

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

GYRODATA INCORPORATED,	§	CIVIL ACTION NO. 4:09-CV-1005
Plaintiff,	§	
	§	
v.	§	
	§	HON. KENNETH M. HOYT
GYRO TECHNOLOGIES, INC. (d/b/a	§	
VAUGHN ENERGY SERVICES) and	§	
DATAFLOW MEASUREMENT	§	
SYSTEMS, LIMITED,	§	
Defendants.	§	JURY TRIAL DEMANDED

**FIRST AMENDED ORIGINAL COMPLAINT AND
APPLICATION FOR PRELIMINARY INJUNCTION**

Plaintiff Gyrodata Incorporated ("Gyrodata") files this First Amended Original Complaint and Application for Preliminary Injunction.

PARTIES

1. Plaintiff Gyrodata is a Texas corporation with its principal place of business at 1682 West Sam Houston Parkway North, Houston, Harris County, Texas 77043.

2. Defendant Gyro Technologies, Inc. d/b/a Vaughn Energy Services ("Vaughn Energy"), is a Texas corporation. It has answered and appeared in this suit.

3. Defendant Dataflow Measurement Systems, Limited ("DMS"), is a United Kingdom corporation. It has answered and appeared in this suit.

JURISDICTION AND VENUE

4. This Court has exclusive subject matter jurisdiction over this action under 28 U.S.C. § 1338(a) and 28 U.S.C. § 1331.

5. This Court has personal jurisdiction over Defendants and venue is proper in this district under 28 U.S.C. § 1391(b)(2) because Defendant Vaughn Energy resides in this district and a substantial part of the events giving rise to the claim occurred in this district.

FACTUAL BACKGROUND

A. The '195 Patent.

6. On September 15, 1998, United States Patent No. 5,806,195 (the "'195 Patent"), entitled "Rate Gyro Wells Survey System Including Nulling System," issued from the United States Patent and Trademark Office. Gyrodata is the assignee of the '195 Patent, a copy of which is attached as Exhibit A to this Complaint.

7. The '195 Patent covers an oil and gas wellbore surveying instrument that can be "dropped" or lowered into a wellbore and can measure downhole without being connected to a power supply at the surface. These instruments use rate gyroscopes and gravity sensors, such as accelerometers, to determine the location of a wellbore beneath the earth's surface with respect to true north. Accurate determination of a wellbore's location is critical to ensure safe and precise access to a targeted reservoir. Erroneous surveys, on the other hand, endanger public safety, particularly if the survey results in an operator drilling into an adjacent well.

8. An advantage of the patented technology is the ability to accurately survey non-vertical wellbores in magnetic environments without having to use wirelines (and, therefore, wireline trucks, operators, and surface-generated electricity) for power. Gyrodata markets various commercial embodiments of the invention, including the RGS-BT and RGS Drop Systems (when used in battery or drop modes) and the Gyro-

Guide GWD™. Gyrodata is one of two major competitors in this niche market of gyroscopic surveying of non-vertical oil and gas wellbores in magnetic environments.

9. Claim 53 of the '195 Patent defines an apparatus comprised of a sonde with a rate gyro, a power supply, memory, and a CPU capable of measuring a sequence of data within the borehole. It reads as follows:

An apparatus for measuring a sequence of data from within a well borehole, comprising;

- (a) a sonde which is conveyed within said borehole, wherein said sonde comprises
 - (i) a rate gyro comprising at least one axis,
 - (ii) a power supply to operate said rate gyro,
 - (iii) a memory for recording response of said rate gyro, and
 - (iv) means for measuring the direction of gravity acting upon said sonde;
- (b) a CPU for
 - (i) combining a first and a second measurement from said rate gyro to obtain a measure of true north,
 - (ii) combining a third and a fourth measurement from said rate gyro with said first and second measurements to reduce systematic instrument error in said measure of true north; and
 - (iii) combining said measure of gravity direction and said measure of true north to obtain said measured sequence of data; and
- (c) means for conveying said sonde within said well borehole.

Exh. A, Col. 14:19-41.

10. Claim 54 depends from claim 53 and adds the limitation of a slick line: “The apparatus of claim 53 wherein said means for conveying said sonde comprises a slick line.” Exh. A, Col. 14:42-43.

11. Claim 55 also depends from claim 53 and adds the limitation of drill string: “The apparatus of claim 53 wherein said means for conveying said sonde comprises a drill string.” Exh. A, Col. 14:44-45.

12. Claim 56 also depends from claim 53 and adds the limitation of gravity as the means for conveying the sonde: “The apparatus of claim 53 wherein said means for conveying said sonde comprises the force of gravity.” Exh. A, Col. 14:46-47.

B. Defendants’ Infringement.

13. Soon after the ’195 Patent issued, Nick Wallis, a sales representative from one of Gyrodata’s vendors, told Gyrodata he was contemplating building a rate gyro system with a power supply that would allow the instrument to be dropped in the wellbore. Gyrodata told Wallis that his proposed system, if built, likely would infringe the ’195 Patent. Wallis assured Gyrodata that he and his business associates would not infringe Gyrodata’s patents, and that if they were going to use Gyrodata’s patents they first would discuss a license agreement with Gyrodata. After that meeting, Gyrodata did not hear from nor see Wallis for several years.

14. Then, in 2008, Gyrodata received reports that a company called “Vaughn Energy” was “dropping a tool” in wellbores in the Colorado Rocky Mountains and elsewhere. Although details were scant, Vaughn Energy purportedly was affiliated with Wallis and his company, DMS.

15. Defendant Vaughn Energy, Incorporated under the name Gyro Technologies, Inc., on information and belief, markets, sells, and uses in the United States tools, including but not limited to the Gyroflex™ Navigator, or Gyroflex™, and the Gyroflex™ Explorer (“the Gyroflex™ tools”), to provide surveying products and services to the oilfield. The Gyroflex™ tools, on information and belief, include each and every limitation of claims 53, 54, 55, and 56 of the ’195 Patent and, therefore, infringe.

16. On information and belief, Defendant DMS manufactures the Gyroflex™ tools and serves as Vaughn Energy's manufacturing and product support. On information and belief, DMS acquires the substantial and critical components (including gyroscopes) for the Gyroflex™ tools from the United States, assembles the Gyroflex™ tools in England, and imports the infringing products into the United States for use and sale by Vaughn Energy and possibly others.

17. Defendants have been objectively reckless in their actions because they learned about the '195 Patent prior to commencing their infringing activities, acted despite an objectively high likelihood that their actions constituted infringement of a valid patent, and knew that their actions constituted a risk of infringement. Therefore, they have committed willful infringement.

18. Defendants are offering the Gyroflex™ tools to customers in the oil patch, claiming they will provide the same accuracy as Gyrodata's systems, but at a substantially lower price. But for their infringement, Defendants would not be in the market at all. By driving prices down with infringing technology, the Defendants are irreparably damaging the market in an amount that may not be adequately compensable by money damages or any other remedy at law. In addition, upon information and belief, Defendants' recent activities have resulted in operators drilling into other wells, which is a risk to public safety.

C. Defendants' False Representations

19. Upon information and belief, Defendants have made, and continue to make, representations about the accuracy of the Gyroflex™ tools that are false and/or misleading. These representations appear, *inter alia*, on their websites, in printed

brochures and, upon information and belief, in statements to customers and potential customers. These representations occur in interstate commerce, and the Gyroflex™ tools are sold, used, and offered for sale in interstate commerce. See, e.g., Exh. B-C.

COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 5,806,195

20. Gyrodata incorporates by reference paragraphs 1 through 19.

21. Defendants have infringed and continue to infringe the '195 Patent by, among other things, making, using, selling, and/or offering to sell, within the United States, and/or importing into the United States, products and services that come within the scope of at least one claim of the '195 Patent. 35 U.S.C. § 271(a).

22. The Gyroflex™ tools manufactured by Defendant DMS are imported into the United States by Defendants DMS and Vaughn Energy and used, sold, and/or offered for sale in the United States by Vaughn Energy and its customers.

23. Defendants also have infringed and continue to infringe the '195 Patent by actively inducing the infringement by others, who also would be subject to injunction against the use of infringing products. 35 U.S.C. § 271(b).

24. Defendants also have infringed and continue to infringe the '195 Patent by selling and offering to sell, within the United States, components of patented products that constitute a material part of the claimed invention, knowing the same to be especially made or especially adapted for use in an infringement of these claims, and not a staple article or commodity of commerce suitable for substantial non-infringing use. 35 U.S.C. § 271(c).

25. Defendants also have infringed and continue to infringe by supplying or causing to be supplied in or from the United States all or a substantial portion of

uncombined components of the patented invention, in a manner that actively induces the combination of the components outside of the United States in a manner that would infringe the '195 Patent if such combination occurred within the United States. 35 U.S.C. § 271(f)(1).

26. Defendants also have infringed and continue to infringe by supplying or causing to be supplied in or from the United States uncombined components they know are especially made or adapted for use in products that come within the scope of at least one claim of the '195 Patent, components that are not staple articles or commodities of commerce suitable for noninfringing use, and intending the components to be combined outside of the United States in a manner that would infringe the patent if such combination occurred within the United States. 35 U.S.C. § 271(f)(2).

27. The Defendants have known of the '195 Patent since 1998 or 1999, when Wallis first approached Gyrodata. Their infringement has been willful, has caused Gyrodata damage, and unless enjoined, will cause irreparable injury to Gyrodata.

COUNT 2: FALSE REPRESENTATIONS

28. Gyrodata incorporates by reference paragraphs 1 through 27 above.

29. The Defendants' representations regarding the accuracy of the Gyroflex™ tools are literally false and/or materially misleading. These representations deceived or had the capacity to deceive a substantial segment of customers or potential customers for tools that perform gyroscopic surveying of non-vertical oil and gas wellbores in magnetic environments. Further, these false or misleading representations likely influenced decisions to purchase or use Defendants' tools.

30. Defendants have placed the Gyroflex™ tools in interstate commerce. Defendants' conduct amounts to false description and representation that violates 15 U.S.C. § 1125(a)(1)(B).

31. Defendants' conduct has injured or is likely to injure Gyrodata by, *inter alia*, causing Gyrodata to lose business to Defendants, eroding the price Gyrodata may command for its technology, diluting Gyrodata's business, and/or harming the business reputation of gyroscopic wellbore survey tools in general.

32. Although damages are not a wholly adequate remedy at law for the continuing injury to Gyrodata's business caused by Defendants' conduct, Gyrodata is entitled to actual damages and to the Defendants' profits pursuant to 15 U.S.C. § 1117(a). These actual damages and profits should be enhanced up to three times the amount of actual damages as authorized by 15 U.S.C. § 1117(a).

33. Further, Gyrodata has suffered and will continue to suffer irreparable injury caused by, *inter alia*, the continuing damage to its business reputation and goodwill, by price erosion and by the continuing damage to the reputation of this type of wellbore survey tool, as described above. The Defendants are likely to continue their unlawful activities unless they are enjoined from doing so. Gyrodata does not have an adequate remedy at law to compensate it for the injuries caused and threatened by the Defendants. Accordingly, Gyrodata is entitled to injunctive relief according to 15 U.S.C. § 1116(a) and under equity.

34. This is an exceptional case. Therefore, Gyrodata also is entitled to recover its attorneys' fees according to 15 U.S.C. § 1117.

COUNT 3: APPLICATION FOR PRELIMINARY INJUNCTION

35. Gyrodata incorporates by reference paragraphs 1 through 34.

36. Gyrodata requests this Court preliminarily enjoin Defendants from making, using, selling, or offering to sell the Gyroflex™ tools pending trial. Gyrodata is entitled to this relief because it is substantially likely to prevail on the merits, Gyrodata's injury is irreparable, and the balance of the hardships and public policy favor an injunction.

A. Gyrodata is substantially likely to prevail on the merits.

37. To prevail, Gyrodata must establish a substantial likelihood of prevailing on the merits, including proof of infringement and lack of a substantial question regarding invalidity. The Gyroflex™ tools include every component described in claims 53, 54, and 55 of the '195 Patent and Defendants use, make, and sell this infringing product. Attached as Exhibit D is a preliminary infringement chart showing how the Gyroflex™ tools correspond to every limitation of claims 53, 54, and 55. Therefore, Gyrodata likely will prove infringement.

38. Second, the '195 Patent is presumed valid. 35 U.S.C. § 282. No substantial question regarding invalidity exists. Therefore, Gyrodata likely will succeed on the merits.

B. Gyrodata will suffer irreparable injury if an injunction is not granted.

39. Defendants offer their infringing product at a substantially lower price than Gyrodata. This not only costs Gyrodata customers and competitive edge by an amount that may not be calculable, it also drives down the value of the market Gyrodata has created. These injuries are irreparable and not adequately remedied by monetary damages or any other remedy at law.

C. Balance of hardships favors injunction.

40. Since 1980, Gyrodata has worked to build and maintain its leadership in oil and gas wellbore gyroscopic surveying. With the '195 Patent, Gyrodata has created a niche market of drop gyroscopic wellbore surveying in highly magnetic environments. Defendants' infringement erodes the market and undermines these efforts.

41. Without an injunction, Gyrodata stands to lose its place in this market altogether or be left with a market whose value has been incalculably diminished by Defendants' infringement. Defendants have no legal right to make, use, sell, or offer to sell products or services that fall within the scope of Gyrodata's patent. A preliminary injunction would merely stop Defendants from doing something they have no legal right to do.

42. Moreover, any harm to Defendants would be short term, particularly because Defendants only recently entered this market and operated for many years previously in ventures that did not infringe Gyrodata's patents. Presumably, Defendants can return to non-infringing activities without significant harm.

43. Additionally, on information and belief, Defendants are very lightly capitalized and incapable of responding in damages if Gyrodata succeeds in this claim. Gyrodata has no adequate remedy at law.

44. The balance of the equities between the parties strongly favors a preliminary injunction.

D. Public policy favors injunction.

45. Finally, public policy favors injunctive relief in this case. Defendants' continued infringing conduct threatens public safety, which in itself justifies injunction.

In addition, this country has a strong public policy in protecting patent holders' rights. Finally, no contravening public policy exists that would be disserved by injunctive relief.

46. Therefore, Gyrodata requests that upon a hearing, the Court enter a preliminary injunction through trial prohibiting Defendants from making, using, selling, offering for sale, and/or importing infringing products and components of infringing products.

47. Gyrodata is ready, willing, and able to post an appropriate bond for injunction to issue. FED. R. CIV. P. 65(c).

REQUEST FOR EXPEDITED MARKMAN HEARING

Plaintiff requests the Court hold its *Markman* hearing at the inception of the preliminary injunction hearing.

JURY DEMAND

Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

Gyrodata requests this Court:

- A. enter a preliminary and permanent injunction enjoining Defendants, and all those in active concert or participation with them, from infringing the '195 Patent pursuant to 35 U.S.C. § 283 and from making false representations in violation of 15 U.S.C. § 1125;
- B. award damages of not less than a reasonable royalty together with interest and costs under 35 U.S.C. § 284, due to Defendants' direct infringement and indirect infringement of the '195 Patent;

- C. award actual damages and Defendants' profits to Gyrodata under 15 U.S.C. § 1117;
- D. award Gyrodata enhanced damages under 15 U.S.C. § 1117;
- E. find that Defendants' infringement has been willful and award treble damages under 35 U.S.C. § 284;
- F. find that this case is an exceptional case and award reasonable attorney fees; and
- G. award all other relief to which Gyrodata is entitled at law or in equity.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that service of this document on counsel of record will be accomplished automatically through Notice of Electronic Filing on September 29, 2009, as follows:

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