

Case Study

M-Ship v ICE Marine

M-Ship accused ICE Marine's
Bladerunner hull of Patent infringement
(The case as seen by a non-legally
trained involved party!)

The M-Hull



Bladerunner

- BR-35





Patents

1. Nobody reads them because they are hard work.
2. The holder usually claims more than the actual Patent coverage, and others believe him!
3. When queried, the holder will try to interpret his patent to cover a wider field than it does.

BLADERUNNER SERIES

30 years in the making...

'Skean Dhu'

1976 – National 4 litre champion
1979 – Class 2 World offshore record
1980 – Outright World offshore record



'Just Add Water'



Lorne Campbell Design



BR-51 Leisure 65kts – launching 2006



Lorne Campbell Design



BR-51 Bradstone Challenger

World Record Holder



BR-51-R Tour

55+ kts

NAVATEK

1975-1980

1987

1989

1990

1992

1995

1998

2004

2005

2006

'SGL Jet 1'



Lorne Campbell Design

'Mac Tools'

4 litre World Champion – 1992



Lorne Campbell Design

BR-34 GT, GT4, Sport

61-74kts



BR-35 65-90kts

BR-35-R 'Mosquito' 60kts



NAVATEK

'SGL Jet 2'



Lorne Campbell Design

Jeremy Watts teams with Lorne Campbell Design to form Ice Marine & develop the Bladerunner series



BR-34-RS6 90+kts

Cowes Classic Winner 2000, '01, '02
National Speed Record – 101.7mph

im
ICEMARINE

Dates

- 1st Bladerunner on public display on 12th September 1998 during Southampton Boat Show, U.K.
- M-Ship provisional US patent application dated 22nd September 1998 – 10 days later!
- M-Ship patent granted on June 26th 2001.



Prior Art Rights

- In Europe, the initial patent application date is the start of protection.
- In the USA – at the time of this action – the patent protection could be back-dated by up to one year, provided the applicant could prove he was working on it during that period.
- In Europe this case would not have started!
- They seemed to discount prior art that was outside the USA!
- They ignored prior AEM designs (some of which were produced in the USA) even though they functioned on the same principal as the Bladerunner. The BR had more tunnel curvature than previous AEMs and they focused on this.

Background - Navatek involvement

- Navatek (Hawaii) are licence holders in the USA and in certain other regions for commercial and military versions of the Bladerunner.
- Both Navatek and M-Ship do business with the US Navy and are, therefore, business rivals.

Different technologies

- M-Ship's patent claims that their centre hull creates a bow wave which is swallowed by the tunnels and allows the tunnel roof to plane on this vortex tube of water emulsion.
- The AEM style of hull (Bladerunner) planes on the centre hull with the tunnels being designed to trap air only, and attach the stabilising sponsons to the hull.

M-Ship Claim

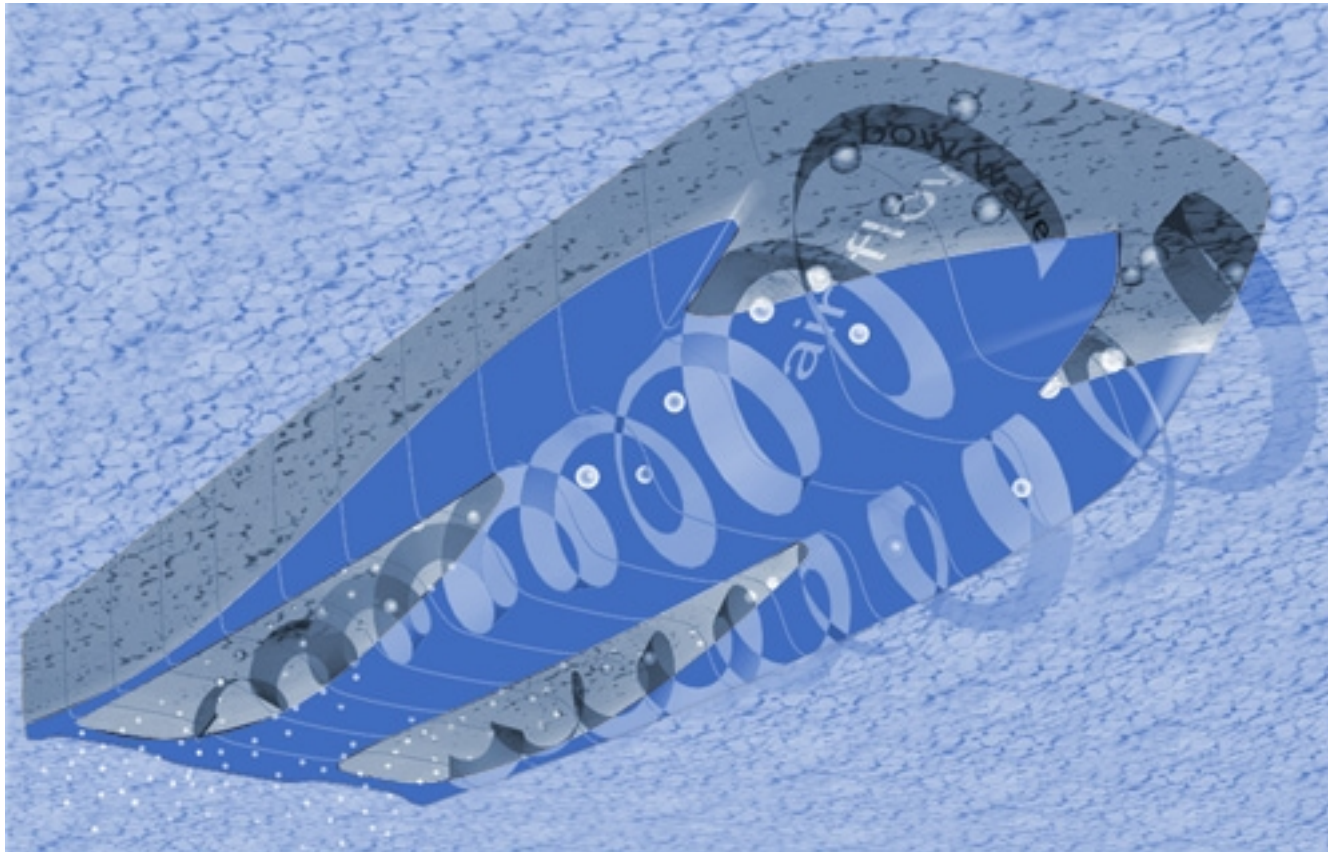


Fig. 1

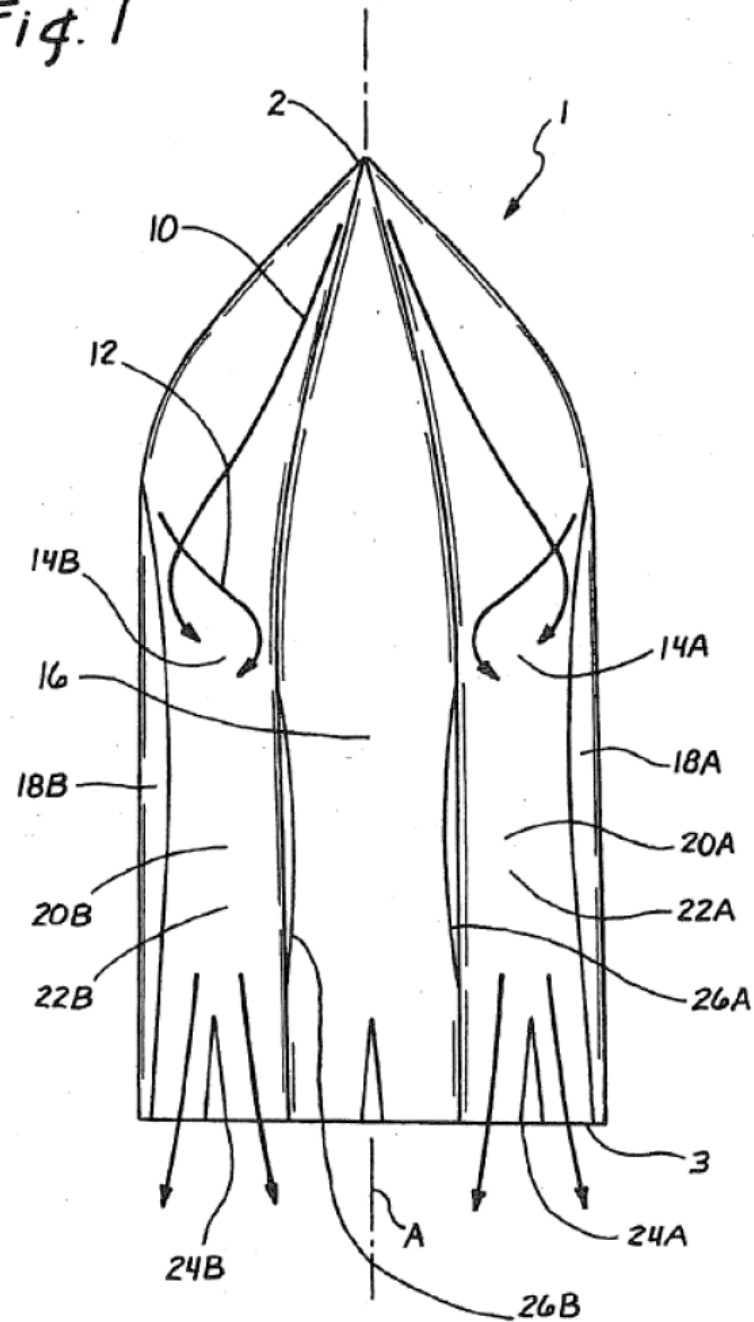


Fig. 3A

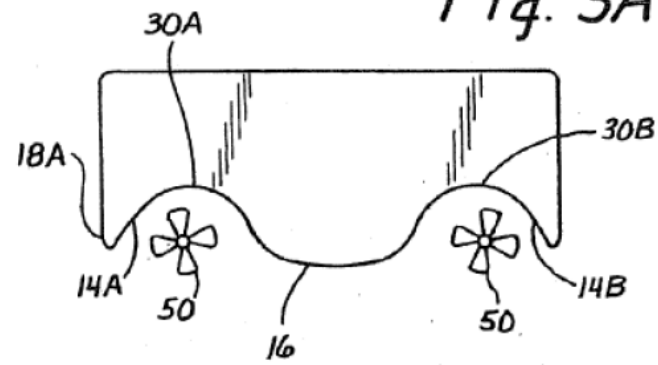


Fig. 3B

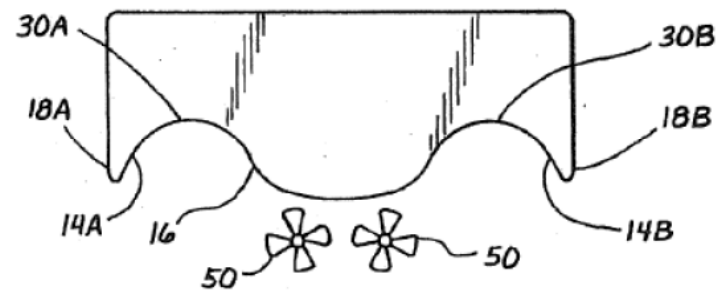
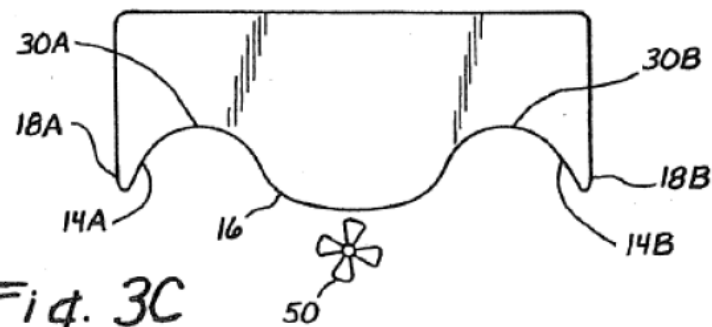
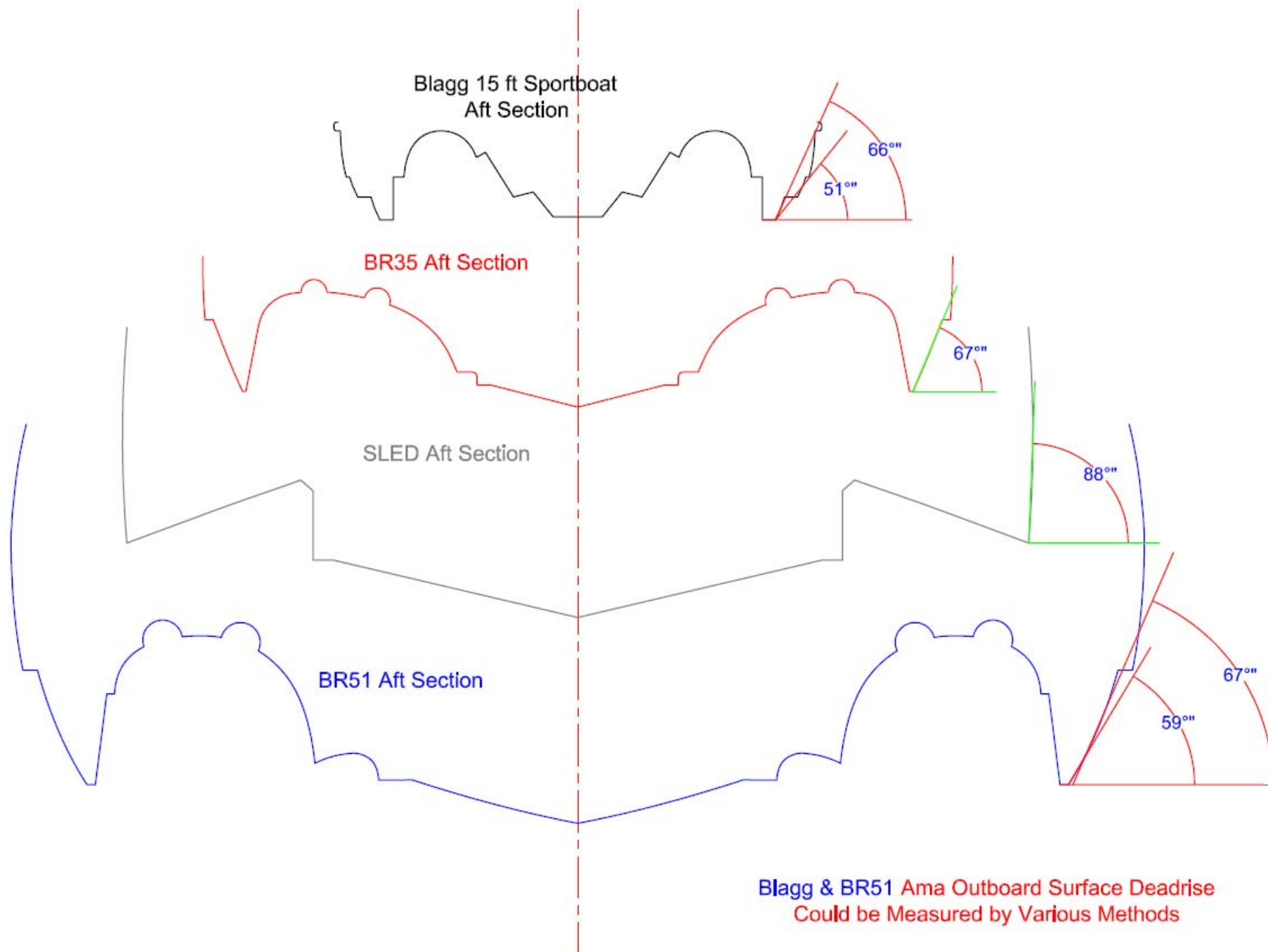


Fig. 3C





Possible Reasons for M-Ship Action?

1. Out of ignorance, they genuinely thought our craft functioned the same way as theirs?
2. The existence of the Bladerunner caused embarrassment with their broadened claim to all twin tunnel hull technology?
3. They considered that ICE would not have the means to combat the action and thought they could use the case to frighten off others?
4. They considered that the action would be a cheap way of denying Navatek – who were rivals for US Navy contracts – the BR technology?
5. A combination of the above?
6. We don't know the answer.

Case Stages

- January '06 - Letter of intent – Surprised us!
- March '06 – Meeting in San Diego
- July '06 – Law Suit filed
- May – August '07 – 'Claim Construction'
- November '07 – 'Mediation'
- July '08 – Deposition under Oath
- July – November '08 – Summary Judgement phase.
- November '08 – Judgement granted for us!
- December '08 – M-Ship appeal
- October '09 – M-Ship loses appeal

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Post Law Suit Filing Phase

- Writing of many statements and counter statements
- Collecting prior art/patents
- Analysis of M-Ship patent
- Reading and countering their claims statements; reading and countering their counter claims to those, etc...
- Initially they wanted us to come under their patent and pay a royalty to stop the action
- We were only interested if the royalty was nominal and it was understood that we admitted no liability
- The two sides didn't agree!

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May-August '07 - Claim Construction Phase

- Covered 3 months of intense work all to do with how the patent should be interpreted!
- Selecting expert witnesses; draft statements; final statements; opposition counter statements; reply statements to those...
- Preliminary and final Claim Construction Charts from both sides – again with counter versions and replies to those, etc.

Claim

COURT'S CLAIM CONSTRUCTION CHART ["APPENDIX A"]

CLAIM 1	M SHIP	ICE MARINE	COURT CONSTRUCTION
1. A watercraft	A vessel for riding on or in water ['245 Patent generally]	A powerboat or a sailboat for use on the surface of a body of water that creates a bow wave. ['245 Patent Col. 5, ll. 1-2]	A powerboat or a sailboat for use on the surface of a body of water [Agreed to by both parties].
comprising	AGREED	AGREED	An open ended transitional sentence that does not limit the scope of the claim to only the elements listed, i.e., including but not limited to.
a hull having	The overall structural body of a vessel. [Introduction to Naval Architecture, Thomas C. Gillmer and Bruce Johnson, Naval Institute Press, Annapolis, Maryland, 1982, ISBN 0-87021-318-0 (Glossary)]	The hull is the body or shell of the powerboat, sailboat or ship. [McGraw-Hill Dictionary of Scientific and Technical Terms, Fifth Edition, p. 959][Webster's Seventh New Collegiate Dictionary 1963, p. 404]	The hull is the overall body or shell of the powerboat or sailboat being comprised of the central displacement body 16, the planning wings having wing channels 20A and B., and the skirts 18A and B.['245 Patent, II, 43-55]
a fore end, an aft end and	Fore end: the portion or portions of the hull lying between the mid-length of the hull and the front tip of the hull. [Introduction to Naval Architecture] [Webster's Ninth New Collegiate Dictionary] ['245 Patent, e.g., Col. 2, lines 43-58, Fig. 1] Aft end: the portion or portions of the hull lying between the mid-length of the hull and the back of the hull. [Introduction to Naval Architecture] [Webster's Ninth New Collegiate Dictionary] ['245 Patent, e.g., Col. 2, lines 43-58, Fig. 1]	Fore end is the forward or front end, i.e., extreme, last forward part of the hull, aft end is the rearward most or stern end, i.e., extreme last rear part, of the hull. [McGraw-Hill Dictionary, Id. pp. 790, 44.] [Webster's, Id. p. 273]	Aft end is the trailing rear edge of the hull where the central displacement body, the channels and the outer skirts terminate. Fore end is the front end portion of the hull forward of the first and second outer skirts.
a longitudinal axis extending between the fore end and the aft end	Longitudinal axis: an imaginary line extending the length of the hull, parallel to the centerline of the hull, through the fore end and the aft end.	An axis extending along the centerline of the hull from the fore end to the aft end.	An axis extending along the centerline of the hull from the aft end to the tip of the fore end as shown in Figure 1, arrow reference 2.

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Summary Judgement Phase

- Again! 4 months of intense effort in support of Summary Judgement Action!
- Declarations and statements in draft and final form from attorneys and expert witnesses on both sides with rebuttles, rebuttle rebuttles...
- ...replies, and replies to replies, etc, etc....
- Trial 'Exhibit' lists produced, plus loads of backup documentation.
- It seemed to go on forever!

Our case projected on two fronts:

- 1. The Bladerunner does not infringe their patent.
- 2. Their patent is invalid.
- Summary Judgement doesn't often work – but if it does it can stop the case going to full blown trial.
- It requires there to be an obvious difference between the Patent and the accused craft – one such difference is all it takes for there to be no infringement.

Hull Sides should be nominally Vertical

- There were a number of other – more fundamental – aspects that we considered functioned differently, but this was the ‘most obvious’ and easiest to explain clearly.
- This was an intrinsic part of the M-Ship patent – originally they had wanted the sides to be any angle but the patent office had disallowed that (prior patents) so they had been forced to add in ‘almost vertical’ sides to obtain their patent.

Fig. 3A

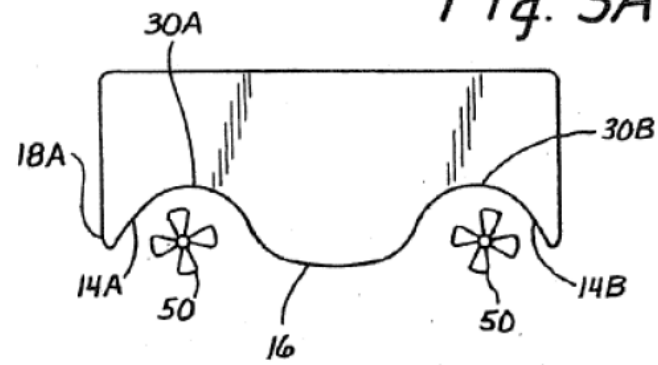


Fig. 3B

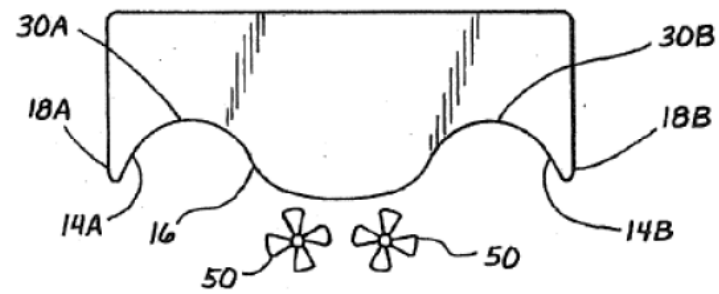
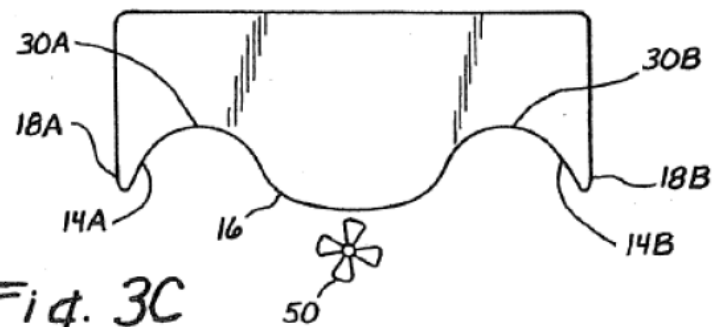
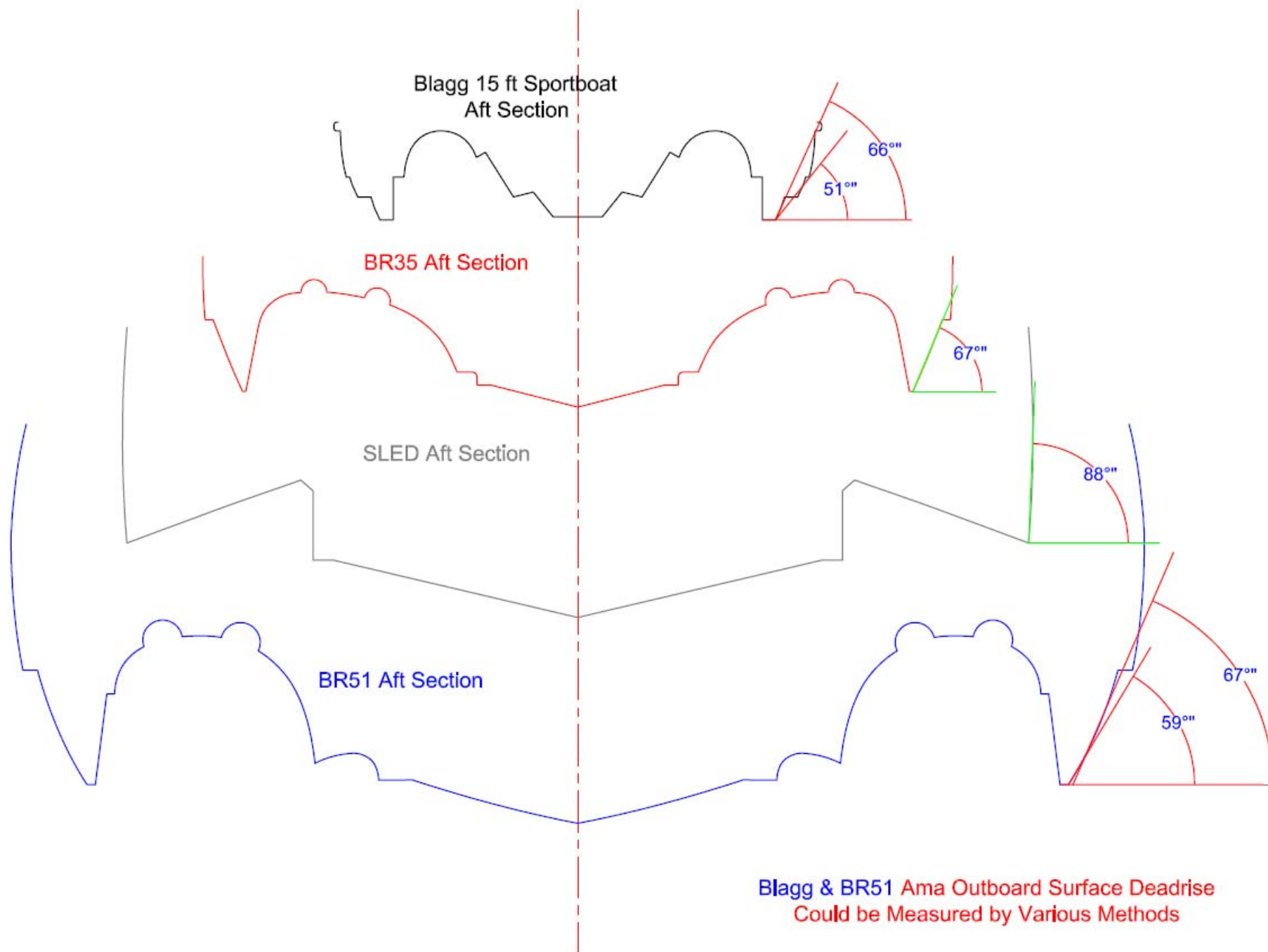


Fig. 3C





Summary Judgement for us

- Judge agreed that in the operative area, our hull sides were not vertical or nearly vertical and judged that there was no infringement by the Bladerunner and ICE Marine.
- Because of this the Judge said that the 'Patent Invalid' part of our action was irrelevant and didn't pronounce judgement.
- M-Ship appealed but (10 months later) the appeal was thrown out.

1st Post Script

- I understand that in March 2010, using the large amount of prior art information accrued during the case, Navatek asked the US Patent Office to re-examine the M-Ship patent.
- This caused the US Patent Office to withdraw all M-Ship's Claims.

Notes:

- ~ 522 files on my computer and a stack of paper files.
- Time from M-Ship's letter of intent to the granting of Summary Judgement was 2 years, 10 months – plus a further 10 months for their appeal.
- The total cost for our side was of the order of \$800,000 ! Unable to claim this back in damages (unless a case for fraudulence can be made).

Notes:

- Without Navatek, ICE could not have fought this and, therefore, would have lost by default – so all an aggressor has to do is sue a smaller opponent. Even if the case is weak, he will win if the opponent can't afford to fight it.
- Situation had a negative effect on both Navatek and ICE, as well as M-Ship. We didn't really win – we just didn't lose!
- Attorney Privilege – Communications with your attorney, or copied to him/her, are not required to be shown to the opposition. Your communications to others, are!

2nd Post Script:

- Situation now is that M-Ship do not have an effective US patent, but they do hold a European patent. This was granted despite opposition from ICE Marine as the European Examiner considered that the two craft functioned in a completely different way!
- The BR pre-dates the M-Ship European Patent anyway.