

ENTERED

September 06, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PILOT ENERGY SOLUTIONS, LLC, <i>et</i>	§	
<i>al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION NO. 4:23-CV-02505
	§	
CHEVRON U.S.A., INC, <i>et al.</i> ,	§	
	§	
Defendants.	§	

ORDER

Before the Court are Plaintiffs' Complaint (Doc. #1), Defendants' Motion to Dismiss (Doc. #16), Plaintiffs' Response (Doc. #20), and Defendants' Reply (Doc. #23). On December 1, 2023, the Court heard oral arguments on the motion before it. Having considered the parties' written and oral arguments, and the applicable legal authorities, the Court grants Defendants' Motion to Dismiss in part.

I. Background

Plaintiff Pilot Energy Solutions, LLC ("Pilot Energy") develops processing technologies for natural gas liquid and CO₂ recovery. Doc. #1 ¶ 13. Plaintiff Pilot Intellectual Property, LLC is a subsidiary of Pilot Energy (collectively, "Plaintiffs") that now owns and administers Pilot Energy's intellectual property assets. *Id.* ¶ 14. The technology at issue in this case is Pilot Energy's CO₂Flex process for recovering natural gas liquid from high-CO₂ natural gas streams. *Id.* ¶ 16. From 2007 to 2010, Pilot Energy and Defendant Chevron, U.S.A., Inc. ("Chevron") had ongoing discussions about Chevron potentially using Pilot's then patent-pending CO₂ Flex process technology to recycle the CO₂ gas at a plant Chevron was developing near Midland, Texas

(the “Mabee Plant”). *Id.* ¶¶ 19–22. Pilot Energy also proposed building a plant to third-party process the CO₂ recycle gas at the Mabee Plant recompression station. *Id.* ¶ 20. In 2008 and 2009, Pilot and Chevron executed confidentiality agreements. *Id.* ¶ 19. As a result, Pilot Energy shared its drawings, process simulations, heat and material balances, and preliminary cost estimates with Chevron. *Id.* Suddenly, in July 2009, all discussions regarding the Mabee Plant were suspended. *Id.* ¶ 21. Then, in May 2010, Pilot Energy asserts that it received an email from Chevron stating that Chevron had a “two-year plan” and that no final decision would be made about the Mabee Plant until 2012. *Id.* In August 2010, Chevron stated that it was still evaluating Pilot Energy’s technology and its processing proposal for the Mabee Plant. *Id.* ¶ 22.

Pilot Energy contends that in January 2012, it learned “through several industry contacts familiar with Pilot [Energy’s] technology[] that Chevron was building the Mabee Plant and that it appeared the Plant was going to use Pilot [Energy’s] technology.” *Id.* ¶ 23. Pilot Energy contacted Chevron to inquire about Chevron allegedly using its technology. *Id.* In February 2012, Chevron asserted that the Mabee Plant’s design was identical to its plant in Rangely, Colorado, and using Chevron’s technology. *Id.* ¶ 24. Pilot Energy continued to hear information that led it to believe that Chevron was using its technology, so in November 2012, it looked up the Mabee Plant’s air permit application that was filed with the Texas Commission for Environmental Quality (the “Air Permit”). *Id.* ¶ 26. Pilot Energy determined that the Air Permit was consistent with what it had been hearing—that Chevron was using its technology. *Id.*

On August 13, 2013, the patent for Pilot Energy’s CO₂ Flex was issued as United States Patent No. 8,505,332 (the “‘332 Patent”). *Id.* ¶¶ 1, 27. Two days later, Pilot Energy sent a letter to Chevron notifying Chevron of the issuance of the ‘332 Patent and confirming that the Patent covers the technology disclosed to Chevron in Pilot Energy’s proposals for the Mabee Plant. *Id.*

¶ 27. In its letter, Pilot Energy also stated that it would happily “drop the matter” if it was determined that Chevron was not using its technology. On August 29, 2013, Chevron’s legal department sent a letter of its own stating that Chevron reviewed the ‘332 Patent and Chevron’s processes for conditioning and recycling CO₂ gas at the Mabee Plant and confirmed that “Chevron does not infringe any of the claims of the ‘322 Patent.” *Id.* ¶ 28. Chevron concluded the letter stating that it considered the matter to be closed. *Id.* ¶ 30. Accordingly, Pilot Energy dropped the matter, asserting that it relied on Chevron’s confirmation that it reviewed the matter and determined that Chevron was not using Pilot Energy’s technology. *Id.*

Then, in July 2022, Pilot Energy asserts that it discovered “a paper on the Internet that described the technology being used in Chevron’s Mabee Plant.” *Id.* ¶ 32. The paper is entitled “Hydrate Formation in Chevron Mabee Unit for [Natural Gas Liquid] Recovery and CO₂ Purification for EOR” (hereinafter, the “Paper”). *Id.* The Paper was published in 2017, and one of its authors is a Chevron process engineer. *Id.* Pilot Energy claims that details in the Paper regarding the processes used at the Mabee Plant led it to conclude that Chevron is using Pilot Energy’s patented technology. *Id.* ¶ 33.

On July 7, 2023, Plaintiffs sued Defendants Chevron and Scout Energy Management, LLC, which acquired the Mabee Plant from Chevron in November 2021 and continues to operate it. *See* Doc. #1. Chevron and Scout Energy Management, LLC will collectively be referred to as “Defendants.” Plaintiffs assert patent infringement and fraudulent (or negligent) misrepresentation claims against Defendants.¹ *Id.* Plaintiffs attach seven exhibits to its Complaint, including the ‘332 Patent, the Air Permit, Pilot Energy’s correspondences with Chevron in August

¹ In their Complaint, Plaintiffs title their second cause of action, “Texas Common Law Fraudulent (or at least Negligent) Misrepresentation.” Doc. #1 at 11.

2013, the Paper, and a claim chart comparing language from Claim 1 of the '332 Patent with language from the Air Permit and the Paper. *See* Doc. #1, Ex. 1. On October 2, 2023, Defendants moved to dismiss Plaintiffs' claims for failure to state a claim. Doc. #16. On December 1, 2023, the Court heard oral arguments regarding the same.

II. Legal Standard: Federal Rule of Civil Procedure 12(b)(6)

A complaint may be dismissed for failure to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). The pleading standard is set forth in Federal Rule of Civil Procedure 8(a)(2), requiring "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (1955). The standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555).

To survive a motion to dismiss, the complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). Plausibility exists when the complaint includes factual content "that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. The complaint must show more than a "sheer possibility that the defendant has acted unlawfully," and pleading facts that are "'merely consistent with' a defendant's liability" will not suffice. *Id.*; *see Gonzales v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009). Courts accept "the well-pleaded factual allegations in the complaint as true" but do "not credit conclusory allegations or allegations that merely restate the legal elements of a claim." *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 469 (5th Cir. 2016). In considering a motion to dismiss, a court may consider the complaint and its proper attachments. *Dorsey v. Portfolio*

Equities, Inc., 540 F.3d 333, 338 (5th Cir. 2008).

III. Analysis

a. Patent Infringement

Defendants contend that Plaintiffs' patent infringement claim must fail because Plaintiffs' theories of infringement contradict the documents upon which they rely. Doc. #16 at 6. In the Motion, Defendants explain how each of Plaintiffs' allegations regarding parts of Claim 1 of the '332 Patent are contradicted by the Air Permit and/or the Paper. *See id.* at 6–10. Plaintiffs aver that their patent infringement claim is sufficiently pled because the Complaint identifies the infringing facility and alleges that Defendants' operation of the Mabee Plant infringes Claim 1 of the '332 Patent. Doc. #20 at 6. Moreover, Plaintiffs note that the Complaint details the infringement allegations further via the claim chart attached as an exhibit (*see* Doc. #1, Ex. 1 at 61–66). *Id.* Finally, Plaintiffs state that this is not a typical patent infringement case where the accused product can be purchased and reverse engineered. Instead, the accused facility, the Mabee Plant, is a private facility to which Plaintiffs do not have access. *Id.*; *see also* Doc. #1 ¶ 34 (“The Chevron Mabee Plant is not a public facility and members of the public are not able to view the processes used within the Plant.”). As such, Plaintiffs aver they have to rely on two publicly available documents describing the Mabee Plant's gas processing to assert its claims. Doc. #20 at 6.

To state a claim for patent infringement under 35 U.S.C. § 271, a plaintiff need only give the defendant “fair notice” of the infringement claim and “the grounds upon which it rests.” *Disease Sols. Inc. v. VGH Sols., Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018). A defendant has fair notice of a direct infringement claim if the complaint specifically identifies the allegedly infringing product and the patent the product infringes. *Id.* “[T]here is no requirement that the facts alleged

mimic the precise language used in a claim; what is necessary is that facts, when considered in their entirety and in context, lead to the common sense conclusion that a patented method is being practiced.” *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1343 (Fed. Cir. 2012). In *Hunton Energy Holdings, LLC v. HL Seawater Holdings, LLC*, this Court addressed a factually similar situation where the plaintiff did not have access to the accused facility to assert its patent infringement claim. 539 F. Supp. 3d 685, 694 (S.D. Tex. 2021). In that case, the Court took into consideration plaintiff’s limited access to the facility, the allegations in the complaint, and the exhibits attached thereto. *Id.* at 695.

Here, like *Hunton Energy Holdings, LLC*, this case is not a typical patent infringement case because Plaintiffs do not have access to the Mabee Plant, and they cannot simply purchase and reverse engineer the accused product. Plaintiffs specifically identify the infringing facility as the Mabee Plant and allege that the Mabee Plant uses Pilot Energy’s patented technology for recovering natural gas liquids from high-CO₂ natural gas streams. *See* Doc. #1; *see also* Doc. #1, Ex. 1 at 61–66. Due to the limited access to the Mabee Plant, Plaintiffs rely on the only information they have at their disposal, the Air Permit and the Paper. Plaintiffs’ claim chart shows the specific parts of the Air Permit and the Paper that led them to believe that Defendants are infringing on Claim 1 of the ‘322 Patent. Doc. #1, Ex. 1 at 61–66. As such, in light of Plaintiffs’ limited access to the Mabee Plant and considering the Complaint in its entirety, the Court finds these allegations sufficient to give Defendants “fair notice” of the direct infringement claim against them and the grounds upon which it rests. *See Hunton Energy Holdings, LLC*, 539 F. Supp. 3d at 695 (citing *Disc Disease Sols. Inc.*, 888 F.3d at 1260). Accordingly, Defendants’ Motion to Dismiss is denied as to Plaintiffs’ patent infringement claim.

b. Fraudulent/Negligent Misrepresentation

Next, Defendants argue, among other things, that Plaintiffs’ fraudulent/negligent misrepresentation claim is barred by the statute of limitations. Doc. #16 at 16. In the Complaint, Plaintiffs assert that Chevron knowingly and recklessly made false representations in 2012 and 2013 when it stated that the Mabee Plant was designed based on Chevron’s Rangely, Colorado, facility and did not use Pilot Energy’s technology. Doc. #1 ¶¶ 44–45. Alternatively, Plaintiffs claim that Chevron made negligent misrepresentations “by not exercising reasonable care or competence in communicating with Pilot [Energy] regarding the processes used in the Mabee Plant.” *Id.* ¶ 46. Defendants aver that during the 2012–2013 timeframe, Pilot Energy had knowledge of sufficient facts to make an inquiry to determine its legal rights, thus that is when Plaintiffs’ misrepresentation cause of action accrued. Doc. #16 at 17. Defendants also note that Plaintiffs fail to plead what new information the Paper provided that suddenly made Chevron’s representations false. And more importantly, the Paper was published in 2017, more than four years before Plaintiffs sued, and it is unclear why Plaintiffs could not have discovered the Paper sooner. *Id.* at 17–18. Plaintiffs contend that the Complaint explains why Pilot Energy did not discover the Paper sooner—Pilot Energy first located the Paper in 2022 “by happenstance” because it had no reason to watch for similar papers regarding the Mabee Plant. Doc. #20 at 22–23. Plaintiffs do not explicitly raise any arguments regarding the applicable statute of limitations and when the cause of action accrued. *See id.*

“Texas requires litigants to file a claim for fraudulent misrepresentation within two years of the action’s accrual date.” *Rutherford v. Exxon Co., U.S.A.*, 855 F.2d 1141, 1148 (5th Cir. 1988). “The two[-]year limitations period begins to run ‘when [the] plaintiff kn[ows] of the alleged wrongdoing or [should have known] of facts sufficient to excite such an inquiry as would have

been made in the exercise of reasonable diligence.”” *Id.* at 1145 (alterations in original) (quoting *Ryan v. Collins*, 496 S.W.2d 205, 211 (Tex. App.—Tyler 1973)). Suits for negligent misrepresentation are also governed by a two-year statute of limitations. *Kreit v. St. Paul Fire & Marine Ins. Co.*, No. Civ.A.H-04-1600, 2006 WL 322587, at *3 n.3 (S.D. Tex. Feb. 10, 2006).

Here, Plaintiffs first learned of Defendants’ alleged misrepresentations regarding the Mabee Plant in 2012 based on comments from industry contacts and continued to suspect that Defendants’ representations were false in 2013 after Pilot Energy reviewed the Air Permit. Accordingly, Plaintiffs knew sufficient facts in 2012 and 2013 to state a claim for fraudulent or negligent misrepresentation. Instead, Plaintiffs voluntarily chose to “drop the matter.” Plaintiffs’ discovery of the Paper in 2022 simply added to its pre-existing belief that Chevron was using Pilot Energy’s technology. Plaintiffs do not allege that there were new misrepresentations made in the Paper that would warrant the two-year limitations period to begin to run in 2022. As such, Plaintiffs’ fraudulent/negligent misrepresentation claim is barred by the applicable statute of limitations. Defendants’ Motion to Dismiss is granted as to this claim.

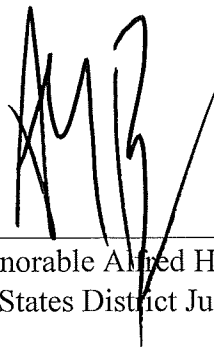
IV. Conclusion

For the foregoing reasons, Defendants’ Motion to Dismiss (Doc. #16) is hereby DENIED as to Plaintiffs’ patent infringement claim and GRANTED as to Plaintiffs’ fraudulent/negligent misrepresentation claim.

It is so ORDERED.

SEP 04 2024

Date



The Honorable Alfred H. Bennett
United States District Judge