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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DUHN OIL TOOL, INC.,

Plaintiff/Counterclaim-Defendant,

vs.

COOPER CAMERON CORPORATION,
n/k/a CAMERON INTERNATIONAL
CORPORATION

Defendant/Counterclaim-Plaintiff.

Case No. 1:05-cv-01411-OWW-GSA

**ORDER GRANTING DEFENDANT
CAMERON’S MOTION FOR LEAVE TO
FILE SUPPLEMENTAL BRIEFING IN
SUPPORT OF ITS MOTION FOR
PARTIAL SUMMARY JUDGMENT OF
NO LOST PROFITS DAMAGES**

Hon. Oliver W. Wanger

Pending before this Court is Defendant Cooper Cameron Corporation, n/k/a Cooper Cameron Corporation, (“Cameron”)’s Motion for Leave to File Supplemental Briefing in Support of Cameron’s previously filed Motion (Doc. No. 319) for Partial Summary Judgment of No Lost Profits Damages. The Court hereby grants Cameron’s Motion for Leave. The Court further finds, as a matters of law, that:

1. The Plaintiff Duhn Oil Tool, Inc. is precluded from claiming damages based on the alleged lost profits of its parent corporation Seaboard International, Inc., or any other corporate affiliate of Duhn Oil Tool, Inc. *See Poly-America, L.P. v. GSE Lining Technology, Inc.*, 383 F.3d 1303, 1311 (Fed. Cir. 2004) (“While Poly-America may have the right to sue under its patents, both as an owner and as a back-licensee, it can only recover its own lost profits, not [its affiliate] Poly-Flex’s.”)

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2. Duhn Oil Tool, Inc. became a non-operating holding company when it was acquired by Seaboard International, Inc. on December 19, 2007. Thus, Duhn Oil lacked the prerequisite marketing and manufacturing capability required to claim lost-profits damages accruing after that acquisition date. *See Rite-Hite Corp v. Kelly Co., Inc.*, 56 F.3d 1538, 1545 (Fed. Cir. 1995) (en banc) (“To recover lost profits damages, the patentee must show a reasonable probability that, ‘but for’ the infringement, it would have made the sales that were made by the infringer.”) (citing *Panduit Corp. v. Stahl Bros. Fibre Work, Inc.*, 575 F.2d 1152, 1156 (6th Cir. 1978). The Panduit test requires that a patentee establish manufacturing and marketing capability to exploit a demand for the patented product.

3. Seaboard International, Inc. is not a patentee as defined by 35 U.S.C. §§ 281 and 284, and, thus, would lack constitutional standing to assert any claim for alleged infringement of the patent-in-suit, U.S. Patent No. 6,920,925.

4. Hearing Date: September 27, 2010 at 10:00a.m. in Courtroom 3 (7th Floor) before Judge Wanger.

IT IS SO ORDERED.

Dated: July 30, 2010

/s/ OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE