

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

HAWK TECHNOLOGY SYSTEMS, LLC,	)	
	)	
<i>Plaintiff,</i>	)	Case No. 1:13-CV-20632-CMA
	)	
v.	)	JURY TRIAL DEMANDED
	)	
VICON INDUSTRIES, INC.,	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**DEFENDANT VICON INDUSTRIES, INC.'S ANSWER AND DEFENSES TO HAWK  
TECHNOLOGY SYSTEMS, LLC'S COMPLAINT**

Defendants Vicon Industries, Inc. ("Vicon") hereby answers the Complaint filed on February 21, 2013 ("Complaint") by Plaintiff Hawk Technology Systems, LLC ("Hawk"), responding to the separately enumerated paragraphs of the Complaint as follows:

**NATURE OF THE ACTION**

1. Vicon admits that the Complaint alleges infringement of United States Patent No. RE43,462 (the "'462 Patent"), and that the '462 Patent purports to be a continuation of United States Patent No. 5,265,410 (the "'410 Patent"). Vicon denies that the '462 Patent is a continuation of United States Patent No. 5,265,410 as recited in the Complaint, and denies the remainder of the allegations of Paragraph 1 of the Complaint.

**PARTIES**

2. Vicon does not have the knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint, and therefore denies them.

3. Vicon admits the allegations of Paragraph 3 of the Complaint.
4. Vicon admits the allegations of Paragraph 4 of the Complaint.
5. Vicon admits the allegations of Paragraph 5 of the Complaint.

#### **JURISDICTION AND VENUE**

6. Vicon admits that the Complaint purports to be an action for infringement of a United States patent arising under 35 U.S.C. § 1 *et. seq.* Vicon admits that this Court has subject matter jurisdiction of the action under 28 U.S.C. § 1331 and § 1338(a), but Vicon denies the legal sufficiency of Plaintiff's claims and allegations. Vicon denies any remaining allegations of Paragraph 6 of the Complaint.

7. Vicon admits for the purposes of this litigation only that this Court has personal jurisdiction over it, but denies the legal sufficiency of Plaintiff's claims and allegations. Vicon admits that it has transacted business in this judicial district. Vicon denies any remaining allegations of Paragraph 7 of the Complaint.

8. Vicon admits for the purposes of this litigation only that venue is proper in this judicial district. Vicon denies that this venue is the most appropriate or convenient forum for this litigation and reserves the right to seek a transfer to a more convenient judicial district.

#### **GENERAL ALLEGATIONS**

9. Vicon does not have the knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint, and therefore denies them.

10. Vicon admits that the '462 Patent identifies Ken Washino and Barry Schwab as inventors. Vicon denies any remaining allegations of Paragraph 10 of the Complaint.

11. Vicon does not have the knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint, and therefore denies them.

12. Vicon does not have the knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint, and therefore denies them.

**CLAIM 1 OF THE '462 PATENT**

13. Vicon admits that Paragraph 13 of the Complaint properly recites Claim 1 of the '462 Patent as amended through the reexamination proceeding. Vicon denies any remaining allegations of Paragraph 13.

**CLAIM 12 OF THE '462 PATENT**

14. Vicon admits that Paragraph 14 of the Complaint properly recites Claim 12 of the '462 Patent as amended through the reexamination proceeding. Vicon denies any remaining allegations of Paragraph 14.

**CLAIM 15 OF THE '462 PATENT**

15. Vicon admits that Paragraph 15 of the Complaint properly recites Claim 15 of the '462 Patent as amended through the reexamination proceeding. Vicon denies any remaining allegations of Paragraph 15.

16. Vicon admits that it develops, produces, and sells high definition security systems. Vicon denies any remaining allegations of Paragraph 16.

17. Vicon denies the allegations of Paragraph 17 of the Complaint.

18. Vicon denies the allegations of Paragraph 18 of the Complaint.

19. Vicon does not have the knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint, and therefore denies them.

20. Vicon denies the allegations of Paragraph 20 of the Complaint.

**COUNT I: ALLEGED DIRECT INFRINGEMENT OF THE '462 PATENT**

21. Vicon incorporates by reference its responses to Paragraphs 1 through 20 as if set forth fully herein.

22. Vicon denies the allegations of Paragraph 22 of the Complaint.

23. Vicon denies the allegations of Paragraph 23 of the Complaint.

24. Vicon denies the allegations of Paragraph 24 of the Complaint.

25. Vicon denies the allegations of Paragraph 25 of the Complaint.

26. Vicon denies the allegations of Paragraph 26 of the Complaint.

Vicon denies that Plaintiff is entitled to any of the relief prayed for in Plaintiff's Complaint in Paragraphs A-E as set forth following Paragraph 26. Vicon denies any remaining allegations contained in Paragraphs A-E following Paragraph 26 of the Complaint.

**COUNT II: ALLEGED INDUCEMENT OF PATENT INFRINGEMENT**

27. Vicon incorporates by reference its responses to Paragraphs 1 through 26 as if set forth fully herein.

28. Vicon denies the legal sufficiency of Plaintiff's purported identification of third parties. Vicon denies the allegations of Paragraph 28 of the Complaint.

29. Vicon denies the legal sufficiency of Plaintiff's purported identification of third parties. Vicon denies the allegations of Paragraph 29 of the Complaint.

Vicon denies that Plaintiff is entitled to any of the relief prayed for in Plaintiff's Complaint in Paragraphs A-E as set forth following paragraph 29. Vicon denies any remaining allegations contained in Paragraphs A-E following Paragraph 29 of the Complaint.

**COUNT III: ALLEGED CONTRIBUTORY PATENT INFRINGEMENT**

30. Vicon incorporates by reference its responses to Paragraphs 1 through 29 as if set forth fully herein.

31. Vicon denies the allegations of Paragraph 31 of the Complaint.

32. Vicon denies the legal sufficiency of Plaintiff's purported identification of accused products. Vicon denies the allegations of Paragraph 32 of the Complaint.

Vicon denies that Plaintiff is entitled to any of the relief prayed for in Plaintiff's Complaint in Paragraphs A-E set forth following Paragraph 32. Vicon denies any remaining allegations contained in Paragraphs A-E following Paragraph 32 of the Complaint.

**JURY DEMAND**

Vicon admits that Plaintiff requests a trial by jury of any issues so triable, and Vicon hereby requests a trial by jury pursuant to Federal Rule of Civil Procedure 38.

**GENERAL DENIAL AND RESPONSE TO REQUEST FOR RELIEF**

Except as expressly admitted herein, Vicon denies each and every allegation contained in Plaintiff's Complaint. Vicon denies that Plaintiff is entitled to be awarded any of the relief sought in its prayer for relief against Vicon. Vicon has not directly, indirectly, contributorily, and/or by inducement, literally and/or by the doctrine of equivalents infringed – willfully or otherwise – any valid and enforceable claim of the '462 Patent. Plaintiff is not entitled to recover damages, interest, costs, fees, or any other type of remedy from Vicon. Plaintiff's prayers should, therefore, be denied in their entirety and with prejudice, and Plaintiff should take nothing therefrom. Vicon asks that judgment be entered for it, and that it be awarded attorneys' fees in defending against the Complaint, together with such other and further relief as the Court deems appropriate.

## **DEFENSES**

Pursuant to Federal Rules of Civil Procedure 8(b) and (c), without assuming any burden that it would not otherwise bear, without reducing or removing Plaintiff's burdens of proof on its affirmative claims against Vicon, without waiving its right to assert additional defenses, and solely to the extent deemed necessary by the Court to maintain any or all of the following defenses, Vicon asserts the following defenses to Plaintiff's Complaint:

### **FIRST DEFENSE (Failure to State a Claim)**

Plaintiff's Complaint fails to state a claim upon which relief can be granted against Vicon.

### **SECOND DEFENSE (Noninfringement)**

Vicon does not infringe and has not infringed any valid and enforceable claim of the '462 Patent, either directly or indirectly, literally, under the doctrine of equivalents, contributorily, by way of inducement, and/or via any other mechanism of liability under the Patent Act.

### **THIRD DEFENSE (Invalidity)**

On information and belief, the claims of the '462 Patent are invalid and/or unenforceable for failure to comply with one or more of the conditions of patentability set forth in Part II of Title 35 of the United States Code, including, without limitation, for example, 35 U.S.C. §§ 101, 102, 103, and 112.

**FOURTH DEFENSE  
(License Agreement)**

Plaintiff's claims for patent infringement are precluded in whole or in part to the extent that any allegedly infringing products are supplied, directly or indirectly, to Vicor by an entity or entities having express or implied licenses to the '462 Patent, under the doctrine of patent exhaustion, and/or to the extent Vicor is licensed to the '462 Patent.

**FIFTH DEFENSE  
(Limitations on Damages)**

Plaintiff's claim for damages and other remedies is limited under 35 U.S.C. §§ 286 and 287. Plaintiff is barred under 35 U.S.C. § 287 from recovering damages prior to the date of the filing of the Complaint. Plaintiff is barred by 35 U.S.C. § 288 from recovering costs associated with its action.

**SIXTH DEFENSE  
(No Exceptional Case)**

Vicor has engaged in all of its activities in good faith, and Plaintiff cannot prove that this is an exceptional case justifying an award of attorney fees against Vicor pursuant to 35 U.S.C. § 285.

**SEVENTH DEFENSE  
(Lack of Standing)**

Plaintiff has failed to provide adequate evidence of ownership of, and the right to sue and receive remedies under, the '462 Patent. Plaintiff therefore lacks standing to bring suit for alleged infringement of the '462 Patent.

**EIGHTH DEFENSE  
(Equitable Defenses)**

Plaintiff's claims may be barred, in whole or in part, by estoppel, laches, waiver, unclean hands, and/or other equitable doctrines.

**NINTH DEFENSE**  
**(Abatement and/or Intervening Rights)**

Plaintiff's claims may be barred from enforcing the claims of the '462 Patent under the doctrines of abatement, and absolute and/or equitable intervening rights under 35 U.S.C. § 252 due to having amended their claims in the '462 Patent. Before the issuance of the '462 Patent, Vicon made substantial preparations related to the making, using, offering to sell, and/or selling of the accused products and/or services. Under 35 U.S.C. § 252, and the doctrines of abatement, absolute and equitable intervening rights, Vicon is not liable for infringement for activities prior to issuance of the '462 Patent and Vicon is permitted to continue these activities without liability to Plaintiff and without the need for a license or other authority from Plaintiff.

**TENTH DEFENSE**  
**(Dedication to the Public)**

Plaintiff has dedicated to the public all methods, systems, apparatuses, and/or products disclosed in the '462 Patent but not literally claimed therein, and is estopped from claiming infringement by any such public domain methods, systems, apparatuses, and/or products.

**ELEVENTH DEFENSE**  
**(Prosecution History Estoppel)**

Plaintiff's alleged cause of action for patent infringement is barred under the doctrine of prosecution history estoppel. Plaintiff is estopped from making any assertion inconsistent with or negating any argument, representation, or position taken in course of prosecuting the application that issued as the '410 Patent or the '462 Patent.

**TWELFTH DEFENSE**  
**(No Enhanced Damages)**

Plaintiff has failed to plead and meet the requirements for enhanced damages.



**THIRTEENTH DEFENSE**  
**(Failure to Disclaim Invalid Claim)**

As Plaintiff did not file a disclaimer of the invalid claims of the '462 Patent in the Patent Office before commencing its infringement action, it is not entitled to recover any costs.

Vicon reserves any and all rights to amend its Answer and Defenses to Plaintiff's Complaint and to add additional defenses as they become apparent.

Dated: April 12, 2013

Respectfully submitted,

By: /s/ Samuel O. Patmore

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 12, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Samuel O. Patmore