

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

REALTIMEZONE, INC.,

Plaintiff,

vs.

No.

HALLIBURTON ENERGY SERVICES, INC.

Defendant.

**COMPLAINT FOR BREACH OF CONTRACT,  
FRAUD, AND PATENT INFRINGEMENT**

Plaintiff Realtimezone, Inc. (“RTZ”) complains of Defendant Halliburton Energy Services, Inc. (“Halliburton”) as follows:

**THE PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff is a New Mexico corporation with its principle place of business in New Mexico.
2. Halliburton is a Delaware corporation with its principle place of business in Texas. Halliburton maintains a registered agent for service of process in New Mexico and does business in New Mexico.
3. RTZ’s claims arise under 35 U.S.C. § 271, there is diversity of citizenship between the parties, and, upon information and belief, the amount in controversy exceeds \$75,000 exclusive of interests and costs. This Court, therefore, has subject matter jurisdiction over RTZ’s claims under 28 U.S.C. §§ 1331, 1332, 1338, and 1367(a).

4. Venue is proper in the District of New Mexico under 28 U.S.C. §§ 1391(b) and 1400(b).

### **GENERAL ALLEGATIONS**

5. On August 27, 2002, the United States Patent and Trademark Office issued Patent No. 6,439,310 B1, entitled “Real-Time Reservoir Fracturing Process,” for RTZ and the United States Department of Energy’s co-developed process for hydraulic fracturing of subterranean reservoir formations in real time (the “Patented Process”).

6. RTZ has the exclusive rights to license the Patented Process and sue for patent infringement pursuant to the Exclusive Patent License Agreement between RTZ and the United States Department of Energy, attached as Exhibit A.

7. RTZ registered the Patented Process in Brazil, Venezuela, Great Britain, and Canada.

8. RTZ licensed the Patented Process to Halliburton pursuant to the January 1, 2001 License Agreement between RTZ and Halliburton, attached as Exhibit B.

9. Halliburton marketed the Patented Process in various oil and gas trade publications and at international oil and gas industry conferences and expositions.

10. Halliburton knowingly has used, offered to sell, and sold the Patented Process in the United States and specifically in New Mexico.

11. On a quarterly basis since the inception of the License Agreement, Halliburton has reported to RTZ in writing, an example of which is attached as Exhibit C, that Halliburton has not used the Patented Process and does not owe RTZ any royalties pursuant to the License Agreement, even though Halliburton knows it has used, offered to sell, and sold the Patented Process.

12. In the Fall of 2005, RTZ exercised its right under the License Agreement to audit Halliburton's use of the Patented Process. Halliburton, however, refused to provide RTZ with information on Halliburton's use of the Patented Process in any country outside the United States as RTZ had requested. Instead, Halliburton told RTZ that it would have to travel to foreign countries to conduct audits there even though the License Agreement does not contain such a requirement. Upon information and belief, Halliburton took this position to prevent RTZ from discovering that Halliburton had used, offered to sell, and sold the Patented Process in foreign countries where RTZ had registered the Patented Process in order to avoid paying RTZ royalties under the License Agreement.

13. During the Fall 2005 audit, RTZ discovered, and Halliburton admitted, that Halliburton had used the Patented Process and owed RTZ royalties of some unspecified amount under the License Agreement. Halliburton, however, continues to report quarterly to RTZ that Halliburton has not used the Patented Process and owes RTZ no royalties under the License Agreement.

14. To date, Halliburton has not paid RTZ a single royalty due under the License Agreement.

## **COUNT I**

### **BREACH OF CONTRACT**

15. RTZ incorporates each and every foregoing paragraph as if fully set forth herein.

16. Halliburton breached the License Agreement by failing to account for its use of the Patented Process and paying royalties due to RTZ pursuant to the License Agreement.

17. Halliburton's conduct, including but not limited to refusing to give RTZ access to information necessary to audit Halliburton's use of the Patented Process outside the United

States during the 2005 audit, is in bad faith and violates the covenant of good faith and fair dealing implied in the License Agreement.

18. Halliburton's willful, bad faith breach of the License Agreement has damaged RTZ, entitling it to compensatory and punitive damages in an amount to be determined at trial.

## **COUNT II**

### **FRAUD**

19. RTZ incorporates each and every foregoing paragraph as if fully set forth herein.

20. Halliburton knowingly reporting to RTZ on a quarterly basis since inception of the License Agreement that Halliburton did not use the Patented Process when Halliburton knew it had used the Patented Process.

21. Halliburton made these statements with the intent to deceive RTZ into believing that Halliburton had not used the Patented Process in the quarter preceding each quarterly report in order to induce RTZ to rely on those statements and avoid paying RTZ royalties under the License Agreement.

22. RTZ reasonably relied on Halliburton's statements that no royalties were due to RTZ to its detriment of not receiving royalties Halliburton owes RTZ under the License Agreement.

23. Halliburton's willful fraud has damaged RTZ, entitling it to compensatory and punitive damages in an amount to be determined at trial.

## **COUNT III**

### **PATENT INFRINGEMENT**

24. Plaintiff incorporates each and every foregoing paragraph as if fully set forth herein.

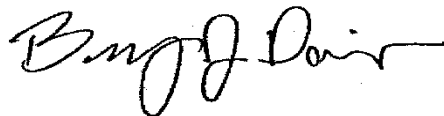
25. Halliburton has used, offered to sell, and sold the Patented Process in the United States without paying RTZ any royalties under the License Agreement thereby infringing Patent No. 6,439,310 B1 in violation of 35 U.S.C. § 271 and causing RTZ damage.

26. Halliburton's infringement of Patent No. 6,439,310 B1 is willful and deliberate, entitling RTZ to increased damages under 35 U.S.C. § 284 and attorneys' fees and costs under 35 U.S.C. § 285.

WHEREFORE, Plaintiff Realtimezone, Inc. prays for an award of compensatory and punitive damages in an amount to be determined at trial together with an award of enhanced damages and attorneys' fees pursuant to 35 U.S.C. §§ 284-285, and costs, pre- and post-judgment interest, and whatever further relief the Court deems just and proper.

Submitted by:

DAVIS & GILCHRIST, P.C.

A handwritten signature in black ink, appearing to read "Bryan J. Davis". The signature is fluid and cursive, written over a light blue horizontal line.

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