

ENTERED

July 21, 2016

David J. Bradley, Clerk

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

LUBRIZOL SPECIALTY PRODUCTS, INC.,

Plaintiff,

v.

FLOWCHEM LLC,

Defendant.

Civil Action No. 4:15-cv-02917

**STIPULATED FINAL CONSENT JUDGMENT
AND ORDER FOR INJUNCTION**

The Court having considered the facts and applicable law, and the parties, Plaintiff Lubrizol Specialty Products, Inc. (“LSPI”) and Defendant Flowchem LLC (“Flowchem”) having agreed to the entry of this Stipulated Final Consent Judgment and Order for Injunction (“Consent Judgment and Order”), and having stipulated that there is no just reason for delaying entry of final judgment in this action, each term of which below is deemed to be material to the resolution of this dispute, it is hereby ordered, adjudged, and decreed that:

FINDINGS OF FACT

A. This Court has subject matter jurisdiction over this patent infringement action (the “Action”) and personal jurisdiction over LSPI and Flowchem. Venue is proper in this Court as to LSPI and Flowchem.

B. In this Action, LSPI has alleged that Flowchem directly infringed and indirectly infringed (through inducement and contributory infringement) certain claims of United States Patent Nos. 8,022,118; 8,426,498; 8,450,249; and 8,450,250 (collectively, the “Patents-in-Suit”), namely claims 8-10 of U.S. Patent No. 8,022,118 and each of the claims of U.S. Patent Nos.

8,426,498; 8,450,249; and 8,450,250 (collectively, the “Asserted Claims”), in violation of 35 U.S.C. § 271 (a)-(c), (g).

C. In response, Flowchem has alleged certain defenses and counterclaims, including that the Asserted Claims are invalid and not infringed. Flowchem has also counterclaimed that the Patents-in-Suit are unenforceable on the basis of inequitable conduct during the prosecution of at least U.S. Patent No. 8,022,118 and that LSPI has monopolized the relevant market for sale of drag reducing agents (“DRAs”) for use in heavy crude oil to customers in the United States by fraudulent omissions and misrepresentations in connection with the filing and prosecution of the Patents-in-Suit, by conduct to exploit invalid patents so as to exclude competition, and by threats to customers in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

D. More specifically, LSPI has alleged that Flowchem has directly and indirectly infringed the Asserted Claims under 35 U.S.C. § 271(a)-(c) at least on the basis of Flowchem’s involvement in limited third party testing of a DRA in two United States pipelines (the “Third Party Pipeline Testing”). Flowchem no longer contests LSPI’s indirect infringement allegations under 35 U.S.C. § 271(b) on such basis.

E. Flowchem has agreed that each of the defenses and counterclaims set forth in the Answer and Counterclaim of Flowchem (Dkt. 64) and Amended Answer and Amended Counterclaim of Flowchem (Dkt. 65), including the allegations and averments contained therein, should be dismissed, with prejudice. For avoidance of doubt, Flowchem makes this agreement only to the extent that those defenses and counterclaims relate to the Patents-in-Suit. Flowchem does not intend to waive or relinquish any of its rights to assert any defenses or counterclaims in any future controversy, except those that were asserted in this Action as they relate to the Patents-in-Suit.

F. Flowchem has agreed to an injunction, on the terms and conditions set forth below, precluding Flowchem and its parents, subsidiaries, affiliates, assignees, or successors in interest by way of merger or acquisition, or any other entity who is in active concert or participation with, through, or under any of them (“Flowchem and its Successors”) each from:

(a) supplying, making, using, selling, importing or offering for sale in the United States a DRA that is, or that is intended to be, inserted by anyone into a pipeline located in the United States that contains a crude oil having an API gravity of less than about 26° and an asphaltene content of at least 3 weight percent (“Heavy Asphaltenic Crude Oil”) as set forth in the Asserted Claims, prior to the expiration of all of the Patents-in Suit, any affirmative disclaimer of all of the Asserted Claims, or any final and unappealable judgment of unenforceability or invalidity of all of the Asserted Claims; or

(b) inducing another in the United States to use, or contributing to another’s use of, a DRA in a pipeline located in the United States that contains a Heavy Asphaltenic Crude Oil as set forth in the Asserted Claims, prior to the expiration of all of the Patents-in Suit, any affirmative disclaimer of all of the Asserted Claims, or any final and unappealable judgment of unenforceability or invalidity of all of the Asserted Claims.

For the avoidance of doubt, nothing in this paragraph will preclude Flowchem from making TURBOFLO® EXL in the United States to supply it outside of the United States, so long as it is not used, or intended to be used, in any pipeline in the United States.

CONSENT JUDGMENT AND ORDER

Accordingly, pursuant to the above Findings of Fact, and upon the consent and request of LSPI and Flowchem, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. Flowchem acknowledges and admits that each of the Asserted Claims of the Patents-in-Suit is valid and enforceable in all respects.

2. Flowchem no longer contests LSPI's indirect infringement allegations based on the Third Party Pipeline Testing under 35 U.S.C. § 271 (b), and on that basis the Court finds that Flowchem has indirectly infringed each of the Asserted Claims of the Patents-in-Suit under 35 U.S.C. § 271 (b).

3. No determination is made as to LSPI's infringement allegations concerning other Flowchem activities, and all claims based on such allegations are hereby dismissed, without prejudice.

4. The parties intend and this Court explicitly orders that the issues of validity and enforceability of the Asserted Claims, and infringement with respect to Flowchem's involvement in the Third Party Testing, are hereby finally concluded and disposed.

5. Each of Flowchem's defenses and counterclaims asserted in this Action with respect to the Patents-in-Suit are hereby dismissed, with prejudice.

6. Flowchem and its Successors are each enjoined from:

(a) supplying, making, using, selling, importing or offering for sale in the United States a DRA that is, or that is intended to be, inserted by anyone into a pipeline located in the United States that contains a Heavy Asphaltenic Crude Oil as set forth in the Asserted Claims, prior to the expiration of all of the Patents-in Suit, any affirmative disclaimer of

all of the Asserted Claims, or any final and unappealable judgment of unenforceability or invalidity of all of the Asserted Claims; or

(b) inducing another in the United States to use, or contributing to another's use of, a DRA in a pipeline located in the United States that contains a Heavy Asphaltenic Crude Oil as set forth in the Asserted Claims, prior to the expiration of all of the Patents-in Suit, any affirmative disclaimer of all of the Asserted Claims, or any final and unappealable judgment of unenforceability or invalidity of all of the Asserted Claims.

For the avoidance of doubt, nothing in this paragraph will preclude Flowchem from making TURBOFLO[®] EXL in the United States to supply it outside of the United States, so long as it is not used, or intended to be used, in any pipeline in the United States.

7. The Court shall retain jurisdiction over any and all disputes arising out of or concerning this Consent Judgment and Order.

8. This Consent Judgment and Order is not intended to be inconsistent with or violate any applicable laws, nor should the Consent Judgment and Order be applied in any manner inconsistent with or that would violate any applicable laws, including but not limited to any antitrust and patent laws.

9. The Consent Judgment and Order shall finally resolve this Action between LSPI and Flowchem. Each party shall bear its own costs, expenses, and attorneys' fees.

10. The Clerk of the Court is directed to enter this final judgment forthwith.

Dated: July 18, 2016

Respectfully submitted,

/s/ Douglas W. McClellan

OF COUNSEL:

Elizabeth Stotland Weiswasser
(*pro hac vice*)
elizabeth.weiswasser@weil.com
Eric S. Hochstadt
(*pro hac vice*)
Claire K. Comfort (*pro hac vice*)
claire.comfort@weil.com
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

WEIL, GOTSHAL & MANGES LLP

Douglas W. McClellan
Attorney-in-Charge
Texas Bar No. 24027488
S.D. Texas No. 393038
doug.mcclellan@weil.com
Melissa Hotze
Texas Bar No. 24049831
S.D. Texas No. 784631
Melizza.hotze@weil.com
WEIL, GOTSHAL & MANGES LLP
700 Louisiana, Suite 1700
Houston, TX 77002
(713) 546-5000 (phone)
(713) 224-9511 (fax)

Suzanne F. Day
Texas Bar No. 24047516
S.D. Texas No. 22529
suzanne.day@lubrizol.com
The Lubrizol Corporation
2000 West Sam Houston Pkwy South
Suite 400
Houston, TX 77042
(440) 347-5073

Julie A. Harris
Texas Bar No. 24094278
S.D. Texas No. 621717
julie.harris@lubrizol.com
The Lubrizol Corporation
29400 Lakeland Blvd.
Wickliffe, OH 44092
(440) 347-2302

*Attorneys for Plaintiff Lubrizol Specialty
Products, Inc.*

/s/ Cristina Espinosa Rodriguez

OF COUNSEL:

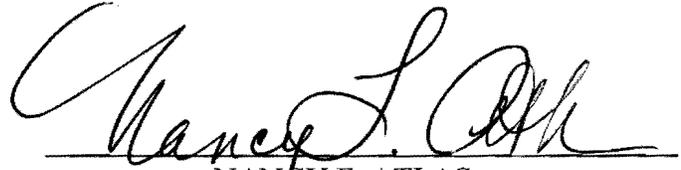
Steven P. Hollman
Steven.hollman@hoganlovells.com
HOGAN LOVELLS US, LLP
555 Thirteenth Street, NW
Washington, DC 20004-1109
Telephone: (202) 637-5600
Fax: (202) 637-5910

Maria Wyckoff Boyce
Texas Bar No. 22095050
SDTX No. 10442
maria.boyce@hoganlovells.com
Jeffrey S. Whittle
Texas Bar No. 24037813
SDTX No. 991796
jeffrey.whittle@hoganlovells.com
Cristina Rodriguez
Texas Bar No. 00793701
SDTX No. 20575
cristina.rodriguez@hoganlovells.com
Mark D. Shelley, II
Texas Bar No. 24051328
SDTX No. 784598
mark.shelley@hoganlovells.com
Jillian Beck
Texas Bar No. 24082672
SDTX No. 10429
jillian.beck@hoganlovells.com
HOGAN LOVELLS US, L.L.P.
700 Louisiana, Suite 4300
Houston, Texas 77002
Telephone: (713) 632-1400
Fax: (713) 632-1401

Attorneys for Defendant Flowchem LLC

PURSUANT TO STIPULATION, IT IS SO ORDERED, ADJUDGED AND DECREED

this 21st day of July, 2016.



NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE