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U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA  
2007 OCT 30 AM 9:59  
LORETTA G. WHYTE  
CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

DRILL TECH ENVIRONMENTAL  
SERVICES, INC.

*Plaintiff*

VERSUS

SUN DRILLING PRODUCTS CORPORATION \*

*Defendant* \*

\*\*\*\*\*

CIVIL ACTION

NO.

**07-75751**

SECTION

**SECT. F MAG. 2**

MAG. DIV.

**COMPLAINT FOR DECLARATORY JUDGMENT, DAMAGES  
AND INJUNCTIVE RELIEF**

For this Complaint of Plaintiff, Drill Tech Environmental Services, Inc. ("Plaintiff" or "Drill Tech"), alleges as follows:

**NATURE OF THE CASE**

1.

Plaintiff seeks judgment declaring that it has not infringed and does not infringe any valid and enforceable claim of Defendant's Reissue Patent, and/or that Defendant's Reissue Patent is invalid and/or unenforceable. Plaintiff also seeks recovery of attorney fees, monetary damages, and injunctive relief arising from certain acts of the Defendant, including but not limited to, upon information and belief, Defendant's false and injurious statements to Plaintiff's Customers regarding Plaintiff's Recovery Unit and how Plaintiff obtained its Recovery Unit.

**THE PARTIES**

1.

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Plaintiff, Drill Tech Environmental Services, Inc., is a Corporation organized and existing under the laws of the State of Louisiana which has its principal place of business in Terrebonne Parish, State of Louisiana.

2.

Upon information and belief, Sun Drilling Products Corporation (hereinafter "Defendant") is a Louisiana corporation domiciled in Orleans Parish, and having a regional office located in Plaquemines Parish, State of Louisiana, and has minimum contacts with this judicial district (hereinafter "Defendant").

### **JURISDICTION AND VENUE**

3.

(a) 28 U.S.C. § 1338(a), as this matter involves an action arising under Acts of Congress relating to patents, specifically 35 U.S.C. § 1 *et seq.*, as to which Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201; and

(b) The supplemental jurisdiction of this Court for the state law claims herein, pursuant to 28 U.S.C. § 1367, as those claims and the federal claims arise out of a common nucleus of operative facts and are so related that they form part of the same case or controversy.

6.

Venue is proper in this District pursuant to 38 U.S.C. §1391 and/or 1400.

### **FACTUAL BACKGROUND AND ALLEGATIONS**

7.

Upon information and belief, and at all time relevant hereto, Defendant has owned and/or

have claimed to be the owner of U.S. Reissue Patent No. RE38,367 (hereinafter sometimes referred to as the "Reissue Patent"), relating to a recovery unit for copolymer beads.

**8.**

Plaintiff, from its business located in this judicial district, sells copolymer beads which assist in the process of drilling for oil and gas.

**9.**

As part of its business, Plaintiff offers for rental various copolymer bead recovery units ("Plaintiff's Recovery Units") which recover for reuse a large portion of the copolymer beads Plaintiff sells. Plaintiff's Recovery Units decrease the overall cost of drilling operations for Plaintiff's customers because less copolymer beads are required to be purchased during the drilling process.

**10.**

On September 20, 2007, Plaintiff received a letter from a law firm stating, in part, that "Our firm represents Sun Drilling Products Corporation ("Sun Drilling") in connection with patent matters. As you may know, Sun Drilling owns U.S. Patent No. RE38,367 entitled 'Recovery Apparatus for Drilling and Excavation Application and Related Methods' (Exhibit A), as well as foreign counterparts to this patent around the world." (Attached hereto as Exhibit 1).

**11.**

This letter also alleges that "[b]ased on our review, it appears that Drill Tech is operating bead recovery units that **meet each and every limitation of the independent claims** of the Sun Drilling Bead Recovery Unit patent Portfolio." (Emphasis added). Because the definition of infringement under patent law is the meeting of every limitation in at least one claim of a patent,

this is an allegation that Plaintiff's Recovery Unit infringes the Reissue Patent.

12.

The letter goes on to state that "[w]e consider this a **serious matter requiring expeditious resolution**, and therefore request a **response within 15 days**." (Emphasis added).

13.

Furthermore, after receiving the letter, Plaintiff was informed by at least one individual that representatives of Defendant had told him that "Sun Drilling had sent a letter to Drill Tech and was going to shut them [Drill-Tech] down."

14.

Moreover, upon information and belief, one of Plaintiff's customers recently stopped using Plaintiff's Recovery Unit on a copolymer bead recovery unit job because Defendant's representative told this customer that "Drill Tech had stolen Sun Drilling's design for the recovery unit and was infringing Sun Drilling's patent."

15.

Plaintiff contends that the letter from the Defendant's attorney along with Defendant's conduct was intended to be, and is, a threat that the Defendant will bring suit against the Plaintiff arising from its use of Plaintiff's Copolymer bead Recovery Units unless Plaintiff agrees to stop all use or take a license under the Reissue Patent - - which Plaintiff does not intend to do. As such, the Defendant has conducted itself in such a manner as to create a reasonable apprehension that Plaintiff will be faced with a suit by the Defendant.

16.

Plaintiff contends, contrary to the Defendant's claim, that the Reissue Patent is invalid,

unenforceable, and that no valid and enforceable claim of the Reissue Patent is infringed by Plaintiff's Recovery Units.

**17.**

Under the foregoing facts and circumstances, an actual controversy exists between the Plaintiff and the Defendant regarding the validity, enforceability, and infringement of the Reissue Patent.

**18.**

Upon information and belief, the Reissue Patent is invalid, unenforceable, and/or void for failure to comply with and/or satisfy applicable provisions of the law including without limitation 35 U.S.C. § § 101, 102, 103, 112, 115 and/or 116.

**19.**

Upon information and belief, the Reissue Patent is unenforceable due to the acts and/or omissions of the inventor, his attorneys and/or others associated with the filing and/or prosecution of the Reissue Patent, for failing to comply with their duty of candor and good faith in dealing with the U.S. Patent and Trademark Office (hereinafter the "Patent Office") in connection with the Patent, including without limitation their failure to comply with their duty to disclose to the Patent Office all information known to them to be material to patentability, in violation of 37 C.F.R. § 1.56.

**20.**

Upon information and belief, the Reissue Patent is unenforceable due to misuse of the patent by Sun Drilling, including, but not limited to Sun Drilling tying at least one license under the Reissue Patent with the sale of un-patented products (i.e., copolymer beads).

**21.**

The Defendant's accusations against Plaintiff, as referenced in paragraphs 13 and 14 hereinabove, and as set forth in the attached Exhibit "A," are false. Plaintiff has not infringed any valid and enforceable claim of the Reissue Patent, nor violated any other rights which Defendant may have with respect to a recovery unit.

**22.**

For the reasons set forth hereinabove in paragraphs 1-21, Plaintiff has no obligation to comply, has no intention of complying, and will not comply with the Defendant's threats

**23.**

Under the facts and circumstances set forth hereinabove in paragraphs 1 through 22, an actual controversy exists between Plaintiff and the Defendant regarding the validity, enforceability, and/or infringement of the Reissue Patent vis-a-vis the Plaintiff's Recovery Unit.

**24.**

Upon information and belief, Defendant has intentionally and maliciously communicated the false accusations regarding Plaintiff's conduct to third parties, including third parties with whom the Plaintiff has established and/or desires to establish contractual and/or other business relations, in order to damage Plaintiff.

**25.**

As a result of the acts of Defendant as set forth in paragraph 24 hereinabove, Plaintiff has suffered and/or may suffer significant monetary damage, including loss of business goodwill, loss of present and/or anticipated business opportunities and damage to plaintiff's business reputations, the total of said damages estimated to be in excess of \$1,000,000.00. Plaintiff will

continue to suffer future and irreparable damage unless the Defendant are restrained by this Court.

**26.**

By reason of the acts and/or omissions of the Defendant as set forth hereinabove, this is an exceptional case which justifies an award to plaintiff of its attorney fees in connection with this matter, pursuant to 35 U.S.C. § 285.

**COUNT I - DECLARATORY JUDGMENT**

**27.**

Plaintiff adopts, realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs 1 through 26, inclusive.

**28.**

Plaintiff is entitled to a judgment declaring that the Plaintiff's Recovery Unit does not infringe any valid and enforceable claim of the Reissue Patent, and/or declaring that the Reissue Patent is invalid, unenforceable and/or void, and that the sale, distribution and other commercialization of Plaintiff's Recovery Units do not constitute infringement, unfair competition or other violation of any rights which the Defendant may have with respect to the Defendant' Patent or any recovery unit.

**COUNT II - ATTORNEY FEES**

**29.**

Plaintiff adopts, realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs 1 through 28, inclusive.

**30.**

Plaintiff is entitled to recover against the Defendant, the attorney fees incurred by Plaintiff in connection with this matter, pursuant to 35 U.S.C. § 285.

**COUNT III - UNFAIR COMPETITION AND  
DECEPTIVE ACTS UNDER STATE LAW**

**31.**

Plaintiff adopts, realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs 1 through 30, inclusive.

**32.**

The above described actions of Defendant constitute unfair methods of competition, deceptive trade practices and other illegal acts in violation of Louisiana state law, including but not limited to La. R.S. 51:1401 et seq. and Louisiana Civil Code Article 2315.

**33.**

As a consequence of the Defendant's actions in violation of said laws, Plaintiff is entitled to injunctive relief and recovery of monetary damages against the Defendant, in an amount necessary to fully compensate the plaintiff for the acts of the Defendant, plus interest, costs and attorney's fees.

**JURY DEMAND**

**34.**

Plaintiff requests a trial by jury of all issues so triable herein.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment in its favor and against the Defendant as follows:



- 1) Judgment declaring that the Plaintiff's Recovery Unit does not infringe any valid and enforceable claim of the Patent, and/or declaring that the Patent is invalid, unenforceable and/or void, and that the sale, distribution and other commercialization of Plaintiff's Recovery Unit does not constitute infringement, or other violation of any rights which the Defendant may have with respect to the Defendants's Reissue Patent or its recovery unit.
- 2) An award against the Defendant of attorney fees incurred by plaintiff in connection with this matter.
- 3) An award of monetary damages of at least \$1,000,000.00 against the Defendant as a result of Defendant' acts of unfair competition, deceptive trade practices, and false accusations.
- 4) Injunctive relief against the Defendant, ordering the Defendant to stop making false accusations of patent infringement and other violations as regards Plaintiff and Plaintiff's Recovery Units, and ordering the Defendant to inform all third parties to whom they communicated that such accusations that said accusations are false.
- 5) Any and all further relief as may be deemed fit and proper.


Respectfully submitted,

**GARVEY, SMITH, NEHRBASS & NORTH, L.L.C.**

3838 N. Causeway Blvd., Suite 3290

Metairie, LA 70002

Phone - 504-835-2000; Fax - 504-835-2070

A handwritten signature in black ink, appearing to be "Brett A. North", written over a horizontal line. The signature is stylized and cursive.

Brett A. North, Bar Roll No. 22,503