

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

**THE MODERN GROUP LTD., and
DRAGON PRODUCTS, LTD.**

Plaintiffs,

V.

Civil Action No. 1:12-CV-00043

PINNACLE COMPANIES, INC. (a/k/a and doing business as PINNACLE MATERIALS, INC., PINNACLE MATERIALS COMPANY, and PINNACLE FABRICATION COMPANY), PINNACLE MATERIALS, LLC., and MATTHEW W. HANNA.

Defendants.

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, The Modern Group, Ltd. (“Modern Group”) and Dragon Products, Ltd. (“Dragon Products”) (collectively “Plaintiffs”) for their First Amended Complaint against Defendants Pinnacle Companies, Inc., also known as and doing business as Pinnacle Materials, Inc., Pinnacle Materials Company, and Pinnacle Fabrication Company, (collectively “Pinnacle Companies”), Pinnacle Materials, LLC (“Pinnacle Materials”) and Matthew W. Hanna (“Hanna”) (collectively “Defendants”) allege as follows:

THE PARTIES

1. Modern Group is a Corporation duly organized and existing under the laws of the State of Texas, having a principal place of business in Beaumont, Texas at 1655 Louisiana St., Beaumont, TX. 77701.

2. Dragon Products is a Corporation duly organized and existing under the laws of the State of Texas, having a principal place of business in Beaumont, Texas at 1655 Louisiana St., Beaumont, TX. 77701.

3. On information and belief, Pinnacle Companies is a Corporation duly organized and existing under the laws of the State of Texas, having a principal place of business at 903 East Interstate 30, Sulphur Springs, TX. 75482. Pinnacle Companies has an agent for service of process as: Matthew W. Hanna, 903 East Interstate 30, Sulphur Springs, TX. 75482.

4. On information and belief, Pinnacle Materials is a Limited Liability Company duly organized and existing under the laws of the State of Texas, having a principal place of business at 903 East Interstate 30, Sulphur Springs, TX. 75482. Pinnacle Materials has an agent for service of process as: Matthew W. Hanna, 903 East Interstate 30, Sulphur Springs, TX. 75482.

5. On information and belief, Matthew W. Hanna is the CEO of Pinnacle Companies and Pinnacle Materials having a residence in this judicial district.

JURISDICTION

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 et seq. The Court has personal jurisdiction over Defendants in that each of them has committed acts within Texas and this judicial district giving rise to this action and each of Defendants has established minimum contacts with the forum such that the exercise of jurisdiction over each of Defendants would not offend traditional notions of fair play and substantial justice.

VENUE

7. Each of Defendants has committed acts within this judicial district giving rise to this action and does business in this district, including making, testing, offering for sale, making sales and providing service and support to their respective customers in this district. Acts of infringement have occurred in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) (c) and 1400(b).

INFRINGEMENT OF U.S. PATENT NO. 7,762,588

8. On July 27, 2010, United States Patent No. 7,762,588 (“the ‘588 Patent”) was duly and legally issued for an invention entitled “Fluid Storage Tank Trailer.” A copy of the ‘588 Patent is attached as Exhibit A. Gary R. Markham (“Markham”) is the sole inventor of the ‘588 Patent. The ‘588 Patent relates to a fluid storage tank trailer having a forward slopping ladder. The tank trailer is used for providing and storing industrial fluid storage, such as hydraulic fracturing fluids, at temporary locations, such as drilling sites for oil and gas wells.

9. Dragon Products manufactures and sells industrial equipment. The ‘588 Patent was assigned to Modern Group, and Modern Group continues to hold all rights and interests in the ‘588 Patent. Dragon Products is authorized to build and sell tank trailers under the scope of the ‘588 Patent.

10. Defendants manufacture and sell hydraulic fracturing trailers having a forward sloping ladder under the trade name “Frac Tank.” Such tanks infringe at least claims 1-4, 6-9, 11-12, and 14 of the ‘588 Patent as reflected in the Plaintiffs’ Infringement Contentions and claim chart attached hereto as Exhibit B.

11. On August 22, 2011, Modern Group advised Hanna, Pinnacle Materials, Inc. and Pinnacle Fabrication Company that they are infringing claims of the ‘588 Patent (See Exhibit C). Upon information and belief, Hanna, Pinnacle Companies, and Pinnacle Materials knew of the

‘588 Patent in April of 2011. Notwithstanding this notice of the ‘588 Patent, Defendants continued to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 et seq., constituting direct infringement, contributory infringement, and/or induced infringement of one or more claims of the ‘588 Patent, and have continued such infringing activities to date. Each of Defendants’ acts of infringement has caused damage to Plaintiffs, and Plaintiffs are entitled to recover from each Defendant the damages sustained by Plaintiffs as a result of their individual wrongful acts in an amount subject to proof at trial.

12. Plaintiffs recently became aware that Hanna, on behalf of and while controlling and directing Pinnacle Companies and Pinnacle Materials, was responsible for obtaining design drawings, specifications, and information about Plaintiffs’ tank trailers for the purpose of copying Plaintiffs’ patented technology. Hanna, on behalf of and while controlling and directing Pinnacle Companies and Pinnacle Materials, Pinnacle Companies and Pinnacle Materials obtained these design drawings, specifications, and information from Great Plains Oilfield Rental (“Great Plains”), which is a common customer of both Plaintiffs and Defendants. Hanna, on behalf of and while controlling and directing Pinnacle Companies and Pinnacle Materials, Pinnacle Companies and Pinnacle Materials then commissioned a third party, Dynamic Engineering, Inc., to create design drawings and specifications matching Plaintiffs’ patented tank trailers.

13. After receiving the design drawings and specifications from Dynamic Engineering, Hanna, on behalf of and while controlling and directing Pinnacle Companies and Pinnacle Materials, Pinnacle Companies and Pinnacle Materials obtained final approval for the infringing design from Great Plains. Hanna, on behalf of and while controlling and directing Pinnacle Companies and Pinnacle Materials, Pinnacle Companies and Pinnacle Materials

ensured that any changes or revisions to the infringing tank trailer design that were requested by Great Plains were handled by Dynamic Engineering and/or the employees of Pinnacle Companies or Pinnacle Materials.

14. After receiving final approval from Great Plains, Pinnacle Companies and Pinnacle Materials, under Hanna's control and direction, fabricated the infringing tank trailers.

15. Pinnacle Companies and Pinnacle Materials, under Hanna's control and direction then sold and delivered infringing tank trailers to Great Plains and continue to do so to other customers. As CEO of Pinnacle Companies and Pinnacle Materials, Hanna was responsible for and controlled every step of their infringement of the '588 Patent. Thus, Hanna had knowledge of the '588 Patent and a specific intent to infringe the '588 Patent, and therefore, is liable for inducing infringement of the '588 Patent.

16. Upon information and belief, Hanna's, Pinnacle Companies' and Pinnacle Materials' infringements of the '588 Patent are willful and deliberate, entitling Plaintiffs to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

17. Pursuant to Federal Rule of Civil Procedure 38, Modern Group and Dragon Products demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and seeks relief against each of the Defendants as follows:

- a) For judgment that the '588 Patent has been infringed by Hanna, Pinnacle Companies and Pinnacle Materials;

- b) For an accounting of all damages sustained by Plaintiffs as the result of the acts of infringement by Hanna, Pinnacle Companies, and Pinnacle Materials;
- c) For preliminary and permanent injunctions enjoining the aforesaid acts of infringement by Hanna, and by Pinnacle Companies and Pinnacle Materials, and their officers, agents, servants, employees, subsidiaries and attorneys, and those persons acting in concert with them, including related individuals and entities, customers, representatives, dealers and distributors;
- d) For actual damages together with prejudgment and postjudgment interest;
- e) For enhanced damages pursuant to 35 U.S.C. § 284;
- f) For an award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;
- g) For all costs of suit; and
- h) For such other and further relief as the Court may deem just and proper.

Dated: November 2, 2012.

OF COUNSEL:

Fulbright & Jaworski L.L.P.
Marc L. Delflache
State Bar No. 05725650
Dustin M. Mauck
State Bar No. 24046373
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
Telephone: (214) 855-8000
Facsimile: (214) 855-8200
Email: mdelflache@fulbright.com
Email: dmauck@fulbright.com

Respectfully submitted,

By: /s/ Dustin M. Mauck
J. Hoke Peacock II
State Bar No. 15678000
Email: jhp@obt.com
John S. Bullard
State Bar No. 24040601
Email: jb@obt.com
ORGAIN, BELL & TUCKER, L.L.P.
P. O. Box 1751
Beaumont, Texas 77704-1751
(409) 838-6412 - Telephone
(409) 838-6959 – Telecopier

**ATTORNEYS-IN-CHARGE FOR
PLAINTIFFS THE MODERN GROUP, LTD.
AND DRAGON PRODUCTS, LTD.**

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 2nd day of November, 2012. Any other counsel of record will be served by first class mail.

/s/ Dustin M. Mauck

Dustin M. Mauck