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International Automated Systems, Inc.,  
LTB1, and Neldon Johnson*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL  
AUTOMATED SYSTEMS, INC., LTB1,  
LLC, R. GREGORY SHEPARD, NELDON  
JOHNSON, and ROGER FREEBORN,

Defendants.

**RAPOWER-3, LLC'S  
SUPPLEMENTAL RESPONSES TO  
UNITED STATES' FIRST  
INTERROGATORIES**

Civil No. 2:15-cv-00828-DN-BCW

Judge David Nuffer  
Magistrate Judge Brooke C. Wells

**Plaintiff  
Exhibit**

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Defendant, RaPower-3, LLC, ("RaPower-3") by and through counsel undersigned, and pursuant to Fed. R. Civ. P. 33, hereby submits these *Supplemental Responses to United States' First Interrogatories*. This submission is offered in direct compliance with the April 13, 2017 Order to Compel:

**INTERROGATORIES**

**INTERROGATORY NO. 14:** Identify the product (i.e. electricity, heat, hot water, cooling, desalinization, solar process heat or any other product) that the Lens, Systems, and Components

are intended to produce, either in the past, currently, or in the future. To the extent that any product has been produced or is being produced, identify when it was produced, in what form, in what measurable amount and the revenues received for such product.

RESPONSE NO. 14: RaPower-3 responds to this interrogatory and affirms that it does not produce any product, or thing. RaPower3, as has been explained on multiple occasions to the Plaintiffs, is solely a marketing entity. RaPower3 is designed to accomplish nothing more than rendering assistance to buyers in relation to a buyer's acquisition of solar lenses.

**INTERROGATORY NO. 15:** Identify what, and how many Lenses, Systems and Components have been placed in service, as defined in 26 U.S.C. § 48(a)(1) and Treas. Reg. § 1.46-3(d). Your response should include the dates any Lens, System or Component was placed in service.

RESPONSE NO. 15: Objection. Defendant objects to the question as it is overly broad and vague. Specifically, the question is not limited to any specific time frame, asks for each and every lens ever sold, which information is not reasonably calculated to obtain discoverable information, and is unduly burdensome in that the question could be tailored to specific customer's or lenses, or customers and lenses at any given time frame or frames. Moreover, Plaintiff has multiple "placed- in-service" letters in their position. Each of these letters was obtained in the course of prior discovery. In fact many of these letters have been used in the course of depositions, and are actually attached as exhibits to those depositions. Plaintiff is aware of these letters as Plaintiff has offered them as exhibits. Accordingly, it is plain that this is yet another attempt on the part of Plaintiff to create an unnecessary discovery burden. There is no proportionality addressed in this request, and the request fails to acknowledge, or even account for the documents and

information associated with those documents that are already in Plaintiff's possession.

Notwithstanding the objection stated, and without waiving the same, Defendant RaPower3 responds and states, that each lens is assigned on serial number. When the lenses are sold to customers, the customer is assigned, and is then identified as owning, the lens(es) whose serial numbers are designated on company records.

The purchase date is important however, because each lens is deemed to be "placed in service" as on the date of purchase. The service rendered is that each lens is used for research and development. A specific example is that many lenses are used for the express purpose of tracking the thickness of the lenses. Each lens presently on a tower has been tested for efficiency. We also test the manufacturing costs for different types, styles, ridge heights, ridge distances, wave length differences, and focal point options, as well as varying degrees of thicknesses. Ridge height, ridge distance, wave length differences, and focal point options have all been developed and each combination has undergone actual production runs. Each and every lens produced was used in some aspect of this process of research and development. Presently, nearly 50,000 lenses have been constructed. All of the price structures vary for large run creation, short run creation, one-off construction, and thicknesses. Again however, it is critical to note that while RaPower-3 is generally aware of this information RaPower3 **is not** engaged in any of these actions, other than RaPower-3 assigns a specific lens to a specific purchaser at the time of sale, and issues the "placed-in-service" letter to the buyer.

It is believed that nearly 4,000 lenses have been damaged, destroyed, or failed in the course of this development process. The cost basis associated with the pricing structure



requires that the cost of this development be accounted for. Additionally, the fact that each lens has a 15 year unconditional warranty is an expense that the company is also required to take into consideration when costing is assessed. The cost of maintaining this warranty is still being fully evaluated because the 15 year life span, and the failure rates over that span have not yet been fully determined. Specifically, no lens has yet had sufficient time to age to that point, although projections are available and are believed to be increasingly accurate as time passes and the data becomes increasingly available. However, it should be noted that the weather/exposure test presently being conducted has produced specific information that will be part of the larger data set when the 15 year term has lapsed.

Specifically, the first run of lenses subjected to the weather test lasted approximately six months. The replacement lenses, or second run, lasted almost three times as long (18 months). The present run, or third run, is still in operation, and has been operating for over two years now. There are obvious signs of damage on some lenses, but this technology is sufficient to allow for a high level of performance despite the damage that has occurred.

The initial run's failures were largely attributed to lens thickness and frame material failure. The second run was thicker; materials were altered in terms of both connection, density, and the specific machining practices associated with assembly of the components. Similarly, the third run developed different securing clamps, and different structural bracing. The bracing was altered from the original cable design and replaced with semi-pliable rebar. The cables demonstrated harmonic tendencies when experiencing high volumes of wind.

Another lesson learned was that the original cabling was problematic because of the harmonics that were generated. The harmonics were seen as the primary cause of a fairly substantial structural insecurity, and resulted in damage to the lenses. Moreover, the harmonics were of sufficient nature to cause damage to the actual lens towers. Replacing the cables with semi-pliable rebar has dramatically reduced harmonic issues. Although there is still some harmonic resonance occurring in high wind situations; the rebar does not store and amplify the harmonic energy to the level of the cables. As a result, the vibrations are not of an intensity or force sufficient to cause substantial injury or damage to the lenses or the lens towers.

Notably, the sheer volume of rebar used in the process has allowed for the purchase price to be roughly equivalent to that of the cable; which is an enormous cost benefit. However, the issue the rebar created was in attaching the rebar to the lens chasis and to the towers themselves. This issue required substantial research and development, until a fastener could be developed that would connect the rebar lengths to one another, as well as to the remainder of the structure; and which would allow for the components to expand and contract when exposed to temperature variance. It should be noted that the entire project began in 2005; before any energy credits were offered. Moreover, it should be noted that RaPower3 is not responsible for anything more than it has specified, even though it offers this information to show the level of cooperation Defendants have tried to exemplify.

**INTERROGATORY NO. 16:** Identify the costs you incurred to produce each lens, including the cost of procuring materials and manufacturing the final product that you sold to customers.

*RESPONSE NO. 16:* Objection. Defendant objects to the question as it is overly broad and

vague. Specifically, the question is not limited to any specific time frame, asks for each and every lens ever sold, which information is not reasonably calculated to obtain discoverable information, and is unduly burdensome in that the question could be tailored to specific customer's or lenses, or customers and lenses at any given time frame or frames. Moreover, Plaintiff has substantial knowledge of the fact that multiple forms/types and versions of the lenses have been produced and yet has failed to offer questions that designate any specific version, type, or form. As such, the question is unduly broad, vague and overly burdensome.

Further, Plaintiff has failed to offer any analysis as to proportionality as that concept applies to this request, and the request fails to acknowledge, or even account for the documents and information associated with those documents that is already in Plaintiff's possession.

Notwithstanding this objection, and without waiving the same, RaPower-3 states that it does not produce lenses, and as such, RaPower3 has not incurred any costs to produce lenses, procure materials, or manufacture the final product.

**INTERROGATORY NO. 17:** Identify how you determined the price each customer must pay per lens, to include the amount of profit, amount of down payment, and the terms of repayment.

**RESPONSE NO. 17:** RaPower-3 is required to pay IAUS for the right to sell the product. RaPower3 bases the retail cost of the items on the amount necessary to generate a reasonable profit after paying all of RaPower-3's expenses. Once the expense amount is determined, then RaPower3's management sets the pricing models including financing options. These levels are set such that the company can maintain viability. Although



RaPower3 is not responsible for the other entities that are involved, it is generally aware of, and submits the following information, which is also responsive to the intent of the question presented.

The costs associated with the production of the system and its components are calculated by accounting for all of the product costs, labor costs, research and development costs, as well as all normal operating expenses. These amounts are then totaled and a price point is set so that the expenses can be covered and reasonable revenues generated. Note that revenues are only possible after all material and labor costs have been accounted for. Because of the highly speculative nature of the process, it is necessary to work in this fashion.

Some of the other calculations involved include an analysis of the base price of typical thermal solar energy on a per kilowatt basis. This rate was used to set up the initial price structure. Then, an additional small percentage was added to compensate for the “misses” and “unknowns” in the projections and processes. It was noted that other entities in the industry who have issued projections had been off by as much as 40% (Ivanpaw).

RaPower-3 also noted that geothermal was selling at \$68.00 per watt. At the outset of this project, Defendant Neldon Johnson obtained personal knowledge of a hot spring in Minersville, Utah. Neldon Johnson was able to obtain control of this property. Shortly thereafter an unaffiliated company purchased some additional hot springs located just south of the property under Defendant Johnson’s administration. This company attempted to develop the springs as a geothermal resource. This unaffiliated company received a 1603 tax credit of \$68.00 per watt. Market contemporaries such as this company were used

to place values on this project, and notably Ivanpaw and Barstow were referenced as “market comparables.” The goal in terms of economics was to avoid the loss of money, and yet not price the system in a market that the anticipated customer base could not afford.

**INTERROGATORY NO. 22:** Identify all attorneys or other tax advisors you consulted or from whom you received tax advice regarding any Lens, System, Component, including the dates consulted, the dates any advice was received, and the form of the advice (*i.e.* oral, email, memoranda, opinion letters, other written correspondence, etc.).

RESPONSE NO. 22: RaPower-3 consulted with Kirton McConkie and the Todd Anderson Law Firm. These were the only attorneys used for legal advice regarding solar energy. Other attorneys were consulted before the entity itself was formed, but the concepts and issues of consultation did not address solar energy. Defendant RaPower3 did not use any tax advisors for consultation associated with tax advice. It is expressly affirmed that the sole advice upon which RaPower3 relied is stated in the opinion letters produced by Kirton & McConkie and The Todd Anderson Law Firm, which were posted for public view on the internet, and which Plaintiff’s already have in their possession.

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**VERIFICATION OF RESPONSES**

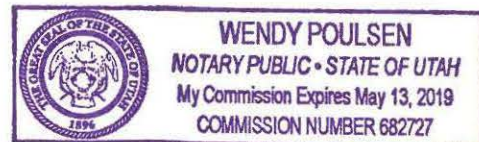
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing Supplemental responses to the United States' First Interrogatories to RaPower-3, LLC, are true and correct.

  
RAPOWER-3, LLC *Manager*

Sworn & Subscribed to before me, a notary public, this 3rd day of May, 2017.

  
NOTARY PUBLIC

My commission expires on 5-13-2019



**VERIFICATION OF RESPONSES**

As to Objections:

DATED and SIGNED May 3, 2017.

**HEIDEMAN & ASSOCIATES**

/s/ Justin D. Heideman

JUSTIN D. HEIDEMAN

*Attorney for Defendants*

**CERTIFICATE OF SERVICE**

On May 3, 2017, I hereby certify a true and correct copy of the forgoing **RAPOWER-3, LLC'S SUPPLEMENTAL RESPONSES TO UNITED STATES' FIRST INTERROGATORIES** was served on the following:

| <b>Party/Attorney</b>   | <b>Method</b>   |
|---|---|
| <i>Former Attorneys for Defendants</i><br>James S. Judd<br>Richard A. Van Wagoner<br>Rodney R. Parker<br>Samuel Alba<br>Snow Christensen & Martineau<br>10 Exchange Place 11 <sup>th</sup> FL<br>P.O. Box 45000<br>Salt Lake City, Utah 84145<br>Tele: (801) 521-9000<br>Email: jsj@scmlaw.com<br>rvanwagoner@scmlaw.com<br>rparker@scmlaw.com<br>sa@scmlaw.com | Hand Delivery<br>U.S. Mail, postage prepaid<br>Overnight Mail<br>Fax Transmission<br><input checked="" type="checkbox"/> Electronic Filing Notice |
| <i>Attorney for Defendants</i><br>R. Gregory Shepard<br>Roger Freeborn<br>Donald S. Reay<br>Reay Law PLLC<br>43 W 9000 S Ste B<br>Sandy, Utah 84070<br>Tele: (801) 999-8529<br>Email: donald@reaylaw.com  | Hand Delivery<br>U.S. Mail, postage prepaid<br>Overnight Mail<br>Fax Transmission<br><input checked="" type="checkbox"/> Electronic Filing Notice |
| <i>Pro Hac Vice Attorney for Plaintiff</i><br>Erin Healy Gallagher<br>US Department of Justice (TAX)<br>Tax Division<br>P.O. Box 7238<br>Washington, DC 20044<br>Phone: (202) 353-2452<br>Email: erin.healygallagher@usdoj.gov  | Hand Delivery<br>U.S. Mail, postage prepaid<br>Overnight Mail<br>Fax Transmission<br><input checked="" type="checkbox"/> Electronic Filing Notice |
| <i>Pro Hac Vice Attorney for Plaintiff</i><br>Erin R. Hines<br>US Department Justice<br>Central Civil Trial Section RM 8921<br>555 4 <sup>th</sup> St NW<br>Washington, DC 20001  | Hand Delivery<br>U.S. Mail, postage prepaid<br>Overnight Mail<br>Fax Transmission   |



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|---|---|
| Tele: (202) 514-6619<br>Email: erin.r.hines@usdoj.gov   | <input checked="" type="checkbox"/> Electronic Filing Notice  |
| <i>Attorney for Plaintiff</i><br>John K. Mangum<br>US Attorney's Office (UT)<br>Tele: (801) 325-3216<br>Email: john.mangum@usdoj.gov  | Hand Delivery<br>U.S. Mail, postage prepaid<br>Overnight Mail<br>Fax Transmission<br><input checked="" type="checkbox"/> Electronic Filing Notice |
| <i>Pro Hac Vice Attorney for Plaintiff</i><br>Christopher R. Moran<br>US Department of Justice (TAX)<br>Tax Division<br>PO Box 7238<br>Washington, DC 20044<br>Tele: (202) 307-0234<br>Email: christopher.r.moran@usdoj.gov | Hand Delivery<br>U.S. Mail, postage prepaid<br>Overnight Mail<br>Fax Transmission<br><input checked="" type="checkbox"/> Electronic Filing Notice |

**HEIDEMAN & ASSOCIATES**/s/ Samantha Fowlks

SAMANTHA FOWLKS

Legal Assistant