

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

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

Plaintiffs,

v.

AIR LIQUIDE LARGE INDUSTRIES U.S. LP

Defendant.

Case No. 1:16-cv-00065-RC

Honorable Ron Clark

JURY DEMANDED

**PLAINTIFFS PRAXAIR, INC. AND PRAXAIR TECHNOLOGY, INC.’S SECOND
AMENDED COMPLAINT FOR DECLARATORY JUDGMENT OF INFRINGEMENT**

Plaintiffs Praxair, Inc. and Praxair Technology, Inc. (collectively “Praxair”) hereby request a declaratory judgment of infringement by Defendant Air Liquide Large Industries U.S. LP (“Air Liquide”) based on the following:

The Parties

1. Praxair, Inc. is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 39 Old Ridgebury Road, Danbury, CT 06810.
2. Praxair Technology, Inc., a wholly-owned subsidiary of Praxair, Inc., is organized and existing under the laws of the State of Delaware and has its principal place of business at 39 Old Ridgebury Road, Danbury, CT 06810.
3. On information and belief, Air Liquide is a Delaware limited partnership with a place of business in Houston, Texas.

Jurisdiction & Venue

4. Praxair brings this action for a declaratory judgment of patent infringement under the patent laws of the United States, 35 U.S.C. §1 *et seq.*

5. Because this action arises under the patent laws of the United States, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

6. A substantial controversy of sufficient immediacy and reality exists between the parties that warrants the issuance of a declaratory judgment. Praxair contends that Air Liquide will infringe Praxair's patents with the operation of its Spindletop hydrogen gas storage cavern. Air Liquide has indicated that it intends to imminently start commercial operation of hydrogen storage in the Spindletop cavern.

7. This Court has personal jurisdiction over Air Liquide by virtue of its actions in this District, including the construction, operation and commercialization of its Spindletop cavern near Beaumont, Texas, and by virtue of its regularly conducted and systematic business contacts in this State.

8. Venue is proper within this District under 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.

Factual Background

9. Praxair is an industry leader in the manufacture and supply of industrial gases, including hydrogen. Since 2007, Praxair has supplied its Gulf Coast customers with hydrogen that is stored in an underground salt cavern located in Liberty, Texas. Praxair's hydrogen

storage cavern was the first such facility in the world, and is protected by a number of U.S. Patents, including the patents-in-suit.

10. On April 8, 2014, U.S. Patent No. 8,690,476 (“‘476 patent”), entitled “Method And System For Storing Hydrogen In A Salt Cavern With A Permeation Barrier,” was duly and legally issued by the United States Patent and Trademark Office (“PTO”). The entire right, title and interest to the ‘476 patent, including the right to sue and to recover for past infringement thereof, is assigned to and owned by Praxair Technology, Inc. A true and correct copy of the ‘476 patent is attached as Exhibit A to this Complaint.

11. On March 8, 2016 at 12:00 AM Eastern Time, U.S. Patent No. 9,278,807 (“‘807 patent”), entitled “Hydrogen Storage Method And System,” was duly and legally issued from U.S. Patent Application No. 14/272,795 by the PTO. The entire right, title and interest to the ‘807 patent, including the right to sue and to recover for past infringement thereof, is assigned to and owned by Praxair Technology, Inc. A true and correct copy of the ‘807 patent is attached as Exhibit B to this Complaint.

12. On March 15, 2016 at 12:00 AM Eastern Time, U.S. Patent No. 9,284,120 (“‘120 patent”), entitled “Methods For Storing Hydrogen In A Salt Cavern With A Permeation Barrier,” was duly and legally issued from U.S. Patent Application No. 14/182,582 by the PTO. A true and correct copy of the Issue Notification for the ‘120 patent is attached as Exhibit C to this Complaint. The ‘120 patent is a continuation-in-part of the ‘476 patent. The entire right, title and interest to the ‘120 patent, including the right to sue and to recover for past infringement thereof, is assigned to and owned by Praxair Technology, Inc. A true and correct copy of the publication of U.S. Patent Application No. 14/182,582 (Publication No. 2014/0161533 A1) is

attached as Exhibit D, and a true and correct copy of the '120 patent claims as allowed by the PTO is attached as Exhibit E to this Complaint.

13. On information and belief, Air Liquide is constructing and/or has completed construction of its Spindletop hydrogen storage cavern and is operating and/or will operate this cavern to store hydrogen according to the claims of the '476 patent, the '807 patent and the '120 patent (together, "patents-in-suit").

14. Air Liquide has indicated that it will begin commercial operations of the Spindletop cavern in Spring 2016.

15. In October 2014, the parties met to discuss Praxair's concerns regarding Air Liquid's Spindletop cavern and the fact that operation of the cavern will infringe Praxair's patents, including the '476 patent.

16. On April 18, 2015, Air Liquide filed petitions for *inter partes* review of the '476 patent with the PTO, which were assigned Nos. IPR2015-01074 and IPR2015-01075. On October 26, 2015, the PTO denied institution of those petitions.

17. On May 20, 2015, Air Liquide filed an action seeking a declaratory judgment of invalidity of the '476 patent in the Southern District of Texas, Case No. 4:15-cv-01365 ("S.D. Tex. Action"), alleging that the completion and commercial operation of its hydrogen gas storage cavern is imminent, and that it has a reasonable apprehension that Praxair will sue Air Liquide for patent infringement on the '476 patent. Air Liquide dismissed the S.D. Tex. Action on March 4, 2016 pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) before Praxair filed an Answer to Air Liquide's Complaint.

Count 1 – Declaratory Judgment of Infringement of U.S. Patent No. 8,690,476

18. The allegations set forth in the foregoing paragraphs 1 through 17 are hereby realleged and incorporated herein by reference.

19. Air Liquide has had actual knowledge of the '476 patent and its infringement of that patent since at least the date that Air Liquide filed its Complaint in the S.D. Tex. Action on May 20, 2015.

20. Air Liquide has indicated its intent, including in the prior Complaint in the S.D. Tex. Action, to begin using its Spindletop cavern by Spring 2016 for the storage of hydrogen gas that will be sold and supplied to Air Liquide's customers.

21. On information and belief, Air Liquide will directly infringe, under 35 U.S.C. § 271, either literally or under the doctrine of equivalents, at least claim 1 of the '476 patent by making and using its Spindletop hydrogen storage cavern, without the authority of Praxair.

22. Air Liquide's infringement has caused and/or will cause Praxair irreparable harm unless such infringement is enjoined by the Court pursuant to 35 U.S.C. §283.

23. Air Liquide's infringement has caused and/or will cause Praxair damages for which Praxair is entitled to compensation pursuant to 35 U.S.C. §284.

24. Although Air Liquide has been aware of the '476 Patent and its infringement since before the filing of this lawsuit, Air Liquide has continued to commercialize its Spindletop cavern and to infringe, or prepare to infringe, the '476 Patent. On information and belief, Air Liquide's infringement has been, continues to be, and/or will be willful.

25. By virtue of, inter alia, the facts alleged in paragraphs 18-24, inclusive, of this Complaint, there exists an actual and justiciable case or controversy between the parties that is ripe for adjudication under the Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202) as to whether Air Liquide will infringe one or more claims of the '476 patent.

Count 2 – Declaratory Judgment of Infringement of U.S. Patent No. 9,278,807

26. The allegations set forth in the foregoing paragraphs 1 through 25 are hereby realleged and incorporated herein by reference.

27. Air Liquide has indicated its intent, including in the prior Complaint in the S.D. Tex. Action, to begin using its Spindletop cavern by Spring 2016 for the storage of hydrogen gas that will be sold and supplied to Air Liquide's customers.

28. On information and belief, Air Liquide will directly infringe, under 35 U.S.C. § 271, either literally or under the doctrine of equivalents, at least claim 11 of the '807 patent by making and using its Spindletop hydrogen storage cavern, without the authority of Praxair.

29. Air Liquide's infringement has caused and/or will cause Praxair irreparable harm unless such infringement is enjoined by the Court pursuant to 35 U.S.C. §283.

30. Air Liquide's infringement has caused and/or will cause Praxair damages for which Praxair is entitled to compensation pursuant to 35 U.S.C. §284.

31. By virtue of, inter alia, the facts alleged in paragraphs 26-30, inclusive, of this Complaint, there exists an actual and justiciable case or controversy between the parties that is ripe for adjudication under the Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202) as to whether Air Liquide will infringe one or more claims of the '807 patent.

Count 3 – Declaratory Judgment of Infringement of U.S. Patent No. 9,284,120

32. The allegations set forth in the foregoing paragraphs 1 through 31 are hereby realleged and incorporated herein by reference.

33. Air Liquide has indicated its intent, including in the prior Complaint in the S.D. Tex. Action, to begin using its Spindletop cavern by Spring 2016 for the storage of hydrogen gas that will be sold and supplied to Air Liquide's customers.

34. On information and belief, Air Liquide will directly infringe, under 35 U.S.C. § 271, either literally or under the doctrine of equivalents, at least claim 1 of the '120 patent (i.e., at least claim 1 as numbered in Exhibit E) by making and using its Spindletop hydrogen storage cavern, without the authority of Praxair.

35. Air Liquide's infringement has caused and/or will cause Praxair irreparable harm unless such infringement is enjoined by the Court pursuant to 35 U.S.C. §283.

36. Air Liquide's infringement has caused and/or will cause Praxair damages for which Praxair is entitled to compensation pursuant to 35 U.S.C. §284.

37. By virtue of, inter alia, the facts alleged in paragraphs 32-36, inclusive, of this Complaint, there exists an actual and justiciable case or controversy between the parties that is ripe for adjudication under the Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202) as to whether Air Liquide will infringe one or more claims of the '120 patent.

JURY DEMAND

Praxair demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Praxair prays the Court to grant judgment for Praxair and against Air Liquide as follows:

- a. Declaratory judgment that Air Liquide will infringe the patents-in-suit;
- b. An award of damages to be paid by Air Liquide adequate to compensate Praxair for Air Liquide's past infringement of the patents-in-suit, to the extent such infringement has occurred, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts, including, but not limited to, those acts not presented at trial;
- c. An order that Air Liquide pay an ongoing royalty in an amount to be determined for any continued infringement of the patents-in-suit after the date judgment is entered;

- d. A permanent injunction enjoining Air Liquide and its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents and all others acting in concert or privity with them from infringing the patents-in-suit pursuant to 35 U.S.C. § 283;
- e. A finding that the complained-of conduct by Air Liquide has been willful, warranting an award of treble damages under 35 U.S.C. § 284;
- f. A declaration finding this to be an exceptional case, and awarding Praxair attorney fees under 35 U.S.C. § 285; and
- g. Such further relief as the Court may deem just and proper.

Dated: March 16, 2016

Respectfully submitted,

By: /s/ J. Thad Heartfield
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