JEMB,) Modified on 7/7/2008 (JEMB,TO REFLECT STRICKEN SECTIONS). (Entered: 05/16/2008)
05/14/2008	<u>81</u>	ORDER granting <u>80</u> Motion to Seal Document. Signed by Judge Raner C Collins on 5/14/08.(JEMB,) (Entered: 05/16/2008)
05/16/2008	<u>83</u>	CERTIFICATE OF SERVICE by Universal Avionics Systems Corporation (Walsh, E) (Entered: 05/16/2008)
05/20/2008	<u>84</u>	Sealed MOTION to Seal Document re Motion to Unseal Chandler & Udall, LLP'S Ex Parte Motion to Withdraw as Counsel by Universal Avionics

		Systems Corporation. (Attachments: # <u>1</u> Text of Proposed Order)(Walsh, E) Modified on 5/21/2008 to seal document(PAB,). (Entered: 05/20/2008)
05/20/2008	<u>85</u>	SEALED LODGED Proposed Motion to Unseal Chandler & Udall, LLP's Ex Parte Motion to Withdraw as Counsel re: <u>84</u> MOTION to Seal Document re Motion to Unseal Chandler & Udall, LLP'S Ex Parte Motion to Withdraw as Counsel. Document to be filed by Clerk if Motion to Seal is granted. Filed by Universal Avionics Systems Corporation. (Walsh, E) (Entered: 05/20/2008)
05/20/2008	<u>86</u>	SEALED LODGED Proposed Declaration of Allan A. Kassenoff in Support of Plaintiff Universal Avionics Systems Corporation's Motion to Unseal Chandler & Udall, LLP's Ex Parte Motion to Withdraw as Counsel re: <u>84</u> MOTION to Seal Document re Motion to Unseal Chandler & Udall, LLP'S Ex Parte Motion to Withdraw as Counsel. Document to be filed by Clerk if Motion to Seal is granted. Filed by Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Exhibit)(Walsh, E) (Entered: 05/20/2008)
05/21/2008	<u>89</u>	ORDER granting <u>84</u> Motion to Seal Document. Signed by Judge Raner C Collins on 5/20/08.(JEMB,) (Entered: 05/22/2008)
05/21/2008	<u>90</u>	MOTION to Unseal Document re Chandler & Udall, LLP's Ex Parte Motion to Withdraw as Counsel by Universal Avionics Systems Corporation. (JEMB,) (Entered: 05/22/2008)
05/21/2008	<u>91</u>	Sealed Document: Declaration filed by Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Exhibit)(JEMB,) (Entered: 05/22/2008)
05/22/2008	<u>87</u>	MOTION to Strike <i>Allegations From Amended Complaint</i> by Optima Technology Group, Inc., Jed Margolin. (Bernheim, Robert) (Entered: 05/22/2008)
05/22/2008	<u>88</u>	Additional Attachments to Main Document re <u>87</u> MOTION to Strike <i>Allegations From Amended Complaint Proposed Order Granting Defendants' Motion to Strike Allegations from Amended Complaint</i> by Defendants Optima Technology Group, Inc., Jed Margolin. (Bernheim, Robert) (Entered: 05/22/2008)
05/29/2008	<u>92</u>	RESPONSE in Opposition re <u>90</u> MOTION to Unseal Document re Chandler & Udall, LLP's Ex Parte Motion to Withdraw as Counsel filed by Optima Technology Group, Inc., Jed Margolin. (Bernheim, Robert) (Entered: 05/29/2008)
06/04/2008	<u>93</u>	RESPONSE in Opposition re <u>87</u> MOTION to Strike <i>Allegations From Amended Complaint</i> filed by Universal Avionics Systems Corporation. (Walsh, E) (Entered: 06/04/2008)
06/05/2008	<u>94</u>	REPLY in Support re <u>90</u> MOTION to Unseal Document re Chandler & Udall, LLP's Ex Parte Motion to Withdraw as Counsel filed by Universal Avionics Systems Corporation. (Walsh, E) (Entered: 06/05/2008)
06/09/2008	<u>96</u>	SEALED ORDER denying <u>90</u> Motion to Unseal Document. Signed by Judge Raner C Collins on 6/9/08.(JEMB,) (Entered: 06/12/2008)
06/11/2008	<u>95</u>	Notice re Joint Rule 26(f) Report and Respective Case Management Plans by

		Optima Technology Group, Inc., Universal Avionics Systems Corporation (Willis, Jeffrey) (Entered: 06/11/2008)
06/18/2008	<u>97</u>	REPLY to Response to Motion re <u>87</u> MOTION to Strike <i>Allegations From Amended Complaint</i> filed by Optima Technology Group, Inc., Jed Margolin. (Bernheim, Robert) (Entered: 06/18/2008)
06/18/2008	<u>98</u>	MOTION for Default Judgment as to Cross-Defendants Optima Technology Corp. (a CA corp.) and Optima Technology Corp.(a NV corp.) by Optima Technology Group, Inc., Robert Adams, Jed Margolin. (Attachments: # <u>1</u> Text of Proposed Order [Proposed] Form of Judgment)(Bernheim, Robert) (Entered: 06/18/2008)
06/23/2008	<u>99</u>	RESPONSE in Opposition re <u>98</u> MOTION for Default Judgment as to Cross-Defendants Optima Technology Corp. (a CA corp.) and Optima Technology Corp.(a NV corp.) MOTION for Default Judgment as to Cross-Defendants Optima Technology Corp. (a CA corp.) and Optima Technology Corp.(a NV corp.) filed by Universal Avionics Systems Corporation. (Walsh, E) (Entered: 06/23/2008)
06/27/2008	<u>100</u>	Reply re <u>99</u> Response in Opposition to Motion, by Defendant Optima Technology Group, Inc.. (Bernheim, Robert) (Entered: 06/27/2008)
07/07/2008	<u>101</u>	ORDER granting in part and denying in part <u>87</u> Motion to Strike, Plaintiff may file an amended complaint by 7/15/08; granting <u>98</u> Motion for Default Judgment against Cross-Dfts Optima Technology Corporation, a CA Corporation, and Optima Technology Corporation, a NV Corporation.Signed by Judge Raner C Collins on 7/2/08.(SSU,) (Entered: 07/07/2008)
07/08/2008	<u>102</u>	REQUEST For Entry of Separate Judgment Under Rule 58(d) by Defendants Optima Technology Group, Inc., Robert Adams, Jed Margolin. (Attachments: # <u>1</u> Proposed Form of Judgment)(Bernheim, Robert) (Entered: 07/08/2008)
07/10/2008	<u>103</u>	Notice re of Service of Defendant Optima Technology Group, Inc.'s First Set of Interrogatories to Plaintiff by Optima Technology Group, Inc. (Willis, Jeffrey) (Entered: 07/10/2008)
07/15/2008	<u>104</u>	AMENDED COMPLAINT <i>Second</i> against Optima Technology Corporation, Optima Technology Group, Inc., Jed Margolin;Jury Demand, filed by Universal Avionics Systems Corporation.(Walsh, E) (Entered: 07/15/2008)
07/15/2008	<u>105</u>	AFFIDAVIT of Process Server Dean Nichols on <i>Mercury Computer Systems, Inc.</i> by Plaintiff Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Exhibit Subpoena)(Walsh, E) (Entered: 07/15/2008)
07/15/2008	<u>106</u>	AFFIDAVIT of Process Server Ronald Bodtke for <i>Service on Reza Zandian</i> by Plaintiff Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Exhibit Subpoena)(Walsh, E) (Entered: 07/15/2008)
07/15/2008	<u>107</u>	NOTICE of Deposition of Jed Margolin, filed by Universal Avionics Systems Corporation. (Walsh, E) (Entered: 07/15/2008)
07/15/2008	<u>108</u>	NOTICE of Deposition of Robert Adams, filed by Universal Avionics Systems Corporation. (Walsh, E) (Entered: 07/15/2008)

07/15/2008	<u>109</u>	Notice re Service of Plaintiff's First Set of Interrogatories to Defendant Optima Technology Group, Inc. by Universal Avionics Systems Corporation (Walsh, E) TEXT HAS BEEN MODIFIED TO REFLECT CORRECT DOCUMENT TITLE, PER ATTORNEY. Modified on 7/16/2008 (SSU,). (Entered: 07/15/2008)
07/16/2008	<u>110</u>	Notice re Service of Plaintiff's First Request for Production of Documents to Defendant Optima Technology Group, Inc. by Universal Avionics Systems Corporation by Universal Avionics Systems Corporation (Walsh, E) (Entered: 07/16/2008)
07/18/2008	<u>111</u>	NOTICE of Deposition of UAS, filed by Optima Technology Group, Inc.. (Willis, Jeffrey) (Entered: 07/18/2008)
07/18/2008	<u>112</u>	NOTICE of Deposition of Joaquin Naimer, filed by Optima Technology Group, Inc.. (Willis, Jeffrey) (Entered: 07/18/2008)
07/18/2008	<u>113</u>	NOTICE of Deposition of Don Berlin, filed by Optima Technology Group, Inc.. (Willis, Jeffrey) (Entered: 07/18/2008)
07/18/2008	<u>114</u>	NOTICE of Deposition of Frank Hummel, filed by Optima Technology Group, Inc.. (Willis, Jeffrey) (Entered: 07/18/2008)
07/21/2008	<u>115</u>	MOTION for Reconsideration re Of the Court's Default Ruling Against Optima Technology Corporation Filed July7, 2008 by Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Exhibit A)(Mandel, Robert) (Entered: 07/21/2008)
07/23/2008	<u>116</u>	MOTION for Hearing or Conference re: Rule 16 Conference by Optima Technology Group, Inc., Jed Margolin. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Text of Proposed Order)(Willis, Jeffrey) (Entered: 07/23/2008)
07/25/2008	<u>117</u>	APPLICATION for Entry of Default by Plaintiff Universal Avionics Systems Corporation against Optima Technology Corporation. (Attachments: # <u>1</u> Text of Proposed Order Entry of Default)(Mandel, Robert) (Entered: 07/25/2008)
07/25/2008	<u>118</u>	DECLARATION of Declaration of Allan A. Kassenoff in Support of Plaintiff's Application for Entry of Default re <u>117</u> Application for Entry of Default by Plaintiff Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Mandel, Robert) (Entered: 07/25/2008)
07/28/2008	<u>119</u>	RESPONSE in Opposition re <u>116</u> MOTION for Hearing or Conference re: Rule 16 Conference <i>and Expedited Stay of Proceedings Pending Conference</i> filed by Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Mandel, Robert) (Entered: 07/28/2008)
07/29/2008	<u>120</u>	Clerk's ENTRY OF DEFAULT as to Optima Technology Corporation (SSU,) (Entered: 07/29/2008)
07/29/2008	<u>121</u>	ORDER granting in part and denying in part <u>116</u> Motion; Court will set scheduling conference but will not grant a stay of the proceedings. Telephonic Scheduling Conference set for 8/28/2008 10:00 AM before Judge Raner C Collins' law clerk, Isaac Rothschild. Further ordered, parties file with the Court a joint report reflecting the results of the conference by 8/25/08. Signed

		by Judge Raner C Collins on 7/29/08.(SSU,) (Entered: 07/29/2008)
07/29/2008	<u>122</u>	<i>Optima Technology Group and Jed Margolin's ANSWER to 104 Amended Complaint and, COUNTERCLAIM against Optima Technology Corporation by Optima Technology Group, Inc., Jed Margolin.(Bernheim, Robert)</i> (Entered: 07/29/2008)
07/31/2008	<u>123</u>	MOTION FOR DEFAULT JUDGMENT by Plaintiff Universal Avionics Systems Corporation against Optima Technology Corporation. (Mandel, Robert) EVENT AND TEXT MODIFIED FROM Application for Default Judgment TO Motion for Default Judgment. Modified on 8/5/2008 (SSU,). (Entered: 07/31/2008)
08/06/2008	<u>124</u>	Notice re Service of Requests for Production to Garmin International, Inc. by Optima Technology Group, Inc., Jed Margolin (Bernheim, Robert) (Entered: 08/06/2008)
08/06/2008	<u>125</u>	Notice re Answers to Universal Avionics Systems Corporation's First Set of Interrogatories by Optima Technology Group, Inc. (Willis, Jeffrey) (Entered: 08/06/2008)
08/12/2008	<u>126</u>	Reply TO DEFENDANT OPTIMA TECHNOLOGY GROUP, INC.'S COUNTERCLAIMS by Plaintiff Universal Avionics Systems Corporation. (Mandel, Robert) (Entered: 08/12/2008)
08/13/2008	<u>127</u>	Notice re SERVICE OF OBJECTIONS AND RESPONSES TO OPTIMA TECHNOLOGY GROUP, INC.'S FIRST SET OF INTERROGATORIES by Universal Avionics Systems Corporation (Mandel, Robert) (Entered: 08/13/2008)
08/18/2008	<u>128</u>	Notice re Service of Responses to Universal Avionics Systems Corporation's First Request for Production of Documents and Things by Optima Technology Group, Inc., Jed Margolin (Bernheim, Robert) (Entered: 08/18/2008)
08/18/2008	<u>129</u>	ORDER denying <u>115</u> Motion for Reconsideration ; granting <u>123</u> Motion for Default Judgment. Signed by Judge Raner C Collins on 8/18/08.(CLJ,) (Entered: 08/18/2008)
08/18/2008	<u>130</u>	DEFAULT JUDGMENT in favor of Universal Avionics Systems Corporation against Optima Technology Corporation. Signed by Judge Raner C Collins on 8/18/08. (CLJ,) (Entered: 08/18/2008)
08/18/2008	<u>131</u>	ORDER that Final Judgment entered against Cross-Defendants Optima Technology Corporation. ***See attached PDF for complete information***. Signed by Judge Raner C Collins on 8/18/08. (CLJ,) (Entered: 08/18/2008)
08/18/2008	<u>132</u>	ORDER that Final Judgment entered against Defendant Optima Technology Corporation. ***See attached PDF for complete information***. Signed by Judge Raner C Collins on 8/18/08. (CLJ,) (Entered: 08/18/2008)
08/18/2008	<u>133</u>	CLERK'S JUDGMENT in favor of Universal Avionics Systems Corporation against Optima Technology Corporation. Cross-defendant Optima Technology Corporation has been terminated. Signed by Judge Raner C

		Collins on 8/18/08. (CLJ,) (Entered: 08/18/2008)
08/18/2008	<u>134</u>	CLERK'S JUDGMENT in favor of Universal Avionics Systems Corporation against Optima Technology Corporation. Defendant Optima Technology Corporation has been terminated. Signed by Judge Raner C Collins on 8/18/08. (CLJ,) (Entered: 08/18/2008)
08/25/2008	<u>135</u>	NOTICE of Deposition of Optima Technology Group 30(b)(6), filed by Universal Avionics Systems Corporation. (Mandel, Robert) (Entered: 08/25/2008)
08/25/2008	<u>136</u>	REPORT of Joint Rule 26(f) Report and Respective Case Management Plans by Defendants Optima Technology Group, Inc., Jed Margolin, Plaintiff Universal Avionics Systems Corporation. (Bernheim, Robert) (Entered: 08/25/2008)
08/26/2008	<u>137</u>	Notice re Notice of Service of Initial Disclosures by Universal Avionics Systems Corporation (Mandel, Robert) (Entered: 08/26/2008)
08/28/2008	<u>138</u>	Notice re Service of Defendants' Rule 26(a)(1) Initial Disclosure Statement by Optima Technology Group, Inc., Jed Margolin (Bernheim, Robert) (Entered: 08/28/2008)
08/28/2008	<u>139</u>	SCHEDULING ORDER: Discovery due by 9/12/2009. Dispositive motions due by 11/12/2009. Proposed Pretrial Order due by 11/25/2009. Status Report due by 1/5/2009. See attached PDF for additional information. Signed by Judge Raner C Collins on 8/28/08. (SSU,) (Entered: 08/28/2008)
09/05/2008	<u>140</u>	MOTION for Extension of Time <i>To File Briefs</i> by Optima Technology Group, Inc., Jed Margolin. (Attachments: # <u>1</u> Text of Proposed Order) (Bernheim, Robert) (Entered: 09/05/2008)
09/08/2008	<u>141</u>	ORDER granting <u>140</u> Motion for Extension of Time. Dft's briefs re: prejudice resulting from disputed patent prosecution exclusion be filed by 9/12/08, Dft's briefs re: preliminary invalidity contentions be filed by 9/15/08 and Plaintiff's brief re: case bifurcation be filed by 9/15/08. See attached PDF for additional information. Signed by Judge Raner C Collins on 9/8/08.(SSU,) (Entered: 09/08/2008)
09/15/2008	<u>142</u>	STIPULATION <i>to Extend Deadlines to File Briefs</i> by Optima Technology Group, Inc., Jed Margolin, Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Text of Proposed Order)(Bernheim, Robert) (Entered: 09/15/2008)
09/16/2008	<u>143</u>	ORDER granting <u>142</u> Stipulation : dfts have until 9/19/08 to file their briefs re: prejudice resulting from the disputed patent prosecution exclusion, 9/22/08 to file briefs re: preliminary invalidity contentions, Plaintiff have until 9/22/08 to file their brief re: case bifurcation. All parties have 10 days to file responsive memorandum after the initial briefs are filed. Signed by Judge Raner C Collins on 9/16/08. (SSU,) (Entered: 09/16/2008)
09/19/2008	<u>144</u>	BRIEF <i>Re Prejudice Caused by Universal's Proposed Restriction Against Patent Prosecution</i> by Defendants Optima Technology Group, Inc., Jed Margolin. (Bernheim, Robert) (Entered: 09/19/2008)

09/22/2008	<u>145</u>	STIPULATION to <i>Extend Deadlines to File Briefs</i> by Optima Technology Group, Inc., Jed Margolin, Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Text of Proposed Order)(Bernheim, Robert) (Entered: 09/22/2008)
09/23/2008	<u>146</u>	ORDER granting <u>145</u> Stipulation : Dfts shall have up to and including 9/29/2008 to file their motion regarding preliminary invalidity contentions. Pla shall have up to and including 9/29/2008 to file their motion regarding case bifurcation and up to and including 10/10/2008 to file their brief regarding disputed patent prosecution exclusion. The parties shall have ten days after the filing of the motions to respond.. Signed by Judge Raner C Collins on 9/22/08. (JKM,) (Entered: 09/23/2008)
09/23/2008	<u>147</u>	STIPULATION of Dismissal with <i>Prejudice</i> by Optima Technology Group, Inc., Jed Margolin, Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Text of Proposed Order)(Bernheim, Robert) (Entered: 09/23/2008)
09/24/2008	<u>148</u>	ORDER granting <u>147</u> Stipulation of Dismissal :All claims and counterclaims in this action are dismissed with prejudice and the Clerk shall CLOSE this case. Each party shall be responsible for paying its own attorneys' fees and costs incurred in this action.. Signed by Judge Raner C Collins on 9/23/08. (JKM,) (Entered: 09/24/2008)

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Description:	Docket Report	Search Criteria:	4:07-cv-00588-RCC
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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,

5 vs.

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

Third-Party Defendants.

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

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

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

20 **INTRODUCTORY PARAGRAPH**

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

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
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 35. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
2 counsel. Affirmatively allege that the text of Exhibit 13 to the *Complaint* speaks for itself.
3 Deny all remaining allegations.

4 36. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
5 counsel. Deny allegations regarding communications to which Optima was not a party for lack
6 of knowledge. Deny all remaining allegations.

7 37. Deny for lack of knowledge.

8 38. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
9 counsel. Affirmatively allege that the text of Exhibit 14 to the *Complaint* speaks for itself.
10 Deny all remaining allegations.

11 39. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
12 counsel. Affirmatively allege that the text of Exhibit 15 to the *Complaint* speaks for itself.
13 Deny all remaining allegations.

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

17 41. Admit. Affirmatively allege that the text of Exhibit 17 to the *Complaint* speaks
18 for itself.

19 42. Admit. Affirmatively allege that the text of Exhibit 17 to the *Complaint* speaks
20 for itself.

21 43. Admit.

22 CLAIMS FOR RELIEF

23 COUNT ONE

24 Declaratory Judgment of Non-Infringement of the '073 Patent

25 44. Optima repeats and restates the statements of paragraphs 1-43 above as if fully
26 set forth herein.

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.

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COUNT FOUR

Declaratory Judgment of Invalidity of the '724 Patent

56. Optima repeats and restates the statements of paragraphs 1-55 above as if fully set forth herein.

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

58. Deny.

59. Admit that Plaintiff seeks a declaration as described in Paragraph 59 of the *Complaint*. Deny that Plaintiff is entitled to such a declaration. Deny all remaining allegations.

COUNTS FIVE THROUGH SEVEN

Defendant Optima has contemporaneously filed a *Motion to Dismiss* seeking to dismiss Counts Five through Seven of the *Complaint* against it for failure to state a claim. As such, Defendant Optima will amend this *Answer* and respond to Counts V, VI and/or VII of the *Complaint* at such time, and to the extent that the Court herein denies that *Motion* in whole or in part. See Rule 12(a)(4), Fed.R.Civ.P.

GENERAL DENIAL

Defendant Optima denies each allegation of Plaintiff's *Complaint* not specifically admitted herein.

EXCEPTIONAL CASE

This is an exceptional case under 35 U.S.C. § 285 in which Defendant Optima is entitled to its attorneys' fees and costs incurred in connection Plaintiff's stated claims in bringing this action.

AFFIRMATIVE DEFENSES

Defendant Optima asserts all available affirmative defenses under Rule 8(c), Fed.R.Civ.P., including but not limited to those specifically designated as follows (Defendant

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 its declaratory judgment cross-claim against OTC herein to declare and establish
- 2 true and proper title to the Patents, for which Optima has incurred and will incur
- 3 substantial expenses (attorneys' fees and costs) in the prosecution thereof.
- 4 25. Upon information and belief, UAS provided additional information to Zandian/OTC
- 5 regarding, or of the same nature as that discussed in, Paragraph 33 of and Exhibits 14,
- 6 15 and 17 to the *Complaint* herein.
- 7 26. UAS made the disclosures (*inter alia*) as acknowledged in its *Complaint* herein.
- 8 27. Upon information and belief, UAS also made the disclosures alleged in Paragraph 34
- 9 of, and in Exhibit 12 attached to, the *Complaint*.
- 10 28. By filing its *Complaint* as part of the open public record in this case, UAS disclosed the
- 11 content thereof and the Exhibits attached thereto.
- 12 29. The actions of UAS and OTC herein were motivated by spite, malice and/or ill-will
- 13 toward Optima and were for the purpose of and/or were intended to intermeddle with,
- 14 interfere with, trespass upon and/or cause harm to Optima's rights in the Patents and/or
- 15 under the Power of Attorney, and/or with knowledge that such intermeddling,
- 16 interference, trespass and/or harm was substantially certain to occur.
- 17 30. Upon information and belief, OTC intends to continue to compete, interfere, and/or
- 18 attempt to compete and/or interfere with Optima regarding the Patents and/or the Power
- 19 of Attorney. At this time, however, Optima is unaware of any actual attempts yet made
- 20 by OTC to purportedly license, sell or otherwise transfer rights regarding the Patents
- 21 under its purported Assignment/Power of Attorney (as recorded with the PTO). If and
- 22 when Optima becomes aware of such actions, it will timely seek to amend and
- 23 supplement the Counterclaims, Cross-Claims, Third-Party Claims and/or remedies
- 24 herein as necessary and applicable.
- 25 ***
- 26 ***

COUNT 1

PATENT INFRINGEMENT

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

5 32. This is a cause of action for patent infringement under 35 U.S.C. § 271 *et seq.* At all
6 relevant times, UAS had actual and constructive knowledge of the Patents in suit
7 including the scope and claim coverage thereof.

8 33. UAS's aforesaid activities constitute a direct, contributory and/or inducement of
9 infringement of the aforesaid patents in violation of 35 U.S.C. § 271 *et seq.* UAS's
10 aforesaid infringement is and has, at all relevant times, been willful and knowing.

11 34. Naimer and Hummel, through their forgoing actions, actively aided and abetted and
12 knowingly and/or intentionally induced, and specifically intended to induce, UAS's
13 direct infringement despite their knowledge of the Patents.

14 35. Optima has suffered and will continue to suffer immediate and ongoing irreparable and
15 actual harm and monetary damage as a result of UAS's, Naimer's and Hummel's willful
16 patent infringement in an amount to be proven at trial.

COUNT 2

BREACH OF CONTRACT

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18
19 36. The statements of all of the foregoing paragraphs are incorporated herein by reference
20 as if fully set forth herein.

21 37. This is a cause of action for breach of contract against UAS pursuant to Arizona law.

22 38. UAS's actions constitute one or more breaches of the contract attached as Exhibit 8 to
23 the *Complaint* herein.

24 39. 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

COUNT 3

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

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

COUNT 4

NEGLIGENCE

- 14
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16 45. The statements of all of the foregoing paragraphs are incorporated herein by reference
17 as if fully set forth herein.
18 46. This is an cause of action for negligence against UAS pursuant to the law of New York,
19 Delaware, California, Virginia or Arizona.
20 47. UAS owed a duty of care to Optima as a result of Exhibit 8 to the *Complaint* herein, and
21 the obligations created therein and/or relating thereto.
22 48. UAS breached these duties through its foregoing actions as alleged herein, including but
23 not limited to:
24 a. UAS's inclusion in an openly-accessible public record the allegations of its
25 *Complaint*; and/or
26

- 1 b. UAS's inclusion in an openly-accessible public record the exhibits attached to
- 2 the *Complaint*; and/or
- 3 c. UAS's provision of a copy of the Power of Attorney prior to and/or as a result
- 4 of UAS's service of the *Complaint* (with Exhibit 3 thereto) upon OTC; and/or
- 5 d. UAS's informing, directing, advising, assisting and conspiring of/with
- 6 Zandian/OTC to record the Power of Attorney with the U.S. Patent and
- 7 Trademark Office ("PTO").

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

10 **COUNT 5**

11 **DECLARATORY JUDGMENT**

- 12 50. The statements of all of the foregoing paragraphs are incorporated herein by reference
13 as if fully set forth herein.
- 14 51. This is a cause of action for declaratory judgment under 28 U.S.C. § 2201 *et seq* against
15 OTC.
- 16 52. Optima was at all times relevant hereto the rightful holder of the Power of Attorney and
17 the rightful owner of the Patents.
- 18 53. By virtue of OTC's recording of the Assignment and Power of Attorney with the PTO,
19 a cloud of title, impairment of vendibility, etc. (as otherwise alleged above) exists with
20 respect to Optima's exclusive ownership rights relating to the Patents and the exclusive
21 rights under the Power of Attorney.
- 22 54. An actual and live controversy exists between OTC and Optima.
- 23 55. As a result thereof, Optima requests a declaration of rights with respect to the foregoing,
24 including but not limited to a declaration that OTC has no interest or right in either the
25 Power of Attorney or the Patents, that OTC's filing/recording of documents with the
26 PTO asserting any interest or right in either the Power of Attorney or the Patents was

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

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

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

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

6 67. 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 9**

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

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

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

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

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

18 b. Constitute a deceptive trade practice; and/or

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

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

25 e. Represent that goods or services are of a particular standard, quality, or grade,
26 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