

From: Burns, Laura (HQ-MA000)
Sent: Friday, August 15, 2008 2:10 PM
To: McNutt, Jan (HQ-MC000)
Subject: UAS.vs.OTG

Jan,

Attached are some documents from the Universal case. Several of the documents were not available because they were sealed. If you have any questions, let me know.



UAs.vs.OTG.docket
.pdf



OTG.Answer.to.UA
S.Complaint.pd...



OTG.Amended.Ans
wer.pdf



UAS.Reply.Counter
claims.pdf



UAS.Order.Motion.
Dismiss.4.9.0...



USA.2ndAmendedC
omplaint.pdf



OTG.Answer.2nd.A
mended.Complai...



UAS.Reply.to.OTG.
Counterclaims...

Laura

Laura Burns

Law Librarian for the Office of the General Counsel
NASA Headquarters
300 E Street, SW, Suite 9W39A
Washington, DC 20546

202-358-2078 (v)
202-358-4355 (f)

02663

STD

**U.S. District Court
DISTRICT OF ARIZONA (Tucson Division)
CIVIL DOCKET FOR CASE #: 4:07-cv-00588-RCC**

Universal Avionics Systems Corporation v. Optima
Technology Group, Inc. et al
Assigned to: Judge Raner C Collins
Cause: No cause code entered

Date Filed: 11/09/2007
Jury Demand: Both
Nature of Suit: 190 Contract: Other
Jurisdiction: Federal Question

Plaintiff

**Universal Avionics Systems
Corporation**

represented by **Allan Andrew Kassenoff**
Greenberg Traurig LLP
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ATTORNEY TO BE NOTICED

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V.

Defendant

Optima Technology Group, Inc.

represented by **Jeffrey Lynn Willis**
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Fax: 520-884-1294
Email: jwillis@swlaw.com

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ATTORNEY TO BE NOTICED

Defendant

Optima Technology Corporation

Defendant

Jed Margolin

represented by **Jeffrey Lynn Willis**
(See above for address)
ATTORNEY TO BE NOTICED

Robert Alan Bernheim
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Optima Technology Corporation

ThirdParty Defendant

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Joachim L Naimer

ThirdParty Defendant

Jane Doe Naimer

ThirdParty Defendant

Frank E Hummel

ThirdParty Defendant

Jane Doe Hummel

ThirdParty Plaintiff

Optima Technology Group, Inc.

Cross Claimant

Optima Technology Group, Inc.

Counter Claimant

Optima Technology Group, Inc.

V.

Counter Defendant

Universal Avionics Systems Corporation

represented by **Allan Andrew Kassenoff**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Paul J Sutton
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Scott Joseph Bornstein ,
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

E Jeffrey Walsh
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Optima Technology Group, Inc.

represented by **Jeffrey Lynn Willis**
(See above for address)

Robert Alan Bernheim
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant**Jed Margolin**

represented by **Jeffrey Lynn Willis**
 (See above for address)
ATTORNEY TO BE NOTICED

Robert Alan Bernheim
 (See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant**Optima Technology Corporation**

Date Filed	#	Docket Text
11/09/2007	<u>1</u>	SEALED COMPLAINT. Filing fee received: \$ 350.00, receipt number 1549612, filed by Universal Avionics Systems Corporation. (Attachments: # <u>1</u> Exhibit Part 1 of 2# <u>2</u> Exhibit Part 2 of 2# <u>3</u> Summons OTC# <u>4</u> Summons OTG# <u>5</u> Summons JA# <u>6</u> Summons RA# <u>7</u> Civil Cover Sheet)(Walsh, E) Modified on 1/25/2008 (DNO, SEALED PER ORDER <u>39</u>). Modified on 2/15/2008 (APJ,). (Entered: 11/09/2007)
11/09/2007		This case has been assigned to the Honorable Raner C. Collins. All future pleadings or documents should bear the correct case number: CIV-07-588-TUC-RCC. (GPA,) (Entered: 11/15/2007)
11/15/2007	<u>2</u>	Summons Issued as to Optima Technology Corporation. (GPA,). *** 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: 11/15/2007)
11/15/2007	<u>3</u>	Summons Issued as to Optima Technology Group, Inc.. (GPA,). *** 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: 11/15/2007)
11/15/2007	<u>4</u>	Summons Issued as to Jed Margolin. (GPA,). *** 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: 11/15/2007)
11/15/2007	<u>5</u>	Summons Issued as to Robert Adams. (GPA,). *** 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: 11/15/2007)
11/15/2007	<u>6</u>	Notice re electronically sending a magistrate election form to filer by Universal Avionics Systems Corporation (GPA,) (Entered: 11/15/2007)

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12/17/2007	<u>7</u>	Quarterly MOTION for Extension of Time To Answer based on Stipulation by Optima Technology Corporation, Robert Adams, Jed Margolin. (Attachments: # <u>1</u> Supplement Stipulation, # <u>2</u> Text of Proposed Order Order) (Chandler, Jeanna) (Entered: 12/17/2007)
12/19/2007	<u>8</u>	ORDER granting <u>7</u> Motion for Extension of Time. Dfts have up to 1/7/08 to serve/file their answer. Signed by Judge Raner C Collins on 12/18/07.(SSU,) (Entered: 12/19/2007)
01/04/2008	<u>9</u>	MOTION for Admission Pro Hac Vice as to attorney Scott J Bornstein on behalf of Universal Avionics Systems Corporation. (BAS,) (Entered: 01/04/2008)
01/04/2008	<u>10</u>	MOTION for Admission Pro Hac Vice as to attorney Paul J Sutton on behalf of Universal Avionics Systems Corporation. (BAS,) (Entered: 01/04/2008)
01/04/2008	<u>11</u>	MOTION for Admission Pro Hac Vice as to attorney Allan A Kassenoff on behalf of Universal Avionics Systems Corporation. (BAS,) (Entered: 01/04/2008)
01/04/2008		PRO HAC VICE FEE PAID. \$ 100, receipt number PHX066316 as to Scott J Bornstein. (BAS,) (Entered: 01/04/2008)
01/04/2008		PRO HAC VICE FEE PAID. \$ 100, receipt number PHX066315 as to Paul J Sutton. (BAS,) (Entered: 01/04/2008)
01/04/2008		PRO HAC VICE FEE PAID. \$ 100, receipt number PHX066314 as to Allan A Kassenoff. (BAS,) (Entered: 01/04/2008)
01/04/2008	<u>12</u>	ORDER pursuant to General Order 05-25 granting <u>9</u> Motion for Admission Pro Hac Vice; granting <u>10</u> Motion for Admission Pro Hac Vice; granting <u>11</u> Motion for Admission Pro Hac Vice.Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. (BAS,)(This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 01/04/2008)
01/07/2008	<u>13</u>	MOTION to Dismiss Case by Optima Technology Group, Inc., Robert Adams. (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>16</u>	SEALED LODGED Proposed Memorandum in Support of Motion to Dismiss Adams/Optima re: 14 MOTION to Seal Document re Memorandum in Support of Adams/Optima Motion to Dismiss. Document to be filed by Clerk if Motion to Seal is granted. Filed by Optima Technology Group, Inc., Robert Adams. (Chandler, Jeanna) (Entered: 01/07/2008)
01/07/2008	<u>17</u>	MOTION to Dismiss Case for Lack of Jurisdiction by Robert Adams. (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)

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		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 <u>14</u> Motion to Seal Document ; granting <u>18</u> Motion to Seal Document ; granting <u>22</u> 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

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		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 35 Motion to Seal Document ; denying 25 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 <i>re Affidavit of Process Server as to Service Upon Reza Zandian (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, # <u>2</u> Text of Proposed

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		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)

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8/15/2008

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 <u>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)</u> 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)

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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)

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05/20/2008	<u>85</u>	SEALED LODGED Proposed Motion to Unseal Chandler & Udall, LLP's Ex Parte Motion to Withdraw as Counsel re: 84 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: 84 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 84 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 <i>For Entry of Separate Judgment Under Rule 58(d)</i> 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 <i>on 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 <i>for 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

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		(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)

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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 <i>TO DEFENDANT OPTIMA TECHNOLOGY GROUP, INC.S COUNTERCLAIMS</i> 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)

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10 Attorneys for Defendants Adams, Margolin and Optima Technology Inc. a/k/a Optima
11 Technology Group, Inc.

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

14 UNIVERSAL AVIONICS SYSTEMS
15 CORPORATION,
16
17 Plaintiff,
18
19 vs.
20 OPTIMA TECHNOLOGY GROUP, INC.,
21 OPTIMA TECHNOLOGY CORPORATION,
22 ROBERT ADAMS and JED MARGOLIN,
23
24 Defendants.

NO. CV-00588-RC
**ANSWER OF DEFENDANT
OPTIMA TECHNOLOGY INC.
A/K/A OPTIMA TECHNOLOGY
GROUP, INC.**
JURY TRIAL DEMANDED
Assigned to: Hon. Raner C. Collins

25 Defendant Optima Technology Inc. a/k/a Optima Technology Group Inc. (hereinafter
26 "Optima"), by and through undersigned counsel, hereby submits its *Answer* to the Plaintiff's
Complaint herein. Due to its contemporaneously-filed *Motion to Dismiss* asserting that
Counts V, VI and VII fail to state a claim against Optima, Optima answers herein the general
allegations of the *Complaint*, and those of Counts I-IV, and will amend this *Answer* to answer
Counts V, VI and/or VII 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.¹

¹ The District of Arizona has adopted the majority view "that even though a pending motion to dismiss may only address some of the claims alleged, the motion to dismiss tolls the time to respond to all claims." *Pestube Systems, Inc. v. Hometeam Pest Defense, LLC.*, 2006 WL 1441014 *7 (D.Ariz. 2006). However, because this is an unpublished decision, and only

1 The following paragraphs are in response to the allegations of the correspondingly
2 numbered paragraphs of the Complaint:

3 **INTRODUCTORY PARAGRAPH**

4 Deny the allegations of Plaintiff's Introductory Paragraph (page 1 line 19 through page
5 2 line 3 of the *Complaint*).

6 **NATURE OF THE ACTION**

7 1. Admit that the *Complaint* seeks declarations of invalidity and non-infringement
8 of U.S. Patent Nos. 5,566,073 (the "'073 patent") and 5,904,724 (the "'724 patent").² Admit
9 that the *Complaint* asserts claims for breach of contract, unfair competition and negligent
10 interference. Deny validity of all such assertions and claims. Deny all remaining allegations.

11 2. Deny for lack of knowledge.

12 3. Admit. Affirmatively allege that Optima Technology Group Inc. is also known
13 and does business as Optima Technology Inc.

14 4. Denied. Affirmatively allege that Optima Technology Corporation (hereinafter
15 "OTC") has no relationship whatsoever to Optima.

16 5. Denied. Affirmatively alleged that Defendant Robert Adams ("Adams") is the
17 Chief Executive Officer of Optima.

18 6. Denied.

19 7. Denied.

20 8. Admit that the *Complaint* seeks declarations of invalidity and non-infringement
21 of the '073 patent and the '724 patent, and asserts claims for breach of contract, unfair
22

23 _____
24 to avoid any potential dispute with Plaintiff whether a failure to answer the allegations of
25 Counts I-IV of the *Complaint* (i.e., those claims that are not the subject of the *Motion to*
26 *Dismiss*) could be deemed a failure to defend those allegations for purposes of a default,
Optima proceeds to answer those allegations and claims herein.

² The '073 patent and the '724 patent are collectively referred to herein as the "Patents."

1 competition and negligent interference. Deny validity of all such assertions and claims. Deny
2 all remaining allegations.

3 9. Admit that the Court has original jurisdiction over Counts I-IV of the *Complaint*
4 asserting non-infringement and invalidity of the Patents (although Optima denies the assertions
5 and validity of those claims) as to defendant Optima. Affirmatively allege that co-defendant
6 OTC, to the extent that it purportedly exists, does not own or have any other interest in the
7 Patents. Deny that the Court has jurisdiction over Counts V, VI and VII of the *Complaint*, and
8 affirmatively allege that Plaintiff lacks Article III standing with respect thereto. Affirmatively
9 allege that Counts V, VI and VII fail to state a claim against Optima as asserted in Optima's
10 *Motion to Dismiss*. Deny that the court has supplemental jurisdiction over Counts V, VI and
11 VII of the *Complaint*. Deny all remaining allegations.

12 10. Deny.

13 THE PATENTS-IN-SUIT

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

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

22 13. Admit that defendant Jed Margolin granted a Power of Attorney to Optima.
23 Admit that a copy of the Power of Attorney is attached as Exhibit 3 to the *Complaint*. Admit
24 that the Power of Attorney appointed "Optima Technology Inc. - Robert Adams, CEO" as
25 Margolin's agent with respect to the Patents. Affirmatively allege that OTC has and had no
26 right or interest under the Power of Attorney. Affirmatively allege that the Power of Attorney

1 was superseded by an assignment of the Patents to Optima. Affirmatively allege that the Power
2 of Attorney was subsequently revoked and is no longer valid or in force. Deny all remaining
3 allegations.

4 FACTS

5 14. Admit that Adams communicated (as CEO of Optima) with Plaintiff's counsel.
6 Affirmatively allege that the text of Exhibit 4 to the *Complaint* speaks for itself. Deny all
7 remaining allegations.

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

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

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

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

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

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

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

- 1 22. Admit. Affirmatively allege that Adams' actions as described in Paragraph 22
2 of the *Complaint* were in his capacity as CEO of Optima.
- 3 23. Admit. Affirmatively allege that the text of Exhibit 8 to the *Complaint* speaks
4 for itself. Affirmatively allege that Plaintiff, through its actions, has waived its rights under
5 Exhibit 8 to the *Complaint*.
- 6 24. Affirmatively allege that the text of Exhibit 9 to the *Complaint* speaks for itself.
7 Deny all remaining allegations.
- 8 25. Admit second sentence of Paragraph 25 of the *Complaint* to the extent it asserts
9 that the following persons attended the meeting on behalf of Plaintiff: Donald Berlin, Andria
10 Poe, Paul DeHerrera, Frank Hummel, Michael P. Delgado, and Scott Bornstein. Deny all
11 remaining allegations.
- 12 26. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
13 counsel. Deny all remaining allegations.
- 14 27. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
15 counsel. Deny all remaining allegations.
- 16 28. Deny.
- 17 29. Admit that Jed Margolin communicated with Plaintiff. Deny all remaining
18 allegations.
- 19 30. Admit that OTC, which is upon information and belief owned and controlled by
20 Reza Zandian a/k/a Gholamreza Zandianjazi, may have been involved in numerous state court
21 lawsuits. Deny all remaining allegations. Affirmatively allege that OTC, and any such
22 lawsuits, are completely unrelated to Optima.
- 23 31. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
24 counsel. Affirmatively allege that the text of Exhibit 10 to the *Complaint* speaks for itself.
25 Deny all remaining allegations.
- 26 32. Deny for lack of knowledge.

- 1 33. Deny Plaintiff's "conclusion" for lack of knowledge. Deny all remaining
2 allegations.
- 3 34. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
4 counsel. Affirmatively allege that the text of Exhibits 11 and 12 to the *Complaint* speak for
5 themselves. Deny all remaining allegations.
- 6 35. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
7 counsel. Affirmatively allege that the text of Exhibit 13 to the *Complaint* speaks for itself.
8 Deny all remaining allegations.
- 9 36. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
10 counsel. Deny allegations regarding communications to which Optima was not a party for lack
11 of knowledge. Deny all remaining allegations.
- 12 37. Deny for lack of knowledge.
- 13 38. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
14 counsel. Affirmatively allege that the text of Exhibit 14 to the *Complaint* speaks for itself.
15 Deny all remaining allegations.
- 16 39. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
17 counsel. Affirmatively allege that the text of Exhibit 15 to the *Complaint* speaks for itself.
18 Deny all remaining allegations.
- 19 40. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
20 counsel. Affirmatively allege that the text of Exhibit 16 to the *Complaint* speaks for itself.
21 Deny all remaining allegations.
- 22 41. Admit. Affirmatively allege that the text of Exhibit 17 to the *Complaint* speaks
23 for itself.
- 24 42. Admit. Affirmatively allege that the text of Exhibit 17 to the *Complaint* speaks
25 for itself.
- 26 43. Admit.

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CLAIMS FOR RELIEF

COUNT ONE

Declaratory Judgment of Non-Infringement of the '073 Patent

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

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

46. Deny.

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

COUNT TWO

Declaratory Judgment of Invalidity of the '073 Patent

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

49. 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.

50. Deny.

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

COUNT THREE

Declaratory Judgment of Non-Infringement of the '724 Patent

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

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EXCEPTIONAL CASE

This is an exceptional case under 35 U.S.C. § 285 in which Defendant Optima is entitled to its attorney's fees and costs incurred in connection with 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 Optima hereby reserves the right to amend this *Answer* at any time that discovery, disclosure or additional events reveal the existence of additional affirmative defenses):

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

- 2. Laches;
- 3. Waiver; and,
- 4. Estoppel.

JURY TRIAL DEMAND

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

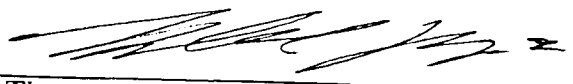
PRAYER FOR RELIEF

WHEREFORE Defendant Optima requests that the Court enter judgment in its favor on Plaintiff's claims, deny Plaintiff any relief herein, grant Optima its attorneys' fees and costs

1 pursuant to applicable law, including but not limited to 35 U.S.C. § 285, and grant Optima such
2 other and further relief as the Court deems reasonable and just.

3 RESPECTFULLY SUBMITTED this 7th day of January, 2008.

4 CHANDLER & UDALL, LLP

5 By 

6 Thomas A. Langan
7 Edward Moomjian II
8 Jeanna Chandler Nash
9 Attorneys for Defendants Adams, Margolin
and Optima Technology Inc. a/k/a Optima
Technology Group, Inc.

10
11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on January 7, 2008, I electronically transmitted the attached
13 document to the Clerk's office using the EM/ECF System for filing and transmittal of a Notice
14 of Electronic Filing to the following CM/DCF registrants:

15 E. Jeffrey Walsh, Esquire
16 Greenberg Traurig, LLP
2375 East Camelback Road, Suite 700
17 Phoenix, Arizona 85016
Attorneys for Plaintiff

18
19
20 _____ s/

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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

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

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

Cross-Claimant,

vs.

OPTIMA TECHNOLOGY CORPORATION,
a corporation,

Cross-Defendant

NO. CV-00588-RC

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

JURY TRIAL DEMANDED

Assigned to: Hon. Raner C. Collins

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OPTIMA TECHNOLOGY INC. a/k/a
OPTIMA TECHNOLOGY GROUP, INC., a
corporation,
Third-Party Plaintiff,
vs.
JOACHIM L. NAIMER and JANE DOE
NAIMER, husband and wife; and FRANK E.
HUMMEL and JANE DOE HUMMEL,
Third-Party Defendants.

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

As stated in Optima's original *Answer*, due to its contemporaneously-filed *Motion to Dismiss* asserting that Counts V, VI and VII fail to state a claim against Optima, Optima answers herein the general allegations of the *Complaint*, and those of Counts I-IV, and will amend this *Answer* to answer Counts V, VI and/or VII 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.¹

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

INTRODUCTORY PARAGRAPH

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

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

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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

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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 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

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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

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

- 25. Upon information and belief, UAS provided additional information to Zandian/OTC regarding, or of the same nature as that discussed in, Paragraph 33 of and Exhibits 14, 15 and 17 to the *Complaint* herein.
- 26. UAS made the disclosures (*inter alia*) as acknowledged in its *Complaint* herein.
- 27. Upon information and belief, UAS also made the disclosures alleged in Paragraph 34 of, and in Exhibit 12 attached to, the *Complaint*.
- 28. By filing its *Complaint* as part of the open public record in this case, UAS disclosed the content thereof and the Exhibits attached thereto.
- 29. The actions of UAS and OTC herein were motivated by spite, malice and/or ill-will toward Optima and were for the purpose of and/or were intended to intermeddle with, interfere with, trespass upon and/or cause harm to Optima's rights in the Patents and/or under the Power of Attorney, and/or with knowledge that such intermeddling, interference, trespass and/or harm was substantially certain to occur.
- 30. Upon information and belief, OTC intends to continue to compete, interfere, and/or attempt to compete and/or interfere with Optima regarding the Patents and/or the Power of Attorney. At this time, however, Optima is unaware of any actual attempts yet made by OTC to purportedly license, sell or otherwise transfer rights regarding the Patents under its purported Assignment/Power of Attorney (as recorded with the PTO). If and when Optima becomes aware of such actions, it will timely seek to amend and supplement the Counterclaims, Cross-Claims, Third-Party Claims and/or remedies herein as necessary and applicable.

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COUNT 1

PATENT INFRINGEMENT

- 31. The statements of all of the foregoing paragraphs are incorporated herein by reference as if fully set forth herein.
- 32. This is a cause of action for patent infringement under 35 U.S.C. § 271 *et seq.* At all relevant times, UAS had actual and constructive knowledge of the Patents in suit including the scope and claim coverage thereof.
- 33. UAS's aforesaid activities constitute a direct, contributory and/or inducement of infringement of the aforesaid patents in violation of 35 U.S.C. § 271 *et seq.* UAS's aforesaid infringement is and has, at all relevant times, been willful and knowing.
- 34. Naimer and Hummel, through their forgoing actions, actively aided and abetted and knowingly and/or intentionally induced, and specifically intended to induce, UAS's direct infringement despite their knowledge of the Patents.
- 35. Optima has suffered and will continue to suffer immediate and ongoing irreparable and actual harm and monetary damage as a result of UAS's, Naimer's and Hummel's willful patent infringement in an amount to be proven at trial.

COUNT 2

BREACH OF CONTRACT

- 36. The statements of all of the foregoing paragraphs are incorporated herein by reference as if fully set forth herein.
- 37. This is a cause of action for breach of contract against UAS pursuant to Arizona law.
- 38. UAS's actions constitute one or more breaches of the contract attached as Exhibit 8 to the *Complaint* herein.
- 39. 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.

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COUNT 3

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

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

41. This is a cause of action for breach of the implied covenant of good faith and fair dealing against UAS pursuant to Arizona law.

42. Under Arizona law, every contract contains an implied covenant of good faith and fair dealing.

43. UAS's actions constitute one or more breaches of covenant of good faith and fair dealing present and implied in the contract attached as Exhibit 8 to the *Complaint* herein.

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

COUNT 4

NEGLIGENCE

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

46. This is an cause of action for negligence against UAS pursuant to the law of New York, Delaware, California, Virginia or Arizona.

47. UAS owed a duty of care to Optima as a result of Exhibit 8 to the *Complaint* herein, and the obligations created therein and/or relating thereto.

48. UAS breached these duties through its foregoing actions as alleged herein, including but not limited to:

- a. UAS's inclusion in an openly-accessible public record the allegations of its *Complaint*; and/or

- 1 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.

COUNT 5

DECLARATORY JUDGMENT

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- 11
- 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

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

COUNT 6

INJURIOUS FALSEHOOD/SLANDER OF TITLE

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

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

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

- a. Are/were false and/or disparaging statement(s) and/or publication(s) resulting in an impairment of vendibility, cloud of title and/or a casting of doubt on the validity of Optima's right of ownership in the Patents and/or rights under the Power of Attorney; and/or
- b. Are/were an effort to persuade third parties from dealing with Optima, and/or to harm to interests of Optima, regarding the Patents and/or the Power of Attorney; and/or
- c. Are/were actions for which OTC and UAS foresaw and/or should have reasonably foreseen that the false and/or disparaging statement(s) and/or publication(s) would likely determine the conduct of a third party with respect to, or would otherwise cause harm to Optima's pecuniary interests with respect to, the purchase, license or other business dealings regarding Optima's right in the Patents and/or rights under the Power of Attorney; and/or
- d. Are/were with knowledge that the statement(s) and/or publication(s) was/were false; and/or
- e. Are/were with knowledge of the disparaging nature of the statements; and/or
- f. Are/were in reckless disregard of the truth or falsity of the statement(s) and/or

- 1 publication(s); and/or
- 2 g. Are/were in reckless disregard with being in the nature of disparagement(s);
- 3 and/or
- 4 h. Are/were motivated by ill will toward Optima; and/or
- 5 i. Are/were motivated by an intent to injure Optima; and/or
- 6 j. Are/were committed with an intent to interfere in an unprivileged manner with
- 7 Optima's interests; and/or
- 8 k. Are/were committed with negligence regarding the truth or falsity of the
- 9 statement and/or publication and/or with being in the nature of a disparagement.
- 10 59. As a result thereof, Optima has suffered and will continue to suffer immediate and
- 11 ongoing harm and monetary damage in an amount to be proven at trial.

12 COUNT 7

13 TRESPASS TO CHATTELS

- 14 60. The statements of all of the foregoing paragraphs are incorporated herein by reference
- 15 as if fully set forth herein.
- 16 61. This is a cause of action for trespass to chattels against OTC and UAS pursuant to the
- 17 law of New York, Delaware, California, Virginia or Arizona.
- 18 62. The actions of OTC and/or UAS, as alleged above:
 - 19 a. Are/were intentional physical, forcible and/or unlawful interference with the use
 - 20 and enjoyment of rights to the Patents and/or Power of Attorney possessed by
 - 21 Optima without justification or consent; and/or
 - 22 b. Are/were possession of and/or the exercise of dominion over rights to the Patents
 - 23 and/or Power of Attorney possessed by Optima without justification or consent;
 - 24 and/or
 - 25 c. Are/were intentional use and/or intermeddling with rights to the Patents and/or
 - 26 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

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

- f. Are likely to divert the trade of Optima; and/or
- g. Are likely to cause substantial and irreparable harm to Optima.

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

COUNT 9

UNFAIR AND DECEPTIVE COMPETITION/BUSINESS PRACTICES

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

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

70. The actions of OTC and/or UAS, as alleged above:
- a. Are/were those of a person engaged in a course of a business, vocation, or occupation; and/or
 - b. Constitute a deceptive trade practice; and/or
 - c. Cause a likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another; and/or
 - d. Represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have; and/or
 - e. Represent that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and/or

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

14 **COUNT 10**

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

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

1 Ann. § 18.2-500,

2 COUNT 11

3 UNFAIR AND DECEPTIVE COMPETITION/BUSINESS PRACTICES

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

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

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

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

- 1 84. As a result thereof, Optima has suffered and will continue to suffer immediate and
2 ongoing harm and monetary damage.
- 3 85. Optima is without an adequate remedy at law.
- 4 86. Unless enjoined the acts of OTC and UAS will continue to cause further, great,
5 immediate and irreparable injury to Optima.
- 6 87. Optima is entitled to injunctive relief and restitutionary disgorgement pursuant to
7 California Business and Professions Code § 17203.

8 **COUNT 12**

9 **UAS LIABILITY**

- 10 88. The statements of all of the foregoing paragraphs are incorporated herein by reference
11 as if fully set forth herein.
- 12 89. In addition to any other liability existing as to the acts of UAS described herein UAS
13 is additionally liable under Counts 6-11 herein because:
- 14 a. OTC acted as the agent and/or servant of UAS; and/or
 - 15 b. UAS aided and abetted the wrongful conduct of OTC through one or more of the
16 following:
 - 17 i. UAS provided aid to OTC in its commission of a wrongful act that caused
18 injury to Optima; and/or
 - 19 ii. UAS substantially assisted and/or encouraged OTC in the principal
20 violation/wrongful act; and/or
 - 21 iii. UAS was aware of its role as part of overall illegal and/or tortious activity
22 at the time it provided the assistance; and/or
 - 23 iv. UAS reached a conscious decision to participate in tortious activity for
24 the purpose of assisting OTC in performing a wrongful act; and/or
 - 25 c. UAS engaged in a civil conspiracy with OTC through an agreement to
26 accomplish an unlawful purpose and/or to accomplish a lawful object by

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

21 **COUNT 13**

22 **PUNITIVE DAMAGES**

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

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

- 1 p. Acted with wilful and wanton conduct so as to evince a conscious disregard of
 - 2 the rights of others; and/or
 - 3 q. Acted with recklessness and/or negligence so as to evince a conscious disregard
 - 4 of the rights of others; and/or
 - 5 r. Engaged in malicious conduct; and/or
 - 6 s. Engaged in misconduct and/or actual malice.
- 7 94. As a result thereof, Optima is entitled to an award of punitive damages against OTC and
- 8 UAS herein in an amount to be determined by a jury.

9 **EXCEPTIONAL CASE**

10 This is an exceptional case under 35 U.S.C. § 285 in which Counterclaimant and

11 Cross-Claimant Optima is entitled to its attorneys' fees and costs incurred in connection with

12 this action.

13 **JURY TRIAL DEMAND**

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

15 this matter.

16 **PRAYER FOR RELIEF**

17 WHEREFORE Optima requests that the Court enter judgment in favor of Optima, and

18 against UAS, OTC, Naimer, and Hummel, on the Counterclaims, Cross-Claims and Third-Party

19 Claims, as follows:

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

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

1 not limited to A.R.S. §12-341.01 and § 12-340 and/or the laws of one or more of New
2 York, Virginia, Delaware and/or California;
3 11. Granting Optima prejudgment and post-judgment interest at the legal rate; and
4 12. Granting Optima such other and further relief as the Court deems just and proper.
5 RESPECTFULLY SUBMITTED this 24th day of January, 2008.

6 CHANDLER & UDALL, LLP

7
8 By /s Edward Moomjian II
9 Edward Moomjian II
10 Jeanna Chandler Nash
11 Attorneys for Defendants Adams, Margolin
12 and Optima Technology Inc. a/k/a Optima
13 Technology Group, Inc.

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on January 24, 2008, I electronically transmitted the attached
16 document to the Clerk's office using the EM/ECF System for filing and transmittal of a Notice
17 of Electronic Filing to the following CM/DCF registrants:

18 E. Jeffrey Walsh, Esquire
19 Greenberg Traurig, LLP
20 2375 East Camelback Road, Suite 700
21 Phoenix, Arizona 85016
22 *Attorneys for Plaintiff*

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24 Paul J. Sutton, Esquire
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_____ s/

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14 *Attorneys for Plaintiff*

15 **IN THE UNITED STATES DISTRICT COURT**

16 **DISTRICT OF ARIZONA**

17 UNIVERSAL AVIONICS SYSTEMS
18 CORPORATION,

19 Plaintiff,

20 v.

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

24 Defendants.

Case No. CV-00588-RC

**UNIVERSAL AVIONICS
SYSTEMS CORPORATION'S
REPLY TO DEFENDANT OPTIMA
TECHNOLOGY GROUP, INC.'S
COUNTERCLAIMS**

Assigned to: Hon. Raner C. Collins

25 Plaintiff Universal Avionics Systems Corporation ("UAS") replies to Defendant
26 Optima Technology Group, Inc.'s ("OTG's") Counterclaims as follows:¹

THE PARTIES

1. UAS lacks knowledge or information sufficient to form a belief as to the
truth of the allegations in Paragraph 1 and therefore denies the same.

¹ This reply is made solely on behalf of UAS. Additional claims have been made by OTG against third parties Joachim Naimer, Jane Doe Naimer, Frank Hummel and Jane Doe Hummel. The deadline for these third parties to answer or otherwise move for relief is April 14, 2008.

FACTS

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

4 11. UAS denies the allegations of Paragraph 11.

5 12. UAS denies the allegations of Paragraph 12.

6 13. The allegations in Paragraph 13 relate solely to third party defendant
7 Naimer. Mr. Naimer will answer or otherwise move on or before April 14, 2008.
8

9 14. The allegations in Paragraph 14 relate solely to third party defendant
10 Hummel. Mr. Hummel will answer or otherwise move on or before April 14, 2008.

11 15. UAS admits that UAS and OTG entered into the contract attached as Exhibit
12 8 to the Complaint. UAS further admits that OTG provided UAS with a power of
13 attorney ("Power of Attorney"). UAS lacks knowledge or information sufficient to form a
14 belief as to the truth of the remaining allegations in Paragraph 15 and therefore denies the
15 same.

16 16. UAS lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations in Paragraph 16 and therefore denies the same.

18 17. UAS lacks knowledge or information sufficient to form a belief as to the
19 truth of the allegations in Paragraph 17 and therefore denies the same.

20 18. UAS denies the allegations of Paragraph 18.

21 19. UAS denies the allegations of Paragraph 19.

22 20. UAS denies the allegations of Paragraph 20.

23 21. UAS lacks knowledge or information sufficient to form a belief as to the
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1 truth of the allegations in Paragraph 21 and therefore denies the same.

2 22. UAS lacks knowledge or information sufficient to form a belief as to the
3 truth of the allegations in Paragraph 22 and therefore denies the same.

4 23. UAS denies the allegations of Paragraph 23.

5 24. UAS lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations in Paragraph 24 and therefore denies the same.

7 25. UAS denies the allegations of Paragraph 25.

8 26. The Complaint is clear on its face. UAS denies the remaining allegations of
9 Paragraph 26.

10 27. The Complaint is clear on its face. UAS denies the remaining allegations of
11 Paragraph 27.

12 28. UAS admits that the Complaint was publicly filed. However, at the request
13 of former counsel for OTG, UAS agreed to retroactively seal the Complaint and the
14 attendant exhibits.²

15 29. UAS denies the allegations of Paragraph 29 as they relate to UAS. UAS
16 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
17 allegations in Paragraph 29 and therefore denies the same.

18 30. UAS lacks knowledge or information sufficient to form a belief as to the
19 truth of the allegations in Paragraph 30 and therefore denies the same.

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24 ² In February 2008, counsel for defendants OTG, Margolin and Adams made an *ex parte* motion to withdraw as
25 counsel. On February 28, 2008, the Court granted the motion. Despite repeated requests by counsel for UAS,
26 defendants and their former counsel have been unwilling to provide copies of the motion for withdrawal to permit
UAS to understand the stated basis underlying the motion. To date, no other attorney(s) have made an appearance on
behalf of defendants.

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COUNT 1

PATENT INFRINGEMENT

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

32. UAS admits that OTG asserts a cause of action for alleged patent infringement under 35 U.S.C. § 271 *et seq.* UAS denies the remaining allegations of Paragraph 32.

33. UAS denies the allegations of Paragraph 33.

34. The allegations in Paragraph 34 relate solely to third parties Naimer and Hummel.

35. UAS denies the allegations of Paragraph 35 as they relate to UAS.

COUNT 2

BREACH OF CONTRACT

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

37. UAS admits that OTG asserts a cause of action for alleged breach of contract against UAS under Arizona law.

38. UAS denies the allegations of Paragraph 38.

39. UAS denies the allegations of Paragraph 39.

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COUNT 3

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

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

41. UAS admits that OTG asserts a cause of action for alleged breach of the implied covenant of good faith and fair dealing against UAS pursuant to Arizona law.

42. Paragraph 42 purports to state a legal proposition and does not require a response.

43. UAS denies the allegations of Paragraph 43.

44. UAS denies the allegations of Paragraph 44.

COUNT 4

NEGLIGENCE

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

46. UAS admits that OTG asserts a cause of action for alleged negligence against UAS pursuant to the law of New York, Delaware, California, Virginia or Arizona.

47. UAS denies the allegations of Paragraph 47.

48. UAS denies the allegations of Paragraph 48.

49. UAS denies the allegations of Paragraph 49.

COUNT 5

DECLARATORY JUDGMENT

50. The statements of all of the foregoing paragraphs are incorporated herein by

1 reference as if fully set forth herein.

2 51. UAS admits that OTG asserts a cause of action against for declaratory
3 judgment under 28 U.S.C. § 2201 *et seq.* against OTC.

4 52. UAS lacks knowledge or information sufficient to form a belief as to the
5 truth of the allegations in Paragraph 52 and therefore denies the same.

6 53. UAS lacks knowledge or information sufficient to form a belief as to the
7 truth of the allegations in Paragraph 53 and therefore denies the same.

8 54. UAS lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations in Paragraph 54 and therefore denies the same.

10 55. UAS admits that OTG seeks a declaration of rights with respect to the
11 averments of Paragraph 55. UAS lacks knowledge or information sufficient to form a
12 belief as to the truth of the remaining allegations in Paragraph 55 and therefore denies the
13 same.

14
15
16 **COUNT 6**

17 **INJURIOUS FALSEHOOD/SLANDER OF TITLE**

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

20 57. UAS admits that OTG asserts a cause of action for alleged injurious
21 falsehood and/or alleged slander of title against OTC and UAS pursuant to the law of New
22 York, Delaware, California, Virginia or Arizona.

23 58. UAS denies the allegations of Paragraph 58 as they relate to UAS. UAS
24 lacks knowledge or information sufficient to form a belief as to the truth of the allegations
25 in Paragraph 58 as they relate to OTC and therefore denies the same.

26

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87. UAS denies the allegations of Paragraph 87 as they relate to UAS. UAS lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 87 as they relate to OTC and therefore denies the same.

COUNT 12
UAS LIABILITY

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

89. UAS denies the allegations of Paragraph 89.

90. UAS denies the allegations of Paragraph 90.

COUNT 13
PUNITIVE DAMAGES

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

92. UAS admits that OTG asserts a cause of action for alleged punitive damages against OTC and UAS pursuant to the common law and/or statutory law of new York, Delaware, California, Virginia or Arizona.

93. UAS denies the allegations of Paragraph 93 as they relate to UAS. UAS lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 93 as they relate to OTC and therefore denies the same.

94. UAS denies the allegations of Paragraph 94 as they relate to UAS. UAS lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94 as they relate to OTC and therefore denies the same.

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EXCEPTIONAL CASE

UAS incorporates herein by reference its Replies to Paragraphs 1 through 94 of OTG's Counterclaims and denies that OTG is entitled to attorneys' fees or costs in connection with this action.

JURY TRIAL DEMAND

UAS admits that OTG demands a jury trial on all claims and issues to be litigated in this matter.

PRAYER FOR RELIEF

UAS incorporates herein by reference its Replies to Paragraphs 1 through 94 of OTG's Counterclaims and denies that OTG is entitled to any relief or judgment against UAS.

AFFIRMATIVE DEFENSES

UAS asserts the following defenses to the causes of action asserted in OTG's Counterclaims, undertaking to prove only those defenses on which it bears the burden of proof under the applicable law.

1. Failure to state a claim upon which relief can be granted.
2. Failure to establish standing.
3. Lack of subject-matter jurisdiction.
4. Assumption of risk.
5. Contributory negligence.
6. Estoppel.
7. Fraud. UAS incorporates herein by reference Paragraphs 1 through 78 of its

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Complaint.

8. Laches.

9. Waiver.

10. UAS has not and does not directly or indirectly infringe any valid and enforceable claim of the '073 patent or the '724 patent, either literally or under the doctrine of equivalents.

11. Each claim of the '073 patent and the '724 patent is invalid for failing to satisfy one or more requirements of the Patent Act, 35 U.S.C. § 1, *et seq.*, including, but not limited to, the conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.

12. The '073 patent and the '724 patent are each unenforceable as a result of inequitable conduct committed by an individual or individuals associated with the filing and/or prosecution of the patent applications relating to the '073 patent and the '724 patent.

13. OTG is barred from relief for infringement of the '073 patent and/or the '724 patent under the equitable doctrine of prosecution laches.

14. The '073 patent and the '724 patent are each unenforceable for Defendants' failure to timely disclaim the invalid claims pursuant to 35 U.S.C. §§ 253 and 288.

15. UAS reserves the right to amend its affirmative defenses as further dictated by discovery in this case.

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RESPECTFULLY SUBMITTED this 18th day of March 2008.

GREENBERG TRAUIG, LLP

By: /s/ Scott J. Bornstein
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing document to be served upon counsel listed below and defendant Optima Technology Group, Inc. by U.S. Mail on March 18, 2008.

M. Lawrence Oliverio
Rissman Jobse Hendricks & Oliverio LLP
100 Cambridge Street, Suite 2101
Boston, MA 02114

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c/o Robert Adams, President and CEO
1981 Empire Road
Reno, Nevada 89521

_____/s/ Marian R. Mackey

1 Jeffrey Willis (#004870)
Robert Bernheim (#024664)
2 SNELL & WILMER LLP
One South Church Avenue, Suite 1500
3 Tucson, Arizona 85701-1630
Telephone: (520) 882-1200
4 Facsimile: (520) 884-1294
Attorneys for Defendants Optima Technology
5 Group, Inc. and Jed Margolin

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 UNIVERSAL AVIONICS SYSTEMS
CORPORATION,

No. 07-CV-00588-RC

9 Plaintiff,

10 v.

**ANSWER OF OPTIMA
TECHNOLOGY GROUP, INC. AND
JED MARGOLIN TO SECOND
AMENDED COMPLAINT; OPTIMA
TECHNOLOGY GROUP, INC.'S
COUNTERCLAIMS¹**

11
12 OPTIMA TECHNOLOGY GROUP,
INC., OPTIMA TECHNOLOGY
13 CORPORATION and JED MARGOLIN,

14 Defendants.

(Assigned to the Honorable Raner C.
Collins)

15
16 OPTIMA TECHNOLOGY GROUP,
INC., a corporation,

17 Counterclaimant,

18 vs.

19 UNIVERSAL AVIONICS SYSTEMS
CORPORATION, an Arizona
20 corporation,

21 Counterdefendant

22 Defendants Optima Technology Group, Inc. ("OTG") and Jed Margolin
23 (collectively "Defendants"), by and through their counsel undersigned, hereby answer the
24

25 ¹ OTG will not reassert its cross-claims against Optima Technology Corporation
26 ("OTC") in this pleading as such cross-claims have been reduced to judgment pursuant to
the Court's order dated July 2, 2008. (Docket No. 101)

1 Second Amended Complaint. As to the prefatory statement of the Second Amended
2 Complaint, Defendants deny the allegations in such statement.

3
4 **NATURE OF THE ACTION**

5 1. Admitted.

6 **THE PARTIES**

7 2. Admitted.

8 3. Admitted.

9 4. Defendants are without knowledge or information sufficient to form a belief
10 as to the truth or falsity of the allegations of paragraph 4, and therefore deny the same.
11 Defendants have information, and upon that information base their belief, that Defendant
12 Optima Technology Corporation was both a California Corporation and a Nevada
13 Corporation. Defendants have information, and upon that information base their belief,
14 that the principal place of business of Optima Technology Corporation is not 2222
15 Michelson Drive, Suite 1830, Irving, California 92612.

16 5. Defendants admit that Defendant Margolin resides in or near Reno, Nevada.

17
18 **JURISDICTION AND VENUE**

19 6. Admitted.

20 7. Admitted.

21 8. Denied.

22 9. Denied.

23
24 **THE PATENTS-IN-SUIT**

25 10. Admitted.

26 11. Admitted.

- 1 12. Admitted.
2 13. Admitted. OTG's actions were fraudulent.

3
4 **FACTS – OTG AND MARGOLIN**

- 5 14. Admitted. Defendants allege that the exhibit speaks for itself.
6 15. Admitted. Defendants allege that the exhibit speaks for itself.
7 16. Defendants admit that Universal's counsel communicated with Dr. Adams
8 on or about July 3, 2007, but deny the remaining allegations.
9 17. Denied. Defendants allege that the exhibit speaks for itself.
10 18. Denied. Defendants allege that the exhibit speaks for itself.
11 19. Denied. Defendants allege that the exhibit speaks for itself.
12 20. In answer to paragraph 20, Defendants admit that Universal responded to an
13 August 7, 2007 email. Defendants deny the second sentence of paragraph 20. As to the
14 last sentences of paragraph 20, Defendants allege that the exhibit speaks for itself.
15 21. Defendants admit that a meeting was scheduled for September 11, 2007, and
16 that Universal and OTG executed a Confidential, Non-Disclosure Limited Use
17 Agreement.
18 22. In answer to paragraph 22, Defendants are without information or
19 knowledge sufficient to form a belief as to Universal's understanding of the purpose of the
20 September 11, 2007 meeting, and therefore deny the allegations in the first sentence.
21 Defendants admit the second sentence of paragraph 22, and also that Dr. Adams
22 represented OTG. Defendants deny the remaining allegations of paragraph 22.
23 23. In answer to paragraph 23, Defendants affirmatively allege that Universal
24 makes and sells at least one product covered by claims in the '073 patent and that the '073
25 and the '724 patents are both valid. Defendants deny the remaining allegations of
26 paragraph 23.

1 24. Defendants admit that there were communications between Dr. Adams, on
2 behalf of OTG, and representatives of Universal, but deny the remaining allegations of
3 paragraph 24.

4 25. Defendants admit that the contact information for Defendant Margolin was
5 provided to Universal by Dr. Adams and that Universal was invited to contact Defendant
6 Margolin to seek additional information relevant to its professed interest in entering into a
7 license for the '073 patent.

8 26. In answer to paragraph 26, Defendants allege that the exhibit speaks for
9 itself. Defendants deny all other allegations in paragraph 26.

10 27. In answer to paragraph 27, Defendants allege that the exhibit speaks for
11 itself. Defendants deny all other allegations in paragraph 27.

12 28. In answer to paragraph 28, Defendants allege that the exhibit speaks for
13 itself. Defendants deny all other allegations in paragraph 28.

14 29. Admitted.

15 30. In answer to paragraph 30, Universal was specifically advised by OTG
16 before filing the Second Amended Complaint that OTG was not alleging that any known
17 product of Universal infringed the '724 patent. Defendant OTG affirmatively alleges that
18 at least one Universal product does infringe the '073 patent.

19

20

FACTS – OTC

21 31. Defendants admit that Dr. Adams is OTG's current President and CEO, and
22 that he was associated with Defendant OTC before forming Defendant OTG.

23 32. Defendants deny that the Durable Power of Attorney executed on July 20,
24 2004, was entered into at a time during which Dr. Adams was under any duty to OTC.
25 Defendants admit that the address in the Durable Power of Attorney was as alleged.
26 Defendants deny the remaining allegations in paragraph 22.

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1 33. Admitted. OTC's actions were fraudulent.

2 34. Admitted.

3 35. Defendants deny the allegations of paragraph 35, except that they admit that
4 Exhibit 2 of the First Amended Complaint is a copy of the patent assignment from
5 Defendant Margolin to Defendant OTG.

6
7 **CLAIMS FOR RELIEF**

8 **COUNT ONE**

9 **Declaratory Judgment of Non-Infringement of the '073 Patent against OTG and/or**
10 **Margolin**

11 36. Defendants incorporate paragraphs 1-35 above as if fully set forth herein.

12 37. Defendants admit that an actual and continuing controversy exists between
13 OTG and Universal as to whether Universal has directly infringed, contributed to the
14 infringement of, or induced the infringement of any claim of the '073 patent.

15 38. Denied.

16 39. The statements in paragraph 39 do not require a response.

17 **COUNT TWO**

18 **Declaratory Judgment of Invalidity of the '073 Patent against OTG and/or Margolin**

19 40. Defendants incorporate paragraphs 1-39 above as if fully set forth herein.

20 41. In answer to paragraph 41, Defendants admit that Universal claims that the
21 '073 patent is invalid.

22 42. Denied.

23 43. Paragraph 43 does not require a response.
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COUNT THREE

Declaratory Judgment of Non-Infringement of the '724 Patent against OTG and/or Margolin

44. Defendants incorporate paragraphs 1-43 above as if fully set forth herein.

45. Defendants deny that there is an actual and continuing controversy as to whether Universal has infringed, directly or indirectly, any claim of the '724 patent. OTG, as the assignee of the '724 patent, does not contend that any known Universal product infringes any claim of the '724 patent.

46. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of paragraph 46, and therefore deny the same.

47. While paragraph 47 does not require a response, Defendants affirmatively allege that Universal should not receive the requested declaration because there is no actual or continuing controversy regarding this issue.

COUNT FOUR

Declaratory Judgment of Invalidity of the '724 Patent against OTG and/or Margolin

48. Defendants incorporate paragraphs 1-47 above as if fully set forth herein.

49. Defendants deny that there is an actual or continuing controversy between OTG and Universal as to the validity of any of the claims in the '724 patent.

50. Denied.

51. Although paragraph 51 does not require a response, Defendants deny that Universal is entitled to the requested declaration because there is no actual or continuing controversy regarding this issue.

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COUNT FIVE

Declaratory Judgment of the Non-Infringement of the '073 Patent against OTC

52. Defendants incorporate paragraphs 1-51 above as if fully set forth herein.

53. Since the allegations in paragraph 53 – 63 are directed at Defendant Optima Technology Corporation (“OTC”), these Defendants are not required to, nor will they, respond to the allegations.

54. Defendants deny each and every allegation of the Second Amended Complaint which has not been specifically admitted, qualified or denied above.

WHEREFORE, having fully answered the Second Amended Complaint, Defendants respectfully request that this Court enter judgment in their favor, and grant the following relief:

A. Dismissing all claims for relief against these Defendants and entering judgment in their favor on such claims;

B. Awarding their attorney’s fees and costs incurred in defending the claims against them;

C. Granting such other and further relief that the Court deems just and appropriate under the circumstances.

OPTIMA TECHNOLOGY GROUP, INC.’S COUNTERCLAIMS

Counterclaimant Optima Technology Group, Inc. brings the following claims against Counterdefendant Universal Avionics Systems Corporation.

PARTIES, JURISDICTION, AND VENUE

1. Counterclaimant Optima Technology Group, Inc. (“OTG”) is a Delaware corporation with its principal place of business in Reno, Nevada.

1 “Infringing Products”), display pilots with a synthesized world view in ways that infringe
2 the ‘073 patent.

3 10. Infringement of the ‘073 patent by Universal in this judicial district and
4 elsewhere has been without OTG’s consent.

5 11. Upon information and belief, Universal’s infringement of OTG’s ‘073
6 patent has been willful and deliberate.

7 12. Universal’s infringement of the ‘073 patent has caused irreparable injury to
8 OTG and will continue to cause irreparable injury until Universal is permanently enjoined
9 by this Court.

10 **COUNT II**

11 **(INJURIOUS FALSEHOOD/SLANDER OF TITLE)**

12 13. OTG incorporates paragraphs 1-12 as if fully set forth herein.

13 14. OTG is the present assignee and has standing to sue for injurious
14 falsehood/slander of title of Unites States Letters Patent No. 5,566,073 (the “‘073
15 patent”), entitled “Pilot Aid Using a Synthetic Environment”; United States Letters Patent
16 No. 5,904,724 (the “‘724 patent”), entitled “Method and Apparatus for Remotely Piloting
17 an Aircraft” (see Docket No. 1, Exhibit 2); and a Durable Power of Attorney, dated July
18 20, 2004, executed by Jed Margolin and appointing OTG as agent with management
19 powers over the ‘073 and ‘724 patents (the “Power of Attorney”) (see Docket No. 1,
20 Exhibit 3).

21 15. The ‘073 patent was duly and properly issued on October 15, 1996 by the
22 USPTO, and the ‘724 patent was duly and properly issued on May 18, 1999 by the
23 USPTO. The ‘073 and ‘724 patents are now, and have been at all times since the dates of
24 issue, valid and enforceable.

25 16. On information and belief, Universal, in conspiracy with OTC, made false
26 and/or disparaging statements and/or publications resulting in the impairment of

1 vendibility, cloud of title, and/or a casting of doubt on the validity of OTG's ownership of
2 the '073 and '724 patents and/or rights under the Power of Attorney.

3 17. On information and belief, Universal made efforts regarding the Patents
4 and/or Power of Attorney to dissuade third parties from dealing with OTG and/or to harm
5 OTG's interests.

6 18. Universal foresaw and/or reasonably should have foreseen that its false
7 and/or disparaging statements and/or publications would likely determine the conduct of
8 third parties, or would otherwise harm OTG's pecuniary interests, with respect to the
9 purchase, license, or other business dealings regarding Optima's rights in the '073 and
10 '724 patents and/or rights under the Power of Attorney.

11 19. On information and belief, Universal acted and continues to act with
12 knowledge that the statements and/or publications are false and/or disparaging in nature.

13 20. Universal acted and continues to act in reckless disregard of the truth or
14 falsity and/or the disparaging nature of the statements and/or publications.

15 21. On information and belief, Universal was motivated and is still motivated by
16 ill will toward OTG.

17 22. On information and belief, Universal intended and still intends its actions to
18 interfere in an unprivileged manner with OTG's interests and/or otherwise injure OTG.

19 23. On information and belief, Universal acted and still acts in a wantonly
20 negligent manner regarding the truth or falsity and/or disparaging nature of the statements
21 and/or publications.

22 24. As a result, OTG has suffered and will continue to suffer immediate and
23 ongoing harm and monetary damage in an amount to proven at trial.

24 **EXCEPTIONAL CASE**

25 25. This is an exceptional case under 35 U.S.C. § 285 and therefore OTG is
26 entitled to its reasonable attorneys' fees and costs incurred in bringing this action.

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Snell & Wilmer

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damages at the highest legal rate;

H. Declaring this an exceptional case under 35 U.S.C. § 285 and awarding OTG its attorneys' fees and costs; and

I. Granting OTG such other and further relief as this Court deems just and appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 29th day of July, 2008.

SNELL & WILMER L.L.P.

By: s/Robert Bernheim

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Attorneys for Defendants Optima Technology Group,
Inc. and Margolin

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2008, I electronically transmitted and sent via U.S. mail the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

UNIVERSAL AVIONICS SYSTEMS
CORPORATION,

Plaintiff,

v.

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

Defendants.

Case No. CV-00588-RC

SECOND AMENDED COMPLAINT

[JURY TRIAL DEMANDED]

Plaintiff Universal Avionics Systems Corporation (“Universal”), by and through its undersigned attorneys, for their Second Amended Complaint against Defendants Optima Technology Group, Inc. (“OTG”), Optima Technology Corporation (“OTC”) and Jed Margolin (“Margolin”) (collectively, “Defendants”) alleges as follows based upon its best available information and belief. Defendant OTG is an entity commonly referred to as a patent holding company. In simple terms, Defendants OTG, its President and CEO Robert Adams (“Adams”), and Margolin, made repeated and baseless threats to Universal regarding several patents purportedly owned by OTG. No longer willing to be subjected

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1 to meritless allegations and countless threats, Universal initiated the present action.

2 **NATURE OF THE ACTION**

3 1. This is an action seeking a declaratory judgment that U.S. Patent Nos.
4 5,566,073 (the "'073 patent") and 5,904,724 (the "'724 patent") (collectively, the
5 "Patents-in-Suit") are invalid and not infringed.

6 **THE PARTIES**

7 2. Plaintiff Universal is an Arizona corporation, having a principal place of
8 business at 3260 East Universal Way, Tucson, Arizona 85706.

9 3. Upon information and belief, Defendant Optima Technology Group, Inc. is
10 a Delaware corporation, having a principal place of business at 1981 Empire Road, Reno,
11 Nevada 89521.

12 4. Upon information and belief, Defendant Optima Technology Corporation is
13 a California corporation, having a principal place of business at 2222 Michelson Drive,
14 Suite 1830, Irvine, California 92612.

15 5. Upon information and belief, Defendant Margolin resides at 1981 Empire
16 Road, Reno, Nevada 89521.

17 **JURISDICTION AND VENUE**

18 6. This is an action seeking a declaratory judgment that the '073 patent and the
19 '724 patent are invalid and not infringed.

20 7. This Court has original jurisdiction over this action pursuant to the Federal
21 Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, the Patent Laws of the United States,
22 35 U.S.C. §100 et seq. and 28 U.S.C. §§ 1331, 1332 and 1338(a) and (b).

23 8. Venue is proper in this judicial district because Defendants have engaged in
24 business dealings with Plaintiff Universal in this judicial district. *See* 28 U.S.C. § 1391.

25 9. Additionally, Defendants OTG and Margolin have not objected to the
26 jurisdiction of this Court or that venue is proper.

1 infringes the Patents-in-Suit. (Attached as Exhibit 4 to the original Complaint).

2 15. Adams suggested that Universal should either purchase or accept a license
3 under the Patents-in-Suit in order to assert it against Honeywell. That communication
4 also contained an email from Margolin in which he suggested that Universal “could get
5 some leverage against Honeywell . . . by buying ‘073 and/or taking an exclusive license
6 from us and then nail Honeywell who also infringes [the ‘073 patent].” (Attached as
7 Exhibit 5 to the original Complaint).

8 16. Universal’s counsel responded to Adams the same day, informing Adams
9 that an analysis was necessary prior to considering OTG’s license offer.

10 17. Despite Adams’ initial suggestion that the overture was intended to “help”
11 Universal in an action against Honeywell, he almost immediately began asserting that
12 Universal was also infringing the Patents-in-Suit. (*Id.*)

13 18. On or about July 16, 2007, Adams began to issue not-so-subtle threats
14 against Universal, suggesting that OTG would grant a license under the Patents-in-Suit to
15 Honeywell -- so that Honeywell could sue Universal -- should Universal decline OTG’s
16 offer. “Seeing that both your client [Universal] and Honeywell infringes, it might be a
17 good thing for your client to take the exclusive license now that your case turned, before
18 of course Honeywell takes the opportunity to do the same thing and use it against others.”
19 (*Id.*)

20 19. Adams continued his threats against Universal in an August 7, 2007 email in
21 which he claimed that OTG had decided on a law firm “in the event that I need to hire
22 them to take on Honeywell, Mercury Computer Systems as well as all the others.”
23 (Attached as Exhibit 6 to the original Complaint).

24 20. On or about August 10, 2007, Universal responded to the August 7, 2007
25 email, informing Adams that counsel would be speaking to Universal’s management in
26 the coming week to discuss OTG’s license offer. Adams apparently was satisfied by this

1 response, as he retreated from his threats and returned to discussing the possibility of
2 Universal and OTG cooperating and entering into a “working relationship.” Specifically,
3 Adams opined that “[o]ur working models show that not only would [the Patents-in-Suit]
4 make Honeywell back-off their case against your client [Universal], but your client will be
5 in a key position to go after approximately \$56 Million and growing in business that
6 Honeywell infringes. A win win for both of us” (Attached as Exhibit 7 to the
7 original Complaint).

8 21. On or about August 15, 2007, Universal and Adams agreed to meet in an
9 effort to resolve the dispute. The meeting was scheduled for September 11, 2007 at
10 Universal’s corporate headquarters in Tucson, Arizona (the “Tucson Meeting”). In
11 anticipation of the Tucson Meeting, on or about August 22, 2007, Universal and OTG
12 entered into a Confidential, Nondisclosure and Limited Use Agreement. (Attached as
13 Exhibit 8 to the original Complaint).

14 22. The purpose of the Tucson Meeting was to hear and consider economic
15 issues surrounding OTG’s offer to license the Patents-in-Suit in an effort to avoid further
16 threats, nuisance and wasted money and time. Universal was represented at the Tucson
17 Meeting by several members of senior management, along with its outside legal counsel.
18 Adams was the sole representative for OTG and gave the impression that he was acting on
19 behalf of both OTG and Margolin.

20 23. At the meeting, Universal made it clear that (1) a license to the Patents-in-
21 Suit was unnecessary because Universal did not sell any products covered by any claim
22 from the ‘073 or ‘724 patents; and (2) Universal believed that the ‘073 and ‘724 patents
23 were invalid based on several prior art references. In response, Adams stated that he
24 would have to defer to his legal counsel as he did not know anything about patent validity.
25 Universal repeatedly asked Adams to identify terms he considered appropriate for a
26 settlement but he refused to provide any specific terms. Instead, Adams claimed that

1 several unnamed parties had already entered into license agreements with OTG in
2 connection with the Patents-in-Suit and an agreement with Universal would need to be on
3 similar terms. However, Adams refused to disclose the terms of the “mystery”
4 agreements.

5 24. At the Tucson Meeting, Adams also (mis)represented that OTG had been
6 involved in a number of successful patent infringement lawsuits in the past. By
7 implication, he suggested that if Universal failed to settle on terms acceptable to the
8 Defendants, it would be the next litigation target. However, upon information and belief,
9 Defendant OTC previously filed only one (1) patent litigation involving unrelated
10 technology -- which it lost -- while OTG has not filed any.

11 25. Adams concluded the meeting by providing contact information for
12 Defendant Margolin and inviting Universal to contact Margolin to seek additional
13 information.

14 26. After apparently realizing that it was unlikely that Universal and OTG
15 would agree on terms for an agreement, Adams again resorted to threatening Universal.
16 First, he suggested (again) that OTG would enter into a license with Honeywell so that
17 Honeywell could sue Universal. “Not a problem, I am sure Honeywell will be more than
18 [sic] pleased to talk with us and take the exclusive [if] anything just into [sic] enforce it
19 against others whom they know will [sic] from past infringement case.” (Attached as
20 Exhibit 14 to the original Complaint). Universal did not take the bait.

21 27. Adams then got hostile, falsely accusing Universal’s President of “stealing
22 our patented concept some time ago and [claiming to have] the web traffic to prove it was
23 at the very least his company and/or his personal IP address.” (Attached as Exhibit 15 to
24 the original Complaint).

25 28. Then, on October 15, 2007, Adams notified Universal of an alleged offer
26 made by Honeywell and stated that Universal has “four hours from now . . . to accept and

1 make us a better offer or decline by not responding.” (Attached as Exhibit 16 to the
2 original Complaint).

3 29. Finally, on November 6, 2007, OTG’s outside counsel, M. Lawrence
4 Oliverio (“Oliverio”) of Rissman Jobse Hendricks & Oliverio,¹ sent counsel for Universal
5 a letter specifically threatening litigation. (Attached as Exhibit 17 to the original
6 Complaint).

7 30. Based upon the specific allegations of infringement contained in Oliverio’s
8 November 6, 2007 letter, Universal had a reasonable apprehension that OTG will file suit
9 for alleged infringement of the ‘073 and ‘724 patents.

10 FACTS - OTC

11 31. Upon information and belief, Adams, OTG’s current President and CEO,
12 was a paid employee of Defendant OTC from 1990-1995 and its unpaid CEO from 2001
13 to 2005.

14 32. The Durable Power of Attorney (attached as Exhibit 3 to the original
15 Complaint) that Margolin executed on July 20, 2004, whereby he appointed “Optima
16 Technology Inc. - Robert Adams, CEO” as his agent, was entered into during Adams’
17 tenure as OTC’s CEO. Additionally, the Durable Power of Attorney provided the
18 following address for Optima Technology Inc.: 2222 Michelson, Suite 1830, Irvine,
19 California 92612 -- the registered address for Defendant OTC.

20 33. Upon information and belief, on or about December 5, 2007, Defendant
21 OTC filed a notice of recordation of assignment with the PTO, indicating that Margolin
22 had assigned four patents, including the ‘073 and ‘724 patents, to OTC. (Attached as
23 Exhibit 1 to the First Amended Complaint).

24 34. Upon information and belief, on or about December 19, 2007, Margolin
25

26 ¹ Despite repeatedly identifying himself as OTG’s outside counsel, Mr. Oliverio has subsequently advised Universal’s outside counsel that he no longer represents OTG, Adams or Margolin.

1 terminated the Durable Power of Attorney -- two weeks after OTG had filed the notice of
2 recordation of assignment with the PTO.

3 35. Upon information and belief, at some point between September 21, 2007
4 and October 5, 2007, Margolin created a Patent Assignment which he knowingly and
5 fraudulently back-dated to July 20, 2004, whereby he attempted to assign the entire right,
6 title and interest in the '073 and '724 patents to OTG. (Attached as Exhibit 2 to the First
7 Amended Complaint).

8 **CLAIMS FOR RELIEF**

9 **COUNT ONE**

10 **Declaratory Judgment of Non-Infringement**
11 **of the '073 Patent against OTG and/or Margolin**

12 36. Universal repeats and realleges the allegations above as if fully set forth
13 herein.

14 37. As set forth in Paragraph 29 above, on November 6, 2007, OTG, through its
15 outside counsel, sent a threatening letter to Universal's outside counsel, accusing
16 Universal of infringing the '073 and '724 patents with respect to Universal's Vision-1,
17 UNS-1 and TAWS products. Furthermore, as indicated in Paragraph 29 above, OTG
18 suggested that it was likely to file a litigation if Universal was unwilling to accede to
19 unreasonable licensing demands by November 11, 2007. Accordingly, an actual and
20 continuing controversy has arisen and continues to exist between OTG, on the one hand,
21 and Universal, on the other hand, as to whether or not Universal has directly infringed,
22 contributed to the infringement of, or induced the infringement of, any valid and/or
23 enforceable claim of the '073 patent.

24 38. Universal has not infringed and is not now infringing, contributorily
25 infringing or inducing infringement of any valid and/or enforceable claim of the '073
26 patent, either literally or under the doctrine of equivalents.

COUNT THREE

**Declaratory Judgment of Non-Infringement
of the '724 Patent against OTG and/or Margolin**

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4 44. Universal repeats and realleges the allegations above as if fully set forth
5 herein.

6 45. As set forth in Paragraph 29 above, on November 6, 2007, OTG, through its
7 outside counsel, sent a threatening letter to Universal's outside counsel, accusing
8 Universal of infringing the '073 and '724 patents with respect to Universal's Vision-1,
9 UNS-1 and TAWS products. Furthermore, as indicated in Paragraph 29 above, OTG
10 suggested that it was likely to file a litigation if Universal was unwilling to accede to
11 unreasonable licensing demands by November 11, 2007. Accordingly, an actual and
12 continuing controversy has arisen and continues to exist between OTG, on the one hand,
13 and Universal, on the other hand, as to whether or not Universal has directly infringed,
14 contributed to the infringement of, or induced the infringement of, any valid and/or
15 enforceable claim of the '724 patent.

16 46. Universal has not infringed and is not now infringing, contributorily
17 infringing or inducing infringement of any valid and/or enforceable claim of the '724
18 patent, either literally or under the doctrine of equivalents.

19 47. Accordingly, Universal requests a declaration from this Court that Universal
20 has not infringed and is not now infringing, contributorily infringing or inducing
21 infringement of any valid and/or enforceable claim of the '724 patent, either literally or
22 under the doctrine of equivalents.

COUNT FOUR

Declaratory Judgment of Invalidity of the '724 Patent against OTG and/or Margolin

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24 48. Universal repeats and realleges the allegations above as if fully set forth
25 herein.
26

COUNT SIX

Declaratory Judgment of Invalidity of the '073 Patent against OTC

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3 55. Universal repeats and realleges the allegations above as if fully set forth
4 herein.

5 56. Upon information and belief, the '073 patent, and each of the claims thereof,
6 are invalid and void for failure to meet the conditions of patentability as set forth in the
7 provisions of the Patent Laws, 35 U.S.C. §§ 100 et. seq., including but not limited to, one
8 or more of 35 U.S.C. §§ 101, 102, 103 and/or 112.

9 57. Accordingly, Universal requests a declaration from this Court that each of
10 the claims of the '073 patent is invalid for failure to comply with the provisions of the
11 Patent Laws, 35 U.S.C. §§ 100 et. seq., including but not limited to, one or more of 35
12 U.S.C. §§ 101, 102, 103 and/or 112.

COUNT SEVEN

Declaratory Judgment of Non-Infringement of the '724 Patent against OTC

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15 58. Universal repeats and realleges the allegations above as if fully set forth
16 herein.

17 59. Universal has not infringed and is not now infringing, contributorily
18 infringing or inducing infringement of any valid and/or enforceable claim of the '724
19 patent, either literally or under the doctrine of equivalents.

20 60. Accordingly, Universal requests a declaration from this Court that Universal
21 has not infringed and is not now infringing, contributorily infringing or inducing
22 infringement of any valid and/or enforceable claim of the '724 patent, either literally or
23 under the doctrine of equivalents.
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COUNT EIGHT

Declaratory Judgment of Invalidity of the '724 Patent against OTC

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61. Universal repeats and realleges the allegations above as if fully set forth herein.

62. Upon information and belief, the '724 patent, and each of the claims thereof, are invalid and void for failure to meet the conditions of patentability as set forth in the provisions of the Patent Laws, 35 U.S.C. §§ 100 et. seq., including but not limited to, one or more of 35 U.S.C. §§ 101, 102, 103 and/or 112.

63. Accordingly, Universal requests a declaration from this Court that each of the claims of the '724 patent is invalid for failure to comply with the provisions of the Patent Laws, 35 U.S.C. §§ 100 et. seq., including but not limited to, one or more of 35 U.S.C. §§ 101, 102, 103 and/or 112.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and grant the following relief:

- A. An order and judgment declaring that Universal does not infringe any valid and enforceable claim of the '073 patent;
- B. An order and judgment declaring that the claims of the '073 patent are invalid and/or unenforceable;
- C. An order and judgment declaring that Universal does not infringe any valid and enforceable claim of the '724 patent;
- D. An order and judgment declaring that the claims of the '724 patent are invalid and/or unenforceable;

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E. An order and judgment that this is an exceptional case, pursuant to 35 U.S.C. § 285, and awarding reasonable attorneys' fees and costs.

DATED this 15th day of July 2008.

GREENBERG TRAURIG, LLP

By: /s/ Scott J. Bornstein
E. Jeffrey Walsh
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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2008, a copy of the foregoing was caused to the following by the methods indicated below:

Jeffrey Willis, Esq. (**Email and First Class Mail**)
Snell & Wilmer
One South Church Avenue
Suite 1500
Tucson, Arizona 85701-1630

Optima Technology Corporation (**Hand Delivery**)
c/o Reza Zandian
8775 Costa Verde Blvd., #501
San Diego, California 92122

/s/Marian R. Mackey

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNIVERSAL AVIONICS SYSTEMS)
CORPORATION,

Plaintiff,

vs.

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

Defendants.

No. CV 07-588-TUC-RCC

ORDER

Pending before the Court are Defendants Robert Adams' and Optima Technology Group, Inc.'s Motion to Dismiss, Defendant Robert Adams' Motion to Dismiss for Lack of Personal Jurisdiction, and Defendant Jed Margolin's Motion to Dismiss. The motions have been fully briefed.

Facts

The Plaintiff's Complaint arises from several conversations between the Plaintiff, Universal Avionics Systems Corporation, and Defendants, Optima Technology, Robert Adams, and Jed Margolin. The Plaintiff and Defendants discussed licensing the patents at issue for any of a number of reasons stated in the briefs, allegedly the Defendants eventually accused the Plaintiff of past and continuing infringement of the patents, in an attempt to

1 avoid litigation the parties entered negotiations, and allegedly executed a confidentiality
2 agreement. After preliminary negotiations the Defendants allegedly breached the
3 confidentiality agreement and made misstatements to a third party, Mercury Computer
4 Systems, about licenses and potential licenses between the Plaintiff and the Defendants. The
5 Plaintiff then commenced the present litigation.

6 The Plaintiff's Complaint sought seven claims for relief: 1) a declaratory judgment
7 of non-infringement of the '073 patent, 2) a declaratory judgment of invalidity of the '073
8 patent, 3) declaratory judgment of non-infringement of the '724 patent, 4) declaratory
9 judgment of invalidity of the '724 patent, 5) breach of the confidentiality agreement under
10 Arizona law, 6) violation of the California Unfair Competition law, and 7) a claim for
11 negligent interference with prospective economic advantage under California law.

12 A. Defendant Adams' and Optima Technology Group's Motion to Dismiss

13 Defendants Adams and Optima Technology filed a motion to dismiss the Plaintiff's
14 entire complaint on multiple grounds. However, in the Defendants' Reply the Defendants
15 voluntarily withdrew all of their arguments except the argument that this Court lacks subject
16 matter jurisdiction over counts five through seven of the Plaintiff's complaint.

17 In a motion to dismiss for lack of subject matter jurisdiction, the Court must liberally
18 construe the sufficiency of the complaint, accept all allegations as true, and draw all
19 reasonable inferences in the plaintiff's favor. *Campanelli v. Bockrath*, 100 F.3d 1476, 1479
20 (9th Cir. 1996).

21 The Defendants concede the Court has jurisdiction over the first four claims of the
22 complaint. A case or controversy exists in a noninfringement or invalidity of a patent claim
23 if the plaintiff can show an explicit threat or other action by the patentee, which creates a
24 substantial controversy and "present activity which could constitute infringement or concrete
25 steps taken with the intent to conduct such activity." *Predicate Logic, Inc. v. Distributive*
26 *Software, LLC*, 2007 WL 2070345, *4 (S.D. Cal. 2007). To determine if infringement has
27 occurred requires "two steps: (1) the court must first interpret the claim, and (2) it must then
28 compare the properly construed claims to the allegedly infringing device." *SafeTCare Mfg.*,

1 *Inc. v. Tele-Made, Inc.*, 497 F.3d 1262, 1268 (Fed. Cir. 2007). To determine whether the
2 patent is valid the Court will have to determine if the Defendants actually invented the
3 product and/or otherwise complied with the conditions of patentability. 35 U.S.C. §§ 101,
4 102, 103, 112.

5 In order to exercise supplemental jurisdiction the Court must determine whether the
6 state law claims are part of the same case or controversy as the patent non-infringement
7 claims and the invalidity of the claimed patents. *See* 28 U.S.C. §1367. Claims are part of
8 the same case or controversy if they derive from a common nucleus of operative facts and
9 the plaintiff would ordinarily expect the claims to be tried in one judicial proceeding. *Finley*
10 *v. United States*, 490 U.S. 545, 549, 109 S. Ct. 2003, 104 L.Ed.2d 593 (1989).

11 I. The Breach of Contract Claim

12 To prove an action based on breach of contract, the plaintiff must prove the existence
13 of a contract, breach of the contract, and damages. *Cartone, Inc. v. Bernini*, 207 Ariz. 162,
14 170 (App. 2004). The operative facts of the Plaintiff's contract claim are: the parties entered
15 a confidentiality agreement on August 22, 2007, this agreement prevented the parties from
16 disclosing to third parties the parties' discussions about potential license agreements, the
17 Defendants breached this agreement, and the Plaintiff suffered damages. The Plaintiff argues
18 it is hard to imagine of another state law claim more related to the invalid and non-
19 infringement patent claim than such a breach of contract claim.

20 In *Crater Corp. v. Lucent Techs., Inc.*, the district court dismissed the plaintiff's
21 claims for patent infringement for lack of subject matter jurisdiction and subsequently
22 determined it could not exercise supplemental discretion over the plaintiff's state law claims.
23 255 F.3d 1361, 1363 (Fed. Cir. 2001). The Federal Circuit Court found the district court had
24 jurisdiction over the plaintiff's patent infringement claims, and summarily determined the
25 district court had supplemental jurisdiction over the plaintiff's state law claims for breach of
26 contract and misappropriation of trade secrets. *Id.* at 1370-71. The Circuit Court then
27 remanded the case for further proceedings with regard to the district court's supplemental
28 jurisdiction of the plaintiff's state law claims. *Id.* However, the court did not discuss what

1 factors the court used to determine the state law claims and the plaintiff's patent infringement
2 claims were part of the same case or controversy.

3 In *Trilithic Inc. v. Wavetek*, the plaintiff sought to amend the complaint to include a
4 state law claim for breach of a non-disclosure agreement created to facilitate settlement, the
5 plaintiff argued a common nucleus existed because the disclosure agreement would not have
6 existed but for the patent litigation. 6 F. Supp.2d 803, 806 (S.D. Ind. 1998). The court found
7 the breach of contract action was separate and independent from the patent infringement
8 action because the resolution of the contract claim required the determination of completely
9 different facts than the patent infringement claim and therefore outside of the court's
10 supplemental jurisdiction. *Id.* A casual relationship is not sufficient to create supplemental
11 jurisdiction, the state and federal claims must share some operative facts for a federal court
12 to exercise supplemental jurisdiction. *Id.* at 807.

13 In this case, the *Trilithic* case is more instructive and persuasive than *Craier*. None
14 of the facts required to resolve the four federal claims are necessary to resolve the breach of
15 contract claim. The Plaintiff's breach of contract claim will rise and fall on facts not related
16 to the facts necessary to determine whether the patents are valid or whether the Plaintiff
17 infringed on those patents. Therefore, the Court does not have supplemental jurisdiction over
18 the Plaintiff's breach of contract claim.

19 II. The Negligent Interference with Prospective Economic Advantage Claim

20 To establish a claim for negligent interference with prospective economic advantage
21 the plaintiff must demonstrate:

22 1) An economic relationship existed between the plaintiff and a third party which
23 contained a reasonably probable future economic benefit or advantage to plaintiff; 2)
24 The defendant knew of the existence of the relationship and was aware or should have
25 been aware that if it did not act with due care its actions would interfere with this
26 economic benefit or advantage of the relationship; 3) The Defendant was negligent;
and 4) Such negligence caused damage to plaintiff in that the relationship was actually
interfered with or disrupted and plaintiff lost in whole or in part the economic benefits
or advantage reasonably expected from the relationship.

27 *Venhaus v. Shultz*, 155 Cal. App. 4th 1072, 1078 Cal. Rptr.3d 432, 435-36 (App. 2007).

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1 The operative facts of this claim are almost exactly the same as the operative facts as
2 the breach of contract claim and negligent interference claim. The additional operative facts
3 required to prove the Unfair Competition claim are different then the operative facts required
4 to resolve the federal claims. Therefore, the Court lacks supplemental jurisdiction over the
5 Plaintiff's California Unfair Competition claim.

6 B. Defendant Adams' Motion to Dismiss for Lack of Personal Jurisdiction

7 Defendant Adams moved this Court to dismiss the case against him for lack of
8 personal jurisdiction. However, the Plaintiff only asserted the unfair competition and
9 negligent interference claims against Defendant Adams. (Docket No. 53, p. 2). Since the
10 Court lacks supplemental jurisdiction over the unfair competition and negligent interference
11 claims the Defendant's Motion is moot.

12 C. Defendant Margolin's Motion to Dismiss and Request for a Stay

13 In the Defendant's Reply (Docket No. 71), the Defendant argues that if the Court
14 dismisses the state law claims then Defendant Margolin should also be dismissed because
15 there are no remaining claims against Defendant Margolin. However, Defendant Margolin
16 is a potential owner of the '073 and '724 patents. (Docket No. 58, ¶23). Therefore,
17 Defendant Margolin may be a necessary party to the remaining federal claims and cannot be
18 dismissed at this time.

19 The Defendant also requests a stay of Defendant Margolin's Motion to Dismiss
20 because the dismissal of the state law claims would result in the dismissal of Defendant
21 Margolin. However, as discussed above the dismissal of the Plaintiff's state law claim does
22 not result in the dismissal of Defendant Margolin as a necessary party in the remaining
23 claims. Therefore, the Defendant has not shown good cause for a stay and a stay of the
24 proceedings will not be granted.

25 Therefore, IT IS HEREBY ORDERED:

26 1) Defendants Adams' and Optima Technology's Motion to Dismiss (Docket No. 13)
27 as amended by (Docket No. 72) is GRANTED. Counts five, six, and seven of the Plaintiff's
28 Complaint are dismissed without prejudice to the Plaintiff refiling these claims in state court.

1 Additionally, counts two, three, four, and seven through twelve of the Defendants' state law
2 counterclaims, cross-claims, and third-party claims are dismissed without prejudice.

3 2) Defendant Adams' Motion to Dismiss (Docket No. 17) is DENIED as moot.
4 Defendant Adams is dismissed as a party in this action as there are no remaining claims
5 asserted against him.

6 3) Defendant Margolin's Motion to Dismiss (Docket No. 21) is DENIED.

7 4) Defendant Margolin's Request for a Stay of Proceedings (Docket No. 71) is
8 DENIED.

9 DATED this 9th day of April, 2008.

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14 Raner C. Collins
United States District Judge

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16 **IN THE UNITED STATES DISTRICT COURT**

17 **DISTRICT OF ARIZONA**

18 UNIVERSAL AVIONICS SYSTEMS
19 CORPORATION,

20 Plaintiff,

21 v.

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

25 Defendants.

Case No. 07-CV-00588-RC

**UNIVERSAL AVIONICS SYSTEMS
CORPORATION'S REPLY TO
DEFENDANT OPTIMA
TECHNOLOGY GROUP, INC.'S
COUNTERCLAIMS**

(Assigned to the Hon. Raner C. Collins)

26 Plaintiff Universal Avionics Systems Corporation ("UAS") replies to Defendant Optima Technology Group, Inc.'s ("OTG's") Counterclaims as follows:

PARTIES, JURISDICTION, AND VENUE

1. UAS lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies the same.
2. UAS admits the allegations of Paragraph 2.

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FIRST AFFIRMATIVE DEFENSE

1. UAS has not and does not directly or indirectly infringe any valid and enforceable claim of the '073 patent, either literally or under the doctrine of equivalents.

SECOND AFFIRMATIVE DEFENSE

2. Each claim of the '073 patent is invalid for failing to satisfy one or more requirements of the Patent Act, 35 U.S.C. § 1, *et seq.*, including, but not limited to, the conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.

THIRD AFFIRMATIVE DEFENSE

3. OTG's Counterclaims fail to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

4. OTG lacks standing to assert its Counterclaims, at least because it does not own or retain exclusive rights to the patents-in-suit.

FIFTH AFFIRMATIVE DEFENSE

5. OTG's Counterclaims are barred by the equitable doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

6. OTG's Counterclaims are barred as a result of OTG's fraud.

7. Specifically, upon information and belief, at some point between September 21, 2007 and October 5, 2007, Defendant Margolin created a Patent Assignment which he knowingly and fraudulently back-dated to July 20, 2004, whereby he attempted to assign the entire right, title and interest in the '073 and '724 patents to OTG.

8. UAS incorporates herein by reference Paragraph 35 of the Second Amended Complaint and Paragraphs 14 and 36 through 43 of the First Amended Complaint.

SEVENTH AFFIRMATIVE DEFENSE

9. OTG's Counterclaims are barred by laches.

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EIGHTH AFFIRMATIVE DEFENSE

10. OTG's Counterclaims are barred due to its patent misuse.

NINTH AFFIRMATIVE DEFENSE

11. The '073 patent is unenforceable as a result of inequitable conduct committed by an individual or individuals associated with the filing, procurement and/or assignment of the '073 patent and/or the patent applications related thereto.

12. UAS incorporates herein by reference Paragraph 35 of the Second Amended Complaint and Paragraphs 14 and 36 through 43 of the First Amended Complaint.

TENTH AFFIRMATIVE DEFENSE

13. OTG is barred from relief for infringement of the '073 patent under the equitable doctrine of prosecution laches.

ELEVENTH AFFIRMATIVE DEFENSE

14. The '073 patent is unenforceable due to OTG's failure to timely disclaim the invalid claims therein pursuant to 35 U.S.C. §§ 253 and 288.

15. UAS reserves the right to amend its affirmative defenses as further dictated by discovery in this case.

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RESPECTFULLY SUBMITTED this 12th day of August 2008.

GREENBERG TRAURIG, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2008, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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I hereby certify that on _____, 2008, I served the attached document by United States First Class Mail upon the following, who are not registered participants of the CM/ECF System:

By: /s/ Sue Cole
Employee, Greenberg Traurig, LLP