UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	CV 18-3005 PSG (JPRx)	Date	October 16, 2019
Title	Edgewell Personal Care Brands, LLC et al v. Munchkin, Inc.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): **The Court GRANTS-IN-PART Defendant's Motion for Summary Judgment of Noninfringement, DENIES-IN-PART the remainder of Defendant's Motion MOOT, and DENIES all other pending dispositive and *Daubert* motions as MOOT.**

Plaintiffs Edgewell Personal Care Brands, LLC and International Refills Company, Ltd ("Plaintiffs") have sued Defendant Munchkin Inc ("Defendant") for patent infringement. *See Complaint*, Dkt. # 1 ("*Compl.*"); *see also First Amended Complaint*, Dkt. # 36 ("*FAC*"). Specifically, Plaintiffs allege that Defendant makes, uses, sells, offers to sell, and/or imports products that infringe U.S. Patent No. 6,974,029 ("the '029 Patent") and U.S. Patent No. 8,899,420 ("the '420 Patent") (collectively, "Asserted Patents"). *See generally FAC*.

The parties collectively filed seven summary judgment and *Daubert* motions by the dispositive motion deadline. *See* Dkts. # 175, 179, 180, 185, 186, 187, 230. This Order only substantively addresses portions of Defendant's Motion for Summary Judgment as to Non-Infringement and Invalidity and No Entitlement to Lost Profits Damages. Dkts. # 180 (public), 227 (sealed) ("*Motion*"). Plaintiffs have filed an opposition. Dkts. # 322 (public), 327 (sealed) ("*Opposition*"). Defendant has filed a reply. Dkts. # 362 (public), 368-1 (sealed) ("*Reply*").

Having considered the moving papers, the Court **VACATES** the hearing set for October 21, 2019 (*see* L.R. 7-15), **GRANTS-IN-PART** Defendant's Motion for Summary Judgment as it relates to noninfringement. The Court otherwise **DENIES-IN-PART** the remainder of Defendant's Motion as **MOOT**. All other pending dispositive and *Daubert* motions are also found **MOOT**.

I. Background

Plaintiff International Refills Company, Ltd is the owner of the Asserted Patents and has granted an exclusive license to Plaintiff Edgewell Personal Care Brands, LLC to practice them. *FAC* ¶¶ 20–21, 30–31. The '029 Patent issued December 13, 2005 and is titled "Cassette for Dispensing Pleated Tubing." The '420 Patent issued December 2, 2014 and is titled "Cassette and Apparatus for Packing Disposable Objects into an Elongated Tube of Flexible Material." The Asserted Patents are not in the same patent family, but both generally relate to an apparatus for collecting materials such as waste within a tube of material. '029 Patent, 1:6–13 ("The present invention pertains to a cassette used for dispensing a pleated tubing contained therein. This type of cassette may be used . . . to collect waste refuse which can be disposed in packages collected in a tubular tubing."); '420 Patent, 1:20–27 ("The present application relates to an apparatus for packaging disposable material or objects into a tube of flexible plastic film material.").

Plaintiffs allege that Defendant has infringed certain claims of the '029 and '420 Patents with its sales and offers for sale of certain diaper pail refill cassette products "specifically designed for use with Plaintiff Edgewell's Diaper Genie® System." *FAC* ¶¶ 14, 16. Specifically Plaintiffs currently assert infringement of Claims 1, 2, 4, 6, and 7 of the '029 Patent and Claims 1–17 of the '420 Patent by Defendant's "Second and Third Generation Cassettes." Dkt. # 222 at 2:18–20 (Notice of Defendant's Motion *in Limine* No. 6); *Parties' Statement of Disputed and Undisputed Facts Regarding Defendant's Summary Judgment Motion*, Dkt. # 327-4 ("*SDF*") ¶ 18. After claim construction proceedings in this case, Plaintiffs continue to assert literal infringement of the '420 Patent, but only assert infringement under the doctrine of equivalents for the '029 Patent. *SDF* ¶ 20.

Claim 1 is the only independent claim of the '029 Patent. It states:

> 1. A cassette for use in dispensing a pleated tubing comprising:
> an annular body having a generally U shaped cross-section defined by an inner wall, an outer wall and a bottom wall joining a lower part of said inner and outer walls, said walls defining a housing in which the pleated tubing is packed in layered form;
> ***an annular cover extending over said housing; said cover having an inner portion extending downwardly and engaging an upper part of said inner wall of said body and a top portion extending over said housing***; ***said top portion including a tear-off outwardly projecting section*** having an outer edge engaging an upper part of

said outer wall of said annular body; ***said tear-off section***, when torn-off, leaving a peripheral gap to allow access and passage of said tubing therebetween; said downwardly projecting inner portion having an inclined annular area defining a funnel to assist in sliding said tubing when pulled through a central core defined by said inner wall of said body; and

cooperating inter-engagement means on said upper part of said body and on opposite edges of ***said cover*** to lock said cover to said body.

'029 Patent, Claim 1 (emphasis added).

The '420 Patent includes three independent claims. One of them, Claim 11, states:

11. A cassette for packing at least one disposable object, comprising:

an annular receptacle including an annular wall delimiting a central opening of the annular receptacle, a bottom wall at a bottom end of the cassette, and a volume receiving an elongated tube of flexible material radially outward of the annular wall, ***the annular receptacle including a clearance defined by a portion of the annular wall extending obliquely upward from a junction with the bottom wall, said portion of the annular wall joining with an upright portion of the annular wall whereby the clearance opens into the central opening***;

a length of the elongated tube of flexible material disposed in an accumulated condition in the volume of the annular receptacle; and

an annular opening at an upper end of the annular receptacle for dispensing the tubing such that the elongated tube extends through the central opening of the annular receptacle to receive disposable objects in an end of the elongated tube,

wherein at least a portion of the volume of the annular receptacle is located radially outward of and side by side with at least a portion of the clearance such that at least a portion of the elongated tube of flexible material is disposed in the accumulated condition in said portion of the annular receptacle.

'420 Patent, Claim 11 (emphasis added). As relevant to this Order, independent Claims 1 and 6 also include a requirement for a clearance. *See id.* at Claim 1 ("wherein the annular receptacle includes a clearance in a bottom portion of the central opening, the clearance extending

continuously from the annular wall and radially outward of a downward projection of the annular wall, the clearance delimiting a portion of the volume having a reduced width relative to a portion of the volume above the clearance."), Claim 6 ("wherein the annular receptacle includes a clearance at a bottom of the central opening, the clearance being located radially outward of a downward projection of the annular wall relative to the central opening, and opening into the central opening").

During claim construction, the Court construed the following relevant claim terms:

Term (Patent No., Claim No(s).)	Court's Tentative Construction
"annular cover extending over said housing; said cover having an inner portion . . . and a top portion" ('029 Patent, Claims 1, 2, 4)	"annular cover" is construed as "a single, ring-shaped cover including at least a top portion and an inner portion that are parts of the same structure"
"engage" ('029 Patent, Claim 2) / "engaging" ('029 Patent, Claim 1)	"attach" / "attached to"
"said top portion including a tear-off outwardly projecting section" ('029 Patent, Claim 1)	"a tear-off outwardly projecting section" is construed as "a section initially formed as part of the same structure as the rest of the annular cover, which can be torn off from the rest of the annular cover"
"clearance" ('420 Patent, Claims 1–3, 5–8, 10–13, 16–17)	"a space within the annular receptacle that is configured to prevent interference between the annular wall and another structure"

Dkt. # 149 at 27–29 ("*Markman Order*").

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II. Legal Standard

A. Summary Judgment

A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the nonmoving party will have the burden of proof at trial, the movant can prevail by pointing out that there is an absence of evidence to support the moving party's case. *See id.* If the moving party meets its initial burden, the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, "specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. Rather, it draws all reasonable inferences in the light most favorable to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987). The evidence presented by the parties must be capable of being presented at trial in a form that would be admissible in evidence. *See* Fed. R. Civ. P. 56(c)(2). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

B. Patent Infringement

A determination of infringement, or lack thereof, of a U.S. patent requires a two-step analysis. *See PC Connector Solutions LLC v. SmartDiskCorp.*, 406 F.3d 1359, 1362 (Fed. Cir. 2005).

First, the court must ascertain the scope of the claims as a matter of law. *Id.*; *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970–71 (Fed. Cir. 1995) (en banc). Construction of the claims need not be an exhaustive process, "[a]s long as the trial court construes the claims to the extent necessary to determine whether the accused device infringes." *Ballard Med. Prods. v. Allegiance Healthcare Corp.*, 268 F.3d 1352, 1358 (Fed. Cir. 2011)

(affirming summary judgment of non-infringement without providing a complete claim construction because disputed terms were properly construed to exclude the structures that were used in the accused device).

In the second step of infringement analysis, the court determines whether the properly construed claims cover the accused device, either literally or under the doctrine of equivalents. *See PC Connector*, 406 F.3d at 1362, 1364. Although this second step is a question of fact, when there are no genuine issues of material fact in dispute, a grant of summary judgment is proper. *Id.* at 1364; *see also Rheox, Inc. v. Entact, Inc.*, 276 F.3d 1319, 1324 (Fed. Cir. 2002) ("where the parties do not dispute any relevant facts regarding the accused product[s] but disagree over possible claim interpretations, the question of literal infringement collapses into claim construction and is amenable to summary judgment"). Literal infringement requires that each and every claim limitation appear in an accused product. *See, e.g., Frank's Casing Crew & Rental Tools, Inc. v. Weatherford Int'l, Inc.*, 389 F.3d 1370, 1378 (Fed. Cir. 2004). Where literal infringement is not present, infringement under the doctrine of equivalents may be found where the "accused product or process contain[s] elements identical or equivalent to each claimed element of the patented invention." *Warner-Jenkinson Co., Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 40 (1997).

III. Discussion

A. Noninfringement of the '029 Patent

As noted, Plaintiffs' only remaining infringement theory for the asserted claims of the '029 Patent requires an argument that the claimed "annular cover" and "tear-off outwardly projecting section" limitations are satisfied by the accused products under the doctrine of equivalents. *SDF* ¶ 20–21.

As also noted, the Court construed the term "annular cover" to mean "a single, ring-shaped cover including at least a top portion and an inner portion that are parts of the same structure." *Markman Order* 5–10. The Court also construed the term "a tear-off outwardly projecting section" to mean "a section initially formed as part of the same structure as the rest of the annular cover, which can be torn off from the rest of the annular cover." *Id.* The Court specifically observed:

> The claims and the specification both make clear that this "tear-off section" is intended to be torn off from the rest of the cover. In other words, it would be inappropriate to construe the claims such that the "tear-off section" of the "top

> portion" of the "annular cover" could be considered some additional or separate component that is simply torn away from the outside of the device, but not otherwise connected to the rest of the annular cover.

Docket No. 149 at 9.

In other words, the Court specifically found that the tear-off section and annular cover in the '029 Patent initially refer to a single structure. Plaintiffs argue that these claim limitations are satisfied by the accused products' "two-part cover" that is a combination of a plastic cover and either the "shrink wrap" (Generation Two) or "blister cap" (Generation Three) that Defendant's products come in when they are sold to consumers. Although Plaintiffs apparently acknowledge that the accused products' "two-part cover" does not literally infringe, Plaintiffs argue that the combination of the plastic cover with either the shrink wrap or blister cap infringes under the doctrine of equivalents. *SDF* ¶ 21.

The two types of accused products are considered in turn.

i. Shrink Wrap (Generation 2 Cassettes)

Defendant provided an annotated image of its shrink-wrapped Generation 2 cassettes in its expert's report:

See SDF ¶ 15; *Defendant's Expert Report of Jeffrey Swan*, Dkt. # 181-1 ("*Swan Report*") ¶ 380; *see also Portions of Plaintiffs' Opening Expert Report of Michael Jobin on Infringement*, Dkt # 322-1 ECF65–215 ("*Jobin Report*") ¶ 85 (ECF91) ("Munchkin's Second Generation Cassettes

include a cover that holds the tubing inside the cassette. This cover consists of two parts, an inner piece of molded plastic that engages the inner wall of the cassette, and an outer removable piece of shrink wrap.").

The Court agrees with Defendant that no reasonable jury would be able to conclude that the combination of shrink wrap and molded plastic cover satisfies the requirements of the asserted claims of the '029 as construed under the doctrine of equivalents. Plaintiffs' position would impermissibly extend its patent monopoly beyond what the claims contemplate. In particular, the Court agrees that Plaintiffs' infringement theory would effectively vitiate the "tear-off section" limitation. *See Carnegie Mellon Univ. v. Hoffman-La Roche Inc.*, 541 F.3d 1115, 1129 (Fed. Cir. 2008) ("the 'all limitations rule' restricts the doctrine of equivalents by preventing its application when doing so would vitiate a claim limitation"). As the Federal Circuit has explained,

> In determining whether a finding of infringement under the doctrine of equivalents would vitiate a claim limitation, [a court] must consider the totality of the circumstances of each case and determine whether the alleged equivalent can be fairly characterized as an insubstantial change from the claimed subject matter without rendering the pertinent limitation meaningless.

Id. (internal quotations omitted).

Stating that a shrink wrap packaging layered over a cover is equivalent to a "section" of a single-piece "annular cover" would undermine the explicit determinations reached by this Court during claim construction proceedings. *See Markman Order* 9. Simply because the shrink wrap could be characterized in the layman's sense as "torn away" from the cassette upon removal does not mean that it would be appropriate for a jury to find equivalency given the specific claim limitations, and particularly the "tear-off ***section***" limitation. Indeed, the shrink wrap is not subsequently torn off from an annular cover to which it was physically attached as part of a singular whole, but simply torn from itself in a manner that permits it to be moved away from the cassette walls it previously abutted. In this way, it would not be appropriate to characterize the shrink wrap and molded plastic combination as presenting an insubstantial change from the claimed subject matter. The claims themselves, particularly as construed by the Court, specifically contemplate a certain relationship among cover components ("sections") that would be rendered meaningless under Plaintiffs' interpretation.

Although the parties present disputes regarding various Federal Circuit cases regarding the doctrine of equivalents, the critical issue here is that the claims were specifically construed to require that an annular cover be a single component. *See generally Markman Order*. Once

that determination was reached, relying on a generalized legal assertion that "[t]he doctrine of equivalents does not require a one-to-one correspondence between components of the accused device and the claimed invention" is unavailing. *See Dolly, Inc. v. Spalding & Evenflo Companies, Inc.*, 16 F.3d 394, 398 (Fed. Cir. 1994). This legal assertion cannot serve as a basis to permit Plaintiffs to allege infringement without satisfying the requirement that the annular cover be made out of a single component piece, as this requirement remains a specific requirement of the claims under both literal infringement and infringement by the doctrine of equivalents. *See id.* ("the concept of equivalency cannot embrace a structure that is specifically excluded from the scope of the claims.").

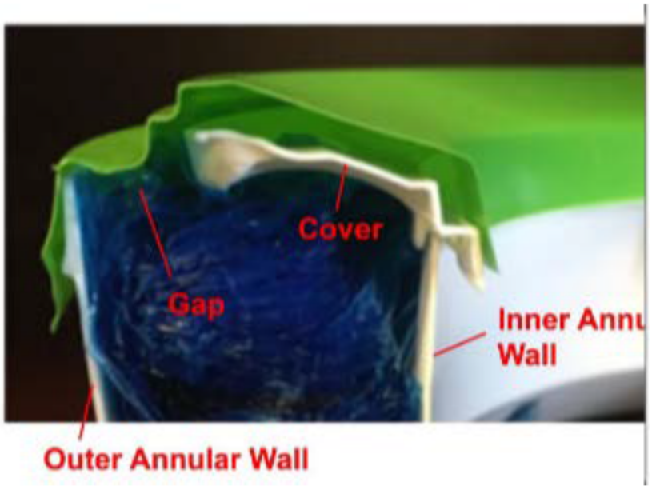
For similar reasons, under a proper interpretation of "engage," Plaintiffs cannot persuasively show that the shrink wrap is meaningfully "attached" or "engaged with" the outer wall of the accused cassettes. The term "engage" was construed to mean "attach." *See Markman Order* 10–11. In this case, the relationship between the shrink wrap and the cassette is borne out of the fact that the shrink wrap is tightly wrapped around the cassette, held there by its own wrapped configuration. That means the shrink wrap and outer annular walls are not "attached" to one another in the sense required for them to be "engaged" or meaningfully connected, but instead simply touching. Plaintiffs' expert opinions rely on an improper interpretation of the term "engage" and thus are rejected. They are insufficient to create a genuine dispute of material fact. *See Opp'n* 8:17–9:12.

ii. Blister Cap (Generation 3 Cassettes)

Comparing and contrasting to shrink wrap, the blister cap is a harder plastic covering (shown below in green) that rests over the molded plastic cover of Defendant's Generation 3 Cassette when sold and is removed by a customer before installation and use.

See SDF ¶ 25 (figure cropped such that annotations omitted) ("image was provided to [a] customer in [an] . . . email"); *see also Jobin Report* ¶ 99 (ECF97–98) ("The cover of the Third Generation Cassettes consists of two parts—an inner portion that engages the inner wall of the cassette and a blister cap that can be torn-off. The inner portion is composed of the same molded plastic that is used in Munchkin's Second Generation Cassettes. In lieu of shrink-wrap, the Third Generation Cassette uses a blister cap, which may be torn-off of the cassette.").

Unlike the shrink wrap, images of the accused cassette show that the blister cap may snap in place over the rest of the cassette.



SDF ¶ 16; *see also Swan Report* ¶ 384. However, the Court still finds that Plaintiffs cannot maintain an infringement argument under the doctrine of equivalents for this configuration. As with the shrink wrap, permitting the claimed "annular cover" and "tear-off section" to be interpreted broadly enough to encapsulate a two-piece combination of a blister cap and additional molded plastic component of the cassette itself would again vitiate the claims' requirements. Again, the claims specifically require an annular cover that is a single piece, and a "tear-off section" *of that same cover*. These claim limitations would be vitiated and rendered meaningless under Plaintiffs' interpretation. And again, referring to the blister cap as being "torn off" from the cassette in the layman's sense cannot change this outcome. Plaintiffs' position must be rejected.

iii. Conclusion

For these reasons, summary judgment of noninfringement of the '029 Patent is warranted.

B. Noninfringement of the '420 Patent

i. Claim Construction Dispute

The parties' dispute regarding the '420 Patent raises a further disagreement regarding the appropriate scope of the term "clearance." This is a claim construction issue, and thus a matter of law for the Court to resolve. *PC Connector*, 406 F.3d at 1362.

The Court previously considered a dispute regarding the term "clearance" and construed it to mean "a space within the annular receptacle that is configured to prevent interference between the annular wall and another structure." *Markman Order* 18–24. The parties now appear to dispute whether the term "clearance" can cover circumstances where there is not actually space between a cassette as normally positioned and the annular wall, but instead where the annular wall and cassette are configured to touch or at least be situated perfectly adjacent to one another.

Plaintiffs rely on Figure 7 of the '420 Patent to support its position that there can still be a "clearance" in this latter configuration at the point where the interfering members meet the wall:

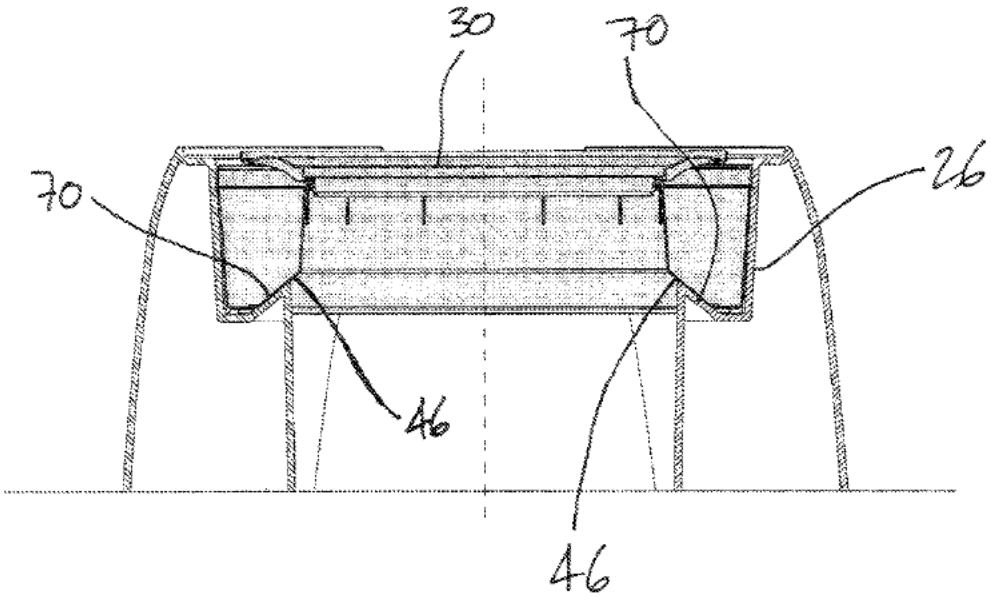


Fig. 7

'420 Patent, Fig. 7; *see also Opp'n* 10:13–21, 11:13–13:3. The '420 Patent specification

describes this embodiment only briefly. It states,

> [i]n another embodiment illustrated by FIG. 7, the holder **26** features an interfering member **70** that has a shape that is complementary to that of the cassette **30** with the chamfer clearance **41**. With the presence of the interfering member **70**, the cassette **30** must properly be installed in the holder **26** to be used.

'420 Patent at 8:40–45. This disclosure does not support interpreting the term "clearance" as including points where there is not actually space between the wall and another structure. First, the specification contrasts the shape of the "interfering member **70**" as "complementary to that of the cassette **30** with the chamfer clearance **41**." *Id.* The Court interprets this statement not to mean that there can still be a chamfer clearance **41** in the location where an interfering member **70** is present, but instead that the interfering member **70** *replaces* the space where a chamfer clearance **41** otherwise would be. In reaching this decision, it is also relevant that the label **41** for the chamfer clearance is not included in Figure 7 itself, but instead is referenced in other figures, including Figure 6. This interpretation is further supported by the name "*interfering* member **70**" itself. As the Court explained in the claim construction order, the purpose of the clearance is to create a space that *prevents* interference. *See Markman Order* 24. The "interfering member **70**," on the other hand, is specifically designed to interfere, *i.e.* fill the space between the cassette and annular wall such that the cassette is locked in place when inserted correctly. By doing so, the interfering member **70** takes up the space that would otherwise exist to form a clearance.

Plaintiffs' primary argument to the contrary is that it is impermissible to interpret a claim term in such a way that preferred embodiments in the specification are excluded. *Opp'n* 14:19–16:2. Plaintiffs' position ignores counter-vailing legal authority that stands for the proposition that not every claim need be broad enough to cover every disclosed embodiment. "[Federal Circuit] precedent is replete with examples of subject matter that is included in the specification, but is not claimed." *TIP Sys., LLC v. Phillips & Brooks/Gladwin, Inc.*, 529 F.3d 1364, 1373 (Fed. Cir. 2008)

But more importantly, Plaintiffs have not shown that even under the proper interpretation of the term "clearance," the embodiment shown in Figure 7 would indeed be excluded from all of the claims. Figure 7 itself explains that it is depicting "***a pair*** of interfering members **70** . . . on both side[s] of the holder **26**." 8:40:45–46. In other words, the "interfering members **70**" shown in Figure 7 do not extend around the entire periphery of the cassette and/or annular wall. Instead, they represent, for instance, a pair of locations to secure the cassette and annular wall in place during proper installation. Plaintiffs do not identify any

evidence that the clearance ceases to exist for the remaining annular wall periphery.

ii. Application

To show that there is no "clearance" in the accused products, Defendant's expert conducted a "chalk test." *Swan Report* ¶¶ 368–370. He rubbed blue marking chalk on the annular wall of the cassette, inserted the cassette in the diaper pail, attempted to move the cassette "laterally and rotationally," and observed whether chalk appeared on the funnel structure of the pail. *Id.* For the Generation 2 product, his results show chalk all along the pail wall:

Swan Report ¶ 370; *see also SDF* ¶ 62. Swan further states, "[i]n every placement of every cassette in every pail with a funnel structure, I observed chalk rub on the funnel structure of the pail." *Swan Report* ¶ 369. These tests and opinions support the conclusion that once the cassette is inserted, there is no "space within the annular receptacle that is configured to prevent interference between the annular wall and another structure." Indeed, there is no "space" at all.

Plaintiffs, who otherwise bear the burden of proving infringement, do not argue to the

contrary that there is indeed some space that exists between the cassette and pail *after* the cassette is installed. Although Plaintiffs present argument suggesting that there is a clearance *before* a cassette is installed (or when it is installed incorrectly), this would appear to be true for any diaper pail and cassette combination. Similarly, to the extent Plaintiffs argue that the clearance creates a space ***for*** the keys or prongs that can be seen in certain of its diaper pails and extend into the cassettes upon insertion to hold them in place (*see Opp'n* at 16:23–25), this interpretation of the claims is inconsistent with the claim construction in this case and the rest of intrinsic record. Although the interfering members may be positioned in a way that is complementary in shape to the clearance, the claimed clearance is the space around those members that remains (if there is any), not the space where the interfering member or cassette is itself located upon insertion.

iii. Conclusion

Because it is Plaintiffs' burden to prove infringement and Plaintiffs have not submitted evidence to show that, under a proper interpretation of "clearance," there could be literal infringement of the asserted claims of the '420 Patent, Defendant's motion for summary judgment on this basis must be granted.[1]

C. Other Pending Matters

Defendant's summary judgment motion also requests a determination as a matter of law that Plaintiffs are not entitled to lost profits. *See Motion.* This and all other aspects of Defendant's motion are **MOOT** in light of the determinations as a matter of law that Defendant's accused products do not infringe the asserted claims of the Asserted Patents. Similarly, the other six pending *Daubert* and summary judgment motions are **MOOT**.

Defendant has asserted counterclaims for declaratory judgment of invalidity of the two Asserted Patents. *Counterclaims*, Dkt. # 118 Counts III, IV. With the two Asserted Patents adjudicated as non-infringed, the Court understands that no case or controversy remains such that Defendant's counterclaims should be maintained in this case, and the Court would decline to address them. With that determination, no other matters remain for adjudication in this case.

[1] Neither party discusses the doctrine of equivalents with respect to the '420 Patent. The Court understands that Plaintiff has not presented a doctrine of equivalents theory of infringement for the '420 Patent and that no dispute regarding infringement of this patent remains now that literal infringement has been addressed.

IV. Conclusion

The Court **GRANTS-IN-PART** Defendant's Motion for Summary Judgment as it relates to noninfringement. The Court otherwise **DENIES-IN-PART** the remainder of Defendant's Motion as **MOOT**. All other pending dispositive and *Daubert* motions are also found **MOOT**. Defendant is directed to file a proposed final judgment within 14 days of this Order.

IT IS SO ORDERED.