

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JUN 19 PM 3:50  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature] DEPUTY CLERK

ATSER RESEARCH TECHNOLOGIES, INC., §  
§  
*Plaintiff,* §

vs. §

RABA-KISTNER INFRASTRUCTURE, INC.; §  
RABA-KISTNER CONSULTANTS, INC.; §  
BRYTEST LABORATORIES, INC. d/b/a §  
RABA-KISTNER-BRYTEST §  
CONSULTANTS, INC.; §  
RABA-KISTNER-ANDERSON §  
CONSULTANTS, INC. f/k/a RABA-KISTNER §  
CONSULTANTS (SW), INC.; §  
LONE STAR INFRASTRUCTURE, LLC; and §  
LONE STAR INFRASTRUCTURE, §  
JOINT VENTURE §  
§  
*Defendants.* §

§ CIVIL ACTION NO. SA-07-CV093-XR  
§ JURY TRIAL REQUESTED

**FIRST AMENDED COMPLAINT**

For its First Amended Complaint against Defendants Raba-Kistner Infrastructure, Inc. (“RKI”), Raba-Kistner Consultants, Inc. (“RKC”), Brytest Laboratories, Inc. d/b/a Raba-Kistner-Brytest Consultants, Inc. (“Brytest”), Raba-Kistner-Anderson Consultants, Inc. f/k/a Raba-Kistner Consultants (SW), Inc. (“RKA”), Lone Star Infrastructure, LLC (“Lone Star”), and Lone Star Infrastructure, Joint Venture (“LSIJV”), Plaintiff ATSER Research Technologies, Inc. (“ATSER”), alleges as follows:

**NATURE OF THIS ACTION**

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

**THE PARTIES**

2. Plaintiff ATSER Research Technologies, Inc. ("ATSER") is a corporation organized and existing under the laws of the State of Texas with its principal place of business at 1150 Richcrest Drive, Houston, Texas 77060.

3. Defendant Raba-Kistner Infrastructure, Inc. ("RKI") is a corporation organized and existing under the laws of the State of Texas with its principal place of business at 12821 West Golden Lane, San Antonio, Texas 78249. RKI may be served through its registered agent, Carl F. Raba, Jr., at 12821 West Golden Lane, San Antonio, Texas 78249.

4. Defendant Raba-Kistner Consultants, Inc. ("RKC") is a corporation organized and existing under the laws of the State of Texas with its principal place of business at 12821 West Golden Lane, San Antonio, Texas 78249. RKC may be served through its registered agent, Carl F. Raba, Jr., at 12821 West Golden Lane, San Antonio, Texas 78249.

5. Defendant Brytest Laboratories, Inc. d/b/a Raba-Kistner-Brytest Consultants, Inc. ("Brytest") is a corporation organized and existing under the laws of the State of Texas with its principal place of business at 12821 West Golden Lane, San Antonio, Texas 78249. Brytest may be served through its registered agent, Carl F. Raba, Jr., at 12821 West Golden Lane, San Antonio, Texas 78249.

6. Defendant Raba-Kistner-Anderson Consultants, Inc. f/k/a Raba-Kistner Consultants (SW), Inc. ("RKA") is a corporation organized and existing under the laws of the State of Texas with its principal place of business at 12821 West Golden Lane, San Antonio, Texas 78249. RKA may be served through its registered agent, Carl F. Raba, Jr., at 12821 West Golden Lane, San Antonio, Texas 78249.

7. Defendant Lone Star Infrastructure, LLC (“Lone Star”) is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 1421 Wells Branch Parkway, Suite 200, Pflugerville, Texas 78660. Lone Star may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporated Service Company, at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

8. Defendant Lone Star Infrastructure, Joint Venture (“LSIJV”) is a joint venture formed and operating under the laws of the State of Texas with its principal place of business at 1421 Wells Branch Parkway, Suite 200, Pflugerville, Texas 78660. LSIJV may be served through its counsel, John Moran, of Holland & Knight, LLP, 2099 Pennsylvania Avenue, N.W. Suite 100, Washington, D.C. 20006. Mr. Moran has previously agreed to accept service on behalf of LSIJV via certified mail, return receipt requested.

#### **JURISDICTION AND VENUE**

9. This Court has subject matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over RKI because RKI is a Texas corporation. Further, this Court has personal jurisdiction over RKI based upon its commission of one or more acts of infringement of ATSER’s patent in this District and elsewhere in the State of Texas, and RKI’s transaction of business within this District and the State of Texas.

11. This Court has personal jurisdiction over RKC because RKC is a Texas corporation. Further, this Court has personal jurisdiction over RKC based upon its commission of one or more acts of infringement of ATSER’s patent in this District and elsewhere in the State of Texas, and RKC’s transaction of business within this District and the State of Texas.

12. This Court has personal jurisdiction over Brytest because Brytest is a Texas corporation. Further, this Court has personal jurisdiction over Brytest based upon its

commission of one or more acts of infringement of ATSER's patent in this District and elsewhere in the State of Texas, and Brytest's transaction of business within this District and the State of Texas.

13. This Court has personal jurisdiction over RKA because RKA is a Texas corporation. Further, this Court has personal jurisdiction over RKA based upon its commission of one or more acts of infringement of ATSER's patent in this District and elsewhere in the State of Texas, and RKA's transaction of business within this District and the State of Texas.

14. This Court has personal jurisdiction over Lone Star because Lone Star has its principal place of business in Texas. Further, this Court has personal jurisdiction over Lone Star based upon its commission of one or more acts of infringement of ATSER's patent in this District and elsewhere in the State of Texas, and Lone Star's transaction of business within this District and the State of Texas.

15. This Court has personal jurisdiction over LSIJV because LSIJV has its principal place of business in Texas. Further, this Court has personal jurisdiction over LSIJV based upon its commission of one or more acts of infringement of ATSER's patent in this District and elsewhere in the State of Texas, and LSIJV's transaction of business within this District and the State of Texas.

16. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

**COUNT I**  
**PATENT INFRINGEMENT**

17. Plaintiff re-alleges and incorporates by reference herein the allegations contained in the preceding paragraphs of the Complaint.

18. On November 30, 2004, U.S. Patent No. 6,826,498 ("the '498 patent"), entitled "Computerized Laboratory Information Management System," was duly and legally issued by

the United States Patent & Trademark Office. Before this date, the application which issued as the '498 patent was published by the U.S. Patent & Trademark Office on September 26, 2002 (Publication No. US 2002-0138220). A true and correct copy of the '498 patent is attached as Exhibit "A" to this Complaint.

19. ATSER owns the entire right, title and interest of the '498 patent including the right to seek damages for all past infringements.

20. Upon information and belief, RKI has been and is directly infringing, actively inducing other to infringe, and/or contributing to the infringement of at least one claim of the '498 patent in the United States by making, using, offering for sale, and/or selling, without limitation, its Electronic Laboratory Verification Information System ("ELVIS").

21. Upon information and belief, RKI will continue to infringe the '498 patent unless and until it is enjoined by the Court.

22. Upon information and belief, RKI has infringed and continues to infringe the '498 patent with full knowledge of the '498 patent, and its infringement is willful.

23. RKI has caused and will continue to cause ATSER irreparable injury and damage by infringing the '498 patent. ATSER will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until RKI is enjoined from infringing the '498 patent.

24. Upon information and belief, RKC has been and is directly infringing, actively inducing other to infringe, and/or contributing to the infringement of at least one claim of the '498 patent in the United States by making, using, offering for sale, and/or selling, without limitation, its Electronic Laboratory Verification Information System ("ELVIS").

25. Upon information and belief, RKC will continue to infringe the '498 patent unless and until it is enjoined by the Court.

26. Upon information and belief, RKC has infringed and continues to infringe the '498 patent with full knowledge of the '498 patent, and its infringement is willful.

27. RKC has caused and will continue to cause ATSER irreparable injury and damage by infringing the '498 patent. ATSER will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until RKC is enjoined from infringing the '498 patent.

28. Upon information and belief, Brytest has been and is directly infringing, actively inducing other to infringe, and/or contributing to the infringement of at least one claim of the '498 patent in the United States by making, using, offering for sale, and/or selling, without limitation, its Electronic Laboratory Verification Information System ("ELVIS").

29. Upon information and belief, Brytest will continue to infringe the '498 patent unless and until it is enjoined by the Court.

30. Upon information and belief, Brytest has infringed and continues to infringe the '498 patent with full knowledge of the '498 patent, and its infringement is willful.

31. Brytest has caused and will continue to cause ATSER irreparable injury and damage by infringing the '498 patent. ATSER will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Brytest is enjoined from infringing the '498 patent.

32. Upon information and belief, RKA has been and is directly infringing, actively inducing other to infringe, and/or contributing to the infringement of at least one claim of the '498 patent in the United States by making, using, offering for sale, and/or selling, without limitation, its Electronic Laboratory Verification Information System ("ELVIS").

33. Upon information and belief, RKA will continue to infringe the '498 patent unless and until it is enjoined by the Court.

34. Upon information and belief, RKA has infringed and continues to infringe the '498 patent with full knowledge of the '498 patent, and its infringement is willful.

35. RKA has caused and will continue to cause ATSER irreparable injury and damage by infringing the '498 patent. ATSER will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until RKA is enjoined from infringing the '498 patent.

36. Upon information and belief, Lone Star has been and is directly infringing, actively inducing other to infringe, and/or contributing to the infringement of at least one claim of the '498 patent in the United States by making, using, offering for sale, and/or selling, without limitation, its Electronic Laboratory Verification Information System ("ELVIS").

37. Upon information and belief, Lone Star will continue to infringe the '498 patent unless and until it is enjoined by the Court.

38. Upon information and belief, Lone Star has infringed and continues to infringe the '498 patent with full knowledge of the '498 patent, and its infringement is willful.

39. Lone Star has caused and will continue to cause ATSER irreparable injury and damage by infringing the '498 patent. ATSER will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Lone Star is enjoined from infringing the '498 patent.

40. Upon information and belief, LSIJV has been and is directly infringing, actively inducing other to infringe, and/or contributing to the infringement of at least one claim of the '498 patent in the United States by making, using, offering for sale, and/or selling, without limitation, its Electronic Laboratory Verification Information System ("ELVIS").

41. Upon information and belief, LSIJV will continue to infringe the '498 patent unless and until it is enjoined by the Court.

42. Upon information and belief, LSIJV has infringed and continues to infringe the '498 patent with full knowledge of the '498 patent, and its infringement is willful.

43. LSIJV has caused and will continue to cause ATSER irreparable injury and damage by infringing the '498 patent. ATSER will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until LSIJV is enjoined from infringing the '498 patent.

**JURY TRIAL DEMAND**

44. Pursuant to Federal Rule of Civil Procedure 38, ATSER hereby demands a jury trial on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, ATSER respectfully requests this Court enter judgment:

1. that RKI has infringed the '498 patent;
2. permanently enjoining RKI and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '498 patent;
3. awarding ATSER its damages in amounts sufficient to compensate it for RKI's infringement of the '498 patent, together with prejudgment and post judgment interest and costs, pursuant to 35 U.S.C. § 284;
4. trebling the damages award to ATSER by reason of RKI's willful infringement of the '498 patent;
5. that RKC has infringed the '498 patent;



6. permanently enjoining RKC and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '498 patent;

7. awarding ATSER its damages in amounts sufficient to compensate it for RKC's infringement of the '498 patent, together with prejudgment and post judgment interest and costs, pursuant to 35 U.S.C. § 284;

8. trebling the damages award to ATSER by reason of RKC's willful infringement of the '498 patent;

9. that Brytest has infringed the '498 patent;

10. permanently enjoining Brytest and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '498 patent;

11. awarding ATSER its damages in amounts sufficient to compensate it for Brytest's infringement of the '498 patent, together with prejudgment and post judgment interest and costs, pursuant to 35 U.S.C. § 284;

12. trebling the damages award to ATSER by reason of Brytest's willful infringement of the '498 patent;

13. that RKA has infringed the '498 patent;

14. permanently enjoining RKA and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '498 patent;

15. awarding ATSER its damages in amounts sufficient to compensate it for RKA's infringement of the '498 patent, together with prejudgment and post judgment interest and costs, pursuant to 35 U.S.C. § 284;

16. trebling the damages award to ATSER by reason of RKA's willful infringement of the '498 patent;

17. that Lone Star has infringed the '498 patent;

18. permanently enjoining Lone Star and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '498 patent;

19. awarding ATSER its damages in amounts sufficient to compensate it for Lone Star's infringement of the '498 patent, together with prejudgment and post judgment interest and costs, pursuant to 35 U.S.C. § 284;

20. trebling the damages award to ATSER by reason of Lone Star's willful infringement of the '498 patent;

21. that LSIJV has infringed the '498 patent;

22. permanently enjoining LSIJV and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '498 patent;

23. awarding ATSER its damages in amounts sufficient to compensate it for LSIJV's infringement of the '498 patent, together with prejudgment and post judgment interest and costs, pursuant to 35 U.S.C. § 284;

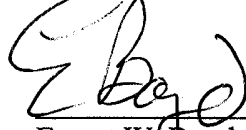
24. trebling the damages award to ATSER by reason of LSIJV's willful infringement of the '498 patent;

25. declaring this case to be "exceptional" under 35 U.S.C. § 285 and awarding ATSER its attorneys' fees, expenses and costs incurred in this action; and

26. awarding ATSER such other and further relief as this Court deems just and proper.

Respectfully submitted,

MEHAFFY WEBER, P.C.



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ATTORNEYS FOR PLAINTIFF

ATSER RESEARCH TECHNOLOGIES, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 18, 2007, I served the attached document, Plaintiff's First Amended Complaint, by certified mail, return receipt requested, as required. The following individuals were served:

**Via Certified Mail, RRR 7160 3901 9846 1129 6490**

John Moran  
Holland & Knight, LLP  
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**Via Certified Mail, RRR 7160 3901 9846 1129 6513**

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**ATTORNEYS FOR DEFENDANTS RABA-KISTNER INFRASTRUCTURE, INC.; RABA-KISTNER CONSULTANTS, INC.; BRYTEST LABORATORIES, INC. d/b/a RABA-KISTNER-BRYTEST CONSULTANTS, INC.; RABA-KISTNER-ANDERSON CONSULTANTS, INC. f/k/a RABA-KISTNER CONSULTANTS (SW), INC.; and LONE STAR INFRASTRUCTURE, LLC.**



Eric Adams