

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

CHARLES C. FREENY III, BRYAN E.  
FREENY, and JAMES P. FREENY,

Plaintiffs,

v.

E-Z MART STORES, INC.,

Case No. 2:15-cv-01388-JRG-RSP

CONSOLIDATED

JURY TRIAL DEMANDED

VALERO ENERGY CORPORATION,  
CST BRANDS, INC., and CST  
SERVICES LLC,

Defendants.

Case No. 2:15-cv-01386-JRG-RSP

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs Charles C. Freeny III, Bryan E. Freeny, and James P. Freeny (collectively “Plaintiffs”), for their First Amended Complaint against Defendants Valero Energy Corporation, CST Brands, Inc., and CST Services LLC (collectively “Defendants”), hereby allege as follows:

**THE PARTIES**

1. Plaintiff Charles C. Freeny III is an individual residing in Flower Mound, Texas.
2. Plaintiff Bryan E. Freeny is an individual residing in Ft. Worth, Texas.
3. Plaintiff James P. Freeny is an individual residing in Spring, Texas.
4. On information and belief, Defendant Valero Energy Corporation (“Valero”) is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at One Valero Way, San Antonio, Texas, 78249.

5. On information and belief, Defendant CST Brands, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at One Valero Way, Building D, Suite 200, San Antonio, Texas, 78249.

6. On information and belief, Defendant CST Services LLC is a corporation duly organized and existing under the laws of the state of Delaware, having its principal place of business at One Valero Way, Building D, Suite 200, San Antonio, Texas, 78249.

7. On information and belief, CST Services LLC is currently a wholly-owned subsidiary of CST Brands, Inc., but was previously a wholly-owned subsidiary of Valero, and previously operated under the name Valero Retail Holdings, Inc.

8. On information and belief, up until around May 2013, Valero owned and operated numerous retail gas stations located within the State of Texas and this judicial district as well as in other areas of the United States.

9. On information and belief, sometime around May 2013, Valero transferred ownership over all of its retail gas stations to CST Brands, Inc. and CST Services LLC (collectively "CST"), which now own and operate those retail gas stations as well as other retail gas stations.

10. On information and belief, Valero has supplied and continues to supply fuel products for sale in CST's retail gas stations located within the State of Texas and this judicial district as well as in other areas of the United States.

11. On information and belief, Valero also has supplied and continues to supply fuel products for sale in other retail gas stations not owned or operated by CST that are located within the State of Texas and this judicial district as well as in other areas of the United States.

**JURISDICTION AND VENUE**

12. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§101 et seq. This Court has jurisdiction over Plaintiffs' federal law claims under 28 U.S.C. §§1331 and 1338(a).

13. This Court has specific and/or general personal jurisdiction over Defendants because they have committed acts giving rise to this action within this judicial district and/or have established minimum contacts within Texas and within this judicial district such that the exercise of jurisdiction over each would not offend traditional notions of fair play and substantial justice.

14. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) because Defendants have committed acts within this judicial district giving rise to this action, and continue to conduct business in this district, and/or have committed acts of patent infringement within this District giving rise to this action.

**COUNT I**

**(INFRINGEMENT OF U.S. PATENT NO. 6,076,071)**

15. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

16. On June 13, 2000, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,076,071 ("the '071 patent"), entitled "Automated Synchronous Product Pricing and Advertising System." A true and correct copy of the '071 patent is attached hereto as **Exhibit A**.

17. The named inventor of the '071 patent is Charles C. Freeny, Jr., who is now deceased.

18. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the '071 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

19. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the '071 patent.

20. On information and belief, Defendants Valero and CST have been and/or are now infringing the '071 patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making and using in their retail gas stations located in this judicial district and throughout the United States electronic pricing systems for displaying, tracking, and updating the prices of gasoline products offered for sale at those stations. Such systems directly infringe one or more claims of the '071 patent.

21. On information and belief, Defendants will continue to infringe the '071 patent unless enjoined by this Court.

22. Defendants' acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Defendants' infringement of Plaintiffs' rights under the '071 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

## **COUNT II**

### **(INFRINGEMENT OF U.S. PATENT NO. 6,513,016)**

23. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

24. On January 28, 2003, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,513,016 ("the '016 patent") entitled "Automated

Synchronous Product Pricing and Advertising System.” A true and correct copy of the ’016 patent is attached hereto as **Exhibit B**.

25. The named inventor of the ’016 patent is Charles C. Freeny, Jr., who is now deceased.

26. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the ’016 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

27. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the ’016 patent.

28. On information and belief, Defendants Valero and CST have been and/or are now infringing the ’016 patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making and using in their retail gas stations located in this judicial district and throughout the United States electronic pricing systems for displaying, tracking, and updating the prices of gasoline products offered for sale at those stations. Such systems directly infringe one or more claims of the ’016 patent.

29. On information and belief, Defendants will continue to infringe the ’016 patent unless enjoined by this Court.

30. Defendants’ acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Defendants’ infringement of Plaintiffs’ rights under the ’016 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully request that this Court enter judgment against Defendants as follows:

- a. For judgment that Defendants have infringed and continue to infringe the claims of the '071 and '016 patents;
- b. For a permanent injunction against Defendants and their respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '071 and '016 patents;
- c. For an accounting of all damages caused by Defendants' acts of infringement;
- d. For a judgment and order requiring Defendants to pay Plaintiffs' damages, costs, expenses, and pre- and post-judgment interest for their infringement of the '071 and '016 patents as provided under 35 U.S.C. § 284;
- e. For a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
- f. For such other relief at law and in equity as the Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiffs demand a trial by jury of all issues triable by a jury.

Dated: November 9, 2015

Respectfully submitted,

/s/ Christopher D. Banys

Christopher D. Banys - *Lead Attorney*

BANYS, P.C.

Christopher D. Banys SBN: 230038 (California)

Richard C. Lin SBN: 209233 (California)

Jennifer L. Gilbert SBN: 255820 (California)

1032 Elwell Court, Suite 100

Palo Alto, CA 94303

Tel: (650) 308-8505

Fax: (650) 353-2202

cdb@banyspc.com

rcl@banyspc.com

jlg@banyspc.com

LOCAL COUNSEL:

WARD, SMITH & HILL, PLLC

Wesley Hill SBN: 24032294

P.O. Box 1231

1127 Judson Rd., Ste. 220

Longview, TX 75601

Tel: (903) 757-6400

Fax: (903) 757-2323

wh@wsfirm.com

**ATTORNEYS FOR PLAINTIFFS**

**CHARLES C. FREENY III, BRYAN E. FREENY,**

**AND JAMES P. FREENY**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on November 9, 2015. Therefore, this document was served on all counsel who are deemed to have consented to electronic service.

/s/ Frances Paredes

Frances Paredes