

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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J. F. Brennan Co., Inc.,

Plaintiff,

v.

Morrish-Wallace Construction, Inc., d/b/a  
Ryba Marine Construction Co., and Ryba-  
Terra, a joint venture between Ryba Marine  
Construction Co. and Terra Contracting  
Services, LLC,

Defendants.

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Case No.

JURY TRIAL DEMANDED

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**COMPLAINT**

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Plaintiff J. F. Brennan Co., Inc. (“J. F. Brennan”) brings this action for patent infringement against defendants Morrish-Wallace Construction, Inc. d/b/a Ryba Marine Construction Co. (“Ryba”) and Ryba-Terra, a joint between Ryba and Terra Contracting Services, LLC, and alleges as follows:<sup>1</sup>

**PARTIES**

1. J. F. Brennan is a Wisconsin corporation with a principal place of business at 818 Bainbridge Street, LaCrosse, Wisconsin 54603. J. F. Brennan is a marine construction and environmental remediation company.

2. Ryba is a Michigan corporation with a principal place of business at 629 N. Main Street, Cheboygan, Michigan 49721. Ryba is authorized to do business in Wisconsin. On

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<sup>1</sup> Unless individually identified, Ryba and Ryba-Terra are collectively referred to as “Defendants” in the Complaint.

information and belief, Ryba is engaged in the marine construction services business, including marine environmental remediation.

3. On information and belief, Ryba-Terra is a joint venture between Ryba and Terra Contracting Services, LLC, with a principal place of business at 205 W. Wacker Drive, Suite 1605, Chicago, Illinois 60606. On information and belief, Ryba-Terra engages in environmental consulting and remediation, including water and sediment remediation. On information and belief, Terra Contracting Services, LLC is a Delaware limited liability company with a principal place of business at 5787 Stadium Drive, Kalamazoo, Michigan 49009.

### **JURISDICTION AND VENUE**

4. This is an action for patent infringement under 35 U.S.C. § 271.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 and 35 U.S.C. § 271.

6. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

7. This Court has personal jurisdiction over the Defendants because the Defendants do substantial business in Wisconsin and have purposely availed themselves of Wisconsin's laws, services and/or other benefits and therefore should reasonably anticipate being hailed into one or more of the courts within the State of Wisconsin. Moreover, specific acts of infringement have occurred in Wisconsin and in this district.

8. Upon information and belief, venue is proper pursuant to 28 U.S.C. § 1391 (b) and (c) and 28 U.S.C. § 1400.

## **PATENT-IN-SUIT**

9. The Patent-in-Suit is U.S. Patent No. 7,695,215 (the “‘215 Patent”). The ‘215 Patent is valid and enforceable.

10. J. F. Brennan is the owner of the entire right, title and interest in and to the ‘215 Patent, issued by the United States Patent and Trademark Office (“USPTO”) on April 13, 2010 and entitled “Method and System for Broadcast Sediment Capping.” A true and correct copy of the ‘215 Patent is attached hereto as Exhibit A and incorporated herein by reference.

11. J. F. Brennan uses its patented method and system on jobs throughout the United States.

## **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

12. J. F. Brennan and the Defendants operate in the marine construction and environmental remediation industry.

13. J. F. Brennan is a leader and innovator in the marine construction and remediation industry.

14. Through extensive research and development, J. F. Brennan pioneered a method and system for broadcast sediment capping using one or more types of capping material. The J.F. Brennan patented method and system overcome problems related to dredging and hauling contaminants from the bottom of waterways and facilitates the efficient capping of such contaminants.

15. J. F. Brennan invested significant time, effort and money in developing its patented method and system, and in filing and prosecuting the ‘215 Patent with the USPTO to protect its method and system for broadcast sediment capping. J. F. Brennan’s patented method

and system provides J. F. Brennan with a competitive advantage in the market when bidding on and completing remediation jobs.

16. The Defendants compete with J. F. Brennan for marine remediation work.

17. Defendants are and have been aware of the '215 Patent and J. F. Brennan's patented method and system for broadcast sediment capping. For example, on or about January 4, 2010, Ryba was notified of the existence of and/or received a copy of patent application publication US 2009/0304447-A1, for U.S. Serial Number 12/134,924, which issued as the '215 Patent. Further, on or about on August 31, 2010, Ryba confirmed to J. F. Brennan that it was aware of the issuance of the '215 Patent.

18. Despite their knowledge of the '215 Patent and J. F. Brennan's patented method and system for broadcast sediment capping, the Defendants have used and continue to use J. F. Brennan's patented method and system to bid on and complete marine remediation work, including a remediation job on the Sheboygan River in Wisconsin in 2013.

#### **INFRINGEMENT OF U.S. PATENT NO. 7,695,215**

19. J. F. Brennan incorporates by reference the allegations set forth in paragraphs 1 – 18 of this Complaint as though fully set forth herein.

20. Defendants, during the term of the '215 Patent, have infringed and continue to infringe the '215 Patent, in violation of 35 U.S.C. § 271 *et seq.*, including Sections (a), (b) and (c), directly, indirectly, contributorily, and by inducement of and action with others, by making, using, selling, offering for sale and/or importing in this District and elsewhere in the United States, without authority, a method or system of sub-aquatic sediment capping, or components thereof, that infringes one or more claims of the '215 Patent, including at least independent claims 8 and 13 and dependent claims 9, 14 and 15.

21. Defendants induce infringement of the '215 Patent by knowingly inducing each other and/or third parties to use the accused method or system of sub-aquatic sediment capping in the United States.

22. Upon information and belief, Defendants' infringement of the '215 Patent has been and will continue to be willful and intentional.

23. Upon information and belief, Defendants will continue to willfully infringe the '215 Patent unless and until enjoined by the Court.

24. The Defendants' infringement has caused and will continue to cause damage to J. F. Brennan, and is causing irreparable harm to J. F. Brennan for which there is no adequate remedy at law.

25. The Defendants' acts of infringement of the '215 Patent are exceptional, entitling J. F. Brennan to recovery of its attorneys' fees and costs under 35 U.S.C. § 285.

### **JURY DEMAND**

26. J. F. Brennan hereby demands a trial by jury of all claims and issues triable before a jury.

### **PRAYER FOR RELIEF**

Wherefore, J. F. Brennan respectfully requests that this Court enter judgment against the Defendants and each of them as follows:

- A. Hold that the Defendants directly infringe J. F. Brennan's U.S. Patent No. 7,695,215 under 35 U.S.C. § 271(a), and/or indirectly infringe U.S. Patent No. 7,695,215 under 35 U.S.C. § 271(b) and (c).
- B. Preliminarily and permanently enjoin the Defendants, their officers, agents, servants and employees, from infringing U.S. Patent No. 7,695,215 under 35 U.S.C. § 283.
- C. Award J. F. Brennan damages to compensate for the Defendants' infringement of U.S. Patent No. 7,695,215, including lost profits and/or a reasonable royalty, costs

and prejudgment interest from the first date of infringement, under 35 U.S.C. § 284.

- D. Hold that the Defendants' infringement was willful and otherwise entitles J. F. Brennan to treble damages, under 35 U.S.C. § 284.
- E. Hold that the Defendants' actions in this matter make this case exceptional, and award reasonable attorneys' fees to J. F. Brennan under 35 U.S.C. § 285.
- F. Award J. F. Brennan its attorneys' fees and costs and such other relief as is appropriate under law or equity.

Dated this 11<sup>th</sup> day of November, 2013.

WHYTE HIRSCHBOECK DUDEK S.C.

*s/ Kenneth R. Nowakowski*

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