

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

DYNAENERGETICS EUROPE GMBH, and
DYNAENERGETICS US, INC.,

Plaintiffs,

v.

YELLOW JACKET OIL TOOLS, LLC and
G&H DIVERSIFIED MANUFACTURING, LP

Defendants.

Civil Action No: 6:20-cv-01110-ADA

**FIRST AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs DynaEnergetics Europe GmbH and DynaEnergetics US, Inc. (collectively, “DynaEnergetics”) file this First Amended Complaint for patent infringement against Yellow Jacket Oil Tools, LLC (“Yellow Jacket”) and G&H Diversified Manufacturing, LP (“G&H”) (collectively, “Defendants”), and, in support thereof, allege as follows:

THE PARTIES

1. Plaintiff DynaEnergetics Europe GmbH (“DynaEnergetics Europe”) is a corporation organized under the laws of Germany, with its headquarters at Kaiserstrasse 3, 53840 Troisdorf, Germany.

2. Plaintiff DynaEnergetics US, Inc. (“DynaEnergetics US”) is a corporation organized under the laws of the State of Colorado, with its headquarters at 2050 W. Sam Houston Pkwy S., Suite 1750, Houston, TX 77042-3659. DynaEnergetics US has a regular and established place of business within this District at 3580 HCR 1145 Loop North, Blum, TX 76627.

3. Upon information and belief, Yellow Jacket is a Texas limited liability company with a registered address of 11660 Brittmoore Park Dr., Houston, Texas 77041-6917. On its

website, also lists 11670 Brittmoore Park Dr., Houston, Texas 77041-6917 as an address for its headquarters. Yellow Jacket has appeared and can be served through its counsel of record in this case.

4. Upon information and belief, G&H is a Texas limited partnership with a mailing address of 11927 Tanner Rd, Houston, TX 77041-6703. On its website, G&H also lists 11660 Brittmoore Park Dr., Houston, Texas 77041-6917 as an address for its headquarters. G&H may be served with process by serving its registered agent, Edward C. Kash at 11660 Brittmoore Park Drive, Houston, TX 77041.

5. Upon information and belief, Defendants have regular and established places of business throughout Texas and in this District, including at 4608 S County Road 1310, Odessa, TX, 79765. Yellow Jacket lists this office on its website, and a photo of the Odessa, TX facility is shown below, with a sign bearing the “Yellow Jacket Oil Tools” name and domain name www.yjoiltools.com.



JURISDICTION AND VENUE

6. This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 1 *et seq.*

8. This court has personal jurisdiction over Defendants, and venue is proper in this District, because Defendants have regular and established places of business located within this District and because Defendants actively and regularly conduct business within the State of Texas and within this District. Defendants have represented that Yellow Jacket is owned and controlled by G&H. Further, upon information and belief, infringement is occurring within the State of Texas and this District through Defendants' manufacture and distribution of the "YJOT Pre-Wired Perforating Gun" at their Texas manufacturing and distribution facilities, and within the State of Texas and this District through Defendants' sales of or offers to sell the YJOT Pre-Wired Perforating Gun. Specifically, upon information and belief, Defendants have manufactured, distributed, sold, and/or offered to sell the YJOT Pre-Wired Perforating Gun to customers for use throughout the Permian Basin in Texas, which is primarily located within this District, including in Andrews, Crane, Ector, Jeff Davis, Loving, Martin, Midland, Pecos, Reeves, Upton, Ward, and Winkler counties. Upon information and belief, Defendant employs at least one employee, including a Regional Service Manager, at its Odessa, TX facility, and a Sales Representative who travels to and/or sells products within the Permian Basin in furtherance of its regular and established business within this District.

9. On January 29, 2021, Yellow Jacket filed a motion under Federal Rule of Civil Procedure 12(b)(3) (Dkt. 16) stating that this matter should be dismissed for lack of venue.

10. John Kaiser stated in a January 29, 2021 declaration that G&H designs, manufactures, and sells perforating guns under the Yellow Jacket Oil Tools name and leases property within this District, including at 4608 S County Road 1310, Odessa, TX 79765. Dkt. 16-1 ¶¶ 15-17. Thus, at least with the addition of G&H, Defendants have conceded that venue is proper, through this Amended Complaint. Moreover, DynaEnergetics has added allegations that Yellow Jacket is additionally an alter ego of G&H which is not addressed by Yellow Jacket's Motion to Dismiss.

11. Further, Yellow Jacket Oil Tools publicly maintains that it is a "full-service distributor of completion tools oil well perforating systems," that "Yellow Jacket Oil Tools is a division of G&H Diversified Manufacturing, LP," and that "Yellow Jacket Oil Tools is a full-service manufacturer and distributor of completion tools and oilfield perforating systems." Ex. A; Ex. B at 2.

12. Yellow Jacket Oil Tools has also publicly advertised itself as "currently the largest manufacturer of short perforating guns." Ex. C at 1. Yellow Jacket Oil Tools has publicly represented that "Yellow Jacket warehouses are strategically located in close proximity to major U.S. shale plays." *Id.*

13. G&H publicly maintains that "Yellow Jacket, a division of G&H Diversified, produces superior oilfield tools." Ex. D.

14. Yellow Jacket's motion under Federal Rule of Civil Procedure 12(b)(3) has been mooted and must fail at least because of the additional allegations made herein. Moreover, because Yellow Jacket has presented matters outside the pleadings, its motion, if not mooted, would be

treated as one for summary judgment under Rule 56, which would be premature in light of DynaEnergetics' First Amended Complaint and the fact that no discovery has been conducted.

15. Based on the foregoing, venue as to Defendants is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

FACTS

A. DynaEnergetics' Technology

16. DynaEnergetics is a leader in the field of well completion, perforating, well abandonment, and seismic technologies. DynaEnergetics has a long history of technological innovation, including innovation in the manufacture of detonators, detonating cords, and perforating hardware.

17. In connection with its research and development efforts, DynaEnergetics has developed groundbreaking inventions for a wireless detonator assembly, a pre-wired perforating gun assembly, and methods of assembling the pre-wired perforating gun assembly. These inventions are currently protected by multiple United States patents, including U.S. Patent No. 10,844,697 (the "'697 Patent").

18. The '697 Patent, entitled "PERFORATION GUN COMPONENTS AND SYSTEM," was duly and legally issued on November 24, 2020 to DynaEnergetics Europe GmbH. A true and accurate copy of the '697 Patent is attached hereto and incorporated herein by reference as Exhibit E.

19. DynaEnergetics makes, distributes, offers to sell, and sells perforating gun systems that practice the '697 Patent. DynaEnergetics Europe exclusively licenses DynaEnergetics US to make, distribute, offer to sell, and sell perforating gun systems that practice the '697 Patent in the

United States. DynaEnergetics has marked the covered products in accordance with 35 U.S.C. § 287.

20. Claim 1 of the '697 Patent recites:

1. An electrical connection assembly for establishing an electrical connection in a tool string, the electrical connection assembly comprising:

a tandem seal adapter having a first end, a second end and a bore that extends from the first end to the second end and entirely through the tandem seal adapter;

a perforation gun system comprising a first outer gun carrier, a shaped charge, and a first detonator, wherein the shaped charge and the first detonator are positioned within the first outer gun carrier, wherein the first outer gun carrier is connected to the first end of the tandem seal adapter; and

a pressure bulkhead having an outer surface, a first end and a second end, the outer surface of the pressure bulkhead is sealing received in the bore of the tandem seal adapter, the pressure bulkhead also having a pin connector assembly extending through the pressure bulkhead from a first pin connector end to a second pin connector end, and configured to relay an electrical signal from the first end of the pressure bulkhead to the second end of the pressure bulkhead, wherein the first pin connector end extends beyond the first end of the pressure bulkhead and the second pin connector end extends beyond the second end of the pressure bulkhead, wherein

the first detonator is in electrical communication with the pin connector assembly, wherein the tandem seal adapter and the pressure bulkhead are configured to provide a seal between the detonator and an environment on the second end of the tandem seal adapter.

B. G&H and Yellow Jacket

21. Defendants are competitors of DynaEnergetics, including in the field of perforating systems. Defendants have, upon information and belief, either alone or in concert, manufactured,

distributed, sold, or offered to sell the YJOT Pre-Wired Perforating Gun in the United States, including within the State of Texas and within this District.

22. Upon information and belief, Yellow Jacket is wholly owned by G&H. Dkt. 16 at 2; Dkt. 16-2 at 6. Yellow Jacket was formed in 2015 under the name Yellow Jacket Equipment LLC, which was later amended in 2019 to Yellow Jacket Oil Tools, LLC. *Id.* G&H is Yellow Jacket's managing and sole member. G&H and Yellow Jacket share a CEO, President, Vice President of Sales, CFO, Director of Supply Chain, Director of Business Systems, and HR Manager. *Compare* Ex. F *with* Ex. G. Upon information and belief, Yellow Jacket additionally functions as an alter ego of G&H.

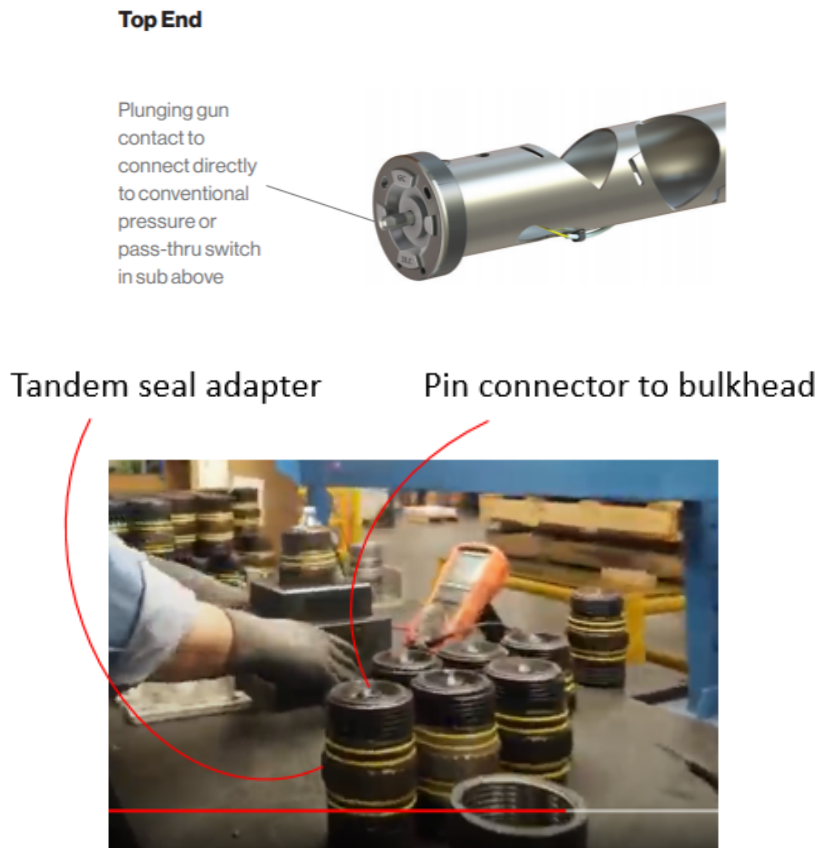
23. Yellow Jacket, either on its own or as an alter ego of G&H, describes and provides photos of the YJOT Pre-Wired Perforating Gun on its website at www.yjoiltools.com/Perforating-Guns/Pre-Wired-Perforating-Gun. A copy of Yellow Jacket's website advertising the YJOT Pre-Wired Perforating Gun and the corresponding photos (as accessed on December 4, 2020) is attached hereto and incorporated herein by reference as Exhibit H.

24. Yellow Jacket's website also provides a downloadable PDF containing specifications for the YJOT Pre-Wired Perforating Gun. A copy of Yellow Jacket's downloadable PDF specifications for the YJOT Pre-Wired Perforating Gun (as downloaded on December 4, 2020) is attached hereto and incorporated herein by reference as Exhibit I.

25. The YJOT Pre-Wired Perforating Gun infringes one or more claims of the '697 Patent, including at least each and every element of Claim 1 either literally or equivalently.

26. The YJOT Pre-Wired Perforating Gun either literally or equivalently contains an electrical connection assembly for establishing an electrical connection in a tool string. An example of this is shown in the below photo from Exhibit I, and from the below still image of a

video displaying the YJOT Pre-Wired Perforating Gun, available at <https://www.youtube.com/watch?v=Hm4vE46ZgK0>¹ (last accessed November 24, 2020) (annotations added).



27. The electrical connection assembly in the YJOT Pre-Wired Perforating Gun either literally or equivalently comprises a tandem seal adapter having a first end, a second end and a bore that extends from the first end to the second end and entirely through the tandem seal adapter. The tandem seal adapter, as shown in the still image above, connects the top end and bottom end of successive gun assemblies.

¹ Upon the filing of DynaEnergetics' Complaint on December 4, 2020, the YouTube video displaying the YJOT Pre-Wired Perforating Gun was active. However, Defendants appear to have removed the video has since that time and this link is no longer active.

28. The electrical connection assembly in the YJOT Pre-Wired Perforating Gun either literally or equivalently comprises a perforation gun system comprising a first outer gun carrier, a shaped charge, and a first detonator, wherein the shaped charge and the first detonator are positioned within the first outer gun carrier, wherein the first outer gun carrier is connected to the first end of the tandem seal adapter. An example of this is shown in the below photo from Exhibit H, which shows the YJOT Pre-Wired Perforating Gun outer gun carrier, an assembly including a carrier for housing a shaped charge and a first detonator (not shown). The opening to receive the detonator, which is on the side not shown in the first image below, is shown in the below still image from the video of the YJOT Pre-Wired Perforating Gun available at <https://www.youtube.com/watch?v=Hm4vE46ZgK0> (last accessed November 24, 2020) (annotations added). The YJOT Pre-Wired Perforating Gun assembly is positioned within the outer gun carrier, wherein the outer gun carrier is connected to the first end of the tandem seal adapter (not shown in the figures below).





29. The electrical connection assembly in the YJOT Pre-Wired Perforating Gun either literally or equivalently comprises a pressure bulkhead having an outer surface, a first end and a second end, the outer surface of the pressure bulkhead is sealing received in the bore of the tandem seal adapter, the pressure bulkhead also having a pin connector assembly extending through the pressure bulkhead from a first pin connector end to a second pin connector end, and configured to relay an electrical signal from the first end of the pressure bulkhead to the second end of the pressure bulkhead, wherein the first pin connector end extends beyond the first end of the pressure bulkhead and the second pin connector end extends beyond the second end of the pressure bulkhead. As noted in the below description and photo from Exhibit I, the YJOT Pre-Wired Perforating Gun has pre-installed wires connecting to “a plunging gun contact that mates directly to the conventional pressure or pass-thru switch in the sub above.” That description of the YJOT Pre-Wired Perforating Gun indicates that it comprises a pressure bulkhead received in the bore of the tandem seal adapter and having a pin connector assembly extending through the pressure bulkhead from a first pin connector end to a second pin connector end that is configured to relay

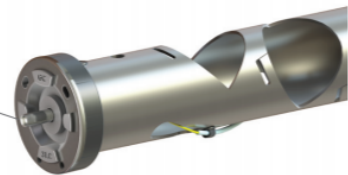
an electrical signal from the first end of the pressure bulkhead to the second end of the pressure bulkhead, wherein the first pin connector end extends beyond the first end of the pressure bulkhead and the second pin connector end extends beyond the second end of the pressure bulkhead. This configuration is also shown in the below still images from the video of the YJOT Pre-Wired Perforating Gun available at <https://www.youtube.com/watch?v=Hm4vE46ZgK0> (last accessed November 24, 2020) (annotations added).

Faster assembly

- Lead and ground wires pre-installed
- Lead wire is connected to a plunging gun contact that mates directly to the conventional pressure or pass-thru switch in the sub above

Top End

Plunging gun contact to connect directly to conventional pressure or pass-thru switch in sub above



Detonator side plunging (pin) contact



Transfer side plunging (pin) contact



Transfer side plunging (pin) contact

30. The electrical connection assembly in the YJOT Pre-Wired Perforating Gun either literally or equivalently comprises the first detonator being in electrical communication with the pin connector assembly, wherein the tandem seal adapter and the pressure bulkhead are configured to provide a seal between the detonator and an environment on the second end of the tandem seal adapter.

31. Defendant Yellow Jacket has known of the '697 Patent and its own infringing activities since at least as early as the filing of this complaint. Further, on September 11, 2020, DynaEnergetics put Defendant Yellow Jacket on notice of U.S. Patent Application 16/585,790 (the "'790 Application") that led to the '697 Patent. A copy of the letter sent to Defendant Yellow Jacket on September 11, 2020 is attached hereto and incorporated herein by reference as Exhibit J. The claims in the published '790 Application are identical to the claims that actually issued in the '697 Patent. Defendant Yellow Jacket has been on notice of the claims that issued in the '697 Patent since at least as early as September 11, 2020. Additionally, Defendant G&H has represented that it interpreted the September 11, 2020 letter to Yellow Jacket as a threat of infringement against G&H, despite the letter not being sent to G&H, and thus Defendant G&H has been on notice of the claims that issued in the '697 Patent since at least as early as September 11, 2020. Moreover, according to Defendants, Yellow Jacket operates as an alter ego of G&H and thus both Defendants were on notice of the claims that issued in the '697 Patent since at least as early as September 11, 2020. Defendants did not respond to the September 11, 2020 letter nor have they ceased their infringing activity.

32. Because Defendants are using infringing technology to compete directly with DynaEnergetics, it is causing irreparable harm to DynaEnergetics, thereby forcing DynaEnergetics to bring this lawsuit to protect its intellectual property.

COUNT I – INFRINGEMENT OF THE '697 PATENT

33. DynaEnergetics repeats and incorporates by reference the allegations contained in the foregoing paragraphs, as if stated fully herein.

34. DynaEnergetics is the owner of the '697 Patent, with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '697 Patent against infringers, and to collect damages for all relevant times.

35. Defendants have, either alone or in concert, directly infringed and continue to infringe the '697 Patent, either literally or through the doctrine of equivalents, by making, using, importing, supplying, distributing, selling and/or offering for sale the YJOT Pre-Wired Perforating Gun within the United States, in violation of 35 U.S.C. § 271(a).

36. Upon information and belief, Defendants have made and are continuing to make unlawful gains and profits from its infringement of the '697 Patent.

37. At least as early as the filing of this complaint, Defendants have been on notice of and have had knowledge of the '697 Patent and of DynaEnergetics' allegations of infringement. Defendants' infringement of the '697 Patent has been willful and deliberate at least since this date.

38. DynaEnergetics has been damaged and irreparably harmed by Defendants' infringement of the '697 Patent for which DynaEnergetics is entitled to relief under 35 U.S.C. § 284 and 35 U.S.C. § 154(d). DynaEnergetics will continue to suffer damages and irreparable harm unless Defendants are enjoined preliminarily and permanently by this Court from continuing its infringement.

ATTORNEYS' FEES

39. Pursuant to 35 U.S.C. § 285, DynaEnergetics is entitled to and hereby demands its reasonable attorneys' fees in this case.

JURY DEMAND

40. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, DynaEnergetics respectfully requests a trial by jury of any issues so triable.

PRAYER FOR RELIEF

WHEREFORE, DynaEnergetics respectfully asks that the Court issue citation for Defendants to appear and answer and seeks the following additional relief:

A. that Defendants be declared to have directly infringed one or more of the claims of the '697 Patent under 35 U.S.C. § 271(a);

B. that that Court issue a preliminary and permanent injunction pursuant to 35 U.S.C. § 283 against the continuing infringement of the claims of the '697 Patent by Defendants, its officers, agents, employees, attorneys, representatives, and all others acting in concert therewith;

C. that the Court order an accounting for all monies received by or on behalf of Defendants and all damages sustained by DynaEnergetics as a result of Defendants' aforementioned infringements, that such monies and damages be awarded to DynaEnergetics, and that interest and costs be assessed against Defendants pursuant to 35 U.S.C. § 284 and 35 U.S.C. § 154(d);

D. that the Court declare that Defendants' infringement was and is willful from the time it became aware of the infringing nature of their product and award treble damages for the period of such willful infringement of the '697 Patent, pursuant to 35 U.S.C. § 284;

E. that the Court declare this an exceptional case and order that Defendants pay to DynaEnergetics its reasonable attorneys' fees and costs, pursuant to 35 U.S.C. § 285; and

F. that the Court award such further and other relief to DynaEnergetics as the Court deems just, together with its costs and disbursements in this action.

Dated: February 12, 2021

Respectfully submitted,

By: /s/Eric H. Findlay

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*Attorneys for Plaintiffs DynaEnergetics Europe
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CERTIFICATE OF SERVICE

The undersigned certifies that on February 12, 2021, the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record.

/s/ Eric H. Findlay
Eric H. Findlay