UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

JARRETT B. PERLOW
CLERK OF COURT

CLERK'S OFFICE
202-275-8000

July 22, 2024

NOTICE OF DOCKETING

Federal Circuit Docket No.: 2024-2116

Federal Circuit Short Caption: MHL Custom, Inc. v. Waydoo USA, Inc.

Date of Docketing: July 22, 2024

Originating Tribunal: United States District Court for the District of Delaware

Originating Case No.: 1:21-cv-00091-RGA

Appellants: Waydoo USA, Inc., Shenzhen Waydoo Intelligence Technology Co., Ltd.

A notice of appeal has been filed and assigned the above Federal Circuit case number. The court's official caption is included as an attachment to this notice. Unless otherwise noted in the court's rules, the assigned docket number and official caption or short caption must be included on all documents filed with this Court. It is the responsibility of all parties to review the Rules for critical due dates. The assigned deputy clerk is noted below and all case questions should be directed to the Case Management section at (202) 275-8055.

The following filings are due within 14 days of this notice:

- Entry of Appearance or Notice of Unrepresented Person. (Fed. Cir. R. 47.3.)
- Certificate of Interest. (Fed. Cir. R. 47.4; not required for unrepresented and federal government parties unless disclosing information under Fed. Cir. R. 47.4(a)(6))
- Docketing Statement. Note: The Docketing Statement is due in 30 days if the United States or its officer or agency is a party in the appeal. (Fed. Cir. R. 47.6 and the Mediation Guidelines; no docketing statement is required in cases with an unrepresented party)
- Statement Concerning Discrimination in MSPB or arbitrator cases. (Fed. Cir. R. 15(c); completed by petitioner only)
- Fee payment or appropriate fee waiver request, if the docketing fee was not prepaid (see Fee Payment below).

FILING DOCUMENTS: Each counsel representing a party must be a member of the court's bar and registered for the court's electronic filing system. Parties represented by counsel must make all filings through the court's electronic filing system.

Unrepresented parties may choose to submit case filings to the court either in paper or through the court's electronic filing system; electronic filing will only be permitted for unrepresented parties after successful registration for the court's electronic filing system and submission of a completed Notice of Unrepresented Person Appearance. Fed. Cir. R. 25(a). The court's Electronic Filing Procedures may be accessed at www.cafc.uscourts.gov/contact/clerks-office/filing-resources.

CONTACT INFORMATION: Electronic filers, or unrepresented parties registered to receive electronic service, must update their contact information in their PACER service center profile whenever their contact information changes. Counsel must file an amended Entry of Appearance and unrepresented parties must file an amended Notice of Unrepresented Person Appearance whenever contact information changes. Fed. Cir. R. 25(a)(5).

FEE PAYMENT: Unless the filing fee was prepaid, fee payment must be submitted within fourteen days after this notice. Fed. Cir. R. 52(d). For outstanding docketing fees due to this court, electronic filers must pay the fee using the event Pay Docketing Fee through the court's electronic filing system. Fed. Cir. R. 52(e). Docketing fees due to other courts, such as U.S. District Courts, the U.S. Court of Appeals for Veterans Claims, and non-vaccine cases at the U.S. Court of Federal Claims, must be submitted to those courts in accordance with their procedures. A filer wishing to proceed without fee payment must submit a motion for leave to proceed in forma pauperis, or other fee waiver request, within fourteen days.

OFFICIAL CAPTION: The court's official caption is attached and reflects the lower tribunal's caption pursuant to Fed. R. App. P. 12(a), 15(a), and 21(a). Please review the caption carefully and promptly advise this court in writing of any improper or inaccurate designations.



Jarrett B. Perlow
Clerk of Court

By: J. Phillips, Deputy Clerk

Attachments:

- Official caption
- Paper Copies of General Information and Forms (to unrepresented parties only):
  - General Information and Overview of a Case in the Federal Circuit
  - Notice of Unrepresented Person Appearance
  - Informal Brief
  - Informal Reply Brief (to be completed only after receiving the opposing party's response brief)
  - Motion and Affidavit for Leave to Proceed in Forma Pauperis (only to filers owing the docketing fee)
  - Supplemental in Forma Pauperis Form for Prisoners (only to filers in a correctional institution)
  - Statement Concerning Discrimination (only to petitioners in MSPB or arbitrator case)

cc: United States District Court for the District of Delaware

Official Caption

MHL CUSTOM, INC.,
Plaintiff-Appellee

v.

WAYDOO USA, INC., SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD.,
Defendants-Appellants

Short Caption

MHL Custom, Inc. v. Waydoo USA, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC., Plaintiff, v. WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD., Defendants.	Civil Action No. 21-91-RGA

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendants Waydoo USA, Inc. and Shenzhen Waydoo Intelligence Technology Co., Ltd. (collectively "Defendants") hereby appeal to the United States Court of Appeals for the Federal Circuit from an Order Granting Stipulated Proposed Order on Ongoing Royalties (D.I. 292), entered in this action on June 17, 2024 (D.I. 295), a Memorandum Order entered in this action on July 1, 2024 (D.I. 296), a Memorandum Opinion regarding Defendants' renewed motions for judgment as a matter of law (D.I. 257) and associated Order (D.I. 258), both dated September 6, 2023, a Memorandum Opinion regarding Plaintiff's post-trial motions (D.I. 259) and associated Order (D.I. 260), both dated September 7, 2023, Judgment dated April 12, 2023 (D.I. 226), as amended by, *inter alia*, the Court's resolution of Plaintiff's post-trial motions dated September 7, 2023 (D.I. 259, 260), and from all orders, opinions, decisions, and rulings including, but not limited to, the Court's:

- Memorandum Opinion regarding claim construction dated June 24, 2022 (D.I. 66) and Claim Construction Order dated June 30, 2022 (D.I. 68);
- Order regarding claim construction dated January 3, 2023 (D.I. 142);
- Memorandum Opinion regarding the parties' motions for summary judgment (D.I. 153) and associated Order (D.I. 154), both dated February 3, 2023;
- Memorandum Order regarding the parties' Daubert motions dated February 3, 2023 (D.I. 155);
- Oral Order regarding the testimony of expert witness Christopher Barry dated February 22, 2023 (D.I. 160); Rulings made at the March 10, 2023 pre-trial conference, as reflected in the pre-trial conference transcript (D.I. 208) and Amended Final Joint Pretrial Order dated March 24, 2023 (D.I. 212);
- Memorandum Opinion (D.I. 201) regarding motions in limine (D.I. 167, 180), the Opinion dated March 20, 2023;
- Decisions, judgments, rulings, findings, decrees, instructions, and opinions made during and/or in connection with the March 24, 2023 through March 31, 2023 trial in this action, as reflected in the trial transcript (D.I. 239-244) and elsewhere.

As part of this Notice of Appeal, Defendants submit the required filing fees.

Dated: July 16, 2024

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: */s/ Amy M. Dudash*

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CLOSED,APPEAL,PATENT

U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:21-cv-00091-RGA
Internal Use Only

MHL Custom, Inc. v. Waydoo USA, Inc. et al
Assigned to: Judge Richard G. Andrews
Case in other court: the Federal Circuit, 24-01036
Cause: 28:1338 Patent Infringement

Date Filed: 01/27/2021
Date Terminated: 07/01/2024
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

MHL Custom, Inc.

represented by **Andrew Ralli**
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Megan E. Gibson

UNITED STATES DISTRICT COURT DISTRICT OF DELAWARE

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V.

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Defendant

Shenzhen Waydoo Intelligence Technology Co., Ltd.
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Counter Claimant

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Counter Claimant

Waydoo USA, Inc.
a Delaware corporation

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Robert J. Theuerkauf
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Date Filed	#	Docket Text
01/27/2021	1	COMPLAINT FOR PATENT INFRINGEMENT filed with Jury Demand against Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc. - Magistrate Consent Notice to Pltf. (Filing fee $ 402, receipt number ADEDC-3492281.) - filed by MHL Custom, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Civil Cover Sheet)(myr) (Additional attachment(s) added on 1/27/2021: # 4 Exhibit C) (cna,). (Entered: 01/27/2021)
01/27/2021	2	Notice, Consent and Referral forms re: U.S. Magistrate Judge jurisdiction. (myr) (Entered: 01/27/2021)
01/27/2021	3	Report to the Commissioner of Patents and Trademarks for Patent/Trademark Number(s) 9,359,044 ;9,586,659. (myr) (Entered: 01/27/2021)
01/27/2021	4	Summonses Issued (please complete the top portion of the form and print out for use/service). (myr) (Entered: 01/27/2021)
02/01/2021	5	SUMMONS Returned Executed by MHL Custom, Inc.. Waydoo USA, Inc. served on 1/29/2021, answer due 2/19/2021. (Bennett, Blake) (Entered: 02/01/2021)
02/01/2021	6	SUMMONS Returned Executed by MHL Custom, Inc.. Shenzhen Waydoo Intelligence Technology Co., Ltd. served on 1/29/2021, answer due 2/19/2021. (Bennett, Blake) (Entered: 02/01/2021)
02/03/2021		Case Assigned to Judge Richard G. Andrews. Please include the initials of the Judge (RGA) after the case number on all documents filed. (rjb) (Entered: 02/03/2021)
02/05/2021	7	MOTION for Pro Hac Vice Appearance of Attorney Robert J. Theuerkauf - filed by MHL Custom, Inc.. (Bennett, Blake) (Entered: 02/05/2021)
02/05/2021	8	MOTION for Pro Hac Vice Appearance of Attorney Daniel W. Redding - filed by MHL Custom, Inc.. (Bennett, Blake) (Entered: 02/05/2021)
02/05/2021	9	MOTION for Pro Hac Vice Appearance of Attorney Dennis D. Murrell - filed by MHL Custom, Inc.. (Bennett, Blake) (Entered: 02/05/2021)
02/05/2021		SO ORDERED, re 8 MOTION for Pro Hac Vice Appearance of Attorney Daniel W. Redding, 9 MOTION for Pro Hac Vice Appearance of Attorney Dennis D. Murrell, and 7 MOTION for Pro Hac Vice Appearance of Attorney Robert J. Theuerkauf, filed by MHL Custom, Inc.. Signed by Judge Richard G. Andrews on 2/5/2021. (nms) (Entered: 02/05/2021)
02/24/2021	10	ORAL ORDER: Answers were due to be filed on 2/19/2021 (see D.I. 5 ; D.I. 6), and to date none have been filed. Now the Plaintiff shall file a status letter within 3 days from the entry of this Order. Ordered by Judge Richard G. Andrews on 2/24/2021. (nms) (Entered: 02/24/2021)
02/24/2021		Pro Hac Vice Attorneys Robert J. Theuerkauf, Daniel W. Redding, Dennis D. Murrell for MHL Custom, Inc. added for electronic noticing. Pursuant to Local

		Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (kmd) (Entered: 02/24/2021)
02/24/2021	11	Letter to The Honorable Richard G. Andrews, from Blake A. Bennett, regarding status. (Bennett, Blake) Modified on 2/25/2021 (nms). (Entered: 02/24/2021)
02/26/2021	12	STIPULATION of Waiver and to Extend Time by MHL Custom, Inc.. (Bennett, Blake) (Entered: 02/26/2021)
03/01/2021		SO ORDERED, re 12 Stipulation of Waiver and to Extend Time (*Reset Answer Deadlines: Shenzhen Waydoo Intelligence Technology Co., Ltd. answer due 5/20/2021; Waydoo USA, Inc. answer due 5/20/2021). Signed by Judge Richard G. Andrews on 3/1/2021. (nms) (Entered: 03/01/2021)
03/01/2021		(Court only) ***Attorney Kelly E. Farnan for Shenzhen Waydoo Intelligence Technology Co., Ltd.,Kelly E. Farnan for Waydoo USA, Inc. added per D.I. 12 . (nms) (Entered: 03/01/2021)
05/20/2021	13	ANSWER to 1 Complaint, with Jury Demand and COUNTERCLAIMS against MHL Custom, Inc., by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) Modified on 5/21/2021 (nms). (Entered: 05/20/2021)
05/20/2021	14	MOTION for Pro Hac Vice Appearance of Attorney Edgar H. Haug, Robert E. Colletti and Roman Khasidov - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 05/20/2021)
05/20/2021		SO ORDERED, re 14 MOTION for Pro Hac Vice Appearance of Attorney Edgar H. Haug, Robert E. Colletti and Roman Khasidov, filed by Waydoo USA, Inc., Shenzhen Waydoo Intelligence Technology Co., Ltd.. Signed by Judge Richard G. Andrews on 5/20/2021. (nms) (Entered: 05/20/2021)
05/26/2021	15	Order Setting Rule 16(b) Telephone Conference: A Scheduling Conference is set for 6/15/2021, at 4:00 PM before Judge Richard G. Andrews (see Order for further details). Signed by Judge Richard G. Andrews on 5/26/2021. (nms) (Entered: 05/26/2021)
05/27/2021		Pro Hac Vice Attorney Edgar H. Haug,Robert E. Colletti for Shenzhen Waydoo Intelligence Technology Co., Ltd., for Waydoo USA, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (myr) (Entered: 05/27/2021)
05/27/2021	16	Disclosure Statement pursuant to Rule 7.1: identifying Other Affiliate SZ DJI Technology Co., Ltd., Other Affiliate Waydoo USA, Inc., Other Affiliate Joy Surf Limited for Shenzhen Waydoo Intelligence Technology Co., Ltd. filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 05/27/2021)
06/04/2021		Pro Hac Vice Attorney Roman Khasidov for Shenzhen Waydoo Intelligence Technology Co., Ltd.and Waydoo USA, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (mal) (Entered: 06/04/2021)
06/10/2021	17	ANSWER to 13 Answer to Complaint, Counterclaim by MHL Custom, Inc.. (Bennett, Blake) (Entered: 06/10/2021)
06/11/2021	18	PROPOSED Scheduling Order, by MHL Custom, Inc.. (Bennett, Blake) Modified on 6/11/2021 (nms). (Entered: 06/11/2021)

06/14/2021	19	SCHEDULING ORDER: Case referred to the Magistrate Judge for the purpose of exploring ADR. This matter will also be referred to a magistrate judge to handle all discovery disputed. Joinder of Parties due by 12/17/2021. Amended Pleadings due by 12/17/2021. Fact Discovery completed by 5/13/2022. Dispositive Motions due by 10/20/2022. Joint Claim Construction Brief due by 2/25/2022. A Markman Hearing is set for 3/22/2022, at 9:00 AM in Courtroom 6A. A Pretrial Conference is set for 3/10/2023, at 9:00 AM in Courtroom 6A. A 5 day Jury Trial is set for 3/27/2023, at 9:30 AM in Courtroom 6A (see Order for further details). Signed by Judge Richard G. Andrews on 6/14/2021. (nms) (Entered: 06/14/2021)
06/14/2021	20	ORAL ORDER: The Rule 16(b) Conference set for 6/15/2021, is CANCELED. Ordered by Judge Richard G. Andrews on 6/14/2021. (nms) (Entered: 06/14/2021)
06/14/2021		CASE REFERRED to Magistrate Judge Jennifer L. Hall for Mediation. Please see Standing Order dated January 20, 2016, regarding disclosure of confidential ADR communications. A link to the standing order is provided here for your convenience at https://www.ded.uscourts.gov/sites/ded/files/forms/StandingOrderforADR-Mediation.pdf (Taylor, Daniel) (Entered: 06/14/2021)
06/14/2021	21	CASE REFERRED to Magistrate Judge Mary Pat Thynge to handle all discovery disputes including any that arise in connection with expert reports. (nms) (Entered: 06/14/2021)
06/14/2021	22	ORAL ORDER: If, during the pendency of this case, Plaintiff(s) and Defendant(s) jointly wish to schedule a form of alternative dispute resolution ("ADR"), such as mediation, with Judge Hall, they should contact chambers by e-mail at Cailah_Garfinkel@ded.uscourts.gov or by phone. Additionally, if either side wishes to speak ex parte with Judge Hall regarding ADR matters, they may contact chambers via e-mail or by phone to arrange a time for a call. In addition, Judge Hall may in the future enter a sua sponte order setting an ADR teleconference. ORDERED by Judge Jennifer L. Hall on 6/14/2021. (ceg) (Entered: 06/14/2021)
06/18/2021	23	NOTICE OF SERVICE of Defendants Initial Disclosures Under Fed. R. Civ. P. 26(a)(1) filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) (Entered: 06/18/2021)
06/21/2021	24	NOTICE of Appearance by Dorronda R. Bordley on behalf of Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc. (Bordley, Dorronda) (Entered: 06/21/2021)
06/22/2021	25	ORAL ORDER Setting Teleconference: Plaintiff to initiate the call. A Telephone Conference to discuss discovery in the context of the Scheduling Order and the referral to Judge Thynge is set for 7/27/2021 at 02:00 PM Eastern Time before Judge Mary Pat Thynge. Signed by Judge Mary Pat Thynge on 6/22/2021. (Taylor, Daniel) (Entered: 06/22/2021)
07/08/2021	26	PROPOSED Discovery Confidentiality Order, by MHL Custom, Inc.. (Bennett, Blake) Modified on 7/8/2021 (nms). (Entered: 07/08/2021)
07/08/2021	27	SO ORDERED Granting 26 Proposed Discovery Confidentiality Order. Signed by Judge Richard G. Andrews on 7/8/2021. (nms) (Entered: 07/08/2021)
07/27/2021		Minute Entry for proceedings held before Judge Mary Pat Thynge - Discovery Conference held on 7/27/2021, Terminated Hearings. (Court Reporter Jennifer Guy.) (Taylor, Daniel) (Entered: 07/30/2021)

08/05/2021	28	ORDER re 19 Scheduling Order, 21 Order Referring Case to Magistrate Judge: paragraph 3.f. of the Scheduling Order at D.I. 19 is replaced and modified consistent with the attached ORDER. Signed by Judge Mary Pat Thynge on 8/5/2021. (Taylor, Daniel) (Main Document 28 replaced on 8/5/2021) (Taylor, Daniel). (Entered: 08/05/2021)
08/05/2021		CORRECTING ENTRY: Updated discovery ORDER at D.I. 28 with corrected document (Taylor, Daniel) (Entered: 08/05/2021)
08/17/2021	29	NOTICE OF SERVICE of Defendants Waydoo USA, Inc. and Shenzhen Waydoo Intelligence Technology Co., Ltd.s (1) First Set of Interrogatories to Plaintiff (Nos. 1-11), (2) First Set of Requests for Production of Documents and Things to Plaintiff (Nos. 1-55), and (3) this notice filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Bordley, Dorronda) (Entered: 08/17/2021)
08/27/2021	30	NOTICE OF SERVICE of (1) Waydoos Responses to MHLs First Set of Interrogatories (Nos. 1-20) and (2) Waydoos Responses To MHLs First Set of Production Requests (Nos. 1-45) filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) (Entered: 08/27/2021)
11/22/2021	31	Joint Claim Construction Chart, by MHL Custom, Inc.. (Attachments: # 1 Exhibit A)(Bennett, Blake) Modified on 11/23/2021 (nms). (Entered: 11/22/2021)
12/06/2021	32	NOTICE of Subpoena to Testify at a Deposition in a Civil Action to Google LLC by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc. (Attachments: # 1 Exhibit 1)(Farnan, Kelly) (Entered: 12/06/2021)
12/07/2021	33	MOTION for Pro Hac Vice Appearance of Attorney Mark Basanta - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 12/07/2021)
12/07/2021		SO ORDERED, re 33 MOTION for Pro Hac Vice Appearance of Attorney Mark Basanta, filed by Waydoo USA, Inc., Shenzhen Waydoo Intelligence Technology Co., Ltd.. Signed by Judge Richard G. Andrews on 12/7/2021. (nms) (Entered: 12/07/2021)
12/28/2021	34	NOTICE to Take Deposition of Christopher Barry on January 13, 2022 filed by Waydoo USA, Inc..(Bordley, Dorronda) (Entered: 12/28/2021)
01/21/2022	35	NOTICE OF SERVICE of (1) Defendants' Opening Claim Construction Brief and (2) Exhibits 1-9 of Defendants' Opening Claim Construction Brief filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) (Entered: 01/21/2022)
02/18/2022	36	NOTICE OF SERVICE of Defendant Waydoo USA, Inc. and Shenzen Waydoo Intelligence Technology Co., Ltd.'s Sur-Reply Claim Construction Brief filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Bordley, Dorronda) (Entered: 02/18/2022)
02/25/2022	37	MOTION for Pro Hac Vice Appearance of Attorney Brian P. McGraw - filed by MHL Custom, Inc.. (Bennett, Blake) (Entered: 02/25/2022)
02/25/2022		SO ORDERED, re 37 MOTION for Pro Hac Vice Appearance of Attorney Brian P. McGraw, filed by MHL Custom, Inc.. Signed by Judge Richard G. Andrews on 2/25/2022. (nms) (Entered: 02/25/2022)
02/25/2022	39	JOINT Appendix re 46 Joint Claim Construction Brief, by MHL Custom, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5

		Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K)(Bennett, Blake) Modified on 2/28/2022 (nms). Modified on 3/1/2022 (nms). (Entered: 02/25/2022)
02/25/2022	40	Joint Motion for Claim Construction - filed by MHL Custom, Inc.. Motions referred to Mary Pat Thynge.(Bennett, Blake) Modified on 2/28/2022 (nms). (Entered: 02/25/2022)
02/28/2022		CORRECTING ENTRY: The Joint Claim Construction Brief filed at D.I. 38 has been removed from the docket as the filing was incompletely formatted. The parties are requested to resubmit the brief which should also include a table of contents and a table of authorities. (nms) (Entered: 02/28/2022)
02/28/2022	41	ORAL ORDER: The Joint Motion for Claim Construction (D.I. 40) is GRANTED. Each side is limited to 45 minutes for argument. Ordered by Judge Richard G. Andrews on 2/28/2022. (nms) (Entered: 02/28/2022)
02/28/2022	42	NOTICE to Take Deposition of Nick Leason on date to be determined filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) (Entered: 02/28/2022)
02/28/2022	43	NOTICE to Take Deposition of Michael Leason on date to be determined filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) (Entered: 02/28/2022)
02/28/2022	44	NOTICE to Take Deposition of Stewart Wagner on date to be determined filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) (Entered: 02/28/2022)
02/28/2022	45	NOTICE to Take Deposition of Brent Farese on date to be determined filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) (Entered: 02/28/2022)
03/01/2022	46	JOINT Claim Construction Brief, filed by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/1/2022 (nms). (Entered: 03/01/2022)
03/01/2022	47	NOTICE of Subpoena to Jacob Willem Langelaan, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibit 1)(Farnan, Kelly) Modified on 3/2/2022 (nms). (Entered: 03/01/2022)
03/02/2022	48	NOTICE to Take Deposition of MHL Custom, Inc. on a date and location to be agreed upon by the parties filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) (Entered: 03/02/2022)
03/02/2022	49	MOTION for Daniel W. Redding to Withdraw as Attorney - filed by MHL Custom, Inc.. (Bennett, Blake) (Entered: 03/02/2022)
03/03/2022		(Court only) ***Motions terminated: 49 MOTION for Daniel W. Redding to Withdraw as Attorney filed by MHL Custom, Inc.. This should have been filed as a notice. (nms) (Entered: 03/03/2022)
03/03/2022		Remark: The filing at D.I. 49 is being treated as a Notice to Withdraw. A motion was not required as the party being represented by the attorney withdrawing is still represented by its local counsel. (nms) (Entered: 03/03/2022)
03/03/2022		(Court only) *** Attorney Daniel W. Redding terminated. (nms) (Entered: 03/03/2022)
03/03/2022	50	MOTION for Pro Hac Vice Appearance of Attorney Megan E. Gibson - filed by MHL Custom, Inc.. (Bennett, Blake) (Entered: 03/03/2022)

03/04/2022		SO ORDERED, re 50 MOTION for Pro Hac Vice Appearance of Attorney Megan E. Gibson, filed by MHL Custom, Inc.. Signed by Judge Richard G. Andrews on 3/4/2022. (nms) (Entered: 03/04/2022)
03/04/2022		Pro Hac Vice Attorney Mark Basanta for Shenzhen Waydoo Intelligence Technology Co., Ltd. and Waydoo USA, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (smg) (Entered: 03/04/2022)
03/04/2022		Pro Hac Vice Attorney Brian P. McGraw for MHL Custom, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (apk) (Entered: 03/04/2022)
03/07/2022	51	NOTICE of Subpoena to Avante Innovations, LLC by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibit 1)(Farnan, Kelly) Modified on 3/8/2022 (nms). (Entered: 03/07/2022)
03/07/2022	52	NOTICE of Subpoena to Fliteboard USA, Inc. by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibit 1)(Farnan, Kelly) Modified on 3/8/2022 (nms). (Entered: 03/07/2022)
03/07/2022		Pro Hac Vice Attorney Megan E. Gibson for MHL Custom, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (srs) (Entered: 03/07/2022)
03/18/2022	53	ORAL ORDER: Due to a scheduling conflict the Markman Hearing scheduled for 3/22/2022, is CANCELED. The hearing will be rescheduled for a date to be determined. Ordered by Judge Richard G. Andrews on 3/18/2022. (nms) (Entered: 03/18/2022)
03/21/2022	54	ORAL ORDER: The Markman Hearing is now rescheduled for 5/3/2022, at 9:00 AM in Courtroom 6A. Ordered by Judge Richard G. Andrews on 3/21/2022. (nms) (Entered: 03/21/2022)
04/11/2022		CASE NO LONGER REFERRED to Magistrate Judge Hall for the purpose of exploring ADR. Please see the Court's Standing Order No. 2022-2 dated March 14, 2022. (ceg) (Entered: 04/11/2022)
05/03/2022		Minute Entry for proceedings held before Judge Richard G. Andrews - Markman Hearing held on 5/3/2022. Counsel for Plaintiff: B. Bennett. Counsel for Defendants: K. Farnan, D. Bordley. Plaintiff's letter due by COB on 4/13/2022. Defendant's response due by COB on 4/18/2022. (Court Reporter Heather Triozzi.) (lak) (Entered: 05/05/2022)
05/04/2022	55	ORDER re 28 Order: The following procedures for discovery disputes with Judge Thynge in this matter shall replace the procedures defined in the Order at D.I. 28. Signed by Judge Mary Pat Thynge on 5/4/2022. (Taylor, Daniel) (Entered: 05/04/2022)
05/05/2022	56	Stipulation and Proposed Order to Extend Discovery and Expert Disclosure Deadlines - filed by MHL Custom, Inc.. (Bennett, Blake) Modified on 5/5/2022 (nms). (Entered: 05/05/2022)
05/05/2022		SO ORDERED, re 56 Stipulation and Proposed Order to Extend Discovery and Expert Disclosure Deadlines. Signed by Judge Richard G. Andrews on 5/5/2022. (nms) (Entered: 05/05/2022)

05/11/2022	57	NOTICE OF SERVICE of Subpoena to Testify at a Deposition in a Civil Action filed by MHL Custom, Inc.. (Attachments: # 1 Exhibit)(Bennett, Blake) (Entered: 05/11/2022)
05/11/2022	58	NOTICE OF SERVICE of Subpoena to Testify at a Deposition in a Civil Action filed by MHL Custom, Inc.. (Attachments: # 1 Exhibit)(Bennett, Blake) (Entered: 05/11/2022)
05/13/2022	59	Letter to The Honorable Richard G. Andrews, from Blake A. Bennett, regarding submission of supplementation regarding claim construction. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Bennett, Blake) Modified on 5/16/2022 (nms). (Entered: 05/13/2022)
05/13/2022	60	Letter to Honorable Richard G. Andrews, from Kelly E. Farnan, regarding submission of supplementation regarding claim construction. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Farnan, Kelly) Modified on 5/16/2022 (nms). (Entered: 05/13/2022)
05/18/2022	61	Letter to The Honorable Richard G. Andrews, from Blake A. Bennett, regarding Plaintiff's objection to Defendants' May 13, 2022 submission (D.I. 60). (Bennett, Blake) Modified on 5/19/2022 (nms). (Entered: 05/18/2022)
05/18/2022	62	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding Defendants limited response to Plaintiffs May 13, 2022 Submission (D.I. 59). (Farnan, Kelly) Modified on 5/18/2022 (nms). (Entered: 05/18/2022)
05/24/2022	63	NOTICE OF SERVICE of Defendants Second Set of Interrogatories to Plaintiff (Nos. 12-13) filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) (Entered: 05/24/2022)
06/23/2022	64	NOTICE OF SERVICE of Plaintiff's Responses to Defendants' Second Set of Interrogatories Nos. 12-13 filed by MHL Custom, Inc..(Bennett, Blake) (Entered: 06/23/2022)
06/24/2022	65	STIPULATION to Extend Discovery and Expert Disclosure Deadlines, by MHL Custom, Inc.. (Bennett, Blake) Modified on 6/24/2022 (nms). (Entered: 06/24/2022)
06/24/2022	66	MEMORANDUM OPINION: Providing claim construction for multiple terms in U.S. Patent Nos. 9,359,044 and 9,586,659. Within five days the parties shall submit a proposed order consistent with this Memorandum Opinion suitable for submission to the jury. Signed by Judge Richard G. Andrews on 6/24/2022. (nms) (Entered: 06/24/2022)
06/24/2022		SO ORDERED, re 65 Stipulation and Proposed Order to Extend Discovery and Expert Disclosure Deadlines. Signed by Judge Richard G. Andrews on 6/24/2022. (nms) (Entered: 06/24/2022)
06/29/2022	67	PROPOSED Claim Construction Order, by MHL Custom, Inc.. (Bennett, Blake) Modified on 6/30/2022 (nms). (Entered: 06/29/2022)
06/30/2022	68	CLAIM CONSTRUCTION ORDER. Signed by Judge Richard G. Andrews on 6/30/2022. (nms) (Entered: 06/30/2022)
07/13/2022	69	NOTICE OF SERVICE of (1) Defendants Supplement to Initial Disclosures under Fed. R. Civ. P. 26(a)(1) and (2) Defendants' Disclosure of Updated Invalidity Contentions filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Farnan, Kelly) (Entered: 07/13/2022)

10/18/2022	70	Unopposed Motion to Clarify and Amend the Dispositive Motion Deadline - filed by MHL Custom, Inc.. (Attachments: # 1 Proposed Order)(Bennett, Blake) Modified on 10/18/2022 (nms). (Entered: 10/18/2022)
10/19/2022	71	SO ORDERED Granting 70 Unopposed Motion to Clarify and Amend the Dispositive Motion Deadline (*Resetting Deadline: Dispositive Motions due by 10/24/2022). Signed by Judge Richard G. Andrews on 10/19/2022. (nms) (Entered: 10/19/2022)
10/24/2022	72	STIPULATION of Amendment to Protective Order, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 10/24/2022 (nms). (Entered: 10/24/2022)
10/24/2022	73	SO ORDERED Granting 72 Stipulation of Amendment to Protective Order. Signed by Judge Richard G. Andrews on 10/24/2022. (nms) (Entered: 10/24/2022)
10/24/2022	74	MOTION to Exclude, In Part, the Testimony of Defendants' Expert, Mark Lanterman, under Daubert - filed by MHL Custom, Inc.. (Attachments: # 1 Proposed Order).(Bennett, Blake) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	75	MOTION to Exclude the Testimony of Defendants' Expert, Philip Kline, Under Daubert - filed by MHL Custom, Inc.. (Attachments: # 1 Proposed Order). (Bennett, Blake) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	76	MOTION to Exclude, In Part, the Testimony of Defendants' Expert, Dr. Michael Triantfyllou, under Daubert - filed by MHL Custom, Inc.. (Attachments: # 1 Proposed Order).(Bennett, Blake) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	77	MOTION for Partial Summary Judgment of No Invalidity - filed by MHL Custom, Inc.. (Attachments: # 1 Proposed Order)(Bennett, Blake) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	78	MOTION for Partial Summary Judgment of Infringement of the '044 Patent - filed by MHL Custom, Inc.. (Attachments: # 1 Proposed Order)(Bennett, Blake) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	79	MOTION for Partial Summary Judgment on Defendants' Lack of Standing Defense - filed by MHL Custom, Inc.. (Attachments: # 1 Proposed Order)(Bennett, Blake) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	80	[SEALED] OPENING BRIEF in Support re 79 MOTION for Partial Summary Judgment on Defendants' Lack of Standing Defense, 76 MOTION to Exclude, In Part, the Testimony of Defendants' Expert, Dr. Michael Triantfyllou, under Daubert, 75 MOTION to Exclude the Testimony of Defendants' Expert, Philip Kline, Under Daubert, 78 MOTION for Partial Summary Judgment of Infringement of the '044 Patent, 74 MOTION to Exclude, In Part, the Testimony of Defendants' Expert, Mark Lanterman, under Daubert, 77 MOTION for Partial Summary Judgment of No Invalidity, filed by MHL Custom, Inc..Answering Brief/Response due date per Local Rules is 11/7/2022. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32

		Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34, # 35 Exhibit 35)(Bennett, Blake) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	81	DAUBERT Motions and Motion for Summary Judgment - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Proposed Order).(Farnan, Kelly) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	82	CERTIFICATE OF SERVICE for Plaintiff's Opening Brief (D.I. 80), by MHL Custom, Inc.. (Bennett, Blake) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	83	[SEALED] OPENING BRIEF in Support re 81 DAUBERT Motions and Motions for Summary Judgment, filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. Answering Brief/Response due date per Local Rules is 11/7/2022. (Farnan, Kelly) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	84	DECLARATION of Robert E. Colletti re 83 Opening Brief in Support, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibits 1-2, # 2 Exhibits 16-20)(Farnan, Kelly) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/24/2022	85	[SEALED] EXHIBITS re 84 Declaration of Robert E. Colletti, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibits 3-15, # 2 Exhibits 21-26)(Farnan, Kelly) Modified on 10/25/2022 (nms). (Entered: 10/24/2022)
10/25/2022		The Motions filed at D.I. 74 , 75 , 76 , 77 , 78 , 79 , and 81 incorrectly referred to Magistrate Judge Mary Pat Thynge by CM/ECF are no longer referred. (nms) (Entered: 10/25/2022)
10/31/2022	86	STIPULATION TO EXTEND TIME to File Redacted Public Versions to November 1, 2022 - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 10/31/2022)
11/01/2022		SO ORDERED, re 86 Stipulation to Extend time to File Redacted Public Versions to November 1, 2022. (Notice of Compliance deadline set for 11/1/2022). Signed by Judge Richard G. Andrews on 11/1/2022. (lah) (Entered: 11/01/2022)
11/01/2022	87	REDACTED VERSION of 80 Opening Brief in Support, by MHL Custom, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32 Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34, # 35 Exhibit 35) (Bennett, Blake) Modified on 11/1/2022 (nms). (Entered: 11/01/2022)
11/01/2022	88	REDACTED VERSION of 83 Opening Brief in Support, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 11/01/2022)
11/01/2022	89	REDACTED VERSION of 85 Sealed Exhibits, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibits 3-12, # 2 Exhibits 13-15, # 3 Exhibit 21-26)(Farnan, Kelly) Modified on 11/1/2022 (nms). (Entered: 11/01/2022)

11/07/2022	90	MOTION for Discovery Teleconference - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. Motions referred to Mary Pat Thynge. (Farnan, Kelly) (Entered: 11/07/2022)
11/07/2022		NOTICE OF SCHEDULING: A Telephonic Discovery Conference is set for 11/15/2022 at 10:00 AM Eastern before Judge Mary Pat Thynge. Counsel for Defendants shall arrange a teleconference and share details with chambers (daniel_taylor@ded.uscourts.gov) and the court reporter (Heather Triozzi). Ordered by Judge Mary Pat Thynge on 11/7/2022. (DAT) (Entered: 11/07/2022)
11/07/2022		ORAL ORDER: In view of the forthcoming federal holiday on Friday, November 11, 2022, the parties are reminded that letter briefs in the discovery dispute raised at D.I. 90 shall be due as follows: (1) Defendants' letter brief shall be due on 11/9/2022 by no later than 10:00 am; (2) Plaintiff's letter brief shall be due on 11/10/2022 by no later than 10:00 am. Courtesy copies shall be due in the Clerk's Office at the same time. All courtesy copies shall be **single sided**. Ordered by Judge Mary Pat Thynge on 11/7/2022. (DAT) (Entered: 11/07/2022)
11/07/2022	91	[SEALED] ANSWERING BRIEF in Opposition re 81 Daubert Motions and Motion for Summary Judgment, filed by MHL Custom, Inc..Reply Brief due date per Local Rules is 11/14/2022. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20)(Bennett, Blake) Modified on 11/7/2022 (nms). (Entered: 11/07/2022)
11/07/2022	92	CERTIFICATE OF SERVICE for Answering Brief in Opposition (D.I. 91), by MHL Custom, Inc.. (Bennett, Blake) Modified on 11/7/2022 (nms). (Entered: 11/07/2022)
11/07/2022	93	[SEALED] ANSWERING BRIEF in Opposition re 75 MOTION to Exclude the Testimony of Defendants' Expert, Philip Kline, Under Daubert, 79 MOTION for Partial Summary Judgment on Defendants' Lack of Standing Defense, 76 MOTION to to Exclude, In Part, the Testimony of Defendants' Expert, Dr. Michael Triantfyllou, under Daubert, 78 MOTION for Partial Summary Judgment of Infringement of the '044 Patent, 74 MOTION to Exclude, In Part, the Testimony of Defendants' Expert, Mark Lanterman, under Daubert, 77 MOTION for Partial Summary Judgment of No Invalidity, filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..Reply Brief due date per Local Rules is 11/14/2022. (Farnan, Kelly) Modified on 11/7/2022 (nms). (Entered: 11/07/2022)
11/07/2022	94	DECLARATION of Robert E. Colletti re 93 Answering Brief in Opposition, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibits 28, 29, 31, 34)(Farnan, Kelly) Modified on 11/7/2022 (nms). (Entered: 11/07/2022)
11/07/2022	95	[SEALED] EXHIBITS to 94 Declaration of Robert E. Colletti, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibits 27, 30, 32, 33)(Farnan, Kelly) Modified on 11/7/2022 (nms). (Entered: 11/07/2022)
11/09/2022	96	[SEALED] Letter to The Honorable Mary Pat Thynge, from Kelly E. Farnan, regarding discovery dispute (D.I. 90). (Attachments: # 1 Exhibits 1-4)(Farnan, Kelly) Modified on 11/9/2022 (nms). (Entered: 11/09/2022)

11/10/2022	97	[SEALED] Letter to The Honorable Mary Pat Thynge, from Blake A. Bennett, regarding Defendants' discovery request (D.I. 96). (Attachments: # 1 Exhibit 1) (Bennett, Blake) Modified on 11/10/2022 (nms). (Entered: 11/10/2022)
11/10/2022	98	CERTIFICATE of Service for Sealed Letter dated November 10 2022 (D.I. 97), by MHL Custom, Inc.. (Bennett, Blake) Modified on 11/10/2022 (nms). (Entered: 11/10/2022)
11/10/2022	99	NOTICE of Appearance by Andrew Ralli on behalf of MHL Custom, Inc. (Ralli, Andrew) (Entered: 11/10/2022)
11/14/2022	100	MOTION to Accept Filing in Excess of the Prescribed Page Limitations - filed by MHL Custom, Inc.. (Attachments: # 1 Proposed Order).(Bennett, Blake) Modified on 11/14/2022 (nms). Modified on 11/14/2022 (nms). (Entered: 11/14/2022)
11/14/2022		Motions No Longer Referred: The referral of D.I. 100 MOTION to Accept Filing in Excess of the Prescribed Page Limitations to Judge Thynge has been removed. This referral was set in error by CM/ECF. (nms) (Entered: 11/14/2022)
11/14/2022	101	[SEALED] REPLY BRIEF re 79 MOTION for Partial Summary Judgment on Defendants' Lack of Standing Defense, 76 MOTION to to Exclude, In Part, the Testimony of Defendants' Expert, Dr. Michael Triantfyllou, under Daubert, 75 MOTION to Exclude the Testimony of Defendants' Expert, Philip Kline, Under Daubert, 78 MOTION for Partial Summary Judgment of Infringement of the '044 Patent, 74 MOTION to Exclude, In Part, the Testimony of Defendants' Expert, Mark Lanterman, under Daubert, and 77 MOTION for Partial Summary Judgment of No Invalidity, filed by MHL Custom, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Bennett, Blake) Modified on 11/15/2022 (nms). (Entered: 11/14/2022)
11/14/2022	102	REDACTED VERSION of 93 Answering Brief in Opposition,,, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Bordley, Dorronda) (Entered: 11/14/2022)
11/14/2022	103	REDACTED VERSION of 95 Exhibit to a Document by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibit 27, 30, 32, 33)(Bordley, Dorronda) (Entered: 11/14/2022)
11/14/2022	104	REDACTED VERSION of 91 Answering Brief in Opposition, by MHL Custom, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19)(Bennett, Blake) Modified on 11/15/2022 (nms). (Entered: 11/14/2022)
11/14/2022	105	STIPULATION TO EXTEND TIME to File Public Versions to November 15, 2022 - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 11/14/2022)
11/14/2022	106	[SEALED] REPLY BRIEF re 81 MOTION for Summary Judgment DAUBERT Motions filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 11/14/2022)
11/14/2022	107	DECLARATION of Robert E. Colletti re 106 Reply Brief, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 11/14/2022 (nms). (Entered: 11/14/2022)

11/14/2022		SO ORDERED, re 105 STIPULATION and Proposed Order to Extend Time to file public version to November 15, 2022. Signed by Judge Richard G. Andrews on 11/14/2022. (nms) (Entered: 11/14/2022)
11/14/2022	108	[SEALED] EXHIBITS to 107 Declaration of Robert E. Colletti, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibits 35-37)(Farnan, Kelly) Modified on 11/14/2022 (nms). (Entered: 11/14/2022)
11/14/2022		Set Answering Brief Deadline re 100 MOTION to Accept Filing in Excess of the Prescribed Page Limitations. Answering Brief/Response due date per Local Rules is 11/28/2022. (nms) (Entered: 11/15/2022)
11/15/2022		Minute Entry for proceedings held before Judge Mary Pat Thynge - Telephonic Discovery Conference held on 11/15/2022. (Court Reporter Heidi Schoentube.) (DAT) (Entered: 11/15/2022)
11/15/2022	109	REDACTED VERSION of 96 Letter by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibit 1-4)(Bordley, Dorronda) (Entered: 11/15/2022)
11/15/2022	110	REDACTED VERSION of 97 Letter by MHL Custom, Inc.. (Bennett, Blake) (Entered: 11/15/2022)
11/17/2022	111	ORAL ORDER: The parties are in an unfortunate dispute over page lengths. Plaintiff filed an answering brief of 45 pages on November 7th. (D.I. 91). That was five pages too long. The parties tried to resolve the issue amicably, but that apparently has not worked out since Plaintiff has now filed a motion to extend the page limits. (D.I. 100). Defendant has filed a reply brief to the 45 page answering brief. (D.I. 106). It is going to oppose the extension of page limits. I would like to get this resolved sooner rather than later. Thus, I offer Defendant two options. One, Plaintiff can file a 40 page answering brief saying whatever it wants to say in the 40 pages, and Defendant can modify its reply brief as it sees fit. Two, I will accept the 45 page brief, and Defendant can either stand on the reply brief it has filed, or, if Defendant wants, it can file a 25 page reply brief in its place. If Defendant rejects both options, it should report that by tomorrow, and the deadline for filing its answering brief to the motion to extend page limits is also tomorrow. I will decide the motion without waiting for any reply brief from Plaintiff. Ordered by Judge Richard G. Andrews on 11/17/2022. (nms) (Entered: 11/17/2022)
11/18/2022	112	REDACTED VERSION of 106 Reply Brief by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 11/18/2022)
11/18/2022	113	REDACTED VERSION of 108 Sealed Exhibits, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibits 35-37)(Farnan, Kelly) Modified on 11/18/2022 (nms). (Entered: 11/18/2022)
11/18/2022	114	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding response to the Court's Oral Order (D.I. 111). (Farnan, Kelly) Modified on 11/18/2022 (nms). (Entered: 11/18/2022)
11/18/2022	115	ORAL ORDER: A hearing on the pending motions (D.I. 74 , 75 , 76 , 77 , 78 , 79 , 81) is now set for 1/4/2023, at 9:00 AM in Courtroom 6A. One week before the argument date the parties are to identify no more than three issues each that they want to argue. Ordered by Judge Richard G. Andrews on 11/18/2022. (nms) Modified on 11/18/2022 (nms). (Entered: 11/18/2022)

11/18/2022		CORRECTING ENTRY: The text for D.I. 115 has been corrected to reflect the correct year the hearing will be held in. (nms) (Entered: 11/18/2022)
11/18/2022	116	ORAL ORDER: The light of Defendants' response (D.I. 114) to the Court's Oral Order (D.I. 111) the Motion to Accept Filing in Excess of the Prescribed Page Limitations (D.I. 100) is GRANTED. Ordered by Judge Richard G. Andrews on 11/18/2022. (nms) (Entered: 11/18/2022)
11/18/2022	117	Official Transcript of Discovery Teleconference held on 11/15/2022 before Judge Hon. Mary Pat Thynge. Court Reporter/Transcriber Heidi Schoentube, Phone: 302-571-0510. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER Redaction Request due 12/9/2022. Redacted Transcript Deadline set for 12/19/2022. Release of Transcript Restriction set for 2/16/2023. (DAT) Modified on 12/2/2022 (DAT). (Entered: 11/18/2022)
11/21/2022		CORRECTING ENTRY: Entry previously filed as D.I. 118 was duplicative to D.I. 117 and has been removed. (nmg) (Entered: 11/21/2022)
11/21/2022	118	REDACTED VERSION of 101 Reply Brief, by MHL Custom, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Bennett, Blake) Modified on 11/21/2022 (nms). (Entered: 11/21/2022)
11/22/2022	119	MOTION for Pro Hac Vice Appearance of Attorney Patrick Lavery - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Bordley, Dorronda) (Entered: 11/22/2022)
11/22/2022		SO ORDERED, re 119 MOTION for Pro Hac Vice Appearance of Attorney Patrick Lavery, filed by Waydoo USA, Inc., Shenzhen Waydoo Intelligence Technology Co., Ltd.. Signed by Judge Richard G. Andrews on 11/22/2022. (nms) (Entered: 11/22/2022)
11/22/2022		Pro Hac Vice Attorney Patrick Lavery for Shenzhen Waydoo Intelligence Technology Co., Ltd. and Waydoo USA, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (mpb) (Entered: 11/22/2022)
12/01/2022	120	ORDER granting D.I. 90 MOTION for Discovery Teleconference; D.I. 96 MOTION to Compel. Signed by Judge Mary Pat Thynge on 12/1/2022. (DAT) Modified on 12/15/2022 (nms). (Entered: 12/01/2022)
12/06/2022	121	Emergency Motion to Stay the Court's December 1 Order - filed by MHL Custom, Inc.. (Attachments: # 1 Proposed Order)(Bennett, Blake) Modified on 12/6/2022 (nms). (Entered: 12/06/2022)
12/07/2022	122	RESPONSE to 121 Emergency Motion to Stay the Court's December 1 Order, filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 12/7/2022 (nms). (Entered: 12/07/2022)
12/07/2022	123	MOTION to Intervene - filed by Intellectual Property Insurance Services Corp. (Attachments: (12) Proposed Order)(Naylor, Joseph) Modified on 12/8/2022 (nms). Modified on 12/8/2022 (nms). Modified on 12/8/2022 (nms). (Entered: 12/07/2022)
12/07/2022	124	Letter to the Honorable Richard G. Andrews, dated 12/7/2022, from Joseph S. Naylor, regarding request for a stay of the Court's December 1, 2022, Order.

		(Attachments: # 1 Proposed Order)(Naylor, Joseph) Modified on 12/8/2022 (nms). (Entered: 12/07/2022)
12/08/2022		CORRECTING ENTRY: The brief and declarations with exhibits filed as attachments to the motion at D.I. 123 . Motions, briefs and declarations are to be filed independent of each other. Counsel is to refile the brief and declarations accordingly. (nms) (Entered: 12/08/2022)
12/08/2022		CORRECTING ENTRY: The motion filed at D.I. 123 has been unsealed. There is nothing in the caption of the filing directing that the motion is confidential or is intended to be under seal. The NEF for the filing has been regenerated. (nms) (Entered: 12/08/2022)
12/08/2022		(Court only) ***Motions terminated: 124 Letter to the Honorable Richard G. Andrews, dated 12/7/2022, from Joseph S. Naylor, regarding request for a stay of the Court's December 1, 2022, Order filed by Intellectual Property Insurance Services Corp. (nms) (Entered: 12/08/2022)
12/08/2022		CORRECTING ENTRY: D.I. 124 has been recoded and the docket text corrected to reflect the filing is a letter requesting a stay and not a motion. (nms) (Entered: 12/08/2022)
12/08/2022		CORRECTING ENTRY: The proposed objections filed as an attachment to the motion at D.I. 123 has been removed per the filer's request. The proposed objections will be refiled under seal. (nms) (Entered: 12/08/2022)
12/08/2022	125	[SEALED] MEMORANDUM in Support re 123 MOTION to Intervene filed by Intellectual Property Insurance Services Corp.Answering Brief/Response due date per Local Rules is 12/22/2022. (Attachments: # 1 Exhibit 1, # 2 Exhibit 1.1, # 3 Exhibit 1.2, # 4 Exhibit 1.3, # 5 Exhibit 2, # 6 Exhibit 3, # 7 Exhibit 3.1, # 8 Exhibit 3.2, # 9 Exhibit 3.3, # 10 Exhibit 3.4, # 11 Exhibit 3.5)(Naylor, Joseph) (Entered: 12/08/2022)
12/08/2022	126	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding Shenzhen Waydoo Intelligence Technology Co., Ltd.'s opposition to stay (D.I. 124). (Farnan, Kelly) Modified on 12/8/2022 (nms). (Entered: 12/08/2022)
12/08/2022	127	OBJECTIONS to 120 Order, by MHL Custom, Inc.. (Bennett, Blake) Modified on 12/9/2022 (nms). (Entered: 12/08/2022)
12/08/2022	128	DECLARATION re 127 Objections, by MHL Custom, Inc.. (Attachments: # 1 Exhibit A , # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Bennett, Blake) Modified on 12/9/2022 (nms). Modified on 12/9/2022 (nms). (Entered: 12/08/2022)
12/08/2022	129	ORDER denying D.I. 121 Emergency Motion to Stay. Signed by Judge Mary Pat Thynge on 12/8/2022. (DAT) (Entered: 12/08/2022)
12/14/2022	130	REDACTED VERSION of 125 MEMORANDUM in Support, by Intellectual Property Insurance Services Corp. (Attachments: # 1 Certificate of Service, # 2 Exhibit 1, # 3 Exhibit 1.1, # 4 Exhibit 1.2, # 5 Exhibit 1.3, # 6 Exhibit 2, # 7 Exhibit 3, # 8 Exhibit 3.1, # 9 Exhibit 3.2, # 10 Exhibit 3.3, # 11 Exhibit 3.4, # 12 Exhibit 3.5)(Naylor, Joseph) (Entered: 12/14/2022)
12/14/2022	131	[SEALED] Response to 127 Objections, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibits 1-3)(Farnan, Kelly) Modified on 12/14/2022 (nms). (Entered: 12/14/2022)

12/14/2022	132	NOTICE of Appearance by Kara R. Fussner on behalf of Intellectual Property Insurance Services Corp.. (Naylor, Joseph) Modified on 12/15/2022 (nms). (Entered: 12/14/2022)
12/14/2022	133	MOTION for Pro Hac Vice Appearance of Attorney Rudolph A. Telscher, Jr., Esq. - filed by Intellectual Property Insurance Services Corp. (Attachments: # 1 Certificate of Admission)(Naylor, Joseph) (Entered: 12/14/2022)
12/15/2022	134	ORAL ORDER: The redacted filing (D.I. 130) is REJECTED because parts of it are redacted in its entirety. Absent a compelling reason, supported by a statement under oath by a party, redactions in their entirety are impermissible; redactions must be done so as to redact the least possible amount of the materials submitted. Failure to make a good faith attempt at such redactions may result in sanctions, the most common of which would be simply unsealing the entire filing. Redacting in its entirety a document or even parts of it that contains publicly available materials is prima facie evidence of bad faith. A revised redacted filing is DUE within five business days. Ordered by Judge Richard G. Andrews on 12/15/2022. (nms) (Entered: 12/15/2022)
12/15/2022		(Court only) ***Attorney Kara Renee Fussner for Intellectual Property Insurance Services Corp added per D.I. 132 . (nms) (Entered: 12/15/2022)
12/15/2022		SO ORDERED, re 133 MOTION for Pro Hac Vice Appearance of Attorney Rudolph A. Telscher, Jr., Esq., filed by Intellectual Property Insurance Services Corp. Signed by Judge Richard G. Andrews on 12/15/2022. (nms) (Entered: 12/15/2022)
12/19/2022	135	REDACTED VERSION of 131 Response to Objections by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibit 1-3)(Bordley, Dorronda) (Entered: 12/19/2022)
12/21/2022	136	REDACTED VERSION of 125 MEMORANDUM in Support, by Intellectual Property Insurance Services Corp. (Attachments: # 1 Certificate of Service, # 2 Exhibit 1, # 3 Exhibit 1.1, # 4 Exhibit 1.2, # 5 Exhibit 1.3, # 6 Exhibit 2, # 7 Exhibit 3, # 8 Exhibit 3.1, # 9 Exhibit 3.2, # 10 Exhibit 3.3, # 11 Exhibit 3.4, # 12 Exhibit 3.5)(Naylor, Joseph) (Entered: 12/21/2022)
12/22/2022	137	[SEALED] RESPONSE to 123 MOTION to Intervene, filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 12/22/2022 (nms). (Entered: 12/22/2022)
12/22/2022	138	DECLARATION of Robert E. Colletti re 137 Response to Motion, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibit 1)(Farnan, Kelly) Modified on 12/22/2022 (nms). (Entered: 12/22/2022)
12/28/2022	139	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding Daubert and summary judgment arguments. (Farnan, Kelly) Modified on 12/28/2022 (nms). (Entered: 12/28/2022)
12/29/2022	140	REPLY BRIEF re 123 MOTION to Intervene filed by Intellectual Property Insurance Services Corp. (Naylor, Joseph) (Entered: 12/29/2022)
12/29/2022	141	REDACTED VERSION of 137 Response to Motion to Intervene, by Shenzhen Waydoo Intelligence Technology Co., Ltd.. (Bordley, Dorronda) Modified on 12/29/2022 (nms). (Entered: 12/29/2022)
01/03/2023	142	ORDER: Regarding construction of "passively stable" (see Order for further details). Signed by Judge Richard G. Andrews on 1/3/2023. (nms) (Entered:

		01/03/2023)
01/03/2023	143	NOTICE of Change of Address by Blake A. Bennett (Bennett, Blake) (Entered: 01/03/2023)
01/04/2023		Minute Entry for proceedings held before Judge Richard G. Andrews - Hearing on pending motions held on 1/4/2023. Counsel for Plaintiff: A. Ralli. Counsel for Defendants: K. Farnan, D. Bordley. Defendants are directed to submit their letter by the end of next week. (Court Reporter Heather Triozzi.) (lah) (Entered: 01/04/2023)
01/04/2023	144	REQUEST for Oral Argument by Intellectual Property Insurance Services Corp re 123 MOTION to Intervene. (Naylor, Joseph) (Entered: 01/04/2023)
01/13/2023	145	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding response to January 4, 2023 Motions Hearing. (Farnan, Kelly) Modified on 1/13/2023 (nms). (Entered: 01/13/2023)
01/17/2023	146	Letter to The Honorable Richard G. Andrews, from Blake A. Bennett, regarding response to Defendants January 13, 2023 letter (D.I. 145). (Bennett, Blake) Modified on 1/17/2023 (nms). (Entered: 01/17/2023)
01/19/2023	147	Official Transcript of Oral Argument held on 01/04/23 before Judge Richard G. Andrews. Court Reporter Heather M. Triozzi,Email: Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 2/9/2023. Redacted Transcript Deadline set for 2/21/2023. Release of Transcript Restriction set for 4/19/2023. (Triozzi, Heather) (Entered: 01/19/2023)
01/26/2023	148	ORAL ORDER: A hearing on the motion to intervene (D.I. 123) and the objections (D.I. 127) to the Magistrate's Order (D.I. 120) is now set for 2/17/2023, at 9:00 AM in Courtroom 6A. Ordered by Judge Richard G. Andrews on 1/26/2023. (nms) (Entered: 01/26/2023)
01/26/2023	149	NOTICE OF SERVICE of Defendants Requests for Admission Propounded to Plaintiff filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Bordley, Dorronda) (Entered: 01/26/2023)
01/26/2023	150	NOTICE OF SERVICE of MHL Custom Inc.'s Request for Admissions Propounded to Defendants filed by MHL Custom, Inc..(Bennett, Blake) (Entered: 01/26/2023)
02/01/2023		DEFICIENCY NOTICE issued by the Court to Plaintiff and Defendant Intellectual Property Insurance Services Corp.: Pursuant to Fed. R. Civ. P. 7.1 (b)(1), A party must: (1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court. Counsel is requested to supplement the docket with an appropriate Rule 7.1 Disclosure Statement. (nms) (Entered: 02/01/2023)
02/02/2023	151	Disclosure Statement pursuant to Rule 7.1: No Parents or Affiliates Listed filed by MHL Custom, Inc.. (Bennett, Blake) (Entered: 02/02/2023)
02/02/2023	152	Disclosure Statement pursuant to Rule 7.1: identifying Corporate Parent Intellectual Property Control Corporation for Intellectual Property Insurance Services Corp filed by Intellectual Property Insurance Services Corp. (Naylor, Joseph) (Entered: 02/02/2023)

02/03/2023	153	MEMORANDUM OPINION. Signed by Judge Richard G. Andrews on 2/3/2023. (nms) (Entered: 02/03/2023)
02/03/2023	154	ORDER: Summary judgment of infringement of the '044 Patent (D.I. 78) is DENIED; Summary judgment for the '044 Patent and '659 Patent not being invalid as anticipated by the Evolo Report (D.I. 77) is DENIED; Summary judgment for the '044 Patent and '659 Patent not being invalid as anticipated by MHLCustom's own products (D.I. 77) is DISMISSED as moot; Summary judgment for Defendants' lack of standing argument (D.I. 79) is DISMISSED as moot. Motion for Partial Summary Judgment is resolved as follows: Summary judgment for non-infringement of the '044 Patent and '659 Patent (D.I. 81) is DENIED; Summary judgment for claims 16-20 of the '659 Patent being invalid for lack of written description (D.I. 81) is GRANTED (see Order for further details). Signed by Judge Richard G. Andrews on 2/3/2023. (nms) (Entered: 02/03/2023)
02/03/2023	155	MEMORANDUM ORDER: The motion as to Defendants' computer/internet expert, Mark Lanterman (D.I. 74) is DENIED. The motion as to Defendants' damages expert, Philip Kline (D.I. 75) is DENIED. The motion as to Defendants' technical expert, Dr. Michael Triantafyllou (D.I. 76) is DENIED. Defendants' motions (D.I. 81) are GRANTED in part and DENIED in part (see Memorandum Order for further details). Signed by Judge Richard G. Andrews on 2/3/2023. (nms) (Entered: 02/03/2023)
02/03/2023	156	Corrected Disclosure Statement pursuant to Rule 7.1: identifying Corporate Parent Intellectual Property Control Corporation for Intellectual Property Insurance Services Corp filed by Intellectual Property Insurance Services Corp. (Naylor, Joseph) Modified on 2/6/2023 (nms). (Entered: 02/03/2023)
02/09/2023	157	MOTION for Pro Hac Vice Appearance of Attorney Jason Kanter - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Bordley, Dorronda) (Entered: 02/09/2023)
02/10/2023		SO ORDERED, re 157 MOTION for Pro Hac Vice Appearance of Attorney Jason Kanter, filed by Waydoo USA, Inc., Shenzhen Waydoo Intelligence Technology Co., Ltd.. Signed by Judge Richard G. Andrews on 2/10/2023. (nms) (Entered: 02/10/2023)
02/15/2023		Pro Hac Vice Attorney Jason A. Kanter for Shenzhen Waydoo Intelligence Technology Co., Ltd. and Waydoo USA, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (mpb) (Entered: 02/15/2023)
02/17/2023	158	ORDER Granting Motion to Intervene (D.I. 123): Upon consideration of non-party Intellectual Property Insurance Services Corporation's Motion to Intervene, said motion is GRANTED and movant is hereby granted leave to intervene, in this case for the limited purposes of objecting to Magistrate Judge Thynge's December 1,2022 Order, granting Defendants' motion to compel (D.I. 120) and asserting claims of privilegeover any documents at issue in said Order. Signed by Judge Richard G. Andrews on 2/17/2023. (nms) (Entered: 02/17/2023)
02/17/2023		Minute Entry for proceedings held before Judge Richard G. Andrews - Hearing on the motion to intervene and the objections to the Magistrate's Order held on 2/17/2023. Counsel for Plaintiff: A. Ralli, J. Naylor. Counsel for Defendants: D. Bordley. Defendants letter is due on 2/24/2023. (Court Reporter Heather Triozzi.) (lah) (Entered: 02/17/2023)

02/21/2023	159	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding expert testimony dispute (D.I. 155). (Farnan, Kelly) Modified on 2/21/2023 (nms). (Entered: 02/21/2023)
02/22/2023	160	ORAL ORDER: The parties submitted a letter about their dispute over Mr. Barrys testimony. (D.I. 159). Defendants request for exclusion is DENIED. Mr. Barry cannot testify that dynamic stability has any different definition than the one I have given it. Plaintiff says Mr. Barry will comply with that requirement. The parties disagree about the role of certain motion types oscillation, aperiodic motion, perhaps others in relation to dynamic stability. That is not a definitional dispute. The experts can debate that dispute and be cross-examined about it at trial. Ordered by Judge Richard G. Andrews on 2/22/2023. (nms) (Entered: 02/22/2023)
02/23/2023	161	STIPULATION and Proposed Order to Extend Time to submit letter responding to Motion to Intervene to February 27, 2023 - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 2/24/2023 (nms). (Entered: 02/23/2023)
02/24/2023		SO ORDERED, re 161 STIPULATION and Proposed Order to Extend Time to submit letter responding to Motion to Intervene to February 27, 2023. Signed by Judge Richard G. Andrews on 2/24/2023. (nms) (Entered: 02/24/2023)
02/24/2023	162	NOTICE OF SERVICE of Defendants' Notice Pursuant to 35 U.S.C. § 282 regarding U.S. Patent Nos. 9,359,044 and 9,586,659 filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..(Bordley, Dorronda) (Entered: 02/24/2023)
02/27/2023	163	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding response to the Court's questions at the motion to intervene hearing. (Farnan, Kelly) Modified on 2/27/2023 (nms). (Entered: 02/27/2023)
03/02/2023	164	ORDER: Waydoo may maintain a copy of MHL_0103530, but is instructed either todestroy or to return all electronic and hard copies of the other documents (see Order for further details). Signed by Judge Richard G. Andrews on 3/2/2023. (nms) (Entered: 03/02/2023)
03/02/2023		Remark: The documents submitted for in camera review under the cover of the letter at D.I. 163 have been destroyed per the filer's authority. (nms) (Entered: 03/02/2023)
03/02/2023		(Court only) ***Motions terminated: Objections (D.I. 127) to the Order at D.I. 120 has been terminated as resolved per the ruling at D.I. 164 . (nms) (Entered: 04/04/2023)
03/06/2023	165	[SEALED] MOTION in Limine No. 1 - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 3/6/2023 (nms). (Entered: 03/06/2023)
03/06/2023	166	[SEALED] MOTION in Limine No. 2 - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 3/6/2023 (nms). (Entered: 03/06/2023)
03/06/2023	167	[SEALED] MOTION in Limine No. 3 - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 3/6/2023 (nms). (Entered: 03/06/2023)
03/06/2023	168	EXHIBITS 1-5 to 166 MOTION in Limine No. 2, 165 MOTION in Limine No. 1, and 167 MOTION in Limine No. 3, by Shenzhen Waydoo Intelligence Technology

		Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 3/6/2023 (nms). (Entered: 03/06/2023)
03/06/2023	169	[SEALED] EXHIBITS 2-3 to 166 MOTION in Limine No. 2, 165 MOTION in Limine No. 1, and 167 MOTION in Limine No. 3, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 3/6/2023 (nms). (Entered: 03/06/2023)
03/06/2023		CORRECTING ENTRY: Plaintiff's Motions in Limine filed as a Reply Brief at D.I. 170 has been removed from the docket. The filing was made using an incorrect code. Plaintiff is to refile its motion in limine using a motion code. (nms) (Entered: 03/06/2023)
03/06/2023	172	[SEALED] Joint Pretrial Order, by MHL Custom, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10)(Bennett, Blake) Modified on 3/7/2023 (nms). (Entered: 03/06/2023)
03/07/2023		CORRECTING ENTRY: The motions in limine filed at D.I. 170 have been removed from the docket. Motions in limine are to be filed separately and any supporting documents (i.e. exhibits, declarations) are to be filed separate from the motion (see Scheduling Order at D.I. 19 , paragraph 14). (nms) (Entered: 03/07/2023)
03/07/2023		CORRECTING ENTRY: The letter and its attachments filed at D.I. 171 has been removed from the docket. The parties are to refile the Proposed Preliminary Jury Instructions, Proposed Final Jury Instructions, Proposed Voir Dire, Plaintiff's Proposed Verdict form, and Defendants' Proposed Verdict form. Each of those filings should be filed independent of the other. (nms) (Entered: 03/07/2023)
03/07/2023	173	Proposed Preliminary Jury Instructions, by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/7/2023 (nms). (Entered: 03/07/2023)
03/07/2023	174	Proposed Final Jury Instructions, by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/7/2023 (nms). (Entered: 03/07/2023)
03/07/2023	175	Proposed Jury Verdict Form, by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/7/2023 (nms). (Entered: 03/07/2023)
03/07/2023	176	Defendants' Proposed Jury Verdict Form, by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/7/2023 (nms). (Entered: 03/07/2023)
03/07/2023	177	Proposed Voir Dire by MHL Custom, Inc.. (Bennett, Blake) (Entered: 03/07/2023)
03/07/2023	178	[SEALED] MOTION in Limine No. 1 - filed by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/7/2023 (nms). Modified on 3/7/2023 (nms). (Entered: 03/07/2023)
03/07/2023	179	[SEALED] MOTION in Limine No. 2 - filed by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/7/2023 (nms). (Entered: 03/07/2023)
03/07/2023	180	[SEALED] MOTION in Limine No. 3 - filed by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/7/2023 (nms). (Entered: 03/07/2023)
03/07/2023	181	[SEALED] Exhibits to 178 MOTION in Limine No. 1, 179 MOTION in Limine No. 2, and 180 MOTION in Limine No. 3, by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/7/2023 (nms). (Entered: 03/07/2023)
03/07/2023	182	Official Transcript of Oral Argument held on 2/17/23 before Judge Richard G. Andrews. Court Reporter Heather M. Triozzi,Email:

		Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 3/28/2023. Redacted Transcript Deadline set for 4/10/2023. Release of Transcript Restriction set for 6/5/2023. (Triozzi, Heather) (Entered: 03/07/2023)
03/10/2023		Minute Entry for proceedings held before Judge Richard G. Andrews - Pretrial Conference held on 3/10/2023. Counsel for Plaintiff: A. Ralli. Counsel for Defendants: K. Farnan, D. Bordley. The parties are directed to resubmit the pretrial order incorporating the Courts rulings made at the hearing. (Court Reporter Heather Triozzi.) (lah) (Entered: 03/10/2023)
03/10/2023	183	Letter to the Honorable Richard G. Andrews, from Kelly E. Farnan, regarding Batnytt article. (Farnan, Kelly) Modified on 3/11/2023 (nms). (Entered: 03/10/2023)
03/13/2023	184	ORDER AFTER PRETRIAL CONFERENCE: The Proposed Pretrial Order (D.I. 172) was extensively discussed and will be ADOPTED as modified. A jury trial will begin on Friday, March 24, 2023, at 10:00 a.m. Each side is allowed 11.5 hours (see Order for further details and rulings). Signed by Judge Richard G. Andrews on 3/13/2023. (nms) (Entered: 03/13/2023)
03/13/2023	185	REDACTED VERSION of 165 MOTION in Limine No. 1 by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Bordley, Dorronda) (Entered: 03/13/2023)
03/13/2023	186	REDACTED VERSION of 166 MOTION in Limine *No. 2* by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Bordley, Dorronda) (Entered: 03/13/2023)
03/13/2023	187	REDACTED VERSION of 167 MOTION in Limine *No. 3* by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Bordley, Dorronda) (Entered: 03/13/2023)
03/13/2023	188	REDACTED VERSION of 169 Sealed Exhibits, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Bordley, Dorronda) Modified on 3/14/2023 (nms). (Entered: 03/13/2023)
03/13/2023	189	REDACTED VERSION of 178 MOTION in Limine No. 1 by MHL Custom, Inc.. (Bennett, Blake) (Entered: 03/13/2023)
03/13/2023	190	REDACTED VERSION of 179 MOTION in Limine No. 2 by MHL Custom, Inc.. (Bennett, Blake) (Entered: 03/13/2023)
03/13/2023	191	REDACTED VERSION of 180 MOTION in Limine No. 3 by MHL Custom, Inc.. (Bennett, Blake) (Entered: 03/13/2023)
03/13/2023	192	REDACTED VERSION of 181 Sealed Exhibits, by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/14/2023 (nms). (Entered: 03/13/2023)
03/13/2023	193	STIPULATION and [Proposed] Order Regarding Pretrial Conference Follow-up Submissions by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 03/13/2023)
03/14/2023	194	SO ORDERED Granting 193 Stipulation and Order establishing schedule for pretrial order submissions (see Order for further details). Signed by Judge Richard G. Andrews on 3/14/2023. (nms) (Entered: 03/14/2023)

03/14/2023	195	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding response to obviousness and indefiniteness arguments. (Attachments: # 1 Exhibit A)(Farnan, Kelly) Modified on 3/15/2023 (nms). (Entered: 03/14/2023)
03/15/2023	196	[SEALED] Letter to The Honorable Richard G. Andrews, from Andrew A. Ralli, regarding identifying items discussed at pretrial conference. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Ralli, Andrew) Modified on 3/16/2023 (nms). (Entered: 03/15/2023)
03/16/2023	197	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding response to March 10th pretrial conference instructions. (Farnan, Kelly) Modified on 3/16/2023 (nms). (Entered: 03/16/2023)
03/17/2023		REDACTION NOTICE: In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, redacted versions of sealed documents shall be filed electronically within 7 days of the filing of the sealed document. The records of this case do not reflect the filing of a redacted version of DI # 172 . (nms) (Entered: 03/17/2023)
03/17/2023	198	ORAL ORDER: The Court has considered the issues raised in the proposed pretrial order (D.I. 172 at 36-37 & 40-42) about whether Defendants have disclosed the Evolo Report alone as the basis for obviousness and the inverse relationship between stability and controllability as a basis for an indefiniteness finding. The Court has reviewed Defendants' letter (D.I. 195) and concludes that Defendants' expert's report discloses both invalidity defenses. Therefore, they remain among the defenses Defendants may assert at trial. Ordered by Judge Richard G. Andrews on 3/17/2023. (lah) (Entered: 03/17/2023)
03/17/2023	199	Letter to The Honorable Richard G. Andrews, from Andrew A. Ralli, regarding claims reduction. (Ralli, Andrew) Modified on 3/20/2023 (nms). (Entered: 03/17/2023)
03/20/2023	200	Letter to The Honorable Richard G. Andrews, from Andrew A. Ralli, regarding Plaintiff claims reduction. (Ralli, Andrew) Modified on 3/20/2023 (nms). (Entered: 03/20/2023)
03/20/2023	201	MEMORANDUM ORDER: Plaintiff's motion in limine (D.I. 180) is granted in part and denied in part. Likewise, Defendant's motion in limine (D.I. 167) is granted in part and denied in part (see Memorandum Order for further details). Signed by Judge Richard G. Andrews on 3/20/2023. (nms) (Entered: 03/20/2023)
03/21/2023	202	NOTICE of Change of Address by Joseph S. Naylor (Naylor, Joseph) (Entered: 03/21/2023)
03/21/2023	203	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding Defendants asserted defenses. (Farnan, Kelly) Modified on 3/21/2023 (nms). (Entered: 03/21/2023)
03/21/2023	204	Preliminary Jury Instructions (to be read in open court). (nms) (Entered: 03/21/2023)
03/21/2023	205	Voir Dire (to be read in open court). (nms) (Entered: 03/21/2023)
03/21/2023	206	REDACTED VERSION of 172 Joint Pretrial Order, by MHL Custom, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10) (Bennett, Blake) Modified on 3/21/2023 (nms). (Entered: 03/21/2023)

03/21/2023	207	Letter to Judge Andrews, from Andrew A. Ralli, regarding Plaintiffs response to Defendants March 21, 2023 letter on reduction of defenses (D.I. 203). (Ralli, Andrew) Modified on 3/22/2023 (nms). (Entered: 03/21/2023)
03/22/2023	208	Official Transcript of Pretrial Conference held on 3/10/23 before Judge Richard G. Andrews. Court Reporter Heather M. Triozzi,Email: Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 4/12/2023. Redacted Transcript Deadline set for 4/24/2023. Release of Transcript Restriction set for 6/20/2023. (Triozzi, Heather) (Entered: 03/22/2023)
03/23/2023	209	ORAL ORDER: At the pretrial conference, the Court ordered the parties to resubmit the pretrial order. (D.I. 208 at 4:5-10). The Court referred to the expected revised pretrial order separately in its own order after the pretrial conference. (D.I. 184). Trial starts tomorrow, but the Court is unaware of any revised pretrial order having been submitted. By the end of the day, the parties should either submit the revised pretrial order or submit a joint letter explaining why they have not done so. Ordered by Judge Richard G. Andrews on 3/23/2023. (nms) (Entered: 03/23/2023)
03/23/2023	210	Amended Final Proposed Pretrial Order, by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/23/2023 (nms). Modified on 3/24/2023 (nms). (Entered: 03/23/2023)
03/23/2023	211	EXHIBITS 1-8 to 210 Amened Proposed Final Pretrial Order, by MHL Custom, Inc.. (Bennett, Blake) Modified on 3/23/2023 (nms). (Entered: 03/23/2023)
03/24/2023	212	SO ORDERED as modified re 210 Amended Final Joint Pretrial Order. Signed by Judge Richard G. Andrews on 3/24/2023. (nms) (Entered: 03/24/2023)
03/24/2023		CORRECTING ENTRY: D.I. 210 has been unsealed per the filing at D.I. 212 . (nms) (Entered: 03/24/2023)
03/24/2023	213	Letter to The Honorable Richard G. Andrews, from Andrew A. Ralli, regarding parties meet and confer status. (Ralli, Andrew) Modified on 3/27/2023 (nms). (Entered: 03/24/2023)
03/24/2023		Minute Entry for proceedings held before Judge Richard G. Andrews - Jury Trial day 1 held on 3/24/2023. Local Counsel for Plaintiff: A. Ralli. Local Counsel for Defendant: K. Farnan. Jury selection held; preliminary jury instructions read. (Court Reporter Deanna Warner.) (lah) (Entered: 03/27/2023)
03/25/2023	214	Letter to Judge Andrews, from Kelly Farnan, regarding Waydoo's defenses (D.I. 213). (Farnan, Kelly) Modified on 3/27/2023 (nms). (Entered: 03/25/2023)
03/27/2023		REDACTION NOTICE: In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, redacted versions of sealed documents shall be filed electronically within 7 days of the filing of the sealed document. The records of this case do not reflect the filing of a redacted version of DI # 196 . (nms) (Entered: 03/27/2023)
03/27/2023		Minute Entry for proceedings held before Judge Richard G. Andrews - Jury Trial day 2 held on 3/27/2023. Local Counsel for Plaintiff: A. Ralli. Local Counsel for Defendant: K. Farnan. Opening statements made. Witnesses: Nicholas Leason, Zhao Tao by deposition, Jacob Langelaan, Steward Wagner. (Court Reporter Heather Triozzi.) (lah) (Entered: 03/28/2023)

03/28/2023	215	Proposed Final Jury Instructions, by MHL Custom, Inc. . (Bennett, Blake) Modified on 3/29/2023 (nms). (Entered: 03/28/2023)
03/28/2023		Minute Entry for proceedings held before Judge Richard G. Andrews - Jury Trial day 3 held on 3/28/2023. Local Counsel for Plaintiff: A. Ralli. Local Counsel for Defendant: K. Farnan. Witnesses: Christopher Barry, Wang Ping by deposition, Jeffrey Stec. (Court Reporter Heather Triozzi.) (lah) (Entered: 03/29/2023)
03/29/2023		Minute Entry for proceedings held before Judge Richard G. Andrews - Jury Trial day 4 held on 3/29/2023. Local Counsel for Plaintiff: A. Ralli. Local Counsel for Defendant: K. Farnan. Witnesses: Wang Ping, Kevin Wade, Mark Lanterman, Michael Triantafyllou, Phillip Kline. (Court Reporter Heather Triozzi.) (lah) (Entered: 03/30/2023)
03/30/2023		SECOND REDACTION NOTICE: In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, redacted versions of sealed documents shall be filed electronically within 7 days of the filing of the sealed document. The records of this case do not reflect the filing of a redacted version of DI # 196 . (nms) (Entered: 03/30/2023)
03/30/2023	216	REDACTED VERSION of 196 Letter, by MHL Custom, Inc.. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit)(Ralli, Andrew) (Entered: 03/30/2023)
03/30/2023		Minute Entry for proceedings held before Judge Richard G. Andrews - Jury Trial day 5 held on 3/30/2023. Local Counsel for Plaintiff: A. Ralli. Local Counsel for Defendant: K. Farnan. Witnesses: Phillip Kline, Christopher Barry. (Court Reporter Heather Triozzi.) (lah) (Entered: 03/31/2023)
03/31/2023	217	Final Jury Instructions (to be read into open court). (nms) (Entered: 03/31/2023)
03/31/2023	218	FINAL JURY VERDICT Form. (nms) (Entered: 03/31/2023)
03/31/2023	219	[SEALED] JURY VERDICT. (lah) (Entered: 03/31/2023)
03/31/2023	220	REDACTED VERSION of 219 Jury Verdict. (lah) (Entered: 03/31/2023)
03/31/2023		Minute Entry for proceedings held before Judge Richard G. Andrews - Jury Trial day 6 completed on 3/31/2023. Final jury instructions read; closing arguments made; deliberations; verdict. (Court Reporter Heather Triozzi.) (lah) (Entered: 03/31/2023)
03/31/2023	221	Exhibit List for Jury Trial held 3/24/2023 - 3/31/2023. (lah) (Entered: 03/31/2023)
04/03/2023		Case no longer referred to Chief Magistrate Judge Mary Pat Thynge. (nms) (Entered: 04/03/2023)
04/04/2023		(Court only) ***Set/Clear Flags (nms) (Entered: 04/04/2023)
04/04/2023	222	TRIAL VERDICT (see verdict for further details). Signed by Judge Richard G. Andrews on 4/4/2023. (nms) (Entered: 04/04/2023)
04/07/2023	223	Joint Letter to The Honorable Richard G. Andrews, from Andrew A. Ralli, regarding post trial motions. (Ralli, Andrew) Modified on 4/7/2023 (nms). (Entered: 04/07/2023)
04/11/2023	224	ORAL ORDER: The proposed schedule as set forth in D.I. 223 is APPROVED. The page limits for the briefing on the post-trial motions is limited to 20-20-10, not

		40-40-20. Ordered by Judge Richard G. Andrews on 4/11/2023. (nms) (Entered: 04/11/2023)
04/12/2023	225	PROPOSED Judgment on the Jury Verdict, by MHL Custom, Inc.. (Ralli, Andrew) Modified on 4/12/2023 (nms). (Entered: 04/12/2023)
04/12/2023	226	SO ORDERED Granting 225 JUDGMENT on the Jury Verdict. Signed by Judge Richard G. Andrews on 4/12/2023. (nms) (Entered: 04/12/2023)
04/17/2023		CORRECTING ENTRY: The motion to redact filed at D.I. 227 on 4/14/2023, has been removed from the docket per discussion between counsel and chambers. Counsel will refile an amended motion. (nms) (Entered: 04/17/2023)
04/17/2023	227	MOTION to Redact Trial Transcripts - filed by MHL Custom, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Proposed Order)(Ralli, Andrew) Modified on 4/17/2023 (nms). Modified on 4/28/2023 (nms). (Entered: 04/17/2023)
04/18/2023		DEFICIENCY NOTICE by the Court issued to MHL Custom, Inc. re 227 Sealed Motion to Redact Transcript. Upon review of the filing, it was determined it does not comply with Local Rule 5.2(b)(1). Plaintiff is requested to supplement the docket with a certificate of service for this motion. (nms) (Entered: 04/18/2023)
04/18/2023	228	CERTIFICATE OF SERVICE for Motion to Redact Trial Transcripts (D.I. 227), by MHL Custom, Inc.. (Ralli, Andrew) Modified on 4/18/2023 (nms). (Entered: 04/18/2023)
04/18/2023	229	ORAL ORDER: The motion to redact trial transcripts (D.I. 227) is DENIED. Ordered by Judge Richard G. Andrews on 4/18/2023. (nms) (Entered: 04/18/2023)
04/28/2023		Remark: The motion to seal (D.I. 227) has been unsealed per entry of the Order at D.I. 229 . (nms) (Entered: 04/28/2023)
05/02/2023	230	MOTION for Permanent Injunction - filed by MHL Custom, Inc.. (Attachments: # 1 Exhibit)(Ralli, Andrew) Modified on 5/3/2023 (nms). (Entered: 05/02/2023)
05/02/2023	231	MOTION for Attorneys' Fees and Expenses - filed by MHL Custom, Inc.. (Ralli, Andrew) Modified on 5/2/2023 (nms). Modified on 5/3/2023 (nms). (Entered: 05/02/2023)
05/02/2023	232	MOTION for Enhanced Damages - filed by MHL Custom, Inc.. (Ralli, Andrew) Modified on 5/2/2023 (nms). Modified on 5/3/2023 (nms). (Entered: 05/02/2023)
05/02/2023	233	MOTION for Supplemental and/or Ongoing Damages, and For Pre-Judgment and Post-Judgment Interest - filed by MHL Custom, Inc.. (Ralli, Andrew) Modified on 5/2/2023 (nms). Modified on 5/3/2023 (nms). (Entered: 05/02/2023)
05/02/2023	234	RENEWED Motion for Judgment as a Matter of Law and Motion for a New Trial - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Proposed Order)(Farnan, Kelly) Modified on 5/2/2023 (nms). (Entered: 05/02/2023)
05/02/2023	235	[SEALED] OPENING BRIEF in Support re 232 MOTION for Enhanced Damages, 233 MOTION for Supplemental and/or Ongoing Damages, and For Pre-Judgment and Post-Judgment Interest, 231 MOTION for Attorneys' Fees and Expenses, and 230 MOTION for Permanent Injunction, filed by MHL Custom, Inc..Answering Brief/Response due date per Local Rules is 5/16/2023. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6

		Exhibit, # 7 Exhibit)(Ralli, Andrew) Modified on 5/2/2023 (nms). (Entered: 05/02/2023)
05/02/2023	236	OPENING BRIEF in Support re 234 RENEWED Motion for Judgment as a Matter of Law and Motion for a New Trial, filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..Answering Brief/Response due date per Local Rules is 5/16/2023. (Farnan, Kelly) Modified on 5/2/2023 (nms). (Entered: 05/02/2023)
05/02/2023	237	CERTIFICATE OF SERVICE Motion for Entry of a Permanent Injunction (D.I. 230); Motion for Attorneys' Fees and Expenses (D.I. 231); Motion for Enhance Damages (D.I. 232); Motion for Supplemental and/or Ongoing Damages, and For Pre-Judgment and Post-Judgment Interest (D.I. 233), by MHL Custom, Inc. (Ralli, Andrew) Modified on 5/3/2023 (nms). (Entered: 05/02/2023)
05/03/2023		CORRECTING ENTRY: The motions filed at D.I. 230 , 231 , 232 , and 233 have been unsealed. The NEFs for the filings have been regenerated. (nms) (Entered: 05/03/2023)
05/15/2023		REDACTION NOTICE: In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, redacted versions of sealed documents shall be filed electronically within 7 days of the filing of the sealed document. The records of this case do not reflect the filing of a redacted version of DI # 235 . (nms) (Entered: 05/15/2023)
05/15/2023	238	REDACTED VERSION of 235 Opening Brief in Support, by MHL Custom, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7)(Ralli, Andrew) Modified on 5/15/2023 (nms). (Entered: 05/15/2023)
05/18/2023	239	Official Transcript of Jury Trial - Jury Selection held on 3/24/23 before Judge Richard G. Andrews. Court Reporter Deanna Warner,Email: Deanna_Warner@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 6/8/2023. Redacted Transcript Deadline set for 6/20/2023. Release of Transcript Restriction set for 8/16/2023. (Triozzi, Heather) (Entered: 05/18/2023)
05/18/2023	240	Official Transcript of Jury Trial held on 3/27/23 before Judge Richard G. Andrews. Court Reporter Heather M. Triozzi,Email: Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 6/8/2023. Redacted Transcript Deadline set for 6/20/2023. Release of Transcript Restriction set for 8/16/2023. (Triozzi, Heather) (Entered: 05/18/2023)
05/18/2023	241	Official Transcript of Jury Trial held on 3/28/23 before Judge Richard G. Andrews. Court Reporter Heather M. Triozzi,Email: Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 6/8/2023. Redacted Transcript Deadline set for 6/20/2023. Release of Transcript Restriction set for 8/16/2023. (Triozzi, Heather) (Entered: 05/18/2023)
05/18/2023	242	Official Transcript of Jury Trial held on 3/29/23 before Judge Richard G. Andrews. Court Reporter Heather M. Triozzi,Email: Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through

		the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 6/8/2023. Redacted Transcript Deadline set for 6/20/2023. Release of Transcript Restriction set for 8/16/2023. (Triozzi, Heather) (Entered: 05/18/2023)
05/18/2023	243	Official Transcript of Jury Trial held on 3/30/23 before Judge Richard G. Andrews. Court Reporter Heather M. Triozzi,Email: Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 6/8/2023. Redacted Transcript Deadline set for 6/20/2023. Release of Transcript Restriction set for 8/16/2023. (Triozzi, Heather) (Entered: 05/18/2023)
05/18/2023	244	Official Transcript of Jury Trial held on 3/31/23 before Judge Richard G. Andrews. Court Reporter Heather M. Triozzi,Email: Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 6/8/2023. Redacted Transcript Deadline set for 6/20/2023. Release of Transcript Restriction set for 8/16/2023. (Triozzi, Heather) (Entered: 05/18/2023)
06/07/2023	245	ANSWERING BRIEF in Opposition re 234 Renewed Motion for Judgment as a Matter of Law andMotion for a New Trial filed by MHL Custom, Inc..Reply Brief due date per Local Rules is 6/14/2023. (Ralli, Andrew) (Entered: 06/07/2023)
06/07/2023	246	[SEALED] ANSWERING BRIEF in Opposition re 232 Motion for Enhanced Damages, 233 Motion for Supplemental and/or Ongoing Damages, and For Pre-Judgment and Post-Judgment Interest, 231 Motion for Attorneys' Fees and Expenses, and 230 Motion for Permanent Injunction, filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..Reply Brief due date per Local Rules is 6/14/2023. (Attachments: # 1 Exhibit 2, # 2 Exhibit 4)(Farnan, Kelly) Modified on 6/7/2023 (nms). (Entered: 06/07/2023)
06/07/2023	247	EXHIBITS 1, 3, and 5 to 246 Answering Brief in Opposition, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 3, # 3 Exhibit 5)(Farnan, Kelly) Modified on 6/7/2023 (nms). (Entered: 06/07/2023)
06/07/2023	248	EXHIBITS 6-7 to 246 Answering Brief in Opposition, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibit 6, # 2 Exhibit 7)(Farnan, Kelly) Modified on 6/7/2023 (nms). (Entered: 06/07/2023)
06/14/2023	249	NOTICE of Constitutional Question by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc. (Attachments: # 1 Certificate of Service) (Bordley, Dorronda) (Entered: 06/14/2023)
06/21/2023	250	[SEALED] REPLY BRIEF re 232 MOTION for Enhanced Damages, 233 MOTION for Supplemental and/or Ongoing Damages, and For Pre-Judgment and Post-Judgment Interest, 231 MOTION for Attorneys' Fees and Expenses, and 230 MOTION for Permanent Injunction, filed by MHL Custom, Inc.. (Ralli, Andrew) Modified on 6/22/2023 (nms). (Entered: 06/21/2023)
06/21/2023	251	CERTIFICATE OF SERVICE of Plaintiffs Reply Brief in Support of its Post-Trial Motions for Permanent Injunction, Supplemental Damages, Ongoing Damages, Pre and Post Judgment Interest, Enhanced Damages and Attorneys Fees by MHL Custom, Inc. re 250 Reply Brief, (Ralli, Andrew) (Entered: 06/21/2023)

06/21/2023	252	REPLY BRIEF re 234 Renewed Motion for Judgment as a Matter of Law andMotion for a New Trial filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 06/21/2023)
06/23/2023	253	REDACTED VERSION of 246 Answering Brief in Opposition, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1 Exhibit 2, # 2 Exhibit 4)(Farnan, Kelly) (Entered: 06/23/2023)
06/26/2023	254	REQUEST for Oral Argument by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc. re 232 MOTION for Enhanced Damages, 233 MOTION for Supplemental and/or Ongoing Damages, and For Pre-Judgment and Post-Judgment Interest, 231 MOTION for Attorneys' Fees and Expenses, 230 MOTION for Permanent Injunction, 234 Renewed Motion for Judgment as a Matter of Law andMotion for a New Trial. (Farnan, Kelly) (Entered: 06/26/2023)
07/06/2023		REDACTION NOTICE: In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, redacted versions of sealed documents shall be filed electronically within 7 days of the filing of the sealed document. The records of this case do not reflect the filing of a redacted version of DI # 250 . (nms) (Entered: 07/06/2023)
07/06/2023	255	REDACTED VERSION of 250 Reply Brief, by MHL Custom, Inc.. (Ralli, Andrew) Modified on 7/6/2023 (nms). (Entered: 07/06/2023)
07/31/2023	256	NOTICE requesting Clerk to remove Dorronda R. Bordley as co-counsel. Reason for request: no longer with firm. (Bordley, Dorronda) (Entered: 07/31/2023)
08/01/2023		(Court only) *** Attorney Dorronda R. Bordley terminated. (nms) (Entered: 08/01/2023)
09/06/2023	257	MEMORANDUM OPINION. Signed by Judge Richard G. Andrews on 9/6/2023. (nms) (Entered: 09/06/2023)
09/06/2023	258	ORDER: Defendants' Motion for Renewed Judgment as a Matter of Law and Motion for a New Trial (D.I. 234) is DENIED. Signed by Judge Richard G. Andrews on 9/6/2023. (nms) (Entered: 09/06/2023)
09/07/2023	259	MEMORANDUM OPINION. Signed by Judge Richard G. Andrews on 9/7/2023. (nms) (Entered: 09/07/2023)
09/07/2023	260	ORDER: Plaintiffs Motion for Entry of a Permanent Injunction (D.I. 230) is DENIED; Plaintiffs Motion for Attorneys' Fees and Expenses (D.I. 231) is DENIED; Plaintiffs Motion for Enhanced Damages (D.I. 232) is DENIED. Plaintiffs Motion for Supplemental and/or Ongoing Damages, and for Pre-Judgment and Post-Judgment Interest (D.I. 233) is GRANTED-IN-PART and DENIED-IN PART. Plaintiffs motion for supplemental damages (D.I. 233) is GRANTED-IN-PART and DENIED-IN-PART. Plaintiff is entitled to supplemental damages from January 1, 2023 to April 12, 2023, the date of judgment. Plaintiff's motion for pre-judgment and post-judgment interest (D.I. 233) is GRANTED. Plaintiff's motion for ongoing damages (D.I. 233) is DISMISSED without prejudice. The Parties are instructed to see if they can reach an agreement on an ongoing royalty. Signed by Judge Richard G. Andrews on 9/7/2023. (nms) (Entered: 09/07/2023)
10/05/2023	262	NOTICE OF APPEAL to the Federal Circuit of 226 Judgment . Appeal filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) (Entered: 10/05/2023)

10/05/2023		APPEAL - Credit Card Payment received re 262 Notice of Appeal (Federal Circuit) filed by Waydoo USA, Inc., Shenzhen Waydoo Intelligence Technology Co., Ltd.. (Filing fee $505, receipt number ADEDC-4241860.) (Farnan, Kelly) (Entered: 10/05/2023)
10/06/2023		CORRECTING ENTRY: The Notice of Appeal filed at D.I. 261 has been removed from the docket as it was filed using an incorrect code. The Notice of Appeal as been correctly refiled at D.I. 262 . (nms) (Entered: 10/06/2023)
10/06/2023		Notification regarding 262 Notice of Appeal (Federal Circuit) sent to Reporter Triozzi (smg) (Entered: 10/06/2023)
10/06/2023		Notification regarding 262 Notice of Appeal (Federal Circuit) sent to Reporter Warner (smg) (Entered: 10/06/2023)
10/06/2023		Notice of Appeal and Docket Sheet to US Court of Appeals for the Federal Circuit re 262 Notice of Appeal (Federal Circuit). (smg) (Entered: 10/06/2023)
10/06/2023	263	BILL OF COSTS by MHL Custom, Inc.. (Bennett, Blake) (Entered: 10/06/2023)
10/06/2023	264	NOTICE requesting Clerk to remove Andrew A. Ralli as co-counsel. Reason for request: No longer with Cooch and Taylor, P.A.. (Bennett, Blake) (Entered: 10/06/2023)
10/06/2023		(Court only) *** Attorney Andrew Ralli terminated. (nms) (Entered: 10/06/2023)
10/12/2023	265	NOTICE of Docketing Record on Appeal from USCA for the Federal Circuit re 262 Notice of Appeal (Federal Circuit), filed by Waydoo USA, Inc., Shenzhen Waydoo Intelligence Technology Co., Ltd.. USCA Case Number 2024-1036. (nms) (Entered: 10/12/2023)
10/19/2023	266	OBJECTIONS to 263 Bill of Costs, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Farnan, Kelly) Modified on 10/19/2023 (nms). (Entered: 10/19/2023)
10/19/2023	267	TRANSCRIPT REQUEST by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc. for proceedings held on May 3, 2022 and March 10, 2023 before Judge Richard G. Andrews, (Farnan, Kelly) (Entered: 10/19/2023)
11/20/2023	268	Official Transcript of Markman Hearing held on 05/03/22 before Judge Richard G. Andrews. Court Reporter Heather M. Triozzi,Email: Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 12/11/2023. Redacted Transcript Deadline set for 12/21/2023. Release of Transcript Restriction set for 2/20/2024. (Triozzi, Heather) (Entered: 11/20/2023)
11/20/2023	269	Official Transcript of Pretrial Conference held on 03/10/23 before Judge Richard G. Andrews. Court Reporter Heather M. Triozzi,Email: Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 12/11/2023. Redacted Transcript Deadline set for 12/21/2023. Release of Transcript Restriction set for 2/20/2024. (Triozzi, Heather) (Entered: 11/20/2023)
01/03/2024	270	Unopposed Motion for Permission to Withdraw as Counsel - filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Attachments: # 1

		Certificate of Compliance, # 2 Proposed Order, # 3 Certificate of Service)(Farnan, Kelly) Modified on 1/4/2024 (nms). (Entered: 01/03/2024)
01/04/2024	271	ORDER: A hearing on the motion for permission to withdraw as counsel is now set for February 6, 2024, at 11:00 a.m. in Courtroom 6A of the J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, DE 19801. Richards, Layton & Finger, P.A. shall provide notice of the hearing to Defendants Waydoo USA, Inc. and Shenzhen Waydoo Intelligence Technology Co., Ltd.. Signed by Judge Richard G. Andrews on 1/4/2024. (nms) (Entered: 01/04/2024)
01/19/2024	272	MOTION for Entry of a Permanent Injunction or Alternative Motion to Alter or Amend the Prior Order Denying Plaintiff's Motion for a Permanent Injunction - filed by MHL Custom, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12)(Bennett, Blake) Modified on 1/22/2024 (nms). (Entered: 01/19/2024)
01/19/2024		Set Answering Brief Deadline re 272 MOTION for Entry of a Permanent Injunction or Alternative Motion to Alter or Amend the Prior Order Denying Plaintiff's Motion for a Permanent Injunction. Answering Brief/Response due date per Local Rules is 2/2/2024. (nms) (Entered: 01/22/2024)
01/25/2024	273	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding compliance with the Court's Jan. 4, 2024 Order (D.I. 271). (Attachments: # 1 Exhibit)(Farnan, Kelly) Modified on 1/25/2024 (nms). (Entered: 01/25/2024)
01/25/2024	274	Letter to The Honorable Richard G. Andrews, from Kelly E. Farnan, regarding request to extend deadline to respond to Motion for Permanent Injunction. (Farnan, Kelly) Modified on 1/25/2024 (nms). (Entered: 01/25/2024)
01/26/2024	275	Letter to Judge Andrews, from Blake A. Bennett, regarding response to Ms. Farnan's January 25, 2024 letter (D.I. 274). (Bennett, Blake) Modified on 1/26/2024 (nms). (Entered: 01/26/2024)
01/26/2024	276	ORAL ORDER: The deadline for Waydoos brief in opposition to the Motion for Permanent Injunction is extended to five minutes after I resolve the pending motion to withdraw (assuming I permit withdrawal) or until a date to be set (assuming I deny permission to withdraw). I note that the record to date appears to support the conclusion that Waydoo is a recalcitrant litigant in default of all its obligations related to this case. Ordered by Judge Richard G. Andrews on 1/26/2024. (nms) (Entered: 01/26/2024)
02/02/2024	277	ANSWERING BRIEF in Opposition re 272 MOTION for Entry of a Permanent Injunction or Alternative Motion to Alter or Amend the Prior Order Denying Plaintiff's Motion for a Permanent Injunction filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc..Reply Brief due date per Local Rules is 2/9/2024. (Gorman, John) (Entered: 02/02/2024)
02/02/2024	278	NOTICE of Appearance by John V. Gorman on behalf of Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc. (Gorman, John) (Entered: 02/02/2024)
02/02/2024	279	NOTICE of Appearance by Amy Michele Dudash on behalf of Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc. (Dudash, Amy) (Entered: 02/02/2024)
02/02/2024	280	NOTICE requesting Clerk to remove Edgar H. Haug, Robert E. Colletti, Jason Kanter, Mark Basanta, Roman Khasidov, Patrick Lavery and the law firm of Haug

		Partners LLP as co-counsel. Reason for request: no longer represents party. (Farnan, Kelly) (Entered: 02/02/2024)
02/02/2024	281	NOTICE OF SUBSTITUTION OF COUNSEL re Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.: Entry of appearance of attorney Amy Michele Dudash. Attorney Kelly E. Farnan, Esq. terminated. (Dudash, Amy) (Entered: 02/02/2024)
02/05/2024	282	Letter to Honorable Richard G. Andrews, from John V. Gorman, respectfully requesting cancellation of hearing regarding Unopposed Motion for Permission to Withdraw as Counsel. (Gorman, John) Modified on 2/5/2024 (nms). (Entered: 02/05/2024)
02/05/2024		(Court only) *** Attorney Edgar H. Haug; Jason A. Kanter; Roman Khasidov; Patrick Lavery; Mark Basanta and Robert E. Colletti terminated per D.I. 280 . (nms) (Entered: 02/05/2024)
02/05/2024		(Court only) *** Attorney Kelly E. Farnan terminated per D.I. 281 . (nms) (Entered: 02/05/2024)
02/05/2024	283	Letter to The Honorable Richard G. Andrews, from Blake A. Bennett, regarding response to Defendants' February 5, 2024 letter (D.I. 282). (Bennett, Blake) Modified on 2/5/2024 (nms). (Entered: 02/05/2024)
02/05/2024	284	ORAL ORDER: The Unopposed Motion for Permission to Withdraw as Counsel (D.I. 270) is DISMISSED as moot (see D.I. 278 , D.I. 279 , D.I. 281). The hearing scheduled for 2/6/2024, is CANCELED. The parties are to submit a joint status report by 2/20/2024. Ordered by Judge Richard G. Andrews on 2/5/2024. (nms) (Entered: 02/05/2024)
02/20/2024	285	JOINT Status Report, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Dudash, Amy) Modified on 2/20/2024 (nms). (Entered: 02/20/2024)
03/20/2024	286	ORAL ORDER: A joint status report is due no later than three (3) days from the date of this Order. Ordered by Judge Richard G. Andrews on 3/20/2024. (nms) (Entered: 03/20/2024)
03/25/2024	287	Joint Status Report, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Dudash, Amy) Modified on 3/25/2024 (nms). (Entered: 03/25/2024)
04/30/2024	288	USCA for the Federal Circuit Order Terminating Appeal as to 262 Notice of Appeal (Federal Circuit), filed by Waydoo USA, Inc., Shenzhen Waydoo Intelligence Technology Co., Ltd.. USCA Decision: The stay is lifted. The motion to dismiss is granted. Each party shall bear its own costs. (nms) (Entered: 04/30/2024)
05/16/2024	289	ORAL ORDER: A joint status letter is due no later than May 23, 2024. Ordered by Judge Richard G. Andrews on 5/16/2024. (nms) (Entered: 05/16/2024)
05/23/2024	290	Joint Letter to the Honorable Richard G. Andrews, from Amy M. Dudash, regarding status. (Dudash, Amy) Modified on 5/23/2024 (nms). (Entered: 05/23/2024)
05/23/2024	291	ORAL ORDER: The request to submit a further status report no later than 14 days from the submission date of D.I. 290 is GRANTED. Ordered by Judge Richard G. Andrews on 5/23/2024. (nms) (Entered: 05/23/2024)

06/06/2024	292	STIPULATED Proposed Order on Ongoing Royalties, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Dudash, Amy) Modified on 6/6/2024 (nms). (Entered: 06/06/2024)
06/06/2024	293	Joint Status Report, by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Dudash, Amy) Modified on 6/6/2024 (nms). (Entered: 06/06/2024)
06/06/2024	294	MANDATE of USCA as to 262 Notice of Appeal (Federal Circuit), filed by Waydoo USA, Inc., Shenzhen Waydoo Intelligence Technology Co., Ltd.. USCA Decision: In accordance with the judgment of this Court, entered April 30, 2024, and pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the formal mandate is hereby issued. (Attachments: # 1 Judgment)(nms) (Entered: 06/06/2024)
06/17/2024	295	SO ORDERED Granting 292 Stipulated Proposed Order on Ongoing Royalties. Signed by Judge Richard G. Andrews on 6/17/2024. (nms) (Entered: 06/17/2024)
07/01/2024	296	MEMORANDUM ORDER: Plaintiff's Motion for Entry of a Permanent Injunction or Alternative Motion to Alter or Amend the Prior Order Denying Plaintiff's Motion for a Permanent Injunction (D.I. 272) is DISMISSED AS MOOT (see Memorandum Order for further details). Signed by Judge Richard G. Andrews on 7/1/2024. (nms) (Entered: 07/01/2024)
07/01/2024		CASE CLOSED per entry of D.I. 296 . (nms) (Entered: 07/01/2024)
07/01/2024	297	Report to the Commissioner of Patents and Trademarks for Patent/Trademark Number(s) 9,359,044; 9,586,659. (Attachments: # 1 Judgment (D.I. 226), # 2 Memorandum Order (D.I. 296))(nms) (Entered: 07/01/2024)
07/16/2024	298	NOTICE OF APPEAL to the Federal Circuit of 160 Oral Order, 260 Order, 226 Judgment, 142 Order, 201 Memorandum and Order, 295 Order, 259 Memorandum Opinion, 153 Memorandum Opinion, 68 Order, 66 Memorandum Opinion, 258 Order, 257 Memorandum Opinion, 154 Order, 296 Memorandum and Order, 212 Order, and 155 Memorandum and Order. Appeal filed by Shenzhen Waydoo Intelligence Technology Co., Ltd., Waydoo USA, Inc.. (Dudash, Amy) Modified on 7/16/2024 (nms). (Entered: 07/16/2024)
07/16/2024		APPEAL - Credit Card Payment received re 298 Notice of Appeal (Federal Circuit), filed by Waydoo USA, Inc., Shenzhen Waydoo Intelligence Technology Co., Ltd.. (Filing fee $605, receipt number ADEDC-4452133.) (Dudash, Amy) (Entered: 07/16/2024)
07/17/2024		Notification regarding D.I. 298 Notice of Appeal (Federal Circuit), sent to Reporter Triozzi (oam) (Entered: 07/17/2024)
07/17/2024		Notification regarding D.I. 298 Notice of Appeal (Federal Circuit), sent to Reporter Warner (oam) (Entered: 07/17/2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC., Plaintiff, v. WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD, Defendant.	C.A. No. 21-0091-RGA

STIPULATED [PROPOSED] ORDER ON ONGOING ROYALTIES

WHEREAS, on March 31, 2023, following a six-day trial, the jury entered a verdict in favor of Plaintiff, MHL Custom, Inc. ("Plaintiff"), and against Defendants Waydoo USA Inc. and Shenzhen Waydoo Intelligence Technology Co., Ltd. ("Defendants") (collectively "the Parties"), finding that Defendants willfully infringed claims 1-2, 5 and 6 of Plaintiff's U.S. Patent No. 9,359,044, and claims 1-2 of Plaintiff's U.S. Patent No. 9,586,659 ("Patents-in-Issue"), and that Plaintiff was entitled to recover from Defendants damages of $1,334,000 at a royalty rate of $500 per Flyer, Flyer One and Flyer One Plus model eFoil unit sold in the United States ("Products at Issue").

WHEREAS, the Court entered the jury's verdict on April 4, 2023. (D.I. 222).

WHEREAS, the Court entered Judgment on the jury verdict on April 12, 2023. (D.I. 226).

WHEREAS, Defendants challenged the jury verdict and filed a renewed motion for judgment as a matter of law and for a new trial (D.I. 234), which the Court denied (D.I. 258), and also challenged Plaintiff's entitlement to ongoing damages (*see* D.I. 253 at 10-11).

WHEREAS, Plaintiff filed a post-trial motion seeking, *inter alia*, to recover ongoing royalty damages from Defendants for the continued sale of infringing products, post-judgment, in the amount of $500 per unit sold. (D.I. 233).

WHEREAS, the Court issued a Memorandum Opinion and Order on September 7, 2023, denying Plaintiff's motion for ongoing royalties, without prejudice. (D.I. 259)

WHEREAS, notwithstanding Defendants' position that ongoing royalties are inappropriate and should not be awarded in the instant action, the Court ordered the parties to see if they can reach agreement regarding an ongoing royalty (D.I. 260, ¶ 3) and stated that Plaintiff is free to file another motion for ongoing royalties if the parties are unable to come to an agreement (D.I. 259 at 13).

WHEREAS, the Parties stipulate that an ongoing royalty rate imposed by the Court in this case should be in an amount that mirrors the jury verdict in the instant action—namely, $500 per Product at Issue sold in the United States until such time as the Patents-at-Issue expire.

WHEREAS, the Parties' agreement is without prejudice to any future appeal.

WHEREAS, the Parties agree that Defendants have preserved all previously lodged challenges and objections to the jury's verdict, including the appropriateness of the royalty calculated by the jury, Plaintiff's entitlement to a reasonable royalty and the amount of any such royalty, as well as Defendants' challenges to the propriety of an ongoing royalty.

WHEREAS, the Parties agree that if the Federal Circuit determines on any appeal in this case, that all of the infringed claims of the Patents-in-Issue are invalid, that Defendants have not infringed both of the Patents-in-Issue, or the Federal Circuit vacates or reverses the jury verdict in whole or in part then this stipulation, and Plaintiff's entitlement to an ongoing royalty in the amount of $500 per Product at Issue sold, would be rendered moot. Except however, if the Federal

Circuit vacates or reverses the jury verdict and remands to the district court for further proceedings, and, after remand and any further proceedings at the district court, Waydoo is determined to be liable for infringement of one or more of the claims of the Patents-at-Issue, one or more of the infringed claims of the Patents-at-Issue are not found to be invalid, and the judgment regarding Plaintiff's entitlement to reasonable royalty damages and ongoing royalties remains intact, then this Stipulated Order will remain in effect under the terms set forth herein.

WHEREAS, subject to any rulings by the Federal Circuit or this Court, the parties reserve all rights to raise arguments relating to an ongoing royalty should the underlying jury verdict and/or judgment or orders as to reasonable royalties, ongoing royalties and/or ongoing damages in any form be reversed or vacated in whole or in part.

IT IS HEREBY ORDERED, subject to the terms and conditions agreed upon above, that Plaintiff shall be entitled to recover an ongoing royalty payment from Defendants in the amount of $500 per Product at Issue sold after April 12, 2023.

COOCH AND TAYLOR, P.A.

/s/Blake A. Bennett
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-and-

Dennis D. Murrell (KY 84017, *pro hac vice)*
Robert J. Theuerkauf (KY 89068, *pro hac vice)*

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Attorney for Plaintiff MHL Custom, Inc.

SO ORDERED this 17 day of June, 2024.

/s/ Richard G. Andrews
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC., Plaintiff, v. WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD, Defendants.	C.A. No. 21-0091-RGA

JUDGMENT ON THE JURY VERDICT

This 12th day of April 2023, the Court having held a jury trial, and the jury having rendered a verdict, pursuant to Fed. R. Civ. P. 58(b)(2), IT IS HEREBY ORDERED that:

Judgment of infringement is entered for Plaintiff MHL Custom, Inc. and against Defendants Waydoo USA, Inc. and Shenzhen Waydoo Intelligence Technology Co., Ltd., on the First and Second Claims for Relief of the Complaint, with respect to claims 1, 2, 5, and 6 of U.S. Patent No. 9,359,044 ("the '044 patent") and claims 1 and 2 of U.S. Patent No. 9,586,659 ("the '659 patent"), in the amount of $1,334,000, at a royalty rate of $500 per unit sold as of December 31, 2022, and Defendants Waydoo USA, Inc. and Shenzhen Waydoo Intelligence Technology Co., Ltd. were further found to have willfully infringed claims 1, 2, 5, and 6 of the '044 patent and claims 1 and 2 of the '659 patent.

Judgment is further entered for Plaintiff MHL Custom, Inc. and against Defendants Waydoo USA, Inc. and Shenzhen Waydoo Intelligence Technology Co., Ltd. on Counterclaims I (non-infringement), II (non-infringement), III (invalidity), and IV (invalidity) with respect to claims 1, 2, 5, and 6 of the '044 patent and claims 1 and 2 of the '659 patent.

This Judgment is subject to modification following the Court's consideration of the parties' post-trial motions.

IT IS SO ORDERED this 12th day of April, 2023.

/s/ Richard G. Andrews

The Honorable Richard G. Andrews

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC.,

Plaintiff,

v.

WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD.,

Defendants.

Civil Action No. 21-0091-RGA

MEMORANDUM OPINION

Blake A. Bennett, COOCH AND TAYLOR, P.A., Wilmington, DE; Dennis D. Murrell, Robert J. Theuerkauf, Brian P. McGraw, Megan E. Gibson, MIDDLETON REUTLINGER, Louisville, KY.

Attorneys for Plaintiff.

Kelly E. Farnan, Dorronda R. Bordley, RICHARDS, LAYTON & FINGER, P.A., Wilmington, DE; Edgar H. Haug, Robert E. Colletti, Mark Basanta, Roman Khasidov, HAUG PARTNERS LLP, New York, NY.

Attorneys for Defendants.

September 7, 2023

ANDREWS, UNITED STATES DISTRICT JUDGE:

Before me are Plaintiff MHL's post-trial motions. MHL seeks a permanent injunction (D.I. 230), attorneys' fees (D.I. 231), enhanced damages (D.I. 232), supplemental damages, ongoing damages, and pre- and post-judgment interest (D.I. 233). The motions have been fully briefed. (D.I. 235, 246, 250).

I. BACKGROUND

MHL filed suit against the Waydoo Defendants asserting infringement of U.S. Patent Nos. 9,359,044 (the "'044 patent") and 9,586,659 (the "'659 patent"). (D.I. 1). The asserted patents relate to a weight-shift controlled personal hydrofoil watercraft, often referred to as an eFoil. The asserted patents share a common specification.

I held a jury trial from March 24-31, 2023, on claims 1-2, 5, and 6 of the '044 patent and claims 1-2 of the '659 patent. The jury found the asserted claims to be valid and infringed, the infringement was willful, and MHL was entitled to a reasonable royalty of $500 per board (totaling $1,334,000 in damages). (D.I. 219). The parties have now filed post-trial motions.[1] MHL requests the following: (1) a permanent injunction; (2) supplemental damages and/or ongoing damages; (3) pre- and post-judgment interest; (4) enhanced damages; and (5) attorneys' fees. (D.I. 235 at 1-2).

II. PERMANENT INJUNCTION

A. Legal Standard

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." 35 U.S.C. § 283. "According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief." *eBay Inc. v.*

[1] Waydoo's post-trial motions are addressed in a separate opinion. (D.I. 257).

MercExchange, LLC, 547 U.S. 388, 391 (2006). "A plaintiff 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." *Id.*

"The essential attribute of a patent grant is that it provides a right to exclude competitors from infringing the patent." *Acumed LLC v. Stryker Corp.*, 551 F.3d 1323, 1328 (Fed. Cir. 2008).

B. Analysis

1. Judicial Estoppel

As an initial matter, Waydoo argues that the doctrine of judicial estoppel should prevent MHL from obtaining a permanent injunction. Waydoo cites MHL's closing argument when MHL said, "MHL's not trying to put Waydoo out of business, but is asking for fair compensation for their use of these patents. Just like Fliteboard is paying a fair compensation for the use of the patents." (D.I. 244 at 1126:19-22). Waydoo contends this statement amounts "to telling the jury [MHL] was not seeking [an injunction]." (D.I. 246 at 2). Waydoo argues MHL should be estopped from seeking a permanent injunction now because "[a] permanent injunction would, of course, put Waydoo out of business in the U.S." (*Id.*).

MHL argues that judicial estoppel is inappropriate. MHL contends that it never told the jury it was not seeking a permanent injunction and that the statement in its closing argument is not "irreconcilably inconsistent" with its motion seeking a permanent injunction now. (D.I. 250 at 2-3).

The doctrine of judicial estoppel bars a party that has previously asserted a legal position from asserting an inconsistent or contrary legal position in a later proceeding. *Oneida Motor*

Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 419 (3d Cir. 1988). The equitable remedy of judicial estoppel is applied to preserve the integrity of the system. Its focus is on the relationship between the litigant and the judicial system. *Id.* The elements of judicial estoppel are: (1) the party to be estopped is taking two irreconcilably inconsistent positions; (2) the party to be estopped has changed his or her position in bad faith; and (3) the use of judicial estoppel is tailored to address the harm identified and no lesser sanction would adequately remedy the damage done. *See Montrose Med. Group Participating Savings Plan v. Bulger*, 243 F.3d 773, 777-78 (3d Cir. 2001).

I agree with MHL that judicial estoppel is inappropriate here. The statements in MHL's closing argument came in the context of discussing what a reasonable royalty would be. (*See* D.I. 244 at 1125:23-1127:13). MHL was asking for a royalty rate of $550 per board, which is approximately the same amount Fliteboard was paying per board.[2] I do not think the statement, "MHL's not trying to put Waydoo out of business," amounts to a declaration that MHL was not seeking a permanent injunction. The issue of injunctive relief was not before the jury. (D.I. 212 at 6 ("The Court held that MHL shall not present any evidence to the jury related to its claims for fees, costs, or an injunction")). Therefore, I find that neither this statement, nor the comparison with Fliteboard, is irreconcilably inconsistent with seeking a permanent injunction.

Thus, I find the judicial estoppel does not apply here.

2. Irreparable Injury

"To prove irreparable injury, a patentee must show '1) that absent an injunction, it will suffer irreparable harm, and 2) that a sufficiently strong causal nexus relates the alleged harm to

[2] The Fliteboard Agreement used a royalty rate that was a percentage of the sale price, rather than a flat dollar amount per board. (D.I. 241 at 556:13-14 (Stec)). Based on Fliteboard's sales price, the dollar amount per board was approximately $550. (*See* D.I. 241 at 557:19-558:2, 559:14-560:3 (Stec)).

the alleged infringement.'" *Presidio Components, Inc. v. Am. Tech. Ceramics Corp.*, 875 F.3d 1369, 1383 (Fed. Cir. 2017) (cleaned up) (quoting *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1374 (Fed. Cir. 2012)). "To determine whether the patentee will suffer irreparable harm absent an injunction, the court may consider factors such as the nature of competition between the patentee and the infringer, the willingness of a patentee to license, and any lost sales the patentee has proven." *Presidio Components*, 875 F.3d at 1383.

a. Nature of Competition

Direct competition strongly suggests the potential for irreparable harm absent an injunction. *Id.* at 1363 (vacating denial of a permanent injunction based on finding no irreparable injury because the record showed "direct and substantial competition between the parties"); *see also Douglas Dynamics, LLC v. Buyers Prod. Co.*, 717 F.3d 1336, 1345 (Fed. Cir. 2013) ("Where two companies are in competition against one another, the patentee suffers the harm—often irreparable—of being forced to compete against products that incorporate and infringe its own patented inventions."). A patentee may establish irreparable harm by showing "that [the parties] were competitors and that [the patentee] lost market share while [the infringer] gained it." *See Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1338 (Fed. Cir. 2013) (upholding the district court's grant of a permanent injunction).

MHL argues that MHL and Waydoo are direct competitors and that MHL will be irreparably harmed by losing market share to Waydoo. (D.I. 235 at 3-5). MHL points out that Waydoo and MHL, at one time, had the same distributor and MHL retailers have stated they have lost sales to Waydoo. (*Id.* at 4). MHL contends that they have lost, and will continue lose, market

share to Waydoo. From 2018 to 2022, MHL's market share decreased from 100%[3] to 55%, and Waydoo's market share grew from 0% to 10-15%. (*See* D.I. 240 at 340:25-341:16 (Wagner)).

Waydoo contends that MHL and Waydoo are not direct competitors. Waydoo argues the two parties cannot be direct competitors as they "occupy different market segments because they sell eFoils at different price points." (D.I. 246 at 4). Waydoo argues the evidence regarding competition is lacking as only one distributor, Mr. Tamayo, is alleged to have represented that he lost MHL sales to Waydoo. (*Id.* at 5).

I find MHL and Waydoo are direct competitors. Mr. Wade, the North American distributor of Waydoo eFoils (D.I. 242 at 687:6-7), admitted there was some overlap in the market between the two companies. (*See id.* at 715:24-716:9 (Wade) (testifying both companies sell eFoils and there is "certainly some overlaps" between them in the market)). While Mr. Wade tried to distinguish the two companies' products by price point by analogizing Waydoo to selling Honda Civics and MHL to selling Ferraris (*id.* at 716:7-9 (Wade)), I do not think the different price points means they are not direct competitors. *See Douglas Dynamics*, 717 F.3d at 1344 (finding irreparable harm when analogizing patentee's product to a Mercedes and infringer's product to a Ford). I think what matters here is that MHL and Waydoo both market similar products through similar distribution channels and sellers with similar end users in mind. Therefore, I think the parties are direct competitors, which weighs in favor of MHL suffering an irreparable harm absent an injunction.

b. Willingness of Patentee to License

MHL has licensed the asserted patents to other competitors in the market, including Fliteboard, which has a larger market share than Waydoo. (D.I. 240 at 206:19-207:4 (Leason); *id.*

[3] At that time, MHL was the only manufacturer of eFoils.

at 340:25-341:16 (Wagner)). Mr. Leason, MHL's CEO, testified that MHL is open and willing to license the asserted patents to competitors. (*Id.* at 207:23-25 ("But, ultimately we agreed that a rising tide can raise all boats, right, and there was not much of a market."); 208:5-7 ("And so, it's perfectly fine to have a competitor out there. In fact, it makes you a better brand, you know, when you have somebody to compete with."); 212:6-7 ("I've always left that door open for the competitors.")). Mr. Leason's statements indicate that MHL would not suffer an irreparable harm by having Waydoo compete in the market.

MHL argues that licensing the asserted patents to other competitors in the market should not weigh against a permanent injunction because MHL only licensed to parties that "did not force MHL to spend significant money to litigate over the course of many years" and the parties "respected MHL's intellectual property and did the right thing." (D.I. 250 at 4).

I do not think the fact that MHL has only licensed to companies that MHL did not sue is a relevant distinction. To the contrary, I would think MHL's willingness to license the patents without requiring litigation would be evidence that licensing the patents is not an irreparable harm. "Litigation costs are undoubtedly undesirable and may take funds away from other endeavors, but they are not an irreparable harm in the injunction calculus." *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1337 (Fed. Cir. 2012). While MHL may justifiably feel that Waydoo disrespected its intellectual property, that is not an irreparable harm.

Therefore, I think MHL's willingness to license its patents, and the fact that it has licensed its patents to a bigger competitor in the market, weighs against finding that MHL would suffer an irreparable harm absent an injunction.

c. Lost Sales

MHL argues that it has and will lose sales to Waydoo. I do not think MHL has carried its burden in showing this. At trial, the jury awarded damages in the form of a reasonable royalty, not lost sales. (D.I. 219 at 4-5).[4] The only evidence MHL cites regarding lost sales is (1) its termination of its relationship with MacKite, a distributor, and (2) a statement Mr. Tamayo, another distributor, made to Dr. Stec. (D.I. 235 at 4).

MHL, however, chose to terminate its relationship with MacKite because MacKite started carrying Waydoo eFoils. (D.I. 241 at 569:5-11 (Stec)). I do not think MHL's decision to terminate its relationship with MacKite, as opposed to MacKite dropping MHL, is enough to show that it lost sales due to Waydoo infringing the asserted patents. There is also no evidence to quantify the number of sales MHL would have had if that relationship still existed. Likewise, the statement from Mr. Tamayo to Dr. Stec did not detail or quantify the number of sales MHL allegedly lost to Waydoo. (D.I. 241 at 626:22-627:24 (Stec)). Such allegations are not sufficient to demonstrate irreparable harm through lost sales.

MHL argues that it has lost, and will continue to lose, market share to Waydoo. MHL cites the growth of Waydoo's market share over the past four years and MHL's loss of market share over that same time as evidence. (D.I. 235 at 4). I am not persuaded. As MHL concedes, during that same time Fliteboard entered the market and has grown to occupy 25-30% of the market. The absence of a two-player market does not automatically negate irreparable harm, *Robert Bosch LLC, v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1151 (Fed. Cir. 2011), but it is still MHL's burden to show that Waydoo's infringement caused MHL's loss in market share. "As [MHL] and [Waydoo] are not the only competitors in this multi-supplier market, [Waydoo's] infringement has not necessarily

[4] MHL did not pursue a damages theory based on lost sales. (*See* D.I. 211, Ex. 3 at 10).

affected [MHL's] market position." *Belden Techs. Inc. v. Superior Essex Commc'ns LP*, 802 F. Supp. 2d 555, 577 (D. Del. 2011); *see also Wonderland Switzerland AG v. Evenflo Co., Inc.*, 2022 WL 2438750, at *3 (D. Del. July 5, 2022) (finding plaintiff did not show defendant's infringement caused plaintiff to lose market share when there were many additional competitors), *appeal docketed*, No. 23-1947 (Fed. Cir. July 27, 2023). Given that Waydoo markets its products at a significantly lower price point than MHL (D.I. 243 at 716:1-7 (noting there is about a $2000 difference between the cheapest MHL product and the most expensive Waydoo product) (Kline)), I do not think a sale made by Waydoo is automatically a sale lost by MHL.

Furthermore, even if MHL has lost some market share to Waydoo, MHL has lost a more substantial portion of the market to Fliteboard, one of its own licensees. As such, I do not think losing a smaller portion of the market to Waydoo is necessarily an irreparable harm.

Therefore, I do not think that MHL has met its burden in showing that Waydoo's infringement has caused MHL to lose market share or sales such that MHL would suffer an irreparable harm.

3. Remedies Available at Law

MHL raises two arguments for why remedies at law are inadequate. First, MHL argues it will continue to lose market share to Waydoo and money alone cannot compensate it for this loss. I disagree for the same reasons that I find MHL will not suffer an irreparable harm.

Second, MHL argues that an ongoing royalty is not an adequate remedy because Waydoo's accounting records are unreliable. MHL cites inconsistencies in Waydoo's accounting of the number of eFoils it sold and Mr. Ping's testimony that Waydoo's accounting records were "not very good." (D.I. 235 at 5-6, 6 n.2). I am not persuaded this makes damages an inadequate remedy. Mr. Ping testified there were accounting issues from 2018-2020. (D.I. 242 at 685:23-686:1). The

accounting issues appear to have ceased in 2020, three years ago. MHL does not cite anything to indicate these issues are ongoing or will emerge in the future. Therefore, I find that MHL has not shown that damages are inadequate to compensate for Waydoo's infringement.

4. Balance of Hardships and Public Interest

Given my conclusions regarding irreparable harm and the remedies available at law, I need not make any findings concerning the balance of hardships and public interest factors.

MHL's motion for a permanent injunction is denied.

C. SUPPLEMENTAL DAMAGES

The jury's award covered infringement up through December 31, 2022, the most recent date for which Waydoo had produced sales and financial records. (D.I. 235 at 9). MHL seeks supplemental damages at the $500 per board royalty determined by the jury for the period from January 1, 2023, to the entry of the permanent injunction. (*Id.*). I, however, have denied MHL's motion for a permanent injunction. Given that MHL has moved for ongoing royalties at the jury-determined royalty rate, I take MHL to be arguing for supplemental damages up until the date of judgment in the event I do not grant a permanent injunction or grant ongoing royalties.

Waydoo argues that MHL waived its ability to request supplemental damages by not presenting the issue to the jury. (D.I. 246 at 9). Waydoo further contends that awarding supplemental damages would violate its Seventh Amendment right to a jury trial. (*Id.*). Waydoo does not argue that MHL had any accounting by way of discovery from Waydoo of the eFoils sold after December 31, 2022. (*See id.* at 9-11).

I find that MHL is entitled to supplemental damages. First, awarding MHL supplemental damages does not violate Waydoo's Seventh Amendment right to a jury trial. "[T]he amount of supplemental damages following a jury verdict is a matter committed to the sound discretion of

the district court." *SynQor, Inc. v. Artesyn Techs., Inc.*, 709 F.3d 1365, 1384 (Fed. Cir. 2013) (rejecting defendants' argument that they had a right to a jury trial with respect to plaintiff's claim for supplemental damages); *see also Bayer Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 986-87 (Fed. Cir. 2021) (rejecting Seventh Amendment argument to find "the district court acted within its discretion in awarding supplemental damages" when it calculated pre-verdict supplemental damages by applying the jury's royalty rate to the actual infringing sales base).

Second, I do not think MHL waived its right to supplemental damages. In its reply brief, MHL cites its statement of legal issues for trial in the pretrial order, which recites,

> In addition, in the event that [MHL] prevails at trial, it will seek injunctive relief against further infringement and additional damages and/or an accounting for royalties accruing as a result of [Waydoo's] continuing infringement after September of 2022, the most recent date for which [Waydoo] ha[s] produced financial information in this case.

(D.I. 206-3, Ex. 3 at 11).[5] This issue was preserved in the pre-trial order. Since MHL was not seeking lump sum damages, I think MHL had no basis to ask for reasonable royalty damages for a time period for which, due to recency, it could not possibly present a royalty base. MHL has not waived its right to supplemental damages simply because the issue was not presented to the jury.

Therefore, I find that MHL is entitled to supplemental damages from January 1, 2023, to April 12, 2023, the date of the judgment (D.I. 226).

D. ONGOING DAMAGES

Waydoo argues that MHL waived its ability to request ongoing damages by not presenting the issue to the jury. Waydoo contends that awarding ongoing damages would violate its Seventh Amendment right to have a jury decide damages. I disagree.

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[5] It appears that shortly before trial Waydoo provided an update on what it had sold from August 2022 to December 2022. (D.I. 637:22-638:7 (Stec)). I assume that is why the pre-trial order differs from the trial testimony.

As noted above, this issue was included in the pre-trial order. (D.I. 206-3, Ex. 3 at 11). Therefore, MHL did not waive its right to ongoing damages. Furthermore, the Federal Circuit and this Court have held that "there is no Seventh Amendment right to jury trial for ongoing royalties." *Godo Kaisha IP Bridge 1 v. TCL Commc'n Tech. Holdings Ltd.*, 2019 WL 1877189, at *4 (D. Del. Apr. 26, 2019) (citing *Paice LLC v. Toyota Motor Corp.*, 504 F.3d 1293, 1315-16 (Fed. Cir. 2007)), *aff'd*, 967 F.3d 1380 (Fed. Cir. 2020). Therefore, I reject Waydoo's argument that it is unconstitutional to award ongoing damages.

It is within this Court's discretion to impose an ongoing royalty, but granting ongoing remedies is not automatic any time a permanent injunction is denied. *Paice*, 504 F.3d at 1314-15. While an ongoing royalty is not automatic, "the Federal Circuit has indicated that a prevailing patentee should receive compensation for any continuing infringement." *Vectura Ltd. v. GlaxoSmithKline LLC*, 2019 WL 4346502, at *6 (D. Del. Sept. 12, 2019) (quoting *Apple, Inc. v. Samsung Elecs. Co.*, 2014 WL 6687122, at *9 (N.D. Cal. Nov. 25, 2014)).

To determine the ongoing royalty rate, courts have used the *Georgia-Pacific* factors. "Generally, the jury's damages award is a starting point for evaluating ongoing royalties." *Apple, Inc.*, 2014 WL 6687122, at *14. In assessing ongoing royalties, I must consider (1) the "change in the parties' bargaining positions, and the resulting change in economic circumstances, resulting from the determination of liability," *Amado v. Microsoft Corp.*, 517 F.3d 1353, 1360 (Fed. Cir. 2008), (2) "changed economic circumstances, such as changes related to the market for the patented products," *XY, LLC v. Trans Ova Genetics*, 890 F.3d 1282, 1297 (Fed. Cir. 2018), and (3) any other "post-verdict factor" that would impact "what a hypothetical negotiation would look like after the prior infringement verdict." *Id.*

MHL argues I should award ongoing royalties at the jury-determined royalty rate: $500 per board. (D.I. 235 at 10). The only rationale MHL offers to support this is the fact that the jury's damages award is a starting point (*id.* (citing *Apple*, 2014 WL 6687122, at *14)) and that ongoing royalty rates are often higher than rates awarded at trial (*id.* (citing *Telcordia Techs., Inc. v. Cisco Sys., Inc.*, 2014 WL 1457797, at *4 (D. Del. Apr. 14, 2014)). Waydoo, however, points out a series of factual issues such as potential changes in the marketplace (e.g., new competitors, new products from MHL at lower price points, etc.), which would change the royalty on which the parties would agree. (D.I. 246 at 11).

I do not think that using the jury's royalty rate of $500 per board is appropriate just because the jury's damages award is a starting point and ongoing royalties are frequently higher. Case law advises to take into consideration "additional economic factors arising out of the imposition of an ongoing royalty." *Paice*, 504 F.3d at 1315; *see also Telcordia Techs.*, 2014 WL 1457797, at *4 ("However, the court must assess an ongoing royalty in light of relevant post-verdict economic circumstances.").

Given that an ongoing royalty only becomes a ripe issue once I deny the request for a permanent injunction, and that neither party has sufficiently addressed the relevant factors in their briefing, I am not now equipped to determine what an appropriate ongoing royalty ought to be. The Federal Circuit has advised that a prudent course of action is to first let the parties attempt to negotiate an ongoing royalty rate, and then the district court can weigh in if necessary. *Paice,* 504 F.3d at 1315. I think the parties are best positioned to negotiate a royalty. Therefore, I will dismiss MHL's motion for ongoing royalties without prejudice. The parties are directed to attempt to negotiate an ongoing royalty rate. If the parties are unable to come to an agreement, MHL is free to file another motion for ongoing royalties.

E. PRE- AND POST-JUDGMENT INTEREST

MHL seeks pre- and post-judgment interest on its damages.

Pre-judgment interest should be awarded "absent some justification for withholding such an award." *Gen. Motors Corp. v. Devex Corp.*, 461 U.S. 648, 657 (1983). Waydoo argues MHL should not be entitled to pre-judgment interest because MHL delayed filing suit by two years. (D.I. 246 at 11). Waydoo contends this two-year period is an undue delay as it caused Waydoo's damages to escalate. (*Id.* at 12 (citing *Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1362 (Fed. Cir. 2001))). I disagree.

Crystal Semiconductor does not stand for the rule that a two-year delay is an undue delay. The Federal Circuit rejected such an interpretation in *Kaufman v. Microsoft Corp.*, 34 F.4th 1360, 1375 (Fed. Cir. 2022). The Federal Circuit, instead, has advised that "to show that delay was undue, a defendant must, at least generally, show that it was prejudiced." *Id.* Waydoo has not presented any argument that it was prejudiced by the delay. Waydoo merely argues that its damages are higher due to the delay in filing the suit. (D.I. 246 at 12). Waydoo, however, does not contend that it would have mitigated its damages but for the delay. *Kaufman*, 34 F.4th 1375 (reversing the district court's decision to withhold pre-judgment interest when the only evidence of prejudice to the defendant was that it "could have," but not that it "would have," altered the infringing product to create a non-infringing alternative). Therefore, I find that MHL is entitled to pre-judgment interest.

MHL argues the interest rate and compounding period should be the prime rate, compounded quarterly. (D.I. 235 at 11). Waydoo does not argue for a different interest rate or

compounding period.[6] Therefore, I will award pre-judgment interest at the prime rate, compounded quarterly.[7]

Post-judgment interest is governed by 28 U.S.C. § 1961. Section 1961(a) provides, "Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment." Waydoo has not presented any argument as to why I should not assess post-judgment interest. Accordingly, I will award MHL post-judgment interest at the Treasury bill rate as defined in § 1961(a), compounded annually.

F. ENHANCED DAMAGES

1. Legal Standard

"[T]he court may increase the damages up to three times the amount found or assessed." 35 U.S.C. § 284. Enhanced damages are "designed as a 'punitive' or 'vindictive' sanction for egregious infringement behavior," which is "willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate." *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 103–04 (2016). Enhanced damages are "not to be meted out in a typical infringement case." *Id.* at 103. A jury's finding of willful infringement is a prerequisite to the

[6] Waydoo disputes the amount of damages on which the interest is assessed by contending the amount of damages awarded by the jury is against the clear weight of the evidence. (D.I. 246 at 12). Waydoo raises this issue in its motion for renewed judgment as a matter of law. (D.I. 234). I denied that motion. (D.I. 257 & 258).

[7] This is what I have done for a number of cases. *See Bayer Healthcare LLC v. Baxalta Inc.*, 2019 WL 4016235, at *7 n.9 (D. Del. Aug. 26, 2019) (collecting cases), *aff'd*, 989 F.3d 964 (Fed. Cir. 2021).

enhancement of damages but is not by itself sufficient. *Presidio Components, Inc. v. Am. Tech. Ceramics Corp.*, 875 F.3d 1369, 1382 (Fed. Cir. 2017).

Although not required, the court may consider the non-exclusive *Read* factors as part of its analysis. *Id.* at 1382–83 (citing *Read Corp. v. Portec, Inc.*, 970 F.2d 816 (Fed. Cir. 1992)). The *Read* factors include: (1) whether the infringer deliberately copied the ideas or design of another; (2) whether the infringer, when he knew of the other's patent protection, investigated the scope of the patent and formed a good-faith belief that it was invalid or that it was not infringed; (3) the infringer's behavior as a party to the litigation; (4) defendant's size and financial condition; (5) closeness of the case; (6) duration of defendant's misconduct; (7) remedial action by defendant; (8) defendant's motivation for harm; and (9) whether defendant attempted to conceal its misconduct. *Read*, 970 F.2d at 827.

For *Read* factor one, MHL argues there is direct evidence of copying "from the fact that Waydoo's first iteration . . . was a carbon copy of the patented product's design." (D.I. 250 at 9). MHL, however, does not cite to anything to support its assertion that the products are so alike that they must have been copied. MHL contends there is circumstantial evidence of copying based on the timeline for Waydoo forming a company and bringing its eFoil to market. (D.I. 235 at 13). I do not think this factor weighs in favor of enhancing damages. MHL essentially argues that Waydoo must have copied because there can be no other explanation for how Waydoo developed a complete eFoil ready for the market in seven months when it took MHL and Dr. Langelaan years to accomplish the same feat. (*Id.*). I do not think the record makes it more likely than not that Waydoo copied MHL's product.

For *Read* factor two, MHL argues that Waydoo did not have a good faith belief that the asserted patents were invalid or not infringed. MHL contends Waydoo's defenses are merely

"litigation-inspired" defenses. (*Id.* at 14). MHL further cites to the jury's finding of willful infringement. Waydoo contends that it had a good faith belief that the asserted patents were invalid as anticipated by the Evolo Report. (D.I. 246 at 14 (citing D.I. 246-2, Ex. 4, at 74:24-75:23)).[8] In view of the willful infringement verdict, I find this factor weighs in favor of enhancing damages.

For *Read* factor three, MHL contends that Waydoo's litigation was not reasonable because they presented arguments that "could be considered weak at best and borderline frivolous at worst." (D.I. 235 at 14). I disagree.

I do not think Waydoo's arguments were unreasonable or particularly weak. I denied MHL's motions for summary judgment that Waydoo infringed the '044 patent and that the asserted patents were not invalid as anticipated. (D.I. 154). I found genuine issues of material fact for both. MHL takes issue with the fact that Waydoo relied primarily on expert testimony for many of its arguments regarding obviousness and enablement. (D.I. 235 at 15-16). I do not think that alone makes Waydoo's arguments frivolous or its actions misconduct. I note that it is the norm in patent litigation to rely primarily upon expert testimony for such arguments.

Overall, I do not think Waydoo's conduct was unreasonable. Indeed, I think many of these issues were closer than how MHL portrays them. Therefore, I find this factor weighs against enhancing damages.

For *Read* factor four, MHL argues that Waydoo will not be jeopardized by enhancing damages as Waydoo does millions of dollars in revenue each year. Waydoo contends that MHL cites Waydoo's revenues, not its profits, and that its profits over the relevant period were approximately $900,000. (D.I. 246 at 18; D.I. 85-1 at 1024-25 of 1039). Waydoo argues that

[8] There was no testimony at trial about Waydoo's beliefs.

enhancing damages would jeopardize its financial well-being as the jury award ($1,334,000) by itself exceeds its profits. (D.I. 246 at 18).

This Court has looked beyond just profits when considering the fourth factor. *See TruePosition Inc. v. Andrew Corp.*, 568 F. Supp. 2d 500, 528 (D. Del. 2008) (considering a party's revenues and research expenditures). Even when it is shown that the defendant has not turned a profit, this factor is considered neutral. *Bio-Rad Lab'ys Inc. v. 10X Genomics, Inc.*, 2019 WL 3322322, at *10 (D. Del. July 24, 2019), *vacated on other grounds*, 967 F.3d 1353 (Fed. Cir. 2020). Waydoo has not cited any evidence to indicate that it would be jeopardized by an enhanced damages award. Given that Waydoo generates millions of dollars of revenue, has turned a profit, and may continue to sell products globally, I do not think Waydoo would be jeopardized by enhancing damages. Therefore, I find this factor slightly favors enhancing damages.

For *Read* factor five, MHL argues this case was not close as it prevailed on every issue presented to the jury. While MHL is correct that it prevailed at trial, I do not think that means this case was not close. As discussed in *Read* factor three, I do not think Waydoo's case was particularly weak. Therefore, I find this factor weighs against enhancing damages.

For *Read* factor six, MHL argues that Waydoo has been infringing for four years, including throughout this litigation. Waydoo does not address this factor. Because infringement has been ongoing for so long, I find this factor weighs in favor of enhancing damages. *See Vectura Ltd. v. GlaxoSmithKline LLC*, 2019 WL 4346502, at *4 (D. Del. Sept. 12, 2019) (finding infringement for "nearly three years, which includes a period of post-litigation infringement," favored enhancing damages).

For *Read* factor seven, MHL argues that Waydoo has not taken any remedial action. Waydoo does not address this factor. Therefore, I find this factor favors enhancement.

For *Read* factor eight, MHL concedes there is no motivation to harm. This factor is therefore neutral.

For *Read* factor nine, MHL argues Waydoo attempted to conceal its misconduct as Waydoo only produced one engineering report during discovery, despite Waydoo's head of research and development indicating that there were other reports. (D.I. 235 at 18). Waydoo argues that MHL is raising a discovery dispute for the first time and has not shown how it was harmed by it. (D.I. 246 at 19). Waydoo contends that it has been operating in the open (*id.*), which MHL does not dispute. Because Waydoo has been operating in the open, I find this factor weighs against enhanced damages. *See Vectura*, 2019 WL 4346502, at *5 (finding *Read* factor nine weighed against enhancement when it was not in dispute that the defendant operated in the open).

I find that MHL is not entitled to enhanced damages. The *Read* factors, on balance, do not favor enhancing damages. I do not think MHL has demonstrated that Waydoo's conduct warrants enhancing damages. Therefore, MHL's motion for enhanced damages is denied.

G. ATTORNEYS' FEES

1. Legal Standard

The Patent Act provides, "The court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285. Under the statute there are two basic requirements: (1) that the case is "exceptional" and (2) that the party seeking fees is a "prevailing party." The Supreme Court defined an "exceptional" case as "simply one that stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 545 (2014). "District courts may determine whether a case is 'exceptional' in the case-by-case exercise of their discretion,

considering the totality of the circumstances." *Id.* The Supreme Court has provided a non-exclusive list of factors for district courts to consider in deciding whether a case is exceptional, including frivolousness, deterrence, motivation, and objective unreasonableness in the factual and legal components of the suit. *Id.* at 554 n.6.

MHL refers to the same arguments it presented under the *Read* factors for enhanced damages. (D.I. 235 at 20 ("As discussed in connection with the enhanced damages argument, above, one could reasonably infer based on the result that this case was never close."); *id.* ("Finally, as to the last factor, which is the litigation behavior of [Waydoo], much of this analysis is presented above in connection with the enhanced damages request.")). As discussed above, I found this to be a close case. Waydoo did not engage in misconduct or unprofessional behavior. Therefore, MHL's motion for attorneys' fees is denied.

III. CONCLUSION

For the foregoing reasons, MHL's motion for pre- and post-judgment interest is GRANTED, MHL's motion for supplemental damages is GRANTED-IN-PART and DENIED-IN-PART, MHL's motion for ongoing royalties is DISMISSED without prejudice, MHL's motion for a permanent injunction is DENIED, MHL's motion for enhanced damages is DENIED, and MHL's motion for attorneys' fees is DENIED.

An appropriate order will issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 21-0091-RGA
	:	
WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD,	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

As part of the case dispositive motion briefing, both sides submitted various *Daubert* motions. (D.I. 74, 75, 76, 81).

The motion as to Defendants' computer/internet expert, Mark Lanterman (D.I. 74) is DENIED. His qualifications are not challenged. Rather, Plaintiff essentially challenges the correctness of his conclusions about the indexing of the EVOLO report and how easily the report could be found, calling the conclusions unreliable. Lanterman sufficiently explains the basis for his conclusions. What remains is simply the question of whether he got it right, which is not a basis to exclude.

The motion as to Defendants' damages expert, Philip Kline (D.I. 75) is DENIED. Plaintiff mostly bases its challenge on his qualifications to give opinions relating to competition and consumer demand in the relevant market. (D.I. 80 at 11). Defendants respond with citations to Kline's resume. (D.I. 93 at 8; *see* D.I. 85-1 at 1009 of 1039). Kline has an economics degree and works for an economics consulting firm. He has experience in patent valuation. He is sufficiently qualified to render the challenged opinions. There is a secondary challenge that he

factors in Defendants' expected (lack of) profits to his reasonable royalty opinion. Profits, or lack thereof, would be a consideration at the hypothetical negotiation, so Plaintiff's challenge is without merit.

The motion as to Defendants' technical expert, Dr. Michael Triantafyllou (D.I. 76) is DENIED. I expect at trial his testimony will follow the rules that he cannot combine multiple pieces of prior art to make an anticipation argument. The criticism that he contradicts himself is grounds for cross-examination, not exclusion. The criticism that he opines on the intent of individuals involved with the EVOLO report is not a significant *Daubert* challenge, and the briefing (D.I. 80 at 8, 18-19) is too cursory to even show whether he does this. It appears the statements are based on science, not mind reading. And, if I am wrong, Plaintiff can object at trial if Plaintiff thinks certain testimony is improper under the evidentiary rules. The argument that Dr. Triantafyllou should not be allowed to give legal conclusions that a claim is obvious or indefinite is simply an evidentiary objection. I note that such conclusions are routinely given in patent cases because they can be helpful to the jury.

Defendants' motions (D.I. 81) are GRANTED in part and DENIED in part.

Defendants challenge Plaintiff's technical expert on multiple issues. A number of them are connected to a claim construction dispute, which I am separately resolving. I expect Mr. Barry to testify consistent with that resolution.[1] There are a number of places where Defendants state that Mr. Barry makes errors or is confused. Even experts make errors; the truth of whether such is the case should be resolved through some combination of opposing expert testimony and cross-examination. If Defendants show errors, it will cut into Mr. Barry's credibility. Mr. Barry,

[1] The parties should meet and confer on this. If there are any issues that the parties cannot resolve, the parties should submit a letter identifying the dispute and proposing a resolution.

who is a technical expert, has no qualifications to testify about economic issues. Mr. Barry's opinions about commercial success are excluded.

Defendants challenge Plaintiff's damages expert, Dr. Jeffery Stec, on various grounds. As to the Fliteboard license, the criticisms do not make his use of the license unreliable, and Dr. Stec has a plausible case for economic comparability. The Fliteboard license did not settle litigation. And, as I understand it, litigation could not even have been instituted at the time the Fliteboard license was negotiated. Defendants' argument about economic comparability is not really about economic comparability (i.e., length of license, exclusivity, territory, etc.). It is about whether the license should be evaluated on a royalty rate based on percentage of sales price or a royalty rate based on a dollar amount per sales unit. It is for the jury to decide how convincing Dr. Stec's analysis is. The second issue concerns Dr. Stec's use of non-final agreements (and the negotiations about them to date). A non-final agreement is not a license. Thus, it also cannot be a comparable license. Thus, as things stand, the Manta and MSLR negotiations and putative licenses are excluded.

IT IS SO ORDERED this 3rd day of February 2023.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 21-0091-RGA
	:	
WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD,	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

I have considered Plaintiff's motion in limine regarding the admissibility of the Evolo videos and Evolo webpage (D.I. 180),[1] Defendants' motion in limine regarding the admissibility of Evolo videos (D.I. 167), and whether Plaintiff's expert Mr. Barry may testify that the Evolo videos demonstrate that the Evolo report is not enabling (D.I. 172 at 32-33). At the pre-trial conference I asked Plaintiff to identify four to six videos of the final two versions of the Evolo prototype, portions of Mr. Barry's report where he discusses those videos in the context of enablement, and where Mr. Barry or Dr. Triantafyllou, Defendants' expert, identifies which version of the Evolo prototype is in the video. (D.I. 194). I have considered Plaintiff's submission (D.I. 196) and Defendant's response (D.I. 197).

Plaintiff's motion in limine (D.I. 180) is granted in part and denied in part. Likewise, Defendants' motion in limine (D.I. 167) is granted in part and denied in part. I address each piece of evidence in turn.

[1] Plaintiff's motion in limine also sought to exclude the Swedish magazine, Båtnytt. (D.I. 180 at 2). I determined the magazine was admissible. (D.I. 184 at 2).

Evolo Video 1 (Bates No. WD004548)[2] is admissible. This video shows a trial run of what the expert witnesses call the "final Evolo prototype." (*See* D.I. 80-15, ¶ 233 (showing a picture of the "final Evolo prototype")). Mr. Barry cites to this video in his expert report. (D.I. 80-32, ¶¶ 92, 169-170). While neither Mr. Barry nor Dr. Triantafyllou specifically identify this video as showing the final Evolo prototype, the video sufficiently shows the watercraft such that one can identify it as the final Evolo prototype based on its appearance. Fed. R. Evid. 901(b)(4). This video is relevant, as Mr. Barry's report recites, "To the extent that Dr. Triantafyllou asserts that any of the prototypes of the Evolo Report are passively static stability (sic), the Evolo Report is not enabled." (D.I. 80-32, Ex. 30, ¶ 110, ¶ 186 (same for "passive stability")). Therefore, this video is admissible, and Mr. Barry may testify about what it shows with respect to whether the Evolo Report is enabling.

Evolo Video 2 (Bates No. WD004546)[3] is admissible. This video shows a trial run of "final Evolo prototype." (*See* D.I. 80-15, ¶ 233 (showing a picture of the "final Evolo prototype")). Dr. Triantafyllou identifies the video as "footage of the final Evolo prototype." (D.I. 80-15, ¶¶ 235 (identifying video with the url and Bates No.)). Mr. Barry cites to this video in his expert report. (D.I. 80-32, ¶¶ 92-93, 169-170). This video is relevant. Mr. Barry's report recites, "To the extent that Dr. Triantafyllou asserts that any of the prototypes of the Evolo Report are passively static stability (sic), the Evolo Report is not enabled." (D.I. 80-32, Ex. 30, ¶ 110, ¶ 186 (same for "passive stability")). Dr. Triantafyllou also cites to and discusses this video in his report. (D.I. 80-15, ¶¶

[2] A. Lundell, *Evolo prototype run,* YouTube.com (May. 5, 2009), https://www.youtube.com/watch?v=a-_OCN50aWo.

[3] Jakob Kuttenkeuler, *Evolo movie*, YouTube.com (Jun. 11, 2009), https://www.youtube.com/watch?v=zL9fO8tFl18.

235-36). Therefore, this video is admissible, and Mr. Barry and Dr. Triantafyllou may testify about it with respect to whether the Evolo Report is enabling.

Evolo Video 3 (Bates No. WD004565[4])[5] may be able to be used, and possibly admitted, during cross-examination of Dr. Triantafyllou.[6] Dr. Triantafyllou identifies this video as showing a trial run of the X8 prototype by comparing an image of the watercraft in the Evolo Report with a screenshot of the video. (D.I. 80-15, ¶¶ 224-226, 232). Dr. Triantafyllou discusses this video in his report. (*See, e.g.*, *id.*, ¶ 226). Plaintiff concedes that this video is not referenced in Mr. Barry's report. (D.I. 196 at 2). Therefore, Mr. Barry may not testify about it.

Evolo Video 4 (Bates No. WD004544)[7] may be able to be used, and possibly admitted, during cross-examination of Dr. Triantafyllou. Dr. Triantafyllou identifies this video as showing a trial run of the X8 prototype. (D.I. 80-15, ¶ 232 ("I believe that the prototypes depicted in these videos were of the X8, given the similarities between the photograph on page 420 of the report and the videos.")). Dr. Triantafyllou discusses this video in his report. (*See, e.g.*, *id.*, ¶ 226).

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[4] Plaintiff identifies this video with Bates No. WD004565 in its letter. (D.I. 196 at 3). Exhibit C to Plaintiff's letter (D.I. 196-3) lists this entry as WD004563, but also has two entries with that same Bates No. (*See* D.I. 196-3, Ex. C at 2). I believe the correct Bates No. is WD004565 as Dr. Triantafyllou identifies a video at the same url using that Bates No. (D.I. 80-15, ¶¶ 226).

[5] A. Lundell, *Project Evolo*, YouTube.com (Jan. 22, 2009), https://www.youtube.com/watch?v=W45pdr9_B9c.

[6] For Evolo Videos 3 and 4, I will not be able to tell whether Plaintiff will be able to use the videos in cross-examination until I have heard Dr. Triantafyllou's direct examination. If Plaintiff thinks the direct examination permits such cross-examination, Plaintiff is going to need to bring that up with me at the time and get my express permission before any use of the two videos.

[7] A. Lundell, *evolo experiment 4*, YouTube.com (Dec. 1, 2008), https://www.youtube.com/watch?v=thgdqujzzNc.

Plaintiff concedes that this video is not referenced in Mr. Barry's report. (D.I. 196 at 2). Mr. Barry may not testify about it.

Evolo Video 5 (Bates No. WD004549),[8] Evolo Video 6 (Bates No. WD004552),[9] and Evolo Video 7 (Bates No. WD004558)[10] are not admissible. Neither Mr. Barry nor Dr. Triantafyllou cite to these videos in their reports or purport to identify which Evolo prototypes are shown in the videos. The videos do not show enough of the watercraft to visually identify which watercraft is being tested. Therefore, the videos are not admissible because there is insufficient evidence "to support a finding that the item is what the [Plaintiff] claims it is." Fed. R. Evid. 901(a). Even if Plaintiff could identify the watercrafts, unless the watercrafts could be identified as the X8 or final Evolo prototype, I would exclude the videos as irrelevant, and, in the alternative, because any probative value is substantially outweighed by the risk of confusion from the introduction of videos of earlier versions of the prototype. *See* Fed. R. Evid. 403. I do not see how the performance of earlier versions of the Evolo prototype are relevant to addressing Defendants' anticipation or obviousness defenses when the Evolo Report discloses improvements in the form of subsequent prototypes.

I find the screenshot of the webpage (D.I. 196-4, Ex. D) referencing the Evolo Report is admissible for limited purposes. Defendants may use the webpage as evidence that the Evolo Report was publicly accessible prior to the priority date of Plaintiff's patents.

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[8] Joacimwe, *Evolo student project*, YouTube.com (Oct. 23, 2008), https://www.youtube.com/watch?v=3vcR4d8hAB0.

[9] Mikael Razola, *Evolo*, YouTube.com (Oct. 30, 2008), https://www.youtube.com/watch?v=wPO8wgPYhQc.

[10] Mikael Razola, *Evolo*, YouTube.com (Oct. 30, 2008), https://www.youtube.com/watch?v=K4pf0CFNDHU.

The statement on the webpage referring to the Evolo prototype as having an "inherently unstable nature" is admissible for addressing Defendants' obviousness defense. (D.I. 196-4, Ex. D). This statement is relevant to whether a person of ordinary skill in the art (POSA) would be motivated to modify the Evolo Report to create a stable eFoil. (D.I. 80-32, ¶¶ 110, 186). In this context, the statement is not hearsay as it is not being offered for the truth of the matter asserted – that Evolo is inherently unstable – but instead that a POSA would be discouraged from using Evolo to make a stable watercraft due to the existence of that statement.

The "inherently unstable nature" statement on the webpage is inadmissible for addressing Defendants' anticipation defense. In this context, the statement is being offered to prove the truth of the matter asserted – that Evolo is inherently unstable. This is classic hearsay. Plaintiff argues the webpage constitutes an exception to the hearsay rule as the statement in it is a present sense impression. (D.I. 196 at 4 (citing Fed. R. Evid. 803(1)). I disagree. There is no evidence that the statement on the webpage was made "while or immediately after the declarant perceived it." Fed. R. Evid. 803(1). Therefore, the statement is inadmissible hearsay when used as evidence to address Defendants' anticipation defense.

Plaintiff's and Defendants' motions in limine (D.I. 167; D.I. 180) are now RESOLVED.

United States District Judge

3/20/23

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC.,

Plaintiff,

v.

WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD.,

Defendants.

Civil Action No. 21-91-RGA

MEMORANDUM ORDER

Before me is Plaintiff's "Motion for Entry of a Permanent Injunction or Alternative Motion to Alter or Amend the Prior Order Denying Plaintiff's Motion for a Permanent Injunction." (D.I. 272).

Plaintiff filed several post-verdict motions, including a motion for permanent injunction (D.I. 230) and a motion for supplemental and/or ongoing damages (D.I. 233). On September 7, 2023, I issued an order denying the former and granting the latter motion. (D.I. 260; *see* D.I. 259). I further instructed the parties to reach an agreement on an ongoing royalty. (D.I. 260).

On January 19, 2024, Plaintiff filed this motion following a lack of cooperation from Defendants in engaging in royalty negotiations that largely stemmed from Defendants' unresponsiveness to their own counsel. (*See* D.I. 272 at 6–9; *see also* D.I. 273; D.I. 274). On February 2, 2024, Defendants filed a Notice of Substitution of Counsel (D.I. 281), along with an answering brief to the present motion (D.I. 277). The parties subsequently resumed discussions (*see* D.I. 285, 287, 290, 293), eventually leading to a stipulation on ongoing royalties (D.I. 292) that I granted on June 17, 2024 (D.I. 295). As the parties have now reached an agreement on a

royalty rate, I no longer see a need to adjudicate the present motion.[1] Plaintiff's argument for a permanent injunction was based on Defendants' "refusal to cooperate and to pay an ongoing royalty." (D.I. 272 at 11). Defendants have now cooperated and agreed to pay an ongoing royalty. The motion (D.I. 272) is DISMISSED AS MOOT.

IT IS SO ORDERED.

Entered this 1st day of July, 2024

Richard G. Andrews
United States District Judge

[1] Plaintiff never filed a reply brief, which is further indication the motion has been rendered moot.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC., Plaintiff, v. WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD., Defendants.	Civil Action No. 21-0091-RGA

MEMORANDUM OPINION

Blake A. Bennett, COOCH AND TAYLOR, P.A., Wilmington, DE; Dennis D. Murrell, Robert J. Theuerkauf (argued), Brian P. McGraw (argued), Megan E. Gibson, MIDDLETON REUTLINGER, Louisville, KY.

Attorneys for Plaintiff.

Kelly E. Farnan, Dorronda R. Bordley, RICHARDS, LAYTON & FINGER, P.A., Wilmington, DE; Edgar H. Haug, Robert E. Colletti (argued), Mark Basanta, Roman Khasidov, HAUG PARTNERS LLP, New York, NY.

Attorneys for Defendants.

February 2, 2023

ANDREWS, UNITED STATES DISTRICT JUDGE:

Before me are Plaintiff MHL Custom's ("MHL") and Defendants Waydoo USA's and Shenzhen Waydoo Intelligence Technology's (collectively, "Waydoo") motions for partial summary judgment. The parties have fully briefed the motions. (D.I. 80, 83, 91, 93, 101, 106). I heard oral argument on January 4, 2023.

I. BACKGROUND

Plaintiff alleges that Defendants infringe two of Plaintiff's patents. Those patents are U.S. Patent Nos. 9,359,044 (the, "'044 Patent") and 9,586,659 (the, "'659 Patent") (collectively, the "Asserted Patents"). The Asserted Patents relate to a personal hydrofoil watercraft. The Asserted Patents share a common specification.

Plaintiff asserts that Defendants' products infringe all claims of the '044 Patent (claims 1-22) and '659 Patent (claims 1-20). Defendants counterclaimed. (D.I. 13). The parties agree claim 1 of the '044 Patent and claims 1 and 16 of the '659 Patent are representative of the other claims for purposes of the pending motions.[1]

Plaintiff has moved for summary judgment of (1) direct infringement of claim 1 of the '044 Patent, (2) the '044 Patent and '659 Patent are not anticipated, and (3) Plaintiff has standing. (D.I. 77, 78, 79). Defendants have moved for summary judgment of (1) claims 16-20 of the '659 Patent are invalid for lack of written description, (2) non-infringement of the '044 Patent, and (3) non-infringement of claims 1-15 of the '659 Patent. (D.I. 81).

[1] These three claims are the independent claims in the two patents. For purposes of the pending motions, Parties agree that the other elements of the dependent claims are met and only dispute as to whether all the claim elements as listed in the three independent claims are infringed by Defendants' products.

II. LEGAL STANDARD

"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). Material facts are those "that could affect the outcome" of the proceeding. *Lamont v. New Jersey*, 637 F.3d 177, 181 (3d Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "[A] dispute about a material fact is 'genuine' if the evidence is sufficient to permit a reasonable jury to return a verdict for the nonmoving party." *Id.* The burden on the moving party may be discharged by pointing out to the district court that there is an absence of evidence supporting the non-moving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

The burden then shifts to the non-movant to demonstrate the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); *Williams v. Borough of West Chester*, 891 F.2d 458, 460–61 (3d Cir. 1989). A non-moving party asserting that a fact is genuinely disputed must support such an assertion by: "(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials; or (B) showing that the materials cited [by the opposing party] do not establish the absence . . . of a genuine dispute . . . ." FED. R. CIV. P. 56(c)(1). The non-moving party's evidence "must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance." *Williams*, 891 F.2d at 460–61.

When determining whether a genuine issue of material fact exists, the court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Scott v. Harris*, 550 U.S. 372, 378 (2007); *Wishkin v. Potter*, 476 F.3d 180,

184 (3d Cir. 2007). If the non-moving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. *See Celotex*, 477 U.S. at 322.

III. DISCUSSION

A. INFRINGEMENT OF CLAIMS 1-15 OF THE '659 PATENT

Defendants have moved for summary judgment on non-infringement of claims 1-15 of the '659 Patent (D.I. 80 at 20-26; D.I. 83 at 29-32). The dispute focuses on whether Defendants infringe claim 1 of the '659 Patent. Claims 2-15 depend on claim 1. The claim reads as follows:

> 1. A passively stable, weight-shift controlled personal hydrofoil watercraft, comprising:
>
> a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface, wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position, the flotation device having a forward section, a middle section, and a rear section;
>
> a strut having a upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device;
>
> a hydrofoil fixedly interconnected with the lower end of the strut, the hydrofoil having no movable surface;
>
> a propulsion system for propelling the watercraft in a body of water, wherein the propulsion system is connected to the hydrofoil; and
>
> the watercraft having no movable steering system.

('659 Patent, cl. 1). The parties agree that the preamble of the '659 Patent—A passively stable, weight-shift controlled personal hydrofoil watercraft–is limiting. (D.I. 83 at 30; D.I. 91 at 41). The parties dispute whether the "stable" aspect of the limitation is met. (D.I. 83 at 29-32; D.I. 91 at 43-45).

There are two issues to this dispute.

The first issue is whether "stable" includes both static stability – having an initial tendency to return to an original condition when disturbed – and dynamic stability – eventually returning to an original condition when disturbed. (D.I. 60-2, Ex. B at 602). Defendants argue both are included; Plaintiff, only static stability. I previously construed this term to have its plain and ordinary meaning but permitted the parties to readdress the issue at this stage of the case. (D.I. 66 at 9). Because there is a dispute over the scope of the claim term, I must construe the term before addressing the question of infringement. *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008) ("A determination that a claim term 'needs no construction' or has the 'plain and ordinary meaning' may be inadequate . . . when reliance on a term's 'ordinary' meaning does not resolve the parties' dispute.").

The second issue is whether Defendants infringe the stability limitation as construed.

1. Claim Construction

"It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal quotation marks omitted). "'[T]here is no magic formula or catechism for conducting claim construction.' Instead, the court is free to attach the appropriate weight to appropriate sources 'in light of the statutes and policies that inform patent law.'" *SoftView LLC v. Apple Inc.*, 2013 WL 4758195, at *1 (D. Del. Sept. 4, 2013) (quoting *Phillips*, 415 F.3d at 1324) (alteration in original). When construing patent claims, a court considers the literal language of the claim, the patent specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977–80 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). Of these sources, "the specification is always highly relevant to the claim construction

analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Phillips*, 415 F.3d at 1315 (internal quotation marks omitted).

"[T]he words of a claim are generally given their ordinary and customary meaning. . . . [Which is] the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1312–13 (citations and internal quotation marks omitted). "[T]he ordinary meaning of a claim term is its meaning to [an] ordinary artisan after reading the entire patent." *Id.* at 1321 (internal quotation marks omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314.

When a court relies solely upon the intrinsic evidence—the patent claims, the specification, and the prosecution history—the court's construction is a determination of law. *See Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 331 (2015). The court may also make factual findings based upon consideration of extrinsic evidence, which "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Phillips*, 415 F.3d at 1317–19 (internal quotation marks omitted). Extrinsic evidence may assist the court in understanding the underlying technology, the meaning of terms to one skilled in the art, and how the invention works. *Id.* Extrinsic evidence, however, is less reliable and less useful in claim construction than the patent and its prosecution history. *Id.*

Defendants argue that "stable" should mean being statically stable and dynamically stable. Defendants cite to the patent specification and textbooks for support that a person of ordinary skill in the art ("POSA") would read "stable" to require static and dynamic stability. (D.I. 83 at 4-7).

Plaintiff argues that "stable" should be interchangeable with statically stable or having static stability, and therefore, does not require that the watercraft have dynamic stability. (D.I. 91 at 22). Plaintiff cites to their expert, Mr. Barry, for support that "'stable' and 'static stability' are 'commonly used interchangeably with respect to aircraft and hydrofoil stability.'" (D.I. 91 at 18 (citing D.I. 80-31, ¶ 12)). Mr. Barry also expressed an opinion that the patent uses the terms interchangeably. (*Id.* at 19).

I agree with Defendants that "stable" should mean having both static stability and dynamic stability. I previously rejected Plaintiff's argument that "stable" and "static stability" could be used interchangeably. (D.I. 66 at 9). Plaintiff has not provided compelling intrinsic or extrinsic evidence to convince me to deviate from my initial view. Furthermore, the patent specification recites, "This trim condition is stable if a disturbance results in a restoring moment that returns the hydrofoil to its original condition." ('659 Patent, col. 6:14-16). The hydrofoil returning to its original condition is a description of dynamic stability, not static stability. Therefore, the patent specification indicates that stable and statically stable (or static stability) are not interchangeable.

Therefore, I will construe "A passively stable, weight-shift controlled personal hydrofoil watercraft" to mean "a weight-shift controlled personal watercraft having a hydrofoil that does not have any moveable components and which, when disturbed, (1) has an initial tendency to return to its original condition and (2) eventually returns to its original condition."[2]

2. Non-Infringement by the Accused Products

The remaining issue is whether the accused products have static stability and dynamic stability. Defendants argue that their products are dynamically unstable (or lack dynamic stability) and Plaintiff has provided no evidence to show the accused products are dynamically stable. Thus,

[2] I proposed this construction prior to oral argument. (D.I. 142).

Defendants argue there is no genuine issue of material fact that precludes summary judgment that the accused products do not infringe claims 1-15 of the '659 Patent.

Defendants contend that the only evidence Plaintiff has that shows Defendants' products are dynamically stable are "eigenvalue" analyses of some of the accused products. (D.I. 83 at 31). The parties agree that this type of analysis can be used to assess whether a watercraft is dynamically stable. (D.I. 83 at 31; D.I. 91 at 43). "If an eigenvalue analysis reports a positive 'sigma value,' it indicates that [a watercraft] is unstable." (D.I. 83 at 3). Defendants assert, because "[a]ll of Mr. Barry's eigenvalue analyses for [Defendants'] products report positive sigma values," Plaintiff's own expert shows conclusively that Defendants' products do not have dynamic stability. (D.I. 83 at 32).

Plaintiff argues that Defendants are not entitled to summary judgment because there still exists a genuine issue of material fact as to whether Defendants' products are dynamically stable. Plaintiff cites to Mr. Barry's deposition where he testified that he did not believe his analyses showed the products were dynamically unstable. (D.I. 91 at 44). Plaintiff contends that: (1) while Mr. Barry's eigenvalue analysis showed the watercrafts to be dynamically unstable, the results were "close" to showing dynamic stability, and (2) when Mr. Barry viewed the accused products operating in the real world, he concluded that they were dynamically stable, notwithstanding the eigenvalue analysis. (*Id.*; *see* D.I. 85-1, Ex. 6, 402:8-403:23 (stating positive eigenvalues did not indicate dynamic instability in part because the software was "an approximation" and did not account for all effects)). Plaintiff, therefore, argues that the eigenvalue analysis is not conclusive when considering Mr. Barry's testimony and other analyses.

Plaintiff also relies on Mr. Barry's statements that the Athena Vortex Lattice (AVL) software he used to analyze the stability of the watercrafts understated the stability of the accused

products.[3] Mr. Barry stated that the AVL software does not account for additional stabilizing factors that "exist once the effect of the water in which the hydrofoil is operating in is considered," such as "damping, free surface, added mass, and viscosity". (D.I. 91 at 44; *see, e.g.*, D.I. 80-33, Ex. 31, ¶¶ 23 (free surface), 55 (damping, added mass and viscosity effects)). Therefore, Plaintiff contends that Mr. Barry's testimony about his different analyses and his conclusions raises a genuine dispute as to whether the accused products are dynamically stable.

I agree with Plaintiff that there is a genuine dispute whether the accused products are dynamically stable. Defendants are correct that the eigenvalue analyses of the watercrafts show at least one positive sigma value for each product analyzed, which Plaintiff does not dispute, indicating dynamic instability. Those analyses, however, are not the only evidence in the record. The record also includes testimony by Mr. Barry, in which he concludes that the watercraft are dynamically stable based on analyzing the stability derivatives using the AVL software and observation of the watercraft in the real world. (D.I. 91 at 44; *see, e.g.*, D.I. 80-33, ¶¶ 26-28, 53-55). Taking the evidence in the light most favorable to Plaintiff, as I am required to do, I determine that a reasonable jury could conclude that the accused products have dynamic stability and therefore do infringe.

Therefore, I will deny summary judgment of infringement of claims 1-15 of the '659 Patent.

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[3] Mr. Barry used the AVL software to analyze the pitch stability derivative, directional stability derivative, and roll stability derivative to assess watercraft stability. Mr. Barry also used the AVL software to analyze the eigenvalues for his eigenvalue analysis. (*See, e.g.*, D.I. 85-1, Ex. 3, ¶¶ 95-96, 155-156)

B. INFRINGEMENT OF THE '044 PATENT

The parties have cross-moved for summary judgment on infringement of claims 1-22 of the '044 Patent (D.I. 80 at 20-26; D.I. 83 at 29-32). The parties agree that whether either side is entitled to summary judgment comes down to whether there is a genuine issue of material fact that Defendants infringe claim 1 of the '044 Patent. The claim reads as follows:

> 1. A passively stable, weight-shift controlled personal hydrofoil watercraft, comprising:
>
> a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface, wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position, the flotation device having a forward section, a middle section, and a rear section, and the flotation device being controlled via weight shift of the user;
>
> a strut having an upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device;
>
> a hydrofoil fixedly interconnected with the lower end of the strut, the hydrofoil having no movable surface and designed to provide passive static stability controlled solely by weight shift of the user;
>
> a propulsion system for propelling the watercraft in a body of water, wherein the propulsion system is connected to the hydrofoil; and
>
> the watercraft having no movable steering system.

('044 Patent, cl. 1). There are two disputes at issue here. First, the parties dispute whether the preamble of claim 1 is limiting. Plaintiff argues it is not; Defendants, that it is. Second, the parties dispute whether Defendants' products satisfy the stability limitations of claim 1. Resolving the second issue necessarily depends on the outcome of the first issue.

1. Whether the Preamble of Claim 1 is Limiting

As an initial matter, it is proper for me to determine whether the preamble of claim 1 is limiting or not. Plaintiff argues that this is a determination to be left for the jury. (D.I. 91 at 41).

Plaintiff is mistaken. Determining the effect of preamble language is a claim-construction issue. *See Cochlear Bone Anchored Solutions AB v. Oticon Medical AB*, 958 F.3d 1348, 1354 (Fed. Cir. 2020). Claim construction and resolving the scope of asserted claims are questions of law left to the court. *See Every Penny Counts, Inc. v. American Express Co.*, 563 F.3d 1378, 1383 (citing *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361-62 (Fed. Cir. 2008)). Therefore, I find it is necessary for me to make this determination now.[4]

"[A]s a general rule preamble language is not treated as limiting." *Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.*, 672 F.3d 1335, 1347 (Fed. Cir. 2012). "Whether to treat a preamble as a limitation is 'determined on the facts of each case in light of the overall form of the claim, and the invention as described in the specification and illuminated in the prosecution history.'" *Deere & Co. v. Bush Hog, LLC*, 703 F.3d 1349, 1357 (Fed. Cir. 2012) (quoting *Applied Materials, Inc. v. Advanced Semiconductor Materials Am., Inc.*, 98 F.3d 1563, 1572-73 (Fed. Cir. 1996)). "In general, a preamble limits the invention if it recites essential structure or steps, or if it is necessary to give life, meaning, and vitality to the claim." *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (citation and quotation marks omitted). "The preamble may be limiting to the extent it is 'necessary to provide antecedent basis for the body of the claim.'" *Cochlear Bone*, 958 F.3d at 1355 (quoting *Symantec Corp. v. Computer Assoc. Int'l, Inc.*, 522 F.3d 1279, 1288 (Fed. Cir. 2008)). In addition, the preamble may be limiting when the preamble "is essential to understand limitations or terms in the claim body," recites "additional structure or steps underscored as important by the specification," or there was "clear reliance on the preamble during

[4] While I have construed identical preamble language in the context of claim 1 of the '659 Patent as limiting, both parties agreed the preamble was limiting in that patent.

prosecution to distinguish the claimed invention from the prior art." *Catalina*, 289 F.3d at 808. In other words, there are numerous exceptions to the default rule that a preamble is not limiting.

Plaintiff contends that the preamble is not limiting because there is a presumption against reading a preamble as limiting and this case does not present one of the recognized exceptions to that presumption. Specifically, Plaintiff argues that the "preamble does not: (1) recite essential structure; (2) provide antecedent basis to the claim term at issue; and (3) is not essential to understand limitations or terms in the claim body." (D.I. 91 at 42).

Plaintiff further argues that there was no reliance on the preamble during prosecution. (*Id.* at 43). Plaintiff cites to the fact the preamble was present in the original claim as filed, and the static stability limitation was added to overcome prior art. (D.I. 146 at 2). Plaintiff contends that this shows that neither the inventor nor Examiner relied on the preamble during prosecution because the addition of the static stability limitation would be unnecessary if the preamble were limiting. (*Id.* at 2).

Defendants argue the preamble should be limiting because claim 1 of the '659 Patent, which is part of the same patent family and has an identical specification, recites identical language and both parties agree the preamble is limiting in that context. Defendants contend that there is "no technical or legal justification for why identical preambles should be treated differently." (D.I. 83 at 30). Defendants further argue that the preamble "is limiting because it recites an 'essential' element not found in the body of the claim (i.e., dynamic stability)." (D.I. 106 at 15). To put it another way, Defendants argue that the patent specification "repeatedly defines the invention as an overall stable watercraft," and therefore the preamble should be limiting because only the preamble specifies that the invention is dynamically stable. (D.I. 145 at 3).

I agree with Plaintiff that the preamble is not limiting. As an initial matter, I am not aware of any case law that states a preamble must be limiting in one patent because the identically worded preamble is limiting in another patent belonging to the same patent family. Defendants have also not supplied any such case law, despite being given additional time to do so. (D.I. 145 at 1).

The proposed identically-worded-preamble rule is inconsistent with the case law.[5] The Federal Circuit has stated "[w]hether to treat a preamble as a limitation is determined on the facts of each case in light of the overall form of the claim[] and the invention as described in the specification and illuminated in the prosecution history." *Cochlear Bone*, 958 F.3d at 1354 (quoting *Deere & Co.*, 703 F.3d at 1357). I am thus required to analyze the form of claim 1 of the '044 Patent, which has significant differences from the form of claim 1 of the '659 Patent, when determining whether the preamble is limiting. Therefore, I do not believe that the presumption against reading a preamble as non-limiting is overcome just because the same preamble is limiting in claim 1 of the '659 Patent.

I do not find that dynamic stability is an "essential" element that requires the preamble to be limiting. Nor do I think dynamic stability is "underscored as important by the specification." *Catalina*, 289 F.3d at 808. Nowhere in the '044 Patent is the term "dynamic stability" or "dynamically stable" used.

The '044 Patent specification does repeatedly describe the invention as being "stable" or having "passive stability," and dynamic stability is a component of those terms. *See* Section III.A.1

[5] Furthermore, I have not applied such a rule even when the claims sharing the identical preamble are part of the same patent. *See Takeda Pharma. Co. v. Actavis Lab'ys FL, Inc.*, 2016 WL 3193188, at *6 n.6, *7 n.7, *7-8 (D. Del. June 6, 2016) (independently analyzing whether identical preamble language is limiting in two separate claims of the same patent), *aff'd in part, rev'd in part sub nom. Nalproprion Pharms., Inc. v. Actavis Lab'ys FL, Inc.*, 934 F.3d 1344 (Fed. Cir. 2019).

supra. "But not every preamble reference to additional structure is limiting, even when the structure is noted in the specification—even, indeed, when the structure is 'underscored as important by the specification.'" *Arctic Cat Inc. v. GEP Power Products, Inc.*, 919 F.3d 1320, 1329 (Fed. Cir. 2019) (quoting *Catalina*, 289 F.3d at 808 ("[W]hen reciting additional structure or steps underscored as important by the specification, the preamble may operate as a claim limitation.")). Furthermore, even though the specification references the importance of stability, it similarly does so with respect to static stability. *See* '044 Patent 2:17-20 ("The prior art in powered hydrofoil surfboards have all relied on moveable surfaces for control, and have ignored the possibility of designing the hydrofoil for passive static stability."); 5:50-54 ("Note that other versions of the hydrofoil are possible: the key is designing the hydrofoil for passive static stability via planform design, airfoil design, and span-wise twist distribution."). Therefore, I read the specification as underscoring the importance that the watercraft have static stability.

The body of claim 1 of the '044 Patent addresses this essential, static stability element of the invention by reciting "a hydrofoil . . . designed to provide passive static stability." ('044 Patent, cl. 1). Because having static stability is already an explicit limitation in the body of the claim, I do not read the preamble as supplying an essential element for claim 1 of the '044 Patent.[6]

Accordingly, I conclude that the preamble of claim 1 of the '044 Patent is not limiting.

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[6] It is this explicit recitation of static stability in the body of the claim 1 of the '044 Patent that differentiates the effect of the preamble in claim 1 of the '044 Patent from the effect of the preamble in claim 1 of the '659 Patent. The body of claim 1 of the '659 Patent does not contain any limitations pertaining to stability. As already discussed, the shared patent specification underscores the importance of the watercraft having static stability. Therefore, the preamble is providing an essential element in claim 1 of the '659 Patent by stating that the watercraft needs to be "stable." Since the preamble is limiting, the full scope of "stable" becomes a limitation.

2. Non-Infringement of the '044 Patent

Defendants' motion for summary judgment of non-infringement of the '044 Patent is premised on the preamble of claim 1 of the '044 Patent being limiting and requiring the additional limitation of dynamic stability. (D.I. 83 at 29-31). Because I have determined that the preamble to claim 1 is not limiting, there is no dynamic stability limitation in the claims of the '044 Patent. Therefore, Defendants' motion for summary judgment of non-infringement of the '044 Patent is denied.

3. Infringement of the '044 Patent

Plaintiff moves for summary judgment that Defendants infringe claim 1 of the '044 Patent, and, by extension, all other claims of the '044 Patent, on the ground that there is no genuine issue of fact that Defendants' accused products are statically stable.[7] Plaintiff argues that the testimony of its expert witness, Mr. Barry, and the analysis he conducted of the accused products, demonstrates that the accused products are passively statically stable. (D.I. 80 at 24-26). Plaintiff contends that because Defendants have not produced any affirmative evidence to dispute that the accused products are passively statically stable, there is no disputed fact in the record that prevents finding that the accused products infringe the '044 Patent. (*Id.* at 25-26).

Defendants argue, "There is a genuine dispute as to whether [Plaintiff] has evidence sufficient to meet its burden for showing even static stability." (D.I. 93 at 25). Defendants contend that their expert witness, Dr. Triantafyllou, has "explained that in trying to show static stability of the Accused Products, Mr. Barry concocted his own stability standard rather than assess them according to the standard set out in the Asserted Patents." (*Id.* at 26). Defendants further argue,

[7] The parties agree that the only claim limitation in question is whether Defendants' products meet the stability limitation of claim 1. As discussed above, claim 1 of the '044 Patent only requires static stability because the preamble is not limiting.

"Without undisputed evidence that the Accused Products meet the standard set out in the Asserted Patents—which [Plaintiff] does not have because Mr. Barry did not so opine—summary judgment of infringement is improper." (*Id.*). Defendants also argue that summary judgment is improper because Mr. Barry did not examine all of the accused products for infringement. (*Id.*).

I agree with Defendants that there exists a genuine issue of material fact. Plaintiff has provided evidence through Mr. Barry's testimony and analysis to show that Defendants' accused products are statically stable. Defendants' expert responded by noting that Mr. Barry's analysis deviates from that included in the asserted patents, and the reason for doing so goes unexplained. (D.I. 85-1, Ex. 8, ¶ 17). A reasonable juror could weigh the testimony by the parties' experts and reach the conclusion that Plaintiff has not carried its burden to show that Defendants' products are statically stable.

Therefore, I will deny summary judgment as to infringement of the '044 Patent.

C. WRITTEN DESCRIPTION OF CLAIMS 16-20 OF THE '659 PATENT

Defendants move for summary judgment of invalidity for lack of written description for claims 16-20 of the '659 Patent. Claim 16, which is representative of the other claims,[8] reads as follows:

> 16. A personal hydrofoil watercraft, comprising:
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> a surfboard-shaped flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface, wherein the top surface has a substantially horizontal supporting surface configured to support a user in a prone, kneeling, or standing position, the flotation device having a forward section, a middle section, and a rear section;
>
> a hydrofoil interconnected with the surfboard-shaped flotation device, the hydrofoil having a strut and a first hydrofoil wing, an upper end of the strut being fixedly interconnected with the surfboard-shaped flotation device;

[8] Claims 17-20 are dependent claims that depend on claim 16.

> a propulsion system attached to the surfboard-shaped flotation device for propelling the watercraft in a body of water, the propulsion system comprising a battery, an electric motor, a motor speed controller, and a propulsor, wherein the propulsor is selected from a propeller, a ducted propeller, or a pump-jet, and the battery and motor speed controller are contained in a watertight compartment integrated into the flotation device;
>
> the watercraft having no movable steering system;
>
> a handheld controller having a throttle; and
>
> a throttle interface, wherein the throttle is adapted to send electronic signals to the throttle interface that cause an output of the propulsion system to change.

('659 Patent, cl. 16). Defendants assert the claims are invalid for lack of written description because they do not contain a stability limitation (i.e., do not require the watercraft to be statically stable, dynamically stable, or both), but the specification of the Asserted Patents "clearly discloses the alleged invention as being a stable hydrofoil watercraft, and never suggests that the alleged invention can be anything other than stable." (D.I. 83 at 26). Defendants further contend that the file history of the '044 Patent shows the patent examiner "explicitly relied on the hydrofoil providing static stability in allowing the '044 [P]atent." (*Id.*). Defendants analogize the present case to *ICU Medical, Inc. v. Alaris Medical Sys., Inc.*, 558 F.3d 1368, 1377-79 (Fed. Cir. 2009).

Plaintiff does not dispute that neither static stability nor dynamic stability (or both together) are limitations of the claims 16-20 of the '659 Patent. Plaintiff asserts the written description requirement is met because the patent specification does not limit the invention to a "stable" watercraft. Plaintiff analogizes the present case to *ScriptPro LLC v. Innovation Assoc., Inc.*, 833 F.3d 1336, 1340-42 (Fed. Cir. 2016). Plaintiff argues that a stable watercraft is just one purpose of the invention and claims 16-20 of the '659 Patent are written to address other purposes of the invention, such as not having a movable steering system, providing a "surfing feel," and being easy to transport and maintain. (D.I. 91 at 39).

The written description requirement contained in 35 U.S.C. § 112 requires that the specification "clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed." *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc) (alteration in original). "In other words, the test for sufficiency is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date." *Id.* "When determining whether a specification contains adequate written description, one must make an 'objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art.'" *Bos. Sci. Corp. v. Johnson & Johnson*, 647 F.3d 1353, 1366 (Fed. Cir. 2011) (quoting *Ariad*, 598 F.3d at 1351).

The written description inquiry is a question of fact. *Ariad*, 598 F.3d at 1351. Although it is a question of fact, "[c]ompliance with the written description requirement . . . is amenable to summary judgment in cases where no reasonable fact finder could return a verdict for the non-moving party." *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1307 (Fed. Cir. 2008). "A party must prove invalidity for lack of written description by clear and convincing evidence." *Vasudevan Software, Inc. v. MicroStrategy, Inc.*, 782 F.3d 671, 682 (Fed. Cir. 2015).

I find that Defendants are entitled to summary judgment that claims 16-20 of the '659 Patent are invalid for lack of written description. The patent specification does not disclose that the patentee possessed a personal hydrofoil watercraft that lacks both static and dynamic stability. There is no genuine disputed fact about this.

The specification of the '659 Patent only, and repeatedly, describes the invention as being a watercraft that is either stable or at least has static stability. For example, the abstract of the patent recites, "A passively stable personal hydrofoil watercraft . . . ." ('659 Patent at Abstract). The

patent specification further recites, "The hydrofoil of the present invention has been designed to provide passive stability in the longitudinal direction, making traditional altitude control systems based on moveable surfaces unnecessary." (*Id.* at col. 2:8-12).

Static stability distinguishes the invention from the prior art. The specification recites, "The prior art in powered hydrofoil surfboards have all relied on moveable surfaces for control, and have ignored the possibility of designing the hydrofoil for passive static stability. . . . [T]he present invention is specifically designed to achieve desired levels of stability and controllability without the need for moveable surfaces." (*Id.* at col. 2:20-26). The patent specification further emphasizes that the hydrofoil should be designed to provide static stability to the watercraft, even for undisclosed embodiments. (*Id.* at col. 5:62-65 ("Note that other versions of the hydrofoil are possible: the key is designing the hydrofoil for passive static stability via planform design, airfoil design, and span-wise twist distribution.")). The patent specification attributes the ability to be controlled by weight shift to the stability of the watercraft. The specification states, "This invention exploits passive stability to obviate the necessity for mechanisms or active control systems to provide stability. This passive stability allows the watercraft to be controlled by weight shift rather than by mechanical systems." (*Id.* at col. 6:7-11). There is nothing in the patent specification to suggest that a watercraft that is both statically and dynamically unstable is part of the disclosure. *See LizardTech, Inc. v. Earth Resource Mapping, Inc.*, 424 F.3d 1336, 1346 (Fed. Cir. 2005).

I agree with Defendants that the present case is similar to *ICU Medical*. In *ICU Medical*, the patent at issue claimed medical valves with spikes and without spikes (i.e., valves without the spike limitation). The specification of the patent, however, only described "medical valves with spikes." *Id.* at 1378. The Federal Circuit upheld the district court's grant of summary judgment

that the "spikeless" claims were invalid for lack of written description because a POSA would not have understood the patentee to have invented a "spikeless" medical valve. *Id.* at 1378-79.

Similarly, in the present case, the '659 Patent only discusses a watercraft that is at least statically stable. There is nothing in the specification that would signal to a POSA that the patentee invented a watercraft that is statically unstable. Furthermore, at oral argument, Plaintiff failed to point to any disclosure in the patent specification of a description or embodiment of a watercraft that was not at least statically stable. (D.I. 147 at 73:9-23). *See ICU Medical*, 558 F.3d at 1379.

While Plaintiff argues that this case is more analogous to *ScriptPro LLC v. Innovation Assoc., Inc.*, 833 F.3d 1336 (Fed. Cir. 2016), I disagree. In *ScriptPro*, the Federal Circuit reversed the district court's ruling that claims without a limitation of employing a "sorting and storage scheme based on patient-identifying information" were invalid for lack of written description. *Id.* at 1341.The Federal Circuit noted that while the patent specification "focuses on embodiments employing a sorting and storage scheme based on patient-identifying information," it is not a limitation of the invention because the invention is used to solve many problems, not all of which involve using a scheme based on patient-identifying information. *Id.* Specifically, the Federal Circuit cautioned that "a specification's focus on one particular embodiment or purpose cannot limit the described invention where the specification expressly contemplates other embodiments or purposes." *Id.* at 1341.

Plaintiff's arguments that watercraft stability is just one solution the invention addresses, like the scheme in *ScriptPro*, misses the mark. First, in *ScriptPro*, the Federal Circuit stated that the "patent's express disclosure that sorting and storing can be done in a number of ways distinguishes this case from . . . *ICU Medical*." *Id.* Specifically, the Federal Circuit found that the invention was not limited to using a patient-identifying information sorting scheme because the

patent specification disclosed that "any predetermined storage scheme will do." *Id.* Unlike in *ScriptPro*, there is no such express disclosure in the '659 Patent specification that the watercraft can be statically and dynamically unstable. Nor is there anything that could reasonably be interpreted as an implied disclosure.

Second, the Federal Circuit noted that the patent in *ScriptPro* was aimed at addressing multiple problems and that the different claims were directed at "covering these different aspects of the invention." *Id.* at 1342. In this case, however, the patent specification clearly describes static stability as a limitation of the invention as a whole, not an aspect of some embodiments or one purpose. *See* p.19 *supra*. The patent specification is not just describing some embodiments as stable or having static stability. (*See, e.g.*, '659 Patent, col. 2:9-12; 2:23-25, 5:62-65). Nor is the specification describing stability as just one purpose of the invention. The patent specification, instead, is emphasizing that it is the stability of the watercraft – or at the least static stability provided by the hydrofoil – that permits the invention to achieve the full scope of its purposes such as not having a moveable steering system. (*See id.* at col. 6:7-11).

Therefore, I find that Defendants are entitled to summary judgment that claims 16-20 of the '659 Patent are invalid for lack of written description.

D. ANTICIPATION OF THE '044 PATENT AND '659 PATENT

Plaintiff moves for summary judgment on Defendants' counterclaims that the Asserted Patents are invalid as anticipated by Plaintiff's products. (D.I. 80 at 26-37; *see also* D.I. 13 at 13-14). Defendants concede that they are not arguing that Plaintiff's own products invalidate the Asserted Patents. (D.I. 93 at 27 ("Waydoo is not asserting that the Asserted Patents are invalid over MHL's own products.")). Therefore, this issue is moot and Plaintiff's motion is dismissed.

Plaintiff also moves for summary judgment on Defendants' counterclaims that the Asserted Patents are invalid as anticipated by the Evolo Report. The Evolo Report is a 554 page report from "a graduate-level student project that was completed in 2009 by naval architecture students at the Royal Institute of Technology in Stockholm, Sweden." (D.I. 80 at 26-37). [9]

There are two issues to this dispute.

The first issue is whether the Evolo Report discloses the static stability limitation of the claims 1-22 of the '044 Patent and claims 1-15 of the '659 Patent.[10] Plaintiff argues it does not; Defendants argue it does.

The second issue is whether the Evolo Report is a printed publication. Plaintiff argues the Evolo Report is not because it was not publicly accessible before the priority date of the Asserted Patents. Defendants argue there is a genuine issue of material fact as to whether the Evolo Report was publicly accessible.

I address each issue in turn.

1. Does the Evolo Report Disclose the Static Stability Limitation?

"To show that a patent claim is invalid as anticipated, the accused infringer must show by clear and convincing evidence that a single prior art reference discloses each and every element of a claimed invention." *Silicon Graphics, Inc. v. ATI Tech., Inc.*, 607 F.3d 784, 796 (Fed. Cir. 2010). "[E]very element of the claimed invention [must be described], either expressly or inherently, such

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[9] Plaintiff argue that Defendants improperly combine multiple Evolo-related references into one anticipation analysis. Defendants argue in their briefing that the Evolo Report itself is the single prior art reference that anticipates the Asserted Patents. (D.I. 93 at 30). Therefore, for purposes of this motion, I focus only on the Evolo Report.

[10] Plaintiff also argues that claims 16-20 of the '659 Patent are not invalidated by anticipation because the Evolo Report does not disclose a motor speed controller, but this issue is moot as I have found claims 16-20 of the '659 Patent to be invalid for lack of written description. *See* Section III.C *supra*.

that a person of ordinary skill in the art could practice the invention without undue experimentation." *Callaway Golf Co. v. Acushnet Co.*, 576 F.3d 1331, 1346 (Fed. Cir. 2009). As with infringement, the court construes the claims and compares them against the prior art. *See Enzo Biochem, Inc. v. Applera Corp.*, 599 F.3d 1325, 1332 (Fed. Cir. 2010). "While anticipation is a question of fact, it may be decided on summary judgment if the record reveals no genuine dispute of material fact." *Encyclopaedia Britannica, Inc. v. Alpine Elecs. of Am., Inc.*, 609 F.3d 1345, 1349 (Fed. Cir. 2010).

Plaintiff argues that the Evolo Report does not disclose a statically stable watercraft. Specifically, Plaintiff argues that Defendants cannot meet their burden because Dr. Triantafyllou did not mathematically assess the stability of the watercraft disclosed in the Evolo Report. (D.I. 80 at 34-35). Plaintiff also cites to Mr. Barry's expert report to show that the Evolo Report discloses a statically unstable watercraft (*Id.* at 35-36).

Defendants argue that there is a material issue of fact as to whether the Evolo Report discloses a statically stable watercraft because Dr. Triantafyllou concluded that the Evolo Report discloses a statically stable watercraft. (D.I. 93 at 32 (citing D.I. 85-1, Ex. 7, ¶¶ 220-241)). Defendants contend that Dr. Triantafyllou responded to the arguments raised by Plaintiff's expert, Mr. Barry. (D.I. 93 at 32 (citing D.I. 85-1, Ex. 9, ¶¶ 71-77)).

I find there are genuine issues of material fact as to whether the Evolo Report discloses a statically stable watercraft. Both parties rely on the testimony of their expert witnesses to establish their positions. A reasonable juror could weigh the testimony by the parties' experts and reach the conclusion that Defendants have shown that the Evolo Report discloses a statically stable watercraft.

2. Is the Evolo Report a Printed Publication?

"Whether a reference qualifies as a "printed publication" under § 102(b) is a legal conclusion based on underlying factual findings." *Jazz Pharm., Inc. v. Amneal Pharm., LLC*, 895 F.3d 1347, 1356 (Fed. Cir. 2018). "A reference is considered publicly accessible if it was disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it." *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018) (citation and internal quotation marks omitted). "The test for public accessibility is not 'has the reference been indexed?'" *Id.* at 774. Instead, "the ultimate question is whether the reference was 'available to the extent that persons interested and ordinarily skilled in the subject matter or art[,] exercising reasonable diligence, can locate it.'" *Voter Verified, Inc. v. Premier Election Sols., Inc.*, 698 F.3d 1374, 1380 (Fed. Cir. 2012) (quoting *SRI Int'l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008)).

Plaintiff argues the Evolo Report was not publicly accessible before the priority date of the Asserted Patents. (D.I. 80 at 30-32). Plaintiff specifically contends that there is no evidence that the Evolo website, which contained a link to the Evolo Report, was indexed by Google, would turn up on a Google search in 2013, or was otherwise accessible to a POSA before the Asserted Patents' priority date. (D.I. 32).

Defendants argue that Plaintiff is not entitled to summary judgment because there is evidence that the Evolo Report was publicly accessible before the Asserted Patents' priority date. Therefore, there is a disputed material of fact, making summary judgment inappropriate. Defendants argue that the record contains evidence that the Evolo Report was downloaded in the United States before the priority date of the Asserted Patents; that their expert Mr. Lanterman

concluded that the Evolo website was likely indexed by Google and had regular activity, and that an article published in the Swedish magazine Båtnytt ("Boat News") in August 2009 detailed the Evolo project and contained a link to the Evolo website. (D.I. 93 at 28-30).

I find there is a genuine issue of material fact as to whether the Evolo Report was publicly accessible to a POSA prior to October 2013. Plaintiff concedes that there was at least one user in the United States (or at least outside of Sweden and Switzerland) who downloaded the Evolo Report. (D.I. 80 at 16, n.7). Further, the article in Båtnytt may also have served as a publicly accessible "research aid" that would have led a POSA to the Evolo website, which contained the Evolo Report. *See, e.g.*, *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1350 (Fed. Cir. 2016); *Bruckelmyer v. Ground Heaters, Inc.*, 445 F.3d 1374, 1379 (Fed. Cir. 2006). For these reasons, I find a reasonable jury could determine that the Evolo Report was publicly accessible before the Asserted Patents' priority date.

Therefore, I find Plaintiff is not entitled to summary judgment on Defendants' counterclaims that the Asserted Patents are anticipated by the Evolo Report.

E. PLAINTIFF'S STANDING

Plaintiff moved for summary judgment on Defendants' affirmative defense that Plaintiff lacks standing. (D.I. 79). After oral argument, Defendants stated they are not challenging standing. (D.I. 145).

Therefore, I will dismiss Plaintiff's motion for summary judgment on standing as moot.

IV. CONCLUSION

For the reasons stated above, I deny Plaintiff's motion for summary judgment for infringement of the '044 Patent, deny Plaintiff's motion for summary judgment for the Asserted

Patents not being invalid as anticipated by the Evolo Report, and dismiss Plaintiff's motion for summary judgment on Defendants' lack of standing argument.

I deny Defendants' motion for summary judgment for non-infringement of the '044 Patent and '659 Patent and grant Defendants' motion for summary judgment of invalidity for lack of written description for claims 16-20 of the '659 Patent.

An appropriate order will issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC.,

Plaintiff,

v.

WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD.,

Defendants.

Civil Action No. 21-0091-RGA

MEMORANDUM OPINION

Blake A. Bennett, COOCH AND TAYLOR, P.A., Wilmington, DE; Dennis D. Murrell, Robert J. Theuerkauf, Brian P. McGraw, Megan E. Gibson, MIDDLETON REUTLINGER, Louisville, KY.

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Attorneys for Defendants.

September 6, 2023

ANDREWS, UNITED STATES DISTRICT JUDGE:

Before me are Defendants Waydoo USA's and Shenzhen Waydoo Intelligence Technology's (collectively, "Waydoo") post-trial motions.

Waydoo moves for renewed judgment as a matter of law on a variety of issues. (D.I. 234). In the alternative, Waydoo moves for a new trial.[1] (*Id.*). The motions have been fully briefed. (D.I. 236, 245, 252).

I. BACKGROUND

Plaintiff MHL Custom ("MHL") filed suit against Waydoo alleging infringement of U.S. Patent Nos. 9,359,044 (the "'044 patent") and 9,586,659 (the "'659 patent") (collectively, the "Asserted Patents"). (D.I. 1). The Asserted Patents relate to a weight-shift controlled personal hydrofoil watercraft (often referred to as an eFoil). The Asserted Patents share a common specification.

I held a jury trial from March 24-31, 2023, on claims 1-2, 5, and 6 of the '044 patent and claims 1-2 of the '659 patent. The jury found the asserted claims to be valid and infringed, the infringement was willful, and MHL was entitled to a reasonable royalty of $500 per board sold by Waydoo (totaling $1,334,000 in damages). (D.I. 219). The parties have now filed post-trial motions.[2]

Waydoo seeks renewed judgment as a matter of law, or in the alternative, a new trial, on (1) whether the Evolo Report (a potential prior art reference) was publicly accessible; (2) whether the Evolo Report is enabled; (3) whether the Asserted Patents are enabled; (4) whether Waydoo

[1] Waydoo does not make any arguments in favor of its new trial motion. Instead, it simply has a perfunctory sentence that it includes at the end of the JMOL arguments. In my view, it has forfeited its new trial arguments.

[2] MHL's post-trial motions (D.I. 230-233) are addressed in a separate opinion.

infringed the '659 patent; (5) whether Waydoo's infringement of the Asserted Patents was willful; and (6) whether the jury's award of damages is supported by the evidence. (D.I. 236 at 1-2). I address each issue in turn. I note that Waydoo does not challenge the correctness of any of the jury instructions.

II. LEGAL STANDARD

A. Judgment as a Matter of Law

Judgment as a matter of law is appropriate if "the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for [a] party" on an issue. FED. R. CIV. P. 50(a)(1). "Entry of judgment as a matter of law is a 'sparingly' invoked remedy, 'granted only if, viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find liability.'" *Marra v. Phila. Hous. Auth.*, 497 F.3d 286, 300 (3d Cir. 2007) (citation omitted).

"To prevail on a renewed motion for JMOL following a jury trial, a party must show that the jury's findings, presumed or express, are not supported by substantial evidence or, if they were, that the legal conclusion(s) implied by the jury's verdict cannot in law be supported by those findings." *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1348 (Fed. Cir. 1998) (cleaned up). "'Substantial' evidence is such relevant evidence from the record taken as a whole as might be accepted by a reasonable mind as adequate to support the finding under review." *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 893 (Fed. Cir. 1984).

In assessing the sufficiency of the evidence, the Court must give the non-moving party, "as [the] verdict winner, the benefit of all logical inferences that could be drawn from the evidence presented, resolve all conflicts in the evidence in his favor and, in general, view the record in the light most favorable to him." *Williamson v. Consol. Rail Corp.*, 926 F.2d 1344, 1348 (3d Cir.

1991). The Court "must not determine credibility of witnesses, and must not substitute its choice for that of the jury between conflicting elements in the evidence." *Perkin-Elmer*, 732 F.2d at 893. Rather, the Court must determine whether the evidence supports the jury's verdict. *See Dawn Equip. Co. v. Ky. Farms Inc.*, 140 F.3d 1009, 1014 (Fed. Cir. 1998); 9B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2524 (3rd ed. 2008) ("The question is not whether there is literally no evidence supporting the party against whom the motion is directed but whether there is evidence upon which the jury might reasonably find a verdict for that party.").

Where the moving party bears the burden of proof, the Third Circuit applies a different standard. This standard "'requires the judge to test the body of evidence not for its insufficiency to support a finding, but rather for its overwhelming effect.'" *Fireman's Fund Ins. Co. v. Videfreeze Corp.*, 540 F.2d 1171, 1177 (3d Cir. 1976) (quoting *Mihalchak v. Am. Dredging Co.*, 266 F.2d 875, 877 (3d Cir. 1959)). The Court "'must be able to say not only that there is sufficient evidence to support the finding, even though other evidence could support as well a contrary finding, but additionally that there is insufficient evidence for permitting any different finding.'" *Id.* at 1171 (quoting *Mihalchak*, 266 F.2d at 877).

B. Motion for a New Trial

Federal Rule of Civil Procedure 59(a)(1)(A) provides, in pertinent part: "The court may, on motion, grant a new trial on all or some of the issues—and to any party—... after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court...." Among the most common reasons for granting a new trial are: (1) the jury's verdict is against the clear weight of the evidence, and a new trial must be granted to prevent a miscarriage of justice; (2) newly discovered evidence exists that would likely alter the outcome of the trial; (3) improper conduct by an attorney or the court unfairly influenced the verdict; or (4) the jury's verdict

was facially inconsistent. *See Zarow–Smith v. New Jersey Transit Rail Operations, Inc.*, 953 F. Supp. 581, 584–85 (D.N.J.1997).

The decision to grant or deny a new trial is committed to the sound discretion of the district court. *See Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980); *Olefins Trading, Inc. v. Han Yang Chem. Corp.*, 9 F.3d 282, 289 (3d Cir.1993) (reviewing district court's grant or denial of new trial motion under the "abuse of discretion" standard). Although the standard for granting a new trial is less rigorous than the standard for granting judgment as a matter of law—in that the Court need not view the evidence in the light most favorable to the verdict winner—a new trial should only be granted where "a miscarriage of justice would result if the verdict were to stand," the verdict "cries out to be overturned," or where the verdict "shocks [the] conscience." *Williamson*, 926 F.2d at 1352–53.

III. DISCUSSION

One of the significant issues at trial and now at JMOL was whether the "Evolo Report" anticipated the asserted patent claims. The jury did not reach the merits of the anticipation issue because it found that the Evolo Report was not publicly accessible and that it was not enabled. (D.I. 219 at 2). Each finding alone is sufficient to support the verdict. Waydoo challenges both of these findings. In order to obtain any relief, Waydoo must be successful on both challenges. I address the two findings separately.

A. Public Accessibility of The Evolo Report

1. Legal Standard

"Whether a reference qualifies as a 'printed publication' under § 102(b) is a legal conclusion based on underlying factual findings." *Jazz Pharm., Inc. v. Amneal Pharm., LLC*, 895 F.3d 1347, 1356 (Fed. Cir. 2018). "A reference is considered publicly accessible if it was

disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it." *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018) (citation and internal quotation marks omitted). "The test for public accessibility is not 'has the reference been indexed,'" *id.* at 774, and "'public accessibility' requires more than technical accessibility," *id.* at 773. The patent challenger bears the burden of establishing that a particular document is a printed publication by clear and convincing evidence. *See Medtronic, Inc. v. Barry*, 891 F.3d 1368, 1380 (Fed. Cir. 2018); *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1359 (Fed. Cir. 2007) ("Since we must presume a patent valid, the patent challenger bears the burden of proving the factual elements of invalidity by clear and convincing evidence.").

2. Analysis

The Evolo Report is a document detailing the capstone project of a group of engineering students in Sweden. (D.I. 242 at 783:13-19 (Triantafyllou); *see also* D.I. 243 at 968:21-24 (Barry)). The students' capstone project was essentially "to create a vehicle which looks like an eFoil." (D.I. 242 at 783:15-16 (Triantafyllou)).

At trial, Waydoo argued the Evolo Report was a printed publication that anticipated the Asserted Patents. The priority date of the Asserted Patents is October 10, 2013. (D.I. 212 at 8). The jury found the Evolo Report was not publicly accessible. (D.I. 219 at 2).

Waydoo argues that it is entitled to judgment as a matter of law, or a new trial, because it presented unchallenged evidence that the Evolo Report was publicly accessible. (D.I. 236 at 4). Waydoo cites Mr. Lanterman's testimony that the Evolo Report was posted on the Evolo project webpage of Prof. Kuttenkeuler's course website in June 2009. (*Id.* (citing D.I. 242 at 724:23-725:4 (Lanterman))). Waydoo contends that the record shows there was "successful activity" on the

course website almost every day from November 2011 to October 2013 (*id.* (citing DTX068A; D.I. 242 at 734:8-16 (Lanterman))), the Evolo project webpage had 120 unique visitors, and 17 unique visitors downloaded the Evolo Report from the webpage (*id.* (citing (DTX068A; D.I. 242 at 734:22-735:9 (Lanterman)). Mr. Lanterman further testified that Google crawled and indexed the Evolo Report in January 2010. (*Id.* (citing D.I. 242 at 725:4-726:6 (Lanterman))).

In addition to accessing the Evolo Report through Google, Waydoo argues the Evolo Report was publicly accessible through the August 2009 issue of the Swedish magazine "Båtnytt" ("Boat News"). An article in that issue featured a link to the Evolo project webpage. (*Id.* at 4).

In short, Waydoo argues the Evolo Report was publicly accessible through two avenues: Google Search and the Boat News article.

MHL concedes the evidence shows the "Evolo Report existed online and may have been downloaded by 17 different people prior to the critical date." (D.I. 245 at 5). MHL, however, contends that "online availability, standing alone, is not enough to demonstrate public accessibility." (*Id.*). MHL argues it was reasonable for the jury to conclude that Waydoo failed to meet its burden to show the Evolo Report was not publicly accessible because Waydoo did not (1) present evidence that anyone accessed the Evolo Report through the Boat News article or (2) show how an interested person could find the Evolo Report through a Google Search. (*Id.* at 7).

I agree with MHL that a reasonable jury could conclude that Waydoo did not meet its heavy evidentiary burden to show the Evolo Report was publicly accessible. Waydoo's evidence establishes that the Evolo Report was technically accessible. MHL concedes that. But "'public accessibility' requires more than technical accessibility." *Acceleration Bay*, 908 F.3d at 773. I find there is sufficient evidence for a reasonable jury to conclude that the Evolo Report was not publicly

accessible, despite being technically accessible, and that Waydoo has not shown that there is "insufficient evidence for permitting any" finding other than public accessibility.

First, the Boat News article may have provided an adequate roadmap for an interested party to arrive at the Evolo Report by linking to the Evolo project page. *See Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1350 (Fed. Cir. 2016) ("An adequate roadmap need not give turn-by-turn directions, but should at least provide enough details from which we can determine that an interested party is reasonably certain to arrive at the destination: the potentially invalidating reference."). What is lacking in Waydoo's argument is evidence to establish that an interested party would be able to find or locate the Boat News magazine. Waydoo has not pointed to any evidence regarding whether Boat News, a Swedish boating magazine, is a publication that the "interested public" would have access to, have been aware of, or have been able to locate. *Cf. Voter Verified, Inc. v. Premier Election Sols., Inc.*, 698 F.3d 1374, 1380 (Fed. Cir. 2012) (finding article was publicly accessible when it was posted on a website that was "was well known to the community" interested in that subject matter); *Cornell Univ. v. Hewlett-Packard Co.*, 2008 WL 11274580 at *6 (N.D.N.Y. May 14, 2008) (finding an article in a "seminal publication" to be a "research aid" for locating a prior art reference). Therefore, I think a reasonable jury could conclude that Waydoo did not meet its burden in showing that the Evolo Report was publicly accessible through the Boat News article. Likewise, I do not think there is such "overwhelming effect" to disturb the jury's decision. *Fireman's Fund*, 540 F.2d at 1177.

Second, I think a reasonable jury could conclude that Waydoo did not meet its burden to prove that the Evolo Report was publicly accessible through Google Search. The Federal Circuit has cautioned that indexing, by itself, is not sufficient to prove public accessibility. *Acceleration Bay, LLC*, 908 F.3d at 774 ("We have explained that where indexing is concerned, whether online

or in tangible media, the ultimate question is whether the reference was available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it." (citation and internal quotation marks omitted)). Mr. Lanterman testified that the Evolo Report was accessible, but his testimony pertained to technical accessibility (i.e., Google confirmed the link was active, crawled, and indexed). (D.I. 242 at 746:12-24 (Lanterman)). While Mr. Lanterman testified that an interested person could have found the Evolo Report through Google (*id.* at 745:7-11), he also testified that he did not perform a Google search to locate the Evolo Report (*id.* at 743:9-13) and that he did not know what a sufficient Google search would have been to locate the Evolo Report (*id.* at 727:18-23, 743:6-8, 743:14-745:11). I think a reasonable jury could conclude from Mr. Lanterman's testimony that the report was only technically accessible, and not publicly accessible such that "persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence," could locate the Evolo Report through Google.

Third, Waydoo contends that it should prevail because the evidence it provided "is uncontradicted and unimpeached," and "MHL did not present any evidence that would permit a different finding." (D.I. 236 at 6-7). I disagree. As the patent challenger, it was Waydoo's burden to prove by clear and convincing evidence that the Evolo Report was publicly accessible. *See Medtronic*, 891 F.3d at 1380; *Pfizer*, 480 F.3d at 1359. As already discussed, I think a reasonable jury could determine that Waydoo failed to meet its burden.

Therefore, I will deny Waydoo's JMOL motion as it pertains to the public accessibility of the Evolo Report. For the same reasons, I find that the jury's finding that the Evolo Report was not publicly accessible is not against the clear weight of the evidence. Therefore, Waydoo's motion for a new trial on this issue is denied.

B. Enablement

1. Legal Standard

A patent's "specification must enable the full scope of the invention as defined by its claims." *Amgen Inc. v. Sanofi*, 143 S. Ct. 1243, 1254 (2023). For a patent claim to be enabled, the patent specification must "contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same[.]" 35 U.S.C. § 112(a). "The enablement requirement is met where one skilled in the art, having read the specification, could practice the invention without 'undue experimentation.'" *Streck, Inc. v. Rsch. & Diagnostic Sys., Inc.*, 665 F.3d 1269, 1288 (Fed. Cir. 2012) (citation omitted); *see also Amgen*, 143 S. Ct. at 1255 ("[A] specification may call for a reasonable amount of experimentation to make and use a patented invention. What is reasonable in any case will depend on the nature of the invention and the underlying art."). Factors for assessing whether a disclosure would require undue experimentation include:

> (1) the quantity of experimentation necessary, (2) the amount of direction or guidance presented, (3) the presence or absence of working examples, (4) the nature of the invention, (5) the state of the prior art, (6) the relative skill of those in the art, (7) the predictability or unpredictability of the art, and (8) the breadth of the claims.

In re Wands, 858 F.2d 731, 737 (Fed. Cir. 1988).

"Enablement is a question of law based on underlying facts." *Wyeth & Cordis Corp. v. Abbott Lab'ys*, 720 F.3d 1380, 1384 (Fed. Cir. 2013). The party challenging validity must prove lack of enablement by clear and convincing evidence. *Cephalon, Inc. v. Watson Pharms., Inc.*, 707 F.3d 1330, 1336 (Fed. Cir. 2013).

2. Analysis

i. Enablement of Evolo Report

At trial, the jury found that the Evolo Report is not enabled. (D.I. 219). "I presume a prior art printed publication is enabling." *Lambda Optical Sols. LLC v. Alcatel Lucent USA Inc.*, 2015 WL 5734427, at *1 (D. Del. Sept. 30, 2015) (citing *Robocast, Inc. v. Apple, Inc.*, 39 F. Supp. 3d 552, 565 (D. Del. 2014)). It is therefore the patentee's initial burden to show that a prior art reference is not enabled, but, if the patentee presents some evidence of enablement, "the burden still rests on the party asserting invalidity to ultimately demonstrate by clear and convincing evidence that the prior art is enabled." *Robocast*, 39 F. Supp. 3d 552, 566 (D. Del. 2014) (quoting *Forest Labs., Inc. v. Ivax Pharm., Inc.*, 438 F.Supp.2d 479, 487 n. 3 (D. Del. 2006), *aff'd*, 501 F.3d 1263 (Fed. Cir. 2007) (internal citations omitted)).

Waydoo argues that it is MHL's burden to prove that the Evolo Report is not enabled. (D.I. 236 at 7 (citing *Apple Inc. v. Corephotonics, Ltd.*, 861 F. App'x 443, 449 (Fed. Cir. 2021))). I do not think shifting the evidentiary burden back to Waydoo after MHL presents some evidence of non-enablement is contrary to *Corephotonics*. *See Corephotonics*, 861 F. App'x at 450 (finding [the PTAB] erred when it refused to consider evidence Apple introduced in support of enablement of a printed publication after Corephotonics raised the issue of non-enablement); *see also id.* at 449 ("[T]he [PTAB] shifted the burden to Apple to provide evidence before institution (i.e., in its petition) that [a patent publication] was enabling as part of its burden to prove anticipation. This was error.").[3]

[3] Even if the evidentiary burden to prove a prior art reference is non-enabled ultimately lies with MHL, it would not alter my analysis because I find there is substantial evidence to support the jury's finding that the Evolo Report is not enabled.

Waydoo contends that Mr. Barry's opinions about enablement were about the Evolo prototypes, not the final Evolo Report. (D.I. 236 at 8). Waydoo explains that none of the Evolo prototypes reflect the "final" product of the Evolo Report because the last prototype built used a motor that did not have the requisite power. (*Id.* at 9). Waydoo contends the final prototype is not representative of the Evolo Report's full disclosure because the final prototype used a 2 kW motor, but the Evolo Report indicated that a more powerful 4 kW motor was required. (*See* D.I. 243 at 1011:12-1012:21). The Evolo Report discussed using a larger motor to meet the requirements for power and speed. (*Id.* at 1012:16-23 (Barry)). Waydoo argues the Evolo Report's instruction to use a 4 kW motor would render the Report enabled as the larger motor is necessary to achieve stability.

Waydoo further argues that the Evolo Report must be enabled because textbooks from the 1960's teach the same information about stability that is disclosed in the patent specification. (*Id.* at 11). Waydoo contends that "if the [Asserted] Patent's disclosure enables a POSA to make a stable eFoil, the same prior art disclosures enable the Evolo Report too." (D.I. 252 at 4).

Waydoo argues that Mr. Barry put forth an invalid "inherency" argument based on the Evolo hydrofoils being flat plates. (D.I. 236 at 10-11). Mr. Barry testified that the Evolo hydrofoils could not achieve stability because they were flat plates. (*See* D.I. 243 at 1041:21-1042:2). Waydoo contends this argument must fail because Mr. Barry contradicted himself and stated that flat plates can achieve stability. (D.I. 236 at 10-11). I take Waydoo to be framing Mr. Barry's testimony as saying the Evolo hydrofoils are inherently unstable because they are flat plates, but, because Mr. Barry contradicted himself, that argument does not support his opinion.

MHL argues there was sufficient evidence for the jury to find the Evolo Report is not enabled. Mr. Barry concluded the Evolo Report is not enabled because the Evolo team "didn't ever

do the calculations required to produce stability . . . they never considered stability in the physical design of the object." (D.I. 245 at 9 (quoting D.I. 243 at 973:3-9)). Mr. Barry concluded that a POSA would read the Evolo Report and understand that an automatic control system was required rather than understand that the watercraft had a passively stable system. (*Id.* (quoting D.I. 243 at 956:18-957:3)). Mr. Barry testified that using a higher-powered motor would not change his opinion that the Evolo Report was not enabled. (*Id.* (quoting D.I. 243 at 1055:9-15)). Mr. Barry also testified that the "delta wing" in the Evolo Report was a flat plat, which would prevent it from achieving stability. (*Id.* at 11).

I think there is substantial evidence to support the jury's finding that the Evolo Report is not enabled.

First, Mr. Barry testified that the Evolo Report was not enabled, independent of the watching the YouTube videos of the different Evolo prototypes. (D.I. 243 at 973:1-13). Therefore, MHL's evidence was about the Evolo Report itself, not just about the Evolo prototypes.

Second, Mr. Barry testified that the Evolo Report's instruction to use a 4 kW motor in the watercraft, as opposed to the 2 kW motor actually used in the final prototype, would not change his opinion that the Evolo Report was not enabled. Waydoo argues the Evolo Report instructed that a 4 kW motor was required and, as a result, would make the Evolo Report enabled. (D.I. 236 at 8). Mr. Barry explained that a more powerful motor would not make the watercraft stable because the watercraft would not reach the requisite speed to achieve stability without crashing first. (D.I. 243 at 1054:25-1055:15).

Third, Mr. Barry expressed that using a flat plate could achieve stability, but it was unlikely to do so. (*Id.* at 973:10-11 ("And, further, the use of the hydrofoil they selected is unlikely to produce stability."), 1041:18-24). I agree with Waydoo that this does not support an argument that

the Evolo Report discloses a watercraft that is inherently unstable because the hydrofoils are flat plates. I think, however, the fact that the Evolo Report discloses using flat plates, which may not be conducive to stability (per Mr. Barry's testimony), makes it a relevant aspect for Mr. Barry, and therefore the jury, to consider in the context of the full Evolo Report.

For each of these three points, the jury was entitled to assess the credibility of Mr. Barry and believe him over Waydoo's expert. It is not for me to weigh the credibility of the witnesses.

Fourth, I reject Waydoo's argument that the Evolo Report must be enabled because the Asserted Patents disclose information about stability that existed in textbooks. Mr. Barry testified that the Asserted Patents teach stability at the same level of detail as textbooks from the 1960's. (D.I. 243 at 1037:23-1038:11). Mr. Barry testified that the Evolo Report referred to and cited those textbooks and that the Report's authors therefore "would have had all the information." (*Id.* at 1041:3-9). Waydoo's argument seems to be that the Evolo Report must be enabled because a POSA would, or could, use the information that is disclosed in other prior art references with the Evolo Report. (*See* D.I. 236 at 11).

But the Report's authors having access to other prior art references does not mean the Evolo Report teaches how to apply that information such that the disclosure of the Evolo Report is enabled. Waydoo cites *SRI Int'l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008) for support, but that case is distinguishable. In *SRI*, the anticipating prior art reference was found to be enabling because it provided a "similar, or even a partially identical" disclosure to the specification of the patent in that case. *Id.* ("Thus, the 1997 publication with its similarities in technical scope and description to the specification of the '212 patent meets the enabling hurdle for a prior art reference.").

I do not think the fact that the Asserted Patents' disclosures about stability existed in textbooks (i.e., other prior art references) means the Evolo Report must be enabled. Even though the patent's information about stability may have been well-known in the art (D.I. 243 at 1038:12-22 (Barry)), and accessible to a POSA, I think the proper focus for determining enablement is how the Evolo Report teaches a POSA to apply those principles. Mr. Barry testified that the Evolo Report does not enable a passively stable eFoil. (*See* D.I. 243 at 998:5-14). Another way of phrasing this is that the Evolo Report applies those well-known principles to achieve an unstable watercraft. I do not think a prior art reference that applies the knowledge of a POSA to achieve a non-enabled embodiment necessarily enables a different, enabled embodiment just because it is possible to apply that same knowledge in a different manner. As such, I think it is reasonable for a jury to determine that the Evolo Report is not enabled because, if they chose to credit Mr. Barry's testimony, there was sufficient evidence to determine that the Evolo Report only teaches one to apply the principles from the textbooks to achieve an unstable watercraft. As such, the jury could conclude that undue experimentation would be required to practice a stable watercraft. Therefore, I do not think the Evolo Report is automatically enabled just because the information disclosed in the Asserted Patents existed in textbooks.

I find a reasonable jury could have considered Mr. Barry's testimony and determined that the Evolo Report is not enabled. Therefore, Waydoo's JMOL motion is denied.

For the same reasons, I find the jury's finding that the Evolo Report is not enabled is not against the clear weight of the evidence. Therefore, Waydoo's motion for a new trial is denied.

ii. Enablement of the Asserted Patents

Waydoo advances two arguments for why the Asserted Patents are not enabled. First, Waydoo argues that if the Evolo Report is not enabled, then the Asserted Patents must not be

enabled. (D.I. 236 at 11-13). More specifically, Waydoo contends that the Asserted Patents are not enabled because they fail to disclose key information regarding stability and hydrofoil design that the Evolo Report teaches. (*Id.* at 12 (listing concepts in the Evolo Report such as longitudinal dihedral wing arrangement, location of the center of gravity, and the importance of speed with respect to stability, that are not in the patent specification); *see also* D.I. 242 at 805:2-25 (Dr. Triantafyllou); D.I. 244 at 1149:1-18 (arguing such concepts are disclosed in the Evolo Report) (Waydoo closing)). If the Evolo Report, which discloses more than the Asserted Patents, is not enabled, then, Waydoo argues, it must logically follow that the Asserted Patents are not enabled.

Waydoo appears to contend that the Asserted Patents needed to describe the missing information rather than rely on a POSA to supply it. Waydoo cites *Auto. Techs. Int'l, Inc. v. BMW of N. Am., Inc.*, 501 F.3d 1274, 1284 (Fed. Cir. 2007), for the proposition that "'it is insufficient to merely state that known technologies can be used to 'achieve passive stability." (D.I. 236 at 14 (citing *Auto. Techs.*, 501 F.3d at 1283)).

In *Auto. Techs.*, the Federal Circuit found an electronic side impact sensor was not enabled in part because "side impact sensing was a new field and . . . there were no electronic sensors in existence that would detect side impact crashes." *Auto. Techs.*, 501 F.3d at 1284.

The case here is distinguishable. The Evolo Report may teach additional content not found in the patent specification, but I do not think that is sufficient to find the Asserted Patents not to be enabled. Waydoo does not argue and fails to cite evidence (e.g., expert testimony) that would indicate that the absence of this information in the Asserted Patents would mean undue experimentation is required to practice the invention. (*See* D.I. 236 at 12). In *Auto. Techs.*, the record was far more developed to show that the patent was not enabled because it was missing key information. *See* 501 F.3d at 1284 (noting expert testimony identified two problems in practicing

the invention and that a "'great deal of experimentation' would have been necessary to make an electronic side impact sensor after reading the specification"). Such evidence is lacking here.

Second, Waydoo argues that the Asserted Patents do not enable dual-wing crafts and, therefore, do not enable the full scope of the claims.[4] Waydoo reiterates its points that the Asserted Patents do not enable a passively stable watercraft, generally. (D.I. 236 at 12). As already discussed, I reject that argument. Waydoo further argues that the specification does not describe how to arrange or design two hydrofoil wings to achieve stability. (*Id.* at 13). Waydoo contends the specification disparages dual-wing hydrofoils as only being suitable for training purposes. (*Id.* at 13).

I think a reasonable jury could conclude that Waydoo failed to meet its burden to show that the Asserted Patents are not enabled. Waydoo contends the specification lacks guidance in designing or arranging two hydrofoil wings but offers no support that undue experimentation would be required to practice a dual-wing craft. (*See* D.I. 236 at 13). Waydoo contends that the patents are not enabled because they do not contain any experimental data or working examples. (*Id.*). Actual working examples, however, are not required to satisfy the enablement requirement. *Allergan, Inc. v. Sandoz Inc.*, 796 F.3d 1293, 1310 (Fed. Cir. 2015).

I also disagree that the patent disparages dual-wing hydrofoils or that the statements in the specification would prevent a POSA from practicing a dual-wing hydrofoil without undue

[4] This is the first time that Waydoo is raising the argument that the claims are not enabled for practicing dual-wing crafts, specifically. At trial, Waydoo moved for judgment as a matter of law for lack of enablement because the patents "teach you nothing new." (D.I. 243 at 1067:14-16). Thus, Waydoo may have forfeited this argument. *See United States v. Dowdell*, 70 F.4th 134, 140 (3d Cir. 2023) ("[A]n example of [forfeiture] is an inadvertent failure to raise an argument." (alteration in original) (quoting *Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.*, 877 F.3d 136, 147 (3d Cir. 2017))). MHL, however, does not object to Waydoo raising this argument now. Because MHL fails to argue the issue is forfeited, MHL has forfeited any forfeiture argument, and I address the issue.

experimentation. The patent indicates that hydrofoils can be designed to have certain tradeoffs (i.e., lower speed, but greater stability). (*See* '044 patent at col. 2:26-35). The specification indicates that designs with greater stability may be better used for training. (*Id.*). The specification indicates that a hydrofoil design that includes a "fixed canard" (i.e., a second wing) increases stability and is "suitable for training." (*Id.* at col. 5:36-37; *see also id.* at col. 5:45-50). The specification does not state that these designs are only suitable for training, or that even being suitable for training is undesirable. The specification is just explaining an advantage of a particular embodiment.

I think a reasonable jury could conclude that Waydoo failed to carry its burden in showing the Asserted Patents are not enabled. Therefore, Waydoo's JMOL motion is denied.

For the same reasons, I find the jury's finding that the Asserted Patents are enabled is not against the clear weight of the evidence. Therefore, Waydoo's motion for a new trial is denied.

C. Infringement of the '659 Patent

Waydoo contends there is insufficient evidence to show that the Waydoo eFoils are stable. As such, Waydoo argues there is insufficient evidence to show that Waydoo infringed the '659 Patent.[5] Waydoo contends that the only evidence regarding whether Waydoo's eFoils are dynamically stable[6] are Mr. Barry's testimony from watching videos of individuals riding Waydoo's boards and Mr. Barry's eigenvalue analysis. (D.I. 236 at 14-15). Waydoo contends that stability cannot be assessed from watching videos of the eFoils being ridden. Waydoo argues Mr. Barry's determination about stability from the video clips was unscientific for the additional reason

[5] I construed the preamble of claim 1 of the '659 patent to be limiting and to require static and dynamic stability. (D.I. 212 at 7). Claim 2 of the '659 patent depends from claim 1.

[6] Waydoo does not argue that its eFoils are not statically stable.

that the clips viewed were shorter than 20 seconds, which was the shortest time frame he indicated was necessary to make a determination about stability. (*Id.* at 15).

Waydoo argues the results from the eigenvalue analysis show Waydoo's eFoils are dynamically unstable as each board has at least one positive sigma value.[7] (D.I. 236 at 15). Waydoo contends that Mr. Barry's "damping" theory to explain why the eFoils are stable, despite the positive sigma values, is unsupported.

MHL contends that Mr. Barry did not rely solely on videos to determine if the Waydoo eFoils were stable. (D.I. 245 at 13). MHL argues that Mr. Barry explained that the eigenvalue analysis was a conservative estimate and that in the real world there would be damping effects that would stabilize the eFoil. (*Id.* at 14 (citing D.I. 241 at 472:20-473:2)).

I find a reasonable jury could have determined the '659 patent was infringed. Mr. Barry testified that the Waydoo eFoils were stable based on watching videos. The jury saw at least some of the same videos. (*See e.g.*, D.I. 241 at 487:11-24 (playing a video Mr. Barry used to "make a positive determination of stability of the Waydoo products")). Waydoo contends that whether a watercraft is stable cannot be evaluated just from watching videos. (D.I. 236 at 14-15). The record shows that watching a video of a watercraft can, at least, give some indication about stability. (D.I. 242 at 840:24-841:11 (Triantafyllou); D.I. 241 at 482:2-5 (Barry)). Therefore, it was reasonable for the jury to consider Mr. Barry's testimony about stability based on the videos of the Waydoo eFoils.

[7] As I noted when addressing Waydoo's motion for summary judgment on non-infringement of the '659 patent, "The parties agree that this type of analysis can be used to assess whether a watercraft is dynamically stable." (D.I. 153 at 8 (citing D.I. 83 at 31; and then citing D.I. 91 at 43)). "If an eigenvalue analysis reports a positive 'sigma value,' it indicates that [a watercraft] is unstable." (D.I. 153 at 8 (quoting D.I. 83 at 3)).

The jury did not just have the video evidence and Mr. Barry's testimony about the stability of Waydoo's eFoils. The jury also had Mr. Barry's testimony about the eigenvalue analysis he performed, from which he concluded that the eFoils were stable. (D.I. 241 at 423:10-424:15).

The eigenvalue analysis produced at least one marginally positive sigma value for the Waydoo eFoil, indicating that the eFoils are dynamically unstable. (*Id.* at 471:22-25). Mr. Barry, however, testified that there are real-world damping effects that the analysis program did not consider. (*Id.* at 474:1-5, 474:11-16). The damping effects, if considered, would result in lesser sigma values than the program would indicate. (*Id.* at 471:6-10). Mr. Barry did not quantify the damping effects, but provided testimony that the damping effects would be "very large." (*Id.* at 476:6-17). Mr. Barry concluded the eigenvalue analysis supported his dynamic stability conclusion notwithstanding the one marginally positive sigma value.

Thus, the jury was free to consider Mr. Barry's testimony about the videos and his eigenvalue analysis and weigh it against the testimony of Waydoo's expert. It is not my place to determine the credibility of the witnesses. *Perkin-Elmer*, 732 F.2d at 893.

I think there is substantial evidence to support the jury's determination. Therefore, Waydoo's JMOL motion is denied.

Likewise, I find that the jury's determination that Waydoo infringed the '659 patent is not against the clear weight of the evidence. Therefore, Waydoo's motion for a new trial is denied.

D. Damages

Waydoo contends that the jury's damages award of a reasonable royalty of $500 per board is not supported by the evidence. Waydoo contends that damages should be limited to a 2.5% royalty rate. (D.I. 236 at 20). Waydoo raises four arguments as to why the royalty rate of $500 per board is not a *reasonable* royalty. I address each one in turn.

First, Waydoo challenges the comparability of the Fliteboard Agreement, which Dr. Stec used as a comparable license agreement, because it was made under the threat of litigation and Dr. Stec did not account for such threats in his analysis. (D.I. 236 at 18). MHL counters that the Fliteboard Agreement was not the product of threats of litigation nor was it used to settle active litigation.

I addressed a similar "threat of litigation" argument in Waydoo's *Daubert* motions. (D.I. 155 at 3). When I denied Waydoo's *Daubert* motion to exclude Dr. Stec's testimony, I noted that the Fliteboard Agreement was not used to settle litigation and that Dr. Stec had a "plausible case for economic comparability." (*Id.*). The jury was free to consider Dr. Stec's testimony regarding the Fliteboard Agreement.

Second, Waydoo contends that the Fliteboard Agreement is not comparable because it included two other patents, in addition to the Asserted Patents, and Dr. Stec failed to apportion any value to those two patents in the Fliteboard Agreement. (D.I. 236 at 19). MHL contends that Dr. Stec did an apportionment analysis of the Fliteboard Agreement and concluded that the two non-asserted patents here had no value. I agree with MHL that Dr. Stec did an apportionment analysis. He testified that he apportioned no value to the two non-asserted patents as they were "thrown in" as Mr. Wagner, President of MHL Custom, informed him that those patents "didn't guide the license in any way, shape or form." (D.I. 241 at 617:16-25). Waydoo contends that Dr. Stec relied on Mr. Wagner's representation about the value of the other patents and Mr. Wagner never valued a patent before. Dr. Stec, however, clarified he relied on Mr. Wagner for his perspective of the negotiations. (*Id.* at 618:1-7). The jury was free to consider Dr. Stec's testimony.

Third, Waydoo maintains that the $500 per board royalty is not reasonable because it exceeds Waydoo's 15% profit margin (i.e., $450 per board) and, thus, would not have been the

agreed upon royalty in a hypothetical negotiation. (D.I. 236 at 19). MHL argues that the $500 per board royalty is reasonable because Mr. Ping testified, at least at one point, that Waydoo's profit margin was 35%. Even though Mr. Ping also testified that Waydoo's profit margin was 15%, MHL argues it was up to the jury to consider the inconsistent testimony to ascertain Waydoo's profit margin.

I think there is substantial evidence to support the jury's determination that $500 per board is a reasonable royalty. Mr. Ping's testimony about Waydoo's profit margin is inconsistent. At one time he indicated it was 35%. (D.I. 241 at 535:17-536:9). At another time he indicated it was 15% and the 35% value was just a goal. (D.I. 241 at 616:3-5). When a party's witness gives conflicting testimony about something that is solely within the party's knowledge, a jury will usually have a substantial basis to credit either version. Thus, I think the jury to determine that Waydoo's profit margin is 35%.

Even if the 35% profit margin was just Waydoo's goal, however, I think a jury could still consider it when determining a reasonable royalty from a hypothetical negotiation. A hypothetical negotiation takes place on the eve of infringement. *LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 76 (Fed. Cir. 2012) ("Indeed, the basic question posed in a hypothetical negotiation is: if, on the eve of infringement, a willing licensor and licensee had entered into an agreement instead of allowing infringement of the patent to take place, what would that agreement be?"). It seems reasonable to me that in a hypothetical negotiation the parties would take into account the parties' expectations, such as Waydoo's expected (or even hoped-for) 35% profit margin.

Fourth, Waydoo contends that "the percent royalty of the Fliteboard Agreement is not economically comparable to MHL's per-unit hypothetical negotiation." (D.I. 236 at 19-20). Waydoo contends that for the Fliteboard Agreement to be comparable the royalty should be

assessed at $157.50 per board, which is a 5.25% royalty, as used in the Fliteboard Agreement. I addressed a similar issue in Waydoo's *Daubert* motion. (D.I. 155 at 3 ("It is about whether the license should be evaluated on a royalty rate based on percentage of sales price or a royalty rate based on a dollar amount per sales unit."). I determined, "It is for the jury to decide how convincing Dr. Stec's analysis is." (*Id.*). The jury considered Dr. Stec's testimony and chose, at least to some extent, to credit it. Therefore, I do not see this as a reason to grant Waydoo's motion for judgment as a matter of law or a new trial.

I think there was sufficient evidence for the jury to determine a reasonable royalty to be $500 per board. Therefore, Waydoo's JMOL motion is denied.

For the same reasons, I find the jury's award of damages is not against the clear weight of the evidence. Therefore, Waydoo's motion for a new trial is denied.

E. Willfulness

Waydoo contends there is not substantial evidence that Waydoo's infringement was willful. Waydoo argues that MHL did not present any evidence that Waydoo had the specific intent to infringe MHL's patents. (D.I. 236 at 17). Waydoo argues that the only evidence produced at trial were the cease-and-desist letters MHL sent Waydoo on January 31, 2019, April 9, 2019, and April 12, 2019. (*Id.*). Waydoo disputes that it received these letters. (*Id.* at 17 n.13). Waydoo further argues those letters are not sufficient to support a finding of willfulness because the letters, even if received, did not provide specificity regarding the infringement (e.g., no claim charts). (*Id.*). Waydoo argues that none of the cease-and-desist letters refer to Waydoo's Flyer ONE product, which is the product Waydoo is currently selling.

MHL contends there is substantial evidence that infringement was willful. MHL argues that the short amount of time between Waydoo's formation as a company and Waydoo's

development of an eFoil ready for market implies that Waydoo copied MHL. (D.I. 245 at 15). MHL contends that the cease-and-desist letters informed Waydoo in 2019 that Waydoo was infringing the Asserted Patents. (*Id.* at 16). MHL sent the first two letters to the email address on Waydoo's website and the third letter via mail to Waydoo's physical address. (D.I. 240 at 344:12-19 (Wagner)).

"Under *Halo*, the concept of 'willfulness' requires a jury to find no more than deliberate or intentional infringement." *Eko Brands, LLC v. Adrian Rivera Maynez Enterprises, Inc.*, 946 F.3d 1367, 1378 (Fed. Cir. 2020) (citing *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 105 (2016)). Taking all reasonable inferences in MHL's favor, I think it is reasonable for the jury to infer that Waydoo received the letters given that they were sent to the email address listed on Waydoo's website.

With respect to the content of the cease-and-desist letters, I think they are specific enough for the jury to conclude Waydoo's infringement was willful. The letters referenced the Asserted Patents. (D.I. 240 at 342:24-343:1 (Wagner)). Mr. Wagner testified that the letters referenced the Waydoo Flyer (*id.* at 343:2-5, 343:20-21), which was the eFoil Waydoo was marketing at the time (D.I. 236 at 17).

Waydoo contends that the letters were not specific because they did not include a claim chart. (D.I. 236 at 17). I do not think a claim chart is required to establish that Waydoo had knowledge that it was infringing the Asserted Patents. I think the reference to the patents and the product Waydoo was marketing is sufficient for the jury to infer that Waydoo knew of the infringement.[8] *See Purewick Corp. v. Sage Prod., LLC*, 2023 WL 2734418, at *9 (D. Del. Mar.

[8] Waydoo appears to argue that the letters only "'assert[]' that a Waydoo eFoil infringes" the Asserted Patents." (D.I. 236 at 17 (citing D.I. 240 at 342:14-343:5 (Wagner)). Even if the letters only referenced a Waydoo eFoil, rather than the Flyer by name, I think that is sufficient to put

31, 2023) ("Plaintiff must show that the accused infringer knew of the patent-in-suit, and knowingly or intentionally infringed the patent after acquiring that knowledge." (citation and internal quotation marks omitted)), *appeal dismissed*, 2023 WL 4230367 (Fed. Cir. June 28, 2023).

I also do not think that Waydoo started marketing the Flyer One, the second-generation product, in June 2020, necessarily means Waydoo's infringement with respect to the Flyer One is not willful. Waydoo merely points to the fact that the product was not accused in the 2019 letters, which were sent before Waydoo began marketing the Flyer One. Waydoo does not point to any differences between the models that would lead one to think the Flyer One was different from the Flyer with respect to infringing the Asserted Patents. Taking all reasonable inferences in MHL's favor, I think a jury could infer that Waydoo knew the Flyer One was infringing the Asserted Patents because of its knowledge that the Flyer was infringing.

I think there is substantial evidence that Waydoo knew of the Asserted Patents and that its products infringed the Asserted Patents. Therefore, Waydoo's JMOL motion is denied.

For the same reasons, I find the jury's finding of willful infringement is not against the clear weight of the evidence. Therefore, Waydoo's motion for a new trial is denied.

IV. CONCLUSION

For the reasons discussed above, Waydoo's renewed JMOL motions and motions for a new trial are denied.

An appropriate order will issue.

Waydoo on notice as it was only marketing one eFoil at the time. (D.I. 236 at 17 (noting the Flyer ONE was not introduced until June 2020)).

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC., Plaintiff; v. WAYDOO USA, INC, and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD, Defendants.	Civil Action No. 21-91-RGA

MEMORANDUM OPINION

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June 24, 2022

ANDREWS, UNITED STATES DISTRICT JUDGE:

Before me is the issue of claim construction of multiple terms in U.S. Patent Nos. 9,359,044 ("the '044 Patent") and 9,586,659 ("the '659 Patent"). I held a claim construction hearing on May 3, 2022 and requested supplemental briefing on several questions. I have considered the parties' joint and supplemental briefing. (D.I. 46, 59, 60, 62).

I. LEGAL STANDARD

"It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (cleaned up). "'[T]here is no magic formula or catechism for conducting claim construction.' Instead, the court is free to attach the appropriate weight to appropriate sources 'in light of the statutes and policies that inform patent law.'" *SoftView LLC v. Apple Inc.*, 2013 WL 4758195, at *1 (D. Del. Sept. 4, 2013) (quoting *Phillips*, 415 F.3d at 1324) (alteration in original). When construing patent claims, a court considers the literal language of the claim, the patent specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977–80 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). Of these sources, "the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Phillips*, 415 F.3d at 1315 (cleaned up).

"[T]he words of a claim are generally given their ordinary and customary meaning. . . . [Which is] the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1312–13 (citations and internal quotation marks omitted). "[T]he ordinary meaning of a claim term is its meaning to [an] ordinary artisan after reading the entire patent." *Id.* at 1321

(internal quotation marks omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314.

When a court relies solely upon the intrinsic evidence—the patent claims, the specification, and the prosecution history—the court's construction is a determination of law. *See Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 331 (2015). The court may also make factual findings based upon consideration of extrinsic evidence, which "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Phillips*, 415 F.3d at 1317–19 (cleaned up). Extrinsic evidence may assist the court in understanding the underlying technology, the meaning of terms to one skilled in the art, and how the invention works. *Id.* Extrinsic evidence, however, is less reliable and less useful in claim construction than the patent and its prosecution history. *Id.*

II. BACKGROUND

The patents claim a "personal hydrofoil"—a surfboard-like device that achieves a hovering effect by using a fin that glides under the surface of the water. This fin—the hydrofoil—"enable[s] higher speeds and to lift the surfboard above the choppy, turbulent surface of the water, thus enabling surfing on larger waves." '044 Patent, 1:26-28.

The '044 patent application was filed October 8, 2014. The '659 patent application was filed March 8, 2016 and is a continuation of the '044 patent. The '044 and '659 patents share a specification. The parties agree that the following claims are representative for their respective patents. The disputed claim language is italicized.

'044 Patent, Claim 1:

A passively stable, weight-shift controlled personal hydrofoil watercraft, comprising:

a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface, *wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position*, the flotation device having a forward section, a middle section, and a rear section, and the flotation device being controlled via weight shift of the user;

a strut having an upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device;

a hydrofoil fixedly interconnected with the lower end of the strut, the hydrofoil having no movable surface and *designed to provide passive static stability* controlled solely by weight shift of the user;

a propulsion system for propelling the watercraft in a body of water, wherein the propulsion system is connected to the hydrofoil; and

the watercraft having no movable steering system.

'044 Patent, Claim 5:

A watercraft in accordance with claim 1, wherein *the design for providing the passive static stability is achieved through a combination of airfoil design, planform design and tailoring of span-wise twist distribution.*

'659 Patent, Claim 1:

A passively stable, weight-shift controlled personal hydrofoil watercraft, comprising:

a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface, *wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position*, the flotation device having a forward section, a middle section, and a rear section;

a strut having a upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device;

a hydrofoil fixedly interconnected with the lower end of the strut, the hydrofoil having no movable surface;

a propulsion system for propelling the watercraft in a body of water, wherein the propulsion system is connected to the hydrofoil; and

the watercraft having no movable steering system.

'659 Patent, Claim 16:

A personal hydrofoil watercraft, comprising:

a surfboard-shaped flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface, *wherein the top surface has a substantially horizontal supporting surface configured to support a user in a prone, kneeling, or standing position*, the flotation device having a forward section, a middle section, and a rear section;

a hydrofoil interconnected with the surfboard-shaped flotation device, the hydrofoil having a strut and a first hydrofoil wing, an upper end of the strut being fixedly interconnected with the surfboard-shaped flotation device;

a propulsion system attached to the surfboard-shaped flotation device for propelling the watercraft in a body of water, the propulsion system comprising a battery, an electric motor, a motor speed controller, and a propulsor, wherein the propulsor is selected from a propeller, a ducted propeller, or a pump-jet, and the battery and motor speed controller are contained in a watertight compartment integrated into the flotation device;

the watercraft having no movable steering system;

a handheld controller having a throttle; and

a throttle interface, wherein the throttle is adapted to send electronic signals to the throttle interface that cause an output of the propulsion system to change.

III. CONSTRUCTION OF DISPUTED TERMS

A. Term 1: "wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position" ('044 Patent, Cl. 1; '659 Patent, Cl. 1)

1. *Plaintiff's proposed construction*: "Wherein a user can be disposed on the top surface of the flotation device in each of the following positions: lying chest down; kneeling; or standing."

2. *Defendants' proposed construction*: Plain and ordinary meaning.

3. *Court's construction*: "'Prone, kneeling, or standing' are alternatives. Only one of them is required."

Plaintiff argues that the top surface of the board must allow the user to use the device in each listed position (prone, kneeling, and standing). Defendants disagree, arguing that the use of the word "or" in the claim limitation means that the board must allow a user to "be in any (or all) of the three positions." (D.I. 62 at 4).

"Or" usually designates alternatives. *See Kustom Signals, Inc. v. Applied Concepts, Inc.*, 264 F.3d 1326, 1331 (Fed. Cir. 2001). To deviate from the usual interpretation, a party must show that the deviation is "clearly explained in the patent documents." *Id.* Here, I do not think that the patent documents show that "or" has anything other than its common usage.

The claim describes "a flotation device … wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position …." '044 Patent, Cl. 1. Plaintiff argues, "The conjunction 'or' is necessary because a user cannot be in all three positions at once . . . ." (D.I. 46 at 14). I do not think that "or" was "necessary"—the patentee could have drafted the claim with more clarity to claim a board that must support all three positions. The claim language, as drafted, claims a top surface that supports a user in a prone position, a kneeling position, or a standing position.

The specification does not clearly explain that "or" ought to be given anything other than its usual meaning. Plaintiff cites an embodiment in support of its proposed construction. (D.I. 46 at 12–14). The embodiment describes a "flotation board . . . similar to those used in surfing or sailboarding." '044 Patent, 3:7–8. Figure 1 shows the flotation board to be "substantially flat." (D.I. 46 at 12). The specification further describes, "To operate the watercraft 100, a user initially lies prone on the flotation board 101. The throttle is engaged, causing the craft to accelerate. As the craft gains speed the user may move to a kneeling or standing position." '044 Patent, 4:33-36.

Defendants argue that Plaintiff seeks to import limitations from embodiments into the claims. (D.I. 46 at 18). I agree. As Defendants argue, "claim 1 (of both patents) and claim 16 (of the '659 patent) are each directed to a 'personal hydrofoil watercraft,' of which a surfboard is just one example." (D.I. 46 at 19). The Figure 1 embodiment, far from clearly explaining that the top surface of the claimed device must support a user in all three positions, suggests that a "flat upper surface to allow an adult human to lie prone, sit, kneel or stand" is merely "preferential[.]" ('044 patent, 3:13–17).

Thus, I reject Plaintiff's proposed construction. I will give "or" its customary meaning of designating alternatives. The claimed top surface must support a user in at least one of the three listed positions, but it need not support a user in more than one of the three.

B. Term 2: "wherein the top surface has a substantially horizontal supporting surface configured to support a user in a prone, kneeling, or standing position" ('659 Patent, Cl. 16)

1. *Plaintiff's proposed construction*: "Wherein the top surface has a substantially horizontal supporting surface configured to support a user in each of the following positions: lying chest down; kneeling; or standing."
2. *Defendants' proposed construction*: Plain and ordinary meaning.
3. *Court's construction*: "'Prone, kneeling, or standing' are alternatives. Only one of them is required."

For the reasons stated in Section III.A, I reject Plaintiff's proposed construction.

C. Term 3: "designed to provide passive static stability" ('044 Patent, Cl. 1)

1. *Plaintiff's proposed construction*: "Designed such that the hydrofoil has an initial tendency to return to its original condition when disturbed without the hydrofoil having any moveable components."

2. *Defendants' proposed construction*: Indefinite or, in the alternative, "designed to provide stability without mechanisms or active control systems."

3. *Court's construction*: "Designed such that the hydrofoil has an initial tendency to return to its original condition when disturbed without the hydrofoil having any moveable components."

Defendants argue this term is indefinite. (D.I. 46 at 38). This is because, according to Defendants, the specification treats stability as simply a "personal preference" and a person of skill in the art ("POSA") would be unable to determine whether "any particular personal hydrofoil watercraft falls inside or outside the scope of the claims." (*Id.* at 39.). Plaintiff responds that there are criteria listed in the specification for determining stability and point to the expert opinion of Mr. Barry. (*Id.* at 46–50). I agree with Plaintiff. The concept of stability appears to be well-known in the art. (*See* D.I. 59, 60). Plaintiff's expert, who considers himself a POSA, has explained how the patents use the term. (D.I. 39-1, Ex. A ¶¶ 71, 77–79). Thus, I reject Defendants' argument that the term is indefinite.

Defendants also dispute Plaintiff's proposed construction. The dispute is over the role of "static" in the term "passive static stability." Defendants argue for the construction, "designed to provide stability without mechanisms or active control systems" while Plaintiff has proposed the construction "Designed such that the hydrofoil has an initial tendency to return to its original condition when disturbed without the hydrofoil having any moveable components." I requested supplemental letters providing definitions of "stability" from sources such as textbooks. The letters were helpful. Stability in the field of aerodynamics has two categories: static and dynamic. Static stability "deals with the *initial* tendency of a vehicle to return to equilibrium . . .

after being disturbed. It says nothing about whether it ever reaches its equilibrium position or how it gets there. Such matters are the realm of dynamic stability." (D.I. 60–2, Ex. B at 602).

Defendants' proposed construction does not account for the fact that static stability is a sub-category of stability. Plaintiff's proposed construction, on the other hand, captures the concept of static stability. Thus, I will adopt Plaintiff's proposed construction.

D. Term 4: "A passively stable, weight-shift controlled personal hydrofoil watercraft" ('659 Patent, Cl. 1)

1. *Plaintiff's proposed construction*: "A watercraft having a hydrofoil, the hydrofoil having an initial tendency to return to its original condition when disturbed without the hydrofoil having any moveable components and that is controlled by weight-shift of the user."
2. *Defendants' proposed construction*: Indefinite or, in the alternative, "A weight-shift controlled personal hydrofoil watercraft that is stable without mechanisms or active control systems."
3. *Court's construction*: Plain and ordinary meaning.

Unlike the last claim term, this term does not specify "static" stability. As discussed *supra*, stability incorporates both static and dynamic stability. Plaintiff asserts that a person of skill in the art would find "passively stable" and "passive static stability" to be interchangeable. (D.I. 46 at 36). I doubt that. Thus, I reject Plaintiff's proposition that the term here ought to have substantially the same construction as the last term. Defendants' proposed construction, however, does not construe "stable" at all. For now, I will construe the term to have its plain and ordinary meaning. The parties may readdress this issue, if it is important, in case dispositive motions.

E. Term 5: "wherein the design for providing the passive static stability is achieved through a combination of airfoil design, planform design and tailoring of span-wise twist distribution" ('044 Patent, Cl. 5)

1. *Plaintiff's proposed construction*: "The design for providing the passive static stability is achieved through a combination of:

   • a geometry of a cross-section of the hydrofoil;

   • a shape of the hydrofoil as viewed from above; and

   • a measure of rotation of a hydrofoil section along the span of the hydrofoil."

2. *Defendants' proposed construction*: "This claim term is not limiting or, in the alternative, no construction is needed at this time."

3. *Court's construction*: Plain and ordinary meaning.

Plaintiff's position is that airfoil design, planform design, and tailoring of span-wise twist distribution are "structural characteristics." (D.I. 46 at 53). Defendants argue that they are methods of design, not structure. (*Id.* at 58). The parties dispute, for instance, whether "tailoring" describes an act or a structure.

"Tailoring" and "design" could be a structure, as Plaintiff argues. At this point, however, I am not convinced that the term means anything other than its plain and ordinary meaning. In support of their proposed construction, Plaintiff largely cites to its expert's declaration, but I give that no weight. (D.I. 46 at 53–57). Neither party has made a strong claim construction argument based on the intrinsic record. The parties are free to address the construction of this term again, if it is important, in case dispositive motions.

IV. CONCLUSION

Within five days the parties shall submit a proposed order consistent with this Memorandum Opinion suitable for submission to the jury.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC., Plaintiff, v. WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD, Defendant.	C.A. No. 21-0091-RGA

****

CLAIM CONSTRUCTION ORDER

Consistent with the Court's Memorandum Opinion (D.I. 66), the Court has determined that the following terms in U.S. Patent Nos. 9,359,044 ("the '044 Patent") and 9,586,659 ("the '659 Patent") are construed as set forth below:

TERM	PATENT CLAIMS	CONSTRUCTION
"wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position"	Claim 1 of the '044 Patent; Claim 1 of the '659 Patent	"'Prone, kneeling, or standing' are alternatives. Only one of them is required."
"wherein the top surface has a substantially horizontal supporting surface configured to support a user in a prone, kneeling, or standing position"	Claim 16 of the '659 Patent	"'Prone, kneeling, or standing' are alternatives. Only one of them is required."
"designed to provide passive static stability"	Claim 1 of the '044 Patent	"Designed such that the hydrofoil has an initial tendency to return to its original condition when disturbed without the hydrofoil having any moveable components."

TERM	PATENT CLAIMS	CONSTRUCTION
"A passively stable, weight-shift controlled personal hydrofoil watercraft"	Claim 1 of the '659 Patent	Plain and ordinary meaning.
"wherein the design for providing the passive static stability is achieved through a combination of airfoil design, planform design and tailoring of span-wise twist distribution"	Claim 5 of the '044 Patent	Plain and ordinary meaning.

SO ORDERED this 30th day of June, 2022.

/s/ Richard G. Andrews
The Honorable Richard G. Andrews

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 21-0091-RGA
	:	
WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD,	:	
	:	
Defendants.	:	

ORDER

The Court has considered the briefing for the partial summary judgment and *Daubert* motions. (D.I. 80, 83, 91, 93, 101, 106). The Court previously construed the term "A passively stable, weight-shift controlled personal hydrofoil watercraft," which both parties agree is a limiting preamble in claim 1 of U.S. Patent No. 9,586,659, to have its plain and ordinary meaning. (D.I. 66 at 9). The parties, however, were permitted to readdress the construction of this term in case dispositive motions. (*Id.*). The meaning of this claim term, specifically with respect to "passively stable," has been raised as an issue in the parties' briefs. (*See, e.g.*, D.I. 80 at 36-37; D.I. 83 at 7-9; D.I. 91 at 17-22). I think the construction of "passively stable" is a question of law for the Court.

I propose to construe "A passively stable, weight-shift controlled personal hydrofoil watercraft" to mean "a weight-shift controlled personal watercraft having a hydrofoil that does not have any moveable components and which, when disturbed, (1) has an initial tendency to return to its original condition and (2) eventually returns to its original condition."

This construction would only apply to U.S. Patent No. 9,586,659. I propose to conclude that the preamble to claim 1 of U.S. Patent No. 9,359,044, which has identical wording, is not limiting.

IT IS SO ORDERED this 3rd day of January 2023.

/s/ Richard G. Andrews
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 21-0091-RGA
	:	
WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD,	:	
	:	
Defendants.	:	

ORDER

For the reasons stated in the accompanying memorandum opinion, IT IS HEREBY ORDERED that Plaintiff's Motion for Partial Summary Judgment is resolved as follows: summary judgment of infringement of the '044 Patent (D.I. 78) is DENIED; summary judgment for the '044 Patent and '659 Patent not being invalid as anticipated by the Evolo Report (D.I. 77) is DENIED; summary judgment for the '044 Patent and '659 Patent not being invalid as anticipated by MHL Custom's own products (D.I. 77) is DISMISSED as moot; summary judgment for Defendants' lack of standing argument (D.I. 79) is DISMISSED as moot.

Defendants' Motion for Partial Summary Judgment is resolved as follows: summary judgment for non-infringement of the '044 Patent and '659 Patent (D.I. 81) is DENIED; summary judgment for claims 16-20 of the '659 Patent being invalid for lack of written description (D.I. 81) is GRANTED.

As used in the asserted claims of the '659 Patent, the term "A passively stable, weight-shift controlled personal hydrofoil watercraft" is construed to mean "a weight-shift controlled personal

watercraft having a hydrofoil that does not have any moveable components and which, when disturbed, (1) has an initial tendency to return to its original condition and (2) eventually returns to its original condition."

As used in the preamble of the asserted claims of the '044 Patent, the term "A passively stable, weight-shift controlled personal hydrofoil watercraft" is construed not to be limiting.

IT IS SO ORDERED this 2nd day of February 2023.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC., Plaintiff, v. WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD, Defendants.	C.A. No. 21-0091-RGA ~~Confidential – Filed Under Seal~~

UPDATED FINAL JOINT PRETRIAL ORDER

This matter comes before the Court at a final pretrial conference held pursuant to Rule 16 of the Federal Rules of Civil Procedure.

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ATTORNEYS FOR DEFENDANTS

Plaintiff, MHL Custom, Inc. ("Plaintiff" or "MHL"), and Defendants, Waydoo USA, Inc. and Shenzhen Waydoo Intelligence Technology Co., Ltd. (collectively "Defendants" or "Waydoo")[1], submit this updated and final joint Pretrial Order pursuant to Federal Rule of Civil Procedure 16, District of Delaware Local Rule 16.3, and the Court's Scheduling Order (D.I. 19) in this matter. The pre-trial conference was held on March 10, 2023, and a five-day jury trial is scheduled to begin on March 27, 2023, with jury selection to begin on March 24, 2023.

Except as noted herein, the following matters as to the conduct of trial have been stipulated by the Parties and are hereby ordered by the Court:

I. NATURE OF THE ACTION

This is a civil lawsuit for patent infringement brought by the Plaintiff, MHL Custom, Inc. MHL is a U.S. company based in Puerto Rico and is the owner of U.S. Patent No. 9,359,044 entitled Weight-Shift Controlled Personal Hydrofoil Watercraft ("the '044 Patent") and United States Patent No. 9,586,659 entitled Powered Hydrofoil Board ("the '659 Patent") (collectively, "the Patents-in-Suit"). MHL alleges that Waydoo infringes upon, or has infringed upon, the Patents-in-Suit by manufacturing, importing, selling and/or offering for sale its *Flyer*, *Flyer One*, and *Flyer One+* branded electric hydrofoil watercraft – or "eFoils". MHL is seeking to recover monetary damages from Waydoo for the claimed infringement. MHL is represented by Robert Theuerkauf, Dennis Murrell, Brian McGraw, and Megan Gibson of the Gray Ice Higdon law firm and Blake Bennett and Andrew Ralli of the Cooch & Taylor law firm.

Waydoo denies MHL's allegations of infringement and asserts that the Patents-in-Suit are invalid. Waydoo is represented by Kelly Farnan and Dorronda R. Bordley of Richards, Layton &

[1] The parties agree that the two Defendants may be treated as one for purposes of trial, except to the extent that some distinguishing between the two entities will be reflected in potential testimony.

Finger PA and Edgar H. Haug, Robert E. Colletti, Jason Kanter, Mark Basanta, and Patrick Lavery of Haug Partners LLP.

Plaintiff denies that the Patents-in-Suit are invalid.

On January 27, 2021, MHL filed its complaint, alleging infringement of the Patents-in-Suit by Waydoo. D.I. 1. Waydoo filed an answer, affirmative defenses, and counterclaims, which are its operative pleadings. D.I. 13. MHL filed an answer to Waydoo's counterclaims. D.I. 17. On June 14, 2021, this Court entered a Scheduling Order setting trial for March 27, 2023. D.I. 19. In June 2022, this Court issued its first claim-construction order. D.I. 66, 68.

In October 2022, the parties filed summary judgment and *Daubert* motions. D.I. 74-79, 81. D.I. 81. In February 2023, the Court issued a memorandum opinion and order denying both parties' motions for summary judgment except for Waydoo's motion for summary judgment that claims 16-20 the '659 Patent are invalid for failure to satisfy the written description requirement. D.I. 153, PageID# 11017-11022. The Court also resolved the parties claim construction regarding "stability". D.I. 153, PageID# 11006-11008. With respect to the parties' *Daubert* motions, the Court denied all of the motions except for Waydoo's motion to preclude MHL's expert, Christopher Barry, from testifying as to economic issues (commercial success) and Waydoo's motion to preclude MHL's expert, Dr. Jeffrey Stec, from testifying as to non-final licensing agreements/negotiations with Manta and MSLR. D.I. 155, PageID# 11032.[2]

The parties each filed three motions *in limine*. *See* D.I. 178, D.I. 179, and D.I. 180 (MHL's motions) and D.I. 165, D.I. 166, and D.I. 167 (Waydoo's motions). Further, the parties set forth a number of disputes in the initial pretrial order related to the scope of the claims and defenses to be asserted at trial. *See* D.I. 172, § XV.A-B. The motions *in limine* and disputes between the parties

[2] The parties agree that the above procedural summary should not be read to the jury.

have now been resolved by the Court as follows:

MHL's Motion *in Limine* No. 1 (D.I. 178): The Court excluded the declaration of Jakob Kuttenkeuler but denied MHL's motion to exclude the Evolo Report and the Båtnytt magazine article. The Court further excluded the Evolo website server logs and the Evolo website metadata, but indicated that Mr. Lanterman may rely on those materials when he testifies. *See* D.I. 208, Hearing Tr. 65:23-66:2; D.I. 184 ¶ 6. The Court further held that the Evolo website server logs may be introduced as Rule 1006 summaries. D.I. 208, Hearing Tr. 65:6-17.

MHL's Motion *in Limine* No. 2 (D.I. 179): The Court held statements by Fliteboard questioning the validity of the patents or references to MHL's insurance policy would be excluded. D.I. 208, Hearing Tr. 74:18-75:1. The Court held Waydoo should seek admissions from MHL's witnesses that MHL threatened litigation against Fliteboard before offering documents that show said threats. *Id.* 80:22-81:3. The Court held that the parties may rely on negotiation communications between MHL and Fliteboard to show what the parties to the negotiation were contemplating. *Id.* 88:5-15. The Court held that if MHL uses the Fliteboard license to argue commercial success in the context of secondary or objective indicia of non-obviousness, then Waydoo may cross-examine MHL's witness to illicit testimony concerning Fliteboard's alleged motivation to enter into the license agreement in order to avoid the legal costs of defending a patent infringement action and/or challenging the validity of the patents. *Id.* 90:5-92:23. Finally, the Court also excluded MHL's license with MSLR and related testimony from MHL's expert witness. *Id.* 83:2-85:4.

MHL's Motion *in Limine* No. 3 (D.I. 180, D.I. 196): The Court granted MHL' motion to introduce (and denied Waydoo's motion to exclude) Evolo Video 1 (WD004548) and Evolo Video 2 (WD004546) and held that Mr. Barry may testify as to these videos at trial. *See* D.I. 201 at 2-3.

The Court also held that Dr. Triantafyllou may testify about Evolo Video 2 at trial. *Id.* The Court further held that Evolo Video 3 (WD004565) and Evolo Video 4 (WD004544) may be used at trial, and possibly admitted, but that Mr. Barry may not testify about them. *Id.* at 3-4. The Court granted Waydoo's motion to exclude other Evolo videos, including Evolo Video 5 (WD004549), Evolo Video 6 (WD004552) and Evolo Video No. 7 (WD04558). *Id.* at 4. Finally, the Court held that the Evolo webpage is admissible for limited purposes. Waydoo may use the webpage as evidence that the Evolo Report was publicly accessible and MHL may use the webpage to address Waydoo's obviousness defense. *Id.* at 4-5. However, the Court held that the webpage is not admissible for addressing Waydoo's anticipation defense. *Id.* at 5.

Waydoo's Motion in Limine No. 1 (D.I. 165): The Court excluded any inflammatory statements made by MHL witnesses regarding Waydoo's national origin. D.I. 208, Hearing Tr. 96:6-97:2. The Court instructed that the Defendants should be jointly referred to as Waydoo. *Id.* 6:10-25, 97:7-98:2; *see also supra* footnote 1 ("The parties agree that the two Defendants may be treated as one for purposes of trial, except to the extent that some distinguishing between the two entities will be reflected in potential testimony."). The Court further instructed MHL to avoid any unnecessary references to China during the presentation of its case. D.I. 208, Hearing Tr. 98:6-16. The Court granted Waydoo's motion to exclude references to DJI. *Id.* 99:1-109:8; D.I. 184 ¶ 6.

Waydoo's Motion in Limine No. 2 (D.I. 166): The Court held that MHL can cross examine Mr. Lanterman about Exhibits 1 and 2 to the McGraw Declaration (consisting of screenshots from the Wayback Machine website) and that MHL is not prohibited from cross-examining him with the aid of Exhibit 3 to the McGraw Declaration (which is inadmissible hearsay), should that be necessary. D.I. 208, Hearing Tr. 109:16-114:3; D.I. 184 ¶ 6.

Waydoo's Motion in Limine No. 3 (D.I. 167, D.I. 197): *See* discussion with respect to MHL's motion *in limine* number 3, above.

MHL's Fees, Costs, and Injunction Evidence: The Court held that MHL shall not present any evidence to the jury related to its claims for fees, costs, or an injunction. D.I. 208, Hearing Tr. 35:17-36:12

MHL's Claim that the Evolo Report is not Enabling: The Court held that Mr. Barry may testify about what Evolo Videos 1 and 2 show "with respect to whether the Evolo Report is enabling." D.I. 201 at 2-3. The Court did not otherwise preclude Mr. Barry from providing his opinion that the Evolo Report is not enabling.

Waydoo's Obviousness Defense: The Court held that Waydoo may present its invalidity defense that the Evolo Report alone rendered the Patents-in-Suit obvious. D.I. 198.

Waydoo's Indefiniteness Defense: The Court held that Waydoo may present its invalidity defense that the Patents-in-Suit are indefinite. D.I. 198.

Waydoo's Written Description Defense: The Court excluded Dr. Triantafyllou's supplemental declaration regarding Waydoo's written description argument. D.I. 208 Hearing Tr. 52:13-54:5.

II. CLAIM CONSTRUCTION

The Court's construction of terms appearing in the asserted claims are listed in the table below. D.I. 66, 68, 153.

Term	Patent Claims	Court's Construction
"A passively stable, weight-shift controlled personal hydrofoil watercraft"	Claim 1 of the '044 Patent	This preamble is not limiting

Term	Patent Claims	Court's Construction
"A passively stable, weight-shift controlled personal hydrofoil watercraft"	Claim 1 of the '659 Patent	This preamble is limiting and is construed to mean: "a weight-shift controlled personal watercraft having a hydrofoil that does not have any moveable components and which, when disturbed, (1) has an initial tendency to return to its original condition and (2) eventually returns to its original condition."
"wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position"	Claim 1 of the '044 Patent; Claim 1 of the '659 Patent	"'Prone, kneeling, or standing' are alternatives. Only one of them is required."
"designed to provide passive static stability"	Claim 1 of the '044 Patent	"Designed such that the hydrofoil has an initial tendency to return to its original condition when disturbed without the hydrofoil having any moveable components."
"wherein the design for providing the passive static stability is achieved through a combination of airfoil design, planform design and tailoring of span-wise twist distribution"	Claim 5 of the '044 Patent	Plain and ordinary meaning.

III. BASIS OF JURISDICTION

It is undisputed that this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

IV. STATEMENT OF FACTS WHICH ARE ADMITTED AND REQUIRE NO PROOF

Subject to the Court's resolution of the parties' motions *in limine* and other evidentiary objections, any party, with prior notice to all other parties, may read any or all of either parties' uncontested facts to the jury or Court, and will be charged for the time used to do so. The following

facts are not disputed or have been agreed to or stipulated to by the parties:

A. Plaintiff's Statement of Facts Which Are Admitted and Require No Proof

1. Plaintiff is the owner of the '044 Patent.

2. The '044 Patent was issued by the United States Patent & Trademark Office ("PTO") on June 7, 2016. The '044 Patent issued from Application Serial No. 14/509,289 having a filing date of October 8, 2014.

3. The '044 Patent claims priority to Provisional Application No. 61/889,071, filed on October 10, 2013 ("the '071 Provisional Application").

4. The '659 Patent was issued by the PTO on March 7, 2017. The '659 Patent issued from Application Serial No. 15/064,521 having a filing date of March 8, 2016.

5. The '659 Patent claims priority to the '044 Patent and the '071 Provisional Application.

6. The '659 Patent is a continuation of the '044 Patent. The Patents-in-Suit contain the same specification and figures.

7. Plaintiff is the owner of the '659 Patent.

8. Jacob Willem Langelaan is the listed inventor of the '044 Patent and the '659 Patent.

9. On March 4, 2016, Jacob Langelaan and Nick Leason (on behalf of Plaintiff), executed an IP License and Sale Agreement in which Langelaan granted to "MHL a worldwide exclusive license" to the Patents-in-Suit, including any rights to the then existing, and future related, patent applications for the Patents-in-Suit. The license agreement provided for a running royalty rate paid to Langelaan of 2.5% of net sales of licensed products sold in the U.S. Total royalty payments were capped at $1,000,000.

10. On April 7, 2019, MHL and Langelaan executed a first amendment of the IP

License and Sale Agreement titled "IP License and Sale Amendment."

11. On July 16, 2020, Plaintiff and Langelaan executed a "Second IP License Amendment and Assignment Agreement" in which all right, title, and interest in and to the Patents-in-Suit were assigned to Plaintiff in exchange for $225,000.

12. Plaintiff manufactures and sells different models of a personal hydrofoil watercraft – in the form of an electric hydrofoil surfboard or "eFoil" – under their "Lift" brand.

13. Waydoo manufactures/has manufactured, offers for sale/has offered for sale, and sells/has sold eFoils under the following model names: *Flyer*, *Flyer One*, and *Flyer One+* ("the Accused Products"). The Accused Products manufactured, offered for sale, and sold by Waydoo are sold to an authorized reseller in the United States.

14. Plaintiff filed this lawsuit on January 27, 2021.

15. Each of the Accused Products has a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface as claimed in Claim 1 of the Patents-in-Suit.

16. Each of the Accused Products has a flotation device wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position as claimed in Claim 1 of the Patents-in-Suit.

17. Each of the Accused Products has a flotation device having a forward section, a middle section, and a rear section as claimed in Claim 1 of the Patents-in-Suit.

18. Each of the Accused Products has a strut having an upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device as claimed in Claim 1 of the Patents-in-Suit.

19. Each of the Accused Products has a hydrofoil fixedly interconnected with the lower

end of the strut, the hydrofoil having no movable surface as claimed in Claim 1 of the Patents-in-Suit.

20. Each of the Accused Products has a propulsion system for propelling the watercraft in a body of water as claimed in Claim 1 of the Patents-in-Suit.

21. Each of the Accused Products has a propulsion system wherein the propulsion system is connected to the hydrofoil as claimed in Claim 1 of the Patents-in-Suit.

22. Each of the Accused Products is a watercraft having no moveable steering system as claimed in Claim 1 of the Patents-in-Suit.

23. Each of the Accused Products has a propulsion system wherein the propulsion system comprises a battery, an electric motor, and a propulsor, the propulsor selected from a propeller, a ducted propeller, or a pump-jet as claimed in Claim 2 of the Patents-in-Suit.

24. Each of the Accused Products has a hydrofoil and a strut wherein the hydrofoil is indirectly connected to the strut as claimed in Claim 7 of the '044 Patent and Claim 4 of the '659 Patent.

25. Each of the Accused Products has a strut and a propulsion system wherein the strut is directly connected to the propulsion system as claimed in Claim 8 of the '044 Patent and Claim 5 of the '659 Patent.

26. The Waydoo *Flyer One* and *Flyer One+* models of the Accused Products have a hydrofoil, strut and a propulsion system wherein a first hydrofoil wing of the hydrofoil is indirectly connected to the strut through the propulsion system as claimed in Claim 9 of the '044 Patent and Claim 6 of the '659 Patent.

27. Each of the Accused Products has a hydrofoil which comprises a plurality of wings that are interconnected by way of a strut as claimed in Claim 10 of the '044 Patent and Claim 7 of

the '659 Patent.

28. Each of the Accused Products has an electric motor wherein the electric motor is integrated into a waterproof, streamlined pod as claimed in Claim 12 of the '044 Patent and Claim 9 of the '659 Patent.

29. Each of the Accused Products has a wireless handheld controller having a transmitter and a receiver, wherein the transmitter is adapted to send wireless signals to the receiver that cause an output of the propulsion system to change as claimed in Claim 15 of the '044 Patent and claim 11 of the '659 Patent.

30. Each of the Accused Products has a hydrofoil wherein the hydrofoil is spaced a fixed distance apart from the flotation device as claimed in Claim 17 of the '044 Patent.

31. Each of the Accused Products has a propulsion system wherein the propulsion system is directly or indirectly connected to the hydrofoil as claimed in Claim 21 of the '044 Patent and Claim 15 of the '659 Patent.

B. Defendants' Statement of Facts Which Are Admitted and Require No Proof

1. Jacob Willem Langelaan filed non-provisional U.S. Patent Application Serial No. 14/509,289 (the "'289 Application") on October 8, 2014, claiming priority to provisional application number 61/889,071, filed on October 10, 2013.

2. On August 30, 2019, MHL, Langelaan, and Fliteboard Pty. Ltd. executed a Non-Exclusive Patent License Agreement that granted Fliteboard a "nonexclusive right and license" to the Patents-in-Suit. Under this license, Fliteboard pays MHL a royalty of 5.25% of its net sales for eFoils.

3. The "Evolo project website" refers to the following URL: http://flygmac7.flyg.kth.se/cdio/old_projects/evolo.

4. The "Evolo Report" refers to each of the following documents produced in this

litigation: WD000650 (Original), WD000099 (English machine translation), and WD086241 at 86241-86797 (Certified English Translation). The certification for the certified English translation is produced in this litigation as WD086808.[3]

5. U.S. Patent No. 7,232,355 ("*Woolley*") issued on June 19, 2007. *Woolley* is prior art to the Patents-in-Suit.

6. U.S. Patent Publication No. 2003/0167991 ("*Namanny*") was published on September 11, 2003. *Namanny* is prior art to the Patents-in-Suit.

7. The Evolo Report discloses a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface as claimed in Claim 1 of the Patents-in-Suit.

8. *Woolley* and/or *Namanny* disclose a flotation device that has a fore-aft length greater than a lateral width, the flotation device having a top surface and a bottom surface as claimed in Claim 1 of the Patents-in-Suit.

9. The Evolo Report discloses a flotation device wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position as claimed in Claim 1 of the Patents-in-Suit.

10. *Namanny* discloses a flotation device wherein a user can be disposed on the top surface of the flotation device in a prone, kneeling, or standing position as claimed in Claim 1 of the Patents-in-Suit.

11. The Evolo Report discloses a flotation device having a forward section, a middle section, and a rear section as claimed in Claim 1 of the Patents-in-Suit.

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[3] Plaintiff's stipulation to the contents of the "Evolo Report" shall not serve as a waiver of any arguments to the admissibility of the Evolo Report at trial and/or whether the Evolo Report qualifies as prior art.

12. *Woolley* and/or *Namanny* disclose a flotation device having a forward section, a middle section, and a rear section as claimed in Claim 1 of the Patents-in-Suit.

13. The Evolo Report discloses a strut having an upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device as claimed in Claim 1 of the Patents-in-Suit.

14. *Woolley* discloses a strut having an upper end and a lower end, the upper end fixedly interconnected with the flotation device between the middle section and the rear section of the flotation device as claimed in Claim 1 of the Patents-in-Suit.

15. The Evolo Report discloses a hydrofoil fixedly interconnected with the lower end of the strut, the hydrofoil having no movable surface as claimed in Claim 1 of the Patents-in-Suit.

16. *Woolley* discloses a hydrofoil fixedly interconnected with the lower end of the strut, the hydrofoil having no movable surface as claimed in Claim 1 of the Patents-in-Suit.

17. The Evolo Report discloses a propulsion system for propelling the watercraft in a body of water as claimed in Claim 1 of the Patents-in-Suit.

18. *Namanny* discloses a propulsion system for propelling the watercraft in a body of water as claimed in Claim 1 of the Patents-in-Suit.

19. The Evolo Report discloses a propulsion system wherein the propulsion system is connected to the hydrofoil as claimed in Claim 1 of the Patents-in-Suit.

20. The Evolo Report discloses a watercraft having no moveable steering system as claimed in Claim 1 of the Patents-in-Suit.

21. *Namanny* discloses a watercraft having no moveable steering system as claimed in Claim 1 of the Patents-in-Suit.

22. The Evolo Report discloses a propulsion system wherein the propulsion system

comprises a battery, an electric motor, and a propulsor, the propulsor selected from a propeller, a ducted propeller, or a pump-jet as claimed in Claim 2 of the Patents-in-Suit.

23. *Namanny* discloses a propulsion system wherein the propulsion system comprises a battery, an electric motor, a motor speed controller, and a propulsor, the propulsor selected from a propeller, a ducted propeller, or a pump-jet as claimed in Claim 2 of the Patents-in-Suit.

24. *Woolley* discloses a hydrofoil wherein the hydrofoil is wing shaped with a front edge and a rear edge that both curve rearwardly as claimed in Claim 6 of '044 Patent.

25. The Evolo Report discloses a hydrofoil and a strut wherein the hydrofoil is indirectly connected to the strut as claimed in Claim 7 of the '044 Patent and Claim 4 of the '659 Patent.

26. *Woolley* discloses a hydrofoil and a strut wherein the hydrofoil is indirectly connected to the strut as claimed in Claim 7 of the '044 Patent and Claim 4 of the '659 Patent.

27. The Evolo Report discloses a strut and a propulsion system wherein the strut is directly connected to the propulsion system as claimed in Claim 8 of the '044 Patent and Claim 5 of the '659 Patent.

28. The Evolo Report discloses a hydrofoil, strut and a propulsion system wherein a first hydrofoil wing of the hydrofoil is indirectly connected to the strut through the propulsion system as claimed in Claim 9 of the '044 Patent and Claim 6 of the '659 Patent.

29. The Evolo Report discloses a hydrofoil which comprises a plurality of wings that are interconnected by way of a strut as claimed in Claim 10 of the '044 Patent and Claim 7 of the '659 Patent.

30. *Woolley* discloses a hydrofoil which comprises a plurality of wings that are interconnected by way of a strut as claimed in Claim 10 of the '044 Patent and Claim 7 of the '659

Patent.

31. The Evolo Report discloses an electric motor wherein the electric motor is integrated into a waterproof, and streamlined pod, and the watercraft comprises a cooling system for cooling the electric motor as claimed in Claim 12 of the '044 Patent and Claim 9 of the '659 Patent.

32. *Namanny* discloses an electric motor wherein the electric motor is integrated into a waterproof, streamlined pod, as claimed in Claim 12 of the '044 Patent and Claim 9 of the '659 Patent.

33. *Woolley* discloses a first hydrofoil wing wherein the first hydrofoil wing includes winglets extending at an angle to a main body of the first hydrofoil wing as claimed in Claim 14 of the '044 Patent.

34. *Namanny* discloses a wireless handheld controller having a transmitter, and a receiver, wherein the transmitter is adapted to send wireless signals to the receiver that cause an output of the propulsion system to change as claimed in Claim 15 of the '044 Patent and Claim 11 of the '659 Patent.

35. The Evolo Report discloses a hydrofoil wherein the hydrofoil is spaced a fixed distance apart from the flotation device as claimed in Claim 17 of the '044 Patent.

36. *Woolley* discloses a hydrofoil wherein the hydrofoil is spaced a fixed distance apart from the flotation device as claimed in Claim 17 of the '044 Patent.

37. *Namanny* discloses an electric motor wherein the electric motor is a brushless motor as claimed in Claim 20 of the '044 Patent.

38. The Evolo Report discloses a propulsion system wherein the propulsion system is directly connected to the hydrofoil as claimed in Claim 21 of the '044 Patent and Claim 15 of the

'659 Patent.

V. STATEMENT OF ISSUES WHICH REMAIN TO BE LITIGATED

1. Plaintiff's Statement: Attached as **Exhibit 1**.

2. Defendants' Statement: Attached as **Exhibit 2**.

VI. ISSUES OF LAW WHICH REMAIN TO BE LITIGATED

The parties expect the following issues of law to be relevant. To the extent that any issues of fact set forth above may be considered issues of law, the parties incorporate those portions by reference. These issues of law may change based on the Court's decisions on certain motions *in limine* or based on the Court's rulings on certain other motions. The parties reserve the right to modify or supplement their list of issues of law that remain to be litigated to the extent necessary to fairly reflect the Court's rulings on any motions or subsequent order of the Court or by agreement of the parties.

1. Plaintiff's Statement: Attached as **Exhibit 3**.

2. Defendants' Statement: Attached as **Exhibit 4**.

VII. EXHIBIT LISTS

Any exhibit not listed in a party's exhibit list will be precluded from trial, absent agreement of the parties or good cause shown.

The parties agree to meet and confer at least one week prior to trial to identify a limited number of exhibits that they know will be used at trial (e.g., opening statements, direct examination, closing statements) and will try and resolve any evidentiary objections to those exhibits before trial. To the extent that any objection to those exhibits remain, the objections will be presented to the Court prior to the exhibits' use.

With respect to opening, the parties agree that they are not required to disclose any exhibit that will be referenced to which there are no unresolved objections. To the extent either party

wishes to reference an exhibit during opening that has any unresolved objections, such exhibit(s) shall be disclosed pursuant to the following paragraph and the evidentiary issues will be presented to the Court prior to opening.

Each party will provide exhibits to be used in connection with direct examination by 8:00 p.m. the night before their intended use, and objections will be provided no later than 9:00 p.m. that same night. The parties shall meet and confer in an attempt to resolve those objections by 9:30 p.m. that same night. If any intended exhibits change after the deadline, the party intending to use a new exhibit will promptly notify the opposing party of the change(s); the opposing party will promptly notify the party of any objections to the new exhibit(s). To the extent there are any unresolved objections after the meet and confer, these objections will be presented to the Court the following morning.

A. Plaintiff's Exhibits

A list of Plaintiff's pre-marked exhibits, other than those to be used for rebuttal or impeachment purposes, is attached as **Exhibit 5** to this Proposed Pretrial Order. Pursuant to Local Rule 16.3(c)(6), all listed exhibits may be admitted into evidence unless an unresolved objection is specifically noted by Defendants in the columns adjacent to the listed exhibit and corresponding evidentiary support proposed by Plaintiff. Plaintiff reserves the right not to introduce any of the exhibits listed on Exhibit 5, to introduce only parts of those exhibits, and to introduce additional exhibits, which cannot be identified until the time of trial, for impeachment or rebuttal purposes. In the event Plaintiff wishes to use at trial any document which is not included on the parties' exhibit lists and/or the joint exhibit list prepared by the parties (collectively the "Exhibit List"), such document shall not be deemed inadmissible simply because it was not included on the Exhibit Lists provided the document was earlier produced to Defendants during discovery or was identified as being relied upon by any expert witness providing testimony in the case.

B. Defendants' Exhibits

A list of Defendants' pre-marked exhibits, other than those to be used for rebuttal or impeachment purposes, is attached as **Exhibit 6** to this Proposed Pretrial Order. Pursuant to Local Rule 16.3(c)(6), all listed exhibits may be admitted into evidence unless an unresolved objection is specifically noted by Plaintiff in the columns adjacent to the listed exhibit and corresponding evidentiary support proposed by Defendants. Defendants reserve the right not to introduce any of the exhibits listed on Exhibit 6, to introduce only parts of those exhibits, and to introduce additional exhibits, which cannot be identified until the time of trial, for impeachment or rebuttal purposes. In the event Defendants wish to use at trial any document which is not included on the Exhibit Lists, such document shall not be deemed inadmissible simply because it was not included on the Exhibit Lists provided the document was earlier produced to Plaintiff during discovery or was identified as being relied upon by any expert witness providing testimony in the case.

C. Admission of Trial Exhibits

All exhibits listed on each party's exhibit list to which there are no unresolved objection are admissible for all purposes at trial and are admitted into evidence at the time offered by either party. Notwithstanding the previous sentence, a party may raise a relevance objection to any exhibit at the time the exhibit is offered for admission or used at trial, provided that exhibit is being offered for a purpose not previously disclosed in the parties' pretrial exhibit objections and responses thereto. No exhibit to which an objection is noted will be admitted unless offered into evidence through a witness, who must at least be shown the exhibit. At some point before completion of the witness' testimony, any party that has used an exhibit with the witness to which an objection has been noted and wishes that exhibit to be admitted into evidence must formally move the exhibit into evidence, by exhibit number. Exhibits to which there is an unresolved objection may not be published, displayed, or otherwise shown to the jury until after they have

been admitted into evidence. Once admitted, counsel may publish exhibits to the jury without requesting to do so. Prior to the use of any impeachment evidence that is not admitted and/or admissible, the offering party shall approach the Court for approval prior to publishing or displaying to the jury.

D. Demonstrative Exhibits

The parties will exchange demonstratives to be used in opening statements by 7:00 p.m. the night before opening statements. The parties will provide any objections to such demonstratives by 9:00 p.m., unless otherwise agreed to by the parties. The parties shall meet and confer in an attempt to resolve those objections by 9:30 p.m. that same night. If any demonstratives change after the deadline, the party intending to use the demonstrative will promptly notify the opposing party of the change(s). To the extent there are any unresolved issues after the meet and confer, these issues will be presented to the Court the following morning.

A party will provide demonstrative exhibits to be used in connection with direct examination by 8:00 p.m. the night before their intended use, and objections will be provided no later than 9:00 p.m. the night before their intended use. The parties shall meet and confer in an attempt to resolve those objections by 9:30 p.m. that same night. If any demonstratives change after the deadline, the party intending to use the demonstrative will promptly notify the opposing party of the change(s). To the extent there are any unresolved issues after the meet and confer, these issues will be presented to the Court the following morning.

A party will provide demonstrative exhibits to be used in connection with closing arguments by 8:00 p.m. the night before closing, and objections will be provided no later than 9:00 p.m. the night before closing. The parties shall meet and confer in an attempt to resolve those objections by 9:30 p.m. that same night. If any demonstratives change after the deadline, the party intending to use the demonstrative will promptly notify the opposing party of the change(s). To

the extent there are any unresolved issues after the meet and confer, these issues will be presented to the Court the following morning.

The party seeking to use a demonstrative will provide a color representation of the demonstrative to the other side in PDF form. However, for video or animations, the party seeking to use the demonstrative will provide it to the other side via email and/or sharefile link. For any irregular sized physical exhibits, the party seeking to use the demonstrative will provide a color representation as a PDF or JPEG copy of 8.5" x 11".

This provision does not apply to demonstratives created during testimony, which do not need to be provided to the other side in advance of their use. In addition, blow-ups or highlights of exhibits or parts of exhibits or testimony are not required to be provided to the other side in advance of their use.

If good faith efforts to resolve objections to demonstrative exhibits fail, the objecting party shall bring its objections to the Court's attention prior to the opening statements or prior to the applicable witness being called to the witness stand. Failure to comply with these procedures, absent an agreement by the parties and approval by the Court, will result in waiver of the use of an exhibit or waiver of objections to the exhibit.

E. Rule 1006 Summaries

The parties agree that they may use charts and/or summaries of voluminous documents, including but not limited to any of the parties' financial records, provided the source of the summary is identified and the source consists of materials listed in the parties' respective Exhibit Lists and/or materials otherwise found to be admissible at trial.

VIII. ORDER OF PROOF

The parties agree that the presentation of evidence will follow the burden of proof. MHL will first present its case-in-chief on infringement and damages. Waydoo will then present its

rebuttal on non-infringement and damages along with its case-in-chief on invalidity. MHL may then present its rebuttal on invalidity ~~and reply on infringement and damages~~. Waydoo may then present its reply on invalidity. The parties agree that witnesses may be taken out of order at trial based on a particular witnesses' availability to testify during trial.

limited to secondary considerations

RBA 3/24/23

IX. WITNESS LISTS

Any witness not listed will be precluded from testifying, absent good cause shown.

A. Plaintiff's Witnesses

Plaintiff may offer some or all of the following witnesses on its case-in-chief, rebuttal, or reply, either in person or by deposition. Plaintiff reserves the right not to call any witness listed below. If a witness is unavailable for trial pursuant to Fed. R. Evid. 804, Plaintiff reserves the right to designate portions of such witness's deposition testimony to be read into the record at trial subject to Section VII(C), *infra*.

Plaintiff reserves the right not to offer any designated testimony, to use only parts of such testimony, or to use additional deposition testimony, not identified below, for purposes of impeachment or rebuttal.

Plaintiff neither waives its objections to certain deposition designations nor concedes that deposition testimony is relevant by way of counter-designating or reply-designating.

Plaintiff reserves the right to object to the admissibility of exhibits identified in testimony designated by Defendants.

i. Fact Witnesses

Name	Will Call	May Call	Deposition May Be Used
Nicholas Leason	X		
Steward Wagner	X		
Jack Langelaan	X		
Mario Alvisi		X	

Christopher Barry*	X		
Jeffery Stec*	X		
Terrance Martin		X	X
Kevin Wade		X	X
Wang Ping		X	X
Zhao Tao		X	X

ii. *Expert Witnesses

1. Christopher Barry. Mr. Barry is an expert in the field of naval architecture and engineering. Mr. Barry will testify consistent with the reports he prepared in this matter subject to any limitations imposed by the Court and may further provide rebuttal testimony relevant to his area of expertise, including on issues related to naval architecture and engineering.

2. Jeffrey Stec. Mr. Stec is an expert in the fields of economics, finance, accounting, finance, statistical analysis, marketing, and licensing associated with intellectual property. Mr. Stec will serve as Plaintiff's monetary damages expert. Mr. Stec is the managing director of Berkeley Research Group, LLC, which is a global strategic advisor and expert consulting firm that provides independent advice, data analytics, valuation, authoritative studies, expert testimony, investigations, transaction advisory, restructuring services, and regulatory and dispute consulting to clients around the world. Mr. Stec will testify consistent with the reports he prepared in this matter subject to any limitations imposed by the Court and may further provide rebuttal testimony relevant to his area of expertise, including accounting, finance, marketing, and licensing associated with intellectual property, including patents.

B. Defendants' Witnesses

Waydoo may offer some or all of the following witnesses on its case-in-chief, rebuttal, or reply, either in-person or by deposition. Waydoo reserves the right not to call any witness listed below. If a witness is unavailable for trial pursuant to Fed. R. Evid. 804, Waydoo reserves the right to designate portions of such witness's deposition testimony to be read into the record at trial

subject to Section VII(C), infra.

Waydoo reserves the right not to offer any designated testimony, to use only parts of such testimony, or to use additional deposition testimony, not identified below, for purposes of impeachment or rebuttal.

Waydoo neither waives its objections to certain deposition designations nor concedes that deposition testimony is relevant by way of counter-designating or reply-designating.

Waydoo reserves the right to object to the admissibility of exhibits identified in testimony designated by MHL.

Name	Will Call	May Call	Deposition May Be Used
Wang Ping	X		
Kevin Wade	X		
Jacob Langelaan		X	X
Mark Lanterman (expert)	X		
Michael Triantafyllou (expert)	X		
Phillip Kline (expert)	X		
Nick Leason		X	X
Steward Wagner		X	X
Brent Farese		X	X

i. Expert Witnesses

1. Mark Lanterman. Mr. Lanterman is the Chief Technology Officer of Computer Forensic Services ("CFS") located in Minneapolis, Minnesota. Mr. Lanterman has over 30 years of experience in computer forensics and cybersecurity. Prior to joining CFS, Mr. Lanterman was a sworn investigator for the United States Secret Service Electronic Crimes Task Force and acted as its senior computer forensic analyst. Mr. Lanterman is also certified by the United States Department of Homeland Security as a "Seized Computer Evidence Recovery Specialist," and is certified in computer forensics by the National White-Collar Crime Center. Both federal and state

court judges have appointed Mr. Lanterman as a neutral computer forensic analyst or special master.

2. Dr. Michael Triantafyllou. Dr. Triantafyllou is the Henry L. and Grace Doherty Professor in Ocean Science & Engineering in the Department of Mechanical Engineering at the Massachusetts Institute of Technology, where he has been teaching for the last 43 years. He has also spent the last 5 years directing the Massachusetts Institute of Technology Sea Grant Program, and has also served as Associate Department Head of Mechanical Engineering and Director of the Center for Ocean Engineering. He is currently the Director of the MIT Towing Tank Facility and Director of the Propeller Tunnel. Dr. Triantafyllou holds a Doctor of Science degree (Sc.D.) in Ocean Engineering, a Master of Science in Naval Architecture & Marine Engineering, and a Master of Science in Mechanical Engineering from the Massachusetts Institute of Technology.

3. Phillip Kline. Mr. Kline is a Managing Director at Insight Economics, where his practice focuses on IP valuation, litigation consulting, IP strategy, and transactional services. Mr. Kline has worked in IP consulting for over 15 years and has extensive experience in the determination of patent royalty rates both in arm's-length negotiations and in the context of litigation. Mr. Kline is a Certified Public Accountant licensed in the state of Illinois. The Court has found that Mr. Kline is "sufficiently qualified" to render opinions in this case. D.I. 155 at 1.

C. Agreed Upon Procedures for Live Witnesses

With the exceptions noted above, any witness not listed in the Sections above will be precluded from testifying absent good cause.

If a witness becomes unavailable for trial, the parties agree to timely notify the other parties and supplement their witness list.

Each party will provide the other party with a list, in order of presentation, of witnesses it intends to call live on direct examination (including any additional witnesses to be called by

adverse direct examination) by 8:00 p.m. the night before those witnesses are intended to testify in Court. This list must also include those witnesses who are to be called by designation. This list is the anticipated order of the proof, but if there will be adjustment to the order for that particular day, the other side must be timely informed.

D. Testimony by Deposition

Any deposition testimony not designated, including counter- and reply-designated, will be precluded from trial, except for impeachment purposes as provided herein; none of the foregoing shall be supplemented without approval of all parties or leave of the Court, on good cause shown.

The parties agree to meet and confer at least one week prior to trial to identify a limited number of deposition designations that they expect will actually be used at trial and will try and resolve any evidentiary objections to that testimony before trial. To the extent that any objection to that testimony remains, the objections will be presented to the Court prior to their use.

For designations with unresolved objections, the party calling the witness by deposition shall, not later than two (2) calendar days before the witness is to be called at trial, submit to the Court, on behalf of the parties: (i) a copy of the entire deposition testimony of the witness at issue, clearly highlighting the designations, counter-designations, and pending objections; and (ii) a cover letter identifying the pending objections as well as a brief indication (i.e. no more than one sentence per objection) of the basis for the objection and the offering party's response to it. Failure to comply with these procedures, absent an agreement by the parties or approval by the Court, will result in waiver of the use of the deposition testimony. All irrelevant and redundant material, including colloquy between counsel, objections, and foreign language questions and answers, will be eliminated when the deposition is read or viewed at trial.

If a party opts to introduce deposition testimony by video, the opposing party's counter designations of that same witness's deposition testimony must also be presented by video at the

same time. Prior testimony designation excerpts will be played in the order they are found in the transcript. When such excerpts are introduced, all admissible counter designation excerpts, whether offered by video or by transcript, will be introduced at the time the testimony is offered, subject to the resolution of any objections to the designated or counter-designated testimony. When the witness is called to testify by deposition at trial, the party calling the witness shall provide the Court with two copies of the transcript of the designations and counter-designations that will be read or played. The parties will be charged for all time that elapses from the time the witness is called until the next witness is called, according to the proportions to be provided by the parties.

For those witnesses whose prior deposition testimony will be read or played to the jury, the parties or the Court shall be permitted to make brief transition statements to introduce the witnesses and their role in the litigation. Transition statements, however, shall not include argument or any commentary on the evidence.

Any party may use deposition testimony that is designated or counter-designated by either party at any time (including testimony that the opposing party had designated or counter-designated and then subsequently dropped), to the same effect as if that party had initially designated the testimony as its own, subject to all objections.

The deposition testimony excerpts to be introduced by Plaintiff are listed on **Exhibit 7**, attached. The deposition testimony excerpts to be introduced by Defendants are listed on **Exhibit 8**, attached.

E. Impeachment with Prior Inconsistent Testimony

Subject to individual objections asserted by the parties, the parties agree that the Court may allow the use of deposition testimony and other prior sworn testimony (such as expert reports submitted in this case) for impeachment purposes.

F. Objections to Expert Testimony

The parties propose that the Court rule on objections to experts testifying beyond the scope of prior expert disclosures during trial. The parties further propose that the Court rule on objections to experts testifying inconsistent with the Court's prior *Daubert* rulings. The parties request that time spent in addressing objections to testimony that is inconsistent with this Court's prior *Daubert* rulings should be charged to the party offering the inconsistent testimony. If the objection is overruled, the time should be charged to the objecting party.

X. BRIEF STATEMENT OF WHAT PLAINTIFF INTENDS TO PROVE IN SUPPORT OF ITS CLAIMS

1. Each of the Accused Products infringes upon the Patents-in-Suit.

2. The Accused Products literally infringe Claims 1, 2, 5 and 6 of the '044 Patent since each of the Accused Products contains every requirement of the '044 Patent exactly as set forth in Claims 1, 2, 5 and 6.

3. The Accused Products literally infringe Claims 1 and 2 of the '659 Patent since each of the Accused Products contains every requirement of the '659 Patent exactly as set forth in Claims 1 and 2.

4. Defendants have willfully infringed and are willfully infringing Plaintiff's patents.

5. Plaintiff is entitled to recover a reasonable royalty for Defendants' infringement starting from March of 2019.

6. Plaintiff is entitled to a royalty of $560 per infringing unit sold by Defendants, or higher.

XI. BRIEF STATEMENT OF WHAT DEFENDANTS INTEND TO PROVE AS A DEFENSE AND/OR COUNTERCLAIM

Waydoo submits the following brief statement of what it intends to prove at trial, including both as part of its defenses and as part of its counterclaims. Waydoo also intends to offer evidence

as to the issues of fact and of law identified elsewhere in this Pretrial Order, and to offer evidence to rebut the evidence and allegations offered by MHL. Waydoo's statement is based upon the current status of the case and the Court's current rulings, and Waydoo reserves the right to supplement or revise this statement in response to MHL's pretrial activities, any subsequent discovery, or any further decisions or orders of the Court.

1. Waydoo intends to demonstrate that MHL has failed to prove that any of the Accused Products infringe any of the asserted claims of the Patents-in-Suit. For example, Waydoo intends to demonstrate that MHL has failed to carry its burden to prove that the Accused Products are "statically stable" as required by each asserted claim of the '044 Patent and that the Accused Products are "stable" as required by each asserted claim of the '659 Patent.

2. Waydoo intends to rebut MHL's allegations regarding willful infringement of the Patents-in-Suit, and will demonstrate that should any claim of the Patents-in-Suit be found valid and infringed, any infringement by Waydoo was not willful.

3. Waydoo intends to rebut MHL's allegations regarding damages and injunctive relief, and will demonstrate that should any claim be found valid and infringed, (i) the reasonable royalty in this case is, at most, a rate of 2.5% of Waydoo's sales, (ii) the royalty period begins no earlier than August 2019, (iii) and injunctive relief is not available and otherwise not warranted.

4. Waydoo intends to prove that the specification of the Patents-in-Suit fails to enable a person of ordinary skill in the art to make and use, without undue experimentation, (i) a passively stable watercraft and (ii) a hydrofoil designed to provide passive static stability.

5. Waydoo intends to prove that the Evolo Report qualifies as a printed publication under 35 U.S.C. § 102, including because it was publicly accessible prior to October 2013.

6. Waydoo intends to prove that MHL has failed to rebut the presumption that the

Evolo Report is enabling.

7. Waydoo intends to prove that the Evolo Report anticipates the Patents-in-Suit because it discloses each limitation of the asserted claims of Patents-in-Suit as those limitation are arranged in the asserted claims.

8. Waydoo intends to prove that, prior to October 2013, the asserted claims of the Patents-in-Suit were obvious in light of the Evolo Report alone.

9. Waydoo intends to prove that, prior to October 2013, the asserted claims of the Patents-in-Suit were obvious in light of the combination of *Woolley* and *Namanny*.

10. Waydoo intends to demonstrate that MHL has not carried its burden to prove that MHL's eFoil products are embodiments of the Patents-in-Suit.

11. Waydoo intends to demonstrate that MHL has not carried its burden to prove that any nexus exists between the alleged invention as claimed by the Patents-in-Suit and any secondary indicia of non-obviousness.

12. Waydoo intends to show that MHL has not carried its burden to prove that any alleged embodiments of the Patents-in-Suit have achieved commercial success.

13. Waydoo intends to show that MHL has not carried its burden to prove that alleged invention as claimed by the Patents-in-Suit satisfied a long-felt need for a solution to problems facing inventors.

14. Waydoo intends to demonstrate that MHL has failed to carry it burden to show that others have tried and failed to invent a personal hydrofoil watercraft as claimed by the Patents-in-Suit.

15. Waydoo intends to show that MHL has not carried its burden to prove that others have copied (i) the alleged invention as claimed by the Patents-in-Suit, or (ii) any alleged

embodiments of the Patents-in-Suit.

16. Waydoo intends to show that MHL has not carried its burden to prove that the alleged invention as claimed by the Patents-in-Suit achieved unexpected superior results to any prior art.

17. Waydoo intends to show that MHL has not carried its burden to prove that the alleged invention as claimed by the Patents-in-Suit or any commercial embodiment of the Patents-in-Suit have been praised in the industry.

18. Waydoo intends to show that the alleged invention of the Patents-in-Suit was criticized in the industry.

19. Waydoo intends to demonstrate that others have taken licenses to the Patents-in-Suit under threat of litigation.

A. Facts That Waydoo Intends to Prove at Trial, Which MHL Has Already Admitted to the Court, But Did Not Agree to Include as Undisputed Facts[4]

20. Waydoo intends to demonstrate that the Evolo project website was first "seen" and first "crawled" by Google on May 8, 2009. D.I. 147, Hearing Tr. 6:2-6.

21. Waydoo intends to demonstrate that by May 8, 2009, the Evolo project website was publicly available on the internet. D.I. 147, Hearing Tr. 6:2-6.

22. Waydoo intends to demonstrate that the Evolo Report was first "seen" by Google on June 18, 2009, and first "crawled" by Google on January 30, 2010. D.I. 147, Hearing Tr. 7:1-5.

[4] MHL disputes that any comments from counsel and/or factual concessions made during summary judgment briefing solely for purposes of summary judgment are binding upon or otherwise serve to estop MHL at trial. Facts are construed in favor of the non-moving party at summary judgment and any of these alleged "admissions" were made solely to streamline the summary judgment process. MHL is not required to stipulate to facts proposed by Waydoo for use at trial – just as Waydoo has refused to stipulate to facts that are not reasonably in dispute. It is Waydoo's burden to establish invalidity by clear and convincing evidence and it should required to present evidence to support its claims.

23. Waydoo intends to demonstrate that the Evolo project website contains a link to download the Evolo Report. D.I. 147, Hearing Tr. 6:11-15.

24. Waydoo intends to demonstrate that the Evolo Report was successfully downloaded by at least 17 unique IP addresses prior to October 10, 2013, at least one of which was located in the United States. D.I. 147, Hearing Tr. 6:11-15; D.I. 80-21 ¶¶ 7, 9.

XII. BRIEF STATEMENT OF WHAT PLAINTIFF INTENDS TO PROVE AS A DEFENSE TO DEFENDANTS' COUNTERCLAIMS

1. The specification of the '659 Patent satisfies the enablement requirement.

2. The specification of the '659 Patent enables a person of ordinary skill in the art to make and use a passively stable watercraft without an unreasonable amount of experimentation.

3. The specification of the '044 Patent satisfies the enablement requirement.

4. The specification of the '044 Patent enables a person of ordinary skill in the art to make and use a hydrofoil designed to provide passive static stability without an unreasonable amount of experimentation.

5. The Evolo Report does not qualify as a printed publication because it was not publicly accessible prior to the filing of the provisional application to the Patents-in-Suit.

6. The Evolo Report does not anticipate the Patents-in-Suit because it does not teach and/or disclose each and every limitation of the Patents-in-Suit.

7. The Evolo Report is not enabling.

8. The Asserted Claims of the '044 Patent were not obvious in light of the Evolo Report alone and/or in combination with the *Namanny* reference.

9. The Asserted Claims of the '659 Patent were not obvious in light of the Evolo Report alone and/or in combination with the *Namanny* reference.

10. The Asserted Claims of the '044 Patent were not obvious in light of the combination

of the *Woolley* and *Namanny* references.

11. The Asserted Claims of the '659 Patent were not obvious in light of the combination of the *Woolley* and *Namanny* references.

12. Plaintiff's commercial embodiments have achieved commercial success.

13. Plaintiff's commercial embodiments satisfied a long-felt need for a solution to problems facing inventors.

14. Others have tried and failed to invent the inventions of the Patents-in-Suit.

15. Others have copied Plaintiff's commercial embodiments.

16. Plaintiff's commercial embodiments achieved unexpected superior results to any alleged prior art.

17. Plaintiff's commercial embodiments have been praised in the industry.

18. Others have obtained licenses to the Patents-in-Suit.

XIII. ANY AMENDMENTS OF PLEADINGS

None.

XIV. CERTIFICATION REGARDING SETTLEMENT

A. MHL's Position

Plaintiff has attempted to resolve this case in good faith by providing multiple settlement offers and engaging in settlement discussions. Plaintiff does not believe the Defendants have engaged in a good faith attempt to try and settle this case.

B. Waydoo's Position

Early in this case, prior to fact depositions, Waydoo initiated discussions with MHL and offered to settle in good faith. MHL countered with an unreasonable settlement offer, nearly double the royalty rate that was later calculated by MHL's damages expert. Waydoo told MHL that its offer was financially unreasonable and, thus, unacceptable. Waydoo did not consider

MHL's approach to be a good-faith attempt to settle this litigation. After the close of expert discovery, MHL sent Waydoo a settlement offer that matched MHL's damages expert's opinions with respect to damages. Waydoo did not consider this a good-faith attempt to settle this litigation either. The parties engaged in further settlement discussions after the Pretrial Conference, but did not reach an agreement.

XV. ANY OTHER MATTERS TO BE ADDRESSED

A. Number of Jurors

The parties agree that there will be eight (8) jurors. The Court will conduct jury selection through the "struck juror" method, beginning with the Court reading *voir dire* to the jury panel in the courtroom, continuing by meeting with jurors individually in chambers or at sidebar and there addressing any challenges for cause, and concluding with peremptory strikes.

B. Length of Trial

The trial will be timed. Unless otherwise ordered, time will be charged to a party for its (i) opening statement, (ii) direct and redirect examinations (including deposition designations) of witnesses it calls, (iii) cross-examination of witnesses called by the other party, and (iv) argument on any objections (as detailed in the following paragraph).

In the event a party brings an objection which results in argument, the party raising the objection will be allocated the full time spent in arguing the objection should the objection be overruled. Should the objection be sustained, the parties will split the time evenly.

The parties will be given a separate time limit for their respective closing arguments. The Courtroom Deputy will keep a running total of trial time used by counsel. If any party uses all of its allotted time, the Court will terminate the party's trial presentation.

Considering the Court's procedures for counting time and considering the nature and extent of the parties' disputes, the parties request **11.5 hours** each for their trial presentation (as allotted

above).

C. Motions for Judgment as a Matter of Law

The parties agree that motions for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(a) will be presented and argued at breaks to avoid any use of the allotted trial time.

D. Order to Control Course of Action

This Order shall control the subsequent course of the action, unless modified by the Court to prevent manifest injustice.

E. Sequestration of Witnesses

The parties agree that, pursuant to Fed. R. Evid. 615, the Court should prevent fact witnesses from hearing the testimony of other witnesses. The parties further agree that in accordance with provision (2) of Rule 615, this exclusion rule will not apply to the one officer or employee designated by each party as its representative at trial. The parties further agree that this exclusion rule will not apply to expert witnesses. The parties further agree that witnesses who are otherwise sequestered pursuant to this paragraph may be present in the courtroom during Opening Statements, and after they have testified. Counsel for the parties shall notify one another by e-mail of their corporate representative no less than one week before the first day of trial.

F. Post-Trial Briefing

The briefing schedule for all post-trial motions, including renewed motions for judgment as a matter of law and motions for a new trial will be decided after the trial. Assuming no judgment has been entered, the parties will submit a proposed schedule to the Court no later than fourteen (14) days following conclusion of the trial.

G. Jury Notes

The parties agree that the jurors should be permitted to take handwritten notes during the presentations of the parties on a notebook provided by the Court, and that jurors be permitted to

bring these handwritten notes into the deliberation room. The parties further propose that the jurors be instructed not to share the notebooks with each other (though they can discuss the contents of their notes) and that the notebooks be collected and destroyed after the verdict without review by the parties or the Court.

H. Waydoo's Remote Presentation of International Witness at Trial

Prior to and during the pretrial conference, Waydoo indicated that it may call its employee, Mr. Wang Ping, to testify at trial remotely as a result of his inability to secure the necessary travel visas. Waydoo will bear any expenses related to any remote testimony it presents at trial. Plaintiff will be permitted to present the testimony of Mr. Ping (or any other 30(b)(6) witness of Waydoo who provides live, remote testimony) in its case in chief through the already-recorded video depositions, as permitted by any applicable rules and Court Orders, and further subject to any asserted objections to such testimony set forth in Exhibit 7 to this Order.

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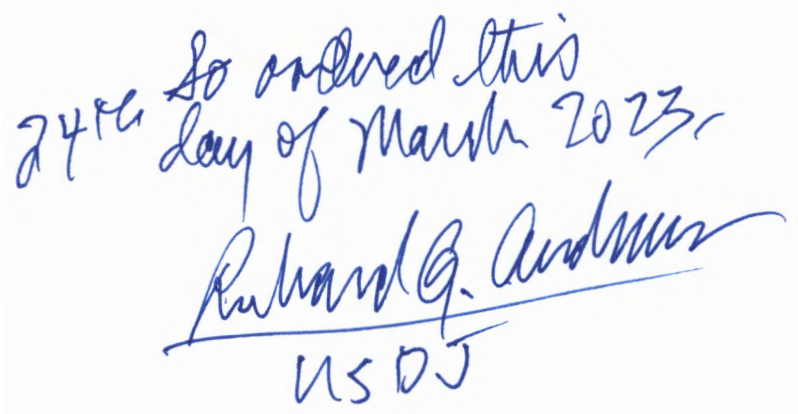
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WAYDOO INTELLIGENCE TECH. CO.



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MHL CUSTOM, INC.,

Plaintiff,

v.

WAYDOO USA, INC. and SHENZHEN WAYDOO INTELLIGENCE TECHNOLOGY CO., LTD.,

Defendants.

Civil Action No. 21-0091-RGA

ORDER

For the reasons stated in the accompanying opinion, IT IS HEREBY ORDERED that Defendants' Motions for Renewed Judgment as a Matter of Law and Motion for a New Trial (D.I. 234) is DENIED.

IT IS SO ORDERED this 6th day of September 2023.

United States District Judge