

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

**CANATEX COMPLETIONS
SOLUTIONS, INC.**

Plaintiff,

V.

WELLMATICS, LLC, GR ENERGY SERVICES, LLC, GR ENERGY SERVICES MANAGEMENT, LP, GR ENERGY SERVICES OPERATING GP, LLC, AND GR WIRLINE, L.P.

Defendants.

[illegible]

CIVIL ACTION NO. 4:22-CV-3306

**PLAINTIFF CANATEX COMPLETIONS SOLUTIONS, INC.'S
REPLY IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

A. Factor 1: Canatex Will Prevail on the Merits	1
1. Defendants’ Non-Infringement Positions Have No Merit.	1
2. Defendants’ Invalidity Analysis Fails to Account for Several Claim Limitations.	4
B. Factor 2: Canatex has Shown a Significant Likelihood of Irreparable Harm	6
C. Factor 3: The Balance of Harms Clearly Favors Canatex	12
D. Factor 4: The Public Interest Favors an Injunction	13
E. Bond	14

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Apple Inc. v. Samsung Elecs. Co.</i> , 735 F.3d 1352 (Fed. Cir. 2013)	10
<i>Apple Inc. v. Samsung Elecs. Co.</i> , 809 F.3d 633 (Fed. Cir. 2015)	10
<i>Commonwealth Sci. v. Buffalo Tech., Inc.</i> , 492 F. Supp. 2d 600 (E.D. Tex. 2007)	12, 13
<i>Georgetown Rail Equip. Co. v. Holland L.P.</i> , No. 6:13-cv-366-MHS-JDL, (E.D. Tex. Jan. 6, 2014)	14, 15
<i>Gonza LLC v. Mission Competition Fitness Equip. LLC</i> , W-21-cv-771, 2021 U.S. Dist. LEXIS 229632 (E.D. Tex. Dec. 1, 2021)	13, 15
<i>Gryphon Oilfield Sols., LLC v. Stage Completions (USA) Corp.</i> , 2018 U.S. Dist. LEXIS 7007 (S.D. Tex. Jan. 17, 2018)	13
<i>Kaepa, Inc. v. Achilles Corp.</i> , 76 F.3d 624 (5th Cir. 1996)	14
<i>MGM Well Servs. v. Mega Lift Sys., L.L.C.</i> , 2005 U.S. Dist. LEXIS 34024 (S.D. Tex. July 19, 2005)	15
<i>M-I LLC v. FPUSA, LLC</i> , No. SA:15-CV-406-DAE, 2015 WL 6738823 (W.D. Tex. Nov. 4, 2015)	14
<i>Mytee Prods. v. Harris Research, Inc.</i> , 439 Fed. Appx. 882 (Fed. Cir. 2011)	7, 9
<i>Petro Franchise Sys., LLC v. All Am. Props., Inc.</i> , 607 F. Supp. 2d 781 (W.D. Tex. 2009)	15
<i>Robert Bosch LLC v. Pylon Mfg. Corp.</i> , 659 F.3d 1142 (Fed. Cir. 2011)	7, 8
<i>Texans for Free Enter. v. Tx. Ethics Comm'n</i> , 2012 U.S. Dist. LEXIS 188644 (W.D. Tex. Dec. 6, 2012)	15
<i>Tinnus Enters, LLC v. Telebrands Corp.</i> , 2015 U.S. Dist. LEXIS 195114 (E.D. Tex. Dec. 22, 2015)	15

<i>Titan Tire Corp. v. Case New Holland, Inc.</i> , 566 F.3d 1372 (Fed. Cir. 2009)	4
<i>Trebro Mfg. v. FireFly Equip., LLC</i> , 748 F.3d 1159 (Fed. Cir. 2014)	8, 10
<i>TriVascular, Inc. v. Samuels</i> , 812 F.3d 1056 (Fed. Cir. 2016)	3
<i>Welsh v. Rockmaster Equip. Mfg.</i> , 4 F. Supp. 2d 659 (E.D. Tex. 1998)	15

Exhibit and Declaration List

MOTION	
Exhibit	Description
A	U.S. Patent No. 10,794,122 (“the ’122 Patent”)
B (SEALED)	Excerpts of Deposition Transcript of Samuel Brown, 30(b)(6) Representative for Wellmatics, LLC and GR Wireline, L.P.
C (SEALED)	GR Wireline, L.P.’s Consolidated Income Statement (GRW-Canatex0000041)
D (SEALED)	Excerpts of Deposition Transcript of Cameron Bryant, 30(b)(6) Representative for Wellmatics, LLC and GR Wireline, L.P.
E (SEALED)	September 30, 2022 Invoices to GR Wireline, L.P.
F	’122 Patent Assignment from Derek Kitchen, Jeffrey Golinowski, Sylvain Hotte, and Trevor Rosten to Avalon Research Ltd.
G	’122 Patent Assignment from Avalon Research Ltd. to Tier 1 Energy Solutions Inc.
H (SEALED)	Amendment to Assett Purchase Agreement between Tier 1 Energy Solutions, Inc. and Tier 1 Energy Tech, Inc. (formerly 1106666 B.C. Ltd.)
I	Certificate of Change Name of 1106666 B.C. Ltd. to Tier 1 Energy Tech, Inc.
J	’122 Patent Assignment from Tier 1 Energy Tech. Inc. to Canatex Completions Solutions, Inc.
K (SEALED)	Animation of PHIRE Escape Tool - Release Operation
L (SEALED)	PHIRE Escape Engineering Drawing (GRW-Canatex00000037) PHIRE Escape Engineering Drawing (GRW-Canatex00000038)
M (SEALED)	PHIRE Escape - Release Tool Manual (GRW-Canatex00002970-80)
N (SEALED)	PHIRE Escape Marketing Video (GRW-Canatex00001367)
O	GR Energy Service’s Income Statement (GRW-Canatex00000039)

(SEALED)	
P (SEALED)	GR Wireline, L.P. Release Tool Revenue (GRW-Canatex00004210)
Q (SEALED)	Wellmatics, LLC Income Statement (GRW-Canatex00000042)
R (SEALED)	Canatex Price Quote to GR Wireline, L.P. for BRT
S	Excerpts of Defendants' Objections and Responses to Canatex's Third Set of Interrogatories
T (SEALED)	Excerpts of Defendants' Objections and Responses to Canatex's First Set of Interrogatories
-- (SEALED)	Declaration of John Rodgers, PhD., Technical Expert for Canatex
-- (SEALED)	Declaration of Jeffrey Golinowski, Inventor of the '122 Patent
-- (SEALED)	Declaration of Rob Sutherland, Chief Executive Officer of Canatex Completions Solutions, Inc.
--	Declaration of Cody Brown, Technical Manager at Tier 1 Completions Solutions, Inc.
REPLY	
U	Excerpts of Transcript from Initial Case Management Conference, Feb.10, 2023
V (SEALED)	Supplemental Declaration of John Rodgers, PhD., Technical Expert for Canatex
W (SEALED)	Declaration of Laurel C. Van Allen, President of Coherent Economics, LLC, Canatex's Economics Expert
X (SEALED)	Additional Excerpts of Deposition Transcript of Samuel Brown, 30(b)(6) Representative for Wellmatics, LLC and GR Wireline, L.P.
Y	Article: How the Pandemic is Harming the Oil and Gas Industry, Sept. 25, 2020

To divert attention away from infringement, Defendants allege that they independently developed the PHIRE Escape. Even if it were only an astonishing coincidence that their tool has the same patented release mechanism embodied by the BRT, copying is irrelevant to infringement.¹ Defendants also repeatedly tout the PHIRE Escape as “superior” to the BRT due to an *additional* “unique inner piston mechanism.” That is also irrelevant to infringement, as the PHIRE Escape relies on the same fundamental release mechanism covered by the ’122 Patent. Indeed, Defendants’ baseless touting of the PHIRE Escape as “superior” only further evidences their efforts to target and displace the BRT. Lastly, the narrative that the market is “moving away” from the BRT due to service quality issues is both false and irrelevant. The evidence clearly shows that Canatex’s BRT is a highly successful tool with significant market share. Even if it was not, the law does not demand that Canatex “dominate” the market to show irreparable harm.

A. Factor 1: Canatex Will Prevail on the Merits.

1. Defendants’ Non-Infringement Positions Have No Merit.

Defendants’ narrow claim constructions are designed solely to avoid infringement. They should be rejected as inconsistent with the plain and ordinary meaning of the claim terms.

i. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Mot., 20; Ex. V ¶ 2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ Defendants have also disingenuously argued an injunction cannot issue absent copying. Ex. U, 6:9-16.

[REDACTED]

[REDACTED]

[REDACTED]

First, Defendants’ interpretation of “expansion chamber” contradicts the express teachings of the specification and excludes every embodiment from the scope of the claims. *SynQor, Inc. v. Artesyn Techs., Inc.*, 709 F.3d 1365, 1378-79 (Fed. Cir. 2013). In reference to Figures 1 and 3, the specification teaches that the “expansion chamber” 38 encompasses the volume occupied by piston section 36 that receives fluid, not merely the sealed volume left of the piston. Ex. V, ¶¶ 3-5 (citing Ex. A, 3:33-38 (explaining that locking piston 32 has “a piston section 36 located in an expansion chamber 38”)). In fact, Fig. 1 specifically points to the space that the piston section 36 occupies as the “expansion chamber.” *Id.* ¶¶6-11. Thus, [REDACTED]

[REDACTED]. *Id.*

Second, Defendants’ position that “a POSA would understand the expansion chamber is only the chamber depicted and labeled below (yellow) that allows the sleeve to expand into it,” is nonsensical. [REDACTED]

[REDACTED] *Id.*, ¶ 12. (citing Ex. A, 3:50-65). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Mot., 17-18 (green box). [REDACTED]

[REDACTED]. Ex. V, ¶ 13. Just as placing a bullet into the chamber of a gun does not create two separate chambers (one on each side of the bullet), [REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED] . *Id.* ¶14.

Finally, even pursuant to Defendants’ arbitrary box-drawing [REDACTED]

[REDACTED] . *Id.* ¶

15. [REDACTED]

ii.

The PHIRE Escape has a “releasable engagement profile which internally engages” [REDACTED]

[REDACTED] .
Mot., 18; Ex. V, ¶ 16. To dodge infringement, Defendants baselessly ask the Court to rewrite this simple term to be: “an engagement mechanism that **has an internal cavity** into which a **male connector** can be received and **does not rely on** the locking piston to create the cavity.” Resp., 10. Defendants argue the ordinary meaning of this claim term was narrowed during prosecution.

First, there is simply no evidence of any disclaimer. Second, Defendants neglect to inform the Court that any such disclaimer must be “**clear and unmistakable.**” *TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1064 (Fed. Cir. 2016). While the claims were amended to recite a “releasable engagement profile which internally engages the connection profile of the first part,” patentee made no arguments that would further limit this term beyond its plain and ordinary meaning. Ex. V, ¶¶ 17-19. Rather, patentee’s arguments distinguished the amended claims from Read based on *other* limitations in the claims—namely that (1) Read’s alleged locking piston does not “directly constrain the releasable engagement profile” and (2) Read fails to teach a first part having an external connection “profile.” *Id.* ¶ 19 (citing Dkt. 59-28, 22-23). As Read was not distinguished based on the “internally engages” language, no disclaimer can exist. *Id.* ¶ 19.

Recognizing this, Defendants try to create a phantom disclaimer by making a big deal out of the fact that the patentee amended the claim and accurately stated “in the presently claimed

invention, the releasable engagement profile internally engages the first part connection profile.” Resp., 9. Defendants pretend these unremarkable statements—which merely restate the claim language—amount to disclaimer so that Dr. Wooley can make the baseless leap in logic that “the patentee deliberately limited its releasable engagement profile of the invention to only those profiles capable of receiving the connection internally,” which he further decides requires a “female-type connection that receives a male connection profile” that must have an “internal cavity” and “does not rely on the locking piston to create the cavity.” Dkt. 61-3, ¶ 79. Yet, none of these very narrow limitations are mentioned *anywhere* in the prosecution history. Ex. V, ¶¶ 20-21. There is no disclaimer. Moreover, Defendants’ proposal that the claim is limited to a “female-type connection” is contradicted by the specification’s teaching that the releasable engagement profile “may be locking **pins** that move radially between a locking and release position.” *Id.* ¶ 22 (citing Ex. A, 3:20-25). Such pins are male-type [REDACTED], not female-type.

2. Defendants’ Invalidity Analysis Fails to Account for Several Claim Limitations.

Defendants must show “it is more likely than not that the [they] will be able to prove at trial, **by clear and convincing evidence**, that the patent is invalid.” *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1379 (Fed. Cir. 2009). Bebak’s failure to disclose several claim elements is fatal to their invalidity defense.

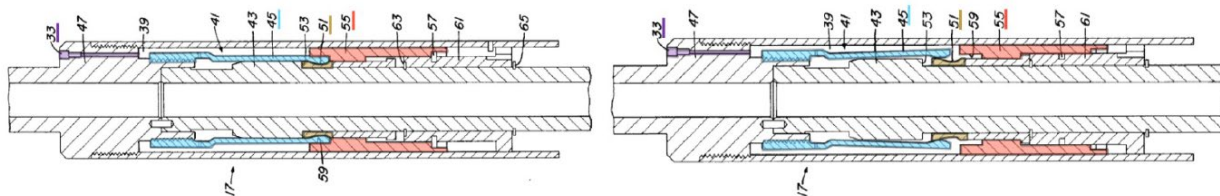
i. Bebak’s Release Adapter Lacks a “Source of Fluid Pressure.”

Defendants identify “hydraulic capillary tube” 33 as the “source of fluid pressure” within Bebak’s release adapter 17. Resp., 15. However, the tube 33 is not a “source” of fluid pressure—it is merely a conduit to convey fluid pressure from a source at the surface, which is a hydraulic pump. Ex. V ¶¶ 25-26 (citing Dkt. 59-9, 2:57-61 (“locking mechanism 41 is actuated **from the surface of the well by pumping hydraulic fluid down** through capillary tube 33 to chamber 39.”)).

A “source of fluid pressure” is where fluid pressure originates, not merely a conduit for conveying fluid pressure from a source. *Id.* ¶ 26. This is in stark contrast to the invention, which requires that the source of fluid pressure (e.g., combustible or gas cylinder) resides in the claimed “second part,” providing a significant advantage over Bebak. *Id.* ¶¶ 27-28.

ii. Bebak’s Release Adapter Lacks a “Locking Piston” in the “Second Part.”

In Defendants’ annotated figures, they identify the alleged external connection profile 51 in brown, the locking piston 55 in red, and the releasable engagement profile 45 in blue:



Defendants conspicuously avoid identifying the specific components that makeup the alleged “second part” of Bebak, because doing so would expose two major flaws in Defendants’ mapping.

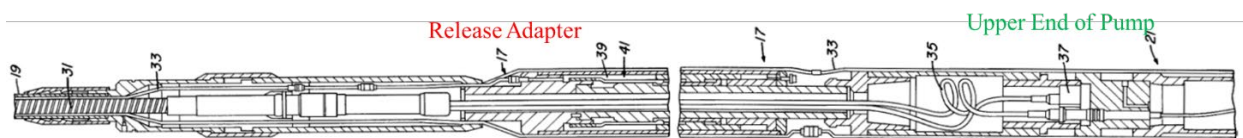
First, the claims require the external connection profile to make up a “first part” and the locking piston to makeup a *different* “second part.” Yet, as shown above the alleged “external connection profile” (**brown**) and piston (**red**) makeup the *same* part. *Id.* ¶ 31. As shown in the right figure above, piston 55 (**red**) has axially shifted to the right to release collet 45 (**blue**) but is *still* coupled to the profile 51 (**brown**). *Id.* Dr. Rodgers more clearly shows this. *Id.* ¶ 32.

Second, the claims require that the “second part” is made up of *both* the locking piston and the releasable engagement profile. However, as explained above, the piston 55 (**red**) and collet 45 (**blue**) do not make up the same part. Rather, piston 55 (**red**) shifts to the right and allows collet 45 (**blue**) to release profile 51 (**brown**), separating the piston from the collet. *Id.* ¶ 33.

iii. Bebak’s Release Adapter Lacks the Required Electrical Connections.

Defendants identify connector 37 as the “first electrical connection” and wires 35 as the “second electrical connection.” Resp., 15-16. However, the connector 37 is not in either the first

or second part as required by claim 13. As shown below and taught by Bebak, the connector 37 is part of the pump 21, which is below the release adaptor 17 (i.e., the alleged “releasable connection”). Ex. V, ¶¶ 34-35 (citing Dkt. 59-9, 2:38-40 (“Power cable 31 contains several electrical wires 35 that interconnect with **connectors 37 located at the upper end of pump 21**”)).



Additionally, a POSITA would not understand wires 35 and connectors 37 to satisfy the claim language because they are not electrically connected *within* the release adaptor 17. *Id.* ¶ 36. The claim requires the first and second electrical connections be connected and carried by the first and second parts, respectively. Thus, a POSITA would understand that the electrical engagement and disengagement of those two components must occur within the alleged releasable connection (i.e., releasable adaptor 17). *Id.* In Bebak, the release adaptor 17 merely provides a hollow passage for two cables (not connected to one another) to pass through. *Id.*²

B. Factor 2: Canatex has Shown a Significant Likelihood of Irreparable Harm.

The undisputed facts demonstrate a significant *likelihood* of irreparable harm:

- Wellmatics admits that [REDACTED]
- [REDACTED]
- The BRT accounts for a substantial portion of Canatex’s revenue and profits and is the core technology that Canatex was founded on in 2017.
- The BRT is believed to account for roughly [REDACTED]
- Defendants admit the PHIRE Escape directly competes in the same market as the patented BRT and is touted by Defendants to be allegedly “superior” to the BRT.

² Defendants also argue that it would have been obvious to add equalization portions to Bebak. A POSA would recognize no need to add equalization ports to Bebak because the coiled tubing 19 of Bebak could simply be pulled toward the surface to overcome any wellbore pressure preventing release. Ex. V, ¶¶ 39-40.

- Wellmatics circulated over [REDACTED]
- GRW was a major customer of the BRT and continuously used the BRT from 2017-2022, just prior to introducing the infringing PHIRE Escape.
- [REDACTED]

The Presence of Competition “Strongly” Favors a Finding Irreparable Harm (#1)

Defendants do not dispute that Canatex and Wellmatics are direct competitors or that GRW uses the PHIRE Escape in direct competition with Canatex’s BRT customers. [REDACTED]

See Mytee Prods. v. Harris Research, Inc., 439 Fed. Appx. 882, 887-88 (Fed. Cir. 2011) (holding that indirect competition by accused infringer with customers that use patented technology was sufficient to demonstrate irreparable harm). Thus, this factor weighs **heavily** in favor of irreparable harm under the law. Mot., 23 (collecting cases). To blunt this, Defendants disingenuously imply that the lack of a two-competitor market weighs against irreparable harm and, since there are additional competitors in the market, Canatex must show that it would secure all of Defendants’ sales/rentals of the PHIRE Escape if Defendants were enjoined. Resp., 23-24. That is not the law, as such a showing would be impossible. “[T]he absence of a two-supplier market does **not** weigh against a finding of irreparable harm” and it is “legal error” for district courts to conclude that “the presence of additional competitors, without more, cuts against a finding of irreparable harm.” *Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1151 (Fed. Cir. 2011).

Loss of market share (#2); loss of access to customers/business opportunities (#3); damage to relationships (#4)

Defendants cannot dispute there is a high **likelihood** that Canatex will suffer a significant loss of market share if they are not enjoined, p [REDACTED]

[REDACTED]. To tilt this factor in their favor, Defendants argue that Canatex has only provided *de minimis* evidence of market share loss **to date**. However,

Defendants disregard that this factor focuses on the risk of *prospective* harm. Ex. W, ¶¶ 7-11. It does not require Canatex to wait to lose its biggest customer or significant market share before obtaining a preliminary injunction. See *Trebro Mfg. v. FireFly Equip., LLC*, 748 F.3d 1159, 1164, 1170 (Fed. Cir. 2014) (“The district court’s blanket dismissal of evidence showing *likely* loss of market share and loss of access to customers was an error of law” and holding court erred by concluding no irreparable harm where plaintiff testified *no actual harm* had been suffered, but there was *risk of future harm* absent enjoinder that would lead to a loss of \$50,000 in gross profit and layoffs). Moreover, [REDACTED]

[REDACTED] Ex. W, ¶

18. An extraordinary risk of unrecoverable lost market share exists.

Defendants also argue that Canatex must specifically prove that [REDACTED] [REDACTED] Resp., 21-22. The Federal Circuit has rejected this exact argument, holding that circumstantial evidence, such as patentee having done past business with the customer, demonstrates a sufficient *risk* of market share loss. *Bosch*, 659 F.3d at 1154 (“*Bosch* relies on the fact that it previously secured the Wal-Mart account as circumstantial evidence that it would reclaim Wal-Mart’s business were Pylon enjoined...*Bosch* made a prima facie showing of lost market share...”)). In fact, [REDACTED]

[REDACTED] Sutherland Decl., App. B. [REDACTED]

[REDACTED] . Ex. W, ¶¶ 15-16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Defendants similarly argue that GRW competing directly with Canatex’s BRT customers is speculative because Canatex has not shown that GRW took any jobs from Canatex’s customer. Resp., 27. However, the critical fact that [REDACTED]

[REDACTED] demonstrates a likelihood of market share loss. *Mytee Prods.*, 439 Fed. Appx. at 887-88. This risk is even more severe given Defendants’ public touting of their infringing tool as “superior” to the BRT. Ex. W, ¶ 12.

Defendants further argue that GRW’s use of the PHIRE Escape cannot constitute a loss of market share because GRW never intends to use the BRT again. But this argument completely ignores that GRW is using the infringing tool in competition with BRT customers. It also disregards that GRW was using the BRT right up to the point of its infringement. *Id.* ¶ 13.

Risk of Price Erosion (#7)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1. Incalculable Nature of Harm (#9)

Defendants allege in conclusory fashion that any harm is “readily calculable.” Tellingly though, they do not explain how Canatex’s loss of goodwill, market share, customers [REDACTED]. Nor do they explain how money damages could rectify the harm from such loss for nearly two-years leading up to trial. Ex. W ¶ 29. Indeed, Defendants merely conclude “such losses are readily calculable,” despite controlling law to the contrary. [REDACTED]

2. Remaining Factors.

Defendants fail to rebut Factor 5 (patented technology is core to Canatex’s business)³ and Factor 8 (right of a patent owner to exclude). They favor Canatex. Moreover, Defendants’ assertion that Canatex has provided no evidence of risk of loss of goodwill and damage to customer relationships is false. *See* Sutherland Decl. ¶¶ 8, 22, 24. So too is the claim that Canatex will not lose goodwill from Defendants’ cannibalizing of the BRT market. Ex. W ¶ 22.

3. Canatex has Shown the Required Nexus

“The purpose of the causal nexus requirement is to establish the link between the infringement and the harm, to ensure that there is ‘**some** connection’ between the harm alleged and the infringing acts.” *Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 640 (Fed. Cir. 2015) (emphasis added). This merely involves “show[ing] **some** connection between the patented feature and demand for the [infringer’s accused] products.” *Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d

³ While the response fails to address this factor at all, Mr. Benoit’s declaration argues that the BRT is not “core” to Canatex. Canatex’s BRT financials expose the absurdity of his position. Ex. W ¶¶ 19-21.

1352, 1364 (Fed. Cir. 2013) (emphasis added). Clearly grasping at straws, Defendants argue that Canatex “must show that the features claimed by its patent drive demand, not merely some aspect of a release mechanism in general.” Resp., 25. However, the patented feature is not just “some aspect of a release mechanism in general.” The patented feature **is** the release mechanism of the BRT. Rodgers Decl., App. B. Absent this release mechanism, there is no release tool at all.

Recognizing their nexus argument lacks merit, Defendants argue that the existence of non-infringing release tools negates the patented feature being a driver of consumer demand. Resp., 25. But the fact that consumers may elect to use other release tools says nothing about whether demand **for the BRT and PHIRE Escape** is driven by the patented feature. Defendants also make the absurd argument that improvements made between the BRT 1.0 and 2.0 demonstrates that the patented release mechanism in no way drives demand. *Id.* [REDACTED]

Sutherland Decl., App. A. Indeed, Canatex touts that both versions have “an **identical** latching and releasing mechanism.” Dkt. 59-7. The release feature is critical to both versions and marketed as such. Ex. W ¶¶ 14, 16.

4. Defendants’ Claim that Canatex would not Benefit from an Injunction is False.

Because the irreparable harm factors weigh so heavily in favor of Canatex, Defendants resort to a fictional narrative that [REDACTED] [REDACTED]. Resp., 24. First, even if this narrative were true, it does not change the fact that Defendants’ infringement has and will cause substantial irreparable harm. Second, Defendants’ narrative is entirely false. Defendants state that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* ¶ 11. [REDACTED]

[REDACTED]

[REDACTED], undercutting Defendants’ false narrative. *Id.* at App. C.

Defendants also allege that competitors of the BRT have been expanding their market share, and then make an incredible leap in logic to suggest that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

C. Factor 3: The Balance of Harms Clearly Favors Canatex.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Defendants argue these facts are irrelevant because

[REDACTED]

[REDACTED] ” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *See*

Commonwealth Sci. v. Buffalo Tech., Inc., 492 F. Supp. 2d 600, 606 (E.D. Tex. 2007) (“Since

wireless products make up only eleven percent of [defendant’s] business, [defendant’s] hardship if it is precluded from making future wireless sales in the United State is far from catastrophic.”).

Each of Defendants’ alleged “harms” are complaints about the natural results that flow from having to cease infringing activity. But “[m]ere hardship incurred in the process of ceasing operations is not sufficient” for a showing of harm. *Commonwealth Sci*, 492 F. Supp. at 606 (citing *Windsurfing Int’l, Inc. v. AMF, Inc.*, 782 F.2d 995, 1003 n.12 (Fed. Cir. 1986) (“One who elects to build a business on a product found to infringe cannot be heard to complain if an injunction against continuing infringement destroys the business so elected.”). Indeed, if a preliminary injunction would be so harmful, [REDACTED].

[REDACTED]. This is pure misdirection. The balance of harm looks at all harm each party would face, it does not compare some harms in isolation. Outside of speculative losses that are the natural result of an injunction, [REDACTED]

[REDACTED] In contrast, Canatex would

[REDACTED]. Moreover, any alleged harm Defendants will suffer will be substantially mitigated by Canatex’s security bond. *Gonza LLC v. Mission Competition Fitness Equip. LLC*, W-21-cv-771, 2021 U.S. Dist. LEXIS 229632, at *23 (E.D. Tex. Dec. 1, 2021) (holding that because an alleged infringer has protection in the form of a bond, but a patentee has no protection absent an injunction, this factor tips “decidedly” in patentee’s favor).

D. Factor 4: The Public Interest Favors an Injunction.

Gryphon does not apply. There, the court noted that public interest *may* not favor protecting patent rights in situations “where the patent holder **has no viable product in the marketplace.**”

Gryphon Oilfield Sols., LLC v. Stage Completions (USA) Corp., 2018 U.S. Dist. LEXIS 7007, at *13 (S.D. Tex. Jan. 17, 2018). While the court stated that public interest favors competition, that comment was made because plaintiff had no product and its patent was likely not infringed. *Id.*

E. Bond

Not only is the bond amount in the trial court's sound discretion, but courts "may elect to require no security at all." *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (citation omitted). "The party against whom a preliminary injunction is sought bears the burden of establishing a *rational* basis for the amount of the proposed bond." *M-I LLC v. FPUSA, LLC*, No. SA:15-CV-406-DAE, 2015 WL 6738823, at *16 (W.D. Tex. Nov. 4, 2015) (emphasis added). Wellmatics has not requested bond and has thus waived any request for bond. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Id. ¶¶ 31, 38. Defendants' speculative and unsupported bond amount must be rejected. *Georgetown Rail Equip. Co. v. Holland L.P.*, No. 6:13-cv-366-MHS-JDL, at *5 (E.D. Tex. Jan. 6, 2014) (rejecting requested bond as based on "conclusory and speculative statements without concrete

evidence detailing the supposed loss.”).⁴

Because Defendants failed to establish a rational bond amount and Canatex has made a compelling showing of success on the merits and irreparable harm, a nominal bond amount of \$100k is appropriate. *Petro Franchise Sys., LLC v. All Am. Props., Inc.*, 607 F. Supp. 2d 781, 801 (W.D. Tex. 2009) (“Several considerations compel this Court to conclude that a relatively low bond amount is appropriate. First, because Plaintiffs’ likelihood of success on the merits is strong, **this Court elects to resolve uncertainties as to the proper basis for calculation in their favor.**”). A bond of \$100k is consistent with the amount sister courts have found appropriate in preliminary injunction patent cases. *Tinnus Enters, LLC v. Telebrands Corp.*, 2015 U.S. Dist. LEXIS 195114, at *8 (E.D. Tex. Dec. 22, 2015) (ordering \$50k bond where defendant’s \$1M request had no sound basis); *Georgetown*, 2014 U.S. Dist. LEXIS, at *7 (ordering \$25k bond where defendant’s \$2M request was unsupported by concrete evidence and contradicted by the record); *MGM Well Servs. v. Mega Lift Sys., L.L.C.*, 2005 U.S. Dist. LEXIS 34024, at *19 (S.D. Tex. July 19, 2005) (ordering \$30k bond where defendant’s bond request in the millions was unsupported by the evidence and accused product had minimal market share); *Welsh v. Rockmaster Equip. Mfg.*, 4 F. Supp. 2d 659, 669 (E.D. Tex. 1998) (ordering \$100k bond); *Gonza*, 2021 U.S. Dist. LEXIS, at *23 (ordering \$25k bond). A nominal bond is especially proper where, as here, the infringing tools make up a negligible fraction of Defendants’ businesses. *Texans for Free Enter. v. Tx. Ethics Comm’n*, 2012 U.S. Dist. LEXIS 188644, at *21-22 (W.D. Tex. Dec. 6, 2012) (“Where the district court determines that the risk of harm is remote, the court has discretion to require only a nominal bond or no bond at all.”).

[REDACTED]

Dated: February 22, 2023

Respectfully submitted,

/s/ J. David Cabello

J. David Cabello

Attorney-in-Charge

Texas Bar No. 03574500

Stephen D. Zinda

Texas Bar No. 24084147

James H. Hall

Texas Bar No. 24041040

Munira A. Jesani

Texas Bar No. 24101967

Cabello Hall Zinda, PLLC

801 Travis Street, Suite 1610

Houston, TX 77002

Telephone: (832) 631-9990

Facsimile: (832) 631-9991

David@CHZFirm.com

Stephen@CHZFirm.com

James@CHZFirm.com

MJesani@CHZFirm.com

**ATTORNEYS FOR PLAINTIFF
CANATEX COMPLETIONS
SOLUTIONS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served electronically on all counsel of record via the Court's ECF system on February 22, 2023.

/s/ Stephen D. Zinda

Stephen D. Zinda