

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

Roy Arterbury, Individually;
Delwin Cobb, Individually;
Cavins Corporation,
Plaintiffs,

v.

Odessa Separator, Inc.,
Defendant.

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Case No.: _____

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

I. NATURE OF THE SUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Plaintiffs allege that Defendant Odessa Separator, Inc. infringes United States Patent No. 5,810,081 entitled “Wear Structure For Bore Hole Separation Device” (the “’081 Patent”), and as a result of Defendant’s infringement are entitled to damages and injunctive relief.

II. THE PARTIES

2. Plaintiff **Roy S. Arterbury** is an individual residing at #9 Saddlewood Estate, Houston, Texas 77024.

3. Plaintiff **Delwin E. Cobb** is an individual residing at 2323 Parana Drive, Houston, Texas 77080.

4. Plaintiff **Cavins Corporation (“Cavins”)** is a Texas Corporation having its

principal place of business at 1800 Bearing Drive, Suite 825, Houston, Texas 77057.

5. Defendant **Odessa Separator, Inc. (“OSI”)** is a Texas corporation having its principal place of business at 1612 S. Viceroy Avenue, Odessa, Texas 79763. OSI does business in the State of Texas, including in the Eastern District of Texas, and can be served with process through its registered agent, Cavin B. Frost, 1610 S. Regal Avenue, Odessa, Texas 79763.

III. JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Cavins is the exclusive licensee of United States Patent No. 5,810,081, and it conducts significant operations throughout this District from its facility located in this District at 2348 Hwy 42 N., New London, Texas 75682. Thus Plaintiffs have suffered irreparable harm in this District as a result of Defendant’s infringing activities.

8. On information and belief Defendant maintains continuous and systematic contacts within this District by marketing and selling within and throughout this District oil field products, including infringing products.

9. Defendant, directly or through intermediaries, has conducted and conducts substantial business in this forum, including but not limited to: (i) engaging in at least part of the infringing acts alleged herein; (ii) purposefully and voluntarily placing one or more infringing products or services into the stream of commerce with the expectation that they will be purchased and/or used by consumers in this forum; and/or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this District. Venue is proper in this

Court under at least 28 U.S.C. §§ 1391(b)-(d) for the reasons set forth herein.

IV. BACKGROUND

10. This case involves United States Patent No. 5,810,081, entitled “Wear Structure For Bore Hole Separation Device” (the “’081 Patent”).

11. The application for the ’081 Patent was filed on February 24, 1997. The ’081 Patent was duly and lawfully issued by the United States Patent & Trademark Office on September 22, 1998. A copy of the ’081 Patent is attached hereto as Exhibit A.

12. Plaintiffs Roy Arterbury and Delwin Cobb are the owners and assignees of all rights, title, and interest in and to the ’081 Patent. Cavins is the exclusive licensee of the ’081 Patent. Together, Plaintiffs Roy Arterbury, Delwin Cobb, and Cavins hold the right to sue and recover damages for infringement of the ’081 Patent, including past damages.

13. Plaintiff Roy Arterbury is currently the President of Cavins. Cavins began operations in 1942, providing oil and gas field services to their clients. One of the main services provided by Cavins is downhole cleanout services. Cavins also provides downhole clean-out products along with downhole sand and gas separation products.

14. Through an agreement and understanding with Plaintiffs, and as the exclusive licensee of the ’081 Patent, Cavins has successfully utilized the technology embodied in the ’081 Patent, and has specifically done so through the manufacture, sale, and marketing of the Cavins Sandtrap Downhole Desander (“Cavins Desander”).

15. Sand related failures are common in the oil and gas industry. Sand failures occur when sand, from either the formation or sand used in fracking operations, is pumped to the surface along with liquids and gas. The pumped sand can cause failure of the pump or tubing, and can also shorten the run life of the mechanical components used in operations.

16. Sand control systems have been created and sold by various entities and individuals, but such systems have limitations depending on sand particle size and a variety of other factors.

17. Utilizing centrifugal action, the Cavins Desander separates abrasive solids in production fluids before they enter a downhole pump.

18. Cavins began offering a desanding device in or around late 1992 or early 1993. The first desanding device offered by Cavins did not contain a wear structure.

19. At the Southwest Petroleum Conference in Lubbock, Texas in 1995 and/or 1996, Plaintiff Roy Arterbury presented a technical paper for the Cavins desanding device that did not utilize a wear structure. Based on information and belief, Bert Frost—who would eventually found OSI—was in attendance and spoke to Mr. Arterbury about the version of the desanding device that was the subject of Mr. Arterbury's presentation.

20. At some point after that presentation, OSI began offering filtration and sand control solutions utilizing a desanding device for downhole use in oil fields in Texas, within this District, and throughout the United States and into Central and Southern America.

21. It eventually became apparent that due to erosion issues the desanding device Cavins initially manufactured and sold needed to be modified to create a weakened wall that will erode over time in a manner that notifies operators of the need for tool replacement before total failure occurs.

22. The Cavins Desander is now designed with a wear structure utilizing the '081 Patent and the invention described therein that enables the user to detect a problem before the tool would otherwise completely part due to erosion. Cavins began manufacturing and selling the Cavins Desander with a wear structure in or around late 1996. Prior to that time, Cavins had sold

and marketed a desanding device that did not contain a wear structure.

23. The Cavins Desander has proven to be effective at removing sand particles and minimizing pump and well failures, thereby saving operators millions of dollars in potential lost production and revenues.

24. In 2003 or 2004, an employee of OSI visited one of Cavins' places of business to attempt to purchase multiple spiral orifices utilized in the Cavins Desander devices.

25. Thereafter, Cavins learned that OSI was manufacturing and selling a desanding device when Cavins' representatives observed the OSI desanding device on display at the Permian Basin Oil and Gas Show in Odessa, Texas. At that show, representatives of Cavins approached representatives of OSI to inform them the OSI device infringed Plaintiffs' patent. Plaintiff Roy Arterbury thereafter spoke further with Bert Frost again informing OSI of Plaintiffs' patent and requested that OSI take their infringing desander device off the market. It was subsequently represented to Plaintiffs and representatives of Cavins that OSI had taken their desanding device off of the market.

26. In 2015, Plaintiff Roy Arterbury became aware of the fact than an unidentified company was manufacturing a "vortex desander" similar that that offered by Cavins. Mr. Arterbury later learned that the "vortex desander" he heard about was the "Vortex Sand Shield" manufactured and sold by OSI.

27. OSI describes the Vortex Sand Shield as follows:

The Vortex Sand Shield is designed specifically for wells with high lifting cost associated with sand failures. The fluid flows down through the Helix and creates a vortex effect that separates solids through centrifugal force allowing clean liquid to flow up the Dip Tube.

28. The OSI Vortex Sand Shield is designed to separate solid particles (i.e., sand)

from well fluids. To do so, the OSI Vortex Sand Shield utilizes two stages of filtration. The first stage consists of the “intake” portion of the device, comprised of OSI’s Tubing Screen, Super Perf, or Perf Sub. The second stage consists of a vortex created by centrifugal force created from a spiral guide located inside the outer tubular body of the Vortex Sand Shield. The vortex pushes the solid particles to the outside of the Vortex Sand Shield and allows the liquid and gas to flow upwardly through the dip tube.

29. Additionally, the wall of the Vortex Sand Shield is designed with a reduced wall thickness to create a weakened wall that will erode over time in a manner that notifies operators of the need for tool replacement before total failure occurs.

30. In October 2015, counsel for Plaintiffs informed OSI of its infringement of the ’081 Patent. Despite this notification, Defendant OSI continued its infringement of the ’081 Patent by continuing to manufacture and sell its Vortex Sand Shield. OSI continues to infringe to this day.

V. CLAIMS

31. The allegations of all preceding paragraphs are incorporated by reference as if fully set forth herein.

32. Based on the above-described services and products, Plaintiff asserts the following against Defendant:

CLAIM 1 Direct Patent Infringement of the ’081 Patent

33. OSI has directly infringed and continues to infringe at least claim 1 of the ’081 Patent in violation of 35 U.S.C. § 271(a) by making, using, selling, and/or offering to sell in the United States, without Plaintiff’s authority, OSI’s Vortex Sand Shield. By way of example only and without limiting Plaintiff’s claims to this specific example, OSI’s implementation and use of

OSI's Vortex Sand Shield infringes at least claim 1 of the '081 Patent.

34. Plaintiffs Roy Arterbury and Delwin Cobb have been injured and seek damages to adequately compensate them for Defendant's infringement of the '081 Patent. Such damages should be no less than a reasonable royalty under 35 U.S.C. § 284.

35. Defendant will continue to infringe the '081 Patent unless enjoined by this Court. Plaintiffs currently and will continue to incur damages, and also face irreparable harm with no adequate remedy at law, due to Defendants' past and continued infringement. Such irreparable harm is caused, at least in part, by Defendant OSI's infringing entry into the market before expiration of the '081 patent. Plaintiffs Roy Arterbury and Delwin Cobb therefore request that this Court enter a temporary restraining order, preliminary injunction, and enter an order under 35 U.S.C. § 283 permanently enjoining Defendants from continuing to make, use, sell, offer to sell, and/or import into the United States the products and processes accused of infringing the '081 Patent and from further infringement, contributory infringement, and/or inducing infringement of the '081 Patent.

VI. NOTICE

36. The allegations of all preceding paragraphs are incorporated by reference as if fully set forth herein.

37. OSI was informed of the '081 patent as early as at least 2006 through Roy Arterbury, Delwin Cobb, and representatives of Cavins.

38. In October 2015, OSI was informed by letter that the OSI Vortex Sand Shield infringed the '081 Patent.

39. Additionally, at least by filing and serving this Original Complaint for Patent Infringement, Plaintiff has given Defendants written notice of their infringement.

VII. WILLFUL INFRINGEMENT

40. OSI's infringement of the '081 Patent has been and is willful.

41. OSI has long been aware of Plaintiffs' technology and the '081 Patent, and at least as early as the 2004 or 2006 Permian Basin Oil and Gas Show in Odessa, Texas. At that show, OSI representatives were showcasing an OSI desanding device at the OSI booth. A representative of Cavins, Delwin Cobb, informed OSI representatives that the Cavins Desander was patented and that the OSI device was infringing the patent covering the Cavins Desander—which is the '081 Patent. Mr. Bert Frost later approached Plaintiff Roy Arterbury at the show, and the two individuals discussed the patented technology and OSI's infringement thereof. Thereafter, OSI represented that it had pulled the OSI device from the market.

42. Subsequently, and with full knowledge and awareness of the '081 Patent, OSI introduced another desanding device—the “Vortex Sand Shield.” OSI engaged in the above described conduct despite a high likelihood that its actions infringed the '081 Patent. Further, OSI knew or should have known that their actions constituted a high likelihood of infringement of the '081 Patent.

VIII. DAMAGES

43. The allegations of all preceding paragraphs are incorporated by reference as if fully set forth herein.

44. For the above-described infringement, Plaintiffs have suffered injury and seek damages to adequately compensate them for Defendants' infringement of the Patents-in-Suit. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

IX. JURY DEMAND

45. Plaintiff requests a jury trial of all issues triable of right by a jury.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- a. A judgment in favor of Plaintiff that Defendants have infringed the '081 Patent, whether literally or under the doctrine of equivalents, as described herein;
- b. An order under 35 U.S.C. § 283 preliminarily and permanently enjoining Defendants from continuing to make, use, sell, offer to sell, and/or import into the United States the products and processes accused of infringing the '081 Patent and from further infringement, contributory infringement, and/or inducing infringement of the '081 Patent;
- c. A judgment and order for damages sufficient to compensate Plaintiffs for OSI's infringement of the '081 Patent in an amount not less than a reasonable royalty;
- d. A judgment and order for increased damages in an amount not less than three times the damages assessed for OSI's infringement of the '081 Patent, in accordance with 34 U.S.C. § 284;
- e. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award to Plaintiffs for reasonable attorneys' fees, expenses, and costs incurred in this action;
- f. An award of pre-judgment and post-judgment interest; and
- g. Such other and further relief as the Court deems just and proper.

Respectfully submitted,



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