

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

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U.S. DISTRICT COURT  
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BY *Barbara J. Shivers*  
CIVIL ACTION NO.  
1001CV-282

KENNETH RAY EVANS and  
EMI TUBULAR PRODUCTS, INC.  
PLAINTIFFS

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VS.

CIVIL ACTION NO.

JOHN DAWSON WATTS and  
XL SYSTEMS, INC.  
DEFENDANTS

**KENNETH RAY EVANS AND EMI TUBULAR  
PRODUCTS, INC.'S ORIGINAL COMPLAINT**

Kenneth Ray Evans and EMI Tubular Products, Inc. (collectively "Plaintiffs") file their original complaint as follows:

Parties

1. Kenneth Ray Evans ("Evans") is an individual residing in Harris County, Texas.
2. EMI Tubular Products, Inc. ("EMI") is a Texas corporation with its principal place of business in Harris County, Texas.
3. John Dawson Watts ("Watts") is an individual residing in Harris County, Texas and may be served with summons and complaint at 5054 Stanhope Dr., Houston, Texas 77084.
4. XL Systems, Inc. ("XL") was a Texas corporation that did business in Jefferson County, Texas. On July 31, 2000, the corporation was converted into a Texas limited partnership. XL Systems, Inc. may be served with summons and complaint upon its former president, John C. Coble at 1450 Lake Robbins Dr., Suite 600, The Woodlands, Texas 77380.

Jurisdiction and Venue

5. This court has jurisdiction pursuant to 28 U.S.C. §1338 and 28 U.S.C. §1367(a). Venue is appropriate pursuant to 28 U.S.C. §1400(b). Defendant XL Systems had a regular and

established place of business in Beaumont, Texas and committed acts of infringement in Beaumont, Texas. Additionally, Watts sued XL in Beaumont, Texas.

#### Introduction

6. Watts brought suit in this court against XL for patent infringement, including infringement of United States Patent No. 5,427,418 (the "418 Patent"). The 418 Patent was the subject of a license agreement ("Agreement") originally entered into between Evans and Watts dated April 22, 1993.<sup>1</sup> One of the patents covered by the Agreement was the 418 Patent. Pursuant to the Agreement, Watts granted Evans an exclusive worldwide license to utilize certain patents and technical information, and to sell licensed products. The Agreement governs the parties' rights, duties, and obligations with respect to infringements of the patents, including the 418 Patent.

7. Section 9.00 provides that:

Each party shall promptly notify the other party in writing of any suspected infringement(s) of the PATENTS and shall inform the other party of any evidence of such infringements(s).

8. Section 9.01 governs the parties' relative rights with respect to suing infringers, providing as follows:

LICENSEE shall have the first right as to LICENSOR to institute suit for infringement(s) of the PATENTS by others making, using, or selling LICENSED PRODUCTS. LICENSOR agrees to join as a party plaintiff in any such lawsuit initiated by LICENSEE, if requested by LICENSEE, with all costs, attorney fees and expenses to be paid for by LICENSEE. However, if LICENSEE or its sublicensee does not institute suit on its own behalf for infringement(s) within ninety (90) days of knowing of such infringement(s), then and only then may LICENSOR, at his own expense, bring suit or take any other appropriate action.

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<sup>1</sup> Evans later assigned his rights and obligations under the Agreement to EMI.

9. On May 7, 1997, Watts sued XL Systems, Inc. for patent infringement in Civil Action No. 1: 97CV0261, *John D. Watts v. XL Systems, Inc.* in the United States District Court for the Eastern District of Texas, Beaumont Division. The lawsuit ultimately included claims that XL Systems, Inc. had violated the 418 Patent. Watts did not comply with Section 9.00 or 9.01 before filing the lawsuit and, to this day, has failed to comply with Section 9.00. Further, Plaintiffs did not have knowledge of any infringement of the 418 Patent by XL Systems, Inc. prior to Watts filing the lawsuit. It was not until much later when Plaintiffs first learned that the 418 Patent (as opposed to other patents) was part of the lawsuit.

10. Sections 9.00 and 9.01 of the Agreement and the respective rights of the parties under it, was the subject of a final judgment entered on October 5, 2000 in C.A. No. H-97-3138; *Kenneth Ray Evans v. John Dawson Watts*, in the United States District Court for the Southern District of Texas, Houston Division. Judge Sim Lake found that Watts did not provide notice to Plaintiffs pursuant to the Agreement. Further, Judge Lake rendered a final judgment that “Watts does not have the right under the 1993 License Agreement to sue XL Systems, Inc. for infringement of the ‘418 Patent.’” See Second Amended Final Judgment attached hereto as Exhibit “A.” Watts is prohibited from contesting these findings based upon the principals of collateral estoppel and/or res judicata.

Cause of Action No. 1: Declaratory Judgment

11. Plaintiffs incorporate all allegations contained in paragraphs 1-10.

12. Based upon the Agreement, Plaintiffs are entitled to all damages awarded against XL for infringement of the 418 Patent. Thus, Plaintiffs seek a declaration that they are entitled under the Agreement to all damages awarded against XL for infringement of the 418 Patent.

Cause of Action No. 2: Breach of Contract

13. Plaintiffs incorporate all allegations contained in paragraphs 1-12.

14. Additionally or in the alternative, Watts breached his obligations under the contract by failing to provide written notice of suspected infringement by XL, by failing to inform Plaintiffs of any evidence of such infringement, and by filing suit against XL Systems, Inc. for infringement of the 418 Patent. As a result of Watts' breach of contract, Intervenors suffered damages within the jurisdictional limits of this court.

Cause of Action No. 3: Patent Infringement

15. Plaintiffs incorporate all allegations contained in paragraphs 1-14.

16. Additionally or in the alternative, Plaintiffs bring a cause of action against XL for infringement of the 418 Patent for threaded pipe connections in violation of 35 U.S.C. §271. Plaintiffs seek recovery of damages for the infringement under 35 U.S.C. §284.

17. Because XL's infringement constitutes a willful disregard of Plaintiffs' patent rights, Plaintiffs are entitled to recover three times the amount assessed as damages and due to the exceptional nature of this case.

18. Plaintiffs are entitled to an award of reasonable attorney fees under 35 U.S.C. §285.

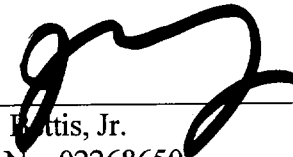
19. The jury in this case has returned a verdict that XL infringed the 418 Patent. XL is barred by principles of res judicata and/or collateral estoppel from contesting these findings.

Prayer

For these reasons Plaintiffs ask for a declaration that Plaintiffs are entitled to any damages awarded against XL for infringement of the 418 Patent; and/or judgement for:

- (a) all actual damages resulting from Watts' breach of contract in an amount to be determined by the trier of fact; and/or
- (b) all actual damages for XL's infringement of the 418 patent plus statutory treble damages;
- (c) all reasonable and necessary attorneys' fees;
- (d) pre-judgment interest;
- (e) post-judgment interest;
- (f) costs of suit; and
- (g) such other and further relief to which Plaintiffs may be entitled.

Respectfully submitted,



James M. Bettis, Jr.

State Bar No. 02268650

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EVANS AND EMI TUBULAR PRODUCTS, INC.

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ATTORNEY DESIGNATED BY ATTORNEY IN CHARGE TO RECEIVE NOTICES

ATTORNEYS FOR KENNETH RAY EVANS  
AND EMI TUBULAR PRODUCTS, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

OCT 5 2000

Michael N. Milby, Clerk

KENNETH RAY EVANS, et al.,  
  
Plaintiffs/Counter-Defendants,

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v.

CIVIL ACTION NO. H-97-3138

JOHN DAWSON WATTS,  
  
Defendant/Counter-Plaintiff.

ORDER

Pending before the court is Defendant/Counter-Plaintiff's Motion to Alter or Amend the Judgment and for New Trial (Docket Entry No. 99). Having carefully considered the motion, plaintiff's opposition, and defendant/counter-plaintiff's reply, the court is persuaded that the motion should be granted in part.

This action was an action for breach of contract. One of the issues in this case was who had the right under the 1993 License Agreement to sue XL Systems, Inc. for patent infringement. The court ruled on that issue in its previous orders. The trial did not involve the issues of whether under Federal patent law Watts



owned the '418 Patent or whether under Federal patent law Watts has any residual rights as the holder of the '418 Patent to sue for infringement of the patent, notwithstanding the court's ruling that Evans, not Watts, has the right under the 1993 License Agreement to sue XL Systems, Inc. for infringing the '418 Patent. Accordingly, the court will again **AMEND** the Final Judgment to reflect that Watts did not have the right under the 1993 License Agreement to sue for infringement of the '418 Patent. In all other respects Defendant/Counter-Plaintiff's Motion to Alter or Amend the Judgment and for New Trial (Docket Entry No. 99) is **DENIED**.

**SIGNED** at Houston, Texas, on this 5th day of October, 2000.



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SIM LAKE  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

OCT 5 2000

Michael N. Milby, Clerk

KENNETH RAY EVANS and §  
EMI TUBULAR PRODUCTS, INC., §

Plaintiffs, §

v. §

CIVIL ACTION NO. H-97-3138

JOHN DAWSON WATTS, §

Defendant. §

SECOND AMENDED FINAL JUDGMENT

In accordance with the court's Findings of Fact and Conclusions of Law stated in open court on January 11, 2000, the court's ruling on Plaintiffs' Request for Attorneys' Fees, and the court's subsequent orders, the court **ADJUDGES** that plaintiffs Kenneth Ray Evans and EMI Tubular Products, Inc. recover from defendant John Dawson Watts the following:

- (1) the sum of \$5,095.50;
- (2) attorneys' fees in the amount of \$21,850.00;
- (3) costs of court in the amount of \$2,495.00; and
- (4) post-judgment interest on all such amounts at the rate of 6.241% per annum.

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The court **ADJUDGES** and **DECREES** that John Dawson Watts is entitled pursuant to paragraph 9.01 of the License Agreement to sue XL Systems, Inc. for patent infringement except as to Patent No. 5,427,418 (the '418 Patent). Watts does not have the right under the 1993 License Agreement to sue XL Systems, Inc. for infringement of the '418 Patent.

All relief not specifically granted in this Judgment is **DENIED**.

This is a **FINAL JUDGMENT**.

**SIGNED** at Houston, Texas, on this 5th day of October, 2000.

  
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SIM LAKE  
UNITED STATES DISTRICT JUDGE