

United States District Court,
W.D. Texas, San Antonio Division.

CURTISS-WRIGHT FLOW CONTROL CORP,
Plaintiff.

v.
VELAN, INC,
Defendant.

Civil No. SA-04-CA-1157-OG

April 15, 2005.

Mark H. Neblett, Mark M. Supko, Crowell & Moring LLP, Washington, DC, Richard William Espey, Davis, Cedillo & Mendoza, Inc., San Antonio, TX, for Plaintiff.

Joseph Daniel Gray, Michael J. Smith, Willem G. Schuurman, Vinson & Elkins, LLP, Austin, TX, for Defendant.

ORDER

JOHN W. PRIMOMO, United States Magistrate Judge.

Before the Court is the plaintiffs' motion for preliminary injunction. (Docket nos. 11, 21). Defendant has responded. (Docket no. 19). A hearing was held on the motion on April 12, 2005. Upon consideration of the testimony, evidence, supplements to evidence, and arguments given, the Court concludes the plaintiffs' motion for preliminary injunction should be **GRANTED**.

Factual Background

The undisputed evidence shows Curtis-Wright Flow Control Corp. (Curtis-Wright) holds two patents for an invention titled "Coke Drum De-Heading System". These patents are directed to a device (hereinafter referred to as the "Delta Valve") for de-heading a vessel (coke drum) containing fluid, distillates, or unconsolidated debris product, known as "coke", for removal. Curtis-Wright brings this suit alleging defendant, Velan, Inc. (Velan), has created a device FN1 which infringes upon claim numbers 14 and 33 in its patent no. 6,5654.714 (hereinafter referred to as patent no. '714). Curtis-Wright now moves for preliminary injunction precluding Velan from introducing its product at an industry conference to be held April 18-21, 2005, in Houston, Texas, and from further conduct constituting infringement of its patents during the pendency of this litigation.

FN1. The record contains no evidence which portrays or exhibits the accused Velan device. This Court must, therefore, rely upon representations and admissions by Velan's counsel at the hearing regarding its construction and similarity to Curtis-Wright's Delta Valve.

Standard of Review

A preliminary injunction is an extraordinary remedy "that is not to be routinely granted." *Intel Corp. v. ULSI Sys. Tech., Inc.*, 995 F.2d 1566, 1568 (Fed.Cir.1993). Consequently, a plaintiff requesting a preliminary injunction must establish four criteria to be entitled to the requested relief:

1. A reasonable likelihood the plaintiff will prevail on the merits,
2. The plaintiff will suffer irreparable injury if the injunction is not granted,
3. The threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and
4. The granting of the preliminary injunction will not disserve the public interest.

Id.; *Hybritech Inc. v. Abbott Labs.*, 849 F.2d 1446, 1451 n. 12 (Fed.Cir.1988). "[T]he trial court should weigh and measure each of the four factors against the other factors and against the magnitude of the relief requested." *Chrysler Motors Corp. v. Auto Body Panels of Ohio, Inc.*, 908 F.2d 951, 953 (Fed.Cir.1990) (*citing* *Hybritech Inc.*, 849 F.2d at 1451 n. 12). If a plaintiff clearly establishes the first factor, it is entitled to a rebuttable presumption in its favor regarding the second factor, irreparable harm. *Polymer Techs., Inc. v. Bridwell*, 103 F.3d 970, 973 (Fed.Cir.1996).

Although a court must consider, weigh, and articulate findings on all four factors before granting a motion for preliminary injunction, a movant is not entitled to preliminary injunction if he fails to demonstrate either of the first two factors, i.e. a reasonable likelihood of success on the merits or irreparable injury. *Nat'l Steel Car, Ltd. v. Canadian Pacific Ry., Ltd.* 357 F.3d 1319, 1325 (Fed.Cir.2004); *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350 (Fed.Cir.2001).

I. Reasonable Likelihood of Success on the Merits

With regard to the first factor, the plaintiff must show a reasonable likelihood of success on the merits by making a clear showing of the patent's validity and infringement. *Purdue Pharma L.P. v. Boehringer Ingelheim GMBH*, 237 F.3d 1359, 1363 (Fed.Cir.2001); *Nutrition 21 v. U.S.*, 930 F.2d 867, 869-870 (5th Cir.1991). This burden requires the plaintiff to show: "(1) it will likely prove [infringement] and (2) its infringement claim will likely withstand challenges to the validity and enforceability of the ... patent[s]." *Purdue Pharma L.P.*, 237 F.3d at 1363 (*quoting* *Genentech, Inc. v. Novo Nordisk, A/S*, 108 F.3d 1361, 1364 (Fed.Cir.1997)).

A. Validity

Although a patent is presumptively valid by statute, when a plaintiff requests preliminary injunction against accused infringement, a court may not rely solely on this presumption. *See* 35 U.S.C. s. 282; *Chrysler Motors Corp.*, 908 F.2d at 953; *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1534 (Fed.Cir.1983). Instead, in the context of preliminary injunction, where the movant bears the burden to demonstrate entitlement to preliminary injunction, this entitlement must be determined in light of the presumptions and burdens that would inhere at trial on the merits. Consequently, the non-movant retains the burden of establishing the patent's invalidity; the movant holds the burden to make a clear showing any attack on the

patent's validity will likely fail. *Stratoflex, Inc.*, 713 F.2d at 1534.

In its response to the motion for preliminary injunction, Velan asserts argument that Curtis-Wright's patent is invalid based upon the existence of prior art: its own valve illustrated in a 1980 catalog and a ball valve used on the top of a coke drum. Velan presents no evidence in support of its argument in its response to the motion for preliminary injunction. However, to demonstrate its argument at the hearing, Velan did provide some accompanying exhibits portraying this prior art.

Curtis-Wright has presented sufficient evidence to make a clear showing that Velan's asserted challenge to the patents' validity would fail. Curtis-Wright presents an excerpt from Michael Jacobs' deposition.^{FN2} In this deposition, Mr. Jacobs attests the asserted prior art, consisting of another Velan valve, was not intended for the application asserted in Patent '714 and lacked a number of the elements of the asserted claims. *Plaintiff's motion*, Exh. G, pp. 51:19-56:24 (filed under seal). As to the ball valve, Jacobs admitted the mechanism was not well suited for application for the deheading of the bottom of a coke drum. *Id.* at pp. 15:12-18, 17:13-21. Further, Mr. Jacobs attested the first valve to be used for bottom coke drum de-heading was the Delta Valve and no other prior art valve was used or intended for un-heading the bottom of a coke drum. *Id.* at pp. 18:1-13, 51:9-52:11.

FN2. Mr Jacobs is the inventor of the Velan device.

Velan has failed to satisfy its burden to establish the invalidity of Curtis-Wright's patents. Curtis-Wright has made a clear showing its infringement claim will likely withstand the challenges raised by Velan in its response to this motion for preliminary injunction. Accordingly the Court will presume Curtis-Wright's patents are valid and will weigh this factor in its favor,

B. Infringement

The parties' central dispute at this time does not involve any defense to infringement asserted by Velan, but simply whether the Velan device infringes upon Claims 14 and 33 of the '714 patent. The parties' dispute focuses on the meaning and application of the term "adjustable" as it is used in Claims 14 and 33 of the '714 patent.

Claims 14 and 33 of the '714 patent contain the pertinent language,

What is claimed is:

14. A coke drum de-heading valve comprising: ... an *adjustable dynamic, live loaded seat* coupled to said main body;

33. A method for de-heading a coke drum following the manufacture of coke therein, said method comprising the steps of: ...

equipping said coke drum with a de-header valve, said deheader valve removably coupled to said coke drum and comprising: a main body having means for connecting said de-header valve to said coke drum; an *adjustable dynamic, live loaded seat* coupled to said main body;

Infringement analysis entails two steps. First, the court must determine the meaning and scope of the patent claims, known as claim construction. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed.Cir.1995) (en banc), *aff'd* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996)). Courts must construe claims before turning to the second step, the application of the interpreted claims to the accused devices. *See* *Markman*, 52 F.3d at 976.

1. Claim Construction

With regard to the first step, claim construction is a question of law although factual determinations may underlie this determination. *Id.* It is not necessary for a court to construe definitively the patent claims when ruling on a motion for preliminary injunction. *Data Race, Inc. v. Lucent Techs., Inc.*, 73 F.Supp.2d 698, 708 (W.D.Tx.1999). Claims must be viewed in light of a person of ordinary skill in the art at the time of the invention, and the language of the claim must be given its common and accustomed meaning. To derive the meaning of a claim, courts must first utilize the three parts of the patent application: the language of the claim, the specification, and the prosecution history (file wrapper). *Insituform Tech., Inc. v. Cat Contracting, Inc.*, 99 F.3d 1098, 1105 (Fed.Cir.1996). The claim language will define its scope, and the specification and prosecution history provide the necessary context to the claim language. *See* *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed.Cir.1996). The claim term's ordinary and accustomed meaning serves as a default meaning. If the patent holder has given a term an unconventional meaning within the patent specification or prosecution history, the Court must apply that meaning. However, if not, the term's ordinary and accustomed meaning controls. *Id.*; *ZMI Corp. v. Cardiac Resuscitator Corp.*, 844 F.2d 1576, 1580 (Fed.Cir.1988).

If necessary, in its discretion, the Court may look to extrinsic evidence to assist in understanding the technology or in determining the meaning or scope of technical terms. *See* *Markman*, 52 F.3d at 976. This extrinsic evidence, including expert testimony or prior art, may not be interpreted to broaden the scope of the patent or to contradict the claim language, the specification, or the prosecution history. *See* *Vitronics Corp.*, 90 F.3d at 1583; *see also* *Data Race, Inc.*, 73 F.Supp.2d at 708.

Velan contends the term "adjustable" as used in the pertinent claims "means the biasing force inherently provided by the biasing elements or coil springs integrated into a dynamic live loaded seat, can be adjusted to increase or decrease the biasing force during use or operation of the de-heading device." The core of Velan's argument is that Claims 14 and 33 incorporate into the definition of "adjustable" the ability to cause adjustment to the load pressure exerted by the dynamic, live loaded seat on the sliding gate while the de-heading device is in operation, or coupled to the coke drum. Velan contends Curtis-Wright's assertion that replacement of the coil springs housed inside the apparatus with springs having a different bias force does not constitute "adjustment" and, in any event, this procedure cannot be performed while its device is in use and attached to the coke drum. Velan further contends the term adjustment provides no additional function than that provided by a live loaded seat, and therefore, the term is redundant. Looking to the specification, Velan argues every reference to patent '714 to adjustability refers to the necessity of having an external adjustment mechanism associated or directed at the dynamic, live loaded seat. Therefore, the term "adjustable" must mean the device must contain an external means of adjusting the biasing force placed upon the sliding gate by the dynamic, live loaded seat while the device is in use.

Curtis-Wright contends the term "adjustable" is a common word that must be given its ordinary and

accustomed meaning as it is used in the context of Claims 14 and 33 of the '714 patent. Curtis-Wright contends the accustomed meaning of this term means "capable of making a change or being changed". Claims 14 and 33 do not restrict the term "adjustable" to changing the biasing force during use or operation of the de-heading device. Thus, the ability to adjust the pressure placed upon the sliding gate by the dynamic, live loaded seat while the valve is in operation is not a requirement of the patented invention. Because an external adjustment mechanism is described in the patent specification as a "preferred embodiment" of the device, Curtis-Wright contends the limitations cannot be read into the claims, nor do claims 14 or 33 limit the invention to the existence of an external adjustment mechanism or any particular means, method, or time of adjustment of the load pressure placed on the sliding gate. Instead, Curtis-Wright contends the asserted claims require only that the live loaded seat be adjustable, regardless of how, when, or whether the adjustment is actually performed. Curtis-Wright particularly argues the asserted claims do not require that adjustment must or may be made while the device is in use, only that adjustment may be made to the load pressure placed upon the sliding gate by the live loaded seat.

Viewing the claim language, Curtis-Wright is correct the term "adjustable" as used in Claims 14 and 33 holds a common meaning of normal usage. *See plaintiff's motion*, Exh. A, Cols. 17, 20. This term means, as asserted by Curtis-Wright, "capable of making a change to something" or capable of being changed. The term "adjustable" as used as a modifier to the term "dynamic, live loaded seat" means the dynamic, live loaded seat must have the capability of changing or making a change. In this particular application, the parties do not dispute the change to be made is a change to the load placed upon the blind, or sliding gate, by the dynamic, live loaded seat. This change can either loosen or tighten the seal between the live loaded seat and the sliding gate.

Also, the Court agrees with Curtis-Wright the term "adjustable", as used in Claims 14 and 33, does not contain or imply any requirement regarding the time in which the load placed upon the gate by the dynamic, live loaded seat may be adjusted. *See plaintiff's motion*, Exh. A, Cols. 17, 20. The use of the term "adjustable" as it appears in Claims 14 and 33 does not include or require any adjustment be made while the Delta Valve is in operation or in use. *See id.* Thus, Velan's asserted definition of the term "adjustable" to include the requirement that a change to the biasing force can be made while the device is in use or operation is beyond the accustomed meaning of the term.

A reading of Claims 14 and 33, and those associated with them, in light of the other asserted claims, and those associated with them, gives context to this construction. Claim 1 describes a coke drum de-heading device which comprises several elements, including an external "live loaded seat assembly" which contains "at least one dynamic, live loaded seat and a corresponding live loaded seat adjustment mechanism to control exertable force of said dynamic, live loaded seat". *See plaintiff's motion*, Exh. A, Cols. 16-17. Claims 2 through 13 consist of further descriptions and elements of the coke drum de-heading device presented in Claim 1. *Id.* Claims 9 and 10, in particular, depict an external live loaded seat adjustment mechanism. *Id.* at Col. 17. Thus, Claims 1 through 10 depict a device limited by Velan's assertions: one which possesses an external adjustment mechanism capable of changing the bias force placed upon the sliding gate by the dynamic, live loaded seat while the device is in use or operation. *See id.*

Claim 14 begins another description of a coke drum de-heading device, this time limited to a "bottom de-heading system" which comprises several elements similar to those depicted in Claim 1; however, the device claimed in Claim 14 does not contain the necessity of a "live loaded seat adjustment mechanism to control exertable force of said dynamic, live loaded seat", as in Claim 1. *See plaintiff's motion*, Exh. A, Col. 17. Claim 14 asserts only that the claimed device be "adjustable", without reference or limitation to the

means, time, or manner in which an adjustment to the exerted force placed upon the sliding gate by the dynamic, live loaded seat must be made. Claim 15, only, further describes the device depicted in Claim 14. *Id.* Thus, in this instance, any reference to an external live loaded seat adjustment mechanism is intentionally omitted.

Further, Claim 16 depicts a "top de-heading system" and follows the same format as described for Claim 14. *See plaintiff's motion*, Exh. A, Col. 18. Claim 18 begins another depiction of a coke de-heading system and follows an identical format as Claim 1. *Id.* Claim 18 also includes the claim of a "live loaded seat assembly coupled to said main body and comprising a dynamic, live loaded seat, a live loaded seat adjustment mechanism coupled to said main body and designed to control and adjust the force and resulting seat load...." *Id.* Claims 19 through 32 consist of further descriptions and elements of the coke drum de-heading device presented in Claim 18. *See plaintiff's motion*, Exh. A, Cols. 18-19. Claim 28, in particular, depicts an external live loaded seat adjustment mechanism. *Id.* at Col. 19.

Finally, Claim 33 claims the *method* used to de-head a coke drum. This method described includes only the restriction that the coke drum be equipped with an "adjustable dynamic, live loaded seat coupled to said main body." *Id.* at Col. 20. The method to be used does not require an external seat adjustment mechanism or the requirement that the adjustment be made while the device is in use.

Examination of Claim 14 in light of the remaining claims reveals that the device claimed therein does not restrict the claimed device to the existence of an external live loaded seat adjustment mechanism. Such a device was specified and claimed in Claims 1 and 18 and those claims associated with them. Thus, because Claims 1 and 18 specifically describe an embodiment possessing this external seat adjustment mechanism and Claim 14 does not, the only meaning to be derived from Claim 14 is that it encompasses all devices that are simply "adjustable", or capable of changing the bias force exerted on the sliding gate by the dynamic, live loaded seat, regardless whether these devices possess an adjustment mechanism or not and regardless of the means or time in which this adjustment is made. Therefore, Velan's primary argument must fail.

This Court further finds Velan's argument that all references to any adjustability in the dynamic, live loaded seat further refers to the necessity of having a "live seat adjustment mechanism" fails on the principle of "preferred embodiment". In the specification, which describes the invention, Curtis-Wright always uses the reference that the description is the "preferred embodiment" of the device. *See plaintiff's motion*, Exh. A, Cols. 4, 5, 9. A preferred embodiment is the inventor's description of the best mode of use; however, the invention is not limited to the preferred embodiment, nor may the court place any limitation contained in the description of the preferred embodiment into the asserted claims. *See Interactive Gift Express, Inc. v. CompuServe, Inc.*, 256 F.3d 1323, 1341 (Fed.Cir.2001); *TurboCare Div'n of Demag Delaval Turbomachinery Corp. v. Gen'l Elec. Co.*, 264 F.3d 1111, 1123 (Fed.Cir.2001) ("There is no basis for reading a limitation from the preferred embodiment into the language of the claim," "particularly ... where another claim restricts the invention in exactly the manner suggested by [a proposed] narrow claim construction.").

Curtis-Wright included the preferred embodiment of its coke drum de-heading device in the specification of patent '714. Such embodiment includes a live seat adjustment mechanism. In the subsequent asserted claims, Curtis-Wright asserted claims restricting the protected device to inclusion of a live seat adjustment mechanism. Curtis-Wright also asserted a claim, Claim 14, which did not include this limitation. Consequently, this Court may not limit Claims 14 and 33 by the description of its preferred embodiment in the patent specification. *See Interactive Gift Express, Inc.*, 256 F.3d at 1341; *TurboCare Div'n of Demag*

The Court finds the term "adjustable" has a meaning and concept different than the term "live loaded seat", and therefore, is not just redundant or superlative. As described in the patent claims and specification, the term "live loaded seat" is used in conjunction with its counterpart, a static seat. *See plaintiff's motion*, Exh. A, Fig. 8, Col. 4, lines 32-42, Col. 13, line 39-Col. 14, line 18. The static seat is mounted to the main body below the sliding gate and does not move. Conversely, the live loaded seat, located above the sliding gate, is flexible, or capable of movement up or down. *Id.*; *see also* Col. 14, line 65-Col. 15, line 3. This movement is facilitated by the spring coils located inside the apparatus. As the weight of coke filling the coke drum changes, the live loaded seat is capable of moving to place further pressure on the sliding gate, thus maintaining the seal. *Id.* Thus, the term live loaded refers to the ability of the seat to move up or down, as opposed to being static, or mounted to the main body. The term adjustable refers to the capability of changing the bias force already exerted on the sliding gate by the live loaded seat. *See id.* at Col. 15, lines 7-22. Although similar, the two terms do not refer to the same or redundant activity.

Based upon these comparisons, findings and conclusions, this Court construes the term "adjustable" as used in Claims 14 and 33 to mean the protected device is capable of changing the bias force exerted on the sliding gate by the dynamic, live loaded seat. This term is not limited by any time, place, manner, or means of adjustment and does not necessitate any external adjustment mechanism.

2. Application

The second step of the patent infringement determination, application of the construed claims to the accused device, is a fact question. *Hybritech Inc.*, 849 F.2d at 1455. To find infringement at this second step, every limitation set forth in a patent claim must be found in the accused product exactly or by a substantial equivalent. *Dolly Inc. v. Spalding & EvenFlo Cos., Inc.*, 16 F.3d 394, 397 (5th Cir.1994).

Curtis-Wright contends Velan's valve is "adjustable", or in this application, capable of changing the load exerted by the live loaded seat on the sliding gate. Curtis-Wright contends the Velan device may be adjusted by removing the live loaded seat from the coke drum and changing the springs housed inside the apparatus to those possessing a different bias force.

Velan responds that Curtis-Wright's proposed application of the term "adjustable" is illogical and far fetched. Velan contends its device cannot change the load placed upon the sliding gate by the dynamic, live loaded seat because it contains no other external adjustment device or means of changing the load other than removing the device and changing the coiled springs.

This Court concludes Curtis-Wright has satisfied its burden of establishing a clear showing of infringement by the Velan device based upon application of the Court's construction of the term "adjustable" as it appears in Claims 14 and 33. Curtis-Wright has made a clear showing that removal of Velan's valve from the coke drum and replacement of the coiled springs constitutes adjustment of the load placed upon the gate by the dynamic, live loaded seat. During the preliminary injunction hearing and his deposition, Ruben Lah, the inventor of the Delta Valve, testified that replacement of the coiled springs with others possessing a different bias force will result in a change to the bias force placed upon the sliding gate by the dynamic, live loaded seat. *See plaintiff's motion*, Exh. H (filed under seal), pp. 77:1-25, 99:5-101:9. It is undisputed that it is possible to change the coiled springs in Velan's device. The fact that removal of Velan's device from the coke drum and replacement of the coiled springs is cumbersome, slow, costly, and difficult does not serve

as basis for a finding that Velan's device is not "adjustable". While cumbersome, this action does change the bias force placed upon the sliding gate by the dynamic, live loaded seat. Consequently, Velan's device fits squarely within the realm of that protected in Claims 14 and 33.

Based upon this Court's interpretation of the term "adjustable" and based upon a finding Curtis-Wright has made a clear showing of infringement by the Velan device, this Court concludes Curtis-Wright has shown a reasonable likelihood of success on the merits of its claims that Velan's asserted device infringes upon Curtis-Wright's patent, particularly claims 14 and 33.

II. Irreparable Harm

Velan argues the presumption of irreparable harm fails because there is already at least one non-infringing competitor in the marketplace, and this destroys Curtis-Wright's exclusive market. Velan also argues Curtis-Wright is not entitled to a presumption of irreparable harm because it has not sued other infringers.

"Because of the very nature of a patent, which provides the right to exclude, ... infringement of a valid patent inherently causes irreparable harm in the absence of" circumstances negating such harm. *Polymer Techs., Inc.*, 103 F.3d at 974-975. Thus, irreparable harm is presumed upon a clear showing of patent validity and infringement, and this presumption may be overcome by evidence which clearly negates irreparable harm. *Id.* Circumstances negating such presumption include a showing that future infringement is no longer likely; the patentee was willing to forego its right to exclude by licensing the patent, or; the patent holder delayed in bringing suit. *Polymer Techs., Inc.*, 103 F.3d at 974-975. The fact that other infringers may be in the marketplace does not negate the presumption of irreparable harm. *Id.* at 975.

Velan's evidence and arguments regarding the lack of irreparable harm must fail. The fact that other infringers may be active in the marketplace does not negate the presumption of irreparable harm. *See id.* at 975. Similarly, Velan's evidence the existence of any competitors, or non-infringers, in the same market also does not serve to negate the presumption. Curtis-Wright has produced evidence that no other company has installed any device for de-heading the bottom of a coke drum in the United States. Further, any promotion or commerce related to any device which admittedly does not infringe upon Curtis-Wright's patent is irrelevant to this discussion. Curtis-Wright's patent only precludes infringing devices. Such protection would never extend to any non-infringing competitor. Thus, the existence of an admitted non-infringing competitor does destroy the exclusive market anticipated by a patent's protection, and thus, does not negate the presumption of irreparable harm mandated by a clear showing of infringement.

For these reasons, this Court concludes Curtis-Wright has made a sufficient showing that it will suffer irreparable injury if the injunction is not granted.

III. Threatened Injury Outweighs Threatened Harm

The balance of hardships weighs in favor of Curtis-Wright. The showing of a reasonable likelihood of success on the merits of the infringement claim and the presumption of irreparable harm tip the scale in favor of Curtis-Wright.

At the preliminary injunction hearing, Velan's counsel argued Velan's product is still in the design stage, and will not be ready for installation for at least one year. Curtis-Wright presents similar evidence through Jacobs deposition. *See plaintiff's motion*, Exh. G, pp. 44:14-47:25. Thus, Velan could still continue its design and testing of its product without any restriction. If it prevails in this litigation, Velan could suffer

monetary damages resulting from any delayed promotion and entry into the market. However, these damages do not outweigh the harm and damages that could be suffered by Curtis-Wright should it prevail in this litigation and injunction were not granted.

This Court concludes the balance of relative hardships weigh in favor of Curtis-Wright.

D. Public Interest

"[A]lthough there exists a public interest in protecting rights secured by a valid patent, the focus of the court's analysis should be whether there is some critical public interest that would be injured by the grant of preliminary relief." *Kybritech, Inc.*, 849 F.2d at 1458.

In this case, preliminary relief will not affect the public interest. While Curtis-Wright's patented device and Velan's proposed device admittedly serve a substantial public interest by making the de-heading of coke drums a safer endeavor, any delay in Velan's promotion of its product caused by preliminary relief would not disserve the public interest. The evidence shows Velan will not be able to install any of its devices until at least one year. At that time, the litigation of this matter will be concluded or close to conclusion. In the meantime, the public interest of safety will be served by Curtis-Wright's device, which is currently available. Although Curtis-Wright's device is backlogged, Velan is not currently ready to meet any backlogged or current demand, and thus, otherwise serve the public interest of getting these devices in the marketplace.

Therefore, the Court finds the granting of a preliminary injunction will not disserve the public interest.

Based upon the analysis and weighing of the four criteria for imposing injunctive relief, this Court concludes Curtis-Wright has satisfied its burden of proof for preliminary injunctive relief. For the reasons cited herein, Curtis-Wright's motion for preliminary injunction is **GRANTED**.

Curtis-Wright is hereby ORDERED to post bond in the amount of \$10,0000. *See* FED.R.CIV.P. 65(c). Velan is hereby restrained from introducing, marketing, promoting, attempting to sell, or offering to sell its accused device.

It is so **ORDERED**.

W.D.Tex.,2005.

Curtiss-Wright Flow Control Corp. v. Velan, Inc.

Produced by Sans Paper, LLC.