

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA
Harrisburg Division**

AIR LIQUIDE AMERICA, L.P.,
Plaintiff,

v.

P.H. GLATFELTER COMPANY,
Defendant.

Civil Action No. 1:CV-04-0646
(Judge Conner)

**AMENDED COMPLAINT FOR THREATENED PATENT
INFRINGEMENT AND PATENT INFRINGEMENT**

Plaintiff Air Liquide America, L.P. (“Air Liquide”) for its Amended Complaint against P.H. Glatfelter Company (“Glatfelter”) alleges as follows:

NATURE OF ACTION

1. This is an action for threatened patent infringement and patent infringement arising under the United States Patent Act, 35 U.S.C. § 1 *et seq.*, and the United States Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court may declare the rights and other legal relations of the parties pursuant to 28 U.S.C. §§ 2201 and 2202, because there is an actual and justiciable controversy between the parties within this Court's jurisdiction.

4. Venue is properly based upon 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400 (b).

THE PARTIES

5. Plaintiff Air Liquide is a Delaware limited partnership having a place of business at 2700 Post Oak Boulevard, Suite 1800, Houston, Texas, 77056. Air Liquide is in the business, *inter alia*, of manufacturing and marketing industrial gases and gas related systems. In connection with this business, Air Liquide develops new technology to add value and facilitate the sale of its gases and related systems.

6. Upon information and belief, defendant Glatfelter is a Pennsylvania corporation having a place of business in this district at 96 South George Street, York, Pennsylvania, 17401. Upon information and belief, Glatfelter is in the

business, *inter alia*, of manufacturing and marketing paper products. Upon information and belief, Glatfelter owns and is currently further constructing, or has constructed, a facility for manufacturing paper products including a production line for ozone bleaching of low consistency pulp at its plant at 228 South Main Street, Spring Grove, Pennsylvania, 17632 (the “Spring Grove Facility”).

THREATENED PATENT INFRINGEMENT
AND PATENT INFRINGEMENT

7. On or about June 17, 2003, U.S. Patent No. 6,579,412 (“the ’412 patent”) was duly and legally issued to V.S. Meenakshi Sundaram, Derek Hornsey, and Sebastien Corbeil for an invention entitled “Process for Ozone Bleaching of Low Consistency Pulp.” Air Liquide is the owner by *mesne* assignments of all right, title and interest in and to the ’412 patent, including the right to sue for past infringement thereof. The ’412 patent claims a process for ozone bleaching of low consistency pulp using high shear mixing equipment. A true copy of the ’412 patent is attached hereto as Exhibit A.

8. On or about August 10, 2004, U.S. Patent No. 6,773,547 (“the ’547 patent”) was duly and legally issued to V.S. Meenakshi Sundaram, Steven Fisher, Sebastien Corbeil, and Derek Hornsey for an invention entitled “Process for the Bleaching of Low Consistency Pulp Using High Partial Pressure Ozone.” Air Liquide is the owner by *mesne* assignments of all right, title and interest in and to

the '547 patent, including the right to sue for past infringement thereof. The '547 patent claims a process for ozone bleaching of low consistency pulp using high shear mixing equipment. A true copy of the '547 patent is attached hereto as Exhibit B.

9. On or about September 21, 2004, U.S. Patent No. 6,793,771 ("the '771 patent") was duly and legally issued to V.S. Meenakshi Sundaram, Derek Hornsey, Sebastien Corbeil, and Steven Fisher for an invention entitle "Ozone Bleaching of Low Consistency Pulp." Air Liquide is the owner by *mesne* assignments of all right, title and interest in and to the '771 patent, including the right to sue for past infringement thereof. The '771 patent claims a process for ozone bleaching of low consistency pulp using high shear mixing equipment. A true copy of the '771 patent is attached hereto as Exhibit C.

10. Upon information and belief, Glatfelter is currently and imminently threatening to infringe the '412, '547, and '771 patents by constructing and arranging for the construction of an ozone bleaching production line at its Spring Grove Facility which will be, or has been, used for ozone bleaching of low consistency pulp with high shear mixing equipment in a manner that infringes the '412, '547, and '771 patents.

11. Upon information and belief, Glatfelter has already infringed the '412,

'547, and '771 patents by conducting, or arranging for the conducting of, one or more commercial, test or pilot runs with equipment for use with, or used in, its production line for ozone bleaching of low consistency pulp with high shear mixing equipment in a manner that infringes the '412, '547, and '771 patents.

12. Glatfelter's threatened infringement and infringement of the '412, '547, and '771 patents is willful. Prior to constructing and arranging for the constructing of its new ozone bleaching production line, Glatfelter engaged in extensive negotiations with Air Liquide, during which Air Liquide explained its new technology for ozone bleaching of low consistency pulp using high shear mixing equipment, conducted evaluation tests to demonstrate the value of the new technology to Glatfelter, and proposed to construct and operate an ozone generating plant at Glatfelter's facility for use in implementing such technology. Air Liquide also advised Glatfelter that the proposed technology was covered by pending patent applications, provided Glatfelter with copies of published pending applications for such technology, and on or about May 2, 2003, specifically advised Glatfelter in writing of the exact wording of the main allowed claim in its first patent application on such technology (which became claim 1 of the '412 patent), and of the fact that the issue fee had been paid and that the patent would be issuing in the very near future. Subsequently, Air Liquide provided a copy of the

patent, as issued, to Glatfelter. Therefore, Glatfelter knows that the '412 patent issued on or about June 17, 2003. Upon information and belief, shortly after learning about the '412 patent, Glatfelter became aware of the pending applications that issued as the '547 and '771 patents. Upon information and belief, Glatfelter knows, or should know, that operation of its new ozone bleaching production line will infringe, or has infringed, the '412, '547, and '771 patents. Upon information and belief, Glatfelter has no good faith basis for continuing with its threatened infringement and/or infringement of the '412, '547, and '771 patents.

13. Glatfelter's threatened infringement of the '412, '547, and '771 patents is imminent and immediate, because, upon information and belief, Glatfelter plans to place its new infringing production line for ozone bleaching of low consistency pulp using high shear mixing equipment into full commercial operation in the near future. In response to Air Liquide's verbal and written communications indicating that Air Liquide would enforce its patent rights, Glatfelter has refused to acknowledge Air Liquide's patent rights and instead has indicated that it disputes such rights and is prepared to defend its position in litigation. As a result, Glatfelter's acts indicate a refusal to change course in the face of communications from Air Liquide sufficient to create a reasonable apprehension that litigation will be forthcoming.

14. The threatened infringement and infringement of the '412, '547, and '771 patents by Glatfelter has damaged Air Liquide in an amount that cannot yet be determined.

15. Upon information and belief, Glatfelter will continue its threatened infringement and infringement of the '412, '547, and '771 patents unless such acts of threatened infringement and infringement are restrained and enjoined by this Court. Should Glatfelter be permitted to continue its acts of threatened infringement and infringement of the '412, '547, and '771 patents, Air Liquide will suffer irreparable injury for which it has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Air Liquide prays for judgment:

A. Declaring that the '412, '547, and '771 patents are valid and enforceable;

B. Declaring that Glatfelter has threatened to infringe and has infringed the '412, '547, and '771 patents, and that such threatened infringement and infringement is willful;

C. Declaring this case to be “exceptional” within the meaning of 35 U.S.C. § 285, entitling Air Liquide to an award of its reasonable attorneys fees, expenses

and costs of this action;

D. Preliminarily and permanently enjoining Glatfelter, its officers, directors, employees, partners, agents, licensees, servants, successors and assigns, and any and all persons acting in privity or concert with them, from further threatening to infringe and/or infringing the '412, '547, and '771 patents;

E. Awarding Air Liquide its damages, and ordering that such damages be trebled;

F. Awarding Air Liquide its costs and disbursements in this action;

G. Awarding Air Liquide its reasonable attorneys fees in this action; and

H. Awarding Air Liquide such other and further relief as this Court may deem just and proper.

Dated: September 29, 2004

s/ Bridget E. Montgomery

Bridget E. Montgomery

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