

HONORABLE JAMES P. DONOHUE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EKO BRANDS, LLC,

Plaintiff,

vs.

ADRIAN RIVERA MAYNEZ
ENTERPRISES, INC. AND
ADRIAN RIVERA, an individual

Defendants.

Case No. 2:15-cv-00522-JPD

STIPULATION OF JUDGMENT OF
INFRINGEMENT OF AMENDED CLAIM 8
OF U.S. PATENT NO. 8,707,855

WHEREAS, Plaintiff Eko Brands, LLC (“Eko”) has alleged that Defendants Adrian Rivera Maynez Enterprises, Inc. and Adrian Rivera (“ARM”) directly infringe claim 8, as amended during reexamination to include the limitations of unamended claim 9, of U.S. Patent No. 8,707,855 (the “855 patent”) by selling ARM’s ECO-FILL DELUXE, ECO-FILL DELUXE 2.0 (or ECO-FILL 2.0), ECO-FILL 2 PACK DELUXE, ECO-FLOW (Original) “v1” and ECO-FLOW (New) “v2”;

WHEREAS, the original claim 9 and amended claim 8 of the 855 patent are understood as being the same claim and are jointly referred to as “Amended claim 8” in this stipulation;

WHEREAS, ARM answered and denied that they have infringed the 855 patent and asserted various defenses, including invalidity and non-infringement of the 855 patent;

WHEREAS, following briefing by the parties on ARM’s motion for summary judgment of non-infringement and invalidity of the 855 patent, the Court issued an order denying summary judgment (Dkt. 161);

WHEREAS, as to non-infringement, the Court’s summary judgment order construed the phrase from Amended claim 8 “wherein the at least one outlet probe receptacle is fluidly isolated

from the brew chamber to prevent the outlet probe from penetrating the brew chamber, thereby preventing fluid from exiting the brew chamber through the outlet probe” and identified the issue as “whether the design of defendants’ products isolates the outlet probe in such a way that it prevents the probe from penetrating the brew chamber and thereby prevents brewed beverage from flowing out of the chamber via the outlet probe” (Dkt. 161 at 5-6) (hereinafter referred to as the “fluidly isolated” claim term);

WHEREAS, ARM disagrees with the Court’s construction of the “fluidly isolated” claim term;

WHEREAS, as to non-infringement, the Court in its summary judgment order construed amended claim 8 under a section entitled “Limitations of the Preamble” and determined that “Defendants’ products need not include a single serve beverage brewer to infringe the 855 patent” (Dkt. 161 at 6);

WHEREAS, ARM disagrees with the Court’s construction under the section entitled “Limitations of the Preamble” and its subsequent determination that “Defendants’ products need not include a single serve beverage brewer to infringe the 855 patent” (Dkt. 161 at 6);

WHEREAS, the parties respectfully request that the Court enter judgment of direct infringement of Amended claim 8 of the 855 patent. ARM expressly reserves the right to appeal that judgment;

WHEREAS, upon final resolution of the issues concerning damages and injunctive relief as to the 855 patent and validity of U.S. Patent No. 8,720,320, ARM intends to file a notice of appeal as to the Court’s summary judgment order (Dkt. 161);

WHEREAS, nothing in this stipulation and order limits or restricts the parties’ rights to appeal any issue, ruling and/or order, rights on appeal, or rights against the opposing parties if this case is reversed and/or remanded on appeal.

RESPECTFULLY SUBMITTED May 30, 2018.

s/ David A. Lowe WSBA No. 24,453
Lowe@LoweGrahamJones.com
Timothy Billick, WSBA No. 46,690
Billick@LoweGrahamJones.com
LOWE GRAHAM JONES^{PLLC}
701 Fifth Avenue, Suite 4800
Seattle, WA 98104
T: 206.381.3300

Attorneys for Plaintiff

/s/ Sudip Kundu (admitted pro hac vice)
sudip.kundu@kundupllc.com
Matthew Cunningham
matthew.cunningham@kundupllc.com
KUNDU PLLC
1300 I Street NW, Suite 400E
Washington, D.C. 20005
T. 202.749.8372

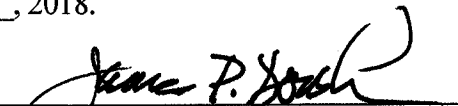
Attorneys for Defendants

GOOD CAUSE APPEARING, the Court hereby ENTERS JUDGMENT that:

1. Based on the WHEREAS clauses above, Defendants directly infringe Amended claim 8 of the 855 patent by selling ARM's ECO-FILL DELUXE, ECO-FILL DELUXE 2.0 (or ECO-FILL 2.0), ECO-FILL 2 PACK DELUXE, ECO-FLOW (Original) "v1" and ECO-FLOW (New) "v2."

2. Nothing in this stipulation and order limits or restricts the parties' rights to appeal any issue including the Court's claim construction order and summary judgment order, ruling and/or order, rights on appeal, or rights against the opposing parties if this case is reversed and/or remanded on appeal.

DATED this 30th day of MAY, 2018.


United States District Judge
Magistrate Judge