

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

TESCO CORPORATION (US)

Plaintiff,

v.

VARCO I/P, INC.

Defendants.

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Civil Action No. 4:05-CV-2118

JURY

**SECOND AMENDED COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT**

Plaintiff Tesco Corporation (US) (“Tesco”) complains of Defendant Varco I/P, Inc. (“Varco”).

PARTIES

1. Tesco is a Delaware corporation that has a principal place of business at 11330 Brittmoore Park Drive, Houston, Texas 77041.

2. Varco is a Delaware corporation that, upon information and belief, has its principal place of business and home office at 2835 Holmes, Houston, Texas 77051. Varco has appeared in this case.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

BACKGROUND

5. Tesco imports goods manufactured in Canada and promotes, markets, offers for sale, and sells goods in the United States and provides services in the United States in the field of oilfield

drilling, including drilling rig top drive systems, casing driving systems, Casing Drilling™ services, and casing running services.

6. Upon information and belief, U.S. Patent No. 6,443,241, entitled “Pipe running tool” (“the ’241 Patent”), issued to Varco on September 3, 2002, naming as inventors Juhasz, et al.

7. Upon information and belief, U.S. Patent No. 6,527,493, entitled “Handling of tube sections in a rig for subsoil drilling” (“the ’493 Patent”), issued to Varco on March 4, 2003, naming as inventors Kamphorst, et al.

8. Upon information and belief, U.S. Patent No. 6,637,526, entitled “Offset elevator for a pipe running tool and a method of using a pipe running tool” (“the ’526 Patent”), issued to Varco on October 28, 2003, naming as inventors Juhasz, et al.

9. Upon information and belief, U.S. Patent No. 6,938,709 entitled “Pipe Running Tool” (“the ’709 Patent”), issued to Varco on September 6, 2005, naming as inventors Juhasz, et al., and Kamphorst, et al.

10. The purported inventors named in the ’709 Patent have admitted that they are not the inventors of the invention defined by various claims of the ’709 Patent.

11. In a suit filed in the U.S. District Court for the Western District of Louisiana on April 11, 2005, Varco alleged that Tesco infringed the ’241 Patent.

12. Varco never served Tesco with a summons to appear in the suit Varco filed on April 11, 2005 until after Varco was served in this case.

13. Upon information and belief, Varco did not serve Tesco in the suit filed on April 11, 2005, because Varco subsequently learned facts showing that venue is improper in the U.S. District Court for the Western District of Louisiana and that Varco had no reasonable basis for its allegation of infringement in that action.

14. Varco has accused Tesco of infringing the ’493 Patent, the ’526 Patent, and the ’709 Patent.

15. Because of Varco’s allegations regarding the ’493 Patent, the ’526 Patent, and the ’709 Patent and based on Varco’s demonstrated propensity to sue Tesco alleging patent

infringement, Tesco has a reasonable fear and apprehension that Varco will commence an action against Tesco for infringement of the '493 Patent, the '526 Patent, and the '709 Patent.

16. Because Tesco provides products and services within the general field of the '493 Patent, the '526 Patent, and the '709 Patent and because Tesco has a reasonable fear and apprehension of being sued by Varco for infringement of such patents, an actual and justiciable controversy therefore exists between the parties.

FIRST CAUSE OF ACTION

Declaratory Judgment of Patent Invalidity

17. Tesco repeats and re-alleges each allegation of paragraphs 1 through 17 as though fully set forth herein.

18. The '493 Patent is invalid for failure to comply with the requirements of Part II of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 102, 103, and 112.

19. The '526 Patent is invalid for failure to comply with the requirements of Part II of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 102, 103, and 112.

20. The '709 Patent is invalid for failure to comply with the requirements of Part II of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 102, 103, and 112.

21. Without limiting the foregoing grounds of invalidity, to the extent that any claim of the '493 Patent, the '526 Patent, or the '709 Patent is construed to read on any of the goods or services offered by Tesco, such claim is invalid based on the admissions of the various alleged inventors named in such patents that they were not the inventors of the subject matter defined by such claim.

SECOND CAUSE OF ACTION

Declaratory Judgment of Estoppel

22. Tesco repeats and re-alleges each allegation of paragraphs 1 through 22 as though fully set forth herein.

23. The various alleged inventors named in the '493 Patent, the '526 Patent, and the '709 Patent have admitted, either in the relevant specifications or in statements made to the Patent and

Trademark Office during relevant patent application prosecutions, that they are not the inventors of certain subject matter disclosed in the '493 Patent, the '526 Patent, and the '709 Patent.

24. To the extent that any claim of the '493 Patent, the '526 Patent, or the '709 Patent claims subject matter that the various alleged inventors have admitted they did not invent, such admissions constitute misleading communications.

25. Tesco has relied on the various admissions by the various alleged inventors named in the '493 Patent, the '526 Patent, and the '709 Patent that they were not the inventors of the subject matter defined by various claims thereof.

26. Tesco would be materially harmed if Varco were allowed to assert against Tesco any claim of the '493 Patent or the '526 Patent or the '709 Patent for which there has been an admission by the various alleged inventors named therein that they were not the inventors of the subject matter defined by such claim.

27. Varco is estopped from asserting against Tesco any claim of the '493 Patent, the '526 Patent or the '709 Patent for which there is an admission by the various alleged inventors that they were not the inventors of the subject matter defined by such claim.

THIRD CAUSE OF ACTION

Declaratory Judgment of Noninfringement

28. Tesco repeats and re-alleges each allegation of paragraphs 1 through 28 as though fully set forth herein.

29. Tesco has not directly infringed, induced the infringement of, or contributed to the infringement of any of the claims of the '493 Patent, the '526 Patent, or the '709 Patent, either literally or under the doctrine of equivalents.

DEMAND FOR TRIAL BY JURY

30. Tesco respectfully demands a trial by jury for all of the issues in this action so triable.

PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff Tesco prays that the Court enter judgment:

A. Declaring that the '493 Patent is invalid;

- B. Declaring that the '526 Patent is invalid;
- C. Declaring that the '709 Patent is invalid;
- D. Declaring that there is no literal infringement of the '493 Patent, the '526 Patent, or the '709 Patent for which Tesco is or will be liable to Varco;
- E. Declaring that there is no infringement of the '493 Patent, the '526 Patent, or the '709 Patent under the doctrine of equivalents for which Tesco is or will be liable to Varco;
- F. Enjoining Defendant and all of its officers, agents, employees, representatives and counsel, and all persons in active concert or participation with any of them, directly or indirectly, from charging infringement or instituting any action for infringement of the '493 Patent, the '526 Patent, or the '709 Patent against Tesco or any of its customers and contractors;
- G. Declaring that this is an exceptional case pursuant to 35 U.S.C. § 285 and awarding Tesco its reasonable attorney's fees, expenses and costs in this action;
- H. Awarding attorney's fees, expenses and costs under 28 U.S.C. § 2202; and
- I. Granting Tesco such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ David P. Griffith

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served by telecopy this the 6th day of September 2005, on the following counsel of record:

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