

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

SAMER AL-AZEM and
PETROHAB LLC,

Plaintiffs,

v.

SAFE ARC TECHNOLOGY, L.L.C.,

Defendant.

* C.A. No. 25-CV-417
*
* JUDGE ROBERT R. SUMMERHAYS
*
* MAGISTRATE JUDGE DAVID J. AYO
*
*
* **PATENT CASE**
*
*

**DEFENDANT SAFE ARC TECHNOLOGY, L.L.C.’s
ANSWER, COUNTERCLAIMS AND AFFIRMATIVE DEFENSES TO
PETROHAB’S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

NOW INTO COURT, through undersigned counsel, comes Defendant, **SAFE ARC TECHNOLOGY, L.L.C.** (“Safe Arc” or “Defendant”), who answers and responds to the above captioned First Amended Complaint for Patent Infringement (“Amended Complaint”) filed by Plaintiffs, **SAMER AL-AZEM** and **PETROHAB, LLC** (collectively “PetroHab” or “Plaintiff”), as follows:

PARTIES

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 1.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Amended Complaint and, therefore,

Defendant denies the allegations of Paragraph 2.

3. Defendant admits that Safe Arc is a Louisiana limited liability company, having a domicile address at 6873 Johnston Street, Suite B, Lafayette, Louisiana 70503.

NATURE OF THE ACTION, JURISDICTION, AND VENUE

4. Defendant admits that this case purports to be an action for patent infringement under the Patent Act, 35 U.S.C. § 1, *et seq.*

5. Defendant admits that this Honorable Court generally has subject matter jurisdiction pursuant over actions based upon 28 U.S.C. §§ 1331 and 1388. To the extent not expressly admitted herein, Defendant denies the remaining allegations of Paragraph 5 of the Amended Complaint.

6. Defendant admits the allegations of Paragraph 6 of the Amended Complaint.

7. Defendant admits the allegations of Paragraph 7 of the Amended Complaint.

BACKGROUND FACTS

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 8.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 9.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 10.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 11.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 12.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 13.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 14.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Complaint and, therefore, Defendant denies the allegations of Paragraph 15.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 16.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 17.

18. Defendant admits that Safe Arc was organized in July, 2011. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 18 of the Amended Complaint and, therefore, Defendant denies the remaining allegations of Paragraph 18.

19. Defendant admits that David Walker is an officer of both Team Management and Consulting, LLC (TMC”) and Safe Arc.

20. Defendant admits that Ben Vetuski was previously employed by TMC and/or Safe Arc. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 20 of the Amended Complaint and, therefore, Defendant denies the remaining allegations of Paragraph 20.

21. Defendant admits that Ben Vetuski was previously employed by Safe Arc and/or TMC. The remaining allegations of Paragraph 21 are denied.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 22.

23. Defendant admits that Ben Vetuski was employed by TMC and/or Safe Arc for a period of time, and that Defendant uses pressurized welding enclosures formed from a number of interconnected panels joined with hoop and loop fasteners. Defendant further responds that any email referenced in Paragraph 23 of the Amended Complaint is in writing and is the best evidence of its contents. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 23 of the Amended Complaint and, therefore, Defendant denies the remaining allegations of Paragraph 23.

24. Defendant denies the allegations of Paragraph 24 of the Amended Complaint.

25. Defendant admits that the '775 Patent was issued on January 17, 2017.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 25 of the Amended Complaint and, therefore, Defendant denies the remaining allegations of Paragraph 25.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 26.

27. Defendant denies the allegations set forth in Paragraph 27 of the Amended Complaint.

28. Defendant denies the allegations set forth in Paragraph 28 of the Amended Complaint.

COUNT I:
INFRINGEMENT OF U.S. PATENT NO. 9,545,775

29. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 29.

30. Defendant admits that the '775 Patent was issued by the United States Patent & Trademark Office on January 17, 2017. Defendant further admits that Exhibit A to the Amended Complaint purports to be a true and correct copy of the '775 Patent. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 30 of the Amended Complaint and, therefore, Defendant denies

the allegations of Paragraph 30.

31. Defendant admits that timely payment of maintenance fees will generally maintain issued United States patents in force and effect. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 31 of the Amended Complaint and, therefore, Defendant denies the remaining allegations of Paragraph 31.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 32 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 32.

33. Defendant admits that Exhibit B to the Amended Complaint purports to be an assignment of the '775 Patent. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 33 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 33.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 34 of the Amended Complaint and, therefore, Defendant denies the allegations of Paragraph 34.

35. Defendant denies the allegations set forth in Paragraph 35 of the Amended Complaint.

36. Defendant denies the allegations set forth in Paragraph 36 of the Amended Complaint.

37. Defendant admits that Safe Arc offers panels of personal welding enclosures. Defendant denies the remaining allegations set forth in Paragraph 37 of the Amended Complaint

and, therefore, Defendant denies the remaining allegations of Paragraph 37.

38. Defendant denies the allegations set forth in Paragraph 38 of the Amended Complaint.

39. Defendant denies the allegations set forth in Paragraph 39 of the Amended Complaint.

40. Defendant denies the allegations set forth in Paragraph 40 of the Amended Complaint.

41. Defendant denies the allegations set forth in Paragraph 41 of the Amended Complaint.

42. Defendant denies the allegations set forth in Paragraph 42 of the Amended Complaint.

43. Defendant denies the allegations set forth in Paragraph 43 of the Amended Complaint, including that any authority or license from PetroHab is required.

44. Defendant denies the allegations set forth in Paragraph 42 of the Amended Complaint.

PRAYER FOR RELIEF

No response is required to the opinions and legal conclusions of PetroHab's Prayer for Relief. To the extent a response is deemed necessary, Defendant specifically DENIES any factual allegations contained in the Prayer for Relief and, further, specifically DENIES that Plaintiffs are entitled to any relief in this action.

AFFIRMATIVE DEFENSES

Subject to the responses above, Defendant alleges and asserts the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, subject to the responses above, Defendant specifically reserves all rights to allege additional affirmative defenses that become known through the course of discovery.

AFFIRMATIVE DEFENSE NO. 1

(Failure to State a Claim)

The Amended Complaint, and each cause of action therein, fails to state any claims against Defendant upon which relief can be granted.

AFFIRMATIVE DEFENSE NO. 2

(Non-Infringement)

Defendant has not directly or indirectly infringed, or contributed to or induced the infringement of any valid and enforceable claim of U.S. Patent No. 9,545,775 (the “775 Patent”), and has not otherwise committed any acts in violation of applicable law including, without limitation, 35 U.S.C. § 271.

AFFIRMATIVE DEFENSE NO. 3

(Invalidity)

Some or all of the claims of the '775 Patent are invalid for failing to satisfy one or more requirements of Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

AFFIRMATIVE DEFENSE NO. 4

(Prosecution History Estoppel)

Defendant has not, and is not, infringing some or all of the claims of the '775 Patent at least due to statements, representations, admissions, elections, positions, concessions and filings made to the U.S. Patent and Trademark Office ("USPTO") during the prosecution of the patent application that matured into the '775 Patent that, in part or collectively, constitute prosecution history estoppel barring PetroHab from asserting that the claims of the patent encompasses or are infringed by any product or activities of Defendant.

Defendant has not, and is not, infringing some or all of the claims of the '775 Patent at least due to statements, representations, admissions, elections, positions, concessions and filings made to the USPTO during the prosecution of U.S. and/or foreign applications from which the '775 Patent purports to claim priority that, in part or collectively, constitute prosecution history estoppel barring PetroHab from asserting that the claims of the patent encompasses or are infringed by any product or activities of Defendant.

AFFIRMATIVE DEFENSE NO. 5

(Damages Barred by Lack of Notice)

PetroHab's claim for damages is barred, in whole or in part, by a failure to satisfy the requirements of 35 U.S.C. § 287(a).

AFFIRMATIVE DEFENSE NO. 6

(Indefiniteness)

Some or all of the claims of the '775 Patent are indefinite.

AFFIRMATIVE DEFENSE NO. 7

(No Costs)

PetroHab is barred by 35 U.S.C. § 288 from receiving any costs associated with this action.

AFFIRMATIVE DEFENSE NO. 8

(No Injunctive Relief)

PetroHab is not entitled to any injunctive relief because any alleged injury to PetroHab is not immediate or irreparable and PetroHab has an adequate remedy at law for any alleged injury.

AFFIRMATIVE DEFENSE NO. 9

(No Enhanced Damages)

PetroHab is not entitled to any enhanced damages under 35 U.S.C. § 284.

AFFIRMATIVE DEFENSE NO. 10

(No Attorney Fees or Costs)

PetroHab is not entitled to any attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

AFFIRMATIVE DEFENSE NO. 11

(No Willful Infringement)

Defendant has not willfully infringed the '775 Patent.

AFFIRMATIVE DEFENSE NO. 12

(Equitable Doctrines)

PetroHab's claims are barred, in whole in part, by the doctrine(s) of estoppel, waiver, acquiescence, laches, consent and/or setoff.

AFFIRMATIVE DEFENSE NO. 13

(Unenforceability)

Some or all claims of the '775 Patent are unenforceable due to PetroHab's inequitable conduct and/or unclean hands in the prosecution of said patent and/or the prosecution of patent applications to which the '775 Patent purports to claim priority to, before the USPTO.

AFFIRMATIVE DEFENSE NO. 14

(Unclean Hands)

PetroHab's claims are barred, in whole or in part, by PetroHab's inequitable conduct and unclean hands.

AFFIRMATIVE DEFENSE NO. 15

Any alleged damage suffered by PetroHab was due to the actions, contributory negligence or fault, comparative fault, conduct and/or negligence of PetroHab and/or other persons for whom Defendant is not liable.

AFFIRMATIVE DEFENSE NO. 16

Defendant reserves the right to file such additional defenses as may be appropriate upon completion of investigation and discovery.

COUNTERCLAIMS

AND NOW, asserting the following counterclaims against PetroHab (referred to below as "Counterclaim Defendant"), Safe Arc Technology, L.L.C. (referred to below as "Counterclaim Plaintiff") respectfully avers as follows:

FIRST COUNTERCLAIM CAUSE OF ACTION
(Patent Invalidity)

1. Counterclaim Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs of this pleading as if fully set forth herein.
2. An actual and substantial controversy has arisen and now exists between the parties concerning the validity of the ‘775 Patent.
3. All claims of the ‘775 Patent are invalid because the purported invention(s) therein fail to meet the conditions for patentability specified in 35 U.S.C. §§ 101 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.
4. By way of example and without limiting the grounds of invalidity that will be asserted in this action, each claim of the ‘775 Patent is invalid in light of the prior art.
5. By way of further example and without limiting the grounds of invalidity that will be asserted in this action, each claim of the ‘775 Patent is invalid for failure to satisfy the requirements of 35 U.S.C. § 102 and 35 U.S.C. § 103.
6. Counterclaim Plaintiff expressly reserves the right to assert additional grounds of invalidity after having the ability to conduct discovery.
7. Counterclaim Plaintiff seeks a declaratory judgment that the ‘775 Patent is invalid.

SECOND COUNTERCLAIM CAUSE OF ACTION
(Non-Infringement)

8. Counterclaim Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs of this pleading as if fully set forth herein.
9. An actual and substantial controversy has arisen and now exists between the parties concerning whether Counterclaim Plaintiff’s manufacture, use, sale, or offer for sale of any of its

personal welding enclosures and/or related goods infringes any valid and enforceable claim of the '775 Patent, either directly or indirectly, literally, under the doctrine of equivalents, or otherwise.

10. By way of example and without limiting the grounds of non-infringement that will be asserted, Counterclaim Plaintiff's personal welding enclosures and related products do not infringe any claim of the '775 Patent because they do not contain certain limitations set forth in each of the independent and dependent claims of the '775 Patent.

11. Counterclaim Plaintiff expressly reserves the right to assert additional grounds of non-infringement after having the ability to conduct discovery and the Court has construed the claims.

12. Counterclaim Plaintiff seeks a declaratory judgment that making, using, offering to sell and/or selling its personal welding enclosures and/or related equipment does not and will not infringe any valid and enforceable claim of the '775 Patent.

WHEREFORE, SAFE ARC TECHNOLOGY, L.L.C. prays:

a) that the ANSWER, COUNTERCLAIMS AND AFFIRMATIVE DEFENSES be deemed good and sufficient and that, after proper proceedings, all claims against Defendant be dismissed with prejudice, and at Plaintiff's sole cost, and further pray for any and all additional and further legal and equitable relief to which they may be entitled that this Honorable Court finds just, necessary and appropriate; and

b) for an award of declaratory judgment, compensatory and punitive damages in an amount to be proven at trial, pre-judgment and post-judgment interest, attorneys' fees, the costs of bringing this action, and such other and further relief as the Honorable Court deems just, necessary and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, SAFE ARC TECHNOLOGY, L.L.C. demands a trial by jury as to all issues and claims triable to a jury.

Respectfully submitted:

s/Ted M. Anthony
Ted M. Anthony, LA #21446 (T.A.)
Sarah B. Dupont, LA #35048
BABINEAUX, POCHÉ, ANTHONY
& SLAVICH, L.L.C.
P. O. Box 52169
Lafayette, LA 70505-2169
Telephone: (337) 984-2505
Fax: (337) 984-2503
Email: tanthony@bpasfirm.com
sdupont@bpasfirm.com

ATTORNEYS FOR SAFE ARC
TECHNOLOGY, L.L.C.