

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

SIBONEY ENERGY SERVICES, INC.,)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	JURY TRIAL DEMANDED
BOXRITE, LLC and MEDLEN)	
OILFIELD TRANSPORT, INC.)	
d/b/a CUTTINGS REMOVAL)	
COMPANY,)	
)	
Defendants.)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Siboney Energy Services, Inc., for its Complaint for Declaratory Judgment against Defendants BoxRite, LLC and Medlen Oilfield Transport, Inc. d/b/a/ Cuttings Removal Company (collectively, “Defendants”), states as follows:

I. PARTIES

1. Plaintiff Siboney Energy Services, Inc. (“Siboney”) is a corporation incorporated under the laws of the State of Florida, with its principal place of business located at 1450 Centrepark Boulevard, Suite 100, West Palm Beach, Florida 33401. Siboney also maintains a principal office located at 121 Private Road 6255, Hobson, Texas 78117.

2. Upon information and belief, Defendant BoxRite, LLC (“BoxRite”) is a limited liability company organized under the laws of the State of Arkansas, with its principal place of business located at P.O. Box 455, Little Rock, Arkansas 72202. BoxRite may be served with process through service upon its registered agent, Christal D. Wilson, at 2800 Cantrell Road, Suite 500, Little Rock, Arkansas 72202.

3. Upon information and belief, Defendant Medlen Oilfield Transport, Inc. d/b/a Cuttings Removal Company (“Medlen”) is a corporation incorporated under the laws of the State of Arkansas, with its principal place of business located at 2877 Heber Springs Road West, Quitman, Arkansas 72131. Medlen may be served with process through service upon its registered agent, Corporation Service Company, at 300 South Spring Street, 300 Spring Building, Suite 900, Little Rock, Arkansas 72201.

II. NATURE OF THE ACTION

4. This is an action for declaratory judgment of non-infringement of U.S. Patent No. 6,227,608; declaratory judgment of invalidity of U.S. Patent No. 6,227,608; declaratory judgment of unenforceability of U.S. Patent No. 6,227,608; unfair competition in violation of 15 U.S.C. § 1125(a); defamation, business disparagement, tortious interference with existing contractual and business relationships, and unfair competition under Texas law.

III. JURISDICTION AND VENUE

5. These claims arise under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Trademark Act of 1946 (the “Lanham Act”), as amended, 15 U.S.C. § 1051 *et seq.*

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1121, 1331, 1332, 1338(a), 2201, and 2202, as the action is between citizens of different States, and the amount in controversy in this action, exclusive of interest and costs, exceeds the sum of \$75,000.00. This Court also has subject matter jurisdiction over this action as it involves the declaration of rights under the Patent Act, 35 U.S.C. § 1 *et seq.*, and claims under the Lanham Act, involving a question of federal law pursuant to 28 U.S.C. § 1331. This Court has original and exclusive jurisdiction over this matter pursuant to 28 U.S.C. § 1338(a). This Court has supplemental

jurisdiction over the claims that arise under Texas law pursuant to 28 U.S.C. § 1367(a) in that they are substantially related to the claims that arise under the Patent Laws of the United States. Furthermore, this Court has supplemental jurisdiction because both the state and federal claims are derived from a common nucleus of operative facts and considerations of judicial economy dictate the state and federal issues be consolidated for a single trial.

7. Upon information and belief, this Court has personal jurisdiction over Defendants based on their continuous and systematic minimum contacts with residents of Texas, through the distribution and sale of their goods and/or services in Texas, because they are regularly transact business in this District, and/or have offered products into interstate commerce through one or more interactive websites, and have caused injury in this District. Defendants, therefore, are present in this judicial district and transact business and solicit business in the State of Texas, within this judicial district, and elsewhere.

8. Further, upon information and belief, Defendants have committed tortious acts within the State of Texas and/or have committed tortious acts without the State of Texas and regularly do or solicit business, engage in other persistent courses of conduct and/or derive substantial revenue from products sold offered in the State of Texas and derive substantial revenue from interstate commerce. In addition, Siboney has been injured in this judicial district.

9. Upon information and belief, this Court has specific personal jurisdiction under Texas' long-arm statute, Tex. Civ. Prac. & Rem. Code Ann. § 17.042, because (1) Defendants have transacted business within Texas; (2) Defendants have contracted to supply services or goods in Texas; (3) Defendants have committed a tort in whole or in part in Texas that give rise to this Complaint; and (4) jurisdiction based on Defendants' contacts with Texas (including, but

not limited to, sales of goods or services) is not inconsistent with the Constitution of the State of Texas or the Constitution of the United States.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to these claims arose in this District and, upon information and belief, Defendants have transacted business in this District and/or have committed tortious acts or omissions in this District, and are subject to personal jurisdiction pursuant to Texas' long-arm statute, Tex. Civ. Prac. & Rem. Code Ann. § 17.042 *et seq.*

IV. FACTUAL BACKGROUND

A. Siboney Energy Services

11. Siboney provides well-site support services and logistic services to the Eagle Ford Shale and Permian Basin. Such services include, without limitation: solids control solutions; super vacuum and pump truck services; full rig cleanouts, open tops, disposal cleanouts, and cellars; tanker transportation for fluids services; and regulations-compliant disposal for produced water and well flowback.

12. Siboney owns and operates an enclosed dump-aggregate trailer sold under the Dragon brand (the "Dragon Trailer") and manufactured and sold by Dragon Products, Ltd., the Modern Group, Ltd., the Modern Group GP-Sub, Inc., and/or the Modern Group GP, Inc. d/b/a Dragon Products and Ranco Trailers (collectively, the "Modern Group").

13. Siboney has used the Dragon Trailer to provide transportation services to several customers, as detailed below.

B. U.S. Patent No. 6,227,608

14. On May 8, 2001, the United States Patent and Trademark Office issued U.S. Patent No. 6,227,608 disclosing an invention for a wagon, granted to inventor Anthony Peter

Hoyne (the “’608 Patent”). A true and correct copy of the ’608 Patent is attached hereto as **Exhibit A**.

15. Upon information and belief, BoxRite is the owner by assignment of the ’608 Patent.

16. Upon information and belief, Medlen is the exclusive licensee of the ’608 Patent.

17. On or about August 6, 2013, Siboney received a letter from Calhoun Law Firm on behalf of BoxRite and its affiliate, Medlen, regarding the ’608 Patent. The August 6, 2013 letter was also directed to the Modern Group. Attached hereto as **Exhibit B** is a true and correct copy of the August 6, 2013 letter.

18. Upon information and belief, BoxRite has granted exclusive rights in the ’608 Patent to Medlen.

19. In the August 6, 2013 letter, Defendants demanded that Siboney immediately cease and desist from hauling anything in any truck or trailer allegedly covered by the ’608 Patent, including the Dragon Trailer.

20. Defendants also demanded that Siboney make available for inspection the Dragon Trailer.

21. In their August 6, 2013 letter, Defendants threaten legal action in the event Siboney continues to use the Dragon Trailer and/or a license agreement is not reached.

C. Defendants’ Unlawful Actions

22. Siboney has recently been made aware that Defendants have been contacting Siboney’s valuable customers in an attempt to improperly interfere with such customers’ business operations and their existing, contractual, and/or prospective relationships with Siboney.

23. On October 2, 2013, Siboney entered into a U.S. Master Transportation Agreement for Motor Carrier Services with Statoil Texas Onshore Properties LLC (“Statoil”) (the “Statoil Agreement”).

24. On or about October 14, 2013, Siboney received a letter from Statoil, informing Siboney that Statoil had received notice from Medlen alleging that Siboney is infringing Medlen’s patents.

25. On October 16, 2013, Siboney responded to Statoil, informing Statoil that Siboney had investigated Defendants’ claims and had determined that there is no patent infringement based on services provided to Statoil by Siboney.

26. Notwithstanding Siboney’s October 16, 2013 letter, Statoil has ceased using any services provided by Siboney as a result of Defendants’ claims of infringement.

27. In addition to Statoil, Siboney has also recently been made aware that Defendants have contacted at least one other customer of Siboney, EOG Resources Inc. (“EOG”), in which Defendants have represented to EOG that Siboney is infringing Defendants’ ’608 Patent. Attached hereto as **Exhibit C** is an undated letter sent by Medlen to EOG (the “EOG Letter”).

28. As a result of Defendants’ letter and their actions, and the resultant interference with Siboney’s existing, contractual, and/or prospective business relationships, Siboney has a reasonable apprehension of being sued by Defendants for infringement of the ’608 Patent.

29. Defendants’ letter and actions have created a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of declaratory judgment regarding the parties’ respective rights as they relate to the ’608 Patent.

V. CAUSES OF ACTION

COUNT I

**DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF
U.S. PATENT NO. 6,227,608**

30. Siboney repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

31. As described above, an actual and justiciable controversy exists between Siboney and Defendants as whether Siboney's use of the Dragon Trailer infringes any valid and/or enforceable claim of the '608 Patent.

32. BoxRite claims to be the owner of all right, title, and interest in and to the '608 Patent.

33. Upon information and belief, Medlen is the exclusive licensee of the '608 Patent.

34. Absent a declaration of non-infringement, Defendants will continue to wrongfully alleged infringement of the '608 Patent against Siboney and thereby cause Siboney injury and damage.

35. To the extent the '608 Patent is found to be valid and enforceable, Siboney's use of the Dragon Trailer cannot infringe the '608 Patent because several elements of independent claim 1 are absent in the embodiment of the Dragon Trailer.

36. Thus, Siboney's use of the Dragon Trailer cannot and does not infringe, either directly, indirectly, by contribution or inducement, and/or literally or under the doctrine of equivalents, the '608 Patent because, if the claims of the '608 Patent can be validly construed, it does not cover, either literally or under the doctrine of equivalents, the Dragon Trailer.

37. To the extent the '608 Patent is found to be valid and enforceable, Siboney is entitled to a declaratory judgment that the '608 Patent does not cover, either literally or under the

doctrine of equivalents, the Dragon Trailer, and that the '608 Patent cannot be validly construed to cover, either literally or under the doctrine of equivalents, the Dragon Trailer.

38. To the extent the '608 Patent is found to be valid and enforceable, Siboney is entitled to a declaratory judgment that Siboney does not infringe, either directly, indirectly, by contribution or inducement, and/or literally or under the doctrine of equivalents, the claims of the '608 Patent.

COUNT II

DECLARATORY JUDGMENT OF UNENFORCEABILITY OF U.S. PATENT NO. 6,227,608

39. Siboney repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

40. As described above, there exists an actual and justiciable controversy between Siboney and Defendants concerning whether Siboney's use of the Dragon Trailer infringes any valid and/or enforceable claim of the '608 Patent.

41. BoxRite claims to be the owner of all right, title, and interest in and to the '608 Patent.

42. Upon information and belief, Medlen is the exclusive licensee of the '608 Patent.

43. Absent a declaration of unenforceability, Defendants will continue to wrongfully allege infringement of the 608 Patent and thereby cause Siboney injury and damage.

44. The 608 Patent and each and every claim thereof are unenforceable under the doctrine of patent misuse, because Defendants know that their claims of patent infringement against Siboney are objectively baseless, and are being asserted against a competitor seeking to impermissibly broaden the physical or temporal scope of the patent grant with anticompetitive

effect, affecting the business of Siboney and thereby constituting misuse of the patent in question.

45. Through their actions alleged herein, Defendants have sought to impose an unreasonable restraint on competition.

46. Therefore, Siboney is entitled to a declaratory judgment that the '608 Patent is unenforceable under the doctrine of patent misuse.

47. Siboney expressly reserves the right to seek declaratory judgment of unenforceability of the '608 Patent based on additional grounds in the future.

COUNT III

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 6,227,608

48. Siboney repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

49. As described above, there exists an actual and justiciable controversy between Siboney and Defendants concerning whether Siboney's use of the Dragon Trailer infringes any valid and/or enforceable claim of the '608 Patent.

50. BoxRite claims to be the owner of all right, title, and interest in and to the '608 Patent.

51. Upon information and belief, Medlen is the exclusive licensee of the '608 Patent.

52. Absent a declaration of invalidity, Defendants will continue to wrongfully allege infringement of the '608 Patent and thereby cause Siboney injury and damage.

53. The '608 Patent and each and every claim thereof are invalid under the doctrine of patent misuse, because Defendants know that their claims of patent infringement against Siboney are objectively baseless, and are being asserted against a competitor seeking to impermissibly

broaden the physical or temporal scope of the patent grant with anticompetitive effect, affecting the business of Siboney and thereby constituting misuse of the patent in question.

54. Through their actions alleged herein, Defendants have sought to impose an unreasonable restraint on competition.

55. Therefore, Siboney is entitled to a declaratory judgment that the '608 Patent is invalid under the doctrine of patent misuse.

56. Siboney expressly reserves the right to seek declaratory judgment of invalidity of the '608 Patent based on additional grounds in the future.

COUNT IV

FEDERAL UNFAIR COMPETITION AND FALSE REPRESENTATION UNDER 15 U.S.C. § 1125(a)

57. Siboney repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

58. Defendants' acts as alleged herein constitute unfair competition and false representation in violation of 15 U.S.C. § 1125(a).

59. Defendants' representations to third parties about the Siboney's services and the alleged infringement of the '608 Patent, including to Siboney's customers as alleged herein, are literally and/or impliedly false and misleading.

60. As alleged herein, Defendants have intentionally made literally false and/or misleading statements in commercial advertising or promotion in interstate commerce which misrepresent the nature, characteristics, qualities, or geographic origin of Siboney's goods, services, or commercial activities, including, but not limited to, Defendants' statements related to Siboney's services and alleged infringement of the '608 Patent.

61. Defendants' false and/or misleading statements regarding Siboney's goods, services, or commercial activities, including, but not limited to, Defendants' statements related to Siboney's services and alleged infringement of the '608 Patent, are material in that they will likely influence existing and potential buyers of (a) transportation and motor carrier services related to removal and transportation of drilling waste generally; (b) Defendants' transportation and motor carrier services related to removal and transportation of drilling waste; and (c) Siboney's transportation and motor carrier services related to removal and transportation of drilling waste.

62. Buyers of Defendants' transportation and motor carrier services related to removal and transportation of drilling waste (and buyers of transportation and motor carrier services related to removal and transportation of drilling waste generally) have no choice in many circumstances but to trust that statements made by Defendants (directly or through its agents or representatives) that Siboney's services have the nature, characteristics, and qualities claimed for them by Defendants, including, without limitation, that Siboney is allegedly infringing the '608 Patent in providing such services.

63. Defendants' false and/or misleading statements regarding the Siboney's transportation and motor carrier services related to removal and transportation of drilling waste, including the alleged infringement of the '608 Patent, have actually deceived or have the capacity to tend to deceive a substantial portion of the intended audience for such statements.

64. Defendants' false or misleading statements have been introduced into interstate commerce through, among other avenues, Defendants' publication of such statements on the Hawx Website and Lalor's email communications to potential and existing customers.

65. By these actions, Defendants have engaged and continue to engage in unfair competition and false representation in violation of the statutory law of the United States, 15 U.S.C. § 1125 *et seq.* As a result, Siboney has suffered and will continue to suffer damage to its business, reputation, and goodwill.

66. Defendants willfully, knowingly, intentionally, maliciously, or recklessly are using in commerce false and/or misleading descriptions of fact or misleading representations of fact concerning the nature, characteristics, and qualities of Siboney's transportation and motor carrier services related to removal and transportation of drilling waste, including that Siboney is allegedly infringing the '608 Patent in providing such services.

67. Defendants' false and/or misleading statements to Siboney's customers in which Defendants assert infringement of the '608 Patent were undertaken in bad faith, because, by means of example and not limitation, Defendants' infringement claims against Siboney are objectively baseless, Medlen has not asserted ownership of any patent (including the '608 Patent) against Siboney, and such communications were made with the intent to thwart Siboney's contractual and business relationships with such customers and redirect those customers to Defendants.

68. Defendants' false and/or misleading statements have caused Siboney injury and/or are likely to cause Siboney injury, either by direct diversion of sales from Siboney to Defendants or by a lessening of the goodwill associated with Siboney's transportation and motor carrier services related to removal and transportation of drilling waste.

69. Siboney has been injured by Defendants' actions and representations because customers who would otherwise have purchased from Siboney have made, or will make, purchasing decisions based upon Defendants' false and misleading representations concerning

the attributes of Siboney's transportation and motor carrier services related to removal and transportation of drilling waste.

70. Unless enjoined by this Court, Defendants' acts will irreparably injure Siboney's goodwill and erode its sales, customer base, and share in the market for transportation and motor carrier services related to removal and transportation of drilling waste.

71. Defendants' acts have caused Siboney damages, and Siboney seeks judgment pursuant to 15 U.S.C. § 1117 for statutory damages, Defendants' profits, any damages sustained by Siboney; for all costs, expenses, and reasonable attorney fees (as this is an exceptional case) incurred in bringing the present action and attempts to remedy Defendants' actions.

72. Siboney seeks an award of treble damages for at least three times the amount of Defendants' profits or Siboney's damages, whichever is greater, due to the nature of Defendants' wanton and willful conduct.

73. Pursuant to 15 U.S.C. § 1116, Siboney is entitled to preliminary and permanent injunctive relief against Defendants to stop the illegal conduct.

74. Pursuant to 15 U.S.C. § 1117, Siboney seeks judgment for three times the amount of Defendants' profits or Siboney's damages, whichever is greater, due to the nature of Defendants' conduct.

75. Defendants' acts are willful, wanton, and calculated to deceive, and are undertaken in bad faith, making this an exceptional case entitling Siboney to recover additional damages and reasonable attorney fees pursuant to 15 U.S.C. § 1117.

76. Pursuant to 15 U.S.C. § 1118, Siboney is entitled to impoundment and destruction of all packaging, containers, devices, products, literature, advertising and any other material

bearing false, deceptive, and/or misleading statements and/or any variants thereof (or similar wording).

77. Defendants' acts as alleged herein, including, without limitation, their false, misleading, or deceptive representations to Siboney's customers that Siboney is infringing certain of Defendants' patents, constitute one or more torts or other illegal conduct that has interfered with Siboney's ability to conduct its business.

78. Defendants' actions are fraudulent, deliberate, willful, and/or malicious, and have been committed with the intent to cause injury to Siboney. Defendants' false, misleading, or deceptive acts have caused Siboney damages as hereinafter alleged.

COUNT V

TORTIOUS INTERFERENCE WITH EXISTING CONTRACTUAL AND BUSINESS RELATIONSHIPS UNDER TEXAS LAW

79. Siboney repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

80. Siboney has entered into many valid service contracts with various customers relating to Siboney's provision of services, including, without limitation, the Statoil Agreement and EOG Agreement. Siboney's service contracts with its customers are subject to interference.

81. Defendants knew or had reason to know of Siboney's contracts and business relationships with existing customers for the provision of Siboney's services, and Siboney's interest in such contracts and business relationships.

82. Through their actions alleged herein, Defendants have willfully, intentionally, and improperly interfered with Siboney's existing contractual and business relationships through improper means to prevent, interfere with and/or otherwise usurp Siboney's contracts and business relationships with existing customers for provision of services, and/or by inducing or

otherwise causing Siboney's customers (including, without limitation, Statoil) not to continue their contractual or business relationships with Siboney.

83. Through their actions alleged herein, Defendants have acted with malice in their interference with Siboney's service contracts and business relationships with its customers, including, without limitation, the Statoil Agreement and EOG Agreement, through contacting such customers and falsely representing that Siboney is infringing certain patents belonging to Defendants.

84. Defendants' communications with Siboney's customers in which Defendants erroneously represent that Siboney has infringed their patent is intended to and indeed does interfere with Siboney's contractual and business relationships.

85. Defendants' actions were committed with malice and without justification.

86. Through their actions alleged herein, Defendants took an active part in persuading third parties who are parties to a service contract with Siboney to breach such contracts.

87. Defendants' communications with Siboney's customers in which Defendants assert infringement of their patents were undertaken in bad faith, because, by means of example and not limitation, Defendants' infringement claims against Siboney are objectively baseless, and such communications were made with the intent to thwart Siboney's contractual and business relationships with such customers and redirect those customers to Defendants.

88. As such, Defendants are liable to Siboney for common law tortious interference with Siboney's existing contractual and business relationships.

89. As a direct and proximate result of Defendants' actions alleged herein, at least one of Siboney's customers has ceased using any services provided by Siboney, thereby causing loss of income to Siboney in excess of \$10,000.00 per day.

90. As a direct and proximate result of Defendants' wrongful interference with Siboney's existing contractual and business relationships, Siboney has been damaged in an amount to be determined at trial, including, but not limited to, actual damages, loss of good will, loss of business opportunities, punitive damages, pre-judgment interest, post-judgment interest, attorney fees, expenses, and costs.

91. Defendants' acts complained of herein have caused and, unless enjoined, will continue to cause Siboney irreparable harm for which there is no adequate remedy at law.

COUNT VI

DEFAMATION UNDER TEXAS LAW

92. Siboney repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

93. Through their actions alleged herein, including Defendants' false representations to Siboney's customers that Siboney is infringing certain of Defendants' patents, Defendants have defamed Siboney.

94. Defendants have published false and disparaging information about Siboney, including, without limitation, that Siboney is infringing certain patents owned by Defendants.

95. As described above, Defendants' statements that Siboney is infringing their patents is false.

96. Defendants published such false statements to third parties, including, without limitation, Statoil and EOG.

97. Defendants' false statements are defamatory and have injured, and will continue to injure Siboney's reputation and/or impeach characteristics of honesty, integrity, or virtue, thereby exposing Siboney to public hatred, contempt, ridicule, or financial injury.

98. Defendants made such statements with negligence as to their truth and/or malice and without privilege in publishing such false and disparaging information about Siboney, in that Defendants knew such statements were false, acted with reckless disregard concerning the falsity of their statements, and/or acted with ill will or intended to interfere with Siboney's economic interests in an unprivileged fashion.

99. Defendants' communications with Siboney's customers in which Defendants assert infringement of their patents were undertaken in bad faith, because, by means of example and not limitation, Defendants' infringement claims against Siboney are objectively baseless, and such communications were made with the intent to thwart Siboney's contractual and business relationships with such customers and redirect those customers to Defendants.

100. As a result of Defendants' statements, Siboney has suffered damage to its reputation and economic loss, including, but not limited to, substantial economic loss; loss of good will; harm to its business reputation; loss of upstanding in the community; and loss of business opportunities.

101. Defendants' acts complained of herein have caused and, unless enjoined, will continue to cause Siboney irreparable harm for which there is no adequate remedy at law.

COUNT VII

BUSINESS DISPARAGEMENT UNDER TEXAS LAW

102. Siboney repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

103. Through their actions alleged herein, including their false representations to Siboney's customers that Siboney is infringing certain of Defendants' patents, Defendants have committed business disparagement of Siboney.

104. Defendants have published false and disparaging information about Siboney, including, without limitation, that Siboney is infringing certain patents owned by Defendants.

105. As described above, Defendants' statements that Siboney is infringing their patents is false.

106. Defendants published such false statements to third parties, including, without limitation, Statoil and EOG.

107. Defendants acted with malice and without privilege in publishing such false and disparaging information about Siboney, in that Defendants knew such statements were false, acted with reckless disregard concerning the falsity of their statements, and/or acted with ill will or intended to interfere with Siboney's economic interests in an unprivileged fashion.

108. Defendants' communications with Siboney's customers in which Defendants assert infringement of their patents were undertaken in bad faith, because, by means of example and not limitation, Defendants' infringement claims against Siboney are objectively baseless, and such communications were made with the intent to thwart Siboney's contractual and business relationships with such customers and redirect those customers to Defendants.

109. As a result of Defendants' actions, Siboney has suffered special economic damages, including, but not limited to, substantial economic loss; loss of good will; loss of business opportunities; and loss of services sales.

110. Defendants' acts complained of herein have caused and, unless enjoined, will continue to cause Siboney irreparable harm for which there is no adequate remedy at law.

COUNT VIII

UNFAIR COMPETITION IN VIOLATION OF TEXAS LAW

111. Siboney repeats and realleges the allegations set forth in the preceding paragraphs as if set forth fully herein.

112. Defendants' acts as alleged herein constitute unfair competition in violation of Texas law.

113. Defendants' are liable to Siboney for unfair competition under Texas law, because Defendants' conduct is tortious and has deprived Siboney of customers and other prospects.

114. Defendants' acts as alleged herein, including, without limitation, their false, misleading, or deceptive representations to Siboney's customers that Siboney is infringing certain of Defendants' patents, constitute one or more torts or other illegal conduct that has interfered with Siboney's ability to conduct its business.

115. Defendants' actions are fraudulent, deliberate, willful, and/or malicious, and have been committed with the intent to cause injury to Siboney. Defendants' false, misleading, or deceptive acts have caused Siboney damages as hereinafter alleged.

116. Defendants' communications with Siboney's customers in which Defendants assert infringement of their patents were undertaken in bad faith, because, by means of example and not limitation, Defendants' infringement claims against Siboney are objectively baseless, and such communications were made with the intent to thwart Siboney's contractual and business relationships with such customers and redirect those customers to Defendants.

117. Defendants' false, misleading, or deceptive acts of unfair competition have caused Siboney damages, and Siboney seeks judgment for Defendants' profits made by Defendants' unfair competition, for the damages sustained by Siboney, for all costs necessary to remediate

the unfair competition and their effects, and for the costs incurred in bringing the present action and prior attempts to remedy Defendants' actions.

118. Siboney further seeks judgment for punitive damages of at least three times the amount of Defendants' profits or Siboney's damages, whichever is greater, due to the nature of Defendants' conduct.

119. Further, Siboney is entitled to preliminary and permanent injunctive relief against Defendants to stop the illegal conduct.

PRAYER FOR RELIEF

WHEREFORE, Siboney respectfully requests the following relief:

A. That judgment be entered in favor of Siboney against Defendants as to each of the above Counts;

120. That Siboney be awarded all relief to which it is entitled under 35 U.S.C. § 1 *et seq.*, 15 U.S.C. § 1051 *et seq.*, and Texas statutory and common law;

B. That the Court enter a declaratory judgment in favor of Siboney that the '608 Patent is invalid and/or unenforceable;

C. That, to the extent the Court finds the '608 Patent valid and/or enforceable, the Court enter a declaratory judgment in favor of Siboney that Siboney does not infringe, either directly, indirectly, by contribution or inducement, and/or literally or under the doctrine of equivalents, the '608 Patent because, if the claims of the '608 Patent can be validly construed, it does not cover, either literally or under the doctrine of equivalents, the Dragon Trailer;

D. That Defendants, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with any of the foregoing, be forthwith preliminary restrained and enjoined from stating, representing, or implying orally or in

writing (including, but not limited to, print advertisements, marketing materials, websites, blogs, social media) any statements that misrepresent the nature, characteristics, qualities, or geographic origin of Siboney's transportation and motor carrier services related to removal and transportation of drilling waste, and/or any statements that Siboney is infringing the '608 Patent in the provision of such services, including, but not limited to making or inducing others to make false, misleading, or deceptive statements or representations of fact in connection with the promotion, advertisement, packaging, display, sale, offering for sale, manufacture, production, circulation, or distribution of Siboney's transportation and motor carrier services related to removal and transportation of drilling waste;

E. That Defendants, their officers, agents, servants, employees, attorneys, and anyone in active concert with, aiding, assisting, and/or enabling Defendants, be forthwith preliminarily restrained and enjoined from committing any defamation, any business disparagement, or any unfair business practices directed toward obtaining the business and/or customers of Siboney; and from committing any other deceptive and/or unfair business practices directed toward devaluing or diminishing the goodwill and reputation associated with Siboney;

F. That Defendants be directed to file with this Court and serve on Siboney within thirty (30) days after the service of an injunction, a report in writing under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

G. At conclusion of trial, Defendants, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with any of the foregoing, be forthwith permanently enjoined from stating, representing, or implying orally or in writing (including, but not limited to, print advertisements, marketing materials, websites, blogs, social media) any statements that misrepresent the nature, characteristics, qualities, or geographic

origin of Siboney's transportation and motor carrier services related to removal and transportation of drilling waste, and/or any statements that Siboney is infringing the 608 Patent in the provision of such services, including, but not limited to making or inducing others to make false, misleading, or deceptive statements or representations of fact in connection with the promotion, advertisement, packaging, display, sale, offering for sale, manufacture, production, circulation, or distribution of Siboney's transportation and motor carrier services related to removal and transportation of drilling waste;

H. At conclusion of trial, Defendants, their officers, agents, servants, employees, attorneys, and anyone in active concert with, aiding, assisting, and/or enabling Defendants, be forthwith permanently enjoined from committing any defamation, any business disparagement, or any unfair business practices directed toward obtaining the business and/or customers of Siboney; and from committing any other deceptive and/or unfair business practices directed toward devaluing or diminishing the goodwill and reputation associated with Siboney;

I. Defendants be directed to file with this Court and serve on Siboney within thirty (30) days after the service of a permanent injunction order, a report in writing under oath, setting forth in detail the manner and form in which they have complied with the permanent injunction order;

J. That Siboney be awarded a judgment against Defendants for monetary damages based on Defendants' profits, Siboney's damages, statutory damages, treble damages, punitive damages, reasonable attorney fees, litigation expenses, costs, pre-judgment interest, post-judgment interest, and other equitable relief;

K. For its claims related to Defendants' false and/or misleading statements, Siboney be granted an award of monetary damages in an amount to be determined at trial, treble damages, punitive damages, prejudgment and post-judgment interest, attorney fees, expenses, and costs;

L. That Siboney be awarded all relief to which it is entitled under 35 U.S.C. § 1 *et seq.*, 15 U.S.C. § 1051 *et seq.*, and Texas statutory and common law;

M. That the Court declare that this case is exceptional under 35 U.S.C. § 285 and that Siboney be awarded its costs, expenses, attorney fees incurred to the extent that 35 U.S.C. § 285 is applicable to declaratory judgment actions;

N. That Defendants' acts be deemed exceptional under 15 U.S.C. § 1117; and

O. That Siboney be awarded such other and further relief as this Court deems just and proper.

DEMAND FOR JURY

Siboney requests a jury for all issues so triable.

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

s/ Samuel F. Miller

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