

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JAC-RACK, INC.,

Plaintiff,

v

UNIRAC, INC.,

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR ANTITRUST VIOLATIONS,  
DECLARATORY RELIEF, AND  
DEMAND FOR JURY TRIAL**

Plaintiff JAC-RACK, INC. (“JAC-Rack”) complains against the Defendant UNIRAC, INC. (“Unirac”) as follows:

**THE PARTIES**

1. JAC-Rack is a Michigan corporation having a principal place of business at 3937 Campus Drive, Pontiac, Michigan, 48341.

2. Unirac is a New Mexico corporation having a principal place of business at 1411 Broadway Boulevard NE, Albuquerque, New Mexico, 87102.

**JURISDICTION AND VENUE**

3. This action arises under the antitrust laws of the United States, 15 U.S.C. § 1, *et seq.*, including Section 2 of the Sherman Act, pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. § 15 and 15 U.S.C. § 26, respectively. This Court has subject matter jurisdiction over this cause of action under 28 U.S.C. §§ 1331, 1337 and 1338.

4. This action also arises under the Patent Act of the United States, 35 U.S.C. § 1, *et seq.*, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, since it presents a case of actual controversy between the parties relating to the United States patent laws. Specifically, JAC-Rack seeks a declaratory judgment of non-infringement and invalidity of United States Patent No. 7,260,918 entitled “Apparatus and Method for Positioning a Module on an Object” (“the ‘918 patent”), United States Patent No. 7,434,362 entitled “System for Removably and Adjustably Mounting a Device on a Surface” (“the ‘362 patent”), United States Patent No. 7,748,175 entitled Method of Manufacturing and Installing a Low Profile Mounting System” (“the ‘175 patent”), and United States Patent No. 7,766,292 entitled “System for Mounting a Photovoltaic Module to a Surface” (“the ‘292 patent”). The Court has subject matter jurisdiction over these causes of action under 28 U.S.C. §§ 1331, 1338(a) and 1367. Copies of the ‘918, ‘362, ‘175 and ‘292 patents are attached hereto as Exhibit A, Exhibit B, Exhibit C and Exhibit D.

5. Unirac is subject to specific personal jurisdiction in Michigan since, among other things, it purposefully directed its complained-of activities at JAC-Rack; Unirac knew JAC-Rack was and is a resident of Michigan and this District; the effects of Unirac’s complained-of activities occurred in Michigan and this District; and JAC-Rack’s claims arise out of or are related to the complained-of activities.

6. Unirac is also subject to general personal jurisdiction in Michigan since, among other things, it has purposefully maintained continuous and systematic contacts with Michigan, including transacting business in Michigan, and doing business in and with other companies that are located in Michigan and/or do business in Michigan, including without limitation Michigan

Solar, Hartland Solar, and Unirac's wholly-owned subsidiary, Unirac Canada Corporation, which is located in Mississauga, Ontario, less than 200 miles from Detroit.

7. Venue is proper in this District based upon 28.U.S.C. § 1391(b) and (c).

### **BACKGROUND FACTS**

8. Unirac designs, manufactures, markets and sells commercial/residential solar mounting systems, and, upon information and belief, controlled and still controls in excess of a 50% share of the commercial/residential solar-mounting-systems market in the United States.

9. Unirac's market power in the commercial/residential solar-mounting-systems market allows Unirac to control and alter market prices in the solar-mounting-systems market, as well as ancillary markets, including the market for components sold in the commercial/residential solar-mounting-systems market.

10. JAC-Rack, in direct competition with Unirac, designs, manufactures, markets and sells commercial/residential solar mounting systems.

11. On January 5, 2011, Unirac filed but did not serve a lawsuit against JAC-Rack and another competitor in the commercial/residential solar-mounting-systems market, IronRidge, Inc., in the United States District Court for the District of New Mexico ("New Mexico Lawsuit").

12. In the New Mexico Lawsuit, Unirac alleges that JAC-Rack's Residential Series 100 Rails, its Residential Series 200 Rails, and its Commercial Series 250 Rails products, infringe certain claims of the '918 and '362 patents.

13. On March 14, 2011, prior to Unirac initiating the New Mexico Lawsuit against JAC-Rack by serving the summons and complaint on JAC-Rack, JAC-Rack wrote to Unirac

demonstrating that the JAC-Rack products that UniRac accused of infringing the '918 and '362 patent claims lacked certain elements required by the '918 and '362 patent claims, including but not limited to "one or more clamps ... formed with a leg having a base, a descending member monolithically extending from the base, and an ascending member monolithically extending from the base in a direction substantially opposite the direction of the descending member," and, as a result, did not infringe the patents as a matter of law.

14. On March 23, 2011, prior to Unirac initiating the New Mexico Lawsuit against JAC-Rack by serving the summons and complaint, JAC-Rack provided Unirac with copies of material prior art to the '918 and '362 patents together with maps of '918 and '362 patent claims in view of that prior art, clearly demonstrating that the prior art rendered the '918 and '362 patent claims invalid as anticipated and/or obvious.

15. During Unirac's *ex parte* prosecution of the '918 and '362 patents, Unirac withheld and/or failed to provide the invalidating prior art to the United States Patent and Trademark Office ("PTO") in violation of Unirac's duties and obligations to the PTO under 37 C.F.R. § 1.56.

16. On April 4, 2011, JAC-Rack wrote to Unirac to advise Unirac that its continuing threats to serve the New Mexico Lawsuit and pursue the New Mexico Lawsuit against JAC-Rack based on patents it knew were invalid and not infringed were in bad faith, an illegal attempt to stifle competition, and anticompetitive.

17. On or about May 5, 2011, Unirac nevertheless served JAC-Rack with the New Mexico Lawsuit, thereby initiating that action. A copy of the New Mexico Lawsuit is attached hereto as Exhibit E.

18. Unirac cannot have initiated and/or maintained the New Mexico Lawsuit in good faith, since it knew the New Mexico Lawsuit is a sham, predicated on patents that are invalid and not infringed.

19. On June 24, 2011, JAC-Rack moved to dismiss the New Mexico Lawsuit because New Mexico cannot properly exercise personal jurisdiction over JAC-Rack consistent with the state's long-arm statute and the federal constitution ("Motion to Dismiss").

20. Unirac's New Mexico Lawsuit will, on information and belief, be dismissed once the briefing on the Motion to Dismiss is completed and the court reaches the merits.

21. Under these facts and circumstances, there is and will remain a substantial controversy between JAC-Rack and Unirac having sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

22. In addition, there is and will remain a substantial controversy between JAC-Rack and Unirac having sufficient immediacy and reality to warrant the issuance of a declaratory judgment regarding the non-infringement and invalidity of the '918, '362, '175 and '292 patents.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF § 2 OF THE SHERMAN ACT**

23. JAC-Rack incorporates all of the preceding paragraphs by reference as though set forth herein.

24. Upon information and belief, Unirac has enjoyed and continues to enjoy monopoly power, or is likely to obtain monopoly power, in the commercial/residential solar-mounting-systems market, maintaining a dominant share of the market with high barriers to entry.

25. The relevant geographic market is the United States.

26. Unirac's monopoly power is evidenced by, among other things, its ability to set prices in the commercial/residential solar-mounting-systems market.

27. JAC-Rack's entry into the commercial/residential solar-mounting-systems market threatens Unirac's monopoly, and/or Unirac's likelihood of obtaining monopoly power in that market.

28. Prior to Unirac initiating and/or serving the New Mexico Lawsuit against JAC-Rack, Unirac knew that the New Mexico Lawsuit was a sham, predicated on patents that are invalid and not infringed, but elected to proceed with this lawsuit anyway in an attempt to drive JAC-Rack from the commercial/residential solar-mounting-systems market, and thereby preserve its unlawful monopoly, or to establish an unlawful monopoly.

29. Prior to Unirac initiating and/or serving the New Mexico Lawsuit against JAC-Rack, Unirac knew the New Mexico Lawsuit was objectively baseless because before serving the summons and complaint, Unirac knew that: (a) the '918 and '362 patents are invalid and/or unenforceable; and (b) JAC-Rack's products do not infringe and have never infringed the '918 and '362 patents.

30. Thus, Unirac initiated and/or served the New Mexico Lawsuit against JAC-Rack without evidence or any basis for a good faith belief that its allegations in support of the New Mexico Lawsuit were true.

31. Unirac's baseless New Mexico Lawsuit was motivated by its intent to preserve its existing monopoly, or to obtain monopoly power, in the commercial/residential solar-mounting-

systems market and thereby preserve its unlawful monopoly, or establish an unlawful monopoly, by reducing or eliminating competition.

32. Unirac's New Mexico Lawsuit has caused and will continue to cause injury to JAC-Rack and the relevant market by subjecting JAC-Rack—one of Unirac's meaningful competitors in the relevant market—to the high costs and other substantial burdens of defending itself against Unirac's groundless claims.

33. Moreover, in seeking an injunction against JAC-Rack in the New Mexico Lawsuit to enforce the '918 and '362 patents which Unirac knows are not infringed and/or are invalid (*see* Ex. E at 5 ¶ C), Unirac is unlawfully seeking to create an insurmountable barrier to entry into the relevant market.

34. Unirac's baseless New Mexico Lawsuit has, as Unirac intended, created and will continue to create meritless doubt in the minds of JAC-Rack's existing and potential customers about JAC-Rack's products, causing existing and potential customers to forgo purchases of JAC-Rack's products that they would have otherwise made but for Unirac's unlawful, monopolistic conduct.

35. As a direct and proximate result of Unirac's unlawful acts in violation of 15 U.S.C. § 2, JAC-Rack and the relevant market have suffered and will continue to suffer damages.

36. As a direct and proximate result of Unirac's unlawful acts in violation of 15 U.S.C. § 2, JAC-Rack has been injured in its business and property, is threatened with immediate and irreparable loss and harm, and will continue to be so threatened unless Unirac is enjoined from continuing its illegal, unfair and predatory conduct.

**SECOND CAUSE OF ACTION  
DECLARATION OF NON-INFRINGEMENT OF  
UNITED STATES PATENT NO. 7,260,918**

37. JAC-Rack incorporates all of the preceding paragraphs by reference as though set forth herein.

38. An actual case or controversy exists between JAC-Rack and Unirac regarding the non-infringement of the '918 patent.

39. Unless prevented through this Declaratory Judgment cause of action, Unirac will continue to wrongfully assert the '918 patent against JAC-Rack.

40. JAC-Rack has not infringed and is not infringing, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, any of Unirac's patent rights, including any rights Unirac may have in the '918 patent.

41. Accordingly, JAC-Rack is entitled to declaratory judgment that it has not infringed and is not infringing any of Unirac's patent rights, including any rights Unirac may have in the '918 patent.

**THIRD CAUSE OF ACTION  
DECLARATION OF INVALIDITY OF  
UNITED STATES PATENT NO. 7,260,918**

42. JAC-Rack incorporates all of the preceding paragraphs by reference as though set forth herein.

43. An actual case or controversy exists between Jac-Rack and Unirac regarding the invalidity of the '918 patent.

44. Unless prevented through this Declaratory Judgment cause of action, Unirac will continue to wrongfully assert the '918 patent against JAC-Rack.



45. The '918 patent is invalid for failure to comply with the requirements of Title 35, United States Code, including one or more of Sections 102, 103 and/or 112.

46. Among other things, certain prior art renders each and every claim of the '918 patent invalid as anticipated and/or obvious, including but not limited to Japanese Patent Publication No. 11-013238 to Masami; Japanese Patent Publication No. 11-324259 to Maseo; Japanese Patent Publication No. 09-250219 to Nobuyuki; and Japanese Patent Publication No. 07-153984 to Hisatoyo.

47. Accordingly, JAC-Rack is entitled to Declaratory Judgment that the claims of the '918 patent are invalid.

**FOURTH CAUSE OF ACTION  
DECLARATION OF NON-INFRINGEMENT OF  
UNITED STATES PATENT NO. 7,434,362**

48. JAC-Rack incorporates all of the preceding paragraphs by reference as though set forth herein.

49. An actual case or controversy exists between JAC-Rack and Unirac regarding the non-infringement of the '362 patent.

50. Unless prevented through this Declaratory Judgment cause of action, Unirac will continue to wrongfully assert the '362 patent against JAC-Rack.

51. JAC-Rack has not infringed and is not infringing, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, any of Unirac's patent rights, including any rights Unirac may have in the '362 patent.

52. Accordingly, JAC-Rack is entitled to Declaratory Judgment that it has not infringed and is not infringing any of Unirac's patent rights, including any rights Unirac may have in the '362 patent.

**FIFTH CAUSE OF ACTION  
DECLARATION OF INVALIDITY OF  
UNITED STATES PATENT NO. 7,434,362**

53. JAC-Rack incorporates all of the preceding paragraphs by reference as though set forth herein.

54. An actual case or controversy exists between Jac-Rack and Unirac regarding the invalidity of the '362 patent.

55. Unless prevented through this Declaratory Judgment cause of action, Unirac will continue to wrongfully assert the '362 patent against JAC-Rack.

56. The '362 patent is invalid for failure to comply with the requirements of Title 35, United States Code, including one or more of Sections 102, 103 and/or 112.

57. Among other things, certain prior art renders each and every claim of the '362 patent invalid as anticipated and/or obvious, including but not limited to Japanese Patent Publication No. 11-013238 to Masami; Japanese Patent Publication No. 11-324259 to Maseo; Japanese Patent Publication No. 09-250219 to Nobuyuki; and Japanese Patent Publication No. 07-153984 to Hisatoyo.

58. Accordingly, JAC-Rack is entitled to a declaratory judgment that the claims of the '362 patent are invalid.

**SIXTH CAUSE OF ACTION  
DECLARATION OF NON-INFRINGEMENT OF  
UNITED STATES PATENT NO. 7,748,175**

59. JAC-Rack incorporates all of the preceding paragraphs by reference as though set forth herein.

60. An actual case or controversy exists between JAC-Rack and Unirac regarding the non-infringement of the '175 patent.

61. Unless prevented through this Declaratory Judgment cause of action, Unirac will wrongfully assert the '175 patent against JAC-Rack.

62. JAC-Rack has not infringed and is not infringing, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, any of Unirac's patent rights, including any rights Unirac may have in the '175 patent.

63. Accordingly, JAC-Rack is entitled to declaratory judgment that it has not infringed and is not infringing any of Unirac's patent rights, including any rights Unirac may have in the '175 patent.

**SEVENTH CAUSE OF ACTION  
DECLARATION OF INVALIDITY OF  
UNITED STATES PATENT NO. 7,748,175**

64. JAC-Rack incorporates all of the preceding paragraphs by reference as though set forth herein.

65. An actual case or controversy exists between Jac-Rack and Unirac regarding the invalidity of the '175 patent.

66. Unless prevented through this Declaratory Judgment cause of action, Unirac will wrongfully assert the '175 patent against JAC-Rack.

67. The '175 patent is invalid for failure to comply with the requirements of Title 35, United States Code, including one or more of Sections 102, 103 and/or 112.

68. Among other things, certain prior art renders each and every claim of the '362 patent invalid as anticipated and/or obvious, including but not limited to Japanese Patent Publication No. 11-013238 to Masami; Japanese Patent Publication No. 11-324259 to Maseo; Japanese Patent Publication No. 09-250219 to Nobuyuki; and Japanese Patent Publication No. 07-153984 to Hisatoyo.

69. Accordingly, JAC-Rack is entitled to a declaratory judgment that the claims of the '175 patent are invalid.

**EIGHTH CAUSE OF ACTION  
DECLARATION OF NON-INFRINGEMENT OF  
UNITED STATES PATENT NO. 7,766,292**

70. JAC-Rack incorporates all of the preceding paragraphs by reference as though set forth herein.

71. An actual case or controversy exists between JAC-Rack and Unirac regarding the non-infringement of the '292 patent.

72. Unless prevented through this Declaratory Judgment action, Unirac will continue to wrongfully assert the '292 patent against JAC-Rack.

73. JAC-Rack has not infringed and is not infringing, either directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, any of Unirac's patent rights, including any rights Unirac may have in the '292 patent.

74. Accordingly, JAC-Rack is entitled to declaratory judgment that it has not infringed and is not infringing any of Unirac's patent rights, including any rights Unirac have in the '292 patent.

**NINTH CAUSE OF ACTION  
DECLARATION OF INVALIDITY OF  
UNITED STATES PATENT NO. 7,766,292**

75. JAC-Rack incorporates all of the preceding paragraphs by reference as though set forth herein.

76. An actual case or controversy exists between Jac-Rack and Unirac regarding the invalidity of the '292 patent.

77. Unless prevented through this Declaratory Judgment cause of action, Unirac will wrongfully assert the '292 patent against JAC-Rack.

78. The '292 patent is invalid for failure to comply with the requirements of Title 35, United States Code, including one or more of Sections 102, 103 and/or 112.

79. Among other things, certain prior art renders each and every claim of the '362 patent invalid as anticipated and/or obvious, including but not limited to Japanese Patent Publication No. 11-013238 to Masami; Japanese Patent Publication No. 11-324259 to Maseo; Japanese Patent Publication No. 09-250219 to Nobuyuki; and Japanese Patent Publication No. 07-153984 to Hisatoyo.

80. Accordingly, JAC-Rack is entitled to a declaratory judgment that the claims of the '292 patent are invalid.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff JAC-Rack, Inc. prays for the following relief:

- A. Entry of judgment that JAC-Rack has not infringed the '918, '362, '175 and '292 patents.
- B. Entry of judgment that JAC-Rack has not willfully infringed the '918, '362, '175 and '292 patents.
- C. Entry of judgment that the '918, '362, '175 and '292 patents are invalid.
- D. Entry of a permanent injunction that prohibits Unirac, including its officers, directors, agents and anyone acting on behalf of or in concert with any of them (i) from asserting that JAC-Rack, its customers, agents, employees or anyone acting on behalf of JAC-Rack has infringed any of Unirac's patent rights, including any in the '918, '362, '175 and '292 patents, or (ii) from asserting that the '918, '362, '175 and '292 patents are valid.
- E. Entry of judgment be declaring that neither JAC-Rack nor any of its customers, distributors, agents or customers have infringed any rights owned by Unirac, including any rights in the '918, '362, '175 and '292 patents.
- F. Entry of judgment that Unirac has attempted to enforce the '918 and '362 patents in bad faith knowing the patents' claims are not infringed and/or invalid, and with an intent to monopolize or to unlawfully obtain a monopoly in the commercial/residential solar-mounting-systems market in violation of Section 2 of the Sherman Act, entitling JAC-Rack to treble damages under Section 4 of the Clayton Act.
- G. Entry of judgment finding this is an exceptional case and awarding JAC-Rack its costs and reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

H. Entry of judgment awarding JAC-Rack its actual and compensatory damages according to proof at trial, including without limitation, its reasonable attorneys' fees, expenses and costs incurred in this action pursuant to 15 U.S.C. § 15(a) and 35 U.S.C. § 285.

I. Entry of judgment awarding JAC-Rack treble its actual damages.

J. Such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff JAC-Rack, Inc. hereby requests trial by jury of all issues so triable.

Respectfully submitted,

s/George T. Schooff

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