

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**M-I LLC,**

**Plaintiff,**

**v.**

**FPUSA, LLC,**

**Defendant.**

**CIVIL ACTION NO. 5:15-CV-406-DAE**

*Jury Trial Requested*

**AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff M-I LLC (“M-I”) brings this Amended Complaint for Patent Infringement against Defendant FPUSA, LLC (“FP”) and shows the following:

**PARTIES**

1. Plaintiff M-I is a limited liability company existing and organized under the laws of the State of Delaware and registered to do business in the State of Texas. It has a principal place of business at 5950 North Course Drive, Houston, Texas 77072.

2. Defendant FP is a limited liability company existing and organized under the laws of the State of Texas and registered to do business in the State of Texas. FP has a principal place of business at 745 North Hwy 123 Bypass, Ste. B, Seguin, Texas 78155 and maintains an operating facility at 10314 WCR 72, Midland, Texas 79707. FP can be served through its registered agent, CT Corporation System, 1999 Bryan Ste. 900, Dallas, Texas 75201.

**NATURE OF THIS ACTION**

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

## JURISDICTION AND VENUE

4. This Court has exclusive subject matter jurisdiction over this lawsuit under 28 U.S.C. §§ 1331 and 1338(a), because it arises under the Patent Laws of the United States.

5. This Court has personal jurisdiction over FP because it is registered to do business in the State of Texas and has sufficient contacts in the Western District of Texas.

6. Venue is proper in this Court under 28 U.S.C. § 1391 and § 1400 because FP resides within the Western District of Texas.

## COUNT I

### INFRINGEMENT OF U.S. PATENT NO. 9,004,288

7. M-I realleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

8. M-I has invested substantial time and money in research and development in the area of improving the separation of drilling fluids from cuttings and other solids in a slurry and thereby recovering drilling fluid for re-use in the field.

9. As part of these efforts, on September 29, 2006, M-I filed a provisional application with the United States Patent and Trademark Office describing drilling fluid recovery systems. On April 14, 2015, the United States Patent and Trademark Office duly and legally issued United States Patent No. 9,004,288 (“the ‘288 Patent”), which claims priority to the provisional application. A copy of the ‘288 Patent is attached as **Exhibit A**.

10. M-I is the assignee and owns all right, title, and interest to the ‘288 Patent.

11. M-I has products covered by one or more of the claims of the ‘288 Patent, such as M-I’s recently commercialized Screen Pulse System.

12. FP makes, uses, offers to rent or sell, and/or rents or sells within the United States drilling fluid recovery systems, including the Vac-Screen System (VSS), VSS-PLUS, and VSS-Lite (collectively, “Vac-Screen Systems”). Upon information and belief, the Vac-Screen Systems directly compete with M-I’s Screen Pulse System.

13. Upon information and belief, there are no other competitors making, using, offering to rent or sell, and/or renting or selling within the United States, a drilling fluid recovery system covered by one or more claims of the ‘288 Patent.

14. FP’s Vac-Screen Systems and the use of FP’s Vac-Screen Systems are covered by one or more claims of the ‘288 Patent.

15. FP directly infringes, either literally or under the doctrine of equivalents, at least one claim of the ‘288 Patent by making, using, offering to rent or sell, and/or renting or selling the Vac-Screen Systems within the United States.

16. FP is actively inducing others to infringe and is contributing to the infringement of the ‘288 Patent by making, using, offering to rent or sell, and/or renting or selling the Vac-Screen Systems within the United States.

17. FP advertises, demonstrates and/or recommends infringing uses and/or provides instruction on how to engage in infringing uses of the infringing Vac-Screen Systems through various forms and by various means, including but not limited to advertisements, websites including: <http://fpusaoilfield.com>, and product literature.

18. FP offers to sell/rent and sells/rents components that are a material part of the claimed invention of the ‘288 Patent and which have no substantial non-infringing use, knowing that the components are especially made or especially adapted for use in a direct infringement of the ‘288 Patent.

19. As a direct and proximate result of FP's acts of infringement of the '288 Patent, M-I has suffered and will continue to suffer economic injury and damages and is entitled to relief under 35 U.S.C. § 284.

20. FP will continue to infringe the '288 Patent unless enjoined by this Court. As a direct and proximate result of FP's acts of infringement of the '288 Patent, M-I has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. M-I is entitled to preliminary and permanent injunctive relief under 35 U.S.C. § 283.

21. The facts and circumstances surrounding the subject of this lawsuit make this an "exceptional case" under 35 U.S.C. § 285 and as such, M-I is entitled to recover its attorney fees under 35 U.S.C. § 285.

## COUNT II

### INFRINGEMENT OF U.S. PATENT NO. 9,074,440

22. M-I realleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

23. M-I has invested substantial time and money in research and development in the area of improving the separation of drilling fluids from cuttings and other solids in a slurry and thereby recovering drilling fluid for re-use in the field.

24. As part of these efforts, on September 29, 2006, M-I filed a provisional application with the United States Patent and Trademark Office describing drilling fluid recovery systems. On July 7, 2015, the United States Patent and Trademark Office duly and legally issued United States Patent No. 9,074,440 ("the '440 Patent"), which claims priority to the provisional application. A copy of the '440 Patent is attached as **Exhibit B**.

25. M-I is the assignee and owns all right, title, and interest to the '440 Patent.

26. M-I has products covered by one or more of the claims of the '440 Patent, such as M-I's recently commercialized Screen Pulse System.

27. FP makes, uses, offers to rent or sell, and/or rents or sells within the United States drilling fluid recovery systems, including the Vac-Screen Systems. Upon information and belief, the Vac-Screen Systems directly compete with M-I's Screen Pulse System.

28. Upon information and belief, there are no other competitors making, using, offering to rent or sell, and/or renting or selling within the United States, a drilling fluid recovery system covered by one or more claims of the '440 Patent.

29. FP's Vac-Screen Systems and the use of FP's Vac-Screen Systems are covered by one or more claims of the '440 Patent.

30. FP directly infringes, either literally or under the doctrine of equivalents, at least one claim of the '440 Patent by making, using, offering to rent or sell, and/or renting or selling the Vac-Screen Systems within the United States.

31. FP is actively inducing others to infringe and is contributing to the infringement of the '440 Patent by making, using, offering to rent or sell, and/or renting or selling the Vac-Screen Systems within the United States.

32. FP advertises, demonstrates and/or recommends infringing uses and/or provides instruction on how to engage in infringing uses of the infringing Vac-Screen Systems through various forms and by various means, including but not limited to advertisements, websites including: <http://fpusaoilfield.com>, and product literature.

33. FP offers to sell/rent and sells/rents components that are a material part of the claimed invention of the '440 Patent and which have no substantial non-infringing use, knowing

that the components are especially made or especially adapted for use in a direct infringement of the '440 Patent.

34. As a direct and proximate result of FP's acts of infringement of the '440 Patent, M-I has suffered and will continue to suffer economic injury and damages and is entitled to relief under 35 U.S.C. § 284.

35. FP will continue to infringe the '440 Patent unless enjoined by this Court. As a direct and proximate result of FP's acts of infringement of the '440 Patent, M-I has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. M-I is entitled to preliminary and permanent injunctive relief under 35 U.S.C. § 283.

36. The facts and circumstances surrounding the subject of this lawsuit make this an "exceptional case" under 35 U.S.C. § 285 and as such, M-I is entitled to recover its attorney fees under 35 U.S.C. § 285.

#### **PRAYER FOR RELIEF**

M-I respectfully asks this Court to summon FP to appear and answer this Amended Complaint, and after being heard on the merits, grant judgment in favor of M-I as follows:

- (a) Find FP liable for direct infringement of the '288 and '440 Patents;
- (b) Find FP liable for indirect infringement of the '288 and '440 Patents;
- (c) Enjoin FP through a preliminary and permanent injunction, from infringing the '288 and '440 Patents for the full terms thereof, and from inducing or contributing to such activities;
- (d) Award M-I just compensation for FP's infringement of the '288 and '440 Patents;
- (e) Award M-I reasonable and necessary costs and attorney fees; and

- (f) For a judgment and an award of such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

In accordance with Fed. R. Civ. P. 38 and 39, M-I asserts its rights under the Seventh Amendment to the United States Constitution and demands a trial by jury on all issues that may be so tried.

DATED: August 12, 2015

Respectfully submitted,

/s/ John R. Keville

John R. Keville

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ATTORNEYS FOR PLAINTIFF,  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of August, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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