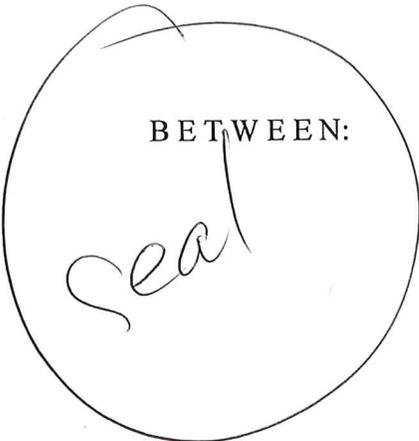


Court File No.

T-2563-23

**FEDERAL COURT**

BETWEEN:



ITP SA

- and -

CNOOC PETROLEUM NORTH AMERICA ULC

Respondent

101

FILED	FEDERAL COURT COUR FÉDÉRALE	DÉPOSÉ
	DEC 4 - 2023	
	Applicant IMRANA AHMED	
TORONTO, ON		

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Suite 200, Toronto ON, M5V 3L6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date

DEC 4 - 2023

Issued by

ORIGINAL SIGNED BY  
IMRANA AHMED  
REGISTRY OFFICER  
AGENT DU GREFFE  
A SIGNÉ L'ORIGINAL

Local Registrar

Address of Federal Court of Canada  
local office: 180 Queen Street West, Suite 200  
Toronto ON M5V 3L6

TO: CNOOC Petroleum North America ULC  
Three Bentall Centre  
595 Burrard Street, Suite 2600, PO Box 49314  
Vancouver, BC V7X 1L3

## APPLICATION

The applicant, ITP SA ("ITP"), makes this application for:

- (a) a declaration that the respondent, CNOOC Petroleum North America ULC ("CNOOC"), has infringed ITP's copyright in the ITP Image (as defined below);
- (b) compensatory damages and an accounting of profits in amounts to be determined by the Court, or statutory damages, as ITP may elect before the hearing in this application;
- (c) punitive damages of \$20,000;
- (d) an Order enjoining CNOOC from reproducing and communicating to the public by telecommunication, without the written agreement of ITP, the ITP Image or any substantial part thereof;
- (e) an Order for a wide injunction prohibiting CNOOC from reproducing and communicating to the public by telecommunication, without the written agreement of ITP, any and all or part of any works in which ITP owns the copyright;
- (f) an Order directing CNOOC to deliver up to ITP or destroy, except to the extent such must be retained for litigation purposes or any other legal obligation,
  - (i) all copies of the ITP Image in its possession or control; and
  - (ii) all copies of the any works in which ITP owns the copyright, in whole or in part, that are in CNOOC's possession or control;

- (g) pre-judgment and post-judgment interest in accordance with the provisions of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended;
- (h) costs of this proceeding, plus all applicable taxes and disbursements; and
- (i) such further and other relief as to this Honourable Court may seem just.

The grounds for the application are:

### **The Parties**

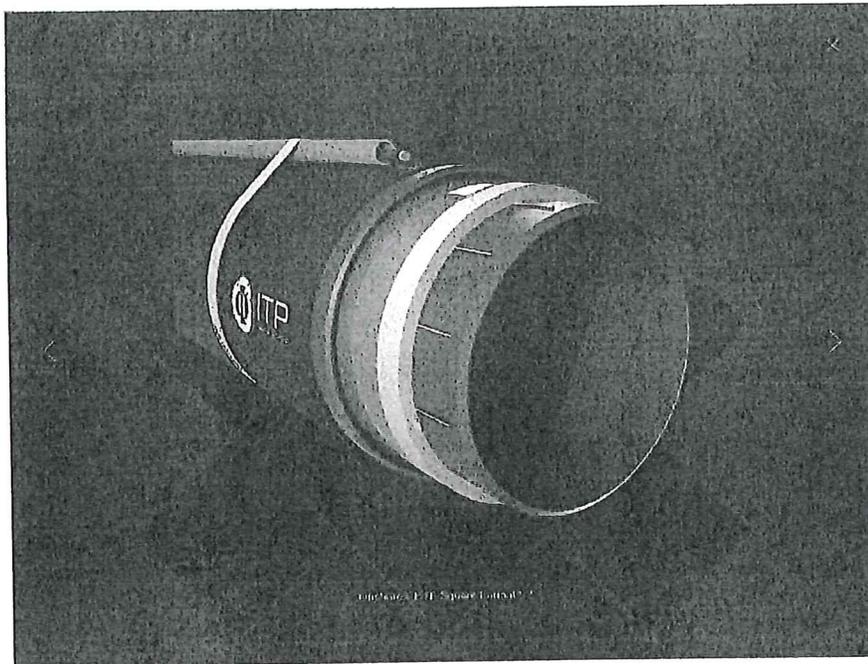
1. The Applicant, ITP, is a corporation incorporated under the laws of the French Republic (“France”) in 1995. Its principal executive offices are in Louveciennes, France. ITP develops, designs, fabricates or supplies components, and installs thermally insulated and sometimes heated “pipe-in-pipe” (“PIP”) systems for industrial projects in the hydrocarbons sector.
2. The Respondent, CNOOC, is a corporation incorporated under the laws of British Columbia. Its principal executive offices are in Vancouver. It is a global energy organization in the upstream oil and gas production sector. CNOOC’s oil and gas projects include oil sands and shale gas facilities in Alberta, British Columbia, and Newfoundland and Labrador. One such project, an integrated Steam Assisted Gravity Drainage and upgrading facility in the Athabasca oil sands region of northern Alberta that CNOOC operates (“the Long Lake Facility” or “Kinosis Project K1A”), has a production capacity of 72,000 barrels of bitumen per day.

### **ITP Owns the Copyright in the ITP Image**

3. ITP, through its employees, creates images related to its PIP systems for various purposes, including to advertise its equipment on its website and to feature in client proposals, regulatory submissions and other documents.
4. One such work is an original image by an ITP employee, Simon Thiolliere, authored over a few days between September 15 and 21, 2016, in the course of his employment (“ITP Image” or the “Image”, as shown further below, not including the black background).
5. ITP is the first owner of the copyright in the ITP Image. ITP has not assigned its copyright interest in the ITP Image to any person, nor has it licensed, or permitted its licensees to sub-license, the ITP Image to CNOOC.

### The ITP Image

6. As shown below, the ITP Image depicts an insulated inner pipe inserted into an outer pipe with electrical wires, insulation material, anti-corrosion coating and an optical fibre monitoring system, and bears ITP's logo:



7. ITP has used the ITP Image on ITP's website, and in customer presentations, other promotional materials, and regulatory submissions. ITP's PIP system portrayed in the ITP Image is a very particular configuration with specific components, including insulation material with fixing accessories, small diameter electrical wires, an annular gap between the insulation and the outer pipe in order to facilitate the pipes' insertion together with the absence of spacers, anti-corrosion coating and a strapped leak detection system.

8. The ITP logo is integral to the Image, a commercial work.

### **ITP Supplied to CNOOC Products and Services for a Pipe In Pipe System**

9. From 2012 to 2013, i.e., well before the ITP Image was created, ITP and CNOOC's predecessor entity, Nexen Inc. ("Nexen"), a Canadian corporation, executed a series of contracts concerning ITP's supply of products and services related to a PIP system at the Long Lake Facility.

10. In the context of that relationship, ITP provided to CNOOC many documents and images in which ITP owns the copyright for the purpose of marketing ITP's products and services to CNOOC and for no other purpose whatsoever.

11. To the best of ITP's knowledge, it never sent to CNOOC a copy of the ITP Image and certainly never authorized its use or reproduction for CNOOC's own purposes.

### **ITP Discovered CNOOC's Copyright Infringement**

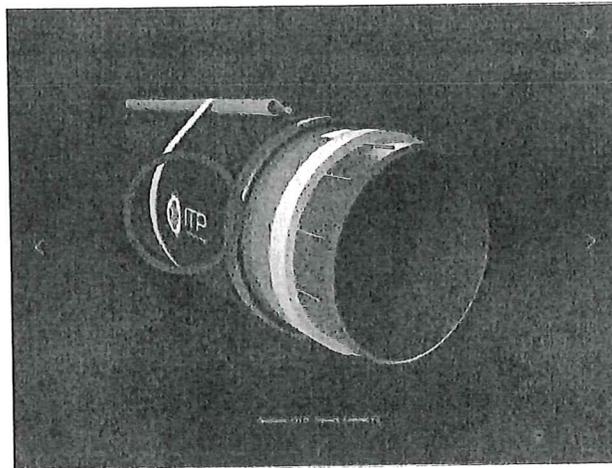
12. On November 24, 2021, ITP submitted a request under the *Freedom of Information and Protection of Privacy Act* for access to: "1. Any emails from Nexen Energy ULC (now CNOOC) to Dave Grzyb, dated September 14, 2018. 2. Any correspondence from Nexen Energy ULC from September 1 to 30, 2018 which enclosed the document entitled 'AER K1A September 13 2018.pdf' or the presentation entitled 'K1A Pipelines Replacement Update for the Alberta Energy Regulator'". At the relevant time, Mr. Grzyb was an employee of the Alberta Energy Regulator (the "AER").

13. The AER responded to ITP's access request on January 24, 2022, granting ITP access to 26 pages of material, including a CNOOC PowerPoint presentation containing the ITP Image.

14. CNOOC included the ITP Image in its presentation to the AER without ITP's knowledge, let alone its authorization.

15. The version of the ITP Image that CNOOC used in its presentation to the AER is identical to and appears to have been copy-pasted from the version of the Image that ITP published on its website, with two notable differences. These differences are shown below using coloured circles for emphasis.

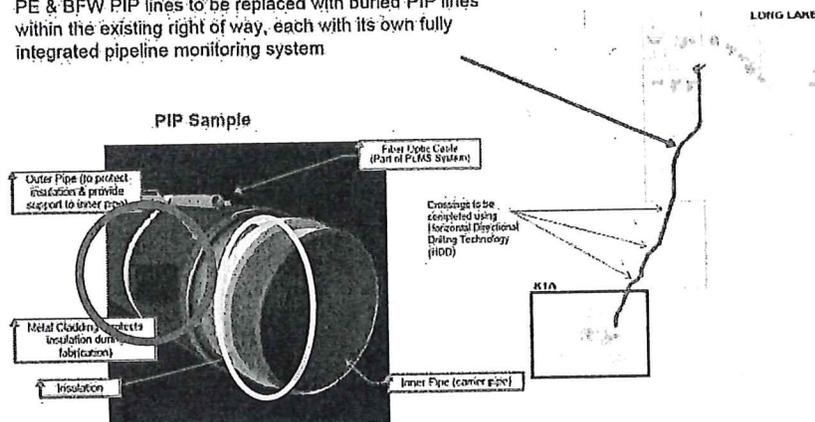
16. The first difference in the version of the Image CNOOC used is a black box obscuring ITP's logo. The covering-up of ITP's logo in the Image in CNOOC's version of the Image is obvious as shown further below, with red circles emphasizing the removed or covered up ITP logo. The second difference is its removal of the electrical wires from the Image in CNOOC's version of the Image, also obvious as shown below, with a yellow circle emphasizing the removed wires.



ITP Image, as displayed on ITP's website (red circle added)

## Technology Selection

PE & BFW PIP lines to be replaced with buried PIP lines within the existing right of way, each with its own fully integrated pipeline monitoring system



Confidential

ITP Image as reproduced in CNOOC's submission to the AER (red and yellow circles added)

17. From a business perspective, CNOOC has used ITP's intellectual property, and marked it "confidential", to move ahead with a major infrastructure project. CNOOC originally used a PIP system that integrated ITP technologies, shown in the ITP Image. In 2018, CNOOC proposed to replace that PIP system with a similar pipeline. To do so, CNOOC required a licensing amendment

from the AER. As part of CNOOC's attempt to persuade the AER to grant this licensing amendment, CNOOC advocated for the new pipeline technology it was proposing to use, including by relying on the ITP Image (albeit stripped of the ITP logo and electrical wiring components). The Image was so valuable to this effort, and going ahead with the project so valuable, that CNOOC used the ITP Image but actively removed the ITP branding and presented the Image to the regulator.

18. CNOOC knew or had reasonable grounds to know that copyright subsisted in the ITP Image.

19. Thus, in Canada, CNOOC has copied, or otherwise reproduced, the ITP Image or a substantial part thereof, without ITP authorization.

20. Unknown to ITP is the extent to which CNOOC has made additional reproductions of the ITP Image, for internal and/or external use. Also unknown to ITP is what unauthorized reproductions or performances of ITP's many other copyrighted-protected works, notably those made available to CNOOC during their past relationship, CNOOC has made or authorized, for internal and/or external use.

21. In light of CNOOC's blatant disregard of ITP's copyrights, CNOOC will likely infringe the copyright in those other works or subject-matter unless enjoined by this Honourable Court from doing so.

#### **CNOOC Benefitted from Its Infringement of ITP's Copyright**

22. CNOOC has profited and will profit from infringing ITP's copyright and ITP has suffered and will continue to suffer damages unless this Honourable Court restrains CNOOC. The AER

ultimately approved CNOOC's application to renew its Kinosis Project K1A at the Long Lake Facility, using the replacement pipeline discussed above. As explained above, CNOOC included a copy of the ITP Image in its communications with the AER about its licensing amendment application, and did so without ITP's knowledge or consent. CNOOC has not provided ITP with any compensation for the inclusion of the Image in CNOOC's application to the AER despite CNOOC's apparent reliance on the ITP Image to obtain licensing amendment approval.

**General**

23. Sections 3(1), 13(1), 13(3), 27(1), 34, 38.1 and 39.1 of the *Copyright Act*, R.S.C. 1985, c. C-42, as amended.

24. Rule 301 of the *Federal Courts Rules*.

25. Such further and other grounds as counsel may advise.

26. This application will be supported by the following material:

- (a) Affidavits of Pierre Ollier and Wayne Grobbelaar; and
- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 4, 2023

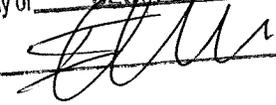
*Goodmans per: LC*  
\_\_\_\_\_

**GOODMANS LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

**Peter Ruby** - pruby@goodmans.ca  
Tel: 416.597.4184  
Solicitors for the Applicant

I HEREBY CERTIFY that the above document is a true copy of  
the original issued out of / filed in the Court on the \_\_\_\_\_  
day of DEC 4 - 2023 A.D. 20 \_\_\_\_\_

Dated this \_\_\_\_\_ day of DEC 4 - 2023 20 \_\_\_\_\_



**IMRANA AHMED  
REGISTRY OFFICER  
AGENT DU GREFFE**

**Federal Courts Fees Receipt**  
**Reçu pour frais judiciaires des cours fédérales**

NO. **A 623055**



Federal Court of Appeal /  
 Cour d'appel fédérale



Federal Court /  
 Cour fédérale



Court Martial Appeal Court of Canada /  
 Cour d'appel de la cour martiale

To / À : Name/Nom : <u>Peter Ruby</u> Organization/Organisation : <u>Goodmans LLP</u> Address/Adresse : <u>Toronto, ON</u> _____ _____	Date : <u>4-DEC-2023</u> Issuing Office / Bureau émetteur : <u>TOR</u> Prepared by / Préparé par : <u>IA</u> Court File No./ N° du dossier de la Cour : <u>T 2563-23</u>
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Style of Cause & Description of Services Provided Intitulé de la cause et description des services rendus	Cost(s) Frais
<p><u>ITP SA v.</u>  <u>CNOUC Petroleum North America LLC</u>  <u>Notice of Application</u></p>	<p>Total = <u>\$50</u></p>

Method of Payment / Mode de paiement	
<input type="checkbox"/> Account / Compte Dept# / # Département : _____ Org Code / Code org : _____ Reference Code / Code référence : _____ <input type="checkbox"/> Cash / Comptant <input type="checkbox"/> Debit Card / Carte de débit	<input type="checkbox"/> Cheque No. / N° chèque : _____ <input type="checkbox"/> American Express: _____ <input type="checkbox"/> MasterCard: _____ <input checked="" type="checkbox"/> Visa: <u>07472G</u>