

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KRATON POLYMERS U.S. LLC,

Plaintiffs,

VS.

LCY ELASTOMERS L.P.,

Defendant.

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JURY DEMANDED

CIVIL ACTION NO.

ORIGINAL COMPLAINT

Kraton Polymers U.S. LLC files this Original Complaint (“Complaint”) against Defendant LCY Elastomers L.P., and would respectfully show the Court as follows:

I.
PARTIES

1. Plaintiff Kraton Polymers U.S. LLC (“Kraton”) is a limited liability corporation organized under the laws of the State of Delaware with its principal place of business in Houston, Texas. Kraton Polymers U.S. LLC is a wholly owned subsidiary of Elastomers Holdings LLC which is a wholly owned subsidiary of Kraton Polymers LLC which is a wholly owned subsidiary of Kraton Performance Polymers, Inc. (NYSE: KRA).

2. Defendant LCY Elastomers L.P. (“LCY”) is a Texas domestic limited partnership with a plant located at 4803 Decker Dr Baytown, TX 77520. The name of the LCY’s managing partner is LCY Elastomer Management LLC. LCY’s registered agent for service of process is Cecil Lee at 4903 Decker Dr Baytown, TX 77520.

II.
JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. section 1, *et seq.*, including 35 U.S.C. section 271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. sections 1331 and 1338(a) in that this is a civil action arising out of the patent laws of the United States of America for infringement of U.S. Patent No. 7,728,074 (“’074 Patent”) attached as Exhibit 1.

4. This Court has personal jurisdiction over LCY which is a Texas limited partnership doing business in Texas. LCY manufactures products and regularly conducts business in the state of Texas and therefore has substantial and continuous contacts within this judicial district. Additionally, LCY purposefully avails itself of the privileges of conducting business in this judicial district. Based on information and belief, LCY has committed acts giving rise to Kraton’s claims within this judicial district.

5. Venue in the Southern District of Texas is proper pursuant to 28 U.S.C. sections 1391(b)-(c) and 1400(b) at least because LCY resides or may be found in this district and has a regular and established place of business in this district. In addition, based upon information and belief LCY has committed acts of infringement within this judicial district.

III.
PATENT-IN-SUIT

6. On June 1, 2010, the ’074 Patent entitled “Process for Preparing a Bituminous Binder Composition” was duly and lawfully issued by the United States Patent and Trademark Office (“PTO”).

7. Kraton owns all rights, titles, and interests in and to the ’074 Patent.

IV.
FACTUAL BACKGROUND

8. As the original inventor of styrenic block copolymer chemistry in the 1960s, Kraton has a history of innovation dating back almost 50 years and is a pioneer in the field of block polymers.

9. Currently, Kraton is a leading producer of engineered block polymers used to enhance the performance of products in a wide variety of applications including consumer and personal care items, adhesives and coatings, electronics, medical supplies, automotive components, and paving and roofing materials.

10. Kraton has been and is one of the leading innovators in polymer additives for the paving and roofing materials market. Specifically, in the 1970s Kraton discovered that the addition of styrene-butadiene-styrene copolymers improved the properties of modified asphalt. Since then Kraton has invested significantly in research and development efforts to develop polymers and methods of using such polymers which make many asphalt paving applications more economical, more environmentally friendly, and safer.

11. Kraton has patented a number of inventions that relate to new and improved polymers useful for asphalt paving applications. For example, the '074 Patent pertains to a block copolymer composition useful in, for example, asphalt paving and related applications.

12. On information and belief, LCY manufactures and/or markets at least some products under the name Globalprene that are specifically designed to directly compete with Kraton's polymers.

13. On information and belief, one such product that LCY manufactures and/or markets is Globalprene 3720.

14. On information and belief, LCY specifically designed Globalprene 3720 to substantially match one or more of the properties as Kraton's line of products called D0243.

14(a). Globalprene 3720 includes a diblock copolymer comprising one block of a monovinylaromatic hydrocarbon and one block of a conjugated diene having a peak molecular weight from 30,000 to 78,000.

14(b). Globalprene 3720 includes a diblock copolymer comprising one block of a monovinylaromatic hydrocarbon and one block of a conjugated diene having a vinyl content from 35 to 80 mol percent based on the number of repeat monomer units in the conjugated diene block.

14(c). Globalprene 3720 exhibits a melt index of from about 20 g/10 min to about 35 g/10 min as determined by ASTM D-1238, condition G (200° C., 5 kg).

15. Kraton has in the past been in contact with LCY about Globalprene 3710, Kraton's patent rights, and Kraton's significant investment in the research and development of materials for paving and roofing technologies. Accordingly, based on information and belief, LCY is aware of and had notice of the '074 Patent.

V.
CLAIMS FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 7,728,074

16. Kraton incorporates by reference Paragraphs 1–15, inclusive, set forth as if fully set forth herein.

17. Kraton is the owner of the entire right, title and interest in and to the '074 Patent.

18. On information and belief, Defendant LCY has infringed and is currently infringing the '074 Patent, in violation of 35 U.S.C. § 271, by, among other things, making, using, offering for sale, selling, and/or importing within this judicial district and elsewhere in the United States, without license or authority, a polymer falling within the scope of one or more claims of the '074 Patent, including without limitation LCY's product called Globalprene 3720 which has the same or similar functionality with respect to the '074 Patent.

19. On information and belief, Defendant LCY, induced and is actively inducing the infringement of the '074 Patent, with knowledge of the '074 Patent and knowledge that it was inducing the infringement of the '074 Patent, in violation of 35 U.S.C. § 271(b), by, among other things, actively and knowingly aiding and abetting, assisting and encouraging others, including without limitation, one or more customers and end users of LCY products, to directly infringe the '074 Patent with respect to the making, using, offering for sale, selling, and/or importing within this judicial district and elsewhere in the United States, without license or authority, a product falling within the scope of one or more claims of the '074 Patent, including without limitation LCY's product called Globalprene 3720, which has the same or similar functionality with respect to the '074 Patent.

20. On information and belief, Defendant LCY's infringement of the '074 Patent has been and continues to be willful and deliberate. LCY, with knowledge of the '074 Patent, engaged in objectively reckless conduct when it continued selling the infringing products in the face of an objectively high risk that it was infringing Kraton's valid United States '074 Patent.

21. As a consequence of Defendant LCY's infringement, Kraton is entitled to recover damages adequate to compensate it for the infringement complained of herein, but in no event less than a reasonable royalty.

22. Unless enjoined, Defendant LCY will continue to infringe the '074 Patent, and Kraton will suffer irreparable injury as a direct and proximate result of LCY's conduct.

23. Kraton has been damaged by Defendant LCY's conduct, and until an injunction issues, will continue to be damaged in an amount yet to be determined.

VI.
JURY DEMAND

24. Kraton demands a trial of this action by jury on all issues.

VII.
PRAYER

WHEREFORE, Kraton respectfully requests that the Court enter judgment as follows:

- A. That LCY has directly infringed the '074 Patent.
- B. That LCY has induced the infringement of the '074 Patent.
- C. That LCY and any of its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for any of them and/or on any of their behalf, or acting in concert with any of them directly or indirectly, be preliminarily and thereafter permanently enjoined from infringing, inducing others to infringe or contributing to the infringement of the '074 Patent;
- D. That LCY and any of its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for any of them and/or on any of their behalf, or acting in concert with any of them directly or indirectly, deliver to

Kraton all products that infringe the '074 Patent for destruction at Kraton's option;

E. That LCY be ordered to pay compensatory damages to Kraton, together with prejudgment interest and post-judgment interest as allowed by law;

F. That LCY be ordered to provide an accounting;

G. That the infringement by LCY be adjudged willful and that the damages be increased under 35 U.S.C. § 284 to three times the amount found or measured;

H. That the Court enter judgment against LCY and in favor of Kraton in all respects;

I. That the Court determine this is an exceptional case under 35 U.S.C. § 285 and an award of attorneys' fees and costs to Kraton is warranted in this action; and

J. For any such other and further relief as the Court deems just and equitable.

Respectfully submitted,

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