

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FIRE 'EM UP, INC.,)	
)	
Plaintiff,)	
v.)	Case No. 10 CV 08050
)	
TECHNOCARB EQUIPMENT (2004) LTD; and AURORA ELECTRONICS, LTD.)	Judge Norgle
)	
Defendants.)	<u>JURY TRIAL DEMANDED</u>
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**TECHNOCARB EQUIPMENT (2004) LTD. AND AURORA ELECTRONICS,
LTD.'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS
TO PLAINTIFF'S COMPLAINT**

Defendants Technocarb Equipment (2004) Ltd. ("Technocarb"), and Aurora Electronics, Ltd. ("Aurora") (collectively "Defendants") answer the Complaint filed in this action by Plaintiff Fire 'Em Up, Inc. ("FEU") as follows:¹

JURISDICTION AND VENUE

1. This lawsuit is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §101, et seq. According, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a) & (b).

ANSWER: Defendants admit that the complaint purports to state a claim arising under the patent laws of the United States, Title 35 of the United States Code, and that such a claim, if proper, would arise within the Court's subject matter jurisdiction, but deny that the complaint states a valid claim.

¹ FEU has previously dismissed its claims against Intigreen Technologies, Inc. and the individual defendants. (Dkt. Nos. 10 & 15).

2. This Court also has supplemental jurisdiction over the Illinois state law claims pursuant to 28 U.S.C. § 1367.

ANSWER: Defendants deny the allegations in paragraph 2. For at least the reasons set forth in defendants' concurrently filed motion to dismiss and supporting memorandum, the complaint does not state any valid Illinois state law claims.

3. This Court has personal jurisdiction over Technocarb. On information and belief, Technocarb has significant contacts with this forum because Technocarb manufacturers (directly or indirectly through third party manufacturers) and/or assembles products that are and have been offered for sale, sold, purchased, and used in the Northern District of Illinois. On information and belief, Technocarb, directly and/or through its distribution network, places infringing devices within the stream of commerce, with the knowledge and/or understanding that such infringing devices will be sold in the Northern District of Illinois. Moreover, on information and belief, Technocarb has distributors within the Northern District of Illinois and expects or should reasonably expect its infringing actions to have consequences in the Northern District of Illinois. Therefore, exercise of jurisdiction over Technocarb will not offend traditional notions of fair play and substantial justice. Such an exercise is consistent with the Illinois long-arm statute, 735 Ill. Comp. Stat. 5/2-209 (2010).

ANSWER: Technocarb denies the allegations in paragraph 3, except admits for the purpose of this case only that the Court has personal jurisdiction over Technocarb. Aurora lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 3, and therefore denies those allegations.

4. Technocarb through its agreement with FEU has agreed that the laws of the State of Illinois and applicable Federal laws would govern their agreement. See Exhibit 1.

ANSWER: Denied as to Technocarb. Except, admitted that Technocarb has at least the identified agreements with FEU and that those agreements, regarding Japan, the Philippines, Australia and New Zealand, state that they are controlled by Illinois law. Technocarb's and FEU's relationship in Canada and the United States, as well as any other territories, were governed by oral agreements that did

not specify any controlling law and may not be governed by Illinois law. Aurora lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 4, and therefore denies those allegations.

5. This Court has personal jurisdiction over Intigreen. On information and belief, Intigreen has significant contacts with this forum because Intigreen has offered for sale, sold, purchased, or used Technocarb's infringing product in the Northern District of Illinois. On information and belief, Intigreen, directly and/or through its distribution network, places infringing devices within the stream of commerce, with me knowledge and/or understanding that such infringing devices will be sold in the Northern District of Illinois. Therefore, exercise of jurisdiction over Intigreen will not offend traditional notions of fair play and substantial justice. Such an exercise is consistent with the Illinois long-arm statute, 735 Ill. Comp. Stat. 5/2-209 (2010).

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 5, and therefore deny those allegations. Further answering, FEU has voluntarily dismissed Intigreen as a defendant in this action. (Dkt. 10.)

6. This Court has personal jurisdiction over Aurora. On information and belief, Aurora has significant contacts with this forum because Aurora has offered for sale, sold, purchased, or used Technocarb's infringing product in the Northern District of Illinois. On information and belief, Aurora, directly and/or through its distribution network, places infringing devices within the stream of commerce, with the knowledge and/or understanding that such infringing devices will be sold in the Northern District of Illinois. Therefore, exercise of jurisdiction over Intigreen will not offend traditional notions of fair play and substantial justice. Such an exercise is consistent with the Illinois long-arm statute, 735 Ill. Comp. Stat. 5/2-209 (2010).

ANSWER: Aurora denies the allegations in paragraph 6, except admits for the purpose of this case only that the Court has personal jurisdiction over Aurora. Technocarb lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 6, and therefore denies those allegations.

7. Venue is proper in the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. §1391(a)(2) & (3) and (d), in

that the agreement between Technocarb and FEU was executed in Waukegan, Illinois, a substantial part of the acts giving rise to this action occurred or were transmitted from this district, the defendants place their product in the stream of commerce in Illinois and the defendant corporations are foreign companies which may be sued in any district.

ANSWER: Defendants deny the allegations in paragraph 7, except that Defendants admit for the purposes of this case only that venue is proper in this judicial district. Defendants further admit they are foreign entities.

INTRODUCTION

8. This is an action brought by Fire 'Em Up against Technocarb for Technocarb's infringement of FEU's U.S. Patent No. 7,100,582B1 (hereinafter "patent"), breach of contract, unfair competition, and breach of the covenant of good faith and fair dealing.

ANSWER: Defendants deny the allegations in paragraph 8, except that Defendants admit that the complaint purports to state a claim for patent infringement, and breach of contract against Technocarb. Defendants deny that the complaint states any valid claim.

9. This is an action brought by FEU against David Shea, individually and as agent for Technocarb, for infringement of FEU's patent and fraud.

ANSWER: Defendants deny the allegations in paragraph 9. Further answering, FEU has voluntarily dismissed David Shea as a defendant in this action. (Dkt. 15.)

10. This is an action brought by FEU against Peter Gordon, individually and as agent for Technocarb, for infringement of FEU's patent and fraud.

ANSWER: Defendants deny the allegations in paragraph 10. Further answering, FEU has voluntarily dismissed Peter Gordon as a defendant in this action. (Dkt. 15.)

11. This is an action brought by FEU against Intigreen for infringement of FEU's patent.

ANSWER: Defendants deny the allegations in paragraph 11. Further answering, FEU has voluntarily dismissed Intigreen as a defendant in this action. (Dkt. 10.)

12. This is an action brought by FEU against Aurora for infringement of FEU's patent.

ANSWER: Defendants deny the allegations in paragraph 12, except that Defendants admit that the complaint purports to state a claim for patent infringement against Aurora. Defendants deny that the complaint states any valid claim.

13. This is an action brought by FEU against Jeff Buechler, individually and as agent for Aurora for infringement of FEU's patent and fraud.

ANSWER: Defendants deny the allegations in paragraph 13. Further answering, FEU has voluntarily dismissed Jeff Buechler as a defendant in this action. (Dkt. 15.)

14. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Fire Em Up demands a trial by jury of this action.

ANSWER: Paragraph 14 contains a jury demand, and Defendants therefore make no answer to this paragraph.

PARTIES

15. Fire Em Up, Inc. is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business at 3800 Hawthorne Court, Waukegan, IL 60087.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 15, and therefore deny those allegations.

16. Technocarb Equipment (2004) Ltd. is a limited company organized and existing under the laws of the Province of British Columbia, Canada, having its principal place of business at 4-30435 Progressive Way, Abbotsford, British Columbia, Canada V2T 6W3.

ANSWER: Admitted.

17. Upon information and belief, David Shea resides in Sparwood, British Columbia, Canada.

ANSWER: Defendants deny the allegations in paragraph 17.

18. At all relevant times, David Shea was an officer, employee and/or agent of Technocarb.

ANSWER: Admitted.

19. Upon information and belief, Peter Gordon resides in British Columbia, Canada.

ANSWER: Admitted.

20. At all relevant times, Peter Gordon was an officer, employee and/or agent of Technocarb.

ANSWER: Admitted.

21. At all relevant times, Intigreen was a joint venture between Technocarb and LifeForce, organized and existing under the laws of the State of California, having its principal place of business at 485 Victor Way, Unit 16, Salinas, CA 93907.

ANSWER: Admitted that at certain times Intigreen was a joint venture between Technocarb and LifeForce. Otherwise, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21, and therefore deny those allegations.

22. At all relevant times, Aurora was a limited liability company organized and existing under the laws of the Province of British Columbia, Canada, having its principal place of business at 3-34346 Manufacturer's Way, Abbotsford, British Columbia, Canada V2S 7M1.

ANSWER: Denied that Aurora is a limited liability corporation. Otherwise, admitted.

23. Upon information and belief, Jeffrey Buechler resides in British Columbia, Canada.

ANSWER: Admitted.

24. At all relevant times, Jeffrey Buechler was an officer, employee and/or agent of Aurora.

ANSWER: Admitted that Jeffrey Buechler has been an officer, employee and/or agent of Aurora. Otherwise, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24, and therefore deny those allegations.

ALLEGATIONS COMMON TO ALL COUNTS

25. Jeffrey Bach is the inventor who invented and sought a patent for "Propane Injection Control System and Apparatus for Vehicles," patent number US 7,100,582 B1. A true and correct copy of the patent is attached to this Complaint as Exhibit 2.

ANSWER: Denied to the extent that Jeffrey Bach is implied to be the sole inventor of U.S. Patent No. 7,100,582 B1 (the "582 Patent"). Otherwise, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25, and therefore deny those allegations, except that Defendants admit that the '582 Patent is titled "Propane Injection Control System and Apparatus for Vehicles."

26. At all relevant times, Jeffrey Bach was an Illinois resident and citizen.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26, and therefore deny those allegations.

27. Jeffrey Bach is the inventor of the Diesel Magnum, which was patented as "Propane Injection Control System and Apparatus for Vehicles", U.S. Patent No. 7,100,582B1.

ANSWER: Denied to the extent that Jeffrey Bach is implied to be the sole inventor of the '582 Patent or the Diesel Magnum. Otherwise, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27, and therefore deny those allegations, except that Defendants admit that the '582 Patent is titled "Propane Injection Control System and Apparatus for Vehicles."

28. After obtaining the patent, Jeffrey Bach assigned his rights to Dynamic Fuel Systems, Inc.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28, and therefore deny those allegations.

29. Dynamic Fuel Systems, Inc. was incorporated in the state of Illinois on April 23, 2004, and the company remains in good standing with the state.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29, and therefore deny those allegations.

30. Dynamic Fuel Systems, Inc. licensed Fire Em Up, Inc. to manufacture, test, sell, distribute, promote, and protect the patented product. See exhibit 3.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30, and therefore deny those allegations.

COUNT I: BREACH OF CONTRACT (TECHNOCARB)

31. Plaintiff re-allege and adopt paragraphs 1 through 30 above as paragraph 31 of Count I as if fully set forth herein.

ANSWER: Defendants incorporate their answers to paragraphs 1-30 as if fully set forth herein.

32. On February 7, 2008, FEU and Technocarb entered into a Master Distributorship Agreement. A true and accurate copy of the Master Distributorship Agreement is attached as exhibit 1.

ANSWER: Denied to the extent the statement suggests a written agreement, dated February 7, 2008, beyond the territories of the Philippines. Defendants further deny the statement to the extent that it suggests the two Master Distributorship Agreements attached as exhibit 1 were both executed on February 7, 2008, and suggest written agreements beyond the territories of Japan, the Philippines, Australia and New Zealand. Otherwise, admitted.

33. At all relevant times, FEU was in the business of manufacturing and marketing a product known as the Diesel Magnum TM Propane Injection System for Diesel Engines, known as the Diesel Magnum.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33, and therefore deny those

allegations, except that Defendants admit that FEU marketed a product called the Diesel Magnum.

34. FEU entered into an agreement whereby Technocarb would be the Master Distributor of the Diesel Magnum for Fire Em Up for 5 years commencing on February 11, 2008.

ANSWER: Denied to the extent the statement suggests a written agreement beyond the territories of Japan, Australia and New Zealand. Otherwise, admitted.

35. FEU, pursuant to the agreement, released to Technocarb trade secrets, secret information and other information that may or may not have been secret that is invaluable in manufacturing, promoting and selling the product and would provide a competitor with inside information allowing it to have an unfair advantage in competing with Manufacturer. See Exhibit 1, paragraph 2.

ANSWER: Defendants deny the allegations in paragraph 35.

36. Technocarb agreed not to use at any time or disclose to others any such information. See Exhibit 1, paragraph 2.

ANSWER: Defendants deny the allegations in paragraph 36, except that Defendants admit that the agreement contains a trade secret and confidentiality provision.

37. Technocarb also agreed that it "shall not as principal, agent, employee or otherwise, engage in or be concerned with any business activities directly or indirectly involving the use of goods in competition with those of Manufacturer within the territory or in any other place during the term of this agreement. Further, Master Distributor shall not at any time, except in performing the responsibilities of this agreement, divulge or use any confidential or business information relating to the business affairs of the Manufacturer." See Exhibit 1, paragraph 11.

ANSWER: Defendants deny the allegations in paragraph 37, except that Defendants admit that FEU has quoted a portion of the Master Distributor agreement.

38. Technocarb breached the agreement in one or more of the following ways:

a. Used the training and materials provided by FEU to develop its own fuel device that combines diesel and propane, known as EcoDiesel System;

b. Copied the technology of FEU to develop its own fuel device, EcoDiesel System;

c. Promotes and sells its own EcoDiesel System instead of using reasonable efforts to sell FEU's Diesel Magnum; and

d. Otherwise performed functions using the knowledge, information, and technology provided by FEU to FEU's detriment.

ANSWER: Defendants deny each and every allegation in this paragraph, including each of its subparts.

39. FEU has been damaged by the breaches of Technocarb, through reductions in the sale of the Diesel Magnum.

ANSWER: Defendants deny the allegations in paragraph 39.

**COUNT II: INFRINGEMENT OF U.S. PATENT NO. 7,100,582 B1
(TECHNOCARB)**

40. Fire Em Up incorporates by reference the preceding averments set forth in paragraphs 1-39.

ANSWER: Defendants incorporate their answers to paragraphs 1-39 as if fully set forth herein.

41. The patent, entitled "Propane Injection Control System and Apparatus for Vehicles," was duly and lawfully issued on September 5, 2006.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 41, and therefore deny those allegations.

42. Under the patent, Fire Em Up developed the device and trademarked it Diesel Magnum.

ANSWER: Defendants lack information or knowledge sufficient to form a belief as to the allegations in paragraph 42, and therefore deny those allegations.

43. On information and belief, Technocarb has infringed and is still infringing, contributorily infringing or inducing infringement of the patent, pursuant to 35 U.S. C. §271 (a), (b), (c), and/or (g), either directly and/or indirectly, literally or under the doctrine of equivalents, by their activities, including making, using, offering for sale and selling in the United States, and by importing into the United States, without authority, products and services, including but not limited to the EcoDiesel system.

ANSWER: Defendants deny the allegations in paragraph 43.

44. Technocarb's infringing activities have caused and will continue to cause Fire Em Up irreparable harm, for which it has no adequate remedy at law, unless Technocarb's infringing activities are enjoined by this Court in accordance with 35 U.S.C. §284.

ANSWER: Defendants deny the allegations in paragraph 44.

45. Fire Em Up has been and continues to be damaged by Technocarb's infringement of the patent in an amount to be determined at trial.

ANSWER: Defendants deny the allegations in paragraph 45.

46. On information and belief, Technocarb's infringement of the patent is willful and deliberate, and justifies an increase in damages up to three times in accordance with 35 U.S.C. §284.

ANSWER: Defendants deny the allegations in paragraph 46.

47. On information and belief, Technocarb's infringement of the patent is exceptional and entitles Fire Em Up to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

ANSWER: Defendants deny the allegations in paragraph 47.

COUNT III: INFRINGEMENT OF U.S. PATENT NO. 7,100,582 B1 (INTIGREEN)

FEU has voluntarily dismissed Intigreen as a defendant in this action. (Dkt. 10.)
Defendants therefore make no answer to this count.

COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 7,100,582 B1 (AURORA)

48. Fire Em Up incorporates by reference the preceding averments set forth in paragraphs 1-30.

ANSWER: Defendants incorporate their answers to paragraphs 1-30 as if fully set forth herein.

49. The patent, entitled "Propane Injection Control System and Apparatus for Vehicles," was duly and lawfully issued on September 5, 2006.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49, and therefore deny those allegations.

50. Under the patent, Fire Em Up developed the device and trademarked it Diesel Magnum.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50, and therefore deny those allegations.

51. On information and belief, Aurora has infringed and is still infringing, contributorily infringing or inducing infringement of the patent, pursuant to 35 U.S.C. §271 (a), (b), (c), and/or (g), either directly and/or indirectly, literally or under the doctrine of equivalents, by their activities, including making, using, offering for sale and selling in the United States, and by importing into the United States, without authority, products and services, including but not limited to the EcoDiesel system.

ANSWER: Defendants deny the allegations in paragraph 51.

52. Aurora's infringing activities have caused and will continue to cause Fire Em Up irreparable harm, for which it has no adequate remedy at law, unless Aurora's infringing activities are enjoined by this Court in accordance with 35 U.S.C. §284.

ANSWER: Defendants deny the allegations in paragraph 52.

53. Fire Em Up has been and continues to be damaged by Aurora's infringement of the patent in an amount to be determined at trial.

ANSWER: Defendants deny the allegations in paragraph 53.

54. On information and belief, Aurora's infringement of the patent is willful and deliberate, and justifies an increase in damages up to three times in accordance with 35 U.S.C. §284.

ANSWER: Defendants deny the allegations in paragraph 54.

55. On information and belief, Aurora's infringement of the patent is exceptional and entitles Fire Em Up to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

ANSWER: Defendants deny the allegations in paragraph 55.

COUNT V: TRADE SECRET MISAPPROPRIATION (TECHNOCARB)

Defendants have filed a motion to dismiss Count V of FEU's complaint, and therefore Defendants make no answer to this Count.

COUNT VI: CONVERSION (TECHNOCARB)

Defendants have filed a motion to dismiss Count VI of FEU's complaint, and therefore Defendants make no answer to this Count.

COUNT VII: FRAUD (ALL DEFENDANTS)

Defendants have filed a motion to dismiss Count VII of FEU's complaint, and therefore Defendants make no answer to this Count.

COUNT VIII: ACCOUNTING (ALL DEFENDANTS)

Defendants have filed a motion to dismiss Count VIII of FEU's complaint, and therefore Defendants make no answer to this Count.

AFFIRMATIVE DEFENSES

**First Affirmative Defense
(Failure to state a claim)**

The complaint fails to state a claim upon which relief may be granted.

**Second Affirmative Defense
(Invalidity)**

Upon information and belief, the '582 Patent and each and every claim contained therein is invalid for failure to satisfy at least one of the requirements for patentability under 35 U.S.C. §§ 101, 102, 103, 112 and/or for being otherwise in violation of one or more of the sections of Parts I, II, and III of Title 35 of the United States Code. More specifically and without limitation, the '582 Patent is invalid as anticipated pursuant to 35 U.S.C. § 102 or as obvious pursuant to 35 U.S.C. § 103 based upon prior art injection control systems for vehicles, including at least the Red Rooster system, as well as other ACME alternate fuel systems.

**Third Affirmative Defense
(Non-Infringement)**

Technocarb and Aurora have not and do not infringe, induce infringement, or contribute to the infringement of any claim of the '582 Patent, either literally or under the doctrine of equivalents. Furthermore, Technocarb and Aurora cannot be found to indirectly infringe the patents because there is no proof of actual knowledge of the patents or pre-suit notice of infringement prior to filing the instant suit.

**Fourth Affirmative Defense
(No Willfulness)**

Technocarb and Aurora cannot be found to have willfully infringed the patent. There is no allegation or evidence of knowledge of the patents or pre-suit notice of infringement prior to filing the instant suit. Furthermore, FEU has not met the additional elements requirement for a finding of post-filing willfulness.

**Fifth Affirmative Defense
(Inventorship)**

Upon information and belief, Jeffrey Bach is not the inventor of the '582 Patent. Pursuant to 35 U.S.C. § 102(f), Jeffrey Bach derived the patented technology from Marvin McKechnie and David Shea while McKechnie and Shea were employed by TechnoCarb. The '582 patent, therefore is invalid pursuant to 35 U.S.C. § 102(f).

**Sixth Affirmative Defense
(Inequitable Conduct)**

Marvin McKechnie and David Shea were at least joint inventors with Jeffrey Bach, if not the sole inventors, of the '582 Patent. Upon information and belief, Jeffrey Bach intentionally withheld the contributions and joint inventorship of Marvin McKechnie and David Shea when applying for and prosecuting the '582 Patent before the United States Patent and Trademark Office ("USPTO"), during which Bach and his counsel held Bach out as the sole inventor of the '582 Patent's technology. Because disclosure of inventorship of a patent is always material for 35 U.S.C. §§ 101, 102, 103, and 112 purposes, Bach's actions constitute inequitable conduct before the USPTO, and the '582 Patent is therefore invalid and unenforceable.

**Seventh Affirmative Defense
(Patent Marking)**

Upon information and belief, FEU is not entitled to any pre-suit damages for alleged infringement because of its failure to comply with 35 U.S.C. § 287 and/or its

failure to otherwise give proper notice that Defendant's actions allegedly infringed the '582 Patent.

**Eighth Affirmative Defense
(Laches)**

Upon information and belief, FEU's claims are barred by the equitable doctrine of laches, unclean hands, estoppel, and/or waiver.

**Ninth Affirmative Defense
(Unavailability of Injunctive Relief)**

FEU is not entitled to injunctive relief, because any injury to it is not immediate and irreparable, FEU would have an adequate remedy at law, the balance of hardships favors no injunction, and the public interest is best served by no injunction.

**Tenth Affirmative Defense
(Prior Breach)**

FEU breached the Master Distributor Agreement, to the extent it ever existed, by taking the exclusive license rights over FEU's products from Technocarb and giving them to Marvin McKechnie without proper notice or following the other requirements of the Master Distributor Agreement, or such other agreement as controlled the relevant relationship between the parties.

**Eleventh Affirmative Defense
(Other Affirmative Defenses Based on Later Discovered Evidence)**

Defendants reserve all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case. Furthermore, because of

their concurrently filed motion to dismiss, Defendants have not answered FEU's state law claims and will offer additional defenses that they may have to those claims along with an answer, should the claims not be dismissed.

COUNTERCLAIMS

For its counterclaims against FEU, Defendants allege as follows:

PARTIES

1. Technocarb Equipment (2004) Ltd. is a limited company organized and existing under the laws of the Province of British Columbia, Canada, with its principal place of business at 4-20435 Progressive Way, Abbotsford, British Columbia, Canada, V2T 6W3.

2. Aurora Electronics, Ltd. is a limited company organized and existing under the laws of the Province of British Columbia, Canada, with its principal place of business at 3-34346 Manufacturer's Way, Abbotsford, British Columbia, Canada, V2S 7M1.

3. According to paragraph 15 of the complaint, FEU is a corporation organized and existing under the laws of the State of Illinois.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

5. Venue for these counterclaims is proper within this district under at least 28 U.S.C. § 1391.

6. This Court has personal jurisdiction over FEU because FEU has submitted itself to the personal jurisdiction of this Court by commencing this action.

COUNT ONE

DECLARATION OF NON-INFRINGEMENT OF THE '582 PATENT

7. Defendants incorporate and reallege the allegations of paragraphs 1-6 of these counterclaims.

8. Defendants brings this action for declaratory judgment of non-infringement of the '582 Patent under the laws of the United States, in particular, 28 U.S.C. §§ 2201 and 2202.

9. FEU has alleged that Defendants have infringed the '582 Patent, and Defendants have denied these allegations.

10. Defendants have not infringed, directly, contributorily, by inducement, or otherwise, literally or under the doctrine of equivalents, any valid and enforceable claim of the '582 Patent, and is not liable for any acts of infringement of any such claim of the '582 Patent.

11. As evidenced by FEU's Complaint and Defendants' Answer thereto, there is an actual, substantial and continuing justiciable case or controversy between the parties regarding infringement of the '582 Patent.

12. Defendants are entitled to a declaratory judgment pursuant to 289 U.S.C. §§ 2201 and 2202 that Defendants do not infringe and have not infringed any valid claim of the '582 Patent.

COUNT TWO

DECLARATION OF INVALIDITY OF THE '582 PATENT

13. Defendants incorporate and reallege the allegations of paragraphs 1-12 of these counterclaims.

14. Defendants brings this action for declaratory judgment of invalidity of the '582 Patent under the laws of the United States, in particular, 28 U.S.C. §§ 2201 and 2202.

15. FEU has alleged that Defendants have infringed the '582 Patent, and Defendants have denied these allegations.

16. As evidenced by FEU's Complaint and Defendants' Answer thereto, there is an actual, substantial and continuing justiciable case or controversy between the parties regarding whether the claims of the '582 Patent are invalid.

17. One or more of the claims of the '582 Patent are invalid for failure to comply with one or more of the statutory provisions of 35 U.S.C. §§ 101, *et seq.*, including without limitation §§ 102, 103, and/or 112.

18. More specifically and without limitation, the '582 Patent is invalid as anticipated pursuant to 35 U.S.C. § 102 or as obvious pursuant to 35 U.S.C. § 103 based upon prior art injection control systems for vehicles, including at least the Red Rooster system, as well as other ACME alternate fuel systems.

19. The '582 Patent is also invalid pursuant to 35 U.S.C. § 102(f) because, upon and belief, Jeffrey Bach is not the inventor of the '582 Patent. The '582

Patent's claimed inventions were derived from Marvin McKechnie and David Shea while McKechnie and Shea were employed by TechnoCarb.

COUNT THREE

DECLARATION AND CORRECTION OF INVENTORSHIP

21. Defendants incorporate and reallege the allegations of paragraphs 1-12 of these counterclaims, but not paragraphs 13-20, and brings Count III of these counterclaims in the alternative to Count II.

22. As evidenced by Technocarb's 2004 conceptual drawing of one of the alternative fuel systems that Technocarb designed and then disclosed to FEU and Bach, Technocarb's employees, specifically at least Shea and McKechnie, were either the sole inventors of the '582 Patent or at least co-inventors along with Bach.

23. Section 256 of the Patent Act, 35 U.S.C. § 256, allows for the correction of inventorship where, "through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his part."

24. Because Marvin McKechnie and David Shea invented and/or discovered all or at least portions of the '582 Patent's invention, McKechnie and Shea, as well as possibly Bach, are inventors of some or all of the claims of the '582 Patent pursuant to 35 U.S.C. §§ 101 and 102.

25. Because McKechnie and Shea are either co-inventors along with Bach or the sole inventors of the '582 Patent, the alleged assignment from Bach to FEU of the '582 Patent is ineffective.

COUNT FOUR

ATTORNEYS FEES AND COSTS

26. Defendants incorporate and reallege the allegations of paragraphs 1-25 of these counterclaims.

27. This case is an exceptional case pursuant to 35 U.S.C. § 285, and therefore Defendants are entitled to an award of attorneys fees and costs.

COUNT FIVE

BREACH OF CONTRACT

28. Defendants incorporate and reallege the allegations of paragraphs 1-27 of these counterclaims.

29. In or about November of 2005, Marvin McKechnie and David Shea, as employees of TechnoCarb, were engaged in a program with Jeffrey Bach and FEU to further develop the Propane Injection Control System and Apparatus which later became the subject of the '582 Patent.

30. In or about November of 2005, as consideration for TechnoCarb's, continued assistance and work, Bach and FEU offered to make TechnoCarb the exclusive worldwide distributor, excepting the United States, for the resulting FEU technology and product.

31. In or about November of 2005, as consideration for its continued support, technical expertise, and future marketing and sales efforts, TechnoCarb accepted the FEU offer of an exclusive worldwide distributorship, excepting the United States.

32. Thereafter, TechnoCarb did fully perform its obligations under the exclusive worldwide distributorship agreement.

33. Despite TechnoCarb's performance, FEU has refused to allow TechnoCarb to serve as exclusive distributor for FEU's products in a number of jurisdictions.

34. Since November of 2005, FEU has granted Marvin McKechnie, individually and not as an employee or agent of TechnoCarb, distributorship rights for the Western sales territory of Canada.

35. Upon information and belief, FEU is marketing and selling its products in other jurisdictions in violation of the exclusive distributorship agreement FEU entered into with TechnoCarb in or about November of 2005.

36. FEU's use of other distributors, and refusal to allow TechnoCarb to serve as exclusive distributor of FEU's products in Canada and elsewhere, constitute a breach of the exclusive distributorship agreement.

37. As a result of FEU's breach, TechnoCarb has suffered real and actual damages.

PRAYER FOR JUDGMENT

WHEREFORE, Defendants pray for the following relief:

A. Dismissal of FEU's Complaint with prejudice and entry of judgment in favor of Defendants;

B. Judgment declaring that the asserted claims of the '582 Patent have not been infringed directly, jointly, indirectly, or by equivalent by the Defendants;

C. Judgment declaring that one or more claims of the '582 Patent are invalid and/or unenforceable pursuant to one or more statutory provisions of Title 35 of the United States Code;

D. In the alternative, judgment declaring that McKechnie and Shea are co-inventors of the '582 Patent;

E. Judgment declaring that the alleged assignment of the '582 Patent from Bach to FEU was ineffective, and naming McKechnie and Shea as joint-owners of the '582 Patent;

F. A judgment that this is an exceptional case pursuant to 35 U.S.C. § 285, and an award to Defendants of their costs and reasonable attorneys' fees, together with interest, including prejudgment interest thereon;

G. Defendants' actual damages for FEU's breach of the exclusive distributorship agreement in an amount to be proven at trial;

H. Defendants' incidental, indirect, and consequential damages for FEU's breach of the exclusive distributorship agreement in an amount to be proven at trial; and

I. Such other and further relief as may be deemed just and appropriate.

JURY DEMAND

Defendants request a jury trial on all issues so triable.

Respectfully submitted,

By: /s/Anna Z. Krasinski
One of their attorneys

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***ATTORNEYS FOR TECHOCARB
EQUIPMENT (2004) LTD. AND
AURORA ELECTRONICS, LTD.***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **April 11, 2011** the foregoing **Answer, Affirmative Defenses, and Counterclaims to Plaintiff's Complaint** was filed with Clerk of the Court for the Northern District of Illinois using the CM/ECF System, which automatically transmitted a Notice of Electronic Filing to all ECF registrants.

/s/Anna Z. Krasinski