

4. Michael D. Gehrig (“Gehrig”) is an individual and a resident of the State of Texas. He may be served with process at 212 N. Main, Muenster, Texas 76252. On June 5, 2012, the Court issued an order dismissing the case against Gehrig.

5. Gehrig, Inc. (“GI”) is a Texas corporation with a principal place of business located at 212 N. Main, Muenster, Texas 76252. The registered agent for service of process for Gehrig, Inc. is Michael D. Gehrig, having an address of 212 N. Main, Muenster, Texas 76252. On June 5, 2012, the Court issued an order dismissing the case against GI.

6. Brian C. Eubanks (“Eubanks”) is an individual and a resident of the State of Texas. He may be served with process at 7148 Silverbrook Lane, Frisco, Texas 75034.

7. Paragon Structural Engineering, Ltd. (“PSE”) is a Texas limited partnership with a principal place of business located at 4100 International Parkway, Suite 1200, Carrollton, Texas 75007. The registered agent for service of process of Paragon Structural Engineering, Ltd. is Brian C. Eubanks having an address of 4100 International Parkway, Suite 1200, Carrollton, Texas 75007.

Jurisdiction and Venue

8. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. §1 *et seq.* and related State law claims.

9. This Court has subject matter jurisdiction of the patent infringement claims asserted under 28 U.S.C. §§1331 and 1338(a).

10. This Court has supplemental jurisdiction over the claims which arise under the common law of the State of Texas pursuant to 28 U.S.C. § 1367(a) since the State law claims are so related to the Federal claims that they form part of the same case or controversy and derive from a common nucleus of operative fact.

11. Venue lies properly in this district and division under 28 U.S.C. §§1391(b) and (c) and §1400(b) because all Defendants are deemed to reside in this State and district and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

Factual Allegations Common to All Counts

12. BCI was founded in 1996 to provide expert services in the field of geology by Dr. John Bryant. BCI uses electrical resistivity techniques to conduct subsurface geological surveys for the construction and insurance industries. In the course of its business, BCI uses certain novel apparatus and methods which have been patented. BCI has also developed and uses certain technical processes and formulas, methods of doing business, customer lists and pricing schedules that are confidential and trade secret information of BCI (“Trade Secret Information”).

13. On September 25, 2001, United States Patent No. 6,295,512 B1 entitled “Subsurface Mapping Apparatus and Method” (the “’512 Patent”) was duly and legally issued to John Bryant. A true and correct copy of the ‘512 Patent is attached as Exhibit A and incorporated by reference. The ‘512 Patent is assigned to BCI. BCI is the sole owner of the ‘512 Patent.

14. On October 12, 2004, United States Patent No. 6,804,625 B1 entitled “Subsurface Modeling Method” (the “’625 Patent”) was duly and legally issued to John Bryant. A true and correct copy of the ‘625 Patent is attached as Exhibit B and incorporated by reference. The ‘625 Patent was assigned to BCI. BCI is the sole owner of the ‘625 Patent.

15. The patents-in-suit describe, generally, novel methods and devices to carry out geotechnical analyses of geological features underground through use of electrical resistivity.

16. Dr. Bryant conceived the inventions of the patents-in-suit as an extension of his graduate studies at Texas A&M University. After graduation, Dr. Bryant formed BCI, which has

practiced the inventions since its inception. The inventions of the patents-in-suit are of great value to BCI.

17. BCI has protected its Trade Secret Information from public disclosure by, among other things, requiring its employees to execute agreements to preserve the confidential nature of the Trade Secret Information, and limiting access to the Trade Secret Information to only those employees who need access to it.

18. In or around June 1999, Defendant Sweeney was employed by BCI as a staff engineer to perform geotechnical and structural engineering duties. In order to perform his duties, Sweeney required and received training in and access to the Trade Secret Information and use of the patented inventions.

19. On June 1, 1999, Sweeney executed a Confidentiality Agreement (“Confidentiality Agreement”), attached as Exhibit C, in which he agreed to protect, not disclose, and hold in confidence the Trade Secret Information of BCI.

20. On March 16, 2001, Sweeney executed a Confidentiality and Non-Disclosure Agreement (“Non-Disclosure Agreement”), attached as Exhibit D. In the Non-Disclosure Agreement, Sweeney agreed that he would not disclose or use the Trade Secret Information, either while an employee or after he ceased to be an employee of BCI (collectively, the “Sweeney Agreements”).

21. Sweeney became Vice-President of BCI in 2008. As an officer and key employee of BCI, Sweeney undertook a fiduciary duty to BCI to protect the Trade Secret Information. As a trusted employee, Sweeney was allowed personal contact with customers of BCI regarding the work being performed by BCI.

22. In or around March 2001, Defendant Gehrig was employed as a staff engineer by BCI. In order to perform his duties, Gehrig required and received training in and access to the Trade Secret Information and use of the patented inventions. He resigned in August 2008.

23. In or around February 2009, Defendant Eubanks was employed by BCI as a staff engineer. During his employment Eubanks received training and access to the Trade Secret Information and the patented inventions.

24. On February 2, 2009, Eubanks entered into a Confidentiality and Non-Disclosure Agreement representing that he would he would not disclose or use the Trade Secret Information, either while an employee or after he ceased to be an employee of BCI (“Eubanks Agreement”). A copy of the Eubanks Agreement is attached as Exhibit E.

25. In June of 2010, Eubanks left the employment of BCI.

26. In July of 2010, upon information and belief, Sweeney formed a business entity, SES, to compete with BCI while he was still employed by BCI. On July 21, 2010, SES was registered with the Texas Secretary of State. Sweeney is listed as a manager of SES.

27. In the fall of 2010, Sweeney left the employment of BCI.

28. Upon information and belief, in the winter and spring of 2010, Defendants conspired to steal and use the Trade Secret Information to contact customers of BCI in order to compete directly and unfairly with BCI. Further, Defendants conspired to practice the methods and apparatus claimed in the patents-in-suit.

29. Upon information and belief, in the fall of 2010, one or more of Defendants, in concert and by agreement, contacted customers of BCI, and offered to and rendered services using the Trade Secret Information and the apparatus and methods claimed in the patents-in-suit.

30. On September 22, 2010, BCI contacted Sweeney and Eubanks, providing written notice of the breach of the Sweeney Agreements and the Eubanks Agreement, breach of fiduciary duty to BCI, theft of the Trade Secret Information, and infringement of the patents-in-suit. At that time, BCI demanded that Sweeney and Eubanks immediately cease using and disclosing the Trade Secret Information and infringing the patents-in-suit.

31. Defendants have failed and refused to cease their activities and have continued to use and disclose the Trade Secret Information in order to unfairly compete with BCI and infringe the patents-in-suit.

Count I

Infringement of the '512 Patent

(35 U.S.C. § 271 and 281)

32. The allegations of Paragraphs 1-31 are incorporated by reference.

33. This cause of action arises under the patent laws of the United States, 35 U.S.C. §§271 and 281.

34. On information and belief, Gehrig and GI, without the consent or authorization of BCI, have directly infringed the '512 Patent by making, using, selling, or offering to sell, within the United States, apparatus and methods claimed by the '512 patent, including but not limited to geotechnical analysis of electrical resistivity measurements.

35. On information and belief, Gehrig, GI, Sweeney and SES, without the consent or authorization of BCI, have indirectly infringed the '512 Patent, through contributory infringement, by selling and offering to sell, within the United States, a component or step of the patented invention, including but not limited to geotechnical analysis services involving electrical resistivity, constituting a material part of the invention of the '512 Patent, knowing the

same to be especially made or especially adapted for use in infringement of the '512 Patent, and not a staple article or commodity of commerce suitable for non-infringing use.

36. On information and belief, Defendants Sweeney, SES, Eubanks and PSE, without the consent or authorization of BCI, have indirectly infringed the '512 Patent, by actively inducing others, including but not limited to, Gehrig and GI, to directly infringe the '512 Patent.

37. On information and belief, Defendants Sweeney, SES, Eubanks and PSE induced the infringing activities of others, including but not limited to, Gehrig and GI, with knowledge that the activities infringed the patents-in-suit.

38. On information and belief, Defendants have had actual notice of the '512 Patent since long before the Complaint was filed. Therefore, Defendants' infringing conduct is willful and intentional. The willful and intentional nature of Defendants' conduct makes this an exceptional case.

39. Defendants' infringing conduct is the actual and proximate cause of damage and irreparable harm to BCI, which will continue unless enjoined by this Court.

Count II

Infringement of the '625 Patent

(35 .S.C. § 271 and 281)

40. The allegations of Paragraphs 1-39 are incorporated by reference.

41. This cause of action arises under the patent laws of the United States, 35 U.S.C. §§271 and 281.

42. On information and belief, Gehrig and GI, without the consent or authorization of BCI, have directly infringed the '625 Patent by making, using, selling, or offering to sell, within the United States, apparatus and methods claimed by the '625 Patent, including but not limited to geotechnical of electrical resistivity measurements.

43. On information and belief, Gehrig, GI, Sweeney and SES, without the consent or authorization of BCI, have indirectly infringed the '625 Patent, through contributory infringement, by selling and offering to sell, within the United States, a component or step of the patented invention, including but not limited to geotechnical services involving electrical resistivity, constituting a material part of the invention of the '625 Patent, knowing the same to be especially made or especially adapted for use in infringement of the '625 Patent, and not a staple article or commodity of commerce suitable for non-infringing use.

44. On information and belief, Defendants, Sweeney, SES, Eubanks and PSE, without the consent or authorization of BCI, have indirectly infringed the '625 Patent, by actively inducing others, including but not limited to, Gehrig and GI, to directly infringe the '625 Patent.

45. On information and belief, Defendants Sweeney, SES, Eubanks and PSE induced the infringing activities of others, including but not limited to, Gehrig and GI, with knowledge that the activities infringed the patents-in-suit.

46. On information and belief, Defendants have had actual notice of the '625 Patent since long before the Complaint was filed. Therefore, Defendants' infringing conduct is willful and intentional. The willful and intentional nature of Defendants' conduct makes this an exceptional case.

47. Defendants' infringing conduct is the actual and proximate cause of damage and irreparable harm to BCI, which will continue unless enjoined by this Court.

Count III

Breach of Contract

(Sweeney)

48. The allegations of Paragraphs 1-47 are incorporated by reference.

49. Sweeney entered a Confidentiality Agreement with BCI on June 1, 1999 and a Non-Disclosure Agreement on March 16, 2001, Exhibits C and D, respectively.

50. In the Sweeney Agreements, Sweeney agreed not to use or disclose the Trade Secret Information of BCI except as required in the regular course of his employment with BCI.

51. On information and belief, during and after employment with BCI, Sweeney used the Trade Secret Information in violation of his contractual duties to BCI. Sweeney, both individually and as an agent of SES, contacted customers of BCI and performed and offered to perform services that required use of the Trade Secret Information for his own gain.

52. BCI satisfied its contractual obligations under the Sweeney Agreements.

53. Sweeney's actions have caused and will continue to cause damage and irreparable harm to BCI, for which BCI has no adequate remedy at law.

Count IV

Breach of Contract

(Eubanks)

54. The allegations of Paragraphs 1-53 are incorporated by reference.

55. Eubanks entered a Non-Disclosure Agreement on February 2, 2009, Exhibit E.

56. In the Eubanks Agreement, Eubanks agreed not to use or disclose the Trade Secret Information of BCI after employment with BCI.

57. On information and belief, Eubanks used and disclosed the Trade Secret Information in violation of his contractual duties to BCI. Eubanks, both individually and as the agent of PSE, contacted customers of BCI and performed and offered to perform services that required use and disclosure of the Trade Secret Information for his own gain.

58. BCI satisfied its contractual obligations under the Eubanks Agreement.

59. Eubanks' actions have caused and will continue to cause damage and irreparable harm to BCI, for which BCI has no adequate remedy at law.

Count V

Theft of Trade Secrets

(Sweeney, SES, Eubanks and PSE)

60. The allegations of Paragraphs 1-59 are incorporated by reference.

61. For over fourteen (14) years and since long prior to the actions of Sweeney, SES, Eubanks, and PSE, BCI has expended substantial time, effort and money in developing the Trade Secret Information.

62. The Trade Secret Information of BCI includes, among other things, formulas, patterns, devices, or compilations of information used in BCI's business that give BCI a competitive advantage over those who do not know or use it. Hence, the Trade Secret Information constitutes valuable property owned by BCI.

63. Since the development of the Trade Secret Information, BCI has taken reasonable steps to protect the secret nature of the Trade Secret Information including, but not limited to, execution by employees of non-disclosure and non-compete agreements, such as those executed by Sweeney and Eubanks.

64. During the course of their employment with BCI, Defendants Sweeney, and Eubanks were provided access to the Trade Secret Information.

65. Each of Defendants Sweeney, Eubanks, SES and PSE has acquired the Trade Secret Information with notice that its disclosure was improper. Further, Defendants Eubanks and Sweeney used and disclosed the Trade Secret Information in violation of confidential and contractual relationships with BCI. Further, Defendants Eubanks, Sweeney, SES and PSE used and disclosed the Trade Secret Information after acquiring it through improper means.

66. On information and belief, Defendants Sweeney, Eubanks, SES and PSE have used and disclosed the Trade Secret Information by contacting customers of BCI, and by performing services incorporating the Trade Secret Information of BCI in competition with BCI.

67. The actions of Defendants Sweeney, Eubanks, SES and PSE have caused and will continue to cause damage and irreparable harm to BCI, for which BCI has no adequate remedy at law.

Count VI

Breach of Fiduciary Duty

(Sweeney)

68. The allegations of Paragraphs 1-67 are incorporated by reference.

69. As an officer of BCI, Sweeney had a duty to act for BCI's benefit in matters connected with his employment and hence was in a fiduciary relationship with BCI.

70. Sweeney breached his fiduciary duty to BCI when he used and disclosed the Trade Secret Information in competition with BCI, during and after his employment with BCI, for his own benefit.

71. Sweeney's actions have caused and will continue to cause damage and irreparable harm to BCI, for which BCI has no adequate remedy at law.

Count VII

Conspiracy

(Sweeney, SES, Eubanks and PSE)

72. The allegations of Paragraphs 1-71 are incorporated by reference.

73. On information and belief, Defendants Sweeney, Eubanks, SES and PSE, as a combination of two or more persons, set out to accomplish an unlawful purpose and/or a lawful

purpose through unlawful means, namely, the theft, use and disclosure of the Trade Secret Information of BCI, and/or the infringement of the patents-in-suit.

74. Defendants Sweeney, Eubanks, SES and PSE had a meeting of the minds on a course of action, namely, to steal, use and disclose the Trade Secret Information in competition with BCI and/or to infringe the patents-in-suit.

75. Each Defendant Sweeney, Eubanks, SES and PSE committed an unlawful, overt act to further the theft and use of the Trade Secret Information in competition with BCI and/or infringement of the patents-in-suit.

76. Defendants Sweeney's, Eubanks', SES' and PSE's actions have caused and will continue to cause damage and irreparable harm to BCI, for which BCI has no adequate remedy at law.

Count VIII

Fraud

(Eubanks)

77. The allegations of Paragraphs 1-76 are incorporated by reference.

78. On or about February 2, 2009, Eubanks represented to BCI that he would maintain the confidentiality of the Trade Secret Information, by, among other actions, signing the Non-Disclosure Agreement, attached as Exhibit E.

79. The representation by Eubanks was material to BCI. BCI would not have provided Eubanks access to the Trade Secret Information without such representation.

80. Upon information and belief, Eubanks knew when he signed the Non-Disclosure Agreement that he intended to use and disclose the Trade Secret Information, and hence knew that the representation in the Non-Disclosure Agreement was false.

81. Upon information and belief, Eubanks made the representation with the intent that BCI rely on it and provide him access to the Trade Secret Information.

82. BCI relied on the representation of Eubanks and provided Eubanks access to the Trade Secret Information. The Trade Secret Information includes but is not limited to, certain technical processes and formulas, methods of doing business, customer lists and pricing schedules of BCI.

83. Eubanks' actions have caused and will continue to cause damage and irreparable harm to BCI, for which BCI has no adequate remedy at law.

Count IX

Unfair Competition

(Sweeney, SES, Eubanks, and PSE)

84. The allegations of Paragraphs 1-83 are incorporated by reference.

85. BCI has spent extensive time, labor, skill, and money in developing the Trade Secret Information and the inventions of the patents-in-suit.

86. Defendants Sweeney, Eubanks, SES and PSE are unfairly competing with the BCI by the use of the Trade Secret Information and inventions of the patents-in-suit in competition with BCI.

87. Defendants Sweeney, Eubanks, SES and PSE have gained a special advantage in the competition against BCI through the use of the Trade Secret Information and the inventions of the patents-in-suit.

88. Defendants Sweeney, Eubanks, SES and PSE are not burdened with the expense incurred by BCI in the development of the Trade Secret Information and inventions of the patents-in-suit.

89. Defendants Sweeney's, Eubanks', SES' and PSE's actions have caused and will continue to cause damage and irreparable harm to BCI, for which BCI has no adequate remedy at law.

Demand for Jury Trial

90. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, BCI demands a jury trial.

Prayer

WHEREFORE, BCI respectfully requests that:

- A. Judgment be entered against Defendants Sweeney, Eubanks, SES and PSE for willful infringement of United States Patent Nos. 6,295,512 and 6,804,625;
- B. Pursuant to 35 U.S.C § 283, a preliminary and permanent injunction be entered restraining Defendant Sweeney, Eubanks, SES and PSE, their respective officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from infringing, contributing to infringement of and inducing others to infringe United States Patent Nos. 6,295,512 and 6,804,625;
- C. Pursuant to 35 U.S.C. §284, judgment be entered against Defendants Sweeney, Eubanks, SES and PSE for damages, together with interest and costs, to compensate BCI for infringement of United States Patent Nos. 6,295,512 and 6,804,625;
- D. Pursuant to 35 U.S.C. §284, any judgment for damages be trebled due to the knowing, willful, intentional, and egregious nature of Defendants Sweeney's, Eubanks', SES' and PSE's conduct;
- E. Judgment be entered against Defendants Sweeney, Eubanks, SES and PSE, jointly and severally, for all actual damages as provided by State law;

F. Judgment be entered against Defendants Sweeney, Eubanks, SES and PSE for the profits of each Defendant as provided by State law;

G. Temporary and permanent injunctions be entered restraining Defendants Sweeney, Eubanks, SES and PSE, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them from:

- i. contacting any customer of BCI included on the BCI customer list; and,
- ii. using or disclosing any Trade Secret Information of BCI;

H. Pursuant to 35 U.S.C. §285 and as provided by State law, judgment be entered against Defendants Sweeney, Eubanks, SES and PSE for the reasonable attorneys' fees and costs of BCI;

I. Judgment be entered against Defendants Sweeney, Eubanks, SES and PSE, jointly and severally, for punitive damages in the amount of one million five hundred thousand dollars (\$1,500,000);

J. Judgment be entered against Defendants Sweeney, Eubanks, SES and PSE, jointly and severally, for prejudgment and post-judgment interest; and

K. The Court award such other and further relief as it deems just and proper.

Dated: June 14, 2012.

Respectfully submitted,

s/ George R. Schultz

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

This is to certify that all known counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing First Amended Complaint via the Court's CM/ECF system according to E. Dist. Tex. Loc. Ct. R. CV-5(a)(3) on this the 14th day of June, 2012. Any other counsel will be served by First Class Mail, postage prepaid.

s/ George R. Schultz
George R. Schultz