

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

DOWNHOLE PRODUCTS LTD.,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
v.	)	4:11-cv-2714
	)	
	)	
TOP-CO LP and	)	JURY TRIAL DEMANDED
TOP-CO CEMENTING PRODUCTS, INC.,	)	
	)	
Defendants.	)	

SECOND AMENDED COMPLAINT

Plaintiff DOWNHOLE PRODUCTS LTD. (“Downhole” or “Plaintiff”) states the following for its Second Amended Complaint against Defendants TOP-CO LP and TOP-CO CEMENTING PRODUCTS, INC. (collectively, “Top-Co” or “Defendants”):

NATURE AND BASIS OF ACTION

1. This is an action in which Downhole asserts against Top-Co claims for patent infringement arising under the United States Patent Act, 35 U.S.C. § 1, et seq. Downhole seeks monetary damages and permanent injunctive relief against Top-Co.

PARTIES

2. Downhole is a Texas corporation, having its principal place of business at 4140 World Houston Parkway, Suite 160, Houston, Texas 77032.

3. On information and belief, Top-Co LP is a Canadian corporation, having its principal place of business at 7720 - 17 Street, Edmonton, AB T6P 1S7.

4. On information and belief, Top-Co LP has a place of business at 3443 North Sam Houston Parkway West, Suite 200 Houston, TX 77086.

5. On information and belief, Top-Co Cementing Products, Inc. is a Texas corporation, having its principal place of business at 1810 Banks Drive, Weatherford, Texas 76087.

#### JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338.

7. Venue in this Court is proper under 28 U.S.C. §§ 1391 and 1400.

8. On information and belief, Defendants have transacted business within this judicial district, have committed tortious acts within this judicial district, have committed tortious injury to Downhole in this judicial district, regularly do or solicit business in this judicial district, derive revenue from goods used or consumed or services rendered in this judicial district, engage in other persistent courses of conduct in this judicial district, and are subject to the jurisdiction of this Court. Further, on information and belief, Defendants have interactive websites that are used in and/or accessible within this judicial district.

#### FACTUAL BACKGROUND

##### U.S. Patent No. 6,435,275

9. On August 20, 2002, the United States Patent and Trademark Office (“USPTO”) issued United States Patent No. 6,435,275 (“the ’275 Patent”), entitled “Casing Centraliser” to inventors Ian Alastair Kirk, William Barron, and Alistair Bertram Clark. A true and correct copy of the ’275 Patent is attached hereto as Exhibit A.

10. The ’275 Patent is currently in full force and effect.

11. All right, title, and interest in and to the '275 Patent have been assigned to Downhole Products Ltd., which is the sole owner of the '275 Patent. A true and correct copy of the record of assignment at the USPTO is attached hereto as Exhibit B.

12. The '275 Patent includes eighteen claims generally directed to a casing centralizer comprising a plastic material.

13. In accordance with 35 U.S.C. § 282, the '275 Patent, and each and every claim thereof, is presumed to be valid.

U.S. Patent No. 5,797,455

14. On August 25, 1998, the USPTO issued United States Patent No. 5,797,455 (“the '455 Patent”), entitled “Casing Centraliser” to inventors William Barron, Ian Alastair Kirk, and Alistair Bertram Clark. A true and correct copy of the '455 Patent is attached hereto as Exhibit C.

15. The '455 Patent is currently in full force and effect.

16. All right, title, and interest in and to the '455 Patent have been assigned to Downhole Products Ltd. A true and correct copy of the record of assignment at the USPTO is attached hereto as Exhibit D.

17. The '455 Patent includes eight claims generally directed to a casing centralizer comprising a zinc material.

18. The '275 Patent and the '455 Patent are referred to collectively herein as the “Patents-in-Suit.”

DEFENDANTS' CONDUCT

19. On information and belief, Defendants make, use, offer to sell, and/or sell within the United States and this judicial district products, including but not limited to centralizers, which include and/or practice one or more of the inventions claimed in the Patents-in-Suit.

20. On information and belief, Defendants' infringing products include at least the Type 346 Top Reach Glider centralizer, Type 342 Straight Blade Solid Body centralizer, and Type 342 Spiral Blade Solid Body centralizer.

COUNT ONE: DEFENDANTS' INFRINGEMENT  
OF THE '275 PATENT UNDER 35 U.S.C. § 271

21. Downhole repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

22. On information and belief, Defendants have infringed and continue to infringe, have actively and knowingly induced and continue to actively and knowingly induce infringement of, and/or have contributed to and continue to contribute to acts of infringement of one or more claims of the '275 Patent, all in violation of 35 U.S.C. §§ 271(a), (b), and/or (c).

23. Defendants' acts of making, using, offering for sale, and selling products that use, include, and/or practice one or more of the inventions claimed in the '275 Patent have been without the permission, consent, authorization, or license of Downhole.

24. As a result of Defendants' infringing acts, Downhole has been and continues to be damaged in its business and property, and thus Downhole is entitled to recover damages for Defendants' infringing acts, which in no event can be less than a reasonable royalty.

25. On information and belief, Defendants' infringing acts are, have been, and continue to be willful, with knowledge of the '275 Patent, and in willful, wanton, and deliberate disregard thereof.

26. As a result of Defendants' infringing acts, Downhole has been and continues to be irreparably injured unless and until Defendants' continuing acts are restrained and enjoined by this Court, and Downhole has no adequate remedy at law.

27. Downhole is entitled to injunctive relief enjoining and restraining Defendants, their officers, agents, servants, and employees, acting jointly or severally, and all persons acting in concert with them, and each of them, from further infringement, inducement of infringement, and/or contributory infringement of the '275 Patent.

**COUNT TWO: DEFENDANTS' INFRINGEMENT  
OF THE '455 PATENT UNDER 35 U.S.C. § 271**

28. Downhole repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

29. On information and belief, Defendants have infringed and continue to infringe, have actively and knowingly induced and continue to actively and knowingly induce infringement of, and/or have contributed to and continue to contribute to acts of infringement of one or more claims of the '455 Patent, all in violation of 35 U.S.C. §§ 271(a), (b), and/or (c).

30. Defendants' acts of making, using, offering for sale, and selling products that use, include, and/or practice one or more of the inventions claimed in the '455 Patent have been without the permission, consent, authorization, or license of Downhole.

31. As a result of Defendants' infringing acts, Downhole has been and continues to be damaged in its business and property, and thus Downhole is entitled to recover damages for Defendants' infringing acts, which in no event can be less than a reasonable royalty.

32. On information and belief, Defendants' infringing acts are, have been, and continue to be willful, with knowledge of the '455 Patent, and in willful, wanton, and deliberate disregard thereof.

33. As a result of Defendants' infringing acts, Downhole has been and continues to be irreparably injured unless and until Defendants' continuing acts are restrained and enjoined by this Court, and Downhole has no adequate remedy at law.

34. Downhole is entitled to injunctive relief enjoining and restraining Defendants, their officers, agents, servants, and employees, acting jointly or severally, and all persons acting in concert with them, and each of them, from further infringement, inducement of infringement, and/or contributory infringement of the '455 Patent.

PRAYERS FOR RELIEF

WHEREFORE, Downhole respectfully prays for entry of a judgment as follows:

A. Finding that Defendants have infringed, induced infringement of, and/or contributorily infringed one or more claims of the Patents-in-Suit, all in violation of 35 U.S.C. § 271;

B. Permanently enjoining Defendants, their officers, agents, servants, representatives, and employees, and all persons acting in concert with them, and each of them, from infringing, inducing the infringement of, and contributorily infringing the Patents-in-Suit;

C. Awarding Downhole damages for Defendants' infringement, inducement of infringement, and/or contributory infringement of the Patents-in-Suit;

D. Finding that Defendants' infringement, inducement of infringement, and/or contributory infringement of the Patents-in-Suit has been knowing and willful;

E. Increasing all damages awarded to Downhole in this case to three times the damages amount found by the jury or assessed by the Court pursuant to 35 U.S.C. § 284;

F. Declaring this case to be an exceptional case and awarding Downhole its attorneys' fees pursuant to 35 U.S.C. § 285;

G. Awarding Downhole costs and prejudgment interest pursuant to 35 U.S.C. § 284;  
and

H. Granting Downhole such other and further relief as the Court deems just, proper,  
and equitable.

DEMAND FOR JURY TRIAL

DOWNHOLE hereby demands a trial by jury on all issues in this action that are so triable  
as a matter of right and law.

Respectfully submitted, this 4th day of May, 2012.

s/ Suzanne Werner  
C. Suzanne Werner  
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