

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

<b>FALCON TECHNOLOGIES</b>	)	
<b>AND SERVICES, INC.,</b>	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. _____
	)	
v.	)	JURY TRIAL DEMANDED
	)	
<b>BENCHMARK FOAM INC.,</b>	)	
	)	
Defendant.	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

Falcon Technologies and Services, Inc. (“Falcon”) files this Complaint against Benchmark Foam Inc. (“Benchmark”) for infringement of United States Patent No. 8,734,052 (the “’052 Patent”).

**THE PARTIES**

1. Falcon is a Texas corporation with a principal place of business at 375 Commerce Street, Southlake, Texas 76092.
2. Falcon is a fully-owned subsidiary of CARBO Ceramics Inc.
3. Falcon and CARBO Ceramics Inc. sell and market products in this District, including tank bases covered by one or more claims of the ‘052 Patent.
4. Upon information and belief, Benchmark is a South Dakota corporation having a principal place of business located 401 Pheasant Ridge Drive, Watertown, South Dakota 57201.
5. Upon information and belief, Benchmark sells and markets tank pads and other products in this District, including the tank pads described and depicted on Benchmark’s website at

<http://benchmarkfoam.com/products/interlocking-tank-pads-for-above-ground-storage-tank-support/>.

**JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this action, and over Falcon and Benchmark, under 28 U.S.C. §§ 1331 and 1338.

7. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and/or 1400(b).

**FALCON AND THE '052 PATENT**

8. The '052 Patent is entitled "Tank Base" and was issued by the U.S. Patent and Trademark Office on May 27, 2014.

9. A true and correct copy of the '052 Patent is attached to this Complaint as Exhibit A.

10. The '052 Patent and all claims thereof are presumed valid under 35 U.S.C. § 282.

11. Falcon is the owner by assignment of all rights, title, and interests in and to the '052 Patent, including the rights to file suit against infringers and to recover damages from infringers.

12. Falcon makes and sells tank bases covered by one or more claims of the '052 Patent.

13. Falcon has complied with the marking and notice provisions of 35 U.S.C. § 287.

**BENCHMARK'S WILLFUL INFRINGEMENT OF THE '052 PATENT**

14. Benchmark makes, sells, and offers to sell tank pads and kits for above-ground storage tank support, including the tank pads described and depicted on Benchmark's website at <http://benchmarkfoam.com/products/interlocking-tank-pads-for-above-ground-storage-tank-support/>.

15. Upon information and belief, Benchmark has sold and offered to sell tank pads and kits for above-ground storage tank support in this District, including the tank pads described and

depicted on Benchmark's website at <http://benchmarkfoam.com/products/interlocking-tank-pads-for-above-ground-storage-tank-support/>.

16. Benchmark has infringed and continues to infringe one or more claims of the '052 Patent under 35 U.S.C. § 271(a) by making, using, selling, and/or offering to sell the aforementioned tank pads and kits.

17. Benchmark has actual knowledge of the '052 Patent and its claims, yet Benchmark continues to infringe the '052 Patent.

18. The claims of the '052 Patent recite, among other limitations, encapsulated substrates that have: (a) have an elastomer coating having a thickness of at least about 50 mils; and (b) planar portions. The claims of the '052 Patent also recite that at least one encapsulated substrate defines a dimension sized to accommodate the diameter of an above-ground storage tank and to provide load-bearing support for the above-ground storage tank.

19. In a letter dated May 30, 2014 (the "Falcon Letter"), counsel for Falcon advised Benchmark that Falcon was the owner of the '052 Patent, notified Benchmark that Falcon had learned that Benchmark was constructing, distributing, or selling tank pads or bases, and requested that Benchmark and its intellectual property counsel review the '052 Patent and provide Falcon with Benchmark's comments. A copy of the Falcon Letter is attached to this Complaint as Exhibit B.

20. In a letter dated June 30, 2014 (the "Benchmark Letter"), counsel for Benchmark responded to the Falcon Letter by indicating that a majority of Benchmark's accused pads have an elastomeric thickness of 90 mils. This elastomeric thickness literally meets the aforementioned claim limitation requiring an elastomer coating thickness of at least about 50 mils. A copy of the Benchmark Letter is attached to this Complaint as Exhibit C.

21. In the Benchmark Letter, *see* Exhibit C, counsel for Benchmark also indicated or suggested that Benchmark manufactures at least some accused tank pads having planar substrate portions. Such tank pads would literally meet the aforementioned claim limitation requiring encapsulated substrates having planar portions.

22. In the Benchmark Letter, *see* Exhibit C, counsel for Benchmark also: (a) suggested and argued that the accused Benchmark pads lack at least one encapsulated substrate that defines a dimension sized to accommodate the diameter of an above-ground storage tank and provides load-bearing support for the above-ground storage tank; and (b) stated that “the Benchmark tank pads (both overall and sections thereof) are sized to be smaller than the diameter of the tanks under which they are positioned.”

23. The aforementioned suggestions, arguments, and statements by Benchmark’s counsel are belied by information found on Benchmark’s website page found at <http://benchmarkfoam.com/products/interlocking-tank-pads-for-above-ground-storage-tank-support/>.

24. The aforementioned Benchmark website page includes a photograph of a tank pad that is seen to accommodate the diameter of an above-ground storage tank, provide load-bearing support for the tank, and have a diameter larger than the diameter of the tank it supports. The photograph from Benchmark's web page is reproduced below:



25. In the Benchmark Letter, *see* Exhibit C, counsel for Benchmark also made the conclusory allegation that “a number of prior art references” would render one or more claims of the ‘052 patent invalid as either anticipated or obvious. In the Benchmark Letter, counsel for Benchmark neither identified any such allegedly-invalidating prior art nor indicated how such prior art would meet or suggest each limitation of any claim of the ‘052 Patent, either alone or in combination.

26. Based at least upon the foregoing statements, suggestions, and communications by and from Benchmark's counsel, Benchmark's infringing conduct is and has been objectively reckless, and Benchmark's infringement of the ‘052 Patent is willful.

**COUNT I: INFRINGEMENT OF THE '052 PATENT**

27. Falcon incorporates the preceding paragraphs 1 through 26 herein by reference.

28. Benchmark has infringed and continues to infringe one or more claims of the '052 Patent under 35 U.S.C. § 271(a) by making, using, selling, and offering to sell tank pads and kits for above-ground storage tank support.

29. Benchmark has infringed and continues to infringes the '052 Patent willfully and with knowledge of the '052 Patent.

30. Benchmark's infringement has caused and is causing irreparable harm and monetary damage to Falcon and will continue to do so until and unless Benchmark is enjoined and restrained by this Court.

**PRAYER FOR RELIEF**

Falcon respectfully requests that the Court:

- (a) Enter judgment that Benchmark infringes and has infringed one or more claims of the '052 Patent;
- (b) Enjoin Benchmark and its agents, officers, servants, and employees from further infringement of the '052 Patent;
- (c) Award Falcon damages resulting from Benchmark's infringement in an amount not less than a reasonable royalty under 35 U.S.C. § 284;
- (d) Enter judgment that Benchmark's infringement is and has been willful;
- (e) Treble or otherwise enhance the damages award to Falcon under 35 U.S.C. § 284;
- (f) Enter judgment that this is an exceptional case and award to Falcon its costs and reasonable attorney's fees under 35 U.S.C. § 285;
- (g) Award Falcon pre-judgment and post-judgment interest and costs; and

(h) Award Falcon such further relief to which the Court finds Falcon entitled under law or equity.

**DEMAND FOR JURY TRIAL**

Falcon hereby respectfully demands a jury trial of all issues so triable.

Dated: July 30, 2014

Respectfully submitted,

By: /s/ Bart A. Starr

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