IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

F'REAL FOODS, LLC and RICH PRODUCTS CORPORATION, Plaintiff, v. HAMILTON BEACH BRANDS, INC. and HERSHEY CREAMERY COMPANY, Defendant.	Civil Action No. 16-41-CFC

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MEMORANDUM OPINION

July 16, 2020
Wilmington, Delaware

COLM F. CONNOLLY
UNITED STATES DISTRICT JUDGE

Plaintiffs f'real Foods, LLC and Rich Products Corporation sued Defendants Hamilton Beach Brands, Inc. and Hershey Creamery Company for infringement of U.S. Patent No. 5,803,377 (the #377 Patent), U.S. Patent No. 7,144,150 (the #150 Patent), U.S. Patent No. 7,520,658 (the #658 Patent), and U.S. Patent No. 7,520,662 (the #662 Patent). Plaintiffs alleged that four products infringed the asserted patents: the IMI2000, the BIC2000, the BIC3000-DQ, and the MIC2000. The four accused products are high performance blenders manufactured by Hamilton Beach.

The Court held a four-day jury trial. The jury found that all four accused products infringe claim 21 of the #662 Patent; that the MIC2000, BIC2000, and BIC3000-DQ literally infringe claim 20 of the #150 Patent; that the MIC2000, BIC2000, and BIC3000-DQ infringe claim 22 of the #150 Patent under the doctrine of equivalents; that all four accused products infringe claims 1 and 5 of the #658 Patent under the doctrine of equivalents; that the MIC2000, BIC2000, BIC3000-DQ, or the IMI2000 literally infringes claims 6, 10, and 11 of the #658 Patent; that none of the accused products infringe the #377 Patent; and that none of the asserted patents are invalid. *See* D.I. 264.

Posttrial I granted Defendants' motion for Judgment as a Matter of Law of noninfringement of claim 21 of the #662 Patent by Defendants. *See* D.I. 355.

Pending before me is Plaintiffs' Motion for a Permanent Injunction and Recall (D.I. 287). By their motion, Plaintiffs seek an order that (1) enjoins Defendants from infringing the #150 and the #658 patents by the commercial manufacture, use, sale, or offer to sell within the United States, or importation into the United States, the MIC2000, BIC2000, BIC3000-DQ or IMI2000 blenders, or any substantially similar products prior to the expiration of the #150 and the #658 patents and (2) requires Hamilton Beach and Hershey to recall all MIC2000 and BIC3000-DQ blenders. *See* D.I. 287.

I. LEGAL STANDARD FOR PERMANENT INJUNCTION

The Patent Act grants a patent holder "the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States . . . ." 35 U.S.C. § 154(a)(1). The right to exclude "has its roots in the U.S. Constitution's Intellectual Property Clause, which refers to inventors' 'exclusive Right to their respective . . . Discoveries.'" *Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 638 (Fed. Cir. 2015) (hereinafter *Apple IV*) (quoting U.S. Const. art. I, § 8, cl. 8.). "In furtherance of this right to exclude, district courts 'may grant injunctions in accordance with

the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.'" *Id.* (quoting 35 U.S.C. § 283).

A Plaintiff seeking a permanent injunction must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (citation omitted). To satisfy the irreparable injury factor, a patentee must establish (1) that absent an injunction it will suffer irreparable injury and (2) that a sufficiently strong causal nexus relates the injury to the infringement. *See Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1361 (Fed. Cir. 2013) (hereinafter *Apple III*). The Supreme Court has cautioned lower courts that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010) (citation omitted). Rather, when "a less drastic remedy . . . [is] sufficient to redress [a plaintiff's] injury, no recourse to the additional and extraordinary relief of an injunction [is] warranted." *Id.* at 165–66 (citations omitted).

II. ANALYSIS

A. The IMI2000 Blenders

Plaintiffs have failed to show that they would suffer irreparable harm from the continued sales of the IMI2000. Plaintiffs mention the IMI2000 only twice in their opening brief. On page 6, Plaintiffs state that the IMI2000 competes with f'real's blender sales. *See* D.I. 288 at 6. Plaintiffs offer neither citation nor argument in support of this conclusory statement. On page 11 of their opening brief, Plaintiffs explain that they are not seeking a recall of the IMI2000 "because of the relatively small number sold since 2015." D.I. 288 at 11 n. 5. Plaintiffs' reply brief is silent on the IMI2000. *See* D.I. 331. Accordingly, I will deny their motion insofar as it concerns the IMI2000.

B. The BIC2000 Blenders

Plaintiffs argue that the "BIC2000 . . . compete[s] directly with f'real's own blenders sales" and that "f'real's LT blender is priced competitively to the infringing BIC3000-DQ or BIC2000, with the same blending capabilities." D.I. 288 at 6–7. Plaintiffs appear to be arguing that their irreparable injury is lost sales of the LT blender. Plaintiffs, however, adduced no evidence of lost sales of the LT blender. Moreover, Defendants argue, and Plaintiffs do not rebut, that the LT blender does not have the same blending capabilities as the BIC2000 because the BIC2000 is "designed to mix ice and liquid drink mix" while f'real's blenders are

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