IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TEAM OIL TOOLS, LP,	§	
	§	
Plaintiff,	§	**C. A. NO. 6:12-cv-664-LED-JDL**
	§	
v.	§	
	§	
PEAK COMPLETION TECHNOLOGIES, INC.	§	**JURY TRIAL DEMANDED**
	§	
	§	
Defendant.	§	
	§	

TEAM OIL TOOLS, LP'S FIRST AMENDED COMPLAINT

Plaintiff TEAM Oil Tools, LP ("TEAM" or "Plaintiff"), by and through its attorneys, submits this First Amended Complaint.

THE PARTIES

1. Plaintiff, TEAM Oil Tools, LP, is a Texas limited partnership, having a place of business at 1400 Woodloch Forest Dr., #500, The Woodlands, TX 77380.

2. On information and belief, Defendant, Peak Completion Technologies, Inc., is a Texas corporation having a place of business at 631 SSE Loop 323, Tyler, TX 75702. Peak has been served with process.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Peak because Peak is a resident of this judicial district, having places of business at 631 SSE Loop 323, Tyler, TX 75702 and

5600 Tennyson Pkwy, Plano, TX 75024. Furthermore, on information and belief, Peak, either directly or through intermediaries, regularly sells a wide variety of goods and services into this judicial district and manufactures a wide variety of products intended to be sold into this judicial district. Additionally, on information and belief, this Court has personal jurisdiction over Peak because Peak has committed, aided, abetted, contributed to, and/or participated in the commission of acts giving rise to this action within this judicial district and has established minimum contacts within the forum such that the exercise of jurisdiction over Peak would not offend traditional notions of fair play and substantial justice. On information and belief, Peak had sold, advertised, solicited customers, marketed and/or distributed Infringing Products (as defined below) in this judicial district and has designed, made, or had made, on its behalf, and placed Infringing Products into the stream of commerce with the reasonable expectation and/or knowledge that actual or potential ultimate purchasers and users for such products and/or services were located within this judicial district.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

INFRINGEMENT OF U.S. PATENT NO. 8,267,178

6. Plaintiff, TEAM, is the owner by assignment of United States Patent No. 8,267,178 ("the '178 patent"), entitled "Valve for Hydraulic Fracturing Through Cement Outside Casing," and owns all rights to sue, and collect damages, including past damages, for infringement of the '178 patent. A true and correct copy of the '178 patent, which was duly and legally issued by the United States Patent and Trademark Office on September 18, 2012 is attached hereto as Exhibit A.

7. Peak has knowledge of the ‘178 patent based at least upon the filing and service of this Complaint. On information and belief, before the ‘178 patent issued, Peak began making, using, offering for sale and/or selling within the United States, products and/or methods that fall within the scope of the claims that have now issued as the ‘178 patent and Peak has continued to pursue those activities after the ‘178 patent issued. Accordingly, on information and belief, Peak is infringing the ‘178 patent in this judicial district, and elsewhere in the United States. Peak’s infringements include, without limitation, making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, products that include/utilize TEAM’s patented valve and method for actuating a valve, including at least Peak’s trigger toe sub and products that include Peak’s trigger toe sub (collectively herein referred to as “Infringing Products”) and thus Peak is liable for infringement of the ‘178 patent pursuant to 35 U.S.C. § 271(a).

8. TEAM is entitled to recover from Peak damages that are adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

9. Peak’s infringement of TEAM’s rights under the ‘178 patent will continue to damage TEAM’s business, causing irreparable harm, for which there is no adequate remedy at law, unless Peak is enjoined by this Court.

UNENFORCEABILITY OF PEAK'S ASSERTED U.S. PATENT NO. 7,926,571

10. Peak is the owner of record of U.S. Patent No. 7,926,571 ("the '571 patent") entitled "Cemented Open Hole Selective Fracing System." A copy of the '571 patent is attached as Exhibit B.

11. Through its counterclaims asserted in Peak's First Amended Answer, Peak asserted infringement, contributory infringement, and inducement of infringement of the '571 patent against TEAM.

12. The '571 patent is unenforceable because of Peak's inequitable conduct arising from material misrepresentations made by Peak's representatives to the United States Patent and Trademark Office (USPTO) in the course of prosecuting the patent application that matured into the '571 patent. The patent-in-suit relies on United States Patent No. 7,267,172 for its filing date and disclosure. If the '172 patent had not been allowed, then the '571 patent would not have been allowed.[1] In the course of prosecuting the patent application that matured into the '172 patent, "but for" material misrepresentations were made by Peak's representatives to procure allowance of the '172 patent. Those material misrepresentations not only taint the '172 patent but also taint the '571 patent.

a. The material misrepresentations made by Peak's representatives to the USPTO are contained in Peak's Reply to Office Action Dated June 14, 2007. Specifically, Peak's representatives made the following false statements to the

[1] There can be no doubt that the '172 and '571 patent claim the same invention as the USPTO required that Peak file a terminal disclaimer to overcome a double-patenting rejection. Peak acquiesced to the USPTO's position that the '571 patent claimed the same invention as the '172 patent by filing its terminal disclaimer.

USPTO to overcome an obviousness rejection under 35 U.S.C. §103,[2] "To date, Peak Completions has run over ***one thousand sliding valves*** in many different wells applying the techniques set forth in my patent. Completed wells have a marked increase in production verses (sic) conventional methods, increased production being as much as ***800% over conventional methods***. This results in substantial cost-savings in the industry."[3]

b. The foregoing false statements were made to overcome the obviousness rejection and secure allowance of the '172 patent which subsequently led to allowance of the '571 patent.

c. There can be no doubt that the material misrepresentations made by Peak led to allowance of the '172 patent inasmuch as the USPTO withdrew its obviousness rejection shortly after Peak made its egregious and false statements to the USPTO.

d. In prior litigation involving Peak[4], during the August 19, 2013 deposition of EOG's representative, Glenn Carter (Peak's customer), Mr. Carter testified that there was no production improvement when using the cemented sleeves and further testified that only about 150 sliding valves had been cemented in place. And Mr. Carter further testified that he was not using the patented invention because the prior art system is simpler to run.

[2] Peak's representatives were attempting to offer secondary consideration of non-obviousness and in its response to the obviousness rejection argued, "The long felt need, failure of others, and commercial success all exist for the current invention as is specifically stated in the Affidavit of the Inventor Raymond A. Hofman (*See* Exhibit C). As the Examiner is well aware, in a close case of obviousness, the secondary conditions tip the scales in favor of patentability. In the present case, all of the secondary consideration factors are in favor of applicant." (See response to office action dated June 14, 2007 at pg. 7).

[3] *See* Exhibit C, ¶ 10 of "Affidavit of Raymond A. Hofman Under 37 C.F.R. 1.132" dated June 13, 2007.

[4] *Peak Completion Technologies, Inc. v. i-Tec Well Solutions, L.L.C.*, Civil Action No. 4:13-cv-00743, in the Southern District of Texas (Houston Div.).

13. The single most reasonable inference to be drawn from the false statements is that they were made with the intent to mislead the United States Patent and Trademark Office to secure allowance of the '172 patent, particularly when one considers the following arguments made by Peak to advance the false statements in Mr. Hofman's affidavit: "The long felt need, failure of others, and commercial success all exist for the current invention as is specifically stated in the Affidavit of the Inventor Raymond A. Hofman (See Exhibit A). As the Examiner is well aware, in a close case of obviousness, the secondary conditions tip the scales in favor of patentability. In the present case, all of the secondary consideration factors are in favor of applicant." *See* Exhibit D, response to office action dated June 14, 2007 at pg. 7.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and seeks the following relief:

(a) For judgment in favor of TEAM that Peak has infringed the '178 patent;

(b) For a permanent injunction enjoining the aforesaid acts of infringement by Peak, its officers, agents, servants, employees, subsidiaries and attorneys, and those acting in concert with Peak, including related individuals and entities, customers, representatives, OEMs, dealers, distributors and/or importers;

(c) For judgment and an order requiring Peak to pay TEAM its damages, costs, expenses, prejudgment and post-judgment interest, and post-judgment royalties for Peak's infringement of the '178 patent, as provided under 35 U.S.C. § 284;

(d) A finding that U.S. Patent No. 7,926,571 is not infringed;

(e) A finding that all claims of U.S. Patent No. 7,926,571 are invalid;

(f) A finding that U.S. Patent No. 7,926,571 was procured by Peak's fraud on the USPTO and is therefore unenforceable;

(g) For judgment and an order that this case is exceptional under 35 U.S.C. § 285 and requiring Peak to pay TEAM's reasonable attorneys' fees; and

(h) For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all issues and claims so triable.

Dated: April 30, 2014

Respectfully submitted,

/s/ J. David Cabello

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service, pursuant to Local Rule CV-5(a)(3), on this 30th day of April, 2014.

/s/ Sarah R. Cabello
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