

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**AIR LIQUIDE LARGE INDUSTRIES
U.S. LP**

Plaintiff,

v.

**PRAXAIR, INC.,
PRAXAIR TECHNOLOGY, INC.**

Defendants.

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CASE NO: 4:15cv1365

JURY DEMANDED

**PLAINTIFF AIR LIQUIDE’S ORIGINAL COMPLAINT
FOR DECLARATORY JUDGMENT OF INVALIDITY**

Air Liquide Large Industries U.S. LP (“Air Liquide”) requests a declaratory judgment of invalidity of certain patent claims owned and controlled by Praxair Technology, Inc. and Praxair, Inc. (collectively “Praxair”) based on the following:

The Parties

1. Air Liquide is a Delaware limited partnership with a principal place of business in Houston, Texas.
2. On information and belief, Praxair, Inc. is a Delaware corporation with a place of business in Deer Park, Texas.
3. On information and belief, Praxair Technology, Inc. is a Delaware corporation.

Jurisdiction & Venue

4. This Court has original subject matter jurisdiction over this declaratory judgment action that arises under the patent laws of the United States pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

5. On information and belief, a substantial controversy of sufficient immediacy and reality exists between the parties that warrants the issuance of a declaratory judgment. Praxair has asserted to Air Liquide and its prospective clients that Air Liquide will infringe Praxair patents with the planned operation of its hydrogen gas storage cavern. Praxair's actions have injured and will continue to injure Air Liquide.

6. This Court has personal jurisdiction over the defendants because Praxair has directed communications forming the basis for declaratory jurisdiction to this District.

7. Venue is properly within this district in accordance with 28 U.S.C. § 1391 and § 1400 (b) at least because a substantial part of the events or omissions giving rise to the declaratory judgment claims occurred in this District and both parties have regular and established places of business in this district.

Facts and Background

Air Liquide Invests Millions in Developing the Spindletop Cavern

8. Air Liquide is a world leader in supplying gases and related technologies for industrial and medical applications. As part of its offerings, Air Liquide produces and contracts to supply hydrogen to the refining and petrochemical industries.

9. In 2007, Air Liquide announced the construction of a hydrogen storage cavern in Spindletop salt dome near Beaumont, Texas. The cavern will improve Air Liquide's ability to provide hydrogen on demand to its refinery customers.

10. In 2008, after notice and a public hearing, the Railroad Commission of Texas unanimously approved Air Liquide's application to operate and maintain an underground gas storage facility at the Spindletop salt dome.

11. In 2010, Air Liquide began drilling and excavating the storage cavern at Spindletop.

12. In 2013, Air Liquide began construction of the topside equipment at the Spindletop cavern used to inject, maintain, and withdraw hydrogen.

13. Air Liquide expects to start commercial hydrogen storage operations in the Spindletop cavern in early 2016. Air Liquide has begun to commercialize its cavern by negotiating supply contracts for hydrogen based upon its expected capacity once the cavern is operational.

14. To date, Air Liquide has invested in excess of \$100 million in the design and construction of the Spindletop hydrogen storage salt cavern.

Praxair's Patents

15. On information and belief, Praxair Technology, Inc. is the assignee of U.S. Patent Nos. 7,078,011 (“‘011 patent”) and 8,690,476 (“‘476 patent”) (collectively the “Praxair patents”). These patents are included as Exhibits A and B, respectively. On information and belief, Praxair, Inc. owns rights to these patents.

16. Air Liquide petitioned the U.S. Patent & Trademark Office to invalidate certain claims of the ‘011 and ‘476 patents in *inter partes* review proceedings. These proceedings have been assigned Nos. IPR2015-01071, IPR2015-01072, IPR2015-01073, IPR2015-01074, and IPR2015-01075. Specifically, Air Liquide has petitioned to invalidate claims 1-3, 7, and 8 of the ‘011 patent and claims 1-12 and 15 of the ‘476 patent.

Praxair Asserts its Patents against the Spindletop Cavern

17. Following the announcement of Air Liquide’s expansion project in 2007, Praxair notified Air Liquide that it was concerned the Spindletop cavern may infringe the Praxair patents. Praxair expressed its concerns again about infringement of its patents in 2010 and 2013 after Air Liquide began construction first of the cavern and later of its topside.

18. Air Liquide responded to Praxair's concerns, but Praxair continued to express concern about infringement of its patents.

19. Praxair and Air Liquide met in October of 2014 so that Praxair could "understand why Air Liquide believes it will not be in violation of [Praxair's] patents during the operation of its cavern." Following the meeting, Praxair informed Air Liquide that Praxair "continue[s] to believe that there is a high likelihood that Air Liquide will violate one or more of [Praxair's] patents or pending applications upon start-up and operation of its hydrogen storage cavern and Praxair will take all necessary steps to protect its valuable intellectual property rights."

20. On information and belief, Praxair has told customers, including through communications directed to this District, that the Air Liquide cavern in Spindletop will infringe the Praxair patents. These allegations have undermined Air Liquide's efforts to enter into contracts for supplying hydrogen based on the storage capacity of the Spindletop cavern.

21. Air Liquide is entitled to bring this action because there is a substantial controversy between Air Liquide and Praxair of sufficient immediacy and reality at least because: Air Liquide has a reasonable apprehension that Praxair will sue Air Liquide for infringement of its patents, including the '011 and '476 patents; Air Liquide has a real and reasonable apprehension that its construction, commercialization, and operation of the Spindletop cavern could, according to statements made by Praxair to Air Liquide and its customers, subject it to liability for patent infringement; and Air Liquide has taken significant, concrete steps to conduct activity through substantial investments in and commercial marketing of the Spindletop cavern that, according to Praxair, is designed to infringe the Praxair patents.

Count 1 – Declaratory Judgment of Invalidity of U.S. Patent No. 7,078,011

22. Claims 1-3, 7, and 8 of the '011 Patent are invalid for failing to satisfy one or more of the conditions of patentability under 35 U.S.C. §103 for the reasons set forth in the

petition for *inter partes* reexamination filed by Air Liquide in Nos. IPR2015-01071, IPR2015-01072, and IPR2015-01073.

23. Air Liquide therefore seeks a declaratory judgment that claims 1-3, 7, and 8 of the '011 Patent are invalid.

Count 2 – Declaratory Judgment of Invalidity of U.S. Patent No. 8,690,476

24. Claims 1-12 and 15 of the '476 Patent are invalid for failing to satisfy one or more of the conditions of patentability under 35 U.S.C. §§ 102 and 103 for the reasons set forth in the petition for inter parties reexamination filed by Air Liquide in Nos. IPR2015-01074 and IPR2015-01075.

25. Air Liquide therefore seeks a declaratory judgment that claims 1-12 and 15 of the '476 Patent are invalid.

Prayer

WHEREFORE, Air Liquide prays the Court to grant:

- (a) Declaratory judgment that claims 1-3, 7, and 8 of the '011 patent are invalid;
- (b) Declaratory judgment that claims 1-12 and 15 of '476 patent are invalid;
- (c) An award of attorney fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law against Praxair.
- (d) All costs of suit; and
- (e) Such other and further relief as the Court may deem just and proper.

Dated: May 20, 2015

Respectfully submitted,

/s/ Charles B. Walker Jr.

Charles B. Walker, Jr.

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