

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**CHARLES C. FREENY III, BRYAN E.
FREENY, and JAMES P. FREENY,**

Plaintiffs,

v.

**MURPHY OIL CORPORATION and
MURPHY USA Inc.,**

Defendants.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Charles C. Freeny III, Bryan E. Freeny, and James P. Freeny (collectively “Plaintiffs”), for their Complaint against Defendants Murphy Oil Corporation and Murphy USA, Inc. (collectively “Defendants”), hereby allege as follows:

THE PARTIES

1. Plaintiff Charles C. Freeny III is an individual residing in Flower Mound, Texas.
2. Plaintiff Bryan E. Freeny is an individual residing in Ft. Worth, Texas.
3. Plaintiff James P. Freeny is an individual residing in Spring, Texas.
4. On information and belief, Defendant Murphy Oil Corporation is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 200 Peach Street, P.O. Box 7000, El Dorado, Arkansas, 71731-7000.
5. On information and belief, Defendant Murphy USA, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 422 North Washington Avenue, El Dorado, Arkansas, 71730-5616. On information

and belief, Defendant Murphy USA, Inc. was formerly a division of Defendant Murphy Oil Corporation that became an independent company around August 2013.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§101 et seq. This Court has jurisdiction over Plaintiffs’ federal law claims under 28 U.S.C. §§1331 and 1338(a).

7. This Court has specific and/or general personal jurisdiction over Defendants because they have committed acts giving rise to this action within this judicial district and/or have established minimum contacts within Texas and within this judicial district such that the exercise of jurisdiction over each would not offend traditional notions of fair play and substantial justice.

8. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) because Defendants have committed acts within this judicial district giving rise to this action, and continue to conduct business in this district, and/or have committed acts of patent infringement within this District giving rise to this action.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 6,076,071)

9. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

10. On June 13, 2000, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,076,071 (“the ’071 patent”), entitled “Automated Synchronous Product Pricing and Advertising System.” A true and correct copy of the ’071 patent is attached hereto as **Exhibit A**.

11. The named inventor of the '071 patent is Charles C. Freeny, Jr., who is now deceased.

12. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the '071 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

13. On information and belief, Defendants have been and now are infringing the '071 patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making and using in their retail gas stations located in this judicial district and throughout the United States electronic pricing systems for displaying, tracking, and updating the prices of gasoline products offered for sale at those stations. Such systems directly infringe one or more claims of the '071 patent.

14. On information and belief, Defendants will continue to infringe the '071 patent unless enjoined by this Court.

15. Defendants' acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Defendants' infringement of Plaintiffs' rights under the '071 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

16. On information and belief, Defendants have had knowledge of the '071 patent and its contents since at least around November 2006, when the '071 patent was cited by the United States Patent and Trademark Office in the prosecution of U.S. Patent No. 8,306,851 ("the '851 patent"). On information and belief, Defendants are or were the owners of the '851 patent and were involved in the prosecution of the '851 patent.

17. The '851 patent is entitled "Automated Price Management System" and, on information and belief, relates to Defendants' accused infringing systems.

18. During the prosecution of the '851 patent, the patent examiner rejected claims in the application for the '851 patent as anticipated and/or obvious in light of the '071 patent. In response, Defendants' patent prosecution counsel discussed the substance and scope of the '071 patent with the patent examiner and, ultimately, Defendants chose to amend the claims in the application for the '851 patent to distinguish them from the '071 patent.

19. On information and belief, based on Defendants' knowledge of the '071 patent acquired during the course of prosecuting the '851 patent, Defendants knew or should have known that there was an objectively high risk that their accused systems infringe the '071 patent.

20. Defendants have also been on notice of the '071 patent and Plaintiffs' allegations of infringement in this action since at least the date of service of this Complaint.

21. Despite being on notice of the '071 patent and their infringement of the patent, Defendants have continued with their infringing activities.

22. Thus, on information and belief, Defendants' infringement of the '071 patent has been willful, thereby entitling Plaintiffs to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in litigating this action under 35 U.S.C. § 285.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 6,513,016)

23. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

24. On January 28, 2003, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,513,016 ("the '016 patent") entitled "Automated

Synchronous Product Pricing and Advertising System.” A true and correct copy of the ’016 patent is attached hereto as **Exhibit B**.

25. The named inventor of the ’016 patent is Charles C. Freeny, Jr., who is now deceased.

26. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the ’016 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

27. On information and belief, Defendants have been and now are infringing the ’016 patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making and using in their retail gas stations located in this judicial district and throughout the United States electronic pricing systems for displaying, tracking, and updating the prices of gasoline products offered for sale at those stations. Such systems directly infringe one or more claims of the ’016 patent.

28. On information and belief, Defendants will continue to infringe the ’016 patent unless enjoined by this Court.

29. Defendants’ acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Defendants’ infringement of Plaintiffs’ rights under the ’016 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

30. On information and belief, Defendants have had knowledge of the ’016 patent and its contents since at least around March 2006, when the ’016 patent was cited as prior art during Defendants’ prosecution of the ’851 patent in the United States Patent and Trademark Office.

31. Defendants have also been on notice of the '016 patent and Plaintiffs' allegations of infringement in this action since at least the date of service of this Complaint.

32. Despite being on notice of the '016 patent and their infringement of the patent, Defendants have continued with their infringing activities.

33. Thus, on information and belief, Defendants' infringement of the '016 patent has been willful, thereby entitling Plaintiffs to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in litigating this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment against Defendants as follows:

- a. For judgment that Defendants have infringed and continue to infringe the claims of the '071 and '016 patents;
- b. For a permanent injunction against Defendants and their respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '071 and '016 patents;
- c. For judgment that Defendants' acts of infringement have been and are willful;
- d. For an accounting of all damages caused by Defendants' acts of infringement;
- e. For a judgment and order requiring Defendants to pay Plaintiffs' damages (including enhanced damages for Defendants' willful infringement), costs, expenses, and pre- and post-judgment interest for their infringement of the '071 and '016 patents as provided under 35 U.S.C. § 284;

f. For a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and

g. For such other relief at law and in equity as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a trial by jury of all issues triable by a jury.

Dated: October 3, 2013

Respectfully submitted,

/s/ Christopher D. Banys
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