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Kurt M. Rylander, WSBA No. 27819
rylander@rylanderlaw.com
Mark E. Beatty, WSBA No. 37076
beatty@rylanderlaw.com
RYLANDER & ASSOCIATES PC
406 West 12th Street
Vancouver, WA 98660
Tel: 360.750.9931
Fax: 360.397.0473
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION**

SUNMODO CORPORATION,
a Washington Corporation,

Plaintiff(s),

v.

UNIRAC, INC.,
a New Mexico Corporation,

Defendant(s).

No. **12-5706**

**COMPLAINT FOR
DECLARATORY JUDGMENT**

(An action related to Patents)

COMES NOW Plaintiff, SUNMODO CORPORATION (hereinafter “Sunmodo”), by and through undersigned counsel, and by this Complaint seeks declaratory judgment against Defendant UNIRAC, INC. (hereinafter “Unirac”), and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for a declaratory judgment that SUNMODO does



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3 7. Plaintiff is informed and believes and on that basis alleges that
4 Defendant, Unirac, is a New Mexico corporation and claims to have a principal
5 place of business at 1411 Broadway Boulevard NE, Albuquerque, New Mexico,
6 87102.

7
8 8. Plaintiff is informed and believes and on that basis alleges that
9 Unirac owns the Asserted Patent.

10 9. Plaintiff is informed and believes and on that basis alleges that
11 Unirac conducts business and engages in contracts and other substantive
12 contact in the State of Washington, and by such extensive conduct, resides in
13 the State of Washington.

14
15 **THE PRESENCE OF AN ACTUAL CONTROVERSY**

16 10. Plaintiff builds and sells a product known as the Ez Roof Mount.
17 It sells that product nationally, internationally, and in the State of
18 Washington.

19
20 11. On May 17, 2012, Unirac, by counsel, sent a letter by Federal
21 Express to Sunmodo. A copy of this letter, including its attachments, is
22 attached hereto as **Exhibit A**.

23 12. In Unirac's May 17, 2012 letter, Unirac claimed to own the '044
24 Patent, and alleged that the Ez Roof Mount made and sold by Plaintiff
25 infringed one or more claims of the '044 Patent. The letter included a claim
26 chart directed to Plaintiff's Ez Roof Mount contending that the Ez Roof Mount
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3 infringed one or more claims of the '044 Patent. The letter further included a
4 copy of the first page of the '044 Patent. Unirac further stated that that it
5 protected it's intellectual property from infringing product and unfair
6 competition. The letter titled itself as "Infringement of U.S. Patent No.
7 8,128,044".

8
9 13. By Unirac's actions, Plaintiff is in reasonable apprehension of an
10 imminent patent infringement suit relating to the Asserted Patent.

11 14. Plaintiff denies that it infringes any valid claim of the Asserted
12 Patent. Plaintiff now seeks a declaratory judgment that it does not infringe
13 any valid claim of the Asserted Patent.

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15 **COUNT ONE—DECLARATORY JUDGMENT**

16 **OF NON-INFRINGEMENT OF THE '044 PATENT**

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18 15. Plaintiff re-alleges every paragraph in this Complaint.

19 16. Plaintiff's Ez Roof Mount does not infringe any valid claim of the
20 '044 Patent threatened by Unirac.

21 17. An actual controversy exists between Plaintiff and the Defendant
22 as to whether or not Plaintiff has infringed, or is infringing, the '044 Patent;
23 has contributed, or is contributing, to infringement of the '044 Patent; or has
24 induced, or is inducing, infringement of the '044 Patent.

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26 18. The controversy is such that, pursuant to Federal Rule of Civil
27 Procedure 57 and 28 U.S.C. § 2201 *et seq.*, Plaintiff is entitled to a declaration,

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3 in the form of a judgment, that by its activities Plaintiff has not infringed and
4 is not infringing any valid and enforceable claim of the '044 Patent threatened
5 by Unirac; has not contributed to infringement and is not contributing to
6 infringement of the '044 Patent; and/or has not induced infringement and is not
7 inducing infringement of the '044 Patent. Such a determination and declaration
8 is necessary and appropriate at this time.
9

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11 **COUNT FOUR--DECLARATORY JUDGMENT**
12 **OF INVALIDITY OF THE '044 PATENT**

13 19. Plaintiff re-alleges every paragraph in this Complaint.

14 20. Based on the above-stated conduct, Plaintiff is informed and
15 believes that the Defendant contends that Plaintiff infringes one or more
16 claims of the '044 Patent.
17

18 21. Plaintiff denies that it infringes any valid and enforceable claim of
19 the '044 Patent threatened by Defendant, and avers that the assertions of
20 infringement cannot be maintained consistently with statutory conditions of
21 patentability and the statutory requirements for disclosure and claiming that
22 must be satisfied for patent validity under at least one of 35 U.S.C. §§ 102, 103,
23 and 112.
24

25 22. Accordingly, an actual controversy exists between Plaintiff and
26 the Defendant as to the validity of the '044 Patent. The controversy is such
27 that, pursuant to Federal Rules of Civil Procedure 57 and 28 U.S.C. § 2201 *et*
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seq., Plaintiff is entitled to a declaration, in the form of a judgment, that the '044 Patent is invalid. Such a determination and declaration is necessary and appropriate at this time.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for judgment in its favor as follows:

- A. For judgment in favor of Plaintiff against Defendant on all claims;
- B. Declaring that Plaintiff's Ez Roof Mount does not infringe any valid claim of the Asserted Patent;
- C. Declaring that the one or more claims of the Asserted Patent are invalid under one or more of 35 U.S.C. §§ 102, 103, and 112;
- D. Awarding Plaintiff's its reasonable attorneys' fees and costs, including costs for experts, pursuant to State and Federal law, including 35 U.S.C. § 285
- E. Awarding Plaintiff such other and further relief as this Court deems is just and proper.

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DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury on all counts so triable.

DATED This August 8, 2012 /s/ Kurt M. Rylander
KURT M. RYLANDER, WSBA 27819

/s/ Mark E. Beatty
MARK E. BEATTY, WSBA 37076

RYLANDER & ASSOCIATES PC
406 West 12th Street
Vancouver, WA 98660
Tel: (360) 750-9931
Fax: (360) 397-0473
E-mail: rylander@rylanderlaw.com

Of Attorneys for Plaintiff

