

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**EQUISTAR CHEMICALS, LP and
MSI TECHNOLOGY L.L.C.,**

Plaintiffs,

v.

WESTLAKE CHEMICAL CORP.,

Defendant.

Civil Action No. 6:14-cv-68

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Equistar Chemicals, LP (“Equistar”) and MSI Technology L.L.C. (“MSIT”), by and through their counsel, for their Complaint against Westlake Chemical Corp. (“Westlake”), allege as follows:

THE NATURE OF THE ACTION

1. This is an action for patent infringement of under 35 U.S.C. § 271, *et seq.*

THE PARTIES

2. Plaintiff Equistar is a limited partnership organized and existing under the laws of the State of Delaware, with a principal place of business at 1221 McKinney Street, Suite 700, Houston, Texas 77010.

3. Plaintiff MSIT is a limited liability corporation organized and existing under the laws of the State of Illinois, with a principal place of business at 3930 Ventura Dr., Suite 355, Arlington Heights, IL 60004.

4. On information and belief, Defendant Westlake is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at

2801 Post Oak Blvd, Suite 600, Houston, TX 77056. Defendant Westlake may be served with summons by serving its registered agent for the service of process, The Corporation Trust Company at Corporation Trust Center, 1209 Orange St, Wilmington, Delaware 19801.

5. On information and belief, Defendant Westlake is in the business of manufacturing, distributing, and selling polyolefin-based adhesive resins, including at least the Tymax product, throughout the United States, including Texas.

6. On information and belief, Defendant Westlake manufactures its polyolefin-based adhesive resin at its Longview, Texas location in this District.

JURISDICTION AND VENUE

7. This action arises under the patent laws of the United States of America, United States Code, Title 35, Section 1, *et seq.* This Court has subject matter jurisdiction over the action under 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Westlake because Westlake has sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within this judicial district and because Westlake has committed acts of patent infringement within the State of Texas and within this judicial district.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and/or 1400(b).

INFRINGEMENT

10. On June 20, 2006, United States Patent No. 7,064,163 (“the ’163 patent”) entitled “Polyolefin-based adhesive resins and method of making adhesive resins” was duly and legally issued by the United States Patent and Trademark Office to MSIT. A

true and correct copy of the '163 patent is attached at Exhibit A. The '163 patent is valid and subsisting.

11. MSIT has solely owned the '163 patent from its issuance until the present and continues to be the sole owner of the '163 patent.

12. Equistar has been licensed to the '163 patent from issuance to the present. Equistar is the exclusive licensee of the '163 patent from MSIT. Equistar has the right to enforce, sue, and recover damages for past and future infringement.

13. On information and belief, Westlake has been, and now is, literally or under the doctrine of equivalents, infringing the '163 patent in this district and elsewhere in Texas and the United States, without the consent or authorization of Plaintiffs, by or through its making, having made, sale, offer for sale, and/or use in the United States of the patented methods which comprise a method for manufacturing a polyolefin-based adhesive resin, including its Tymax product, in a manner covered by one or more claims of the '163 patent.

14. Westlake's acts of infringement have caused damage to Plaintiffs, and Plaintiffs are entitled to recover from Westlake the damages sustained by Plaintiffs as a result of Westlake's wrongful acts in an amount subject to proof at trial. Westlake's infringement of Plaintiffs' exclusive rights under the '163 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

15. On information and belief, Westlake has known of the '163 patent since at least 2009.

16. On October 20, 2010, Westlake filed an opposition to the European counterpart of the '163 patent, European Patent No. 1,543,085. Westlake was ultimately unsuccessful, and the European counterpart of the '163 patent emerged from opposition proceedings on November 25, 2013.

17. Westlake used the methods of the '163 patent in the United States.

18. As part of the European opposition, Westlake submitted declarations describing its use of the methods of the '163 patent.

19. On August 8, 2013, counsel for Equistar sent a letter to Westlake informing Westlake that Equistar was the exclusive licensee of the '163 patent and expressing concern that Westlake's polyethylene-based adhesive resin manufacturing methods infringed the claims of the '163 patent.

20. On August 26, 2013, Westlake responded to Equistar's letter omitting any confirmation or denial of infringement, and Westlake continued to manufacture polyethylene-based adhesive resins.

21. Westlake's infringement of the '163 patent, after having knowledge of the '163 patent since at least 2009, without seeking a license for such, is 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter judgment that Westlake has infringed the '163 patent;

2. Enter an order permanently enjoining Westlake and its officers, agents, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '163 patent;

3. Award Plaintiffs damages in an amount sufficient to compensate them for Westlake's infringement of the '163 patent, including enhanced damages, together with prejudgment and post-judgment interest and costs under 35 U.S.C. § 284;

4. Award Plaintiffs an accounting for acts of infringement not presented at trial and an award by the Court of additional damages for any such acts of infringement;

5. Declare this case to be "exceptional" under 35 U.S.C. § 285 and award Plaintiffs their attorneys' fees, expenses, and costs incurred in this action; and

6. Award Plaintiffs such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby request a trial by jury on issues so triable by right.

Dated: February 3, 2014

Respectfully submitted,

FISH & RICHARDSON P.C.

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