

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ATS PRODUCTS INC., )  
 )  
Plaintiff(s), )  
 )  
v. )  
 )  
FRANK GHIORSO, THERMALGUARD )  
TECHNOLOGY LLC, THERMALGUARD )  
LLC, )  
 )  
Defendant(s). )  
\_\_\_\_\_ )

No. C10-4880 BZ

**ORDER ON DEFENDANTS' MOTION  
TO AMEND FINDINGS OF FACT  
AND CONCLUSIONS OF LAW AND  
PERMANENT INJUNCTION**

Defendants move pursuant to Rule 52(b) of the Federal Rules of Civil Procedure to amend the Findings of Fact and Conclusions of Law ("Findings") and the Permanent Injunction issued on January 27, 2012 (Docket No. 271).<sup>1</sup> Defendants assert that the Findings contain nine errors that either misstate or are not supported by the evidence in the record, and that the Permanent Injunction is improper because it binds parties not before the court and is enforceable for an

<sup>1</sup> All parties have consented to magistrate judge jurisdiction for all proceedings including entry of final judgment, pursuant to 28 U.S.C. § 636(c).

1 improper length of time. I have considered Defendants'  
2 arguments and find that, except to the extent noted in this  
3 order, Defendants have failed to establish any factual or  
4 legal grounds for their motion to amend.<sup>2</sup>

5 Motions under Rule 52(b) are designed to correct findings  
6 of fact which are central to the ultimate decision; the Rule  
7 is not intended to serve as a vehicle for a rehearing. R.C.  
8 Fisher v. Cartwright 2011 WL 6025659 (N.D. Cal.); Davis v.  
9 Mathews, 450 F. Supp. 308, 318 (E.D. Cal. 1978). Put  
10 differently, Rule 52(b) motions are granted in order to  
11 correct manifest errors of law or fact or to address newly  
12 discovered evidence or controlling case law. Fontenot v. Mesa  
13 Petroleum Co., 791 F.2d 1207, 1219-1220 (5th Cir. 1986);  
14 Diebitz v. Arreola, 834 F.Supp. 298, 302 (E.D. Wis. 1993);  
15 Clark v. Nix, 578 F. Supp. 1515, 1516 (S.D. Iowa 1984). The  
16 purpose of Rule 52(b) is to permit a party to move the trial  
17 court to clarify or supplement fact findings to enable the

---

19 <sup>2</sup> The Local Rules of the United States District Court  
20 for the Northern District of California were amended on June 2,  
21 2011 to require that any opposition motion to be served and  
22 filed not more than 14 days after the motion is served and  
23 filed. Civ. L.R. 7-3(a). Pursuant to Civ. L.R. 7-3(a),  
24 Plaintiff's opposition or statement of non-opposition to the  
25 motion to amend was due no later than March 8, 2012. Plaintiff  
26 filed what it termed an "initial" opposition on that date, and  
27 requested leave to file an "amended" opposition by March 13,  
28 2012. (Docket No. 286.) On March 13, Plaintiff filed an  
amended opposition. (Docket No. 288.) Defendants oppose  
Plaintiff's request to file an amended opposition, arguing that  
Plaintiff's claim that it did not become aware of its  
obligation to file an opposition until the day it was due is  
not excusable given that the ECF docket listing provided  
Plaintiff with the opposition deadline. (Docket No. 287.) I  
agree. Accordingly, Plaintiff's request to file an amended  
opposition is **DENIED** and the amended opposition and all  
exhibits filed in conjunction with it will be disregarded.

1 appellate court to understand the factual issues determined at  
2 trial. Lewis v. Blackburn, 555 F. Supp. 713, 724 (W.D. N.C.  
3 1983). A party may not use a Rule 52(b) motion to introduce  
4 any new facts or legal theories that were available to them at  
5 trial, much less re-litigate facts and legal theories that  
6 have previously been rejected by the court. Fontenot, 791 F.2d  
7 at 1219-1220; Diebitz, 834 F.Supp. at 302. Furthermore, a  
8 motion to amend a court's factual and legal findings is  
9 properly denied where the proposed additional facts would not  
10 affect the outcome of the case or are immaterial to the  
11 court's conclusions. Weyerhaeuser Co. v. Atropos Island, 777  
12 F.2d 1344, 1352 (9th Cir. 1985); Lyons v. Jefferson Bank &  
13 Trust, 793 F.Supp. 989, 991 (D. Colo. 1992), aff'd in part,  
14 rev'd in part on other grounds, 994 F.2d 716 (10th Cir. 1993);  
15 U.S. v. Anderson, 591 F.Supp. 1, 4 (E.D. Wash. 1982), aff'd in  
16 part, rev'd in part on other grounds (citing Purer & Co. v.  
17 Aktiebolaget Addo, 410 F.2d 871, 878 (9th Cir. 1969)).

18 With respect to most of their challenges, Defendants have  
19 failed to establish any factual or legal grounds to support  
20 amending those findings.<sup>3</sup> A motion to amend findings should  
21 not be a means for re-litigating issues upon which the moving  
22 party did not prevail at trial. Davis, 450 F. Supp. at 317.  
23 I had the benefit of viewing witness demeanor and considered  
24

---

25 <sup>3</sup> Many of Defendants challenges have to do with the  
26 special verdict form submitted to the jury. To the extent,  
27 however, that Defendants accepted the special verdict form and  
28 did not ask for it to be amended to include the types of  
findings that Defendants now say the form should have included  
(see, e.g., Trial Transcript. Vol 9 at 1212:8-25), Defendants  
have waived those arguments.

1 the testimony in light of the entire record. Defendants may  
2 disagree with the Findings, but Defendants have not shown that  
3 the Findings are unsupported by the evidence.<sup>4</sup> Evans, Inc. v.  
4 Tiffany & Co., 416 F. Supp. 224, 244 (N.D. Ill. 1976). I  
5 evaluated and decided all matters brought forth at trial,  
6 which my Findings reflect.

7 That said, to expedite any appeal, the following two  
8 findings are **AMENDED** as follows:

9 Part of Paragraph 21 now reads:

10 While working at Shea Tech, Ghiorso had complete  
11 access to the Shea trade secrets. Ghiorso  
12 understood that Shea Tech expected him to keep such  
13 information confidential. The jury found that he  
14 breached that duty with respect to at least one  
15 trade secret and I concur with the jury's finding.

16 Part of Paragraph 22 now reads:

17 Second, the weight of the testimony established that  
18 it would take many months, if not years, to create a  
19 viable and optimized PRF resin, yet Ghiorso claimed  
20 it was done in a matter of weeks.

21 With the exception of the amended findings set forth above,  
22 Defendants' motion to amend the Findings is **DENIED**.

23 Defendants' motion to amend the Permanent Injunction is

---

24 <sup>4</sup> Indeed, Defendants have failed to introduce either  
25 new evidence that was not available at trial or a change in the  
26 controlling law that would justify their proposed amendments.  
27 In their proffer, Defendants actually cite exclusively to the  
28 trial transcripts and exhibits in this case, showing that all  
of the evidence upon which Defendants rely was available and  
presented at trial. Motions to amend findings of fact are  
governed by the "clearly erroneous" standard (see Fed. R. Civ.  
Pro. 52(a)), and where there are two permissible views of the  
evidence, the fact finder's choice between them cannot be  
clearly erroneous. Anderson v. Bessemer City, 470 U.S. 564,  
574 (1985). This is so even when the findings are based  
entirely on documentary evidence. Krehl v. Baskin-Robbins Ice  
Cream Co., 664 F.2d 1348, 1352 (9th Cir. 1982). I also note  
that many of Defendants' proposed amendments would not affect  
the outcome of the case and are immaterial to my conclusions  
(see Weyerhaeuser, 777 F.2d at 1352).

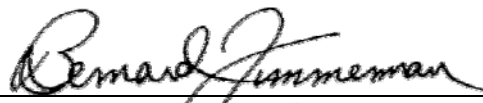
1 also **DENIED**. Defendants' have failed to show that the length  
2 of the Permanent Injunction is impermissible. The Permanent  
3 Injunction specifically states, "Pursuant to California Civil  
4 Code §3426.2(a), Defendants may be relieved from any portion  
5 of this injunction by proving to the court that any of the  
6 Shea trade secrets referred to in paragraph 57 which they are  
7 enjoined from using have ceased to exist as trade secrets."  
8 (Docket No. 271.) This temporal restriction is authorized by  
9 the governing statute and is in conformance with similar  
10 restrictions courts have enforced. See, e.g., Morlife, Inc.  
11 v. Perry, 56 Cal. App. 4th 1514 (1997) (stating that the  
12 duration of the injunction was "not necessarily forever,"  
13 since the court noted in its statement of decision that  
14 termination could be sought under Civ. Code, § 3426.2(a)).

15 Moreover, Defendants' attempt to "clarify" the injunction  
16 regarding whether it extends to defendant Thermalguard, LLC,  
17 Champion Fiberglass and Chris Fish is not well-taken. The  
18 Permanent Injunction specifically prohibits each named  
19 defendant and "anyone in active concert or in participation  
20 with any of them," who receives notice of the injunction from  
21 "[u]sing, copying, modifying, disseminating, making, buying,  
22 selling and/or distributing or assisting another in using,  
23 copying, modifying, disseminating, making, buying, selling  
24 and/or distributing" the listed trade secrets and resins. To  
25 the extent that either Champion Fiberglass or Chris Fish act  
26 in concert with or participate with any of the Defendants by  
27 engaging in the enjoined conduct as it pertains to the  
28 itemized trade secrets or resins, those individuals or

1 entities may violate the injunction. Defendants' attempt to  
2 exclude certain individuals and entities (including a named  
3 defendant) from the scope of the injunction runs afoul of its  
4 underlying purpose, which is to prohibit the further  
5 dissemination of Plaintiff's trade secrets and protect  
6 Plaintiff from further losses to its competitive advantage.

7 For the reasons and to the extent set forth above, **IT IS**  
8 **ORDERED** that Defendants' motion to amend the Findings and  
9 Permanent Injunction is **GRANTED IN PART** but otherwise **DENIED**.  
10 Defendants' motion for partial stay of execution of judgment  
11 is **DENIED** as moot.

12 Dated: March 28, 2012

13  
14 

15 Bernard Zimmerman  
16 United States Magistrate Judge

17 G:\BZALL\BZCASES\ATS V. GHIORSO\ORDER ON DS MOT TO AMEND FINDINGS OF FACT  
18 AND PERMANENT INJUNCTION v.4.wpd