

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

NABORS DRILLING TECHNOLOGIES
USA, INC.

Plaintiff,

vs.

C&M OILFIELD RENTALS, LLC
D/B/A C-MORE ENERGY SERVICES,
Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Nabors Drilling Technologies USA, Inc. (“Nabors”), files this Complaint for Declaratory Judgment against Defendant C&M Oilfield Rentals, LLC d/b/a C-MOR Energy Services (“C&M”), and alleges the following:

NATURE OF THE ACTION

1. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States of America, 35 U.S.C. § 101, *et seq.*

THE PARTIES

2. Plaintiff Nabors is a Delaware corporation having a principal place of business at 515 W. Greens Road, Houston, Texas 77067. As part of its business, Nabors is involved in oil and gas well drilling services with a fleet of next generation drilling rigs.

3. Defendant C&M is a Wyoming limited liability company with its principal place of business located at 3429 Cottonwood Avenue, Cody, Wyoming 82414. C&M may be served through its registered agent Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, Texas, 78701.

JURISDICTION AND VENUE

4. This is a civil action regarding allegations of patent infringement, patent invalidity, and patent unenforceability arising under the patent laws of the United States, Title 35 of the United States Code, in which Nabors seeks declaratory relief under the Declaratory Judgment Act. Thus, this Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331, 1332, 1338, 1367, 2201 and 2202.

5. An actual controversy exists between Nabors and C&M concerning Nabors' lighting system installed on some of its drilling rigs.

6. Nabors contends that it has the right to make, use, have made, sell, offer for sale and import lighting systems for its fleet of drilling rigs without license from C&M.

7. This Court has personal jurisdiction over C&M in that C&M conducts business, including selling and leasing products, throughout the United States including within the State of Texas and within this judicial district. As a result, C&M purposefully avails itself of the privilege of doing business in the Southern District of Texas. Moreover, by doing business in the Southern District of Texas, C&M avails itself of the protections of the Southern District of Texas, and in turn, consents to jurisdiction in the Southern District of Texas.

8. Further, this Court has personal jurisdiction over C&M arising from C&M's own purposeful and tortious conduct directed in Texas, including sending demand letters accusing Nabors of infringing C&M's patents. Nabors received a demand letter from C&M on or about June 20, 2022 accusing Nabors of infringing "one or more of C-MORTM's patents, including U.S. Patent No. 11,300,260," and violating C&M's "'Non-Compete' terms included in the drop tickets, delivery tickets, and other rig up paperwork."

9. Venue is proper in this district, *inter alia*, pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Moreover, C&M consented to venue in § 22 of the Master Services Agreement (“MSA”) and § 11 of Nabors’ Purchase Orders between the parties with respect to any alleged breach of contract claims.

STATEMENT OF FACTS

10. On information and belief, C&M is the assignee of multiple United States patents and has filed patent infringement suits in this district to enforce those patents. Civil Action No. 4:22-cv-00965, *C&M Oilfield Rentals LLC d/b/a C-MOR Energy Services v. Ensign U.S. Southern Drilling LLC et al.*, In the United States District Court for the Southern District of Texas, Houston, Division, *See* Original Complaint (3/24/2022).

11. On June 20, 2022, C&M’s President and CEO, Mr. Joshua C. Allison, sent Nabors a demand letter accusing Nabors’ drilling rig lighting system of infringing “one or more of [C&M’s] patents, including U.S. Patent No. 11,300,260.”

12. Additionally, C&M’s June 20, 2022, demand letter states “Nabors’ actions also violate [C&M’s] ‘Non-Compete’ terms included in the drop tickets, delivery tickets, and other rig up paperwork.”

13. Nabors filed this action in response to C&M’s June 20, 2022 accusation of patent infringement and breach of contract. Therefore, this Complaint presents a justiciable case or controversy.

FIRST CAUSE OF ACTION

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 11,300,260

14. Nabors hereby repeats, re-alleges and incorporates by reference every allegation contained in paragraphs 1 through 13 above as though fully stated herein.

15. There is an actual controversy between Nabors and C&M, as to whether Nabors infringes any valid and enforceable claim of U.S. Patent No. 11,300,260 (the “’260 Patent”).

16. Nabors has not infringed and does not infringe any valid and enforceable claim of the ‘260 Patent.

17. Accordingly, Nabors seeks a judgment declaring that it does not infringe and has not infringed, directly or indirectly, contributorily or by inducement, any claim of the ‘260 Patent.

SECOND CAUSE OF ACTION

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 11,300,260

18. Nabors hereby repeats, re-alleges and incorporates by reference every allegation contained in paragraphs 1 through 17 above as though fully stated herein.

19. There is an actual controversy between Nabors and C&M, as to the invalidity of the ‘260 Patent.

20. The ‘260 Patent is invalid for failure to comply with one or more of the requirements for patentability set forth in Title 35 of the United States Code or the rules, regulations and laws related thereto, including without limitation, the requirements of 35 U.S.C. §§ 101, 102, 103 and/or 112.

21. Accordingly, Nabors seeks a judgment declaring that the claims of the ‘260 Patent are invalid, unenforceable, void and of no legal consequence.

THIRD CAUSE OF ACTION

DECLARATORY JUDGMENT REGARDING ALLEGED NON-COMPETE AGREEMENT

22. Nabors hereby repeats, re-alleges and incorporates by reference every allegation contained in paragraphs 1 through 21 above as though fully stated herein.

23. There is an actual controversy between Nabors and C&M regarding the alleged “‘Non-Compete’ terms included in [C&M’s] drop tickets, delivery tickets, and other rig up paperwork.”

24. On or about June 19, 2019, Nabors and C&M entered into a Master Service Agreement (“MSA”). The MSA states in section 1(a) that the MSA and individual Work Orders (jointly defined as the “Contract”) are the *only* agreements between the parties. Section 1(b) of the MSA is directly on point (emphasis added):

In the event of a conflict between the Agreement and the Work Order(s) issued by Nabors in accordance with the Agreement, the provisions of the Agreement shall govern over the conflicting terms of the Work Order(s). It is expressly understood and agreed that *no* provision of any delivery ticket, invoice, confirmation of purchase order, or other instrument used or provided by Contractor shall supersede the provisions of this Agreement or any Contract.

25. Section 7 of the MSA deals with Nabors’ right to terminate the contract and any legal remedies thereof (emphasis added):

Nabors may, at any time, in its *sole* discretion, terminate Work, in whole or in part, under any Contract. In the event of such termination, Contractor shall be paid at the applicable rates contained in the Work Order for the Work satisfactorily performed up to the date of such termination.

*

*

*

This paragraph states Nabors’ *entire* liability, and Contractor’s *sole* remedy, for Nabors’ termination of any or all Contracts. On written notice of such termination, Contractor shall promptly remove its personnel, machinery, and equipment from the location and shall further cooperate with Nabors or its designee to ensure an orderly and expeditious transition and completion of the work.

26. Nabors’ Purchase Orders with C&M contain language similar to section 1(a) and (b) of the MSA quoted above. This additional language is important (emphasis added):

Buyer objects to, rejects, and shall not be bound by any past or future terms and conditions not set forth herein, including any additional or inconsistent terms shown on Seller’s sales confirmation, shipping documents, invoices,

documents, or other communication and any additions or inconsistencies therein with the provisions hereof shall be null and void.

27. C&M's claims for breach of a "non-compete" agreement contained in the alleged "drop tickets, delivery tickets, and other rig up paperwork," violate express terms of the MSA and Nabors' Work Orders. Nabors did not agree to any additional terms, conditions, or provisions.

28. C&M's claims for breach of a "non-compete" agreement fail for lack of consideration in whole or in part for the alleged "drop tickets, delivery tickets, and other rig up paperwork."

29. C&M's claims for breach of a "non-compete" agreement fail because any person or persons who signed any alleged "drop tickets, delivery tickets, and other rig up paperwork," did not have actual or apparent authority to bind Nabors.

30. Accordingly, Nabors seeks a judgment declaring that the non-compete language of the alleged "drop tickets, delivery tickets, and other rig up paperwork," are invalid, unenforceable, void, and of no legal consequence.

DEMAND FOR JURY TRIAL

31. Pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Seventh Amendment to the U.S. Constitution, Nabors demands a trial by jury of any and all issues triable of right before a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Nabors prays for a judgment in their favor, including:

- A. A declaration that Nabors has not infringed, and are not infringing, any valid and enforceable claim of the '260 Patent;
- B. A declaration that each of the claims of the '260 Patent is invalid;

- C. A declaration that the '260 Patent is unenforceable, void, and of no legal consequence;
- D. A declaration that C&M's asserted non-compete agreement is unenforceable, void, and of no legal consequence;
- E. An injunction prohibiting C&M and its officers, agents, employees and attorneys, and all those persons in active concert or participation with them, from alleging infringement of the '260 Patent or breach of any alleged non-compete agreement by Nabors and their customers;
- F. A declaration that this case is an exceptional case pursuant to 35 U.S.C. § 285;
- G. An award of Nabors' reasonable attorneys' fees, costs and expenses under:
 - (1) 35 U.S.C. § 285;
 - (2) Tex. Civ. P. & Rem. Code §§ 37 & 38; and
 - (3) any other applicable Texas statutes or common laws, and the Parties' Agreements; and
- H. Such other and further relief as the Court deems just and proper.

Dated: June 29, 2022

Respectfully submitted,

RALEY & BOWICK, LLP

/s/ John Wesley Raley

JOHN WESLEY RALEY

ROBERT M. BOWICK

RALEY & BOWICK, LLP

1800 Augusta Drive, Suite 300

Houston, Texas 77057

713-429-8050 (telephone)

713-429-8045 (facsimile)

Email: jralley@raleypbowick.com

rbowick@raleypbowick.com

**ATTORNEYS FOR PLAINTIFF
NABORS DRILLING TECHNOLOGIES
USA, INC.**