

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES – GENERAL**

Case No. **CV 14-00438 BRO (MRWx)** Date March 18, 2015

Title **SPORT DIMENSION, INC. V. THE COLEMAN COMPANY, INC.**

Present: The Honorable **BEVERLY REID O’CONNELL, United States District Judge**

Renee A. Fisher

Not Present

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS)

**ORDER GRANTING MOTION FOR ENTRY OF JUDGMENT OF NON-  
INFRINGEMENT AND DESIGNATION AS FINAL [110]**

**I. INTRODUCTION**

Pending before the Court is Defendant The Coleman Company, Inc.’s (“Coleman”) motion for entry and certification of final judgment for non-infringement pursuant to Federal Rule of Civil Procedure 54(b). (Dkt. No. 110.) After considering the papers filed in support of and in opposition to the instant motion, the Court deems this matter appropriate for resolution without oral argument of counsel. *See* Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. For the following reasons, Defendant’s motion is **GRANTED**.

**II. BACKGROUND**

Plaintiff Sport Dimension, Inc. (“Sport Dimension”) is a sports equipment and apparel company that has been operating in Southern California for sixteen years. (Compl. ¶ 6.) Sport Dimension develops, manufactures, sells, and distributes water-sports-related equipment, including wet suits, personal floatation devices (“PFDs”), body boards, sea scooters, masks, and fins. (Compl. ¶ 7.) Sport Dimension sells many of its products under the Body Glove<sup>®</sup> brand. (Compl. ¶ 7.)

Defendant Coleman is a Delaware corporation that sells and distributes outdoor sporting equipment, including camping equipment and PFDs. (Answer ¶¶ 2, 8.) Coleman is the owner of all rights, title, and interest in U.S. Patent No. D623’714 (the “D’714 patent”), entitled “Personal Flotation Device.” (Answer ¶ 9; Compl. Ex. A.)

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Among other products, Coleman sells a child PFD called the “Puddle Jumper®,” which it asserts is covered by the D’714 patent. (Answer ¶¶ 10, 12.)

On August 9, 2013, Coleman sent Sport Dimension a letter accusing one of Sport Dimension’s PFDs designed for children (the “Body Glove PFD”) of infringing Coleman’s D’714 patent and demanding that Sport Dimension cease and desist all “manufacturing, importing, distributing, selling and/or offering for sale in the United States” of the Body Glove PFD. (Compl. ¶¶ 13, 14.) Sport Dimension and Coleman then exchanged correspondence regarding Sport Dimension’s alleged infringement between August 2013 and December 2013. (Compl. ¶ 16.)

On January 21, 2014, Sport Dimension filed this lawsuit against Coleman seeking declaratory relief. (Compl.) Specifically, Sport Dimension requests declaratory judgment establishing that (1) Sport Dimension is not infringing the D’714 patent, and (2) the D’714 patent is invalid. (Compl. ¶¶ 19–28.)

On October 10, 2015, the parties jointly requested a claim construction hearing pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996). (Dkt. No. 35.) The sole subject of this hearing was how to construe the D’714 patent. In support of its proposed construction, Sport Dimension argued both that the Court should filter out any functional elements of the D’714 patent and that Coleman had made certain prosecution disclaimers that limited the scope of the D’714 patent. (See Dkt. No. 39.) Coleman opposed both arguments and asserted that it was premature to consider the issue of functionality because Coleman had not yet conducted adequate discovery on the issue. (Dkt. No. 36.) After consideration of the briefs and the parties’ oral argument on the matter, the Court determined that Coleman had not made any prosecution disclaimers. (Dkt. No. 59 at 17.) With regard to functionality, however, the Court deemed it premature to consider the issue because discovery had not yet been completed. (Dkt. No. 59 at 13–14.) Consequently, the Court deferred ruling on the functionality of aspects of the D’714 patent until after the parties had had the opportunity to conduct sufficient discovery. (Dkt. No. 59 at 14.)

On January 12, 2015, both parties submitted their supplemental claim construction briefs. (Dkt. Nos. 62, 64.) Sport Dimension also filed a motion to strike and exclude the testimony of Coleman’s expert, Peter Bressler, whom Coleman retained to testify about

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the functionality of certain aspects of the D’714 patent. (Dkt. No. 66.) The basis of Sport Dimension’s motion was that Mr. Bressler, an individual who wielded undeniable expertise in the field of industrial design, nevertheless was unqualified to render an opinion with regard to the patent at issue because he had no experience whatsoever in the field of PFDs. (Dkt. No. 66.) On January 29, 2015, the Court granted this motion on the ground that Mr. Bressler’s general expertise in industrial design was insufficient to qualify him to testify regarding PFD design under the Federal Circuit’s ruling in *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1363 (Fed. Cir. 2008). (Dkt. No. 80.) The Court later excluded Mr. Bressler as an expert with regard to the topics of obviousness and infringement as well on the same basis. (Dkt. No. 106.)

On February 9, 2015, the Court issued a supplemental claim construction order. (Dkt. No. 92.) The Court found that the armbands, the armband attachments, the shape of the armbands, the tapering of the armbands, and the tapering of the side torso were all elements that serve a functional rather than ornamental purpose in the D’714 patent. Accordingly, the Court adopted the following claim construction that was proffered by Sport Dimension:

The ornamental design for a personal flotation device, as shown and described in Figures 1–8, except the left and right armband, and the side torso tapering, which are functional and not ornamental.

(Dkt. No. 92 at 23.) On February 23, 2015, Coleman brought the instant motion under Rule 54(b) to enter judgment in favor of Sport Dimension and certify it as final so that Coleman may expeditiously appeal the Court’s claim construction of the D’714 Patent and the Court’s order striking Coleman’s expert. (Dkt. No. 108.) Sport Dimension filed its opposition on March 3, 2015, (Dkt. No. 114), and Coleman timely replied on March 9, 2015, (Dkt. No. 121).

### **III. LEGAL STANDARD**

“When an action presents more than one claim for relief . . . the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.” Fed. R. Civ. P. 54(b). A judgment is final “in the sense that it is a decision upon a cognizable claim for relief, and it must be ‘final’ in the sense that it is ‘an ultimate disposition of an individual

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claim entered in the course of a multiple claims action.” *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7 (1980) (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956)). Simply put, a final judgment “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Catlin v. United States*, 324 U.S. 229, 233 (1945).

In determining whether there exist just reasons for delay, courts “consider such factors as whether the claims under review [are] separable from the others remaining to be adjudicated and whether the nature of the claims already determined [are] such that no appellate court would have to decide the same issues more than once even if there were subsequent appeals.” *W.L. Gore & Assocs., Inc. v. Int’l Med. Prosthetics Research Assocs., Inc.*, 975 F.2d 858, 862 (Fed. Cir. 1992). This discretionary judgment is to be exercised “in the interest of sound judicial administration.” *Mackey*, 351 U.S. at 437. In addition to judicial administration, the Court must consider the equities involved. *Curtiss-Wright*, 446 U.S. at 8. “The mere presence of [other] claims, however, does not render a Rule 54 (b) certification inappropriate.” *Id.* at 9.

#### IV. DISCUSSION

Coleman brings the instant motion so that it may appeal the Court’s orders striking Coleman’s expert opinion and construing the claims of the patent-in-suit, which, Coleman believes, now make it impossible for Coleman to prove that Sport Dimension infringed upon the D’714 Patent. (Mot. at 1.) Coleman therefore asks the Court to enter a declaratory judgment of non-infringement of the D’714 Patent against Coleman in favor of Sport Dimension pursuant to Federal Rule of Civil Procedure 54(b), and to either dismiss or stay the remaining invalidity claims as moot. (Mot. at 2, 4.) Sport Dimension opposes Coleman’s motion on the grounds that the equities weigh in favor of continuing the instant action. (See Opp’n at 10–13.)

As discussed above, Rule 54(b) motions may be appropriate in an action involving multiple claims for relief “in which ‘one or more but less than all’ of the multiple claims have been finally decided and are found otherwise to be ready for appeal.” *Mackey*, 351 U.S. at 435 (1956) (quoting Fed. R. Civ. P. 54(b)). After establishing this to be the case, the Court “must go on to determine whether there is any just reason for delay.” *Curtiss-Wright*, 446 U.S. at 8.

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### A. Final Judgment

The instant action brings two separate claims against Coleman. Specifically, Sport Dimension requests declaratory judgment establishing that (1) Sport Dimension is not infringing the D’714 patent, and (2) the D’714 patent is invalid. (Compl. ¶¶ 19–28.) In its motion, Coleman contends that the Court’s construction of the D’714 Patent renders Coleman’s ability to prove infringement untenable. (Mot. at 1.) Consequently, Coleman asks the Court to render a declaratory judgment against it, in favor of Sport Dimension, on the issue of infringement. (Mot. at 1.) The issue of infringement in the instant action is therefore no longer in dispute. As a result, Coleman’s request effectively ends the litigation on this issue and leaves nothing left for the Court to do on this cause of action but execute the judgment. *See Catlin*, 324 U.S. at 233 (stating that a final judgment is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment”). Because the action involves two causes of action in which only one has been rendered final, however, the Court must now consider whether there exist any just reasons to delay appeal. *See Curtiss-Wright*, 446 U.S. at 8.

### B. Just Reasons to Delay Appeal

District courts have discretion “to dismiss a counterclaim alleging that a patent is invalid as moot where it finds no infringement.” *Phonometrics, Inc. v. N. Telecom Inc.*, 133 F.3d 1459, 1468 (Fed. Cir. 1998); *accord Nystrom v. TREX Co.*, 339 F.3d 1347, 1351 (Fed. Cir. 2003) (noting that a district court could have dismissed a counterclaim alleging invalidity, either with or without a finding that the counterclaim was moot, following a grant of summary judgment finding non-infringement). At least one district court has found that the reasoning for dismissing a counterclaim under this principle also applies to affirmative claims of invalidity brought in a declaratory judgment action. *See Dolby Labs., Inc. v. Lucent Techs. Inc.*, No. C 01-20709 JF, 2005 U.S. Dist. LEXIS 33723, at \*7 (N.D. Cal. Sept. 6, 2005). As the court in *Dolby* reasoned, there is “no reason that the reasoning [from *Phonometrics*] should not apply to the scenario presented by the instant case, in which [Sport Dimension] brought *affirmative claims* of invalidity as the plaintiff in a declaratory judgment action.” *Id.*

Following a final determination on the issue of infringement in favor of Sport Dimension, Coleman argues that the issue of invalidity has now been rendered moot.

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(Mot. at 1.) Coleman thus asks the Court to dismiss the remaining invalidity claims without prejudice, or, in the alternative, to stay the matter until the Federal Circuit has adjudicated Coleman’s appeal. (Dkt. No. 109 at 10.) In support of this assertion, Coleman argues that “[i]mmediate certification and appeal is the most efficient use of the Court’s time and the parties’ resources.” (Mot. at 3.)

Sport Dimension opposes this motion on the bases that its invalidity claims would not be mooted by a judgment of non-infringement, that certification would result in piecemeal litigation, and that it will be prejudiced should the Court grant Coleman’s motion and put a halt to the proceedings. (Opp’n at 5–6.) Sport Dimension argues that the issue of invalidity is not moot because a ruling on the matter would provide guidance for future actions involving the D’714 patent. (Opp’n at 9.) Sport Dimension further argues that “this is a rare case where . . . a finding that the D’714 Patent is invalid is inevitable and imminent.” (Opp’n at 9.)

Coleman, however, urges the Court to exercise its discretion in dismissing the remaining claims because invalidity “is not plainly evident.” (Mot. at 4.) In fact, Coleman notes that the issue of invalidity is in large part dependent upon the Court’s construction. That is, whether prior art invalidates the patent-in-suit depends on how the D’714 Patent claim is construed. Coleman thus argues that it is in the interest of judicial economy to dismiss Sport Dimension’s invalidity claim without prejudice because if the Federal Circuit were ultimately to find that the Court erroneously construed the claims of the D’714 patent, any subsequent finding on the issue of invalidity may have to be relitigated. Indeed, Sport Dimension concedes that “the Court’s findings of fact that underlie the Claim Construction Order are directly tied to Sport Dimension’s claim for invalidity due to functionality.” (Opp’n at 8.) Coleman argues that a more reasonable and just solution would result in dismissing without prejudice or staying the instant action until a determination is made by the Federal Circuit in order to avoid the prospect of multiple appeals and possible relitigation of issues that are contingent upon the Court’s construction. *See ImageCube LLC v. The Boeing Co.*, No. 04-CV-7587, 2010 WL 331723, at \*4 (N.D. Ill. Jan. 22, 2010) (“[T]o the extent that the claims and counterclaims are linked at least by a common claim construction, any views on claim construction that the Federal Circuit expresses should it agree to hear Plaintiff’s appeal immediately would inform the litigation of the counterclaims following the disposition of the appeal.”); *Amgen, Inc. v. Ariad Pharm., Inc.*, No. CIV.A. 06-259-MPT, 2008 WL 4487910, at \*3

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(D. Del. Oct. 3, 2008) (“If the court were to conduct a trial on Amgen’s claims based on the court’s current claim construction, modification of that claim construction on subsequent appeal could result in a second trial of the same issues based on that modification.”). As discussed above, one of the factors district courts consider in deciding whether to exercise its discretion to certify an appeal is whether an “appellate court would have to decide the same issues more than once even if there were subsequent appeals.” *Curtiss-Wright*, 446 U.S. at 8. Because the issue of validity is closely related to the patent’s claim construction, and as both parties agree that an appeal is inevitable, the Court finds that the most efficient use of resources would be to allow for final resolution on the claim construction issue before the issue of invalidity is determined.

Sport Dimension also argues that it will suffer prejudice if the instant action is not continued. (Opp’n at 6.) This assertion is based upon resources already spent litigating the issue of invalidity as well as upon letters that Coleman previously sent to Sport Dimension’s customers alerting them to Sport Dimension’s potential infringement. According to Sport Dimension, Coleman might continue to interfere with Sport Dimension’s ability to sell its products. If the Court were to grant certification pursuant to Rule 54(b), however, a final judgment on the issue of infringement would effectively refute any possible future claims of infringement. That is, Sport Dimension would be free to sell its products and inform its customers that it received a judgment establishing its non-infringement. Should the Federal Circuit subsequently overturn the Court’s order, Sport Dimension would be in no worse position than it would be if the Court were to continue the instant action.

Finally, the Court notes that the issue of a patent’s validity is one of great public importance. *See Sinclair & Carroll Co. v. Interchem. Corp.*, 325 U.S. 327, 330 (1945). Issued patents are entitled a presumption of validity. 35 U.S.C. § 282. Assertions of invalidity therefore must be proven with clear and convincing evidence. *L.A. Gear v. Thom McAn Shoe Co.*, 988 F.2d 1117, 1123 (Fed. Cir. 1993). The Supreme Court has indicated that there are cases in which it is the “better practice” for a lower court deciding an infringement suit to inquire into the validity question. *Sinclair*, 325 U.S. at 330. But “[w]here, as here, non-infringement is clear and invalidity is not plainly evident, it is appropriate to treat only the infringement issue.” *Nestier Corp. v. Menasha Corp.-Lewisystems Div.*, 739 F.2d 1576, 1581 (Fed. Cir. 1984) (citing *Leesona Corp. v. United States*, 530 F.2d 896, 906 n.9 (Cl. Ct. 1976)). The Court finds that invalidity is not

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“plainly evident.” And because of the impact that the Court’s claim construction will have on making this determination, and in light of the absence of prejudice to Sport Dimension, the Court finds no just reason to delay certifying the judgment as final. Accordingly, the Court **GRANTS** Coleman’s motion.

**V. CONCLUSION**

For the reasons discussed above, the Court **GRANTS** Coleman’s motion for entry of final judgment pursuant to Federal Rule of Civil Procedure 54(b) on the issue of infringement. The Court hereby **DISMISSES without prejudice** Sport Dimension’s remaining claim for invalidity.

**IT IS SO ORDERED.**

Initials of Preparer

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