

**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, AND GR ENERGY SERVICES OPERATING GP, LLC, GR WIRELINE, L.P.

Defendants.

CIVIL ACTION NO. 4:22-CV-3306

*****PUBLIC REDACTED
VERSION*****

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION AGAINST ALL DEFENDANTS**

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EXHIBITS AND DECLARATION LIST

Exhibit	Description
1. SEALED	Deposition Excerpts of Cameron Bryant
2. SEALED	Deposition Excerpts of Samuel Jones Brown
3. SEALED	Declaration of Gary Wooley
4. SEALED	Declaration of Ryan Burnett
5. SEALED	Dynasty Quote
6. SEALED	Horizontal Wireline Quote
7.	BRT 2.0 Datasheet
8. SEALED	Deposition Excerpts of Robert J. Sutherland
9.	U.S. Patent No. 6,571,879 (Bebak)
10. SEALED	Deposition Excerpts of Jeffrey R. Golinowski
11. SEALED	Declaration of Paul Benoit
12. SEALED	Liberty Proposal
13. SEALED	Canatex BRT Quote
14. SEALED	12/9/2022 Plaintiff's Responses and Objections to Defendants' First Set of Interrogatories (Nos. 1-16)
15. SEALED	Canatex Profit and Loss Statement (CANATEX000001)
16. SEALED	Investigative Report
17.	Release Tool Purchase and Rental History (GRW-CANATEX00004209)

SEALED	
18. SEALED	Declaration of Matthew Scott
19. SEALED	Correspondence Identifying Avalon BRT (CANATEX002695-2697)
20.	Documentation of World Events
21. SEALED	Declaration of Samuel Jones Brown, IV
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23.	U.S. Patent No. 10,794,122 (Kitchen)
24. SEALED	Fesco Quote
25. SEALED	BRT SQ Report
26. SEALED	Annotated Drawing
27. SEALED	Canatex Client BRT Purchase History (CANATEX002108)
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I. INTRODUCTION

Failing to evolve its strategy to account for evidence secured through discovery, Canatex has cherry-picked statements, ignored context, and blatantly misrepresented facts in its crusade to disrupt innovation in the release tool industry by pursuing a baseless preliminary injunction. Defendants did not copy the Canatex BRT—a product Defendants find to be inferior to other existing non-infringing tools—when inventing the PHIRE Escape. Rather, Defendants invented the PHIRE Escape to be a premium product that could fill a clearly existing void in the market.

The evidence before this Court demonstrates: (1) Defendants do not infringe U.S. Patent No. 10,794,122 (“the ’122 Patent,” Ex. 23) because the PHIRE Escape materially differs in several ways, [REDACTED]

[REDACTED] (2) the ’122 Patent is invalid due to anticipation and obviousness grounds; (3) Canatex cannot show the requisite irreparable harm to merit a preliminary injunction; and (4) the equitable factors at play neither favor nor require the extraordinary remedy of a preliminary injunction. Defendants GR Energy Services Management, LP, GR Energy Services Operating, GP, LLC, GR Wireline, L.P. (individually “GRW”) (collectively “GR Energy”), and Wellmatics, LLC (collectively “Defendants”) thus ask the Court to deny Plaintiff’s Motion.¹

II. LEGAL STANDARD

A preliminary injunction is an “extraordinary and drastic remedy” that “may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (cleaned up); *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008). Federal Circuit law governs patent preliminary injunctions. *Hybritech Inc. v. Abbott*

¹ Emphasis is added throughout unless otherwise noted.

Labs., 849 F.2d 1446, 1451 n.12 (Fed. Cir. 1988). To obtain a preliminary injunction, the movant must establish four factors: “[1] that [it] is likely to succeed on the merits, [2] that [it] is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in [its] favor, and [4] that an injunction is in the public interest.” *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1375-76 (Fed. Cir. 2009) (quoting *Winter*, 129 S. Ct. at 374).

III. FACTUAL BACKGROUND

A. Facts Leading to the Lawsuit

GR Energy is a completion solutions group committed to lowering oil and gas company risk and cost by delivering better performance and technology.² GR Energy discovered the industry needed improved technology to reduce downtime at wells. Downtime is costly and can result in reputational harm to the entity that is seen as the cause of it. In 2019, GR Energy began designing downhole wireline tools to fix these inefficiencies. *See, e.g.*, Ex. 1 Bryant Dep. Tr. 11:15-12:20

Tool by tool, GR Energy succeeded in its endeavor. *See id.* at 42:8-25; 43:1-8. GR Energy formed Wellmatics in

Wellmatics adopted the mission of *Id.*; Ex. 2

Brown Dep. Tr. 112:3-9. Today, Wellmatics sells its perforating guns and is established as a premium provider of reliable wireline technologies. *See* Ex. 2 at 112:13-20.

GRW, utilized Canatex BRTs in 2017 in hopes of reducing downtime. *See* Ex. 1 at 122:11-22. As the Canatex BRT proved to be unreliable, GRW

²

who is responsible for on-the-ground execution of the oil and gas services the group provides.

began replacing the Canatex BRT on its trucks [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Even after transitioning away from the Canatex BRT, [REDACTED]

[REDACTED]

[REDACTED]

B. Developing the PHIRE Escape Release Tool

With designer Cameron Bryant at the helm, [REDACTED]

[REDACTED] Ex. 2 at 107:16-23; Ex. 1 at 43:6-23. While brainstorming a design, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 1 at 167:11-168:12; Ex. 26 Annotated Drawing. These features could not have been copied from the Canatex BRT because it does not have them, and they are not mentioned in Canatex's patent. For this and other reasons, the PHIRE Escape and BRT look and act differently.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

At no time during the development of the PHIRE Escape did Defendants [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The PHIRE Escape is a superior product [REDACTED]

[REDACTED]

Canatex advertises its BRT can only be run “50+” times before it must be serviced. Ex. 7, BRT 2.0 Datasheet. As a result,

GRW has significantly reduced downtime caused by release tool failures. Ex. 4, at ¶ 13.

C. Relationship of Relevant Entities to Each Other and in the Market

Canatex interchanges the various players in this litigation to fit its David verses Goliath narrative, when it is critical to compare apples to apples. [REDACTED]

[REDACTED] Canatex is thus a competitor of Wellmatics; not GRW. *See, e.g.*, Ex. 2 at 28:12-19. Tier 1 is a competitor of GRW. *See id.* at 152:19-20. [REDACTED]

[REDACTED] Canatex and Tier 1 are far from the small fry they claim to be. Ex. 8 at 68:11-18.

D. This Lawsuit

When word got around that Wellmatics was working on another premium wireline product, clients began inquiring about the PHIRE Escape. But just as Wellmatics was about to launch, Canatex filed this lawsuit on September 27, 2022 along with a request for a preliminary injunction³, disrupting Wellmatics' plan to bring its tool to market.

IV. ARGUMENT

Canatex cannot make the “clear showing” necessary to obtain a preliminary injunction. *Winter*, 129 S. Ct. at 376. Knowing Wellmatics has not commercially sold or rented the PHIRE Escape to third parties, that GRW moved away from the Canatex BRT years before the PHIRE Escape existed, and that Wellmatics developed the PHIRE Escape from the ground up, Defendants respectfully ask the Court to deny Plaintiff's Motion for Preliminary Injunction because (1)

³ Defendants, seeing factual misconceptions in this briefing, contacted Canatex to reach an expedited discovery agreement in hopes of clearing up confusion. Yet, after three rounds of written discovery responses and two corporate representative depositions, Canatex refiled its baseless motion for a preliminary injunction filled with distortions and half-truths.

Defendants do not infringe the '122 Patent; (2) the '122 Patent is invalid; (3) Canatex will not suffer irreparable harm; and (4) Canatex is otherwise unable to meet its burdens.

A. Canatex Is Unlikely to Succeed on the Merits.

Canatex must establish it is likely to succeed on the merits at trial by showing it is likely to prove infringement and withstand any challenges to the validity of the patent. *Titan Tire Corp.*, 566 F.3d at 1376. Canatex cannot do either.

1. *Defendants Do Not Infringe the '122 Patent.*

Patent infringement “requires a two-step analysis: first, the meaning of the claim language is construed, then the facts are applied to determine if the accused device falls within the scope of the claims as interpreted.” *MBO Lab., Inc. v. Becton, Dickinson Co.*, 474 F.3d 1323, 1329 (Fed. Cir. 2007). The second step, “comparison of the claims to the accused device, . . . requires a determination that every claim limitation or its equivalent be found in the accused device.” *Planet Bingo, LLC v. GameTech Int’l, Inc.*, 472 F.3d 1338, 1341 (Fed. Cir. 2006). If even one element of a claim is not present in the accused device literally or equivalently, there can be no infringement. *Lockheed Martin Corp. v. Space Systems/Loral, Inc.*, 324 F.3d 1308, 1321 (Fed. Cir. 2003). A preliminary injunction should not issue if there is a “substantial question” of infringement. *Mylan Institutional LLC v. Aurobindo Pharma Ltd.*, 857 F.3d 858, 866 (Fed. Cir. 2017).

Dr. Gary Wooley, Ph.D., an expert with over 50 years of experience in the oil and gas industry, has conducted an analysis of the '122 patent and compared it to the PHIRE Escape. [REDACTED]

Either is sufficient to establish a “substantial question”

as to Canatex's ability to prove infringement.

a. The PHIRE Escape

The PHIRE Escape

Applying the plain and ordinary meaning of the claim terms in element B4 as understood by a POSA (person of ordinary skill in the art),⁴

[REDACTED]

[REDACTED]

[REDACTED]

⁴ Claim terms "are generally given their ordinary and customary meaning," which is "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (citations omitted).

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Id. Because claims 18 and 19 are dependent on claim 13, which is an independent claim, the PHIRE Escape cannot infringe claims 13, 18, or 19. *Wahpeton Canvas Co., Inc. v.*

Frontier, Inc., 870 F.2d 1546, 1553 (Fed. Cir. 1989) (“dependent claims cannot be found infringed unless the claims from which they depend have been found to have been infringed”).

b. There is No Infringement Because the PHIRE Escape Does Not Meet Element B1 of Claim 13.

In addition, the PHIRE Escape does not meet element B1 of claim 13 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] *Id.*; *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996) (“[i]n most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term”).

In accordance with accepted rules of claim construction, [REDACTED]

[REDACTED]

[REDACTED] *Grace Instrument Indus., LLC v. Chandler Instruments Co., LLC*, 57 F.4th 1001, 1008 (Fed. Cir. 2023) (“If the meaning of a claim term is clear from the intrinsic evidence, there is no reason to resort to extrinsic

evidence.”); Ex. 3 ¶¶ 75-80. The prosecution history is part of the intrinsic record. A review of the prosecution history here shows the patentee [REDACTED]

[REDACTED] *Id.* ¶¶ 76-79. The patentee confirms this position when explaining why it made the amendment. Using present invention language – language that can limit an entire invention⁶– the patentee states, “In contrast, in **the presently claimed invention**, the *releasable engagement profile internally engages* the first part connection profile, which is exemplified by an expandable collet which surrounds the profile.” *Id.* ¶ 78.

⁵ “Prosecution arguments like this one which draw distinctions between the patented invention and the prior art are useful for determining whether the patentee intended to surrender territory, since they indicate in the inventor’s own words what the invention is not.” *MBO Labs., Inc. v. Becton, Dickinson & Co.*, 474 F.3d 1323, 1330 (Fed. Cir. 2007).

⁶ Where, as here, “a patent thus describes the features of the ‘present invention’ as a whole, this description limits the scope of the invention.” *Regents of the University of Minnesota v. AGA Medical Corp.*, 717 F.3d 929, 936 (Fed. Cir. 2013).

This amendment and explanation convey to a POSA that the patentee deliberately limited its releasable engagement profile of the invention to only those profiles capable of receiving the connection internally, i.e. a female-type connection that receives a male connection profile. *Id.* ¶ 79. This was further shown when the patentee provided the collet as the example to differentiate the independent slip mechanisms. *Id.* A POSA would understand that the releasable engagement profile must have an internal cavity that can receive the connection profile, even when the locking piston is not present. *Id.* This connection type would not cover independent components that act together as a frictional unit [REDACTED] *Id.* Thus, to account for the engagement types that the patentee gave up during patent prosecution, a correct construction of “releasable engagement profile” would 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.” *Id.* ¶ 80.

Using the above claim construction of “releasable engagement profile,” [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This is a frictional engagement akin to the slips that were distinguished and excluded from the claim. *Id.* [REDACTED]
[REDACTED]
[REDACTED] *Id.* This does not rely on a male to female connection and there is no male to female component [REDACTED] *Id.* ¶ 85.
[REDACTED]

Id.

The presence of these two independent grounds for non-infringement show that Canatex is unlikely to succeed in proving infringement and a preliminary injunction should not be issued.

2. *The Asserted Claims of Canatex's '122 Patent Are Invalid.*

Even if Canatex's faulty infringement theories were accepted, Canatex would fail to demonstrate a likelihood of success on the merits because its infringement theories would render the claims invalid due to prior art that was not considered by the Patent Office. There is a substantial question about the validity of these patent claims. Ex. 3 ¶ 87. Therefore, a preliminary injunction should not issue.

a. Legal Standard for Invalidity

Invalidity is an affirmative defense to a claim of patent infringement. 35 U.S.C. § 282(b)(2). A preliminary injunction should not issue “if the trial court concludes there is a ‘substantial question’ concerning the validity of the patent, meaning that the alleged infringer has presented an invalidity defense that the patentee has not shown lacks substantial merit.” *Titan Tire Corp.*, 566 F.3d at 1378-79. This Court “must determine whether it is more likely than not that the challenger will be able to prove at trial, by clear and convincing evidence, that the patent is invalid.” *Id.* at 1379.

A patent claim can be invalid over the prior art, such as an earlier patent, due to anticipation or obviousness. Anticipation means a single prior art reference discloses every element of the patent claim. *Electro Med. Sys. SA v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 1052 (Fed. Cir. 1994). Obviousness applies when a single reference does not disclose every element of the claim, but “the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention” to a POSA. 35 U.S.C. § 103. Four factors guide an obviousness analysis and must be

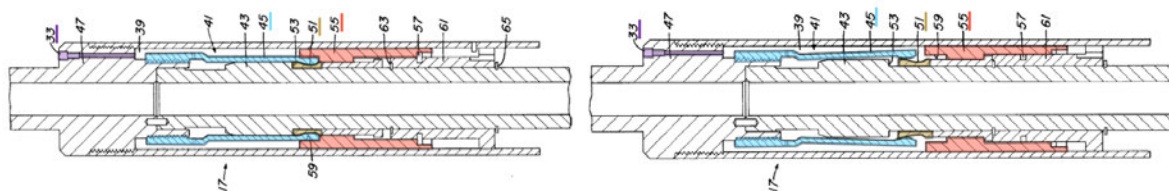
addressed by the Court: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the field of the invention; and (4) objective considerations of non-obviousness such as unexpected results. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). Obviousness should be found if a POSA would have been motivated to combine the teachings of the prior art to arrive at the claimed invention, and would have had a reasonable expectation of success in so doing. *See CRFD Research, Inc. v. Matal*, 876 F.3d 1330, 1340 (Fed. Cir. 2017).

b. Claims 13 and 18 Are Anticipated by Bebak

Claims 13 and 18 of the '122 patent are invalid because they are anticipated by U.S. Patent No. 6,571,879 ("Bebak"). Ex. 9. Bebak is prior art because it is a patent that issued in 2003, long before the '122 patent's alleged August 2016 priority date. 35 U.S.C. § 102(a)(1). *Id.* (cover page).

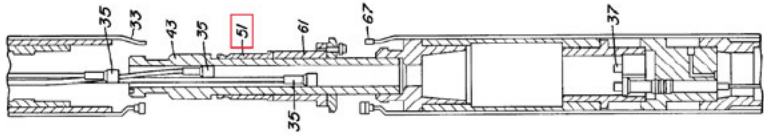
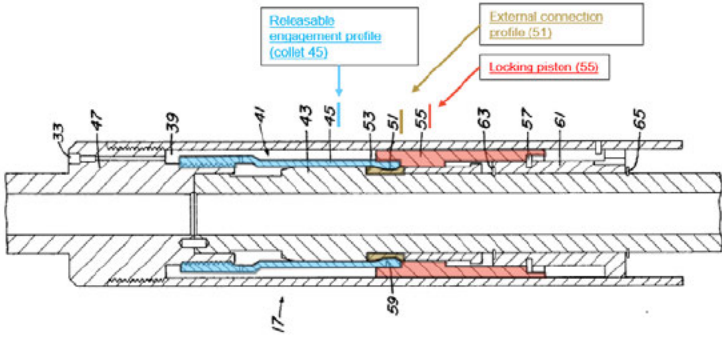
(i) Overview of Bebak

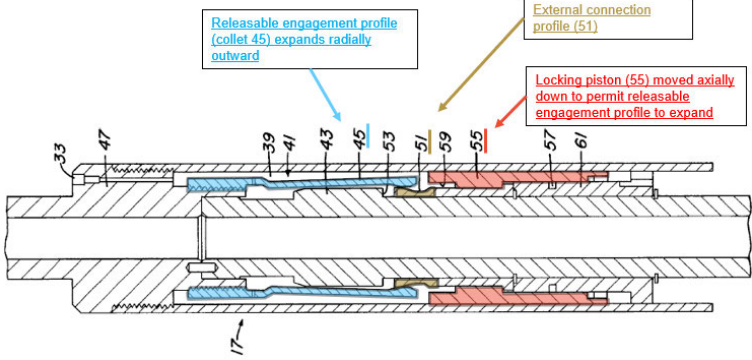
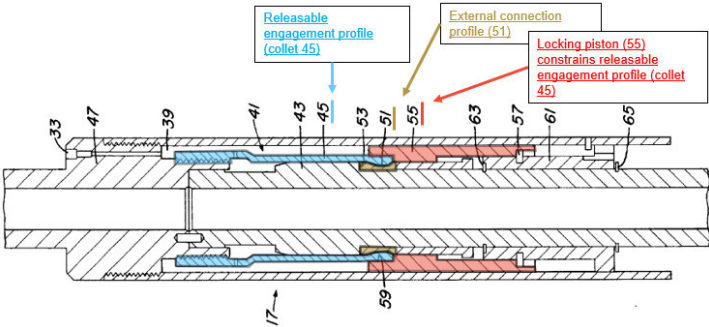
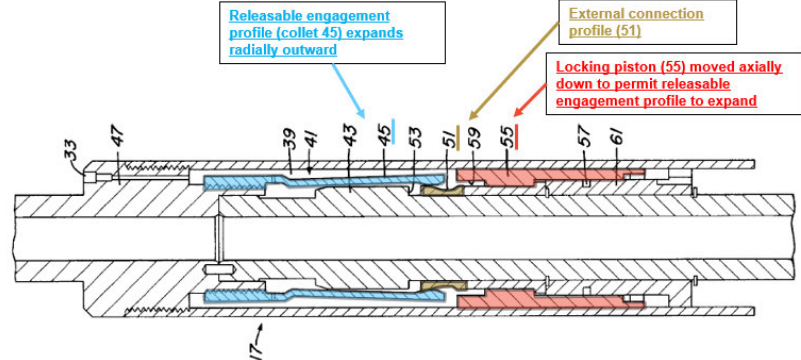
Bebak describes a release tool for letting go of a downhole pump assembly. Figures 3 and 4 of Bebak (Ex. 9) are reproduced below to illustrate its operation. Like embodiments in the '122 patent specification, Bebak's release mechanism uses a locking piston (55) to hold collet fingers (45) down in a profile (51) on a fishing neck (43). To release the tool, hydraulic pressure is applied through the capillary tube (33). The pressure moves the locking piston (55) off the collet fingers (45), which allows the collet fingers to expand radially out and be pulled away. Ex. 3 ¶¶ 90-93.

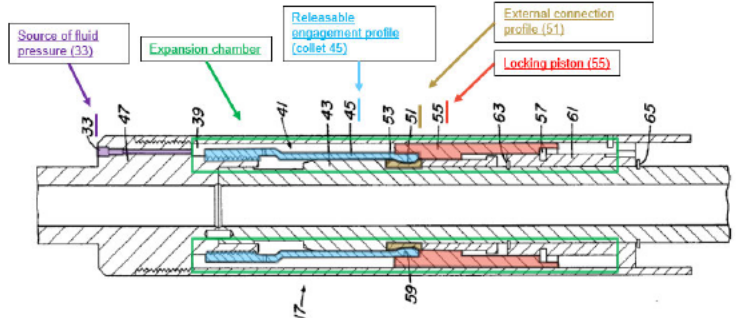


(ii) Element by Element Analysis of Bebak

For easier review, Defendants present here a claim chart explaining how each element of claims 13 and 18 is disclosed by Bebak.

Claim Element	Bebak
[13-Preamble] “A releasable connection for a downhole tool string”	The preamble of a patent claim is not limiting when, as is true here, it merely recites an intended use of the invention, and the body of the claim recites a structurally complete device. Ex. 3 ¶ 96; <i>see Pacing Technologies, LLC v. Garmin International, Inc.</i> , 778 F.3d 1021, 1023 (Fed. Cir. 2015). But even if the preamble were limiting, Bebak discloses <i>a releasable connection for a downhole tool string</i> , namely, a “release tool for submersible pump assemblies.” Ex. 9 at Title; Ex. 3 ¶ 97.
[13-A] “a first part comprising an external connection profile”	Bebak Figure 5B shows the claimed “<i>first part</i>” after it has been pulled away from the release adapter 17. This first part comprises “<i>an external connection profile</i>,” namely “outer profile 51 located on the exterior of neck 43.” Ex. 9 at 2:48-49; Ex. 3 ¶¶ 98-100. 
[13-B] “a second part comprising”	Bebak discloses “ <i>a second part comprising</i> ” elements [13-B1] to [13-B4], as shown by the following analysis of those elements. Ex. 3 ¶ 101.
[13-B1] “a releasable engagement profile which internally engages the connection profile of the first part and which is configured to expand radially to release the connection profile of the first part”	Like in the ’122 patent specification, the “<i>releasable engagement profile</i>” of Bebak is a collet. In Figure 3, Bebak shows the collet 45 “<i>internally engages the connection profile of the first part</i>” because the collet 45 “is latched in an outer profile 51” Ex. 9 at 2:48-49; Ex. 3 ¶¶ 102-04.  Bebak’s collet 45 is “<i>configured to expand radially to release the connection profile of the first part</i>,” as shown in Figure 4. Ex. 3 ¶ 105; Ex. 9 at 2:60-67 (“Collet 45 springs open or radially outward”).

	
[13-B2] “a locking piston positioned within an internal cavity of the second part, the locking piston configured to move axially along the second part between a locking position that directly constrains the releasable engagement profile into engagement with the connection profile of the first part and a release position that permits the releasable engagement profile to expand radially to release the connection profile of the second part;”	In Figures 3-4, Bebak shows a piston 55, which is “a locking piston positioned within an internal cavity of the second part.” Ex. 9 at 2:49-52; Ex. 3 ¶ 107. In Figure 3, Bebak shows locking piston 55 in “a locking position that directly constrains the releasable engagement profile [i.e., collet 45] into engagement with the connection profile of the first part [i.e., outer profile 51 on fishing neck 43].” Ex. 3 ¶ 108; see also Ex. 9 at 1:38 (“piston captures the collet against the neck”).  Comparing Figures 3 and 4 shows Bebak’s locking piston 55 is “configured to move axially along the second part between a locking position ... and a release position that permits the releasable engagement profile to expand radially to release the connection profile of the second part.” In Figure 4, the locking piston 55 moved axially away from collet 45, so that collet 45 can expand radially to release connection profile 51. Ex. 9 at 2:60-67; Ex. 3 ¶¶ 109-10. 

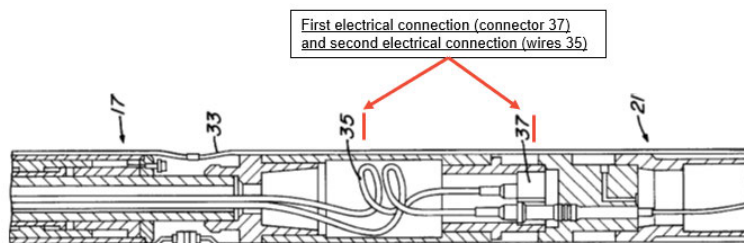
[13-B3] “an expansion chamber in fluid communication with the locking piston” and [13-B4] “a source of fluid pressure in communication with the expansion chamber, wherein, upon activation, the source of fluid pressure is configured to apply fluid pressure to move the locking piston from the locking position toward the release position”	Under the reading of the claims that Plaintiff uses to argue infringement, Bebak discloses elements [13-B3] and [B4]. Applying the logic of Canatex’s infringement position to Bebak, then Bebak would have an <i>expansion chamber</i> shown in the green box below. The green box covers space behind, around, and in front of locking piston 55 when viewed from the locked position,  So understood, this expansion chamber is in fluid communication with the locking piston (element 13-B3) because capillary 33 provides hydraulic fluid pressure that enters chamber 39 and builds up behind piston 55. Ex. 3 ¶ 115. This also shows that Bebak has “a source of fluid pressure in communication with the expansion chamber.”⁷ <i>Id.</i> ¶¶ 116-17. Bebak’s source of fluid pressure, upon activation, “is configured to apply fluid pressure to move the locking piston from the locking position toward the release position.” <i>Id.</i> ¶ 118. As Bebak shows in Figures 3 and 4, hydraulic fluid is pumped through tube 33 into “chamber 39” which pushes the locking piston 55 downward toward its release position. <i>Id.</i>; Ex. 9 at 2:60-67. Indeed, the ’122 patent, likewise discloses an embodiment where a hydraulic fluid line is the claimed <i>source of fluid pressure</i>. Ex. 3 ¶ 119; Ex. 23 at 3:50-58 (“there may be a gas cylinder that releases gas pressure upon activation, <i>a fluid line that provides gas or liquid to expansion chamber 38 from surface</i>, etc.”).
[13-C] “wherein the first part carries	As shown in Figure 2B, the electrical connector 37 on Bebak’s pump assembly shows “the first part carries a first electrical connection,” and the wires 35

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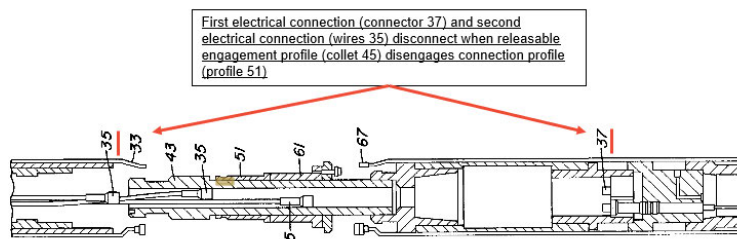
Id. ¶¶ 111-14, 120-21. Bebak Figures 3-4 show a “chamber 39” where hydraulic pressure is pumped in behind piston 55 to push it downward. *Id.* ¶ 114; Ex. 9 at 2:40-42, 58-64. But comparing Figures 3 and 4 shows that piston 55 does not travel far enough for fluid pressure to reach the chamber on the opposite side of the piston, where the piston moves into from its starting position, Ex. 3 ¶ 114. However, in this chart Defendants adopt, *arguendo*,

a first electrical connection, and the second part carries a second electrical connection, the first and second electrical connection being electrically connected when the releasable engagement profile of the second part engages the connection profile of the first part, and becomes disconnected when the releasable engagement profile disengages the connection profile”

passing through the release adapter 17 show “*the second part carries a second electrical connection.*” Ex. 3 ¶¶ 123-24; Ex. 9 at 2:36-40. Wires 35 are connected to 37 when the tool is in a locked position and thus shows “*the first and second electrical connection being electrically connected when the releasable engagement profile of the second part engages the connection profile of the first part.*” *Id.* ¶ 125.



Bebak also discloses that these electrical connections “*become[] disconnected when the releasable engagement profile disengages the connection profile.*” *Id.* ¶¶ 126. As shown in Fig. 5B, when the collet (releasable engagement profile) is pulled into disengagement, the wires 35 also automatically disconnect. *Id.*; Ex. 9 at 2:64-3:5. Claims 7 and 8 of Bebak also describe “a released position wherein the piston releases the lock member such that the housing and the lock member are lifted away from the mandrel and the submersible pump assembly,” and that “the power cable and the hydraulic tube automatically detach from the submersible pump when the housing is lifted.” Ex. 3 ¶ 126; Ex. 9 at 4:35-56.



[18] The releasable connection of claim 13 wherein the second part comprises an outer housing and the locking piston is positioned within an internal cavity of the second part

Bebak also anticipates claim 18. Ex. 3 ¶¶ 127-28. Claim 18 is a dependent claim that requires all the elements of claim 13, which are addressed above. Bebak discloses claim 18’s additional requirement that “*the second part comprises an outer housing and the locking piston is positioned within an internal cavity of the second part.*” For example, Bebak Figures 3-4 show the locking piston 55 inside a cavity of the release adapter 17’s outer housing. *Id.*

a. Bebak Renders Claim 19 Obvious

- (i) [19] “The releasable connection of claim 18 , wherein the outer housing of the second part comprises a pressure equalization ports, the locking piston configured to close the pressure equalization ports in the locking position, and open the pressure equalization ports in the release position.”

Claim 19 is a dependent claim that requires all elements of claim 18. Bebak discloses all elements of claim 18. While Bebak is silent about the *pressure equalization ports* of claim 19, a POSA⁸ would have found it obvious to use *pressure equalization ports* opened by a locking piston with Bebak as described in claim 19. Ex. 3 ¶ 129. A POSA would have been motivated because of the known problem that a pressure differential can clamp a release tool together and prevent release, and would have had a reasonable expectation of success given the predictable nature of the technology. Ex. 3 ¶ 130-33. [REDACTED]

[REDACTED] Thus, in view of Bebak and a POSA’s knowledge, claim 19 reflects no more than known elements used according to known methods, yielding predictable results, and would have been obvious. Ex. 3 ¶ 133; *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

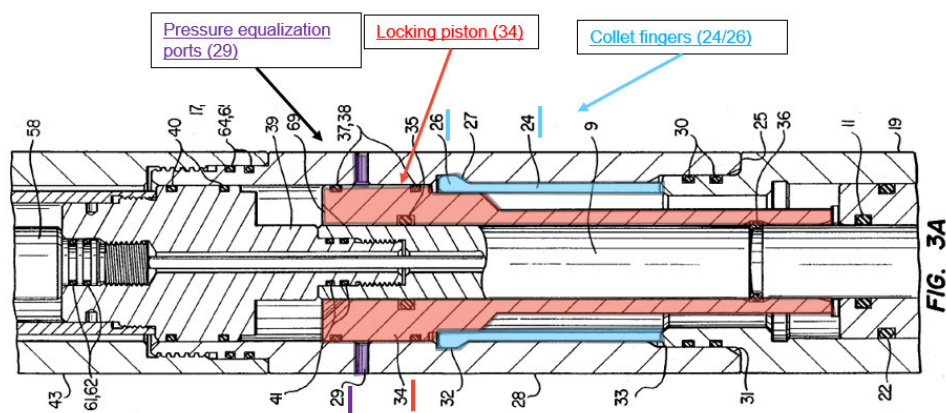
b. Bebak and Forehand Render Claim 19 Obvious

Furthermore, while Bebak is silent about the *pressure equalization ports* of claim 19, U.S. Patent No. 4,776,393 (Ex. 22, “Forehand”) discloses that feature. Ex. 3 ¶ 136. Forehand is prior art because it issued in October 1988, before the ’122 patent’s alleged August 2016 priority date.

⁸ [REDACTED]

35 U.S.C. § 102(a). Ex. 22. A POSA would have found it obvious to modify Bebak to include a *pressure equalization ports* feature opened by a locking piston based on Forehand's teachings, thereby producing a device that satisfies all elements of claim 19. Ex. 3 ¶ 136. Accordingly, claim 19 would have been obvious. *Id.*

Forehand describes a downhole oilfield gun release system, where the pressure of the gun firing automatically activates a release mechanism. *See* Forehand at Abstract; Ex. 3 ¶ 138. As shown in Figure 3A, Forehand uses a sleeve 34 to lock collet fingers 24 in place against a groove, and it uses pressure to move the sleeve 34 away from the collet fingers. Forehand at Abstract; *Id.*



In Figure 3A, Forehand shows *pressure equalization ports* 29 spaced around the housing of the device. *Id.* ¶ 139. In the locked position, sleeve 34 (*locking piston*) keeps the ports 29 closed by sealing them with o-rings 37 and 38 on either side of the ports (*the locking piston configured to close the pressure equalization ports in the locking position*). *Id.* When the gun is fired, the sleeve 34 (*locking piston*) is pushed upwards so it is no longer blocking the ports 29 (*the locking piston configured to . . . open the pressure equalization ports in the release position*). *Id.* ¶¶ 139-140. This allows wellbore pressure to flood in through the *pressure equalization ports*, thereby equalizing pressure and facilitating tool release. Forehand at 6:19-34; *Id.* ¶¶ 139-140.

A POSA would have found it obvious to modify Bebak based on Forehand's teaching about pressure equalization features, thereby producing a device that satisfies all elements of

claim 19. Ex. 3 ¶ 136. [REDACTED]

[REDACTED]
[REDACTED] During release, the *locking piston* moves the O-rings to break the seal around the pressure equalization ports, allowing wellbore pressure to flood into the tool and equalize it. *Id.* The O-rings rest in a groove in the housing (blue) that leaves the O-ring seal broken, facilitating wellbore pressure to flood downward past the O-ring seals for further equalization. *Id.*

[REDACTED]

Id. A POSA would have been motivated to make this simple modification for multiple reasons.

Id. ¶ 141. First, Bebak and Forehand both involve release tools for downhole tools, and thus, a POSA would have looked to both when designing release tools. *Id.* [REDACTED]

[REDACTED] a POSA would have recognized that modifying Bebak to use Forehand's pressure equalization feature would reliably neutralize pressure, make Bebak's design safer, more reliable, and cheaper, and would allow Bebak's release mechanism to be actuated with lower hydraulic pressure while neutralizing pressure that could clamp the tool together and resist release. *Id.* ¶¶ 142-46. [REDACTED]

[REDACTED]

Third, would have discouraged a POSA from this combination. Ex. 3 ¶ 147. Fourth, this combination of Bebak and Forehand would have been a combination of familiar elements according to known methods, yielding no more than predictable results. *Id.* ¶ 148; *See KSR Int'l Co.*, 550 U.S. at 406. A POSA would also have had a reasonable expectation of success in combining Bebak and Forehand's features. Ex. 3 ¶ 149. Release tools are a predictable art, and the modification is simple—removing housing material and placing O-rings. *Id.* ¶ 149.

Finally, while an obviousness analysis should take into account evidence of secondary considerations of non-obviousness, the burden of production for them is on Canatex. *Novo Nordisk A/S v. Caraco Pharm. Lab'ys, Ltd.*, 719 F.3d 1346, 1353 (Fed. Cir. 2013). Canatex has not disclosed positions on secondary considerations. Dr. Wooley saw nothing to overcome the strong evidence of obviousness. Ex. 3 ¶¶ 151-52; *Ohio Willow Wood Co. v. Alps South, LLC*, 735 F.3d 1333, 1344 (Fed. Cir. 2013). Thus, claim 19 would have been obvious and is invalid.

In sum, there is a substantial question about the validity of the asserted claims 13 and 18-19, and that is an additional reason for the Court to deny a preliminary injunction.

B. Plaintiff Has Not Demonstrated Irreparable Harm.

Canatex must also show “it is likely to suffer irreparable harm in the absence of preliminary relief...” *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1379 (Fed. Cir. 2022). There is no presumption of irreparable injury, even if infringement and validity of the patent are established. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 393–94 (2006). Here, Canatex's irreparable harm arguments are speculation based on attorney argument and conclusory, self-serving declarations, and insufficient to carry its burden.

Speculation about future harm cannot support a preliminary injunction. *See, e.g., Winter*, 129 S. Ct. at 375. If Plaintiff fails to show irreparable harm would result but-for a preliminary

injunction, the sought relief must be denied. *See, e.g., Illinois Tool Works, Inc. v. Grip-Pak, Inc.*, 906 F.2d 679, 682 n.3 (Fed. Cir. 1990) (the “absence of irreparable harm ... ma[kes] unnecessary a consideration of ... [the] likelihood of success in proving infringement”).

A finding of irreparable harm cannot be based on tenuous speculation or unsubstantiated fears. *See, e.g., Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985). In this case, Canatex bases its entire motion on speculation. Canatex claims that various “factors” show Canatex will suffer irreparable harm absent a preliminary injunction. PI Mot. at 23-28. However, the Motion boils down to speculation that Canatex will suffer lost market share and price erosion, followed by more speculation that other harms will result from lost market share, and bald assertions that the imagined harms cannot be addressed with damages. As a result, Canatex fails to prove the likelihood of irreparable harm.

I. Canatex Offers No Evidence of Lost Market Share.

Canatex cannot demonstrate irreparable harm because there is no evidence of lost market share. Canatex frames lost market share as the foundation of its alleged harm. But Canatex fails to tell the Court [REDACTED]

[REDACTED] Ex. 8 at 92:11-93:7.

Instead, Canatex attempts to support its claims with the farce that Defendants have [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. *Canatex Offers No Evidence of Price Erosion.*

Canatex attempts to mislead this Court into believing [REDACTED]

[REDACTED]

This is untrue and made clear by Defendants' corporate representative's testimony. Ex. 1 at 102:8-

15. [REDACTED]

[REDACTED]

[REDACTED] Thus, the unchallenged evidence shows

[REDACTED]

Moreover, "[t]o prove price erosion damages, a patentee must show that, but for the infringement, it would have been able to charge higher prices." *Minco, Inc. v. Combustion Eng'g, Inc.*, 95 F.3d 1109, 1120 (Fed. Cir. 1996) (citing *BIC Leisure Prods., Inc. v. Windsurfing Int'l, Inc.*, 1 F.3d 1214, 1220 (Fed. Cir. 1993)). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] There is no basis on this record to determine that price erosion is likely.

Canatex also claims the [REDACTED]

[REDACTED] See PI Mot. at 26-27, fn 12; Ex. 2 at 88:19-24; PI Mot. Ex. T at 18. That is misleading balderdash since [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This disproves price erosion and cannot show price cutting or loss leading.

3. *Canatex's Claims about Lost Goodwill and Reputation Are Redundant and Unsupported Attorney Argument.*

Canatex claims its [REDACTED]

[REDACTED] rendering the argument duplicative of, and dependent on, Canatex's faulty market share argument. PI Mot. at 26. Canatex's throwaway reputation and goodwill argument is also not supported by any evidence. Ex. 11 at ¶ 5, 18–24. The cited paragraph 10 of Mr. Sutherland's declaration says nothing about lost reputation or goodwill. See PI Mot., Ex. 3. Conclusory attorney argument is insufficient to favor the draconian and extraordinary remedy of a preliminary injunction. See, e.g., *Ocusoft, Inc. v. Walgreen Co.*, No. CV H-17-1037, 2017 WL 1838106, at *3-4 (S.D. Tex. May 8, 2017).

4. *Canatex Provides No Evidence It Would Benefit from a Preliminary Injunction.*

Canatex's market share arguments are also faulty because its Motion implies rentals of the Wellmatics PHIRE Escape are rentals Canatex would otherwise secure, as though this is a two-

party market.

[REDACTED]

Thus, there is no evidence Canatex will benefit from a preliminary injunction because

[REDACTED]

[REDACTED]

See, e.g., Ascend Geo, LLC v. OYO Geospace Corp., No. CIV.A. H-09-2886, 2009 WL 3735963, at *3 (S.D. Tex. Nov. 4, 2009) (competitors at least as plaintiff to secure the business plaintiff shows harm is speculative and an injunction should not issue).

5. *Canatex Fails to Show the Required Nexus between Irreparable Harm and the Alleged Infringement.*

“[I]rreparable harm cannot be shown if sales would be lost regardless of the infringing conduct.” *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1324 (Fed Cir. 2012). Accordingly, Canatex must “show that the infringing feature drives consumer demand for the accused product.” *Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1364 (Fed. Cir. 2013). Canatex must show that the features claimed by its patent drive demand, not merely some aspect of a release mechanism in general. *Id.* at 1366 (“evidence showing the importance of a general feature of the type covered by a patent is typically insufficient to establish a causal nexus”). It is also not enough to show that the release mechanism is merely necessary to make the product work. *Id.* at 1364 (“a battery does not necessarily drive demand for a laptop computer simply because its removal would render the laptop ineffective”).

The various non-infringing release tools available, as well as Canatex’s redesign of its tool from the BRT 1.0 to 2.0, undermine any argument that clients base decisions on the patented release mechanism. While both BRT products use the same patented release mechanism, Canatex advertises its BRT 2.0 as having an “85% reduction in electrical components,” fewer subs, an improved fish neck seal, and the ability to go “50+” runs between service instead of 3, which has

no apparent relation to the claims. Ex. 7; Ex. 10 at 82:12–20, 273:10–274:14. The patented features are not a demand driver or distinguishing feature. If they were, [REDACTED]

[REDACTED] Ex. 11 ¶ 17.

6. *Defendants’ Internal Sale and Use of the PHIRE Escape Do Not Irreparably Harm Canatex.*

Canatex also unjustifiably seeks to enjoin Defendants from internal sale and use of the PHIRE Escape and claims Defendants’ internal sale and use of the PHIRE Escape deprives it of market share and evidences price erosion. Neither is true. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. 17, Release Tool Purchase and Rental History. [REDACTED]

[REDACTED] See, e.g., Ex. 2 at 180:21-181:31; *Apple, Inc.*, 678 F.3d. at 1324 (“irreparable harm cannot be shown if sales would be lost regardless of the infringing conduct”).

None of this is news to Canatex; yet, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] PI Mot. at 24-25. This is

purely speculative lawyer argument. There is no evidence GRW has taken a job from a Canatex customer or won a job because of alleged infringement as opposed to other reasons (such as GRW's superior service). Nor does Canatex show this will likely and imminently occur.

7. *Any Alleged Damage from the Sale of the PHIRE Escape Is Readily Calculable.*

Canatex also cannot demonstrate irreparable harm because it offers no explanation why the economic harms it raises, if real, cannot be reduced to money damages. *DFW Metro Line Servs. v. Sw. Bell Tel. Co.*, 901 F.2d 1267, 1269 (5th Cir. 1990) ("There can be no irreparable injury where money damages would adequately compensate a plaintiff.").

Canatex refers to speculative [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*; Ex.

8, at 167:16-169:5. A preliminary injunction is not warranted by a tenuous or overly speculative forecast of anticipated harm. *See, e.g., Holland Am. Ins. Co.*, 777 F.2d at 997. This leaves Canatex's bald claim that "[REDACTED]

[REDACTED] PI Mot. at 28. That is not enough for the Court to decide money damages are inadequate here. *See, e.g., Automated Merchandising Sys. v. Crane Co.*, 357 F. App'x 297, 300-01 (Fed. Cir. 2009) (competition is insufficient to prove irreparable harm; otherwise, irreparable harm would be found in every competitor case). As shown above, Canatex has no evidence of lost market share, goodwill, or reputation, but, if it did, such losses are readily calculable. Ex. 11 at ¶ 5, 31.

C. An Injunction Would Substantially Harm Defendants.

While Canatex cannot show a preliminary injunction would change anything for it, an injunction would substantially harm Defendants. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As a customer of Wellmatics, the hardships GRW would experience are equally palpable.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, Canatex has failed to demonstrate any basis at all that would warrant an injunction against a customer like GRW.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As a result, Canatex offers this Court no concrete, substantiated evidence of the benefits it would enjoy or the hardships it would suffer depending on the outcome of this motion and fails to account for the concrete hardships Wellmatics has identified. This factor, thus, weighs in favor of denying Canatex's motion for a preliminary injunction.

D. It Is in the Public's Interest to Deny Canatex's Motion.

While the public interest generally favors protecting patent rights, this is not always true. Here, the "public interest favors competition and, in this case the resulting potential for lower oil prices, where an asserted patent may be invalid or the accused system may be non-infringing." *Gryphon Oilfield Solutions, LLC v. Stage Completions (USA) Corporation*, No. CV H-17-3220,

2018 WL 447364, at *5 (S.D. Tex. Jan. 17, 2018). The public is best served by having a superior product in the oil field—particularly given world events. Due to the Russia/Ukraine war, the United States specifically banned Russian oil and gas imports as demand skyrocketed. Ex. 20, Documentation of World Events. Removing the PHIRE Escape from the market would deprive the public of a more reliable tool and its associated savings in oil and gas production.

V. Bond

A preliminary injunction cannot issue unless the “movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). The bond constitutes the maximum Defendants can ordinarily recover for being wrongfully enjoined, and as such, it is important to conservatively set the amount to protect Defendants. *See Continuum Co., Inc. v. Incepts, Inc.*, 873 F.2d 801, 803 (5th Cir. 1989), *on reconsideration sub nom. Continuum Co. v. Incepts, Inc.*, 901 F.2d 1111 (5th Cir. 1990) (explaining that “the amount of the bond is the limit of the damages the defendant can obtain for a wrongful injunction”) (internal quotations omitted).

If an injunction will issue, Defendants would ask the Court for time to brief bond. But, at a minimum, [REDACTED]

[REDACTED] Defendants reserve the right to seek further bond if the injunction continues beyond that date.

VI. Conclusion

For the reasons set forth above, Defendants respectfully request that the Court deny Plaintiff’s motion for a preliminary injunction.

Dated: February 8, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via email on February 8, 2023.

/s/ Aimee Perilloux Fagan
Aimee Perilloux Fagan