

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DeNORA WATER TECHNOLOGIES
TEXAS, LLC

Plaintiff,

vs.

H2O, L.L.C.,

Defendant.

Civil Action No.

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, De Nora Water Technologies Texas, LLC (sometimes referred to herein as “De Nora”) for its Original Complaint against Defendant H2O, Inc. (sometimes referred to herein as “H2O”) alleges as set forth below.

NATURE OF THE CLAIMS, JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent Laws of the United States, United States Code, Title 35, § 1 et. seq.; false advertising under § 43(a)(1)(B) of the Lanham Act, United States Code, Title 15, § 1125 (a) (1)(B); false designation of origin and false description and representation under § 43(a)(1)(A) of the Lanham Act, United States Code, Title 15, § 1125 (a) (1)(A); cancellation of a federally registered trademark under 15 U.S.C. § 1119; and misappropriation under Texas unfair competition law. The amount in controversy exceeds \$75,000, exclusive of interest and costs. Jurisdiction of this Court over this action is conferred by 28 U.S.C. §§ 1331, 1332, 1338,

and 1367, 35 U.S.C. § 281 and 15 U.S. C. § 1121, and by the doctrines of supplemental, pendant, and/or ancillary jurisdiction.

2. H2O is subject to the personal jurisdiction of the Court pursuant to Tex. Civ. Prac. & Rem. Code § 17.042 as applied under Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure by virtue of conducting acts constituting business in Texas, by virtue of committing tortious acts in Texas and this judicial district, and by virtue of having a business office in Texas from which many of the acts complained of herein occurred.
3. Defendant H2O has a regular and established place of business within this judicial district. H2O has infringed U.S. Patent No. 6,379,525 (“the ‘525 Patent”) through, inter alia, the offering for sale of products falling within the scope of the ‘525 Patent in this judicial district, and elsewhere, and, upon information and belief, through the sales of such products, within this judicial district and elsewhere, as set forth hereinafter. Therefore, venue in this Court is proper for Count I in accordance with 28 U.S.C. § 1400 (b). Venue in this Court is proper for all remaining Counts in accordance with 28 U.S.C. § 1391 (b) and (c). In addition, venue is proper in this judicial district because a substantial part of the events or missions giving rise to the claims alleged herein occurred within this district.

THE PARTIES

4. Plaintiff, De Nora Water Technologies Texas, LLC (f/k/a Severn Trent De Nora, LLC) is a limited liability corporation incorporated under the laws of the state of Delaware, and has a principal place of business at 1110 Industrial Boulevard, Sugar Land, Texas 77478-2821. Plaintiff is a subsidiary of Industrie De Nora S.p.A., a global company who

designs, manufactures and sells a variety of products, including marine sewage treatment products and systems for oxidizing sewage through an electrolytic process and generating sodium hypochlorite sold under the trademark “OMNIPURE.”

5. Upon information and belief, Defendant H2O, L.L.C. is a limited liability company organized under the laws of the state of Louisiana. Until December 31, 2016, H2O, L.L.C. was formally named H2O, Inc., and currently conducts business under the assumed name H2O, Inc. Upon information and belief, H2O, L.L.C has a facility located at 841 Vincent Road, Lafayette, Louisiana 70508, and a regular and established place of business located at 26225 Park Ten Place, Suite 500, Houston, Texas 77084. H2O can be served through its registered agent, Scott Waldrep, at 1095 Evergreen Circle Suite 252, The Woodlands, Texas 77380.
6. H2O is subject to the jurisdiction of the Court under Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure by virtue of directly conducting business in Texas, and by virtue of having a regular and established place of business located at 26225 Park Ten Place, Suite 500, Houston, Texas 77084. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Defendant H2O is in the business of manufacturing and selling, and offering to sell, marine sanitation devices for treatment of offshore and land-based sewage, for manufacturing and selling multi-pass bookcell electrolyzers, and for manufacturing and selling aftermarket components for marine sewage treatment equipment manufactured and sold by De Nora.

COUNT I
(Patent Infringement – U.S. Patent 6,379,525)

7. Plaintiff repeats and incorporates the allegations set forth in paragraphs 1-6 above.
8. On April 30, 2002, United States Patent No. 6,379,525 entitled ENHANCED ELECTROLYZER (hereinafter the ‘525 Patent) was duly and legally issued to Exceltec International Corporation, a predecessor of Plaintiff, as assignee of the inventors Charles W. Clements, Charles W. Clements, Jr., and Harold Childers. The ‘525 Patent was assigned to Plaintiff in a *nunc pro tunc* assignment executed July 30, 2012, as shown in the assignment records of the United States Patent and Trademark Office on Reel 028738, Frame 0969. At all times relevant to this action for patent infringement, Plaintiff, or its predecessor-in-interest has been, and is now, the owner of all right, title and interest to the ‘525 Patent. Plaintiff has the right to sue on the ‘525 Patent and is entitled to all recoveries related to the ‘525 Patent. Plaintiff manufactures and sells electrolyzers in accordance with this patent. The electrolyzer product sold by Plaintiff under the ‘525 Patent is generally referred to as a multi-pass bookcell electrolyzer. A copy of the ‘525 Patent is attached as Exhibit A.
9. Upon information and belief, discovery and/or other investigation will uncover facts establishing that, without the authorization, consent or permission of Plaintiff, and in derogation of Plaintiff’s rights in the ‘525 Patent, Defendant has manufactured, used, distributed, offered for sale, sold, and continues to manufacture, use, distribute, offer for sale and sell, multi-pass bookcell electrolyzers in accordance with this patent. Upon information and belief, the business unit responsible for the sales of these products is based in Defendant’s Houston office.

10. Upon information and belief, discovery and/or other investigation will uncover facts establishing that the multi-pass bookcell electrolyzers Defendant has made, used, offered for sell, and sold include a housing having an inlet and an outlet, a fluid flow passageway extending through the housing connecting the inlet and the outlet, and an impermeable divider which separates sections of the fluid flow passageway. The divider is positioned such that at least some of the fluid entering the inlet and exiting through the outlet flows through each of the two sections on opposite sides of the divider. First and second electrodes are positioned in the housing to create electrical potential electrical field lines that pass through the fluid as the fluid is passing through the electrolyzer.
11. Upon information and belief, discovery and/or other investigation will uncover facts establishing that, without authorization, consent or permission of Plaintiff and in derogation of Plaintiff's rights in the '525 Patent, Defendant copied Plaintiff's product by acquiring Plaintiff's Omnipure system, including its multi-pass bookcell electrolyzer, disassembling the system and thereafter reconstructing it at a ranch in Texas owned by interests associated with Defendant.
12. Upon information and belief, discovery and/or other investigation will uncover facts establishing that, without authorization, consent or permission of Plaintiff and in derogation of Plaintiff's rights in the '525 Patent, Defendant also rebuilt and reconstructed multi-pass bookcell electrolyzers originally sold by Plaintiff in violation of 35 U.S.C. § 271 (a) on behalf of customers who originally had purchased the multi-pass bookcell electrolyzers from Plaintiff.
13. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Defendant, with knowledge of the '525 Patent, has encouraged, and

continued to encourage, its customers and others to use multi-pass bookcell electrolyzers sold by Defendant and electrolyzers reconstructed by Defendant. This constitutes active inducement of infringement of the '525 Patent in violation of 35 U.S.C. § 271(b).

14. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Defendant's direct infringement and inducement of infringement of the '525 Patent has been, and continues to be, willful and without regard for Plaintiff's patent rights. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Defendants purposely set out to copy and otherwise imitate products made according to the '525 Patent, and reconstructed products originally sold by Plaintiff, thereby willfully continuing conduct in violation of 35 U.S.C. § 271 without regard to Plaintiff's rights.
15. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Plaintiff has suffered both money damages and irreparable harm as a result of Defendant's infringement of the '525 Patent as complained of herein. Unless Defendant is preliminarily and permanently enjoined from continuing its infringing activity, Plaintiff will continue to be irreparably harmed.

COUNT II
(Misrepresentation Under 15 U.S.C. § 1125 (a)(1)(B))

16. Plaintiff repeats and reincorporates the allegations set forth in paragraphs 1-15 above.
17. This count relates to misrepresentation of the nature, characteristics, and qualities of Defendant's products in commercial advertising and promotion.
18. Upon information and belief, Defendant, in its commercial advertising and promotion, represents that it offers aftermarket parts for electrolytic type treatment systems,

including “the Severn Trent Services’ OMNIPURE system,” and that these aftermarket parts “meet or exceed the original equipment manufacturer standards.” An example of such commercial advertising and promotion is attached as Exhibit B.

19. The “Severn Trent Services’ OMNIPURE system” is a system designed and sold by Plaintiff. OMNIPURE is a trademark owned by Plaintiff, and the phrase “Severn Trent Services’ OMNIPURE system” is a clear and unambiguous reference to Plaintiff’s OMNIPURE system.
20. Defendant’s representation that the aftermarket parts it offers for Plaintiff’s OMNIPURE system “meet or exceed” Plaintiff’s original standards for Plaintiff’s OMNIPURE system is both literally false and misleading. It is literally false because, inter alia, Plaintiff’s warranty and Coast Guard certification require only replacement parts from Plaintiff, and because Plaintiff’s standards require parts manufactured by Plaintiff using Plaintiff’s proprietary technology.
21. In addition to other misleading attributes of Defendant’s false statement, the statement is misleading because it falsely implies Defendant knows the standards used by Plaintiff in the manufacture of its OMNIPURE system, which Defendant does not. The OMNIPURE system uses proprietary parts and components that are made by a process which is proprietary to Plaintiff, and many of the characteristics of Plaintiff’s OMNIPURE system are maintained as trade secrets of Plaintiff, and not known to Defendant or to the public. Plaintiff’s original standards for its parts and components require the parts and components to be manufactured in accordance with Plaintiff’s proprietary information and techniques, and parts and components not manufactured in accordance with Plaintiff’s proprietary property do not meet Plaintiff’s original standards for its

OMNIPURE system. By making the misrepresentation that the aftermarket parts Defendant offers for Plaintiff's OMNIPURE system "meet or exceed" Plaintiff's original standards, Defendant misrepresents the nature, characteristics, and qualities of both its goods and of the goods of Plaintiff. Defendant's representation that the aftermarket parts it offers for Plaintiff's OMNIPURE system "will work seamlessly" with Plaintiff's OMNIPURE system implies Defendant's aftermarket parts have the same nature, characteristics, functionality and qualities as Plaintiff's parts, and will function equivalently without problems. The nature, characteristics and qualities of Plaintiff's parts and components are defined, in part, by proprietary technology exclusive to Plaintiff, and any part or component that is made without Plaintiff's proprietary technology will not have the same nature, characteristics or qualities as Plaintiff's parts and components.

22. Defendant's representation that the aftermarket parts it offers for Plaintiff's OMNIPURE system "will work seamlessly" with Plaintiff's OMNIPURE system implies Defendant's aftermarket parts have the same nature, characteristics, functionality and qualities as Plaintiff's parts, and will function equivalently without problems. The nature, characteristics and qualities of Plaintiff's parts and components are defined, in part, by proprietary technology exclusive to Plaintiff, and any part or component that is made without Plaintiff's proprietary technology will not have the same nature, characteristics or qualities as Plaintiff's parts and components.
23. The representation that Defendant's parts and components "will work seamlessly" with Plaintiff's OMNIPURE system further misrepresents the nature, characteristics and qualities of Defendant's aftermarket parts by falsely implying that the use of Defendant's

parts and components on Plaintiff's OMNIPURE systems would not adversely affect Plaintiff's warranty for its OMNIPURE system. The use of Defendant's parts and components in Plaintiff's OMNIPURE system will void Plaintiff's warranty.

24. Defendant has known since at least 2013 that the use of replacement parts manufactured by any party other than the original manufacturer voided Coast Guard certifications for marine sanitation devices. In fact, Defendant was advised by the Coast Guard in writing in 2013 that approved components for Coast Guard certified marine sanitation devices required, inter alia, that the replacement part be from the original manufacturer, that it have the same part number as the original part, and that the replacement part to have the same construction and performance as the original equipment. Due to these Coast Guard requirements, any replacement parts manufactured by Defendant for Plaintiff's OMNIPURE system would void the Coast Guard certification for such equipment, and replacement parts manufactured by Defendant would not work for their intended purpose, much less "work seamlessly."
25. Notwithstanding such knowledge by Defendant, Defendant made the representation in its advertising that Defendant's parts and components "will work seamlessly" with Plaintiff's OMNIPURE system. This misrepresentation thus misrepresents the nature, characteristics and qualities of Defendant's aftermarket parts by falsely implying that the use of Defendant's parts and components with Plaintiff's OMNIPURE system will not adversely affect Plaintiff's Coast Guard certification for the OMNIPURE system.
26. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Plaintiff has suffered both money damages and irreparable harm as a result of Defendant's misrepresentation of the nature, characteristics, and qualities of

Defendant's products in commercial advertising and promotion, which misrepresentations result in deception in the marketplace, as complained of herein. Unless Defendant is preliminarily and permanently enjoined from continuing its misrepresentations, Plaintiff will continue to be irreparably harmed.

COUNT III

(False Designation of Origin and/or False Description or Representation of Numbering System Under 15 U.S.C. § 1125 (a)(1)(A))

27. Plaintiff repeats and reincorporates the allegations set forth in paragraphs 1-26 above.
28. This count relates to false designation of origin and/or false description or representation.
29. Plaintiff has for many years used a unique numbering system for the parts of its electrolytic type treatment systems, including "the Severn Trent Services OMNIPURE" system.
30. Due to Plaintiff's use of this numbering system in the market for marine sewage electrolyzers, Plaintiff's numbering system for its parts came to serve not only the purpose of differentiating one type of part in Plaintiff's line of parts from other parts in Plaintiff's line, but also identifying parts emanating from Plaintiff, and distinguishing those parts from parts emanating from others.
31. Due to Plaintiff's extensive use of its numbering system in the electrolytic treatment marketplace, and the sales of Plaintiff's OMNIPURE products and parts, Plaintiff has achieved and acquired significant and valuable goodwill in connection with its numbering system among purchasers and potential purchasers of electrolytic type marine sewage treatment systems.
32. By virtue of Plaintiff's extensive use of its numbering system in interstate commerce, the numbering system has developed secondary meaning among purchasers and potential

purchasers of electrolytic type treatment systems, and the numbers used by Plaintiff in its numbering system have come to identify goods emanating from Plaintiff in the marketplace for electrolytic type treatment systems.

33. Long after Plaintiff's numbering system developed secondary meaning, Defendant adopted a part numbering system that is confusingly similar to the numbering system used by Plaintiff. Each number in Defendant's numbering system is identical to the corresponding number in Plaintiff's system except for a leading letter "H."
34. Upon information and belief, Defendant adopted a numbering system that used the identical numbers as used by Plaintiff to view similar parts for the purpose of deceiving purchasers and potential purchasers of its parts into believing the parts were the same as Plaintiff's parts, or manufactured by Plaintiff and/or authorized by Plaintiff.
35. Upon information and belief, Defendant adopted a numbering system for parts that it manufactured that used numbers identical to the numbers as used by Plaintiff for the purpose of deceiving purchasers and potential purchasers into falsely believing Defendant's parts complied with Coast Guard certification standards for replacement parts, which certification standards require replacement parts to have the same part number as the original part.
36. In an effort to further duplicate Plaintiff's products, Defendant also has adopted a description of its parts that copies the verbiage and technical expression used by Plaintiff to describe similar parts.
37. Defendant's actions in using the verbiage and technical expressions used by Plaintiff is likely to cause confusion, or to cause mistake, or deceive customers or potential customers of Plaintiff, as to the affiliation, connection, or association of Defendant, or as

to the origin, sponsorship, or approval of Defendant's parts, or as to the commercial activities of Defendant.

38. Upon information and belief, Defendant adopted the verbiage and technical expressions used by Plaintiff for the purpose of deceiving customers and potential customers as to the affiliation, connection, or association of Defendant to Plaintiff, and as to the origin, sponsorship, or approval of Defendant's products.
39. Defendant's use of a numbering system that uses the identical numbers, and describes its parts with identical verbiage and technical expression to that used by Plaintiff allows Defendant deceive purchasers and potential purchasers, to receive the benefit of the goodwill built up at great expense by Plaintiff, and to gain acceptance for Defendant's parts based not on the merits of Defendant's parts, but upon the reputation and goodwill of Plaintiff.
40. Defendant's use of a numbering system that is confusingly similar to the numbering system, verbiage and technical expression used by Plaintiff constitutes an invasion of the valuable property rights of Plaintiff in its numbering system, verbiage and technical expression of Plaintiff, and the attendant goodwill in a manner that unjustly enriches Defendant. Defendant's use of a numbering system, verbiage and technical expression that is confusingly similar to the numbering system, verbiage and technical expression of Plaintiff falsely indicates to the relevant purchasing public and the trade that Defendant's parts are in some way connected to, sponsored by, affiliated with, licensed by, or otherwise related to Plaintiff.
41. Defendant's use of a numbering system, verbiage and technical expression that is confusingly similar to the numbering system, verbiage and technical expression of

Plaintiff places the valuable reputation and goodwill of Plaintiff in the hands of Defendant, over whom Plaintiff has absolutely no control.

42. Defendant's use of a numbering system, verbiage and technical expression that is confusingly similar to the numbering system, verbiage and technical expression of Plaintiff is likely to cause confusion, or to cause mistake, or deceive customers or potential customers of Plaintiff, as to the affiliation, connection, or association of Defendant, or as to the origin, sponsorship, or approval of Defendant's parts, or as to the commercial activities of Defendant.
43. The acts of Defendant complained of constitute a false designation of origin and/or false description or representation in violation of Title 15, United States Code, § 1125 (a)(1)(A).
44. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Plaintiff has suffered both money damages and irreparable harm as a result of Defendant's use of a numbering system that is confusingly similar to the numbering system used by Plaintiff, and which results in deception in the marketplace, as complained of herein. Unless Defendant is preliminarily and permanently enjoined from continuing its use of a confusingly similar numbering system, Plaintiff will continue to be irreparably harmed.

COUNT IV

(False Designation of Origin and/or False Description or Representation of Product Designation Under 15 U.S.C. § 1125 (a)(1)(A))

45. Plaintiff repeats and reincorporates the allegations set forth in paragraphs 1-44 above.
46. This count relates to false designation of origin and/or false description or representation.

47. For many years prior to 2009, Plaintiff used the product designation CRAP ZAPPER as a promotional name for its OMNIPURE product. Among other promotional uses, the designation CRAP ZAPPER was used on stickers given to customers and potential customers of Plaintiff's OMNIPURE product, and used to promote Plaintiff's OMNIPURE product. As a result of Plaintiff's extensive use of the designation CRAP ZAPPER, that designation became closely and widely recognized among purchasers and potential purchasers in the marine sanitation as an "off-color" designation for Plaintiff's OMNIPURE system.
48. The designation CRAP ZAPPER has special significance to Plaintiff's OMNIPURE system. The CRAP ZAPPER term consists of two formatives, the formative "CRAP" and the formative "ZAPPER." The formative "CRAP" is well recognized "off-color" or slang designation for excrement. The term "ZAP" is an onomatopoeic term for an electrostatic discharge, and the term "ZAPPER" suggests a product that performs an electrostatic discharge. When the two formatives are combined, the resulting term is suggestive of a product that eliminates excrement in sewage through a process an electrolytic process. As a result of this special significance, and Plaintiff's wide-spread promotion of the CRAP ZAPPER designation in connection with its OMNIPURE system, which OMNIPURE system oxidizes sewage through an electrolytic process, the CRAP ZAPPER designation was closely associated in the minds of the of purchasers and potential customers of marine sewage products with Plaintiff and its OMNIPURE product. Plaintiff achieved significant goodwill in connection with the CRAP ZAPPER product designation through this association.

49. In 2009, Defendant filed an intent-to-use application for registration of the trademark CRAP ZAPPER for a marine sanitation product that was designed for production platform, off shore bases and drilling rigs. Upon information and belief, this application was made prior to any actual use of the CRAP ZAPPER mark.
50. Upon information and belief, discovery and other investigation will uncover facts establishing that Defendant first used the CRAP ZAPPER trademark in 2010.
51. Defendant was well-aware, both before it filed its intent-to-use trademark application in 2009 and before it actually used the mark in 2010, that the designation CRAP ZAPPER had previously used by Plaintiff to promote marine sanitation products designed for use on production platforms, off shore bases and drilling rigs.
52. The marine sanitation systems sold by Defendant under the CRAP ZAPPER mark do not “zap” sewage, in the sense of using an electrostatic discharge. Instead, Defendant’s CRAP ZAPPER marine sanitation system employs a biological sewage process which breaks down sewage through the action of aerobic bacteria.
53. Upon information and belief, discovery and/or other investigation will uncover evidence facts establishing Defendant adopted the CRAP ZAPPER designation for its marine sanitation system for the specific purpose of usurping the goodwill previously developed by Plaintiff in connection with its OMNIPURE marine sanitation system.
54. The acts of Defendant in adopting the CRAP ZAPPER designation for its marine sanitation system, complained of above, constitute a false designation of origin and/or false description or representation in violation of Title 15, United States Code, § 1125 (a)(1)(A).

COUNT V
(Cancellation of U.S. Trademark Registration No. 3,948,537)

55. Plaintiff repeats and reincorporates the allegations set forth in paragraphs 1-54 above.
56. This count relates to cancellation of a federally registered trademark.
57. On August 6, 2009, Defendant filed an application for federal registration of the mark CRAP ZAPPER in the United States Patent and Trademark Office. The application did not allege the CRAP ZAPPER mark was in actual use by Defendant, but instead was based on an alleged bona fide intention by Defendant to use the CRAP ZAPPER mark in the future.
58. The August 6, 2009 application included a verified statement under 37 C.F.R. 2.33 that the person signing and verifying the statements in the application had firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant.
59. The August 6, 2009 application included the statement “no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form ... or in such near resemblance ... to be likely, when used on or in connection with the goods ... to cause confusion, or to cause mistake, or to deceive.”
60. The goods identified in the August 6, 2009 application were “sewage treatment systems.”
61. The statement in the August 9, 2009 application that “no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form ... or in such near resemblance ... to be likely, when used on or in connection with the goods ... to cause confusion, or to cause mistake, or to deceive” was a false representation of a material fact, and upon information and belief made by Defendant and

its attorney for the purpose of deceiving the United States Patent and Trademark Office and obtaining a federal registration to which Defendant was not entitled.

62. The August 6, 2009 application, including the sworn statement, was signed by Robert L. Waddell, who was represented as an attorney for Defendant.
63. The identification of goods in the August 6, 2009 application was amended to read “sewage purification apparatus, in International Class 11” in an Examiner’s amendment on November 16, 2009.
64. The specimen showing actual use of the CRAP ZAPPER mark was filed on December 9, 2010 and disclosed a marine sanitation product that was designed for production platforms, offshore bases, drilling rigs, FPSO’s (an abbreviation for “floating production storage and Offloading,” a floating vessel located near an oil platform where oil is processed and stored until it can be transferred to a tanker for transporting), Offshore Living Quarters Leasing Company and Ships.
65. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Defendant was well-aware Plaintiff’s OMNIPURE product also was identified by the secondary trademark CRAP ZAPPER on August 6, 2009, and was well-aware that purchaser and potential purchasers of marine sanitation products associated the CRAP ZAPPER mark with Plaintiff.
66. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Defendant was fully aware on August 6, 2009 that the statement “no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form ... or in such near resemblance ... to be likely, when used on or in connection with the goods ... to cause confusion, or to cause mistake, or to deceive”

was a false material fact knowingly made to deceive the United States Patent and Trademark Office.

67. The most plausible inference from the facts noted above is that Defendant made the statement that “no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form ... or in such near resemblance ... to be likely, when used on or in connection with the goods ... to cause confusion, or to cause mistake, or to deceive” in the August 9, 2009 application knowing it to be a false material statement, and that such statement was made for the purpose of deceiving the United States Patent and Trademark Office, and obtaining a federal registration for the trademark CRAP ZAPPER to which Defendant was not entitled.
68. The most plausible inference from the facts noted above is that Robert L. Waddell either made a false material statement to the United States Patent and Trademark Office regarding his firsthand knowledge of the representation that no other person, firm, corporation, or association had the right to use the mark in commerce, either in the identical form ... or in such near resemblance ... to be likely, when used on or in connection with the goods ... to cause confusion, or to cause mistake, or to deceive, or that he made such a representation knowing it to be false and Mr. Waddell made such statement knowing it to be false and material. In either case, Mr. Waddell knowingly made a false material representation to the United States Patent and Trademark Office with the intent to deceive the United States Patent and Trademark Office, and to obtain a federal registration for which Defendant was not entitled.
69. Based upon the false verified statement in the August 9, 2009 application, the United States Patent and Trademark Office granted registration for Defendant’s CRAP ZAPPER

mark, and Defendant is now the registered owner of United States Trademark Registration No. 3,948,537, which issued on April 19, 2011.

70. Plaintiff is likely to be damaged by continued registration of Defendant's United States Trademark Registration No. 3,948,537 in that the evidentiary effect of such registrations impairs Plaintiff's right to use such mark in the future, and falsely suggests an association between Defendant and Plaintiff that does not exist.
71. In view of Defendant's fraudulent procurement of United States Trademark Registration No. 3,948,537, this Court should exercise its power under 15 U.S.C. § 1119 to order the Commissioner of Patents and Trademarks to cancel United States Trademark Registration No. 3,948,537.

COUNT VI
(Violation of Texas Common Law Misappropriation)

72. Plaintiff repeats and incorporates the allegations set forth in paragraph 1-71 above.
73. This count is for misappropriation under the common law of the State of Texas.
74. Jurisdiction for this count is founded on Title 28, United States Code, §§ 1331, 1367 (a), and 1388(b). The amount in controversy in this Count exceeds \$75,000, exclusive of interest and costs. Venue is founded on Title 28, United States Code, § 1391 (a) and (b).
75. On or about October 20, 2011, Defendant announced it was beginning a new Electrochemistry Division, that provided equipment for the Offshore biofouling and sewage treatment markets, which products would treat marine sewage through an electrochlorination process. This new division was to be headed by Marion Joseph, who was named the Vice President of the new division. Mr. Joseph had previously worked for Plaintiff. While employed by Plaintiff, Mr. Joseph was highly familiar with Plaintiff's products and marketing practices, including non-public aspects of those products and the

manufacturing thereof. Among other types of non-public information to which Mr. Joseph had access while in Plaintiff's employ was access to detailed drawings for Plaintiff's products and for the parts and components for such products.

76. Plaintiff has developed a number of detailed drawings for its marine sewage treatment products and parts therefor that contain proprietary manufacturing information that is maintained by De Nora as a trade secret.
77. The creation of these drawings and the creation of the information reflected thereon involved extensive time, labor, skill and money on the part of Plaintiff.
78. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Defendant has misappropriated the drawings created by Plaintiff, and the information contained thereon, and used these drawings and manufacturing information contained thereon to create virtually identical products that compete with similar products sold manufactured and sold by Plaintiff.
79. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Defendant acquired the drawings and manufacturing information created by Plaintiff through improper means, knowing the drawings and manufacturing information were created by Plaintiff, and knowing the person providing the drawings and manufacturing information to Defendant was not authorized to disclose the drawings and manufacturing information to persons outside the employ of Plaintiff, and knowing the person providing the drawings was violating his duties to Plaintiff by possessing such drawings, and by disclosing such drawings to Defendant.

80. Upon information and belief, discovery and/or other investigation will uncover facts establishing that Defendant has used the drawings and manufacturing information created by Plaintiff in competition with Plaintiff.
81. The use by Defendant of drawings and manufacturing created by Plaintiff has provided Defendant with a special advantage in Defendant's competition with Plaintiff because Defendant was burdened with little or none of the expense incurred by Plaintiff in the development of the drawings and the manufacturing information contained thereon.
82. Plaintiff has been damaged by Defendant's use of the drawings and manufacturing information created by Plaintiff, and by use of such manufacturing information contained on such drawings

JURY DEMAND

83. Plaintiff hereby requests trial by jury for all issues triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment as follows:

- A. That United States Patent No. 6,379,525 is valid and infringed;
- B. That Defendant has infringed United States Patent No. 6,379,525;
- C. That Defendant has induced others, including its customers, to infringe United States Patent No. 6,379,525;
- D. That Defendant, its respective officers, agents, servants, employees, successors, assigns, suppliers, distributors, and those persons acting in concert or participation with any of them, be preliminarily and permanently enjoined and restrained from further infringement and inducement of United States Patent No. 6,379,525;

- E. That Plaintiff be awarded its lost profits and other money damages as a result of Defendant's infringement and inducement of infringement hereunder with interest, including prejudgment interest, in accordance with 35 U.S.C. § 284;
- F. That the total lost profits and other money damages awarded to Plaintiff be increased by three (3) times in accordance with 35 U.S.C. § 284;
- G. That this Court grant an injunction pursuant to the powers granted it under Title 15, United States Code, § 1116, enjoining and restraining Defendant, its respective officers, agents, servants, employees, successors, assigns, suppliers, distributors, and those persons acting in concert or participation with any of them from misrepresenting the nature, characteristics, and qualities of Defendant's products in its commercial advertising;
- H. That this Court grant an injunction pursuant to the powers granted it under Title 15, United States Code, § 1116, enjoining and restraining Defendant, its respective officers, agents, servants, employees, successors, assigns, suppliers, distributors, and those persons acting in concert or participation with any of them from using Plaintiff's numbering system, or any other numbering system likely to cause confusion;
- I. That this Court grant an injunction pursuant to the powers granted it under Title 15, United States Code, § 1116, enjoining and restraining Defendant, its respective officers, agents, servants, employees, successors, assigns, suppliers, distributors, and those persons acting in concert or participation with any of them from using the CRAP ZAPPER mark, or any word, mark

or name similar to the term CRAP ZAPPER, and from continuing any and all acts of unfair competition as herein alleged

- J. That this Court exercise its power under 15 U.S.C. § 1119, to order the Commissioner of Patent and Trademarks to cancel Registration No. 3,948,537;
- K. That this Court enjoin Defendants, its respective officers, agents, servants, employees, successors, assigns, suppliers, distributors, and those persons acting in concert or participation with any of them from using the drawings and information created by Plaintiff;
- L. That Defendant be required to account to Plaintiff for all profits derived by Defendant from the sale of its products and services for all damages sustained by Plaintiff by reason of the acts of infringement, unfair competition and misappropriation complained of herein;
- M. That the cost of this action be awarded to Plaintiff;
- N. That this is an exceptional case and that Plaintiff be awarded its reasonable attorneys' fees; and
- O. That this Court grant such other and further relief as it shall deem just.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically and served upon all counsel of record via the Court's CM/ECF system on August 16, 2017.

/s/ W. Curt Webb

W. Curt Webb