

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

Freyssinet, Inc.,

Plaintiff,

v.

DYWIDAG-Systems International USA Inc.,

Defendant.

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Civil Action No. 3:16-cv-2707

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Freyssinet, Inc., (“Plaintiff” or “Freyssinet”) files this Complaint for patent infringement against Defendant DWIDAG-Systems International USA Inc. (“Defendant” or “DSI”). In its Complaint, Plaintiff alleges as follows:

PARTIES

1. Freyssinet is a Delaware corporation with a place of business at 44880 Falcon Place, Suite 100, Sterling, Virginia 20166. It focuses on, among other things, designing, building, and maintaining stay-cable systems.

2. DSI is a New York corporation with a place of business at 2420 Hwy 287 N., Suite 106, Mansfield, Texas 76063. DSI may be served at its registered agent’s office, 1701 Directors Blvd., Suite 300, Austin, Texas 78744. DSI is authorized to conduct, and conducts, business in the state of Texas.

3. DSI’s business is described as including “the development and application of Post-Tensioning and Geotechnical Systems for the Construction industry.”

[Http://www.dsiamerica.com/home.html](http://www.dsiamerica.com/home.html).

JURISDICTION AND VENUE

4. This is an action under the patent laws of the United States, 35 U.S.C. § 1, et seq., for patent infringement by Defendant. This Court has jurisdiction over the claims presented herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. On information and belief, DSI has had minimum contacts with the Northern District of Texas such that personal jurisdiction and venue in this District is fair and reasonable. Such minimum contacts include, but are not limited to, the presence of an office in this District. DSI has committed such purposeful acts or transactions in this District that it reasonably should know and expect that it could be brought into this Court as a consequence of such activity. On information and belief, DSI has transacted and, at the time of the filing of this Complaint, is transacting, business within the Northern District of Texas.

6. Accordingly, venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

GENERAL ALLEGATIONS

The '708 Patent

7. Freyssinet is the current owner by assignment of U.S. Patent No. 6,748,708, entitled "Device for Anchoring Structural Cable" (the "'708 Patent"). Freyssinet, as owner of the '708 Patent, is entitled to sue for past and future infringement of the patent.

8. The United States Patent and Trademark Office duly and legally issued the '708 Patent on June 15, 2004. The '708 Patent claims priority to a French application filed on June 3, 1999. A true and correct copy of the '708 Patent is attached hereto as Exhibit 1.

9. The '708 Patent describes and claims various embodiments of devices for anchoring structural cables, such as in cable-stayed bridges. A cable-stayed bridge consists of several towers, or pylons, extending perpendicularly from a deck. Multiple cables extend from each tower to the deck of the bridge, as shown in the following image:



[Http://www.freyssinetusa.com/Willamette.html](http://www.freyssinetusa.com/Willamette.html).

10. Although many variations are possible, in general, each cable is anchored on both ends—i.e., a single cable will have an anchor fastening it to the tower, as well as an anchor holding it in place near the deck.

11. The Abstract of the '708 Patent is set forth below, and describes features of a device for anchoring structural cables as follows:

(57) ABSTRACT

A device having an anchor block having orifices therethrough, each accommodating a tendon of the cable and a means of immobilizing the tendon. The device further includes a bearing piece for the anchor block, and means of guiding the tendons between the anchor block and a running part of the cable. The guide means are connected to the bearing piece and include an individual guide passage for each tendon of the cable, allowing angular deviation thereof. Each guide passages have, in the direction of the anchor block, a transverse layout aligned with that of the orifices in the anchor block.

12. Claim 5, which depends from claims 1, 3, and 4, claims a device for anchoring a cable, as does claim 10. Both claims are present in the '708 Patent that is attached as Exhibit 1.

DSI's Anchoring Devices

13. On information and belief, DSI makes, uses, sells, and/or offers for sale within the United States, and/or imports into the United States, certain anchoring devices for cable-stayed bridges that infringe at least claims 5 and 10 of the '708 Patent.

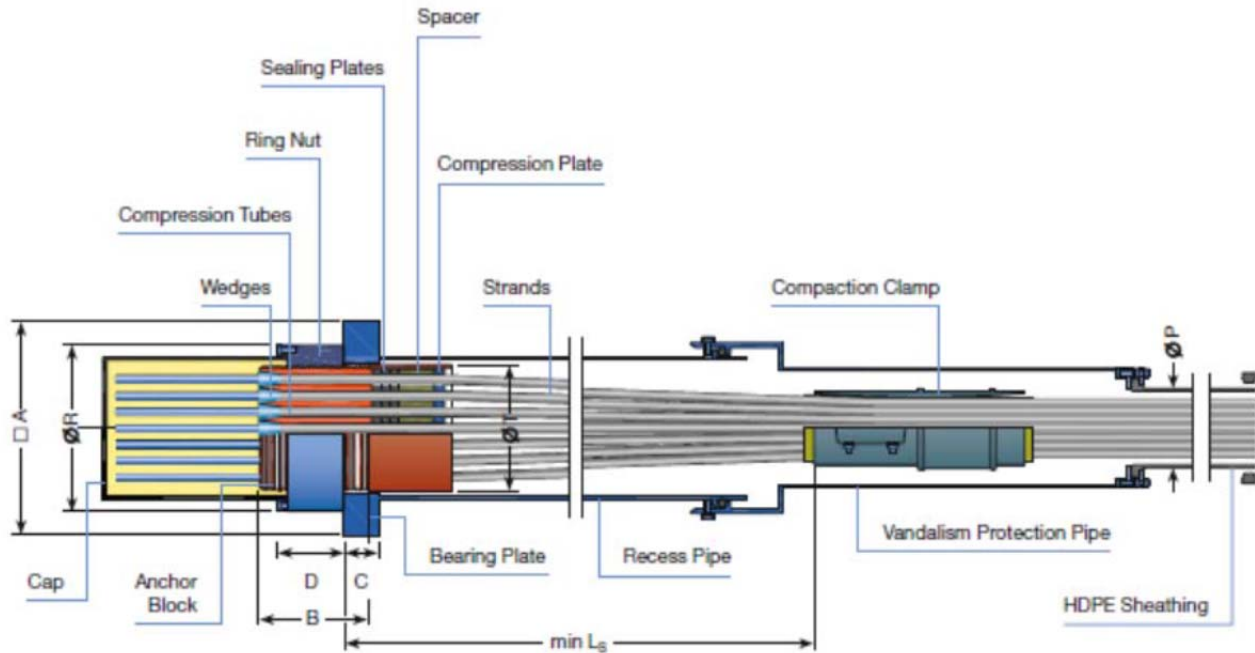
14. For example, DSI markets, among other devices, its DYNA Grip® Anchorage ("DynaGrip Anchor") as part of its stay-cable system. Exhibits 2 and 3 to this Complaint are DSI brochures that describe, among other anchor products, the DynaGrip Anchor.

15. As one example of how DSI has made, used, sold, and/or offered for sale the DynaGrip Anchor within the United States, the DynaGrip Anchor has been incorporated into the Abraham Lincoln Bridge, which is part of the Ohio River Bridges Downtown Crossing project. See, e.g., <http://kyinbridges.com/abraham-lincoln-bridge-opens-to-traffic/>; <http://kyinbridges.com/downtown-crossing/overview/>; <http://www.dsiamerica.com/products/stay-cable-systems/projects/strandstaysdynagrip.html>.

16. DSI advertises its various projects and clients on its website. Under the headings "Stay Cable Systems References" and "Strand stays DYNA Grip®," it includes the following entry: "Ohio River Downtown crossing Louisville, Jefferson County (Kentucky) Department of Highways." See <http://www.dsiamerica.com/products/stay-cable-systems/projects/strandstaysdynagrip.html>. On information and belief, this entry corresponds to the Abraham Lincoln Bridge and, further, it indicates that the bridge incorporates the DynaGrip Anchor. Publicly available information shows that the Abraham Lincoln Bridge opened to two-way traffic in late 2015. See <http://kyinbridges.com/abraham-lincoln-bridge-opens-to-traffic/>.

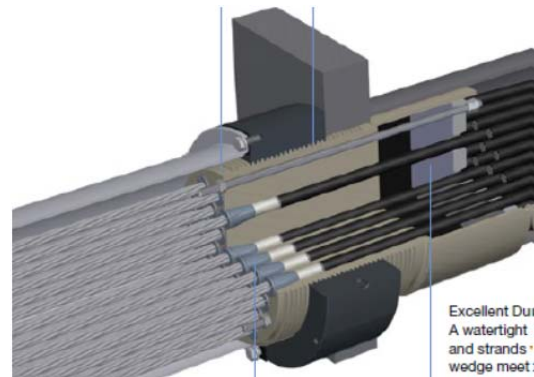
17. The following image is excerpted from page 8 of Exhibit 2 and depicts aspects of the DynaGrip Anchor and associated Stay Cable System:

DYNA Grip® Stay Cable System



18. As depicted and described in the DSI brochure at Exhibit 2, the DynaGrip Anchor contains the elements of claim 5.

19. The DynaGrip Anchor has, as recited in elements of claims 1 and 3: an anchor block with orifices (see above, “Anchor”), a bearing piece (see above, “Bearing Plate”), guide means connected to the bearing piece with a first guide member housed in a tube connected to the bearing piece and having guide passages for the cable tendons (see above Spacer and structure to the right of the “bearing plate”), and a guide passage with a transverse layout to the anchor block’s orifices that widens toward the running part of the cable, as depicted in the image reproduced here from page 6 of Exhibit 2. Further, as recited in elements of claim 4, the guide member is spaced away from the anchor block.



20. The DSI brochure at page 6 of Exhibit 2 explains that the cable tendons comprise “strands with PE-sheathing up to the wedge” See also Exhibit 2, at 7 (“The factory applied corrosion protection of the strands continues directly up to the wedges.”). The figure excerpted from page 8 of Exhibit 2, above, shows sealing plates between the running part of the cable and the part where the cable protection is interrupted, as well as a chamber. Also, at page 6 of Exhibit 3, the DSI brochure explains that “an elastomeric bearing is installed at a certain distance away from the anchor block to reduce the bending stresses in the strands caused by cable rotation” and that “the space in the anchorage ... is to be filled with corrosion protection compound [that] improves durability.” See also Exhibit 2, at 20 (DSI uses “[w]ax as a void filler for the interstices between the wires [that make up the strands] and PE coating.”). Thus, as recited in elements of claim 5, the cable tendons have protection in the running part that is interrupted in a chamber between the first guide member and the anchor block, there is a sealing means between the chamber and the first guide member, and filler product is injected into the chamber.

21. Claim 10 recites many of the elements of claim 5. Its last two elements add additional recitations.

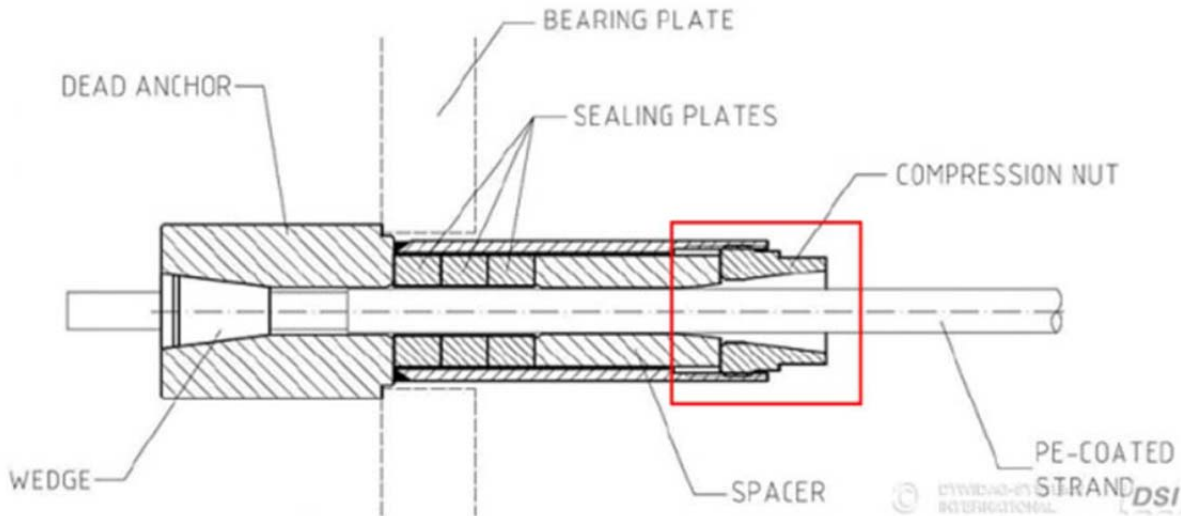
22. Claim 10, for example, also recites that the “first guide member is made of a deformable material.” The Spacer represents a first guide member. As indicated on the DSI website, “tests showed that the sealing unit of the DYNA Grip® System, which consists of an HDPE spacer, sealing plates and a compression plate, is most effective in terms of preventing fatigue caused by bending.” A true and correct copy of this portion of the DSI website is attached as Exhibit 4. HDPE is a deformable material.

23. Claim 10 also recites as a last element that “in the direction of the running part of the cable, a clearance is left between a circumference of the first guide member and the tube in which said first guide member is housed, so as to allow the collection of tendons of the cable an angular deflection by deformation of the material of the guide member.”

24. In conjunction with promoting, marketing, advertising and offering for sale the

DynaGrip Anchor, DSI has published and promoted its testing of the DynaGrip Anchor. Exhibit 4, referenced above, is a true and correct copy of one such testing and promotional piece, entitled “Successful DYNA Grip® Fatigue Bending Tests.”

25. Image 6 from the testing report at Exhibit 4 is reproduced below and annotated with the red box. As shown in the schematic diagram replicated in Image 6 below, the DynaGrip Anchor includes a spacer, or first guide member, with a guide passage that widens toward the running part of the cable, before connecting to a compression nut. Between the tube in which the spacer is located and the tip of the spacer, a clearance is present that allows angular deflection by deformation of the material of the guide member.



26. DSI has, without authority, made, used, sold, and/or offered for sale in the United States, and/or imported into the United States, the DynaGrip Anchor. By doing such unauthorized acts, DSI has directly and indirectly infringed at least claims 5 and 10 of the '708 Patent.

27. The anchoring devices that DSI sells, including the DynaGrip Anchor, are carefully tested, reviewed, and specified by customers and contractors before being purchased or installed. The DynaGrip Anchors, and components thereof, are not staple articles or

commodities of commerce suitable for substantial noninfringing use.

Defendant's Knowing Infringement of Freyssinet's Patent Rights

28. The '708 Patent claims priority to a June 3, 1999 application originally made in France, and is based on an application that was filed through the Patent Cooperation Treaty ("PCT") procedures on May 30, 2000. The PCT application leading to the '708 Patent was published as early as December 14, 2000.

29. Soletanche Freyssinet S.A.S. ("Freyssinet S.A.S.") is represented in the United States by Plaintiff Freyssinet. Freyssinet S.A.S. owns various foreign counterparts to the '708 Patent, including EP 1 181 422, which is attached to this Complaint as Exhibit 5 and is the European equivalent of the '708 Patent. EP 1 181 422 also alleges priority to the same June 3, 1999 application and makes claims similar to the claims in the '708 Patent.

30. In a December 8, 2011 letter, Freyssinet S.A.S.'s Legal Department Manager informed two representatives at DSI Holding that the "Dyna Grip®" product infringed EP 1 181 422, as well as "patents held by Soletanche Freyssinet worldwide, in the United States of America[.]" See Exhibit 6 (December 8, 2011 letter).

31. At the time of such notice, the '708 Patent had been issued and was publicly available and readily accessible. Defendant accordingly had access to, and reason to access, the '708 Patent in examining potential liability for infringement.

32. Freyssinet competes with DSI and the parties frequently competitively bid for the same projects and jobs.

33. DSI was aware of the commercial implementations of Freyssinet's patented technology, which Freyssinet had advertised and promoted to the trade. DSI was aware of the substantial resources Freyssinet necessarily had to devote to develop the patented technology.

34. On information and belief, DSI or its agents did, in fact, access the '708 Patent. DSI was, before the filing of this Complaint, accordingly aware of the scope of patent protection Freyssinet had obtained.

35. To the extent DSI denies any prior knowledge of the '708 Patent, DSI's

competition with Freyssinet, the notice letter DSI's affiliate received from Freyssinet S.A.S. of Freyssinet's equivalent European patent, DSI's knowledge of Freyssinet's investment in the patented technology, and DSI's knowledge that Freyssinet would protect such investments by obtaining patent protection in the U.S., should have compelled DSI to have conducted a patent search seeking to identify Freyssinet's corresponding U.S. patent rights. To the extent DSI failed to conduct such a patent search and nonetheless chose to make, use, market, promote, sell, and/or offer for sale infringing products and/or components thereof, DSI acted with intentional and willful blindness to Freyssinet's patent rights

COUNT I
(Willful Infringement of the '708 Patent)

36. Freyssinet incorporates the preceding paragraphs as though fully set forth herein.

37. DSI has been, and is now, directly infringing (either literally or under the doctrine of equivalents) one or more claims of the '708 Patent by using, making, selling and/or offering for sale infringing anchor devices in violation of 35 U.S.C. § 271(a).

38. For example, the DynaGrip Anchor infringes at least claims 5 and 10 of the '708 Patent. Despite this fact, DSI has, without authority, made, used, sold, and/or offered for sale in the United States, and/or imported into the United States infringing products, including at least the DynaGrip Anchor.

39. On information and belief, DSI had knowledge of the '708 Patent or, at minimum, acted in willful blindness to the existence of the '708 Patent. DSI's instructions for use, promotion, marketing, offer for sale and/or sale of infringing products, including the infringing DynaGrip Anchor, have induced infringement by at least contractors and customers within the United States, in violation of 35 U.S.C. § 271(b).

40. DSI has offered to sell, sold or imported into the United States components of anchoring devices, including components of the DynaGrip Anchor, that were and are a material part of the invention of the '708 Patent. On information and belief, DSI undertook such

activities with knowledge, or, at minimum, willful blindness to gaining knowledge, that the components of the infringing anchor devices like the DynaGrip Anchor were especially adapted for infringement of the '708 Patent in violation of 35 U.S.C. § 271(c).

41. Despite having knowledge of the '708 Patent or having sufficient facts, incentive and access to acquire such knowledge, DSI has intentionally and willfully infringed by continuing to make, use, sell and/or offer for sale infringing products or components thereof, including the infringing DynaGrip Anchor.

42. Plaintiff has been and continues to be injured by Defendant's infringement of the '708 Patent. Plaintiff is entitled to recover damages adequate to compensate it for Defendant's infringing activities in an amount to be determined at trial but in no event less than a reasonable royalty.

43. Unless enjoined by this Court, Defendant's acts of infringement will continue to damage Plaintiff irreparably.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- a. A judgment that DSI has directly and/or indirectly infringed (either literally or under the doctrine of equivalents) at least claims 5 and 10 of the '708 Patent.
- b. A judgment that DSI account for and compensate Freyssinet for all damages that it has incurred because of DSI's infringing conduct.
- c. A judgment and order requiring DSI to pay Freyssinet damages adequate to compensate for infringement under 35 U.S.C. § 284, which damages may include lost profits but in no event shall be less than a reasonable royalty for its usage made of the inventions of the '708 Patent, including pre- and post-judgment interest and costs, including expenses and disbursements.
- d. A judgement for treble damages for willful infringement as provided by 35 U.S.C. § 284.

- e. A judgment declaring this an exceptional case and awarding Freyssinet its attorneys' fees as provided by 35 U.S.C. § 285.
- f. A judgment awarding Freyssinet its costs as provided under Fed. R. Civ. P. 54(d)(1).
- g. A permanent injunction prohibiting DSI and its officers, agents, employees, and those persons in active concert or participation with any of them, as well as all successors or assignees, from further infringement of the '708 Patent.
- h. Any and all such further necessary or proper relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Freyssinet hereby demands a trial by jury of all issues so triable.

DATED: September 22, 2016

Respectfully submitted,

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