

1 Byron Cooper, Bar No. 166578  
Email: bcooper@teklaw.co  
2 TEKLAW  
380 Hamilton Ave., #1278  
3 Palo Alto, CA 94302  
Telephone: (650) 283-4244  
4 Fax: (650) 617-3201

5 Richard T. Ogawa, Bar No. 159749  
Email: richard@rtogawa.com  
6 OGAWA P.C.  
313 Bryant Court  
7 Palo Alto, CA 94301  
Phone: 650 906-0323

8 Attorneys for Plaintiff  
9 GERALD STEVE RAGO

10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13  
14 GERALD STEVE RAGO, an Individual,  
15  
16 Plaintiff,

17 VS.

18 ANGLERS SELECT LLC., a New Jersey  
Limited Liability Company dba ECOPRO  
19 TUNGSTEN; JUSTIN LUCAS, an  
individual; and DOES 1 through 10,  
Inclusive,

20 Defendants.  
21

Case No. 5:17-cv-2456

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMAND**

1 Plaintiff Gerald Steve Rago ("Rago") complains and alleges as follows against  
2 Defendants Anglers Select LLC dba EcoPRO Tungsten ("EcoPRO"); Justin Lucas  
3 ("Lucas"), and DOES 1 through 10, Inclusive (collectively "Defendants").

4 **THE PARTIES**

5 1. Plaintiff Gerald Steve Rago is an individual who resides at [REDACTED]  
6 [REDACTED]. Rago does business as Rago Baits and  
7 designs and sells fishing baits and participates in fishing competitions as a  
8 professional multi-species trophy angler.

9 2. Anglers Select LLC is a New Jersey Limited Liability Corporation that  
10 does business as EcoPRO Tungsten with its principal place of business at 311  
11 Mechanic Street, Boynton, New Jersey 07045. On information and belief, EcoPRO  
12 designs, manufactures, offers for sale and sells fishing baits and other fishing  
13 equipment.

14 3. Justin Lucas is an individual who resides at [REDACTED]  
15 [REDACTED]. On information and belief, Lucas is the principal of  
16 Lucas Fishing, LLC and participates in fishing competitions as a professional sport  
17 fisherman and engages in the marketing and sale of fishing baits and other fishing  
18 products.

19 4. The true names and capacities of the Defendants sued herein as DOES 1  
20 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such  
21 Defendants by fictitious names. Each of the Defendants designated herein as a DOE  
22 is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of  
23 Court to amend this Complaint to reflect the true names and capacities of the DOE  
24 Defendants when such identities become known.

25 **JURISDICTION**

26 5. This is a suit for patent infringement arising under the patent laws of the  
27 United States, Title 35 of the United States Code § 1 et seq. This Court has subject  
28 matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

1           6.       This Court has personal jurisdiction over EcoPRO and Lucas because  
2 each of these Defendants has committed and continues to commit acts of patent  
3 infringement and have engaged in business dealings with Rago and his attorneys in  
4 the State of California, including in this District. The acts by EcoPRO and Lucas  
5 cause injury to Rago within this District. Upon information and belief, EcoPRO  
6 derives substantial revenue from professional sport fishing products sold within this  
7 District, expect their actions to have consequences within this District, and derive  
8 substantial revenue from interstate and international commerce. Upon information  
9 and belief, Lucas is a native Northern Californian who continues to have substantial  
10 personal and professional sport fishing contact in this District.

11                           **VENUE AND INTRADISTRICT ASSIGNMENT**

12           7.       Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and  
13 1400(b).

14           8.       Upon information and belief, EcoPRO and Lucas conduct substantial  
15 business in this forum, directly or through intermediaries, including: (i) at least a  
16 portion of the infringements alleged herein; and (ii) regularly doing or soliciting  
17 business, engaging in other persistent courses of conduct and/or deriving substantial  
18 revenue from goods and services provided to individuals in this forum. Pursuant to  
19 Local Rule 3-2( c), Intellectual Property Actions are assigned on a district-wide basis.

20                           **BACKGROUND AND NATURE OF THE ACTION**

21           9.       Plaintiff Rago is the owner and designer of “Rago Baits” that have  
22 revolutionized the sport fishing industry. Since about 2001 Rago has designed baits  
23 that have won at least three Bassmaster Elite Series fishing tournaments and  
24 hundreds of other tournaments around the country. Rago is well known as one of the  
25 premier bait designers in the world and was the first to introduce many innovative  
26 designs that were radical departures from conventional bait designs.

27           10.      Rago’s creative achievements have resulted in broad intellectual  
28 property protection for his innovations, including patents and broad recognition of his

1 innovations in the US and Japan as the first creator for many of his bait designs.

2 11. Rago's customers include many of the most famous professionals in  
3 sport fishing who have been extremely successful with Rago's designs, including  
4 Skeet Reese; Kevin Van Dam, Byron "the Batchelor" Velvick; Shaw Grigsby, Davy  
5 Hite; Ish Monroe; Randy Howell; Rick Clunn; Brent Chapman; and Hank Cherry  
6 among others.

7 12. There is no doubt Rago's revolutionary bait designs have enjoyed great  
8 success. Very few bait designers have made tour level event winning baits, and even  
9 fewer have won multiple tour level events. The number of tournament wins for  
10 Rago's baits has been described by Livingston Lures CEO, Fred Battah, as  
11 "amazing." According to a Livingston 2013 press release Battah said "When we  
12 looked for bait designers around the world one name kept coming up, Rago."

13 13. In 2010 and 2011 the professionals using Rago's bait designs won the  
14 Bassmaster Elite TV events and in 2014 a lure body Rago designed for Livingston  
15 Lures won the Bassmaster Classic world Championship. Rago's success continues in  
16 2017 with another 18 pound class bass caught using Rago's design - so far the largest  
17 bass caught in the US during the 2017 season. Rago and his bait designs have been  
18 featured in countless newspaper articles, magazine articles, TV shows, and numerous  
19 blogs including: Outdoor Life; Field and Stream; Western Outdoor News; Bass West;  
20 Bass Times; Bassmaster; and Western Outdoors, among others.

21 14. Unfortunately, the success of Rago and his innovative designs have been  
22 the subject of widespread emulation by his competitors, who have attempted to  
23 capitalize on Rago's success by imitating and outright copying many of Rago's most  
24 successful designs.

25 15. One of many imitators is EcoPRO, which introduced a bait design  
26 identical to a Rago bait design at the ICAST 2016 trade show to compete with Rago.  
27 Instead of pursuing independent product development, EcoPRO chose to slavishly  
28 copy Rago's innovative design, in violation of Rago's patent rights.



obtaining a genuine Rago Bait marketed under the trademark “BV3D” and slavishly copying the Rago Bait and presenting the copy to EcoPRO as an original Lucas design to be used, made, and offered for sale at the at the ICAST 2016 trade show to compete with Rago’s BV3D. Below is a picture of the infringing “DUDE” bait as offered for sale by EcoPRO and Lucas alongside an original Rago BV3D.



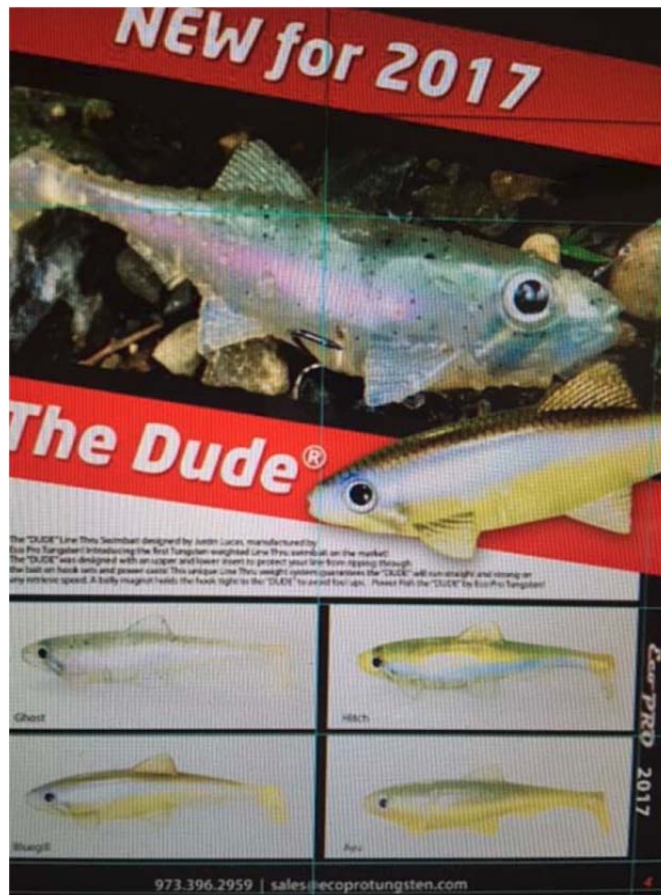
23. Rago approached EcoPRO and Lucas after the 2016 ICAST trade show and confronted Defendants regarding their false assertion that Lucas designed the “DUDE” and asserted the design was made by Rago and copied by Lucas. After being confronted with the truth, Lucas admitted he copied the design from Rago’s BV3D. Rago demanded that EcoPRO and Lucas immediately stop all use, sales and offers for sale of the “DUDE” bait because the Rago BV3D design is protected by Rago’s design patents.

///

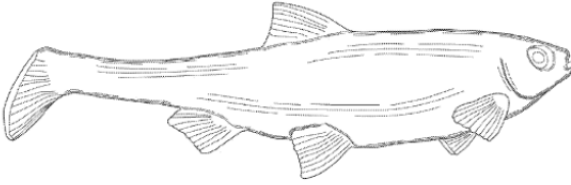







24. EcoPRO's principals contacted Rago and Rago's counsel in Northern California and offered to buy Rago's BV3D design after Rago confronted Lucas and EcoPRO with their infringement of his design. After negotiating for months to purchase the design Lucas copied, EcoPRO simply abandoned its efforts to purchase or license the design and ignored all communications from Rago and his counsel.

25. Despite EcoPRO's knowledge that the "DUDE" bait design was copied from Rago and its knowledge of Rago's patents covering the design, EcoPRO made the decision to abandon discussions to license or purchase the design and has refused and failed to destroy or hand over the infringing molds to Rago, and has refused and failed to acknowledge and confirm that it is no longer making, using, offering for sale or selling the infringing "DUDE" design.

26. On information and belief, EcoPRO and Lucas continue to make, use, offer for sale and sell the infringing "DUDE" bait in 2017 as evidenced by the photo below.



27. EcoPRO's "DUDE" bait design copied from Rago's BV3D is covered by the Patents in Suit as demonstrated in the charts below.

<p>US Patent D648,820</p> 	<p>US Patent D652,478</p> 
<p>Lucas marketing EcoPRO "DUDE"</p> 	<p>Lucas marketing EcoPRO "DUDE"</p> 
<p>Rago Baits BV3D</p>  	<p>Rago Baits BV3D</p>  

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. D640,820**

28. Plaintiff repeats and realleges the allegations of paragraphs 1 through 27 as if fully set forth herein.

29. Defendants have in the past and still directly (and through inducement) infringe, or directly infringe under the doctrine of equivalents, the claim of the '820 Patent by making, using, offering for sale and/or selling within this district and elsewhere in the United States a swim bait fishing lure design marketed as the "DUDE."

30. Defendants have knowledge of the fact that its products infringe the claim of the '820 Patent, and have direct, firsthand knowledge of the '820 Patent as a result of Plaintiff informing Defendants of the '820 Patent and Defendants' infringement thereof by way of a letters and during negotiations after the ICAST trade show in July of 2016.

31. Thus, Defendant have been on notice of the '820 Patent since at least the date it received Plaintiff's notice in July 2016.

32. Upon information and belief, Defendants have not altered their infringing conduct after receiving Plaintiff's notice in July, 2016.

33. Upon information and belief, Defendants' continued infringement despite their knowledge of the '820 Patent and the infringement has been objectively reckless and willful.

34. Plaintiff is therefore entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendants' infringement of the '820 Patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

**COUNT II – INFRINGEMENT OF U.S. PATENT NO. D652,478**

35. Plaintiff repeats and realleges the allegations of paragraphs 1 through 27 as if fully set forth herein.

///

1        36. Defendants have in the past and still directly (and through inducement)  
2 infringe, or directly infringe under the doctrine of equivalents, the claim of the '478  
3 Patent by making, using, offering for sale and/or selling within this district and  
4 elsewhere in the United States a swim bait fishing lure design marketed as the  
5 "DUDE."

6        37. Defendants have knowledge of the fact that its products infringe the  
7 claim of the '478 Patent, and have direct, firsthand knowledge of the '478 Patent as a  
8 result of Plaintiff informing Defendants of the '478 Patent and Defendants'  
9 infringement thereof by way of a letters and during negotiations after the ICAST  
10 trade show in July of 2016.

11        38. Thus, Defendant have been on notice of the '478 Patent since at least the  
12 date it received Plaintiff's notice in July 2016.

13        39. Upon information and belief, Defendants have not altered their  
14 infringing conduct after receiving Plaintiff's notice in July, 2016.

15        40. Upon information and belief, Defendants' continued infringement  
16 despite their knowledge of the '478 Patent and the infringement has been objectively  
17 reckless and willful.

18        41. Plaintiff is therefore entitled to recover from Defendants the damages  
19 sustained by Plaintiff as a result of Defendants' infringement of the '478 Patent in an  
20 amount subject to proof at trial, which, by law, cannot be less than a reasonable  
21 royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

22                                    **PRAYER FOR RELIEF**

23        WHEREFORE, Plaintiff requests that this Court enter judgment against  
24 Defendants as follows:

25            A. An adjudication that Defendants have infringed the '820 and '478 Patents;

26            B. A temporary and permanent injunction against Defendants current and any  
27 future infringement of the '820 and '478 Patents;

28        ///

1 C. An award of damages to be paid by Defendants adequate to compensate  
2 Plaintiff for Defendants' past infringement of the '820 and '478 Patents and any  
3 continuing or future infringement through the date such judgment is entered,  
4 including interest, costs, expenses and an accounting of all infringing acts including,  
5 but not limited to, those acts not presented at trial;

6 D. A declaration that this case is exceptional under 35 U.S.C. § 285, and an  
7 award of Plaintiff's reasonable attorneys' fees;

8 E. To the extent Defendants' conduct subsequent to the date of its notice of the  
9 '820 and '478 Patents is found to be objectively reckless, enhanced damages pursuant  
10 to 35 U.S.C. § 284 for its willful infringement of the '820 and '478 Patents; and

11 F. An award to Plaintiff of such further relief at law or in equity as the Court  
12 deems just and proper.

13 Respectfully Submitted,

14 Dated: May 1, 2017

TEKLAW  
Byron Cooper  
OGAWA P.C.  
Richard T. Ogawa

15  
16  
17 By: /s/ Byron Cooper  
Byron Cooper

18  
19 Attorneys for Plaintiff  
GERALD STEVE RAGO.  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Respectfully Submitted,

Dated: May 1, 2017

TEKLAW  
Byron Cooper  
OGAWA P.C.  
Richard T. Ogawa

By: /s/ Byron Cooper  
Byron Cooper

Attorneys for Plaintiff  
GERALD STEVE RAGO.