

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ENDURANCE LIFT SOLUTIONS, LLC Plaintiff, v. FINALROD IP, LLC, and R2R AND D, LLC d/b/a SUPEROD, Defendants.	Case No.: 3:18-cv-1800 JURY TRIAL DEMANDED
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**ENDURANCE LIFT SOLUTIONS LLC’S COMPLAINT FOR
DECLARATORY JUDGMENT OF INVALIDITY AND NON-INFRINGEMENT**

Plaintiff Endurance Lift Solutions LLC (“Endurance”), by and through its undersigned attorneys, bring this action against Defendants Finalrod IP, LLC, and R2R and D LLC d/b/a Superod (collectively “Defendants” or “Superod”) and through this Declaratory Judgment Complaint hereby allege the following:

NATURE OF THE ACTION

1. This is an action for declaratory judgment of non-infringement and invalidity under the Patent Laws of the United States, Title 35, United States Code, and the Federal Declaratory Judgment Act, Title 28, United States Code, Sections 2201 and 2202.

PARTIES

2. Endurance Lift Solutions, Inc. is a Delaware Limited Liability Company, having a place of business at 201 West California St., Gainesville, TX 76240. Endurance may be served with process through its registered agent, Capitol Corporate Services, Inc. at 800 Brazos, Ste. 400, Austin, Texas 78701. Endurance’s manufacturing and assembly facility for its fiberglass sucker rod product is located in Big Spring, Texas, which is in the Northern District of Texas.

3. Upon information and belief, Defendant Finalrod IP, LLC, (“Finalrod”) is a Texas limited liability company, having a place of business at 610 South Main Street, Big Spring, Texas 79720, which is located in the Northern District of Texas.

4. Upon information and belief, Defendant R2R and D, LLC d/b/a Superod is a Texas limited liability company, having a place of business at 610 South Main Street, Big Spring, Texas 79720, which is located in the Northern District of Texas.

JURISDICTION AND VENUE

5. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and (b), as well as 28 U.S.C. §§ 2201 and 2202, and 35 U.S.C. § 1, et. seq.

6. As described in additional detail below, an actual and justiciable controversy exists between Endurance and Defendants. This Court has subject matter jurisdiction over this action based on a real and immediate controversy between Endurance and Defendants.

7. This Court has personal jurisdiction over Defendants because, on information and belief, Defendants’ primary place of business is in Big Spring, Texas, which is located in this District, and Defendants conduct substantial business in this District.

8. At least because, on information and belief, Defendants are Texas limited liability companies, venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

FACTUAL BACKGROUND

9. Endurance is an industry leader in the design, manufacture, and sale of fiberglass sucker rods and end fittings for use in artificial lift operations in oil and gas wells. For example, Endurance currently offers and sells the Series 200 sucker rods and end fittings.

10. Endurance has spent considerable time and resources to develop a new end fitting design called the Series 300. Series 300 end fittings have been designed to have several competitive advantages over end fittings that are currently offered in the market. As one example,

Series 300 end fittings are lighter and have a narrower outer diameter than currently existing end fittings. The Series 300 end fitting takes up less space than other end fitting designs in the cavity of a downhole rod string and reduces the overall power consumption required in artificial lift for oil and gas.

11. Endurance is marketing and beginning to offer for sale Series 300 end fittings. Endurance has made Series 300 end fittings and has tested the Series 300 end fittings in a well.

12. United States Patent No. 9,181,757 (“the ’757 patent”) is titled “Sucker Rod Apparatus and Method,” and bears an issuance date of November 10, 2015. A copy of the ’757 Patent is attached hereto as Exhibit 1.

13. United States Patent No. 9,045,951 (“the ’951 patent”) is titled “Sucker Rod Apparatus and Method,” and bears an issuance date of June 2, 2015. A copy of the ’951 Patent is attached hereto as Exhibit 2.

14. Upon information and belief, Defendants assert ownership of the ’757 and ’951 Patents.

15. Defendants have asserted the ’757 and ’951 Patents against Endurance’s Series 200 end fittings, which are the subject of a separate lawsuit commenced by Defendants. The fact discovery deadline in the separate lawsuit was June 15, 2018.

16. Despite significant improvements and differences between Endurance’s Series 200 and Series 300 end fittings, Defendants have asserted that they believe the Series 300 is likely covered by the ’757 and ’951 Patents. Defendants have also sought discovery about the function of the Series 300 end fitting in the separate lawsuit. Defendants have informed Endurance in the separate lawsuit that Defendants intend to seek leave to expand the scope of discovery to include Endurance’s Series 300 end fittings.

17. Endurance denied in the separate lawsuit, and continues to deny, that the Series 300 end fitting infringes any claim of the Patents-in-Suit, and Endurance denies that it induces others to infringe, or that it contributes to the infringement by others of any claim of the Patents-in-Suit.

18. Defendants' statements, actions, claims, and allegations during the discovery process in the separate litigation have placed a cloud over Endurance and its Series 300 end fitting, have injured and are injuring Endurance's business and business relationships, and have created a concrete and immediate justiciable controversy between Endurance and Defendants conferring jurisdiction upon this Court pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

19. Because Endurance is already subject to an actual controversy with respect to the Series 200 end fittings, and because Defendants have threatened infringement against the Series 300 end fittings in a discovery dispute, a real and justiciable controversy exists between Endurance and Defendants in relation to the Series 300 end fitting.

20. For at least these reasons, an actual controversy exists within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

COUNT I
(Declaration of Invalidity of U.S. Pat. No. 9,181,757)

21. Endurance incorporates and realleges each and every allegation contained in paragraphs 1-20 above as if fully set forth herein.

22. An actual controversy exists with respect to the '757 Patent. Absent a declaration of invalidity and/or non-infringement, Defendants will continue to wrongfully threaten assertion of the '757 Patent against Endurance's Series 300, and thereby cause Endurance irreparable injury and damage.

23. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Endurance requests a declaration from the Court that each claim of the '757 Patent is invalid and unenforceable.

24. Each claim of the '757 Patent is invalid because it fails to satisfy one or more conditions for patentability set forth in 35 U.S.C. § 101 et seq., including but not limited to Sections 101, 102, 103, and 112.

25. For example, claim 1 is invalid under 35 U.S.C. §§ 102 and/or 103 based on at least the following references (each of which is prior art to the '757 Patent) or combinations thereof:

- U.S. Patent No. 4,662,774 to Morrow (“Morrow”);
- U.S. Patent No. 4,822,201 to Iwasaki (“Iwasaki”);
- U.S. Patent No. 4,822,201 to Watkins (“Watkins”);
- U.S. Patent No. 4,475,839 to Strandberg (“Strandberg”);
- U.S. Patent No. 8,062,463 to Rutledge (“Rutledge 463”);
- U.S. Patent No. 4,401,396 to McKay (“McKay”); and
- U.S. Patent No. 6,193,431 to Rutledge (“Rutledge 431”).

26. More specifically, as an example, Morrow and Iwasaki disclose each and every element of claim 1 of the '757 Patent. Morrow discloses “[a]n end fitting for a sucker rod comprising: an exterior surface, a closed end, an open end, and an interior surface” at least at Figure, Abstract, and at 1:40-61. Iwasaki similarly discloses “[a]n end fitting for a sucker rod comprising: an exterior surface, a closed end, an open end, and an interior surface” at least at Figure 1.

27. Morrow further discloses “the interior surface comprising a wedge system defining a cavity, wherein the wedge system comprises at least one wedge shaped portion having an arcuate

apogee, a perigee, a leading edge and a trailing edge, each apogee forming an arcuate perimeter of equal dimension within the cavity that is the narrowest part of the cavity associated with each wedge shaped portion, each perigee forming a perimeter of equal dimension within the cavity that is the widest part of the cavity associated with each wedge shaped portion such that the leading edge is longer than the trailing edge with the leading edge facing the open end and the trailing edge facing the closed end with respect to each wedge shaped portion” and “such that a force differential along the wedge greater at the closed end of the fitting and decreasing toward the open end of the fitting system is created having compressive forces” at least at Figure, Abstract, and 1:40-2:11. Morrow further discloses at 2:18-45 and 1:40-2:11 that the parabolic curvatures accept less compression and tensile load near the open end than near the closed end and the forces progressively increase from wedge 40, to 42, to 44. Iwasaki similarly discloses the same elements at Figures 1 and 4 and 3:44-50, where it describes the increased contact pressure toward the closed end such that a force differential is created such that the interior wedge receives more force than each subsequent wedge.

28. A judicial determination of the respective rights of the parties with respect to the invalidity of the claims of the '757 patent is now necessary and appropriate under 28 U.S.C. § 2201.

COUNT II
(Declaration of Non-Infringement of U.S. Pat. No. 9,181,757)

29. Endurance incorporates and realleges each and every allegation contained in paragraphs 1-28 above as if fully set forth herein.

30. As a result of the acts described in the foregoing paragraphs, there exists an actual and justiciable controversy of sufficient immediacy and reality to warrant the issuance of a

declaratory judgment that Endurance has not infringed and does not infringe any claim of the '757 Patent.

31. Endurance's Series 300 end fittings have not and do not directly or indirectly infringe, either literally or under the doctrine of equivalents, any claim of the '757 Patent.

32. For example, and without limitation, every claim of the '757 Patent requires at least the limitation that states "such that a force differential along the wedge system is created having compressive forces greater at the closed end of the fitting and decreasing toward the open end of the fitting."

33. Endurance's Series 300 end fitting does not have "a force differential along the wedge system is created having compressive forces greater at the closed end of the fitting and decreasing toward the open end of the fitting."

34. Therefore, Endurance's Series 300 end fittings do not infringe the claims of the '757 Patent at least because, at minimum, they lack the limitation that states "such that a force differential along the wedge system is created having compressive forces greater at the closed end of the fitting and decreasing toward the open end of the fitting."

35. Endurance is entitled to a judgment declaring that it has not and is not infringing, either directly or indirectly, any claim of the '757 Patent.

COUNT III
(Declaration of Invalidity of U.S. Pat. No. 9,045,951)

36. Endurance incorporates and realleges each and every allegation contained in paragraphs 1-35 above as if fully set forth herein.

37. An actual controversy exists with respect to the '951 Patent. Absent a declaration of invalidity and/or non-infringement, Defendants will continue to wrongfully threaten assertion

of the '951 Patent against Endurance's Series 300, and thereby cause Endurance irreparable injury and damage.

38. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Endurance requests a declaration from the Court that each claim of the '951 Patent is invalid and unenforceable.

39. Each claim of the '951 Patent is invalid because it fails to satisfy one or more conditions for patentability set forth in 35 U.S.C. § 101 et seq., including but not limited to Sections 101, 102, 103, and 112.

40. For example, claim 7 is invalid under 35 U.S.C. §§ 102 and/or 103 based on at least the following references (each of which is prior art to the '951 Patent) or combinations thereof:

- U.S. Patent No. 4,662,774 to Morrow;
- U.S. Patent No. 4,822,201 to Iwasaki;
- U.S. Patent No. 4,822,201 to Watkins;
- U.S. Patent No. 8,062,463 to Rutledge;
- U.S. Patent No. 4,401,396 to McKay; and
- U.S. Patent No. 6,193,431 to Rutledge.

41. More specifically, as an example, Morrow and Iwasaki disclose each and every element of claim 7 of the '951 Patent. Morrow discloses “[a]n end fitting for a sucker rod” at least at the Figure and the Abstract.

42. Morrow further discloses “a body having an interior, a closed end, an open end, and a wedge system formed in the interior” at least at the Abstract, Figure, and 1:40-2:12, and 2:18-45.

43. Morrow discloses a wedge system that comprises a number of wedge portions, including an outer wedge portion, an inner wedge portion, and an intermediate wedge portion. Further Morrow discloses the outer wedge portion is most proximate to the open end, the inner wedge portion most proximate to the closed end, and the intermediate wedge portion between them. Each wedge portion comprises a leading edge, a trailing edge, and an angle between the leading edge and the trailing edge at least at Figure, 1:40-2:12, 2:18-45.

44. Accordingly, Morrow discloses “an outer wedge portion formed in the interior proximate to the open end, wherein the outer wedge portion comprises a first leading edge, a first trailing edge, and a first angle between the first leading edge and the first trailing edge, wherein the first leading edge faces the open end and the first trailing edge faces the closed end, and wherein the length of the first leading edge, the length of the first trailing edge, and the size of the first angle define a first distribution of force in the outer wedge portion” and “an intermediate wedge portion formed in the interior between the outer wedge portion and the closed end, wherein the intermediate wedge portion comprises a second leading edge, a second trailing edge, and a second angle between the second leading edge and the second trailing edge, wherein the second leading edge faces the open end and the second trailing edge faces the closed end, and wherein the length of the second leading edge, the length of the second trailing edge, and the size of the second angle define a second distribution of force in the intermediate wedge portion” at least at Figure, 1:40-2:12, 2:18-45.

45. Morrow discloses “an inner wedge portion formed in the interior between the intermediate wedge portion and the closed end, proximate to the closed end, wherein the inner wedge portion comprises a third leading edge, a third trailing edge, and a third angle first angle between the third leading edge and the third trailing edge, wherein the third leading edge faces the

open end and the third trailing edge faces the closed end, and wherein the length of the third leading edge, the length of the third trailing edge, and the size of the third angle define a third distribution of force in the inner wedge portion” at least at Figure, 1:40-2:12, 2:18-45.

46. As shown in the Figure, Morrow discloses trailing edges which vary in length. Specifically, the trailing edges increase in length from the closed end to the open end, which would result in the compressive forces being distributed as described in the claim 7 language (i.e., higher at the closed end of the body than the open end of the body) due to the forces being concentrated along the shorter wedge lengths. Morrow confirms this because it discloses that the parabolic curvatures accept less compression and tensile load near the open end than near the closed end and the forces progressively increase moving from wedge 40, to 42, and then 44, as shown at Morrow at 2:18-45 and 1:40-2:12. Accordingly, Morrow discloses “wherein the first trailing edge, the second trailing edge, and the third trailing edge differ in length such that during use a compressive load applied to the sucker rod at the inner wedge portion is greater than a compressive load applied to the sucker rod at the intermediate wedge portion, and the compressive load applied to the sucker rod at the intermediate wedge portion is greater than a compressive load applied to the sucker rod at the outer wedge portion, such that compressive forces applied to the sucker rod at the closed end of the body exceed compressive forces at the open end of the body” at least at Figure, 1:40-2:12.

47. A judicial determination of the respective rights of the parties with respect to the invalidity of the claims of the '951 patent is now necessary and appropriate under 28 U.S.C. § 2201.

COUNT IV
(Declaration of Non-Infringement of U.S. Pat. No. 9,045,951)

48. Endurance incorporates and realleges each and every allegation contained in paragraphs 1-47 above as if fully set forth herein.

49. As a result of the acts described in the foregoing paragraphs, there exists an actual and justiciable controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that Endurance has not infringed and does not infringe any claim of the '951 Patent.

50. Endurance's Series 300 end fittings have not and do not directly or indirectly infringe, either literally or under the doctrine of equivalents, any claim of the '951 Patent.

51. For example, and without limitation, every claim of the '951 Patent requires at least the limitation "such that compressive forces applied to the sucker rod at the closed end of the body exceed compressive forces at the open end of the body."

52. Endurance's Series 300 end fittings does not have "compressive forces applied to the sucker rod at the closed end of the body [that] exceed compressive forces at the open end of the body."

53. Therefore, Endurance's Series 300 end fittings do not infringe the claims of the '951 Patent at least because, at minimum, they lack the limitation "such that compressive forces applied to the sucker rod at the closed end of the body exceed compressive forces at the open end of the body."

54. Endurance is entitled to a judgment declaring that it has not and is not infringing, either directly or indirectly, any claim of the '951 Patent.

PLAINTIFF'S PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for judgment in its favor and against Defendants as follows:

- A. For judgment in Plaintiff's favor and affirming invalidity and non-infringement of the '757 and '951 Patents;
- B. That the Court enter judgment against Defendants and in favor of Plaintiff and that the Declaratory Judgment Complaint in this action be granted in its entirety;
- C. Enter judgment that the '757 and '951 Patents are invalid;
- D. Enter judgment that Plaintiff's Series 300 end fittings do not infringe, directly or indirectly, the '757 or '951 Patents;
- E. An order awarding Plaintiff its costs and expenses;
- F. That the Court deem this an exceptional case under 35 U.S.C. § 285 and award Plaintiff its costs and reasonable attorneys' fees; and
- G. That the Court award Plaintiff any and all other and further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a jury trial on all the issues so triable under Rule 38 of the Federal Rules of Civil Procedure.

Dated: July 12, 2018

Respectfully submitted,

By: /s/ Winstol D. Carter, Jr.

Winstol D. Carter, Jr.
Texas Bar No. 03932950
Nicholaus E. Floyd
Texas Bar No. 24087524
Morgan, Lewis & Bockius LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002-5005
Tel: (713) 890-5000
Fax: (713) 890-5001
E-mail: winn.carter@morganlewis.com
E-mail: nicholaus.floyd@morganlewis.com

Jason C. White (*pro hac vice* to be filed)
Scott D. Sherwin (*pro hac vice* to be filed)
Nicholas A. Restauri (*pro hac vice* to be filed)
Morgan, Lewis & Bockius LLP
77 W. Wacker Drive, Ste. 500
Chicago, IL 60601
Tel: (312) 324-1000
Fax: (312) 324-1001
E-mail: jason.white@morganlewis.com
E-mail: scott.sherwin@morganlewis.com
E-mail: nicholas.restauri@morganlewis.com

*Attorneys for Plaintiff Endurance Lift
Solutions, LLC*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via CM/ECF on July 12, 2018 upon all counsel of record.

/s/ Winstol D. Carter, Jr.

Winstol D. Carter, Jr.