

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MATSON, INC. D/B/A ACF TARP  
AND AWNING,

Plaintiff,

v.

COWBOY CONTAINMENTS, INC. AND  
KHM RENTALS, LLC,

Defendants.

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Civil Case No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Matson, Inc. d/b/a ACF Tarp and Awning, for its Complaint against Defendants Cowboy Containments, Inc. and KHM Rentals, LLC, states and alleges the following:

**I.**  
**PARTIES**

1. Plaintiff, Matson, Inc. d/b/a ACF Tarp and Awning is a corporation organized under the laws of the State of Texas, having its principal place of business at 5960 E. Loop 820 South, Fort Worth, Texas 76119, and is sometimes hereinafter referred to as “ACF.”

2. Upon information and belief, Defendant Cowboy Containments, Inc. is a corporation organized under the laws of the State of Texas having offices at 2802 Delmar Drive, Suite F, Victoria, Texas 77901. Defendant Cowboy Containments, Inc. may be served with process by serving its registered service agent, Ronald Squires, 104 Shiloh Drive, Victoria, Texas 77904. Defendant Cowboy Containments, Inc. is sometimes hereinafter referred to as “CCI.”

3. Upon information and belief, Defendant KHM Rentals, LLC is a limited liability company established under the laws of the State of Texas having offices at 113 Corporate Drive,

Midland, Texas 79705. Defendant KHM Rentals, LLC may be served with process by serving its registered service agent, GP II Energy, Inc., 113 Corporate Drive, Midland, Texas 79705. Defendant KHM Rentals, LLC is sometimes hereinafter referred to as “KHM.”

**II.**  
**JURISDICTION AND VENUE**

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

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

6. Defendant CCI is subject to the jurisdiction of this Court by reason of its acts of patent infringement, which have been committed in this Judicial District, by virtue of its regularly conducted and systematic business contacts in this State, and through its website at [www.cowboycontainments.com](http://www.cowboycontainments.com). Further, Defendant CCI is a corporation organized and existing under the laws of the State of Texas and may be sued anywhere within the State of Texas.

7. Defendant KHM is subject to the jurisdiction of this Court by reason of its acts of patent infringement, which have been committed in this Judicial District, by virtue of its regularly conducted and systematic business contacts in this State. Further, Defendant KHM is a limited liability company organized and existing under the laws of the State of Texas and may be sued anywhere within the State of Texas.

8. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

**III.**  
**PLAINTIFF’S RIGHTS**

9. On July 9, 2013, United States patent No. 8,479,946 (the “946 Patent”), entitled “Portable Drip Containment Device Apparatus and Method” as invented by Mark Matson of Fort

Worth, Texas, was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). A true and correct copy of the ‘946 Patent is attached as Pleading Exhibit “A” to this Complaint. The ‘946 Patent is enforceable and pursuant to 35 U.S.C. § 282 carries a statutory presumption of validity.

10. On April 17, 2012, the U.S. non-provisional patent application serial number 131,448,542 (the “‘542 Application”) was filed in the USPTO. The ‘542 Application subsequently was issued as the ‘946 Patent. The ‘542 Application was published on December 13, 2012, as Publication No. 2012/0312821 A1, a true and correct copy of which is attached as Pleading Exhibit “B.”

11. By assignment dated May 22, 2012, Plaintiff ACF acquired all right, title, and interest in and to the ‘542 Application that subsequently matured into the ‘946 Patent.

**IV.**  
**FACTS COMMON TO ALL COUNTS**

12. On or about April 17, 2012, Mark Matson filed his ‘542 Application on the “Portable Drip Containment Device Apparatus and Method” that ultimately resulted in the ‘946 Patent. These portable drip containment devices are formed of a fuel and chemical resistant fabric and are designed to contain environmentally destructive fluids to prevent leakage and/or spillage from all types of vehicles and equipment, such as those typically found and used in the production of oil and gas, by way of example.

13. On or about September 2010, Plaintiff ACF began manufacturing and selling its portable drip containment devices to VZ Environmental of Fort Worth, Texas (“VZ”). VZ markets these drip containment devices as its “VMatz” product, as shown on the attached Pleading Exhibit “C.” VZ, in turn, sells and/or rents such portable drip containment devices to its downstream customers such as Marathon Oil, BHP Billiton, Shell Oil Company, Chesapeake

Energy and the like (see Pleading Exhibit “D”).

14. The “VMatz” portable drip containment device products are marked with the ‘946 Patent number as per 35 U.S.C. § 287.

15. From approximately February 2012 to late April 2013, Defendant KHM was a customer of VZ, purchasing “VMatz” products from VZ.

16. Upon information and belief, on about May 1, 2013, a sales representative for VZ ceased to be employed by VZ and was hired by Defendant KHM to start up its new portable drip containment device business, utilizing drip containment devices manufactured by Defendant CCI. Upon information and belief, a number of VZ employees and/or sales representatives have subsequently left the employ of VZ and now work for Defendant KHM and/or Defendant CCI.

17. Upon information and belief, Defendant KHM has been instrumental and/or involved with the organization and establishment of Defendant CCI, which was established on or about April 1, 2013, for the purpose of manufacturing portable drip containment devices for Defendant KHM. An example of this relationship is shown in Defendant CCI’s “Terms of Sale,” attached hereto as Pleading Exhibit “E,” wherein, with respect to products manufactured to Buyer’s specifications, the Buyer (i.e. Defendant KHM) indemnifies and hold harmless the Seller (i.e. Defendant CCI) for any acts of patent infringement (Paragraph 11, Pleading Exhibit “E”).

18. Upon information and belief, since such time, Defendant CCI has manufactured and sold portable drip containment devices that fall within the claims of the ‘946 Patent. See attached Pleading Exhibit “F” showing pictures of one of Defendant CCI’s portable drip containment devices. Upon information and belief, Defendant CCI has sold its drip containment devices to Defendant KHM and others, who in turn has rented or sold such drip containment

devices to the same oil and gas producers as those serviced by VZ (see Pleading Exhibit “D”).

**V.**  
**COUNT 1**  
**INFRINGEMENT OF THE ‘946 PATENT**

19. The allegations set forth in all of the foregoing paragraphs are incorporated into this Count 1 as if fully set forth herein.

20. Upon information and belief, in violation of 35 U.S.C. § 271(a) Defendant CCI and Defendant KHM have directly infringed and continue to directly infringe the ‘946 Patent by making, using, selling and/or offering for sale in the United States, including within this Judicial District, products that infringe one or more of the claims of the ‘946 Patent, all without authority of Plaintiff ACF.

21. Upon information and belief, independent of the fact that the former employees and/or sales representatives of VZ that currently work for Defendants know of and sold VZ’s “VMatz” products, Defendant CCI and KHM received actual notice of Plaintiff ACF’s published Patent Application (Pleading Exhibit “B”) and as such had actual knowledge of the ‘946 Patent prior to its issuance. Upon information and belief, Defendants CCI and KHM knew not only that their use and sales of such portable drip containment devices constituted infringement, but also that Defendants CCI and KHM brazenly elected not to discontinue such use or sales and flaunt their infringement.

22. Plaintiff ACF has been harmed by Defendants CCI and KHM’s infringing activities.

**VI.**  
**COUNT 2**  
**WILLFUL INFRINGEMENT**

23. The allegations set forth in all of the foregoing paragraphs are incorporated into this Count 2 as if fully set forth herein.

24. Upon information and belief, Defendants CCI and KHM have long had actual knowledge of Plaintiff ACF's '946 Patent. Upon information and belief, Defendants CCI and KHM have acted with objective recklessness and subjective recklessness in their continued infringement of Plaintiff ACF's '946 Patent, even prior to its July 9, 2013 issuance. Not only have Defendants long had notice of Plaintiff ACF's '946 Patent, Defendants, without justification, continue to flagrantly infringe such '946 Patent. There was an objectively high likelihood of infringement and Defendants knew this, or the infringement was so obvious that Defendants should have known it.

25. As such, upon information and belief, Defendants CCI and KHM have willfully infringed Plaintiff's '946 Patent and Plaintiff ACF has been harmed by Defendants' activities.

**VII.**  
**COUNT 3**  
**ATTORNEY'S FEES**

26. The allegations set forth in all of the foregoing paragraphs are incorporated into this Count 3 as if fully set forth herein.

27. Based upon the facts detailed hereinabove, Plaintiff ACF believes this case to be an exceptional case for which it is entitled its attorney's fees pursuant to 35 U.S.C. § 285.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff ACF demands judgment for itself and against Defendants CCI and KHM as follows:

- A. An adjudication that the '946 Patent is valid;
- B. An adjudication that Defendants CCI and KHM have infringed the '946 Patent;
- C. An award of damages to be paid by Defendants CCI and KHM adequate to compensate Plaintiff ACF for their past infringement of the '946 Patent and any continuing infringement through the date such judgment is entered, including interest, costs, expenses, and an accounting of all infringement acts, including but not limited to, those acts presented at trial;
- D. An injunction enjoining Defendants CCI and KHM and their respective officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or concert with them from directly or indirectly infringing the '946 Patent;
- E. A declaration that Defendants CCI and KHM's patent infringement is willful;
- F. A declaration that this case is exceptional under 35 U.S.C. § 285 and an award to Plaintiff ACF of its reasonable attorney's fees;
- G. An award of Plaintiff ACF's costs of this litigation; and,
- H. An award to Plaintiff ACF of such further relief at law or in equity as this Court deems just and proper.

## **JURY DEMAND**

Pursuant to Federal Rules of Civil Procedure, Rule 38(b), Plaintiff ACF hereby demands a trial by jury on all issues triable as such.

Dated: September 30, 2013.

Respectfully submitted,

/s/ Richard L. Schwartz  
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