

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

PELICAN REFINING CO., LLC,

Plaintiff

vs.

WRIGHT ASPHALT PRODUCTS CO. LLC.

Defendant

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JURY TRIAL DEMANDED

**PLAINTIFF PELICAN REFINING CO., LLC'S ORIGINAL
COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT
NON-INFRINGEMENT AND INVALIDITY**

I. THE PARTIES

1. Plaintiff Pelican Refining Co., LLC (“Pelican” or “Plaintiff”) is a Louisiana corporation, having a place of business at 500 Kirby Street, Lake Charles, Louisiana, 70601.
2. Defendant Wright Asphalt Products Co. LLC, is a Delaware corporation having its principal place of business at 11931 Wickchester Lane, Suite 101, Houston, Texas 77043-4501 (“Defendant”). Service may be perfected on Defendant by serving its registered agent for service of process, C T Corporation System, 350 N. St. Paul Street, Dallas, TX 75201.

II. JURISDICTION AND VENUE

3. This action arises under the Federal Declaratory Judgment Act, 28 U.S.C. Sec. 2201 and 2202. This Court has jurisdiction of this action under 28 U.S.C. Sec. 1331 and 1338(a) and venue of this action under 28 U.S.C. Sec. 1391 and/or 1400(b).

III. JUSTICIABLE CONTROVERSY

4. Defendant has accused Plaintiff orally and in writing received in Houston, Texas, of infringing, directly and indirectly, one or more claims in each of the following United States Letters Patent: (1) No. 5,397,818 (“The '818 Patent”); and (2) No. 5,492,561 (“The '561 Patent”).
5. Upon information and belief, The '818 Patent and The '561 Patent are each issued to Defendant.
6. Plaintiff has previously denied and does hereby further deny each and every allegation of Defendant of any infringement of either The '818 Patent and/or The '561 Patent.

7. As construed by Defendant to allege infringement, each and every claim in The '818 Patent and The '561 Patent are invalid.
8. At the time of Defendant's allegations of patent infringement, Defendant knew, or should have known, that such allegations were totally unfounded and false, and were made for the sole purpose of harassment and unfair competition.
9. There is a justiciable controversy regarding infringement and validity of The '818 Patent and the '561 Patent.
10. All conditions precedent have occurred or have been performed.

IV. CAUSES OF ACTION

COUNT 1: DECLARATION OF NONINFRINGEMENT

11. Plaintiff respectfully prays and requests a declaratory judgment that:
 - a. Plaintiff has not infringed any claim of either The '818 Patent or The '561 Patent, either directly, or by inducing or contributing to the infringement thereof by others;
 - b. by reason of prosecution of The '818 Patent and The '561 Patent before the United States Patent and Trademark Office, Defendant is estopped to claim that any claim in The '818 Patent or The '561 Patent covers any product manufactured, sold, offered for sale and/or used by Plaintiff;
 - c. the claims of The '818 Patent and The '561 Patent are specifically limited to steps and elements which no reasonable person would conclude after reasonable investigation of the facts and circumstances could be infringed by any process or composition of Plaintiff;
 - d. the acts complained of herein which constitute unfair competition have and will result in damage to Plaintiff; and
 - e. the acts complained of herein constitutes an exceptional case entitling Plaintiff to an award of damages and attorneys' fees and costs under 35 U.S.C. Sec. 285, and/or 28 U.S.C. Sec. 1927

COUNT 2: DECLARATION OF INVALIDITY

12. Each claim of the '561 and '818 patent is invalid for failure to comply with 35 U.S.C. § 101.
13. Each claim of the '561 and '818 patent is invalid for failure to comply with 35 U.S.C. §§ 102(a), 102(b), 102(e), 102(f) and/or 102(g).

14. Each claim of the '561 and '818 patent is invalid for failure to comply with 35 U.S.C. § 103(a).
15. Each claim of the '561 and '818 patent is invalid for failure to comply with 35 U.S.C. § 112.
16. A judicial declaration of invalidity of the '561 and '818 patents is necessary and appropriate to resolve this controversy.

Pelican reserves the right to amend its Complaint as discovery progresses, as allowed by the Scheduling Order to be entered in this matter, or as otherwise permitted by the Court.

V. PRAYER FOR RELIEF

WHEREFORE, Pelican prays for entry of judgment:

- A. Declaring that Pelican has not infringed any claim of the '561 and '818 patents;
- B. Declaring that each claim of the '561 and '818 patents are invalid;
- C. Declaring Wright's conduct to be exceptional within the meaning of 35 U.S.C. § 285 and awarding Pelican the attorney fees, costs, and expenses that it incurs in this action;
- D. Awarding Pelican attorney's fees, costs and expenses to the full extent allowed under Texas and federal law;
- E. Awarding Pelican all pre- and post-judgment interest allowable under Texas and federal law;
- F. Awarding Pelican such other and further relief as the Court deems just and proper.

VI. JURY DEMAND

17. Plaintiff hereby demands a trial by jury.

BEIRNE, MAYNARD & PARSONS, L.L.P.

/s/ William C. Norvell, Jr.

William C. Norvell, Jr.

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