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**United States District Court  
Central District of California**

HYDRODYNAMIC INDUSTRIAL CO  
LTD., a Hong Kong corporation  
  
Plaintiff,  
  
v.  
GREEN MAX DISTRIBUTORS, INC., a  
Washington corporation,  
  
Defendant.

Case No. 2:12-cv-05058-ODW(JEMx)

**ORDER GRANTING PLAINTIFF'S  
APPLICATION FOR PERMANENT  
INJUNCTION [146]**

**I. INTRODUCTION**

Following a jury verdict finding that Defendant Green Max Distributors, Inc., wilfully infringed Plaintiff Hydrodynamic Industrial Company LTD.'s valid patent, Hydrodynamic requests that the Court enjoin Green Max from selling its X-treme sea scooters. (ECF No. 146.) Hydrodynamic argues that it has suffered, and will continue to suffer, irreparable harm from Green Max's infringing sales. Because the Court finds that the equitable factors weigh in favor of Hydrodynamic, the Court **GRANTS** Hydrodynamic's request. (ECF No. 146.)

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1 **II. FACTUAL BACKGROUND**

2 In the interest of judicial efficiency, the Court incorporates the factual  
3 background from its May 9, 2014 Order Denying Green Max’s Motion for Judgment  
4 as a Matter of Law. (ECF No. 152.)

5 **III. LEGAL STANDARD**

6 The Patent Act provides for injunctive relief to be granted “in accordance with  
7 the principles of equity to prevent the violation of any right secured by patent, on such  
8 terms as the court deems reasonable.” 35 U.S.C. § 283. A patentee is not  
9 automatically entitled to an injunction upon a finding of liability. *See Innogenetics,*  
10 *N.V. v. Abbott Labs.*, 512 F.3d 1363, 1379 (Fed. Cir. 2008). Rather, to be entitled to a  
11 permanent injunction, a patentee must satisfy the traditional four-factor test. The  
12 patentee must show that “(1) it has suffered an irreparable injury; (2) remedies  
13 available at law are inadequate to compensate for that injury; (3) considering the  
14 balance of hardships between the plaintiff and defendant, a remedy in equity is  
15 warranted; and (4) the public interest would not be disserved by a permanent  
16 injunction.” *Apple Inc. v. Motorola, Inc.*, 2012-1548, 2014 WL 1646435 (Fed. Cir.  
17 Apr. 25, 2014) (citing *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)).

18 **IV. DISCUSSION**

19 Hydrodynamic argues that the Court should enjoin Green Max’s sale of its  
20 infringing X-treme scooter because it has caused, and will continue to cause,  
21 Hydrodynamic irreparable harm in the recreational-sea-scooter market. Green Max  
22 opposes the entry of a permanent injunction, ostensibly on the grounds that there is  
23 not a sufficient causal nexus between its infringement and Hydrodynamic’s harm.

24 **A. Irreparable harm**

25 Irreparable harm cannot be presumed from the mere fact of infringement.  
26 *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 735 F.3d 1352, 1359 (Fed. Cir. 2013)  
27 (“*Apple III*”). To demonstrate irreparable harm, a patent owner must show “(1) that

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1 absent an injunction, it will suffer irreparable harm, and (2) that a sufficiently strong  
2 causal nexus related the alleged harm to the alleged infringement.” *Id.*

3 The irreparable-harm and the causal-nexus inquiries are “inextricably related  
4 concepts.” *Apple, Inc. v. Samsung Elecs. Co., Ltd.*, 695 F.3d 1370, 1374 (Fed. Cir.  
5 2012) (“*Apple II*”). The Federal Circuit has explained,

6 [T]he accused product [may] sell almost as well without incorporating  
7 the patented feature. And in that case, even if the competitive injury that  
8 results from selling the accused device is substantial, the harm that flows  
9 from the alleged infringement (the only harm that should count) is not.  
10 Thus, the causal nexus [sic] inquiry is indeed part of the irreparable harm  
11 calculus: it informs whether the patentee’s allegations of irreparable harm  
12 are pertinent to the injunctive relief analysis, or whether the patentee  
13 seeks to leverage its patent for competitive gain beyond that which the  
14 inventive contribution and value of the patent warrant.

15 *Id.* at 1374–1375. Although the causal-nexus inquiry is an integral part of the  
16 larger irreparable-harm inquiry, the Court addresses them separately for clarity.

17 1. *Causal Nexus*

18 Green Max contends that Hydrodynamic did not present sufficient evidence at  
19 trial to prove that the patented features drove the demand for the Sea-Doo sea scooter,  
20 or that consumers purchased Green Max’s sea scooter because of the patented  
21 features. Hydrodynamic responds that it presented evidence at trial to demonstrate  
22 (1) that the patented features encompass both the internal and external elements of the  
23 sea scooter and (2) that those patented features—intentionally copied by Green Max—  
24 drove consumer demand for the sea scooter.

25 The causal-nexus inquiry is properly posed as “to what extent the harm  
26 resulting from selling the accused product can be ascribed to the infringement.”  
27 *Apple II*, 695 F.3d at 1375. The connection must be more than tenuous—the patentee

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1 must demonstrate that the infringing features drive consumer demand for the accused  
2 product. *Id.*

3 Here, Hydrodynamic’s causal-nexus evidence is a matter of merely connecting  
4 the dots. First, undisputed evidence at trial linked the patented features to the success  
5 of the Sea-Doo sea scooter. The ’385 Patent improved upon the prior art by creating a  
6 safer, less-bulky sea scooter design that is easy to use and service. (*See* ’385 Patent.)  
7 The inventions of the ’385 Patent relate to both internal and external components of  
8 the Sea-Doo sea scooter, including the ballast, battery, control circuit, sealing  
9 structure, and housing. (’385 Patent; ECF No. 149 at Ex. A at 19:21–20:12, 23:16–  
10 25.) Hydrodynamic presented evidence at trial that these patented features redesigned  
11 the traditional industrial sea scooter into a device suitable for recreational consumer  
12 use—and, in turn, created a recreational-sea-scooter market. (ECF No. 151 at Ex. F at  
13 41:21–25; 68:11–69:8.) Thus, the patented features propelled consumer demand for  
14 the Sea-Doo sea scooter in more than an anecdotal way.

15 Second, Hydrodynamic and Green Max are direct competitors in the  
16 recreational-sea-scooter-market. More than direct competitors, Hydrodynamic  
17 presented unrefuted evidence at trial that Green Max is Hydrodynamic’s *sole*  
18 competitor.<sup>1</sup> (*Id.* at Ex. F 41:21–25.) And Green Max’s President Greg Meske  
19 testified that he specifically sought to make an exact copy of Sea-Doo sea scooter—  
20 presumably because of its commercial success in this market. (*Id.* at Ex. G at 54:23–  
21 25.) Green Max did not present any countervailing evidence at trial to suggest that the  
22 patented features were less important than Hydrodynamic claims, or that any other  
23 unpatented, unprotectable features drive consumer demand for the sea scooters.

24 Accordingly, Hydrodynamic has met its burden to prove a causal nexus.  
25 Hydrodynamic demonstrated that consumers purchased the X-treme sea scooter  
26 because of the patented features. And Green Max directly copied the patented

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27 <sup>1</sup> Although other sea scooters are available to consumers—including the prior-art references in this  
28 action—the Court is persuaded that there is a different market for these industrial sea scooters than  
for the comparatively diminutive sea scooters such as the Sea-Doo and X-treme scooters.

1 features—the same features that unrefuted testimony demonstrated were responsible  
2 for the transformation of the traditional sea scooter into one suitable for recreational  
3 use. Because the undisputed evidence (1) linked the claimed inventions of the  
4 '385 Patent to the Sea-Doo sea scooter's success and (2) established that Green Max  
5 directly copied the Sea-Doo sea scooter, Hydrodynamic has presented sufficient  
6 evidence to directly tie consumer demand for Green Max's sea scooter to the allegedly  
7 infringing features.

## 8 2. *Irreparable-harm factors*

9 Hydrodynamic asserts that it has been, and will continue to be, irreparably  
10 harmed by Green Max's sale of the X-treme scooter. The irreparable-harm inquiry  
11 endeavors to measure the harms that damages awards cannot remedy—such as “price  
12 erosion, damage to ongoing customer relationships, loss of customer goodwill  
13 (e.g., when an effort is later made to restore the original price), and loss of business  
14 opportunities.” *Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir.  
15 2012). There is sufficient evidence in the record to support a finding that irreparable  
16 harm to Hydrodynamic will continue if Green Max is permitted to continue selling the  
17 infringing scooters.

18 First, as previously mentioned, Hydrodynamic and Green Max are direct  
19 competitors in the recreational-sea-scooter-market. Evidence of a two-player market  
20 in which the patent holder is a direct-market competitor of the accused infringer  
21 serves as significant proof of irreparable harm. *See Apple II*, 678 F.3d at 1336. Such  
22 a relationship “creates an inference that an infringing sale [by the accused infringer]  
23 amounts to a lost sale for the patentee.” *Id.* (quoting *Robert Bosch LLC v. Pylon Mfg.*  
24 *Corp.*, 659 F.3d 1142, 1151 (Fed. Cir. 2011)). Money damages are generally  
25 insufficient to compensate the patent holder because the infringement causes a direct,  
26 measurable loss of market share, customers, and access to potential customers, and  
27 causes irreversible price erosion. *Bosch*, 659 F.3d. at 1153.

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1           Beyond this inferred harm, Hydrodynamic presented undisputed evidence of  
2 such harms at trial. Joseph Lin—CEO of Sport Dimension, Inc., the distributor of the  
3 Sea-Doo sea scooter in the U.S.—testified at trial that retailers threatened to not  
4 purchase or stop purchasing Sea-Doo sea scooters from Sport Dimension because of  
5 the X-treme scooters. (ECF No. 151 at Ex. F at 43:10–21.) Although the X-treme  
6 scooter is essentially identical to the Sea-Doo sea scooter, Green Max sells the X-  
7 treme scooter at a significantly lower price: the Sea-Doo sea scooter retails for \$399  
8 while Green Max’s sea scooter retails for only \$249. (*Id.* at 43:13–15.)

9           Lin pointed to West Marine and Costco USA as examples of retailers with  
10 whom Hydrodynamic lost business opportunities. (*Id.* at 44:25, 47:1–8.) Lin testified  
11 that Costco USA ceased purchasing sea scooters because the X-treme sea scooter was  
12 available cheaper online. (*Id.* at 47:25–48:24, 90:17–20.) This resulted in a loss of  
13 approximately \$1.2 million in sales. (*Id.* at 47:9–11.)

14           And there is no reason to believe that Green Max will stop infringing absent an  
15 injunction. *See Reebok Int’l, Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1557 (Fed. Cir.  
16 1994) (recognizing that “future infringement . . . may have market effects never fully  
17 compensable in money”). Indeed, Meske continued to copy Sea-Doo sea scooters  
18 after receiving two cease-and-desist letters informing him of Hydrodynamic’s patent.

19           Perhaps most importantly, Hydrodynamic asserts that the apparently identical  
20 sea scooters cause irreparable harm in the form of loss of goodwill. Hydrodynamic  
21 argues that the presence of the X-treme scooter in the market confuses consumers,  
22 which directly and negatively impacts Hydrodynamic. (ECF No. 151 at Ex. F at 43:8–  
23 44:15.)

24           Hydrodynamic also asserts that the inferior quality of the materials Green Max  
25 uses in the X-treme scooter have resulted in a loss of customer goodwill.  
26 Hydrodynamic presented evidence at trial regarding serious performance and service  
27 problems with Green Max’s X-treme scooter. (Trial Ex. 45, ECF No. 151 Ex. F at  
28 39:11–47:21.) Hydrodynamic received customer complaints from customers who

1 purchased the X-treme scooter believing it was one of Sea-Doo's sea scooters. (Ex.  
2 45, ECF No. 151 at Ex. F at 39:11–47:21.) Accordingly, based on the unrebutted  
3 evidence presented at trial, the Court concludes that Hydrodynamic will continue to  
4 suffer irreparable harm from Green Max's infringement.

5 **B. Adequacy of money damages**

6 Green Max contends that the fact that the jury awarded damages indicates that  
7 monetary damages are sufficient to compensate Hydrodynamic's harms. But  
8 Hydrodynamic disagrees.

9 First, the mere fact that a money-damage award can be computed does not  
10 preclude an irreparable-harm finding. *Celsis*, 664 F.3d at 930. Hydrodynamic has  
11 alleged multiple forms of harm. The fact that the jury awarded monetary damages  
12 does not necessarily mean that those damages captured the full extent of  
13 Hydrodynamic's injury. If this were the case courts would not award both damages  
14 and an injunction for the same infringement—which courts regularly do. *See, e.g.*,  
15 *Broadcom*, 732 F.3d at 1337–38; *Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717  
16 F.3d 1336, 1344–46 (Fed. Cir. 2013); *Presidio Components, Inc. v. Am. Tech.*  
17 *Ceramics Corp.*, 702 F.3d 1351, 1363–64 (Fed. Cir. 2012); *Edwards Lifesciences AG*  
18 *v. CoreValve, Inc.*, 699 F.3d 1305, 1315–16 (Fed. Cir. 2012). Thus, Hydrodynamic's  
19 evidence that it cannot be fully compensated by the damages award is not necessarily  
20 undercut by the jury's damage award.

21 The Court finds that Hydrodynamic has presented sufficient evidence that  
22 money damages are insufficient to compensate it for its harm. First, as noted above,  
23 there is no reason to believe that Green Max will stop infringing, or that the harms  
24 resulting from Green Max's sales of the infringer X-treme scooter will cease, without  
25 an injunction. And unrefuted evidence established that Green Max is Hydrodynamic's  
26 sole competitor. Such a relationship militates against the adequacy of monetary  
27 damages.

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1           Additionally, as discussed previously, Green Max’s X-treme scooter sales have  
2 caused and will continue to cause the loss of business opportunities. The Federal  
3 Circuit has confirmed that “the loss of customers and the loss of future downstream  
4 purchases are difficult to quantify, [and] these considerations support a finding that  
5 monetary damages would be insufficient to compensate Apple.” *Apple, Inc. v.*  
6 *Samsung Elecs. Co., Ltd.*, 678 F.3d 1314, 1337 (Fed. Cir. 2012) (“*Apple I*”).  
7 Moreover, Green Max’s infringement has resulted in a loss to Hydrodynamic of  
8 consumer goodwill. Lastly, the evidence shows that although Hydrodynamic utilized  
9 different distributors for the Sea-Doo sea scooter, it intentionally chose not to license  
10 the technology of the ’385 Patent to maintain market exclusivity. (ECF No. 151 at  
11 Ex. G 78:5–14.) Accordingly, the Court concludes that remedies at law are  
12 inadequate to compensate Hydrodynamic for its harms.

### 13           **C. Balance of hardship**

14           The Court also finds that balance-of-hardships factor favors Hydrodynamic.  
15 This factor “assesses the relative effect of granting or denying an injunction on the  
16 parties.” *i4i Ltd. P’ship v. Microsoft Corp.*, 598 F.3d 831, 861–63 (Fed. Cir. 2010).

17           Although a permanent injunction may never be utilized to punish an infringer,  
18 courts are not sympathetic to the hardship a party brings upon itself by undertaking  
19 knowing infringement. *See, e.g., Smith Int’l, Inc., v. Hughes Tool Co.*, 718 F.2d 1573,  
20 1581 (Fed.Cir.1983). Green Max took a calculated risk that it might infringe  
21 Hydrodynamic’s patent when it copied the Sea-Doo sea scooter. Although Green  
22 Max attempted to invalidate Hydrodynamic’s patent at trial, having failed, Green Max  
23 cannot now say that the balance of hardships tips in its favor. *See, id.*

24           Moreover, requiring Hydrodynamic to compete against its own patented  
25 invention—with the resulting harms described above—places a significant hardship  
26 on Hydrodynamic. On the other hand, if an injunction were granted, the sole effect on  
27 Green Max is that it would be unable to sell the single product that infringes the  
28 ’385 Patent. This factor, therefore, favors entry of a permanent injunction in this case.





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**V. CONCLUSION**

Weighing all of the factors, the Court concludes that the principles of equity support the issuance of a permanent injunction in this action. Accordingly, for the reasons discussed above, the Court **GRANTS** Hydrodynamic's Motion for Preliminary Injunction. (ECF No. 146.) An order will issue.

**IT IS SO ORDERED.**

June 10, 2014



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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**