

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS,
CORPUS CHRISTI DIVISION**

Magnum Oil Tools International, Ltd.	§	
	§	
Plaintiff	§	Civil Action No. 2:12-cv-00099
	§	
v.	§	JURY
	§	
Tony D. McClinton, Jaycar Energy Group, L.L.C., Surf Frac Wellhead Equipment Company, Inc., McClinton Energy Group, L.L.C., Motors Mills Snubbing, L.L.C., and Stan Keeling	§ § § § § § § §	
Defendants	§	

**PLAINTIFF'S FIRST AMENDED COMPLAINT
AND APPLICATION FOR INJUNCTIVE RELIEF**

Plaintiff Magnum Oil Tools International, Ltd. (hereinafter, "Plaintiff") files this First Amended Complaint against Defendants Tony D. McClinton, Jaycar Energy Group, L.L.C., Surf Frac Wellhead Equipment Company, Inc., McClinton Energy Group, L.L.C., Motors Mills Snubbing, L.L.C., and Stan Keeling (hereinafter, "Defendants") as set forth below.

I. PARTIES

1. Plaintiff Magnum Oil Tools International, Ltd. is a limited partnership organized and existing under the laws of the State of Texas, with its principal place of business located at 5655 Bear Lane, Corpus Christi, Texas, 78405.

2. Defendant Tony McClinton is a citizen of the State of Texas, and resides in Odessa, Texas. Defendant Tony McClinton may be served at 11200 West Interstate 20 East, Odessa, Texas, 79765.

3. Defendant Jaycar Energy Group, L.L.C. ("Jaycar") is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business located at 11200 West Interstate 20 East, Odessa, Texas, 79765. Jaycar also has an office located at 4404 U.S. Highway 59 North, Victoria, Texas, 77905. Tony McClinton is the registered agent for Jaycar.

4. Defendant Surf Frac Wellhead Equipment Company, Inc. ("SWECO") is a corporation organized and existing under the laws of the State of Texas, with a place of business located at 11200 West Interstate 20 East, Odessa, Texas, 79765. SWECO, Inc. also has an office located at 4404 U.S. Highway 59 North, Victoria, Texas, 77905. Tony McClinton is the registered agent for SWECO.

5. Defendant McClinton Energy Group, L.L.C. ("McClinton Energy Group") is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business located at 11200 West Interstate 20 East, Odessa, Texas, 79765. McClinton Energy Group also has an office located at 4404 U.S. Highway 59 North, Victoria, Texas, 77905. Tony McClinton is the registered agent for McClinton Energy Group.

6. Defendant Motors Mills Snubbing, L.L.C. ("MMS") is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business located at 11200 West Interstate 20 East, Odessa, Texas, 79765. MMS also has an office located at 4404 U.S. Highway 59 North, Victoria, Texas, 77905. Tony McClinton is the registered agent for MMS.

7. Defendant Stan Keeling is a citizen of the State of Texas, and resides in Odessa, Texas. Stan Keeling may be served at 11200 West Interstate 20 East, Odessa, Texas, 79765.

II. CAUSE OF ACTION

8. This is an action for patent infringement arising under the laws of the United States, 35 U.S.C. § 101, *et seq.*, and particularly 35 U.S.C. §§ 271-287.

9. This is also an action for unfair competition, false advertising, trade dress infringement, and use of a false designation of origin arising under the laws of the United States, 35 U.S.C. § 1111, *et seq.*, and particularly 35 U.S.C. § 1125, as well as under the laws of the State of Texas and Texas common law.

10. This is further an action for false marking arising under the laws of the United States, 35 U.S.C. § 292.

III. JURISDICTION AND VENUE

11. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

12. Defendants are subject to personal jurisdiction by virtue of their contacts with the State of Texas, and with the Southern District of Texas in particular. All Defendants are residents of the State of Texas. Defendants are organized under the laws of the State of Texas and voluntarily do business in the Southern District of Texas. Defendants have used an office in Victoria, Texas, for approximately three (3) years, located at 4404 U.S. Highway 59 North, Victoria, Texas, 77905.

13. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b), because (i) Defendants have systematic and continuous contacts with the Southern district of Texas, (ii) Defendants have purposefully directed activities at residents in the Southern District of Texas, and (iii) this litigation results from alleged injuries that arise out of or relate to those activities, and Defendants have committed acts of infringement and have a regular and established place of business in the Southern District of Texas. Further, Tony McClinton owns a controlling interest in all of the named entities and is a principal salesman for the accused instrumentality, as described further below. Stan Keeling is also a shareholder of Jaycar, and the other principal salesman for the accused instrumentality, as described further below.

IV. FACTS

14. On September 28, 2004, U.S. Patent No. 6,796,376 ("the '376 Patent") was duly and legally issued by the U.S. Patent and Trademark Office to W. Lynn Frazier for an invention relating to downhole plugs. A true and correct copy of the '376 Patent is attached hereto as Exhibit G. The '376 Patent is presumed valid pursuant to 35 U.S.C. § 282.

15. On February 15, 2011, a certificate of correction was duly and legally issued by the U.S. Patent and Trademark Office for the '376 Patent. A true and correct copy of the certificate of correction is attached hereto as Exhibit H.

16. On December 20, 2011, U.S. Patent No. 8,079,413 ("the '413 Patent") was duly and legally issued by the U.S. Patent and Trademark Office to W. Lynn Frazier for an invention relating to downhole plugs. A true and correct copy of the '413 Patent is attached hereto as Exhibit I. The '413 Patent is presumed valid pursuant to 35 U.S.C. § 282.

17. Plaintiff Magnum Oil Tools International, Ltd. owns the patent rights to the '376 Patent and the '413 Patent. Plaintiff manufactures and sells plugs covered by the '376 Patent and the '413 Patent.

18. Defendants make, use, sell, and/or offer to sell downhole plugs identified by Defendants as "MUSTANG SERIES" plugs that are covered by the '376 Patent and the '413 Patent. The MUSTANG SERIES plugs are indistinguishable from Plaintiff's plugs.

19. More particularly, Defendant Jaycar makes, uses, sells, and/or offers to sell MUSTANG SERIES plugs.

20. Defendants Tony McClinton, Stan Keeling, McClinton Energy Group, SWECO and MMS use, sell, and/or offer to sell MUSTANG SERIES plugs.

21. McClinton Energy Group is a parent company for, and owns a majority interest in Jaycar, SWECO, and MMS.

22. Upon information and belief, McClinton Energy Group is the alter ego of Jaycar, SWECO, and MMS, and/or controls the conduct of Jaycar, SWECO, and MMS. Therefore, McClinton Energy Group is liable for the actions of Jaycar, SWECO, and MMS.

23. Tony McClinton owns between 77% and 82% of McClinton Energy Group, 95% of Jaycar, and 85% of SWECO. Tony McClinton controls all of the Defendant entities, to-wit: McClinton Energy Group, Jaycar, SWECO, and MMS.

24. Tony McClinton is a principal salesman for Jaycar.

25. Tony McClinton personally took part in the making, using, selling, and/or offering to sell MUSTANG SERIES plugs, and specifically directed other officers, agents, or employees to make, use, sell, and or offer to sell MUSTANG SERIES plugs. Tony McClinton claims to be the "inventor" of the MUSTANG SERIES plugs. Therefore, Tony McClinton is personally liable

for the conduct of McClinton Energy Group, Jaycar, SWECO, and MMS resulting in the making, using, selling, and/or offering to sell downhole plugs identified by Defendants as "MUSTANG SERIES" plugs that are covered by the '376 Patent and the '413 Patent owned by Plaintiff.

26. Stan Keeling owns 5% of Jaycar and is a principal salesman for Jaycar.

27. Stan Keeling personally took part in the making, using, selling, and/or offering to sell MUSTANG SERIES plugs, and specifically directed other officers, agents, or employees to make, use, sell, and or offer to sell MUSTANG SERIES plugs. Therefore, Stan Keeling is personally liable for the conduct of Jaycar resulting in the making, using, selling, and/or offering to sell downhole plugs identified by Defendants as "MUSTANG SERIES" plugs that are covered by the '376 Patent and the '413 Patent owned by Plaintiff.

28. Defendants have been, and still are, infringing, inducing infringement of, and/or contributorily infringing the '376 Patent and the '413 Patent by making, using, selling, and/or offering to sell the MUSTANG SERIES plugs and/or other products.

29. One or more Defendants, including Tony McClinton and SWECO were purchasers and/or distributors of Plaintiff's plugs prior to the existence of the MUSTANG SERIES plugs.

30. Defendants did not make, use, sell, and/or offer to sell any of their own downhole plugs prior to the MUSTANG SERIES plugs.

31. Defendants will continue to infringe the '376 Patent and the '413 Patent unless enjoined by this Court.

32. Defendants' infringement has been willful and deliberate, entitling Plaintiff to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

33. Upon information and belief, at least Defendants Jaycar, Tony McClinton, and Stan Keeling have been engaging in unfair competition, false advertising, and trade dress infringement as well as using a false designation of origin by falsely informing (or causing their employees to falsely inform) their customers, such as Chesapeake Energy, that the MUSTANG SERIES plugs are manufactured by Plaintiff.

34. More particularly, upon information and belief, at least Defendants Jaycar, Tony McClinton, and Stan Keeling have made false or misleading statements that the MUSTANG SERIES plugs are manufactured by Plaintiff. These statements were made to deceive the customers and/or potential customers to whom they were made.

35. Upon information and belief, this deception is material and likely to influence the purchasing decisions of customers and/or potential customers.

36. The MUSTANG SERIES plugs have travelled in interstate commerce between at least Texas, Arkansas, Colorado, and Oklahoma.

37. Upon information and belief, Defendants' false statements create a likelihood of injury to Plaintiff in terms of declining sales and loss of goodwill.

38. Defendants have been notified of their infringement, unfair competition, false advertising, and use of a false designation of origin in a "Cease and Desist" letter mailed March 12, 2012. Since being given notice regarding the '376 Patent and the '413 Patent, Defendants have continued to infringe.

39. Defendants' McClinton Energy Group ("MEG") Brochure, which is readily available on Defendants' website, advertises products for Jaycar, SWECO, and MMS. A true and correct copy of the MEG Brochure is attached hereto as Exhibit D.

40. The MEG Brochure states that parts of their MUSTANG SERIES plugs are patented for the purpose of deceiving the public, including Plaintiff and Plaintiff's customers. More particularly, the MEG Brochure states, "The JayCar Mustang Series Frac Plugs have a Patented Nose Cone Design that keeps the plug located in the center of the casing." *See* Exhibit D at page 10. A nose cone is shown and labeled as "JayCar Patented Nose Cone Design." *Id.* The MEG Brochure also states, "The Patented Crown Design on the Mandrel allows the Nose Cone to set securely in the Crown of the frac plug below." *Id.* The MEG Brochure further states, "The Patented formulation of materials that the JayCar Frac Plug is comprised of has been proven to have unbelievable drill up times." *Id.*

41. Upon information and belief, no part, component, or material of the MUSTANG SERIES plugs is (or has ever been) patented. Therefore, Defendants assertions constitute false marking under 35 U.S.C. § 292.

42. Defendants' Jaycar Brochure, MMS Brochure, and SWECO Brochure advertise products for Jaycar, MMS, and SWECO. A true and correct copy of the Jaycar Brochure is attached hereto as Exhibit B. A true and correct copy of the MMS Brochure is attached hereto as Exhibit E. A true and correct copy of the SWECO brochure is attached hereto as Exhibit F.

43. Defendants' Jaycar, MMS, and SWECO Brochures state that the MUSTANG SERIES plug is "Patent Pending" for the purpose of deceiving the public, including Plaintiff and Plaintiff's customers.

44. Upon information and belief, no part, component, or material of the MUSTANG SERIES plugs is (or has ever been) patent pending. Therefore, Defendants assertions constitute false marking under 35 U.S.C. § 292.

45. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial as well as irreparable harm.

V. REQUEST FOR PRELIMINARY INJUNCTION

46. Plaintiff realleges and incorporates by reference for all purposes the preceding paragraphs as if fully set forth herein.

47. Plaintiff is entitled to a preliminary injunction against Defendants if Plaintiff establishes (1) that it is likely to succeed on the merits; (2) that it is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in its favor; and (4) that an injunction is in the public interest. *See, e.g., Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350 (Fed. Cir. 2001).

48. There is a substantial likelihood that Plaintiff will prevail on the merits because Defendants' MUSTANG SERIES plugs are indistinguishable from Plaintiff's patented plugs and therefore infringe one or more claims of the '376 Patent and the '413 Patent. The claims of the '376 Patent and the '413 Patent are valid and enforceable. *See*, 35 U.S.C. § 282 ("Each claim of a patent... shall be presumed valid.").

49. Plaintiff is likely to suffer irreparable harm in the absence of a preliminary injunction preventing Defendants from infringing the '376 and '413 Patents and from engaging in unfair competition, false advertising, trade dress infringement, use of a false designation of origin, and false marking.

50. The balance of hardships favors Plaintiff because Plaintiff cannot be made whole again if it prevails in this litigation. Defendants have and continue to erode Plaintiff's markets,

customers, and prices. Such effects are rarely reversible. *See, e.g., Abbott Laboratories v. Sandoz, Inc.*, 544 F.3d 1341, 1362 (Fed. Cir. 2008).

51. A preliminary injunction is in the public interest because the public has an interest in the enforcement of patents. *See, e.g., Abbott Laboratories v. Sandoz, Inc.*, 544 F.3d 1341, 1362 (Fed. Cir. 2008).

52. Plaintiff is willing to post a bond in the amount the Court deems appropriate.

53. Plaintiff asks the Court to set its application for preliminary injunction for hearing at the earliest possible time and, after hearing the request, to issue a preliminary injunction against Defendants.

VI. REQUEST FOR PERMANENT INJUNCTION

54. Plaintiff realleges and incorporates by reference for all purposes the preceding paragraphs as if fully set forth herein.

55. Plaintiff asks the Court to set its application for injunctive relief for a full trial on the issues and, after the trial, to issue a permanent injunction against Defendants.

VII. DAMAGES AND ATTORNEYS' FEES

56. Plaintiff realleges and incorporates by reference for all purposes the preceding paragraphs as if fully set forth herein.

57. In addition to the injunctive relief requested, Plaintiff is entitled to monetary damages well in excess of \$75,000.00. Plaintiff's damages are currently unliquidated and continuing. Plaintiff seeks actual and punitive/exemplary damages. Plaintiff also seeks the recovery of its

reasonable and necessary attorneys' fees, costs, and all pre-and post-judgment interest as allowed by law.

VIII. JURY DEMAND

58. Plaintiff hereby demands a trial by jury.

IX. PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff prays for judgment and seeks relief against Defendants as follows:

- (a) Judgment that the '376 Patent and the '413 Patent are valid and enforceable.
- (b) Judgment that the '376 Patent and the '413 Patent have been and continue to be infringed by Defendants;
- (c) Judgment that Defendants' patent infringement has been and continues to be willful;
- (d) Judgment that Defendants have been and continue to be engaging in unfair competition, false advertising, and trade dress infringement as well as using a false designation of origin;
- (e) Judgment that Defendants have engaged in false marking;
- (f) Preliminary and permanent injunctions enjoining Defendants, their officers, agents, servants, employees, and those acting in privity with them, from further infringement, contributory infringement, and/or inducing infringement of the '376 Patent and the '413 Patent and from unfair competition, false advertising, trade dress infringement, use of a false designation of origin, and false marking;

- (g) Requiring Defendants to file with this Court, within thirty (30) days after entry of final judgment, a written statement under oath setting forth in detail the manner in which they have complied with the permanent injunction;
- (h) Awarding Plaintiff damages adequate to compensate Plaintiff for the patent infringement, unfair competition, false advertising, trade dress infringement, use of a false designation of origin, and false marking by Defendants, including supplemental damages for any continuing post-verdict patent infringement, unfair competition, false advertising, trade dress infringement, use of a false designation of origin, and false marking up until entry of the final judgment with an accounting as needed;
- (i) Trebling the aforesaid damages due to Defendants' willful actions, pursuant to 35 U.S.C. § 284;
- (j) Declaring this case exceptional pursuant to 35 U.S.C. § 285, and awarding Plaintiff attorneys' fees;
- (k) An award of all pre-judgment and post-judgment interest and costs including, but not limited to, all expert fees, deposition costs, and premiums for bond for preliminary injunction; and
- (l) An award of such other and further relief as the Court may deem just and proper.

DATED: June 27, 2012

Respectfully Submitted,

/s/ Robb D. Edmonds
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*Attorneys For Plaintiff,
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Certificate of Service

I hereby certify that on June 27, 2012, a true and correct copy of the foregoing document was served electronically, via ECF, on all counsel of record who are deemed to have consented to such service under the Court's local rules.

/s/ Robb D. Edmonds
Robb D. Edmonds