

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

WHIPSTOCK SERVICES, INC.	§	
	§	CIVIL ACTION NO. 6:09-cv-113-LED
Plaintiff,	§	
	§	
vs.	§	PATENT CASE
	§	
SCHLUMBERGER LIMITED,	§	
SCHLUMBERGER OILFIELD	§	
SERVICES and/or SCHLUMBERGER	§	
TECHNOLOGY CORPORATION	§	
	§	
Defendants.	§	JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

COMES NOW, Plaintiff, Whipstock Services, Inc. (hereinafter referred to as “Whipstock” or “Plaintiff”), and files this, its First Amended Complaint, complaining of Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, and for cause of action respectfully shows the Court the following:

I.
PARTIES

1. Plaintiff, Whipstock, is a Texas corporation having its principal place of business in Baytown, Texas.

2. Defendant, Schlumberger Limited, is a foreign corporation, having its principal place of business in Houston, Texas. Defendant, Schlumberger Limited, may be served with process by serving its registered agent for service in Texas, National Registered Agents, Inc., 16055 Space Center Blvd., Suite 235, Houston, Texas 77062. Defendant, Schlumberger Limited, provides or participates in providing whipstock and milling services to the domestic U.S. oil and gas drilling industry, by and through one or more affiliates, subsidiaries, divisions or

other business segments or units, including Schlumberger Technology Corporation, Schlumberger Drilling & Measurements and/or one or more other affiliates, subsidiaries, divisions or other business segments or units operating under the name Schlumberger Oilfield Services.

3. Additionally or alternatively, Defendant, Schlumberger Oilfield Services, is a foreign corporation or other business entity which provides or participates in providing whipstock and milling services to the domestic U.S. oil and gas drilling industry and is doing business in Texas but has no registered agent for service in Texas. Pursuant to Tex.Civ.Prac.& Rem.Code § 17.044(a), Defendant, Schlumberger Oilfield Services, may be served with process by serving its agent, the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701. The Secretary of State, upon being served with duplicate copies of the summons and complaint in this cause, shall forward a copy of the citation and complaint to Defendant at the address of its home office, 200 Gillingham Lane, MD 200-9, Sugar Land, Texas 77478.

4. Additionally or alternatively, Defendant, Schlumberger Technology Corporation, is a foreign corporation which provides or participates in providing whipstock and milling services to the domestic U.S. oil and gas drilling industry and has its principal place of business in Sugar Land, Texas. Defendant, Schlumberger Technology Corporation, may be served with process by serving its registered agent for service in Texas, National Registered Agents, Inc., 16055 Space Center Blvd., Suite 235, Houston, Texas 77062.

II.

JURISDICTION AND VENUE

5. This is an action for patent infringement pursuant to the laws of the United States, including, 35 U.S.C. §271 and/or 28 U.S.C. §1331. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338. Venue is proper in this district pursuant to 28 U.S.C. §§

1400(b) and 1391(b) and (c) because Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, conducts business within this judicial district and/or has engaged in acts that constitute, contribute to or induce infringement of Whipstock's U.S. Patent No. 5,769,166 in this judicial district and as alleged in this Complaint.

III.
CAUSE OF ACTION

PATENT INFRINGEMENT

6. The contents of the preceding paragraphs are incorporated by reference as if fully set forth herein.

7. On June 23, 1998, U.S. Patent No. 5,769,166 ("the '166 Patent"), entitled "Wellbore Window Milling Method" was issued to John Duke (*See* copy of '166 Patent attached hereto as Exhibit "A" and incorporated herein). John Duke assigned all rights, title, and interest in and to the '166 Patent to Whipstock Services, Inc. (hereinafter "Whipstock") on May 24, 2004, such that Whipstock owns all rights, title and interest, in and to, the '166 Patent (*See* copy of assignment attached hereto as Exhibit "B" and incorporated herein).

8. The '166 Patent is valid and presumed valid under 35 U.S.C. § 282.

9. Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, has actual and/or constructive notice of Whipstock's '166 Patent.

10. Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, has been, and/or is now, infringing one or more claims of the '166 Patent by making, using, selling or offering for sale, or contributing to or inducing the making, use, sale or offer for sale by others, that which is the claimed subject matter of Whipstock's '166 Patent, without Whipstock's consent and in violation of Whipstock's rights

under the '166 Patent. Specifically, Defendant, Schlumberger Technology Corporation, Schlumberger Oilfield Services and/or Schlumberger Limited, is using, offering for sale, or contributing to or inducing the sale, use or offer for sale by others, at least one method that provides whipstock and milling services as claimed in one or more claims of Whipstock's '166 Patent.

11. Because Defendant(s), Schlumberger Technology Corporation, Schlumberger Oilfield Services and/or Schlumberger Limited, used, sold, or offered for sale, and/or contributed to or induced the use, sale or offer for sale by others a method that infringes Whipstock's '166 Patent, and/or engaged in other acts that would constitute infringement of Whipstock's '166 Patent, either literally or under the doctrine of equivalents, Whipstock's '166 Patent is thereby infringed directly, contributorily, or by inducement of others. Whipstock is therefore entitled to actual damages, which, at a minimum, constitute a reasonable royalty. Defendant(s) will continue to infringe the '166 Patent unless, and until, enjoined by order of this Court under 35 U.S.C. §283.

12. The infringement by Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, of Whipstock's '166 Patent is willful, and Whipstock is accordingly entitled to enhanced damages, pursuant to 35 U.S.C. § 284, in an amount equal to treble the actual damages.

13. This is an exceptional case such that Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, should be required to pay Whipstock's reasonable attorneys' fees in accordance with 35 U.S.C. § 285.

IV.
REQUEST FOR INJUNCTION

14. The contents of the preceding paragraphs are included by reference as if fully set forth herein.

15. Due to the infringement of Whipstock's '166 Patent by Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, Whipstock's ability to practice the patented invention by using, offering for sale and selling its method(s) for whipstock and milling services is being impaired, causing irreparable harm and injury to Whipstock's market share, business reputation, and goodwill.

16. Plaintiff respectfully asks the Court for a preliminary injunction and, after a hearing and a trial on the merits, to grant a permanent injunction to Whipstock and against Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation.

V.
REQUEST FOR A *MARKMAN* HEARING

17. The contents of the preceding paragraphs are included by reference as if fully set forth herein.

18. The harm Whipstock has suffered is renewed daily by Defendant(s)'s wrongful activities, as described herein. Consequently, a rapid resolution of this matter is strongly warranted.

19. Whipstock therefore further moves for the scheduling of a trial, including, but not limited to, a *Markman* hearing regarding interpretation of the scope of the claims of the '166 Patent, as soon as the Court's docket will permit.

VI.
DEMAND FOR JURY

20. Plaintiff hereby demands a jury trial of all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

VII.
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief from the Court and Jury:

a. That the '166 Patent be adjudged infringed by Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, under all applicable provisions of Title 35, United States Code;

b. That the Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, its/their officers, directors, employees, agents and all those acting in concert with the Defendant(s) be preliminarily enjoined and after the final hearing, permanently enjoined pursuant to 35 U.S.C. §283, from all future activities infringing the '166 Patent, and/or inducing or contributing to the infringement of the '166 Patent by others, including making, using, selling and/or offering for sale the claimed subject matter of the '166 Patent;

c. That Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, be required to account to Plaintiff for all sales, revenues, and profits derived from Defendant's infringement of the '166 Patent and to prepare and deliver to the Court a complete list of entities, including all sales, revenues, and/or profits derived from these entities, for whom Defendant has provided whipstock and milling services which infringe the '166 Patent, pursuant to all applicable provisions of Title 35, United States Code;

d. That this Court award Plaintiff actual and compensatory damages resulting from the infringing activities of Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, together with pre-judgment and post-judgment interest and costs, as provided by 35 U.S.C. § 284;

e. That this Court order that damages, so found or assessed, be enhanced or trebled as a result of willful, deliberate, wanton and reckless infringement by Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, as provided by 35 U.S.C. § 284;

f. That this Court order that, because this is an exceptional case, Plaintiff be awarded and Defendant(s), Schlumberger Limited, Schlumberger Oilfield Services and/or Schlumberger Technology Corporation, be ordered to pay the reasonable attorneys' fees incurred by Plaintiff in connection with this action, as provided for by 35 U.S.C. § 285;

g. That the Court issue an Order granting Plaintiff a *Markman* hearing on claim interpretation as soon as the Court's docket will permit.

h. That Plaintiff be awarded such other and further relief as may be just and appropriate.

RESPECTFULLY SUBMITTED,

/s/ Andy Tindel (w/permission of Lead Attorney)

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per E. Dist. Tex. Loc. Ct. R. CV-5(a)(3) on the 29th day of July, 2009. Any other counsel of record will be served via facsimile transmission and first class certified mail, return receipt requested.

/s/ Andy Tindel
ANDY TINDEL