

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

Tempress Technologies, Inc.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 4:23-cv-1351
v.	§	
	§	JURY TRIAL DEMANDED
Texas Oilwell Partners LLC,	§	
	§	
Defendant.	§	

**PLAINTIFF TEMPRESS TECHNOLOGIES INC.’S
ORIGINAL COMPLAINT**

Plaintiff Tempress Technologies, Inc. (“Tempress” OR “Plaintiff”), by and through its undersigned attorneys, files this Complaint for patent infringement against Defendant Texas Oilwell Partners LLC (“TOP” or “Defendant”). Tempress alleges infringement of U.S. Patent No. 7,139,219 (the “’219 Patent”), and in support thereof, alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 et seq.

PARTIES

2. Plaintiff Tempress Technologies, Inc. is a Washington corporation with its principal place of business located at 2200 Lind Avenue SW, Bldg A, Suite 108, Renton, Washington 98057.

3. On information and belief, Texas Oilwell Partners LLC is a Texas limited liability company with a principal place of business at 21621 Rhodes Rd., Spring, Texas 77389.

4. On information and belief, Texas Oilwell Partners LLC’s registered agent for service is Jason Swinford located at 6315 Kingcrest Ln, Spring, Texas 77389.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 et seq., including 35 U.S.C. § 271. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over TOP at least because it resides within the State of Texas and the Southern District of Texas (the “District”) at 21621 Rhodes Rd., Spring, Texas 77389. TOP also has continuous and systematic contacts with Texas and this District through actively and regularly conducting business from its regular and established place of business, thereby purposely availing itself of the benefits and protections under Texas law. Moreover, TOP, either directly or indirectly, has committed acts of infringement within this District giving rise to this action and has established minimum contacts such that the exercise of jurisdiction within this District would not offend traditional notions of fair play and substantial justice.

7. Upon information and belief, TOP has committed acts of infringement of the ’219 Patent within this District by making, using, selling, and/or offering for sale in, and/or importing into, this District products protected by the ’219 Patent.

8. Venue is proper against TOP in this District under 28 U.S.C. §§ 1391 and 1400(b) because it is subject to personal jurisdiction within this District and has committed acts of infringement with a regular and established place of business in the District at 21621 Rhodes Rd., Spring, Texas 77389.

FACTUAL BACKGROUND

9. Tempress markets, leases, and sells advanced hydraulic tools for well intervention and drilling.

10. Tempress has a rich history of product innovation and record setting based on complex fluid mechanical technologies. Tempress prides itself on providing 24/7 technical support to its customers while developing next generation products and support software.

11. Tempress has multiple issued U.S. patents and pending U.S. patent applications, including U.S. Patent No. 7,139,219, and multiple foreign and international applications related to its novel design for a hydraulic pulse valve.

12. On November 21, 2006, the United States Patent and Trademark Office (“PTO”) duly and legally issued United States Patent No. 7,139,219, titled “Hydraulic Impulse Generator and Frequency Sweep Mechanism for Borehole Applications,” and naming Jack J. Kollé, Mark H. Marvin, and Kenneth J. Theimer as its inventors. A true and accurate copy of the ’219 Patent is attached hereto and incorporated herein by reference as Exhibit A.

13. Tempress is the assignee of the ’219 Patent by a written assignment effective as of March 9, 2004, and duly recorded with the PTO on June 7, 2004. It is the owner of all rights, title, and interest in and to the invention claimed in the ’219 Patent and its underlying patent applications, including the right to sue for injunctive relief and the right to sue and recover for all past, present, and future damages for infringement of the ’219 Patent.

14. Upon information and belief, TOP offers to sell a pulse tool, the Delta Pulse II (or the “Accused Product”).

15. Upon information and belief, the Delta Pulse II uses the design shown in TOP’s U.S. Patent Application No. 17/473,244 (“the ’244 Application”).

16. On January 31, 2023, Tempress contacted TOP concerning the Delta Pulse II. Tempress explained that it believes TOP’s Delta Pulse II infringes the claims of the ’219 Patent.

17. After initially agreeing to cease making the Delta Pulse II, TOP reversed course and refused to stop its infringing activities, based on an objectively unreasonable position concerning the validity of the '219 Patent.

CAUSES OF ACTION

Count 1: Direct Infringement of the '219 Patent

18. Tempress incorporates by reference and realleges Paragraphs 1–17 of its Complaint, as though fully set forth herein.

19. Tempress is the owner of all right, title, and interest in and to the '219 Patent.

20. As the owner of the '219 Patent, Tempress is authorized and has standing to bring legal action to enforce all rights arising under the '219 Patent.

21. The '219 Patent claims patent-eligible subject matter and is valid and enforceable. Further, the '219 Patent is presumed valid pursuant to 35 U.S.C. § 282.

22. TOP is not licensed to make, use, lease, sell, offer to lease, offer to sell, or import any product or service that is covered by the claims of the '219 Patent.

23. Upon information and belief, TOP, either alone or in concert with others and without authorization or license from Tempress, has directly infringed and will continue to infringe, either literally or under the doctrine of equivalents, one or more claims of the '219 Patent in violation of 35 U.S.C. § 271, by making, using, selling, leasing, importing, installing, supplying, and/or offering to sell or lease an infringing pulse tool, the Accused Product, in the United States.

24. The Accused Product satisfies each element of and infringes at least claim 1 of the '219 Patent, which appears below:

1. A valve configured for generating a pressure pulse within a conduit by at least partially interrupting flow of a pressurized fluid circulating through the conduit, comprising:

- (a) an inlet port configured to couple in fluid communication with the conduit through which the pressurized fluid is circulating;
- (b) an outlet port configured to couple in fluid communication with the conduit through which the pressurized fluid is circulating;
- (c) a plurality of fluid passages configured to selectively couple in fluid communication with said inlet port;
- (d) a poppet that is actuated by the pressurized fluid to cycle between an open position and a closed position, such that when in said closed position, said poppet at least partially interrupts a flow of the pressurized fluid through said outlet port; and
- (e) a pilot disposed within said poppet, said pilot being reciprocated back and forth between first and second positions during each cycle by the pressurized fluid, such that a position of said pilot determines which of said plurality of fluid passages is coupled in fluid communication with said inlet port.

25. Upon information and belief, the Accused Product embodies the design shown in TOP's '244 Application. The design shown in TOP's '244 Application satisfies each element of claim 1 of the '219 Patent.

26. At least as of January 31, 2023, TOP has been placed on notice of the '219 Patent and has actual knowledge that making, using, leasing, selling, or offering to sell or lease the Accused Product constitutes direct infringement of the '219 Patent.

27. On information and belief, TOP's infringement of the '219 Patent has been and will continue to be willful, deliberate, and intentional.

28. As a result of TOP's infringement of the '219 Patent, Tempress has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law, unless TOP is preliminarily and permanently enjoined by this Court. Furthermore, the public interest would be served by issuance of an injunction.

29. As a result of TOP's infringing product and activities, Tempress has suffered actual damages in an amount to be determined at trial. Additionally, as a result of the willful and deliberate nature of TOP's infringing activities, Tempress is entitled to a trebling of its actual damages and is entitled to recover its attorneys' fees and costs incurred in prosecuting this action.

Count 2: Indirect Infringement of the '219 Patent

30. Tempress incorporates by reference and realleges Paragraphs 1–29 of its Complaint, as though fully set forth herein.

31. On information and belief, TOP has actively and knowingly induced direct infringement of the claims of the '219 Patent by TOP's customers by inducing, causing, urging, encouraging, aiding, or abetting TOP's direct or indirect customers to make, use, lease, sell, or offer to lease or sell the Accused Product.

32. TOP has also contributed to direct infringement of the claims of the '219 Patent by TOP's customers. TOP's contributory infringement involves making, using, leasing, selling, or offering to sell the Accused Product, which is a material part of the invention claimed in the '219 Patent, is not a staple article of commerce, and has no substantial non-infringing use. Given its knowledge of the '219 Patent and prior communications between the parties, TOP knows that the Accused Product is especially made for use in an infringement of the '219 Patent.

33. On information and belief, TOP, without authorization or license from Tempress, has and will continue to induce and contribute to infringement of at least claim 1 of the '219 Patent

in violation of 35 U.S.C. §§ 271(b) and 271(c), by making, using, leasing selling, or offering to lease or sell the Accused Product.

34. On information and belief, TOP's indirect infringement of the '219 Patent has been and will continue to be willful, deliberate, and intentional.

35. As a result of TOP's indirect infringement of the '219 Patent, Tempres has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law, unless TOP is preliminarily and permanently enjoined by this Court. Furthermore, the public interest would be served by issuance of an injunction.

36. As a result of TOP's indirect infringement of the claims of the '219 Patent, Tempres has suffered actual damages in an amount to be determined at trial. Additionally, as a result of the willful and deliberate nature of TOP's infringing activities, Tempres is entitled to a trebling of its actual damages and is entitled to recover its attorneys' fees and costs incurred in prosecuting this action.

JURY DEMAND

37. Pursuant to Federal Rule of Civil Procedure 38(b), Tempres requests a trial by jury on all issues.

PRAYER

38. For these reasons, Tempres respectfully requests that this Court award the following relief:

- (A) Judgment be awarded in favor of Tempres and against TOP on all counts, including a finding that TOP has directly and indirectly infringed the '219 Patent;
- (B) A permanent injunction enjoining TOP, its owners, affiliates, officers, directors, managers, agents, servants, employees, trainees, and all persons

in active concert or participation with it, from continuing to infringe the '219 Patent, including but not limited to under 35 U.S.C. § 283;

- (C) An award of damages adequate to compensate Tempres for TOP's infringement of the '219 Patent under 35 U.S.C. § 284;
- (D) A determination that TOP's infringement of the '219 Patent has been willful and deliberate;
- (E) A determination that this case is "exceptional" under 35 U.S.C. § 285, thereby entitling Tempres to an award of its reasonable attorneys' fees and costs incurred in prosecuting this action;
- (F) An award of treble damages based on the willful and deliberate nature of TOP's infringement;
- (G) Awarding Tempres interest, including prejudgment and post-judgment interest, on all damages computed;
- (H) An award of court costs and attorneys' fees as allowed by any other applicable law; and
- (I) Such other relief as this Court deems fair, just, and appropriate.

Dated: April 11, 2023

Respectfully submitted,

/s/ C. Erik Hawes

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