

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
GRAY WOLF ENERGY SERVICES, L.L.C. AND METROSHIELD, L.L.C.
(b) County of Residence of First Listed Plaintiff HARRIS
(c) Attorneys (Firm Name, Address, and Telephone Number)
JOHN R. STRAWN, JR., STRAWN PICKENS LLP
711 LOUISIANA, SUITE 1850, HOUSTON, TX 77002
713-659-9600

DEFENDANTS
POLYCORP LTD., VAE NORTRAK NORTH AMERICA, INC., AND THOMAS C. LAMBERT
County of Residence of First Listed Defendant TORONTO, CANADA
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Grid containing categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 USC SECTION 271
Brief description of cause:
PATENT INFRINGEMENT

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS
CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 04/25/2013 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GRAY WOLF ENERGY SERVICES, L.L.C. §
and METROSHIELD, L.L.C., §

Plaintiffs, §

v. §

C.A. NO. _____

POLYCORP LTD., VAE NORTRAK §
NORTH AMERICA, INC., §
and THOMAS C. LAMBERT, in his official §
capacity as President and Chief Executive §
Officer of the METROPOLITAN TRANSIT §
AUTHORITY OF HARRIS COUNTY, §
TEXAS, §

Defendants. §

DEMAND FOR JURY TRIAL

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiff Gray Wolf Energy Services, L.L.C. and MetroShield L.L.C. file this Original Complaint and respectfully show the following:

Parties

1. Plaintiff Gray Wolf Energy Services, L.L.C. ("Gray Wolf") is a limited liability company organized under the laws of the State of Colorado.

2. Plaintiff MetroShield, L.L.C. ("MetroShield") is a limited liability company organized under the laws of the State of Colorado

3. Defendant Polycorp Ltd. ("Polycorp") is a company organized under the laws of Ontario, Canada. Pursuant to section 17.044 of the Texas Civil Practice and Remedies Code, Polycorp may be served at its principal place of business at 123 Front St. W., Suite 905, Toronto, Ontario M5J 2M2, Canada via the Texas Secretary of State

located at 1019 Brazos St., Austin, Texas 78701. Polycorp is doing business in this District and generally throughout the United States. Polycorp does not maintain a regular place of business in Texas and does not maintain a designated agent for service of process in Texas.

4. Defendant VAE Nortrak North America, Inc. ("VAE Nortrak") is a corporation organized under the laws of Wyoming. VAE Nortrak has its principal place of business at 16160 River Road, Richmond, British Columbia, V6V 1L6, Canada. VAE Nortrak may be served by serving its registered agent C.T. Corporation System, 350 N. St. Paul St., Suite 2900, Dallas, Texas 75201-4234. VAE Nortrak is doing business in this District and generally throughout the United States.

5. Defendant Thomas C. Lambert is the interim President and Chief Executive Officer of the Metropolitan Transit Authority of Harris County ("Houston Metro"), a public transportation agency and governmental unit organized under the laws of the State of Texas. Mr. Lambert may be served in his capacity as administrative head and Interim President and Chief Executive Officer of Houston Metro at 1900 Main St., Houston, Texas, 77002.

Jurisdiction and Venue

6. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code. This is also an action for an injunction, a declaratory judgment and further necessary and proper relief arising under 28 U.S.C. §§ 2201, 2202. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1338(a) and/or 1367. The Court has personal jurisdiction over Defendants Polycorp, VAE Nortrak and Houston Metro because all these

Defendants have minimum contacts with the forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.

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

Facts

8. Gray Wolf is a limited liability company founded by Harold W. "Jack" Gray ("Gray"). Gray is the managing member of Gray Wolf. MetroShield has licensed and assigned to Gray Wolf all substantial rights to the patent(s) at issue in this case, including without limitation, the exclusive and sole right to make, use or sell any product or service under the patent(s), and the right to bring suit against patent infringers and others.

The patented MetroShield process

9. Gray developed the patented MetroShield process at issue. MetroShield is a coating process that uses heat and pressure to bond insulation to the metal rails and special track work used in electric rail transit systems. The bonding agent is made from a custom formulated elastomeric polymer. The application and manufacturing process for MetroShield involves (1) the high-pressure abrasive cleaning of the rails to white metal, (2) applying of adhesive bonding agents to the rails, (3) subsequent application of MetroShield insulation, (4) bonding of the insulation to the rail by means of heat and pressure applied under controlled conditions, such as in an autoclave, and (5) factory inspection with high voltage tests. In addition, on-site application of MetroShield insulation to welded connections and other transitional devices is also performed, where appropriate.

10. The MetroShield process is effective in helping prevent destructive and

dangerous stray electric current resulting from poorly-insulated tracks or rails used in electric transit systems. Stray current typically occurs where the rail is "embedded" in conductive material like concrete, *e.g.*, track lines placed in and along paved streets, track roadway-crossings, and boarding stations. When stray electrical current escapes from the rails, the current can be transmitted to and attack nearby infrastructures, such as buried pipelines, tanks, cables, or building foundations. The stray current can cause electrolytic corrosion and costly damage to the infrastructures. Stray current can become dangerous in certain cases, in that the corrosion of, *e.g.*, gas lines or fuel tanks, can result in the potential for explosions or fires causing injuries to people and property.

11. The MetroShield process also offers benefits other than electrical insulation, such as buffering the vibration and sounds of passing trains, and helping prevent fracturing and disintegration of rail-embedment materials.

12. The bonding of rubber to a steel surface is often defined in terms of "surface retention" and "tear resistance." Maximum long-term bonding, in accordance with these terms, is best achieved by applying heat and pressure in an autoclave as claimed and described in the patent at issue, No. 7,484,669.

13. Using insulation which is not bonded to a transit system's rails can increase the probability of stray current corrosion. Over time, un-bonded insulation may become compromised, permitting dirt, moisture, chemicals and other deleterious debris to intrude into, through and/or around the un-bonded insulation. The debris has an abrasive or eroding effect on the rubber insulation, causing points of failure through which electric current can escape. This debris or moisture also may come into direct contact with the metal rail. When un-bonded insulation is compromised in these ways,

contact points with the metal rail become established. Electric current escapes through a breach or failure in the insulation, and travels to a nearby metal object, such as a buried pipeline. The current then returns to the rail at another point, or flows to another metal object such as a tank or building substructure. Corrosion occurs at the point where the current leaves the underground pipe, tank or substructure (anode), and returns to a point on the rail (cathode) or other metal object.

14. The MetroShield process helps eliminate stray current corrosion by helping prevent dirt, moisture, chemicals and other deleterious debris or substances from penetrating and damaging the insulation. In particular, the MetroShield process prevents stray current at problem areas, such as pieces of special track work including, *e.g.*, "frogs," track switches and switch boxes, where stray electrical current is more likely to occur. The MetroShield process is currently the superior insulation available for pieces of complex special track work.

15. In addition, the MetroShield process conserves energy by helping prevent the loss of electrical power caused by stray current leakage. This results in significant costs savings, and reduces operating expenses for electric rail transit systems.

Defendants' misconduct and infringement^s

16. Defendants' misconduct in misappropriating Gray Wolf's proprietary information and infringing on the MetroShield patent is set out below.

17. In the spring of 2004, Gene Ardelt, an acquaintance of Jack Gray, introduced Gray to Larry DeLashmit, who had worked with Polycorp, a supplier of engineered polymer products. Polycorp is located in Toronto, Ontario, Canada. DeLashmit expressed interest in the MetroShield process.

18. In January 2005, Gray and another party formed MetroShield LLC and registered this company with the Colorado Secretary of State. Attorney Peter Keppler of Golden, Colorado prepared an operating agreement for the LLC, which names Gray as the managing member for the LLC. This agreement gave Gray Wolf, Plaintiff here, the exclusive rights and license for manufacturing and marketing MetroShield process and technology worldwide, with the exception of the European Union.

19. On April 5, 2005, Gray filed a patent application for the MetroShield process, with MetroShield LLC identified as the assignee of any patent issued.

20. In November 2005, DeLashmit called Gray to advise him that Peter Snucins, Polycorp's president, was interested in the MetroShield process and would like more information, including information relating to the patent application. According to DeLashmit, Snucins and Polycorp wanted to consider the MetroShield process as a potential investment. Gray called Snucins in Toronto. After a detailed conversation with Snucins about the merits of the MetroShield process, Gray told Snucins that he would FedEx to Snucins information that Snucins wished to examine; this FedEx package consisted of and/or included information of a proprietary nature. After providing the proprietary information to Snucins, Gray made several calls to Snucins but never received any return call or response. Gray never heard back from Snucins.

21. In early 2006, METRORail, the electric rail system operated by Houston Metro, contacted Gray through a third-party, Ron Carr of Rubber Lining Specialists LLC, seeking information on the MetroShield process. At the time, the Houston METRORail track system was experiencing problems with stray current leakage along Houston's Main Street corridor. In fact, the rubber insulation on this rail system's tracks, called a

“rail boot,” had begun to develop multiple failure points. According to Carr, train engineers felt that the MetroShield process could solve these problems, because the insulation was actually bonded to the metal rail.

22. Houston Metro Engineers Marcus Mukoro and Peter Ubiaro then attended a meeting and presentation on the Metroshield process conducted on or about May 9, 2006. Also present at this meeting were Ron Carr and Rene Naquin of Rubber Lining Specialists. The discussion topics for this presentation and meeting included a technical specification review for the MetroShield process, a product demonstration, a detailed presentation on using MetroShield for special track work such as “frogs” and switches, switch boxes, and pricing information. As a result of this meeting, Houston Metro and its engineers came into possession of highly-detailed proprietary information concerning MetroShield insulation.

23. Also as the result of Gray's meeting with Houston Metro and his providing its personnel with information on the process, Houston Metro in the fall of 2006 shipped a unit of special track work, *i.e.*, a “frog,” to Rubber Lining Specialists LLC in Orange, Texas for application of MetroShield insulation. The frog was made of a manganese/steel casting. An official Houston Metro engineering drawing that Gray received by email shows that, by November 2006, Houston Metro was aware of and considering MetroShield as the insulation of choice for use on its electric rail transit system. Also, in November 2006, Houston Metro requested test data from an independent testing lab to verify the MetroShield products' electrical resistance, and its efficacy in preventing stray current. A specimen consisting of a short section of rail coated with MetroShield insulation was shipped to Professional Corrosion Service LLC

in Havertown, Pennsylvania for testing. The Professional Corrosion Service report was positive, and recommended the MetroShield process for high-voltage resistance on electric rail systems.

24. In March 2007, engineers employed with Houston Metro asked Gray to make a presentation on the MetroShield process to Houston Metro's management, and to several contractors which worked on light rail projects. Gray made this presentation to Houston Metro at its headquarters on or about April 4, 2007. Present were Ron Carr, Ed Ondak, an electrical engineer specializing in stray current solutions, and Rene Naquin, president of Rubber Linings Specialist, the company that had applied the MetroShield process to the Houston METRORail frog casting. The frog casting was displayed in the presentation to illustrate the effectiveness of the MetroShield process in preventing stray current from escaping from special track work used in electric rail transit systems. Houston Metro management was thus completely aware of the MetroShield process, and that this process was proprietary, no later than April 2007. Also, as a result of having the frog coated with the MetroShield insulation at Rubber Lining Specialists, Houston Metro personnel became intimately familiar with the proprietary knowledge and technology underlying the MetroShield process.

25. The U.S. Patent and Trademark Office issued patent No. 7,484,669 for the MetroShield process in February 2009.

26. In or after November 2009, Gray received a call from Brian Abbott, then chief technical director at VAE Nortrak in Vancouver, British Columbia, Canada. Abbott inquired whether Gray would consider an exclusive business relationship with his company. VAE Nortrak, though a Canadian company, is the North American subsidiary

of Voest Alpine AG of Linz, Austria, and is one of the largest makers of special track work and associated rails in the world. VAE Nortrak operates eight plants and/or foundries in the United States, having a major United States plant in Birmingham, Alabama where special track work for electric rail systems is produced. Gray advised Abbott that he would be interested in learning more. Abbott directed Gray to contact Gary Click at VAE Nortrak's Birmingham facility. Also, after Abbott's call to Gray, Mark Call, who had been instrumental in making the first MetroShield proto-type, met with Abbott at Gray's request at VAE Nortrak's Cheyenne, Wyoming facility. Call discussed the MetroShield process in great detail with Abbott. Abbott called Gray later to advise that VAE Nortrak would have plant space where the MetroShield product could be manufactured.

27. On or about December 18, 2009, Gray traveled to Birmingham to meet with Click. Bob Schwartz, a vice-president at Imperial Rubber Products, Inc., a rubber applicator in Chino, California, accompanied Gray. As a result of the meeting, VAE Nortrak decided to send a unit of special track work, a frog approximately 20 feet in length, to Imperial Rubber, for application of the MetroShield process. VAE Nortrak's claimed purpose was to permit study of whether using the MetroShield heat and pressure process would create a long-term, efficacious bond in terms of both surface retention and tear resistance. In particular, VAE Nortrak wished to study whether the MetroShield heat and pressure patented process would provide the most effective bond both to the steel substrate and polyurethane filler used to fill cavities in a steel casting. VAE Nortrak claimed it wanted to study the treated piece of track-work, and then make a decision about whether to enter into a business relationship with MetroShield LLC or

Gray Wolf. VAE Nortrak's study of the frog coated with the MetroShield process lasted from February 2010 until July 2010. The study produced very positive results which showed the efficacy of the patented process in producing a superior bond.

28. As a result of its examination of the frog, VAE Nortrak gained complete and total access to the technical aspects of the patented MetroShield process, down to the finest detail.

29. On or about July 15, 2010, VAE Nortrak's Click called Gray and asked him if Gray were aware that Polycorp was also using a "heat and pressure" process to bond rubber insulation to rails used for electric rail transit systems. By this time, VAE Nortrak was unquestionably aware of the MetroShield patented process, and also aware of the fact that Polycorp was using a process that violated the MetroShield patent.

30. Not long afterwards, on July 21, 2010, Gray received an unsolicited letter from Polycorp's patent attorneys at Carlson, Gaskey & Olds, P.C. in Michigan. The letter stated that MetroShield LLC's patent did not cover "special track work castings," so that Polycorp could not be infringing on the MetroShield patent No. 7,484,669. Gray Wolf's counsel Peter Keppler responded to Carlson, Gaskey & Olds by letter dated August 5, 2010, explaining that Patent No. 7,484,669 applied to the process as used for an *entire* rail system – including components such as special track work and special track work castings. Keppler's letter also noted that, if Polycorp were using the patented "heat and pressure" process on special track work castings, or other rail system components, then Polycorp was indeed infringing patent No. 7,484,669.

31. Gray received an email from Click at VAE Nortrak on or about July 22, 2010, stating that there was apparent disagreement about ownership of the intellectual

property relating to the MetroShield process as between MetroShield, Polycorp and/or other parties. VAE Nortrak subsequently ceased any type of negotiation or contact with Gray and MetroShield.

32. In or near May 2011, VAE Nortrak was awarded the contract to provide rails, including but not limited to, special track work, for a planned expansion of the Houston Metro electric rail system.

33. John Egbert, MetroShield LLC's attorney, also sent a letter to Polycorp's attorneys dated September 27, 2011. This letter refuted the attorneys' claims that the MetroShield LLC patent No. 7,484,669 did not cover special track work, and expressed concern about Polycorp's activities infringing on the patent. Polycorp's attorneys again responded – not that the Polycorp process was non-infringing – but that the MetroShield patent did not cover special track work, and only covered sections of rail connected end-to-end.

34. Egbert sent another letter on October 25, 2011, reiterating the concerns about infringement, and included drawings showing that Polycorp's argument for non-infringement was without merit. Polycorp's attorneys did not respond to Egbert's October 25th letter. This non-response was due to Polycorp's recognition that it was, in fact, infringing upon patent No. 7,484,669. No later than October 2011, Polycorp was aware of, and had knowledge that, it was infringing patent No. 7,484,669.

35. In 2011, Polycorp publicly announced that it had a new product known as "TrackJacket" for insulating special track-work used in electric rail transit systems. Polycorp also published a brochure describing the TrackJacket product; however, these brochures have thus far only been published in German, Spanish and Portuguese. The

brochures feature a cross-section diagram of insulation bonded to a rail in the same manner that the MetroShield process is illustrated in the engineering drawings attached to Egbert's letter of October 25, 2011.

36. Polycorp claims that the patent for the "TrackJacket" product is now pending.

37. On or about February 1, 2012, Polycorp announced in a news release that it had completed a "successful Polycorp special trackwork encapsulation lay-down at VAE Nortrak" facilities in Birmingham, Alabama, using the TrackJacket product applied to a curved piece of special track work. The news release explained that this type of track work encapsulation was being used by the "Houston Rapid Transit" ("HRT") system for its "4 Corridor Expansion Project" in Houston's downtown corridor. The release further commented on "how clean the TrackJacket Encapsulation looked," and stated that, in addition to supplying the TrackJacket encapsulation process to VAE Nortrak, Polycorp was also supplying other components "to provide a completely encapsulated system between the special track work sections and the 'other track material' (OTM)."

38. HRT is a joint venture of private companies created pursuant to the Hybrid Delivery System Act, Chapter 451, subchapter Q, of the Texas Transportation Code. This enabling legislation permits Houston Metro to direct private companies to develop, construct, operate and maintain electric rail systems or networks including, *e.g.*, the Houston Metro 4 Corridor Expansion Project. Houston Metro has directed that this expansion project include satisfactory light rail technology.

39. Houston Metro and HRT act as long-term collaborative partners for

achieving completion of the 4 Corridor Expansion Project. Houston Metro and HRT collaborate by means including the Houston Metro's Board of Directors giving approval for Houston Metro's President and CEO to negotiate, enter, deliver and/or modify contracts with HRT.

40. The Houston Metro Board of Directors meets monthly, more or less, to conduct its business. Board meetings relevant to this action include but are not limited to, those of, *e.g.*, March 22, 2012, April 26, 2012, June 28, 2012, and October 25, 2012 and meetings conducted in 2013. At these meetings, the Board has made motions and passed resolutions allowing Houston Metro President and CEO George Greanias and his successor Thomas C. Lambert to negotiate, enter, deliver and/or modify contracts with HRT. The effect of these contracts is to authorize HRT to use the infringing TrackJacket product to develop, construct and operate the Houston Metro 4 Corridor Expansion Project.

41. As the result of the Board meetings, Greanias' successor, Thomas C. Lambert, continues to enter into contracts on behalf of Houston Metro with HRT. Again, the effect of these contracts is to authorize HRT to use the infringing TrackJacket product to develop, construct and operate the Houston Metro 4 Corridor Expansion Project. Houston President and CEO Lambert enters these contracts with and despite the knowledge that he and/or other Houston Metro employees or agents, including engineers, have that the TrackJacket product copies the knowledge and technology underlying the MetroShield process, and infringes patent No. 7,484,669. With these acts, Lambert, in his official capacity as President and CEO of Houston Metro, is actively infringing patent No. 7,484,669 and causing Houston Metro to use the infringing

TrackJacket product for the Houston Metro/HRT Expansion Project. Absent injunctive relief, Houston Metro and its President and CEO will continue these infringing acts in the future.

42. VAE Nortrak has also announced that it has entered a contract for approximately \$12 million to supply the special track work needed for expansion of the Houston METRORail/HRT system. This expansion plan purports using the "TrackJacket" product described in the February 2012 Polycorp news release.

43. The TrackJacket encapsulation product or process that Polycorp supplies to VAE Nortrak, that VAE Nortrak applies to its special track work pieces and associated rails, and that Houston Metro and HRT have used and/or are now using in the METRORail electric rail transit system infringes on Patent No. 7,484,669.

44. Polycorp has also announced that it will be supplying TrackJacket product to the Utah Transit Authority expansion project. Plaintiffs assert that this project is worth approximately \$5 million.

45. On information and belief, Plaintiffs assert that the market for the MetroShield process, or infringing products, as used on special track work, will be approximately \$250 million over the next decade. In this same timeframe, the market for the MetroShield process as insulation for straight rail sections could reach \$500 million.

Causes of Action Against VAE Nortrak and Polycorp

46. Polycorp and VAE Nortrak have carried out various acts of infringement, including acts in deliberate, intentional and willful disregard of MetroShield's and Gray Wolf's rights in the patent. Gray Wolf and MetroShield allege that Polycorp, VAE

Nortrak, and Houston Metro will continue to infringe in the future.

47. Section 271(a) Direct Infringement by VAE Nortrak and Polycorp – Plaintiffs incorporate the allegations above as if fully set out herein. The Court has subject matter jurisdiction, and Defendants are subject to personal jurisdiction in this Court. Plaintiff MetroShield owned or owns the patent at issue in this case, No. 7,484,669. Plaintiff Gray Wolf now owns all substantial rights for patent No. 7,484,669. Defendants Polycorp and VAE Nortrak have been infringing this patent by making, selling and/or using the TrackJacket insulation, and/or like infringing devices or products embodying this patent, for use on rails and special track work in electric rail transit systems. Plaintiffs have given the Defendants the notice required under 35 U.S.C. § 287 of the patent and of their infringement, by among other things, sending letters and written communications to Polycorp and/or its counsel, filing this action and serving the Defendants with this Complaint. Due to the patent's infringement, Plaintiffs Gray Wolf and MetroShield have made a demand for an injunction and for damages.

48. Section 271(b) Induced Infringement by VAE Nortrak and Polycorp – Plaintiffs incorporate the allegations above as if fully set out herein. There exists a direct infringement of the patent for the MetroShield process No. 7,484,669. Polycorp and VAE Nortrak had knowledge of patent No. 7,484,669, which MetroShield owns and in which Gray Wolf holds all substantial rights. Polycorp and VAE Nortrak possessed the specific intent to induce infringement of this patent. Once it knew of the patent, Polycorp actively and knowingly aided and abetted VAE Nortrak's and the Houston Metro President and CEO's direct infringement by selling the infringing TrackJacket product to VAE Nortrak for use on its track work, with the specific intent that VAE

Nortrak cause Houston Metro to use the TrackJacket product in its electric rail system. Once it knew of the patent, VAE Nortrak actively and knowingly aided and abetted Polycorp's and the Houston Metro President and CEO's infringement by buying the infringing TrackJacket product from Polycorp for use on VAE Nortrak's track work, with the specific intent that VAE Nortrak would then cause Houston Metro to use the TrackJacket product in its electric rail system. Polycorp and VAE Nortrak did not merely possess knowledge of acts allegedly inducing infringement. Polycorp actively induced direct infringement of this patent by VAE Nortrak. VAE Nortrak actively induced direct infringement of the patent by Polycorp. Polycorp and VAE Nortrak both actively induced direct infringement of the patent by Houston Metro Presidents and CEOs. Polycorp specifically intended for its customer VAE Nortrak to use the TrackJacket product on its track work pieces, when Polycorp knew the TrackJacket product infringed patent No. 7,484,669. Polycorp also intended the Houston Metro Presidents and CEOs to infringe the patent for the MetroShield process No. 7,484,669 by causing Houston Metro to use the TrackJacket product in the Houston Metro electric rail system, when Polycorp knew the TrackJacket product infringed patent No. 7,484,669. VAE Nortrak intended for the Houston Metro Presidents and CEOs to infringe the patent for the MetroShield process No. 7,484,669 by causing Houston Metro to use the TrackJacket product in its rail system, when VAE Nortrak knew the TrackJacket product infringed patent No. 7,484,669.

49. Section 271(c) Contributory Infringement by VAE Nortrak and Polycorp – Plaintiffs incorporate the allegations above as if fully set out herein. There exists an actual and direct infringement of patent No. 7,484,669 for the MetroShield

process by Polycorp and VAE Nortrak. Defendants Polycorp and VAE Nortrak sell, offer to sell, or import an apparatus, component or material, *i.e.*, the TrackJacket product, for use in practicing the invention or patented process covered by patent No. 7,484,669. That apparatus, component or material is a material part of practicing the invention or process covered by patent No. 7,484,669. Polycorp and VAE Nortrak have committed these acts with knowledge of the patent, and also with knowledge that the apparatus, component or material is specially made or adapted for use in an infringement of patent No. 7,484,669. The TrackJacket product, apparatus, component or material at issue is not suitable for substantial non-infringing uses.

50. Plaintiffs incorporate the allegations above as if fully set out herein. Gray Wolf and MetroShield have suffered damages by reason of Polycorp's and VAE Nortrak's infringement of the patent at issue, as well as their actively inducing and knowingly contributing to the infringement of the patent by others. Polycorp and VAE Nortrak willfully, knowingly and intentionally infringed patent No. 7,484,669. Gray Wolf and MetroShield will suffer additional damages unless this Court enjoins Polycorp and VAE Nortrak from continuing such infringing acts and from initiating such infringing acts in the future. Gray Wolf and MetroShield therefore seek a declaration that Defendants are infringing patent No. 7,484,669, and also seek injunctive relief under 28 U.S.C. §§ 2201, 2202 to prohibit further infringement. These Defendants are making meaningful preparations for infringing activity, and have engaged in infringing activity. These Defendants have the ability and definite intention to undertake and continue infringing activity. Defendants' acts indicate a refusal to change the course of their actions in the face of acts by Plaintiffs sufficient to create a reasonable apprehension that a suit would

be forthcoming.

Injunctive Relief Against Houston Metro's President and CEO

51. Plaintiffs incorporate the allegations above as if fully set out herein. Houston Metro and its President and CEO are subject to suit for injunctive relief for patent infringement under, *e.g.*, the *Ex Parte Young* doctrine. Houston Metro's President and CEO is engaging in ongoing violations of federal patent law. Plaintiffs seek relief that is prospective, declaratory or injunctive in nature. Specifically, Plaintiffs seek an injunction permanently barring the Houston Metro President and CEO from further causing Houston Metro to use products infringing patent No. 7,484,669, and requiring him to direct that Houston Metro immediately cease the use of any and all infringing products. Plaintiffs will succeed on the merits of their patent infringement claim. Failure to grant injunctive relief will cause Plaintiffs irreparable injury. The irreparable injury to Plaintiffs outweighs any harm that will result to Houston Metro or to its current and future Presidents and CEOs. By observing and enforcing U.S. patent laws, prospective injunctive relief will not disserve the public interest. Neither Houston Metro, nor its Presidents, CEOs, officers, employees or engineers have any right to use patent No. 7,484,669, nor to infringe this patent.

52. Pursuant to FRCP 38(b), Gray Wolf requests a trial by jury on all claims so triable.

Prayer

WHEREFORE, Gray Wolf Energy Services LLC and MetroShield LLC pray for a declaration of infringement, a preliminary and permanent injunction against continued infringement, an accounting for damages of every type due, an award of such damages

against Defendants, including treble damages, and an assessment against Defendants of interest, costs and reasonable attorneys' fees as incurred by Gray Wolf and MetroShield. Plaintiffs further request such other relief as the Court deems proper.

Respectfully submitted,

STRAWN PICKENS L.L.P.

/s/ John R. Strawn, Jr

John R. Strawn, Jr.
Texas Bar No. 19374100
Federal ID No. 6277
Pennzoil Place, South Tower
711 Louisiana, Suite 1850
Houston, Texas 77002
Tel: (713) 659-9600
Fax: (713) 659-9601
Attorney-in-Charge for Plaintiffs
Gray Wolf Energy Services, L.L.C., and
MetroShield LLC

OF COUNSEL:
STRAWN PICKENS L.L.P.
Andrew L. Pickens
Texas Bar No. 15971900
Federal ID No. 14969
Victoria P. Skinner
Texas Bar No. 24005579
Federal ID No. 37679
Pennzoil Place, South Tower
711 Louisiana, Suite 1850
Houston, Texas 77002
Tel: (713) 659-9600
Fax: (713) 659-9601