

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

E9 TREATMENTS, INC.	§	
	§	
<i>Plaintiff,</i>	§	CIVIL ACTION NO. 2:22-cv-172
	§	
v.	§	
	§	
KOPMAN LLC, and CLAYTON DALE WERNLI	§	JURY TRIAL DEMANDED
	§	
<i>Defendants.</i>	§	

COMPLAINT FOR PATENT INFRINGEMENT

I. PARTIES

1. Plaintiff e9 Treatments, Inc. is a Delaware corporation having a place of business at 159 Enterprise Parkway, Boerne, Texas 78006.

2. Defendant Kopman LLC (“Kopman”) is a Texas limited liability company doing business as (d/b/a) Kopman Industries. Kopman has a mailing address of P.O. Box 1002, Refugio, Texas 78377. Kopman may be served through its registered agent for service, United States Corporation Agents, Inc., at 9900 Spectrum Drive, Austin, Texas 78717.

3. Defendant Clayton Dale Wernli (“Mr. Wernli”) is an individual who resides at 601 Lawrence Street, Refugio, Texas 78377. Mr. Wernli is the managing member of Kopman LLC and the CEO and Founder of Kopman Industries.

II. JURISDICTION AND VENUE

4. This Complaint for patent infringement arises under the patent laws of the United States, including 35 U.S.C. §§ 271 and 281. The Court has original and exclusive subject matter jurisdiction over plaintiff’s patent infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue and personal jurisdiction are proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b) because defendant Kopman has a regular and established place of business in this judicial district and has committed acts of infringement within this judicial district and because defendant Mr. Wernli resides within this judicial district and has committed acts of infringement within this judicial district.

III. PLAINTIFF'S BUSINESS AND ASSERTED PATENTS

6. Plaintiff provides patented products and services to prevent or greatly reduce the contamination of metal surfaces in oil field and oil processing equipment and measurement devices. One of the main services that Plaintiff provides is to apply coatings on metal surfaces of measurement devices used in the production and processing of crude oil. Contaminants in crude oil and resulting refined products can deposit on metal surfaces in flow meters and tank level measurement devices resulting in decreased performance or failure of the flow meter or measurement device. The inventors of Plaintiff's patents discovered that application of certain phosphonate chemicals to a clean metal surface resulted in an extremely thin protective layer called a Self-Assembled Monolayer of Phosphonate ("SAMP") that dramatically reduced the build-up of contaminants on the metal surfaces of crude oil measurement devices. The inventors of Plaintiff's patents filed for provisional patent protection for their invention in 2013, resulting in the issuance of several United States patents, three of which are identified below.

7. On December 11, 2018, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 10,150,924 (hereinafter the "924 Patent"). Plaintiff is the owner by assignment of all right, title, and interest in the 924 Patent together with the right to collect damages for all past, present, and future infringement and the right to have the 924 Patent enforced to exclude others from infringing the 924 Patent. The 924 Patent is in full force and effect, is still

within its enforceable term, has not lapsed due to failure to pay maintenance fees, and has not been the subject of any prior litigation. The 924 Patent is presumed to be valid. A copy of the 924 Patent is attached as Exhibit 1. Claim 1 of the 924 Patent provides in part “wherein the protective layer comprises a self assembled monolayer of phosphonate, with a metal-phosphorous covalent bond formed between an underlying metal substrate and the protective layer.”

8. On March 2, 2021, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 10,934,497 (hereinafter the “497 Patent”). Plaintiff is the owner by assignment of all right, title, and interest in the 497 Patent together with the right to collect damages for all past, present, and future infringement and the right to have the 497 Patent enforced to exclude others from infringing the 497 Patent. The 497 Patent is in full force and effect, is still within its enforceable term, has not lapsed due to failure to pay maintenance fees, and has not been the subject of any prior litigation. The 497 Patent is presumed to be valid. A copy of the 497 Patent is attached as Exhibit 2. Claim 1 of the 497 Patent provides in part “applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) . . . to the clean and dried surfaces of said device [utilized in a crude oil service operation].”

9. On August 28, 2018, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 10,059,892 (hereinafter the “892 Patent”). Plaintiff is the owner by assignment of all right, title, and interest in the 892 Patent together with the right to collect damages for all past, present, and future infringement and the right to have the 892 Patent enforced to exclude others from infringing the 892 Patent. The 892 Patent is in full force and effect, is still within its enforceable term, has not lapsed due to failure to pay maintenance fees, and has not been the subject of any prior litigation. The 892 Patent is presumed to be valid. A copy of the 892 Patent is attached as Exhibit 3. Claim 1 of the 892 Patent provides in part “applying a coat of a

Self-Assembled Monolayer of Phosphonate (SAMP) composition to at least one of said cleaned and dried surfaces.”

10. Plaintiff has complied with all marking requirements, if any, for the 924 Patent, the 497 Patent, and the 892 Patent in accordance with 35 U.S.C. § 287(a).

11. Pursuant to 35 U.S.C. § 271(a) “whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States . . . during the term of the patent therefor, infringes the patent.”

IV. DEFENDANTS’ BUSINESS

12. Defendants are engaged in a business that offers and performs services designed to apply treatments to metal surfaces of meters and devices utilized in crude oil service operations. Defendants refer to their service as a nanoscale surface treatment. On information and belief, the nanoscale surface treatments that Defendants provide utilize the application of a Self-Assembled Monolayer of Phosphonate (“SAMP”) to a metal surface.

13. Defendants own and control a website address at www.kopmanindustries.com. On information and belief, the website began offering Defendants’ products and services to the general public in March 2022. The website states that “KopMan Industries’ nanoscale surface treatment creates a covalent bond that is optically invisible and offers numerous performance benefits.” Photographical representations on Defendants’ website depict the treatments applied in crude oil storage and processing equipment in or near a producing oil field and in a crude oil processing refinery. Referring to “SPM Gen 3 Test Results” the website states that “KopMan Industries treated the [oil measurement] meter” to solve problems with “fouling issues.” As described on Defendants’ website, the treatments “repel all fouling,” “prevent impurities from adhering to any KopMan-treated surface,” and “create[] a shield of fouling resistance.” A video on the website

depicts a self-assembled monolayer inside a Coriolis meter above a caption that reads “Kopman’s nanoscale treatment creates a shield of fouling resistance without altering the integrity of the surface.” Another caption in the video states that Defendants’ “nanoscale surface treatment attaches to the surface with a covalent bond.” The “Actual Unit” having the Coriolis meter in the photograph depicted below the video is shown in a crude oil service operation in the field.

14. Defendants’ website states that they “Will Service Anywhere in the United States.” On information and belief, Defendants offer, use, and sell their nanoscale surface treatment services, and assist in the installation of systems that include nanoscale surface treatments in the United States.

15. Plaintiff became aware of Defendants’ business in May 2022. On May 10, 2022, Plaintiff’s representative advised Mr. Wernli that his and Kopman’s actions were infringing on Plaintiff’s patent rights. Mr. Wernli was asked to respond to Plaintiff’s concerns. Mr. Wernli has not responded.

V. FIRST CLAIM – INFRINGEMENT OF THE 924 PATENT

16. Claim 1 of the 924 Patent begins “[a] system comprising a liquid environment that comprises at least one contaminant selected from the group consisting of paraffins and asphaltene; and,” Crude oil is a liquid and is known to contain paraffins and asphaltenes. Defendants’ website depicts systems of “Actual Unit[s]” for processing liquid crude oil. Defendants’ customer’s install devices that Defendants have treated into systems comprising crude oil. One type of treated device shown on Defendants’ website as installed in an “Actual Unit” is a Coriolis meter, a device that is used to measure the flow rate of crude oil moving through the meter. A Coriolis meter works by measuring the oscillation frequency of two metal tubes that each have a liquid flowing inside.

17. Claim 1 of the 924 Patent further requires “a protective layer comprising a surface, said surface residing within and in contact with the environment,” A video presentation on Defendants’ website depicts Defendants forming a protective layer on the inner surfaces of the two metal tubes inside a Coriolis meter. When a treated Coriolis meter is in operation, liquid crude oil flows through the tubes in the Coriolis meter resulting in contact between the crude oil and the treated inner surface of the tubes. Defendants’ website states that “KopMan’s Nanoscale Surface Technology was developed and tested . . . [in] the most stringent testing environments” Defendants’ website depicts several surfaces that were treated to have a protective layer in contact with a process environment. Defendants’ treatments therefore result in a protective layer comprising a surface on the inside of the tubes in a Coriolis meter. Defendants’ customers install the treated Coriolis meters into a system where the treated inner surface of the tubes resides within and in contact with the crude oil environment.

18. Claim 1 of the 924 Patent further requires “wherein the protective layer comprises a self assembled monolayer of phosphonate, with a metal-phosphorous covalent bond formed between an underlying metal substrate and the protective layer,” Defendants’ website depicts a nanoscale surface technology used to form a bonded nanolayer on the inside surface of the metal tubes of a Coriolis meter. Defendants’ website states that the bond formed between the inside surface of the metal tubes of the Coriolis meter and the protective layer is a “covalent” bond. Defendants have verbally advertised the use of phosphonate based nanosurface technology at trade shows and in presentations. On information and belief, Defendants’ treatments create a phosphonate based self-assembled monolayer inside the Coriolis meter tubes resulting in a meter having a self-assembled monolayer of phosphonate, with a metal-phosphorous covalent bond formed between an underlying metal substrate and the protective layer. Defendants’ customers

install Coriolis meters treated by Defendants into systems that are in contact with a crude oil environment.

19. Claim 1 of the 924 Patent further requires “said bonded layer reducing paraffin or asphaltene deposition on the underlying metal substrate.” Defendants’ website states that “with [Defendants’] technology, the costs related to paraffin deposition will be drastically reduced.” Defendants’ represent that their treatments “repel all fouling,” “prevent impurities from adhering to any KopMan-treated surface,” and “create[] a shield of fouling resistance.” Defendants’ website depicts treatments of Coriolis meter tubes that are intended to measure the flow rate of liquid crude oils known to contain paraffin and asphaltene components. Paraffin and asphaltene components will form deposits on untreated metal substrates. Defendants’ website depicts a covalently bonded layer adhered to the inside surfaces of Coriolis meter tubes for the purpose of preventing impurities from adhering to and fouling the tubes. Defendants’ customers install meters treated by Defendants into crude oil measurement systems to reduce paraffin or asphaltene deposition inside the metal tubes of the Coriolis meter.

20. On information and belief, Defendants’ customers make and use systems that directly and literally infringe claim 1 of the 924 Patent under 35 U.S.C. § 271(a).

21. Defendants’ website depicts its treatment being used on metal substrates in wetted, liquid environments of hydrocarbons and crude oils. On information and belief, Defendants’ customers make and use systems that directly and literally infringe claims 2-4 of the 924 Patent under 35 U.S.C. § 271(a).

22. Defendants promote, offer, and provide their nanoscale surface treatment to their customers to reduce fouling and increase the service life of Coriolis meters. Defendants promote, offer, and provide their nanoscale surface treatment to their customers with full knowledge of the

924 Patent and knowledge that their customers are directly infringing the 924 Patent. Defendants are inducing their customers to directly infringe claims 1-4 of the 924 Patent and have liability for their customers' direct infringement under 35 U.S.C. § 271(b).

23. Defendants treat Coriolis meters that are a component of the systems patented in claims 1-4 of the 924 Patent. Defendants' treated Coriolis meters are a material part of the systems patented in claims 1-4 of the 924 Patent. Defendants know that their treated Coriolis meters are especially made or especially adapted for use in infringing claims 1-4 of the 924 Patent. Defendants' treated Coriolis meters are not a staple article or commodity of commerce suitable for substantial noninfringing use. Defendants' are liable as a contributory infringer of claims 1-4 of the 924 Patent under 35 U.S.C. § 271(c).

VI. SECOND CLAIM – INFRINGEMENT OF THE 497 PATENT

24. Claim 1 of the 497 Patent begins “[a] method for treating a device utilized in a crude oil service operation, wherein the device comprises at least one surface, the method comprising the steps of:” Defendants' website describes that its treatment is applied to an “oil measurement meter,” is used in the “metering industry,” is used “within the measurement industry,” and is used on “instrumentation.” Defendants' website depicts its treatment applied to the tubes inside Coriolis meters. These are all references to devices. “Actual Unit[s]” treated by Defendants are depicted on their website and show metering devices and Coriolis meters used in crude oil service operations. The devices depicted on Defendants' website include at least one surface. The Coriolis meter depicted on Defendants' website shows the inside surfaces of tubes being treated. Defendants' customers direct Defendants to perform a method for treating a Coriolis meter utilized in a crude oil service operation, wherein the Coriolis meter has two inner tubes each having an inner surface.

25. Claim 1 of the 497 Patent requires “cleaning the surface to remove surface contamination” Defendants’ website states that “servicing used equipment is our specialty,” and describes the “Benefits of KopMan’s Treatment on . . . Used Surfaces.” Treatment of a Coriolis meter that has previously been in use requires it to be serviced first, meaning cleaning the device to remove contamination built up from being used in the field. The cleaning step is required to remove surface contamination from the inner tubes of a Coriolis meter before application of the chemical that forms the protective layer. On information and belief, Defendants’ customers direct Defendants to clean the tubes inside used Coriolis meters to remove debris and other build-up from the inner surfaces of the tubes.

26. Claim 1 of the 497 Patent further requires “drying the cleaned surface of the device” Drying of the cleaning solution or solvent is required before application of the chemical that forms the protective layer. On information and belief, Defendants’ customers, by directing Defendants to treat Coriolis meters, are directing Defendants to perform or utilize the drying sub-step of the treatment.

27. Claim 1 of the 497 Patent further requires “applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition that repels paraffins or asphaltenes to the clean and dried surfaces of said device to form deposition resistant treated surfaces;” Defendants’ website states that the “application method” of its treatment to form a nanoscale surface is to “Wipe, Aspirate, Saturate.” This method will form a coat on the dried surface. Defendants’ website refers to this coat as a “shield,” and a “nanoscale surface.” Defendants have verbally advertised the use of phosphonate based nanosurface technology at trade shows and in presentations. On information and belief, Defendants’ treatments create a coat of phosphonate based self-assembled monolayer on a clean and dry surface. On information and belief,

Defendants treat the inner surfaces of metal tubes of Coriolis meters to create a coat of phosphonate based self-assembled monolayer on the inner surfaces of the tubes. Defendants' website states that "paraffin deposition will be drastically reduced" by application of their nanoscale surface or shield. On information and belief, Defendants' customers direct Defendants to perform a method step of applying a coat of a SAMP composition that repels paraffins or asphaltenes to the clean and dried inner surfaces of the tubes inside Coriolis meters to form deposition resistant surfaces in the tubes.

28. Claim 1 of the 497 Patent further requires "installing said treated device into a section of a crude oil service operation in which a deposition forming contaminant is present; and," Defendants' website states that "servicing used equipment is our specialty." Treatment of a device that has previously been in use requires it to be removed from service before the cleaning, drying and application of the nanolayer can occur. The treated device is then installed back into its operational section for continued use. Defendants' website depicts "Actual Unit[s]" in crude oil service operations, and depicts meters, including Coriolis meters, installed into a section of the crude oil service operation. The crude oil service operations into which Defendants' treated Coriolis meters are installed have deposition forming contaminants. Defendants' website states that "fouling" from such contaminants, including "paraffins" is reduced by Defendants' treatment. Defendants' customers install Coriolis meters that Defendants have treated into crude oil service operations in which paraffins are present.

29. Claim 1 of the 497 Patent further requires "contacting the deposition resistant treated surfaces with the contaminant, wherein the contaminant is selected from the group consisting of paraffins and asphaltenes." When in use, Coriolis meters treated by Defendants are brought into contact with crude oil. Crude oil contains contaminants, including paraffins and

asphaltenes. Defendants' website states that "paraffin deposition will be drastically reduced" by their treatment. When Defendants' customers operate the Coriolis meters treated by Defendants, crude oil contacts the treated inner surfaces of the tubes in the Coriolis meters.

30. On information and belief, Defendants' customers direct and control performance of all of the method steps of claim 1 of the 497 Patent. On information and belief, Defendants' customers literally and directly infringe claim 1 of the 497 Patent under 35 U.S.C. § 271(a).

31. The Coriolis meters treated by Defendants and installed by Defendants' customers are brought into contact with crude oil containing contaminants, those contaminants are present in the crude oil when the Coriolis meters are installed for use, and the Coriolis meters contain tubes that are conduits. On information and belief, Defendants' customers direct and control performance of all of the method steps of claims 2-3, 5-10, and 12-13 of the 497 Patent. On information and belief, Defendants' customers literally and directly infringe claims 2-3, 5-10, and 12-13 of the 497 Patent under 35 U.S.C. § 271(a).

32. Defendants promote, offer, and provide their nanoscale surface treatment to their customers to reduce fouling and increase the service life of Coriolis meters. Defendants promote, offer, and provide their nanoscale surface treatment to their customers with full knowledge of the 497 Patent and knowledge that their customers are directly infringing the 497 Patent. Defendants are inducing their customers to directly infringe claims 1-3, 5-10, and 12-13 of the 497 Patent and have liability for their customers' direct infringement under 35 U.S.C. § 271(b).

33. Defendants treat Coriolis meters that are for use in practicing the methods protected by the 497 Patent. Defendants' treated Coriolis meters are a material part of the methods protected by the 497 Patent. Defendants know that their treated Coriolis meters are especially made or especially adapted for use in infringing claims 1-3, 5-10, and 12-13 of the 497 Patent. Defendants'

treated Coriolis meters are not a staple article or commodity of commerce suitable for substantial noninfringing use. Defendants' are liable as a contributory infringer of claims 1-3, 5-10, and 12-13 of the 497 Patent under 35 U.S.C. § 271(c).

VII. THIRD CLAIM – INFRINGEMENT OF THE 892 PATENT

34. Claim 1 of the 892 Patent begins “[a] method for treating cooperating surfaces comprising a first cooperating surface and a second cooperating surface, the method comprising the steps of:” Defendants treat the inner surfaces of the two tubes inside a Coriolis meter. The inner surfaces of the tubes in a Coriolis meter are cooperating surfaces whose oscillations in cooperation to each other are measured. The measured information is then translated into a flow rate of the liquid through the meter.

35. Claim 1 of the 892 Patent further requires “cleaning at least one of the cooperating surfaces to remove surface contamination.” The surface treatment that Defendants provide must be performed on a clean surface to be effective. On information and belief, Defendants clean the inner surfaces of both of the tubes inside the Coriolis meters that they treat.

36. Claim 1 of the 892 Patent further requires “drying the at least one cleaned surfaces.” The surface treatment that Defendants provide must be performed on a clean dry surface to be effective. On information and belief, Defendants dry the inner surfaces of both of the tubes inside the Coriolis meters that they treat after those surfaces are cleaned.

37. Claim 1 of the 892 Patent further requires “applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition to at least one of said cleaned and dried surfaces, said SAMP composition reducing paraffin or asphaltene deposition on the at least one of said surfaces.” Defendants' website depicts a nanoscale surface technology used to form a bonded nanolayer coating the inside of the metal tubes of a Coriolis meter. Defendants have verbally

advertised the use of phosphonate based nanosurface technology at trade shows and in presentations. On information and belief, Defendants' treatments create a coat of a self-assembled monolayer of phosphonate that is applied on the inside surfaces of the Coriolis meter tubes. The stated purpose of Defendants' treatment is to reduce paraffin deposition. Defendants' website states that "with [Defendants'] technology, the costs related to paraffin deposition will be drastically reduced." Defendants' represent that their treatments "repel all fouling," "prevent impurities from adhering to any KopMan-treated surface," and "create[] a shield of fouling resistance."

38. On information and belief, Defendants literally and directly infringe claim 1 of the 892 Patent under 35 U.S.C. § 271(a).

39. Defendants treat the inner surfaces of both tubes of Coriolis meters to create a coating. Defendants' website refers to this coating as a "shield," and a "nanoscale surface" that will reduce "paraffin deposition." The inner surfaces of the two tubes of Coriolis meters are cooperating surfaces. On information and belief, Defendants' treatments create a coat of a self-assembled monolayer of phosphonate on the inside surfaces of the Coriolis meter tubes. On information and belief, Defendants literally and directly infringe claims 2, 5-6, and 13-14 of the 892 Patent under 35 U.S.C. § 271(a).

VIII. LIABILITY & DAMAGES

40. Defendants do not have a license under the 924 Patent, the 497 Patent, or the 892 Patent or any authority from Plaintiff or any prior owner of the 924 Patent, the 497 Patent, or the 892 Patent to make, use, offer for sale, or sell their services or devices or to have their customers install patented systems or practice patented methods. Defendants' customers have no such licenses or authority.

41. Defendants' infringement of the 924 Patent, the 497 Patent, and the 892 Patent has caused damage to Plaintiff. Defendants' website states that they have "1,000 Meters Serviced." The full amount of damage to Plaintiff is not presently known and will be determined at trial after discovery from Defendants. Based on Defendants' claim to have serviced 1,000 meters, Plaintiff contends that its damages are at least \$600,000.

IX. WILLFUL INFRINGEMENT

42. On information and belief, Defendants' infringement of the 924 Patent, the 497 Patent and the 892 Patent was and is made with knowledge that their actions infringe the patents. Defendants' infringement was and is willful infringement.

X. IRREPARABLE HARM

43. Defendants' continued infringement will cause irreparable harm to Plaintiff. Defendants recently publicized their services through their website and this will likely lead to Plaintiff losing a portion of the market for these services. Defendants' provision of services have the potential to erode the price that Plaintiff is able to charge for its services. Defendants' services have the potential to damage the favorable reputation for this service that Plaintiff has spent years of hard work developing. On information and belief, Defendants' are financially unable to pay money damages for their infringement liability after trial.

XI. PRAYER FOR RELIEF

44. Plaintiff requests the following relief:
- (a) a preliminary injunction enjoining Defendants from making, using, offering for sale or selling their nanoscale surface treatment pursuant to Fed. R. Civ. P. 65;
 - (b) a judgment that Defendants have infringed the 924 Patent, the 497 Patent, and the 892 Patent;

- (c) a judgment that Defendants' infringement of the 924 Patent, the 497 Patent, and the 892 Patent was and is willful;
- (d) a permanent injunction pursuant to 35 U.S.C. § 283 enjoining Defendants, and anyone in concert with them, from making, using, importing, offering for sale, or selling in the United States their nanoscale surface treatment or any other surface treatment that is substantially similar to their nanoscale surface treatment;
- (e) an award to Plaintiff of damages adequate to compensate for Defendants' infringement, including its lost profits of at least \$600,000, but in no event less than a reasonable royalty;
- (f) an award of increased damages up to three times the amount found or assessed pursuant to 35 U.S.C. § 284;
- (g) a determination by the Court that this is an exceptional case and an award of Plaintiff's reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- (h) an award of prejudgment interest, post-judgment interest, and costs; and,
- (i) such other relief as the Court deems just.

XII. JURY DEMAND

45. Plaintiff demands a trial by jury on all the issues so triable.

Date: July 26, 2022

Respectfully submitted,

/s/ Michael E. Wilson

Attorney-In-Charge

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