

Jurisdiction & Venue

4. Praxair brings this action for a declaratory judgment of patent infringement under the patent laws of the United States, 35 U.S.C. §1 *et seq.*

5. Because this action arises under the patent laws of the United States, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

6. A substantial controversy of sufficient immediacy and reality exists between the parties that warrants the issuance of a declaratory judgment. Praxair contends that Air Liquide will infringe Praxair's patents with the operation of its Spindletop hydrogen gas storage cavern. Air Liquide has indicated that it intends to imminently start commercial operation of hydrogen storage in the Spindletop cavern.

7. This Court has personal jurisdiction over Air Liquide by virtue of its actions in this District, including the construction, operation and commercialization of its Spindletop cavern near Beaumont, Texas, and by virtue of its regularly conducted and systematic business contacts in this State.

8. Venue is proper within this District under 28 U.S.C. §§ 1391 and 1400(b) at least because a substantial part of the events or omissions giving rise to the declaratory judgment claims occurred in this District and both parties have regular and established places of business in this district.

Factual Background

9. Praxair is an industry leader in the manufacture and supply of industrial gases, including hydrogen. Since 2007, Praxair has supplied its Gulf Coast customers with hydrogen that is stored in an underground salt cavern located in Liberty, Texas. Praxair's hydrogen

storage cavern was the first such facility in the world, and is protected by a number of U.S. Patents, including the patent-in-suit.

10. On April 8, 2014, U.S. Patent No. 8,690,476 (“‘476 patent”), entitled “Method And System For Storing Hydrogen In A Salt Cavern With A Permeation Barrier,” was duly and legally issued by the United States Patent and Trademark Office (“PTO”). The entire right, title and interest to the ‘476 patent, including the right to sue and to recover for past infringement thereof, is assigned to and owned by Praxair Technology, Inc. A true and correct copy of the ‘476 patent is attached as Exhibit A to this Complaint.

11. On information and belief, Air Liquide is constructing and/or has completed construction of its Spindletop hydrogen storage cavern and is operating and/or will operate this cavern to store hydrogen according to the claims of the ‘476 patent.

12. Air Liquide has indicated that it will begin commercial operations of the Spindletop cavern in Spring 2016.

13. In October 2014, the parties met to discuss Praxair’s concerns regarding Air Liquid’s Spindletop cavern and the fact that operation of the cavern will infringe the ‘476 patent.

14. On April 18, 2015, Air Liquide filed petitions for *inter partes* review of the ‘476 patent with the PTO, which were assigned Nos. IPR2015-01074 and IPR2015-01075. On October 26, 2015, the PTO denied institution of those petitions.

15. On May 20, 2015, Air Liquide filed an action seeking a declaratory judgment of invalidity of the ‘476 patent in the Southern District of Texas, Case No. 4:15-cv-01365 (“S.D. Tex. Action”), alleging that the completion and commercial operation of its hydrogen gas storage cavern is imminent, and that it has a reasonable apprehension that Praxair will sue Air Liquide for patent infringement on the ‘476 patent. Air Liquide dismissed the S.D. Tex. Action on

March 4, 2016 pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) before Praxair filed an Answer to Air Liquide's Complaint.

Count 1 – Declaratory Judgment of Infringement of U.S. Patent No. 8,690,476

16. The allegations set forth in the foregoing paragraphs 1 through 15 are hereby realleged and incorporated herein by reference.

17. Air Liquide has had actual knowledge of the '476 patent and its infringement of that patent since at least the date that Air Liquide filed its Complaint in the S.D. Tex. Action on May 20, 2015.

18. Air Liquide has indicated its intent, including in the prior Complaint in the S.D. Tex. Action, to begin using its Spindletop cavern by Spring 2016 for the storage of hydrogen gas that will be sold and supplied to Air Liquide's customers.

19. On information and belief, Air Liquide will directly infringe, under 35 U.S.C. § 271, either literally or under the doctrine of equivalents, at least claim 1 of the '476 patent by making and using its Spindletop hydrogen storage cavern, without the authority of Praxair.

20. Air Liquide's infringement has caused and/or will cause Praxair irreparable harm unless such infringement is enjoined by the Court pursuant to 35 U.S.C. §283.

21. Air Liquide's infringement has caused and/or will cause Praxair damages for which Praxair is entitled to compensation pursuant to 35 U.S.C. §284.

22. Although Air Liquide has been aware of the '476 Patent and its infringement since before the filing of this lawsuit, Air Liquide has continued to commercialize its Spindletop cavern and to infringe, or prepare to infringe, the '476 Patent. On information and belief, Air Liquide's infringement has been, continues to be, and/or will be willful.

23. By virtue of, inter alia, the facts alleged in paragraphs 16-22, inclusive, of this Complaint, there exists an actual and justiciable case or controversy between the parties that is

ripe for adjudication under the Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202) as to whether Air Liquide will infringe one or more claims of the '476 patent.

JURY DEMAND

Praxair demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Praxair prays the Court to grant judgment for Praxair and against Air Liquide as follows:

- a. Declaratory judgment that Air Liquide will infringe the '476 patent;
- b. An award of damages to be paid by Air Liquide adequate to compensate Praxair for Air Liquide's past infringement of the '476 patent, to the extent such infringement has occurred, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts, including, but not limited to, those acts not presented at trial;
- c. An order that Air Liquide pay an ongoing royalty in an amount to be determined for any continued infringement of the '476 patent after the date judgment is entered;
- d. A permanent injunction enjoining Air Liquide and its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents and all others acting in concert or privity with them from infringing the '476 patent pursuant to 35 U.S.C. § 283;
- e. A finding that the complained-of conduct by Air Liquide has been willful, warranting an award of treble damages under 35 U.S.C. § 284;

- f. A declaration finding this to be an exceptional case, and awarding Praxair attorney fees under 35 U.S.C. § 285; and
- g. Such further relief as the Court may deem just and proper.

Dated: March 4, 2016

Respectfully submitted,

By: /s/ Brian P. Biddinger

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