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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ASETEK DANMARK A/S,  
Plaintiff,  
v.  
CMI USA, INC.,  
Defendant.

Case No. 13-cv-00457-JST

**ORDER DENYING DEFENDANT'S  
POST-TRIAL MOTIONS; GRANTING  
IN PART AND DENYING IN PART  
PLAINTIFF'S POST-TRIAL MOTIONS**

Re: ECF Nos. 266, 267, 269

This patent infringement case was tried to a jury in December 2014. ECF No. 189. On December 17, 2014, the jury returned a verdict in favor of Plaintiff Asetek Danmark A/S (“Asetek”), finding that Defendant CMI USA, Inc. (“CMI”)’s products infringed United States Patents Nos. 8,240,362 and 8,245,764 (“’362 patent” and “’764 patent”). ECF Nos. 218, 219.

Now before the Court are three sets of post-judgment motions: (1) CMI’s motions for entry of judgment as a matter of law under Federal Rule of Civil Procedure 50(b)(3) and for a new trial under Federal Rule of Civil Procedure 50(b)(2) or 59 (ECF No. 269); (2) Asetek’s motion for entry of a permanent injunction (ECF No. 266); and (3) Asetek’s motion for supplemental damages and prejudgment interest (ECF No. 267). For the reasons set forth below, the motion for entry of judgment as a matter of law is denied, the motion for a new trial is denied, the motion for entry of permanent injunction is granted, and the motion to alter the judgment is granted in part and denied in part.

**I. BACKGROUND**

Asetek is a Denmark-based corporation that sells liquid cooling systems for data centers, servers, workstations, and personal computers. ECF No. 1, ¶¶ 1, 11, 12. It owns the ’764 and ’362 patents by assignment. ECF No. 118 at 1. The patents relate to devices that use liquid to cool computer components. See ECF No. 1, Exs. A, B.

United States District Court  
Northern District of California

1           On January 31, 2013, Asetek filed suit against CMI for infringement of claims 14, 15, and  
2 17-19 of the '362 patent, and claims 1-15, 17, and 18 of the '764 patent, by the following CMI  
3 products: (1) Cooler Master Seidon 120M, 120XL, and 240M; (2) Cooler Master Seidon 120V  
4 and 120V Plus; (3) Cooler Master Glacier 240L; and (4) Cooler Master Nepton 140XL and 280L.  
5 ECF No. 1; ECF No. 130 at 1. In its complaint, Asetek “demand[ed] a jury trial on all matters  
6 triable to a jury.” ECF No. 1 at 7.

7           **A. Claim construction**

8           This case was consolidated for claim construction with another patent-infringement suit  
9 brought by Asetek involving the '362 and '764 patents. See ECF No. 35 at 1 & n.1. Judge  
10 Edward M. Chen presided over the joint claim construction proceeding. Id. Judge Chen’s claim  
11 construction order addressed several terms relating to the claims in dispute at trial. See id. Judge  
12 Chen declined to construe the term “substantially circular passages,” and instead adopted the plain  
13 and ordinary meaning of that term. Id. at 12-14. The parties did not include the term “removably  
14 attached” or “removably coupled” in their joint claim construction statement, and Judge Chen did  
15 not construe them. See ECF Nos. 31, 35.

16           **B. Summary judgment**

17           CMI then moved for summary judgment of invalidity of the '362 and '764 patents and  
18 non-infringement of the '362 patent. ECF No. 86. CMI argued that the '362 and '764 patents  
19 were invalid as both anticipated and obvious. See ECF Nos. 86, 106. Genuine issues of material  
20 fact prevented the Court from determining whether CMI’s products met the “reasonably  
21 attached/coupled” limitation. ECF No. 126 at 14. The Court also determined that the terms  
22 “removably coupled” and “removably attached” did not require construction, because they would  
23 not be unfamiliar or confusing to a jury. Id. at 14 n.6. The Court denied CMI’s motion for  
24 summary judgment in full.

25           **C. Pre-trial and trial**

26           The matter then proceeded to trial. In the parties’ joint pre-trial statement, CMI stated that  
27 it contested infringement only of the '362 patent, and not of the '764 patent. See ECF No. 130 at  
28

1 4-5. CMI also asserted that the '764 and '362 patents were invalid as anticipated, obvious, and  
2 indefinite, and because they lacked adequate written descriptions. See id.

3 Jury selection began on December 2, 2014. On December 17, 2014, the jury returned a  
4 verdict in Asetek's favor. ECF No. 219. The jury found that all of the accused products infringed  
5 the claims of the '362 patent, and that CMI's products contributorily infringed the asserted method  
6 claims of the '362 patent. Id. at 1-2. The jury also found that the '764 patent was not invalid as  
7 anticipated by the Koga prior art reference.<sup>1</sup> Id. at 2. The jury also rendered several decisions  
8 related to the question of obviousness. First, the jury found that a person of ordinary skill in the  
9 field of liquid cooling at the time of the inventions claimed in the '764 and '362 patents was:

10 [S]omeone who has completed college level course work in  
11 thermodynamics, fluid mechanics, and heat transfer, and would have  
12 two or more years of experience in designing liquid cooling systems  
13 for computers or very similar technology or one with a more  
14 advanced degree in the above fields [who] may have had less  
15 practical experience.

16 Id. at 3. Second, the jury described the scope and content of the prior art at the time of the claimed  
17 invention as follows:

18 The prior art devices included a pump, a single-chamber reservoir  
19 (as that term was used in the prior art), and a cold plate as separate  
20 components that were connected using tubing or attached together  
21 with clips or screws or perm[an]ently coupled. Certain prior art  
22 devices had a pump and a cold plate incorporated into a single swirl  
23 chamber, which provided no separation between the pumping and  
24 the heat exchange functionalities of the liquid cooling device.

25 Id. Third, the jury determined the differences that existed between the claimed invention and the  
26 prior art at the time of the invention. The differences included:

27 Asetek's patented invention is directed to a closed loop liquid  
28 cooling system in which cooling liquid is pumped continuously  
between a pump head and a heat radiator (positioned remote from  
the pump head). Rather than connecting together multiple separate  
components (as in the prior art), Asetek's patented pump head  
design combines, into a single unit, a pump and the claimed  
"reservoir" that has, among other things, dual chambers and is

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<sup>1</sup> The parties do not dispute that U.S. Patent No. 7,554,049 to Koga et al. ("Koga"), Korean Patent No. 20-0314041 to Ryu ("Ryu"), and U.S. Publication No. 2004/0052663 to Laing et al. ("Laing") are prior art to Asetek's patents. ECF No. 235 at 4; ECF No. 236 ¶¶ 19-27.

1 bounded by a removable cold plate. Also, the claimed “reservoir” in  
2 Asetek’s invention is a single receptacle that is divided into an upper  
3 chamber and a lower chamber, with the upper chamber providing  
4 the pumping function and the lower chamber providing the thermal  
exchange function. In addition to providing efficient heat removal,  
Asetek’s patented invention includes at least one of the following  
benefits over each example of prior art: a compact (narrow) profile,  
cost-effective manufacturing, and reduced risk of fluid leakage.

5 Id. at 4. Finally, the jury found that Asetek established all objective indicia of non-obviousness  
6 that Asetek sought to prove at trial, including: (1) “commercial success of [the] product[s] due to  
7 the merits of the claimed invention”; (2) “a long-felt need for the solution that is provided by the  
8 claimed invention”; (3) “unsuccessful attempts by others to find the solution that is provided by  
9 the claimed invention”; (4) “copying of the claimed invention by others”; (5) “unexpected and  
10 superior results from the claimed invention”; and (6) “acceptance by others of the claimed  
11 invention as shown by praise from others in the field or from the licensing of the claimed  
12 invention.” Id.

13 The jury also determined that Asetek was entitled to \$404,941 in damages, representing a  
14 14.5% royalty rate on CMI’s sales of infringing products. ECF No. 219 at 5.

15 **D. Post-trial**

16 On January 26, 2015, CMI filed its proposed findings of fact and conclusions of law, as  
17 well as its memorandum of points and authorities in support of its defenses. ECF Nos. 234, 235.  
18 On February 9, 2015, Asetek filed its responsive proposed findings of fact and conclusions of law.  
19 ECF No. 236.

20 On April 21, 2015, the Court issued its findings of fact and conclusions of law, ECF No.  
21 249. The Court concluded that CMI failed to show by clear and convincing evidence that the ’362  
22 and ’764 patents were invalid for obviousness, lack of written description, or indefiniteness. CMI,  
23 in a post-trial brief, argued that the term “substantially circular passages” was indefinite. See ECF  
24 No. 234 at 15-16. But the Court found that CMI waived its indefiniteness defense by not pursuing  
25 it at trial. ECF No. 249 at 28. The Court also noted that CMI did not raise the argument that the  
26 term “removably attached” was indefinite in its post-trial briefing, and that CMI could not  
27 properly pursue the issue at trial. Id.

1           The parties have now filed various post-trial motions, including CMI’s renewed motion for  
2 judgment as a matter of law and motion for a new trial, and Asetek’s motion for a permanent  
3 injunction and motion for supplemental damages.

4       **II.     CMI’S MOTION FOR ENTRY OF JUDGMENT AS A MATTER OF LAW**

5           On June 30, 2015, CMI filed its renewed motion for judgment as a matter of law and  
6 motion for a new trial. ECF No. 269. CMI argues that the non-infringement should be granted as  
7 a matter of law because the accused products do not infringe the ’362 patent as a matter of law and  
8 consequently, do not contributorily infringe, and that substantial evidence does not support the  
9 jury’s finding of a 14.5% royalty rate. See id.

10       **A.     Legal standard**

11           Under Federal Rule of Civil Procedure 50, “a party must make a Rule 50(a) motion for  
12 judgment as a matter of law before a case is submitted to the jury. If the judge denies or defers  
13 ruling on the motion, and if the jury then returns a verdict against the moving party, the party may  
14 renew its motion under Rule 50(b).” E.E.O.C. v. Go Daddy Software, Inc., 581 F.3d 951, 961 (9th  
15 Cir. 2009). In considering a renewed motion for judgment as a matter of law, under Rule 50(b)(3),  
16 the court must uphold the jury’s verdict if “substantial evidence” supports the jury’s conclusion.  
17 Johnson v. Paradise Valley Unified Sch. Dist., 251 F.3d 1222, 1227 (9th Cir. 2001).<sup>2</sup> “Substantial  
18 evidence is evidence adequate to support the jury’s conclusion, even if it is also possible to draw a  
19 contrary conclusion from the same evidence.” Id. The court must “view all the evidence in the  
20 light most favorable to the nonmoving party, draw all reasonable inferences in the favor of the  
21 nonmover, and disregard all evidence favorable to the moving party that the jury is not required to  
22 believe.” Castro v. Cnty. of Los Angeles, 785 F.3d 336 (9th Cir. 2015); see also Reeves v.  
23 Sanderson Plumbing Prods., Inc., 530 U.S. 133, 151 (2000). Judgment as a matter of law “is  
24 appropriate when the jury could have relied only on speculation to reach its verdict.” Lakeside-  
25 Scott v. Multnomah Cnty., 556 F.3d 797, 803 (9th Cir. 2009).

26 \_\_\_\_\_  
27 <sup>2</sup> In reviewing motions for judgment as a matter of law, the Federal Circuit applies the law of the  
28 regional circuit in which the district court is located. See, e.g., Enovsys LLC v. Nextel  
Commc’ns, Inc., 614 F.3d 1333, 1341 (Fed. Cir. 2010).

1           **B.       Analysis**

2                   **1.       The jury’s determination that CMI’s products meet the “removably**  
3                   **attached” limitation**

4           CMI contends that the accused products do not infringe the ’362 patent as a matter of law  
5 because the products do not meet the “reasonably attached” or “reasonably coupled”<sup>3</sup> limitations.  
6 ECF No. 269 at 3. Claim 14 requires “the heat exchanging interface” to be “removably attached  
7 to the reservoir,” while claim 17 requires “the heat exchanging interface” to be “removably  
8 coupled to the reservoir.” All of the asserted claims of the ’362 patent contain the structural  
9 limitation between the heat exchanging interface and the reservoir because Claim 15 depends on  
10 Claim 14 and Claims 18 and 19 depend on Claim 17. The jury found that the Seidon, Seidon  
11 120V, Nepton, and Glacer 240L infringed all claims of the ’362 patent, including claims 14 and  
12 17. See ECF No. 219 at 1.

13                           **a.       Standard of review**

14           CMI and Asetek disagree as to the legal standard the Court should apply in reviewing the  
15 jury’s finding of infringement. CMI argues that the Court should review the jury’s verdict de  
16 novo, because “there is no material dispute regarding the operation of the accused products” and  
17 “[i]nfringement instead turned on applying the ordinary meaning of the ‘removably attached’ and  
18 ‘substantial circular passageway’ limitations.” ECF No. 269 at 9 (citing MyMail, Ltd. v. Am.  
19 Online, Inc., 476 F.3d 1372 (Fed. Cir. 2007) and K-2 Corp. v. Salomon S.A., 191 F.3d 1356 (Fed.  
20 Cir. 1999)). Asetek argues that the question of CMI’s infringement is a factual question that must  
21 be reviewed “for substantial evidence.” ECF No. 286 at 10 (quoting Uniloc USA, Inc. v.  
22 Microsoft Corp., 632 F.3d 1292, 1301 (Fed. Cir. 2011)).

23           MyMail and K-2 do not assist the Court. In those cases, the trial courts had construed  
24 disputed patent terms and granted summary judgment of non-infringement, requiring the Federal  
25 Circuit to resolve issues of claim interpretation on appeal. See MyMail, 476 F.3d at 1375; K-2

26 \_\_\_\_\_  
27 <sup>3</sup> Both parties use the terms “removably attached” and “removably coupled” interchangeably. See  
28 ECF No. 269 at 2 n.2; ECF No. 286 at 5 n.3.

1 Corp., 191 F.3d at 1362. Here, the term “removably attached” was not disputed during claim  
2 construction,<sup>4</sup> and it was not until its reply brief in support of summary judgment that CMI  
3 suggested to the Court that the term be construed.<sup>5</sup> CMI made no mention of the term in its  
4 pretrial filings and did not seek to construe the term in its proposed jury instructions. ECF No.  
5 205 at 4; see Hewlett-Packard Co. v. Mustek Sys., Inc., 340 F.3d 1314, 1320-21 (Fed. Cir. 2003)  
6 (where the parties and district court elect to provide the jury only with the claim language itself, “it  
7 is too late at the JMOL stage to argue for or adopt a new and more detailed interpretation of the  
8 claim language and test the jury verdict by that new and more detailed interpretation”). Thus, this  
9 Court tests the jury’s verdict under the plain meaning of “removably attached,” see id. at 1320  
10 (“On JMOL, the issue here should [be] limited to the question of whether substantial evidence  
11 supported the verdict under the agreed instruction”), and examines whether substantial evidence  
12 supports the jury’s conclusion that CMI’s products infringe the ’362 patent under the plain  
13 meaning of the “removably attached” limitation.

14 **b. Ordinary meaning of the terms**

15 CMI argues that the jury erred in applying the “removably coupled” and “removably  
16 attached” limitations, because whatever plain meaning the jury applied was at odds with the  
17 definition given to the term “removably attached” in another case involving children’s car seats.  
18 Dorel Juvenile Group, Inc. v. Graco Children’s Prods., 429 F.3d 1043 (Fed. Cir. 2005).

19 In Dorel, the Federal Circuit vacated a grant of summary judgment of non-infringement  
20 and remanded the case to the district court to determine, as a matter of fact, whether the accused  
21 child’s car seat met the limitations of the asserted claims. Id. at 1047. The accused product  
22 consisted of two plastic parts: the top portion where the child sat and the bottom base upon which  
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24 <sup>4</sup> Although CMI originally requested that the Court construe the term “removably coupled,” ECF  
25 No. 107 at 2, 107-3 at 3, it dropped that request in the parties’ Joint Claim Construction and  
26 Prehearing Statement filed with the Court. ECF No. 31. Thereafter, CMI did not request  
construction of the term “removably attached” at all.

27 <sup>5</sup> CMI suggested in its reply brief that the Court should construe the “removably attached”  
28 limitation so as not to cover the accused products secured with security screws with triangular  
heads. See ECF No. 106 at 14-15.

1 the seat fit. Id. at 1045. The base was “removably attached and arranged to support the seat,” and  
2 the pieces were held together by screws, either “of the ordinary variety” or “one-way screws.” Id.  
3 In giving the ordinary meaning to the terms “removably attached” and “removably secured,” the  
4 district court concluded that the “claimed product is designed to come apart.” Id. And the seat  
5 and base did not need to come apart during normal usage or be easily removed. Id. at 1045. To  
6 the district court, the “removable” limitations therefore meant that “[t]he seat and base can be  
7 separated ‘in a manner that contemplates that the seat may be removed from the base such that the  
8 seat remains functional.’” Id. at 1046. The Federal Circuit held that the district court correctly  
9 interpreted the contested “removable” limitations as understood through the plain meaning of the  
10 claim language and “as tested by information in the specification.” Id.

11 CMI argues that the Court should have construed the “removably” limitations of Asetek’s  
12 patents to require that the product “remain functional,” just as the Dorel court did, and having not  
13 done so, should now correct what it perceives to be the jury’s error. CMI argues that its products  
14 are not designed to come apart during the products’ lifetime and doing so would render the  
15 products unusable; thus, no reasonable jury could think the “removably attached” limitation  
16 applied. ECF No. 269 at 8-10.

17 CMI’s argument<sup>6</sup> rests on a faulty premise: that a term that has a plain meaning in one  
18 context has the same plain meaning in all others. In fact, however, the opposite is true – the words  
19 of a claim are construed in the context of that claim and that patent as a whole. World Class Tech.  
20 Corp. v. Ormco Corp., 769 F.3d 1120, 1123 (Fed. Cir. 2014). “We apply . . . the principle that  
21 ‘[t]he construction that stays true to the claim language and most naturally aligns with the patent’s  
22 description of the invention will be, in the end, the correct construction.’” In re Papst Licensing  
23 Digital Camera Patent Litig., 778 F.3d 1255, 1261 (Fed. Cir. 2015) (quoting Renishaw PLC v.  
24 Marposs Societa’ per Azioni, 158 F.3d 1243, 1250 (Fed. Cir. 1998). Thus, our courts have been  
25 careful to construe the terms of a patent in the context of that patent. E.g., In re Katz Interactive  
26 Call Processing Patent, No. 07-CV-2134, 2012 WL 10997174, at \*2 (C.D. Cal. Apr. 26, 2012);

27 \_\_\_\_\_  
28 <sup>6</sup> CMI never cited Dorel at any time prior to entry of judgment.



1 I-Flow Corp. v. Apex Med. Technologies, Inc., No. 07CV1200 DMS (NLS), 2008 WL 2899822,  
2 at \*4 (S.D. Cal. July 25, 2008); Hilleby v. FMC Corp., No. C-91-568 FMS, 1992 WL 455435, at  
3 \*4 (N.D. Cal. July 28, 1992). And a word that has a certain plain meaning in one context can have  
4 a different plain meaning in another context.<sup>7</sup> A child’s car seat works differently from a liquid  
5 cooling device for a computer.

6 CMI points to nothing in the language of the patent requiring that the product be functional  
7 once the cooling plate is removed, and there is nothing in the words “removably attached” that  
8 themselves remotely suggest such a construction. Even Dorel explains that the ordinary meaning  
9 term “removably attached” is that the two joining parts are “capable of separation” or “designed at  
10 some time or another to come apart.” See id. at 1045-46. The Court will continue to apply the  
11 plain and ordinary meaning of the term. The plain language of the claim counsels against the  
12 narrow interpretations proposed by CMI. See Phillips v. AWH Corp., 415 F.3d 1303, 1312-13  
13 (Fed. Cir. 2005) (en banc) (“[T]he words of a claim ‘are generally given their ordinary and  
14 customary meaning’ . . . that the term would have to a person of ordinary skill in the art in  
15 question at the time of the invention.”).

16 **c. Substantial evidence supports the jury’s verdict**

17 The Court concludes that substantial evidence supports the jury’s conclusion that the  
18 accused products infringed the ’362 patent with the “removably attached” limitation. At trial,  
19 Asetek’s expert, Dr. David Tilton testified that the thermal-exchange interface was attached to the  
20 reservoir in a way that is removable. ECF No. 198 (Transcript 12/08/2014) 646:7-10. Dr. Tilton  
21 stated that for each product, the thermal exchange interface could be removed by taking out the  
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23 \_\_\_\_\_  
24 <sup>7</sup> There is nothing groundbreaking about the observation that meaning depends on context. When  
25 Raymond Chandler and J.D. Salinger each use the word “grand,” its meaning is plain to the reader,  
26 even though it means something very different in each context. Compare Raymond Chandler,  
27 “Blackmailers Don’t Shoot,” Black Mask, Dec. 1933 (“The letters will cost you ten grand, Miss  
28 Farr.”) with J.D. Salinger, The Catcher In The Rye 9 (1951) (“Then he said, ‘I had the privilege of  
meeting your mother and dad when they had their little chat with Dr. Thurmer some weeks ago.  
They’re grand people.’”). A claim term’s ordinary meaning also depends on context. See Biogen  
Idec, Inc. v. GlaxoSmithKline LLC, 713 F.3d 1090, 1095 (Fed. Cir. 2013) (“[A] term’s ordinary  
meaning must be considered in the context of all the intrinsic evidence, including the claims,  
specification, and prosecution history.”).

1 screws, thus concluding that the “removably attached” limitation applied to all of the accused  
2 products. See Tr. 622:19-22 (narrating the removal of the interface on the Seidon 120M), 627:24-  
3 25 (narrating the removal of the interface on the Seidon 120V), 629:5-10 (narrating the removal of  
4 the interface on the Glacier 240L), and 631:21-25 (narrating the removal of the interface on the  
5 Nepton 140XL). As Dr. Tilton testified with regard to CMI’s Seidon 120M product:

6 **Q.** So here we see the screw being removed. Is that right?

7 **A.** Yeah. You just taken the last screw out so that we can take the  
8 thing apart. And you can see the interior features. So this is the  
9 thermal-exchange interface. And it's removable, as required by the  
claims. It's coming off of the device.

10 Tr. 622:18-623:22. Dr. Tilton went on to explain that he had also personally removed screws from  
11 the accused products, including products using triangular-head screws, using commercially  
12 available screwdrivers. Tr. 646:22-647:19. Dr. Tilton then concluded that the Seidon products  
13 and the Glacier 240L infringed on Claim 14 of the ’362 patent. See Tr. 658:3-6. Dr. Tilton also  
14 concluded that the Seidon 120V and the Nepton products met the limitation of Claim 17. See Tr.  
15 666:3-17.

16 CMI’s expert, Dr. Gregory Carman, disagreed that the “removably attached” limitation  
17 was met by all of CMI’s products. However, during cross-examination, Dr. Carman agreed that  
18 he was able to remove the thermal exchange interfaces from the accused products. See ECF No.  
19 200 (Transcript 12/09/2014) 819:10-24. For example, he testified:

20 **Q.** Okay. The claim doesn’t say anything about the means by which  
21 the cold plate can be removed. It simply says “removable”; right?

22 **A.** That is correct.

23 **Q.** And you were able to remove all the cold plates; right?

24 **A.** That is correct.

25 Tr. 820:23-821:3.

26 The jury considered this testimony, and credited it. The Court concludes that substantial  
27 evidence supports the jury’s findings that the accused products meet the “removably attached” and  
28

1 “removably coupled” limitations.

2 **2. The jury’s determination that CMI’s products meet the “substantially**  
3 **circular passageway” limitation**

4 Next, CMI contends that its products do not infringe the ’362 patent as a matter of law  
5 because the products do not meet the “substantially circular passageway” limitation. Claim 14  
6 recites that the upper and lower chamber of the reservoir be “fluidly coupled together by one or  
7 more passageways, at least one of the one or more passageways being a substantially circular  
8 passageway positioned on the horizontal wall . . . .” (emphasis added). Claim 15 depends on  
9 Claim 14. During claim construction, the Court adopted the plain and ordinary meaning of the  
10 term. See ECF No. 35 at 12-13. At trial, the jury found that the Seidon products and the Glacer  
11 240L infringed Claims 14 and 15. See ECF No. 219 at 1.

12 CMI contends that because Asetek alleged only literal infringement, and not infringement  
13 under the doctrine of equivalents, the limitation must read exactly on CMI’s products. See  
14 DeMarini Sports, Inc. v. Worth, Inc., 239 F.3d 1314, 1331 (Fed. Cir. 2001) (“Literal infringement  
15 of a claim occurs when every limitation recited in the claim appears in the accused device, i.e.,  
16 when ‘the properly construed claim reads on the accused device exactly.’”). CMI points out that  
17 its products have “fan-shaped” passageways, none of which by itself is “substantially circular.”  
18 ECF No. 269 at 11. CMI contends that because none of its accused devices have at least one  
19 singular passageway that is “substantially circular,” no reasonable jury could find that the CMI  
20 products literally met the “substantially circular passageway” limitation. Id.

21 At trial, however, the jury heard Dr. Tilton testify that the passageway was still  
22 substantially circular, even though the ribs divide it into several “sections” or “segments”:

23 **Q.** So is it fair to say that in your opinion, those are three different  
24 segments of a substantially -- a single, substantially circular  
25 passageway?

26 **A.** Well, yeah. There’s one passage there. It’s the passage where the  
27 fluid goes from this chamber up into the impeller.

28 ECF No. 198 (Transcript 12/08/2014) 643:18-22. Dr. Tilton testified that the passageway was  
“obviously substantially circular” with only “a couple of ribs dividing.” Tr. 642:11-12. He also

1 explained that the fluid could only enter properly through a substantially circular passageway,  
2 otherwise the pump would not function properly. Tr. 642:20-13. Specific to the Glacer 240L, Dr.  
3 Tilton agreed that in the product had a “perfectly circular . . . lower half, but . . . does have the ribs  
4 in . . . the exit point in the upper half.” Tr. 645:13-16.

5 CMI’s motion must be denied, because there is sufficient evidence that supports the jury’s  
6 verdict of infringement. See Johnson, 251 F.3d at 1227 (9th Cir. 2001).

7 **3. The jury’s determination that CMI was liable for contributory**  
8 **infringement**

9 Next, CMI argues that the evidence was insufficient to support the jury’s finding that it  
10 contributorily infringed the ’362 patent.<sup>8</sup> CMI now makes the same motion again.

11 “In order to succeed on a claim of contributory infringement, in addition to proving an act  
12 of direct infringement, plaintiff must show that defendant ‘knew that the combination for which its  
13 components were especially made was both patented and infringing’ and that defendant’s  
14 components have ‘no substantial non-infringing uses.’” Cross Med. Prods., Inc. v. Medtronic  
15 Sofamor Danek, Inc., 424 F.3d 1293, 1312 (Fed. Cir. 2005) (quoting Golden Blount, Inc. v.  
16 Robert H. Peterson Co., 365 F.3d 1054, 1061 (Fed. Cir. 2004)). Once the plaintiff makes a prima  
17 facie showing that defendant’s product is not suitable for substantial non-infringing use, the  
18 burden of demonstrating a non-infringing use shifts to the defendant. Golden Blount, 438 F.3d at  
19 1363.

20 CMI first argues that because CMI products did not directly infringe the ’362 patent, CMI  
21 could not contributorily infringe. ECF No. 269 at 13. CMI also argues that it did not commit  
22 contributory infringement because no reasonable jury could find that CMI had knowledge that its  
23 products infringed Asetek’s patents. Id.

24 As discussed previously, substantial evidence supports the jury’s conclusion that CMI  
25 directly infringed the ’362 patent. As to CMI’s knowledge of Asetek’s patents and CMI’s own

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26 <sup>8</sup> CMI orally moved at trial for a directed verdict on Asetek’s contributory infringement claim.  
27 See ECF No. 213 (Transcript 12/15/2014) 1482:16-1485:25. The Court denied CMI’s motion,  
28 finding that Asetek submitted sufficient evidence on its contributory infringement claim from  
which a reasonable jury could find in Asetek’s favor. ECF No. 232 at 4.

1 infringement of them, Asetek sent a case-and-desist letter to CMI on November 28th, 2012  
2 accusing CMI's products of infringing Asetek's patents. See Tr. 1490:3-12 (Trial Exhibit 372). A  
3 reasonable jury could conclude that CMI had knowledge of its infringement from that day  
4 forward. As to whether defendant's components have no substantial non-infringing use, Dr.  
5 Tilton testified that CMI's products infringed Asetek's patents and that the products had no non-  
6 infringing uses. ECF No. 198 (Transcript 12/8/14) 669:4-7, 672:5-9. CMI's General Manager,  
7 Danny Chen, also testified that CMI sells its products with instruction manuals showing  
8 purchasers how to install CMI products so as to provide liquid cooling for computers, i.e., in a  
9 manner that infringes on Asetek's patents. See ECF No. 203 (Transcript 12/11/14) 1078:11-14,  
10 1094:7-1095:16. The "instructions packaged with each device teach the infringing configuration  
11 and nothing in the record suggests that . . . any end-user ignored the instructions or assembled the  
12 [products] in a manner contrary to the instructions so as to form a non-infringing configuration."  
13 Golden Blount, 438 F.3d at 1363.

14 Substantial evidence supports the jury's conclusion that CMI is liable for contributory  
15 infringement.

16 **4. The 14.5% royalty rate**

17 Finally, CMI argues evidence does not support the jury's finding of a 14.5% royalty rate  
18 and the damages award of \$404,941 based on that award. ECF No. 269 at 13. CMI and Asetek  
19 dispute whether Asetek's expert, Dr. Nisha Mody, performed a proper reasonable royalty analysis.

20 Upon a finding of infringement, the patentee is entitled to "damages adequate to  
21 compensate for the infringement, but in no event less than a reasonable royalty for the use made of  
22 the invention by the infringer." 35 U.S.C. § 284; see also Rite-Hite Corp. v. Kelley Co., 56 F.3d  
23 1538, 1554 (Fed. Cir. 1995) (en banc). When a patentee is unable to prove entitlement to lost  
24 profits or an established royalty rate, "it is entitled to 'reasonable royalty' damages based upon a  
25 hypothetical negotiation between the patentee and the infringer when the infringement began."  
26 Unisplay, S.A. v. Am. Elec. Sign Co., 69 F.3d 512, 517 (Fed. Cir. 1995). "This hypothetical  
27 construct seeks the percentage of sales or profit likely to have induced the hypothetical negotiators  
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1 to license use of the invention.” Minco, Inc. v. Combustion Eng'g, Inc., 95 F.3d 1109, 1119  
2 (Fed.Cir.1996). A reasonable royalty is determined by examining the factors set forth in Georgia-  
3 Pacific Corp. v. United States Plywood Corp., 318 F. Supp. 1116 (S.D.N.Y. 1970), which are:  
4 (1) royalties the patentee receives for licensing the patent in suit, (2) rates the licensee pays for  
5 other comparable patents, (3) the exclusivity and restriction terms, (4) the Licensor’s policy to  
6 maintain patent monopoly by not licensing the invention to others, (5) the commercial relationship  
7 between the two parties, (6) effect of selling the patented specialty in promoting sales of other  
8 products, (7) duration of patent and term of license, (8) established profitability of the products  
9 made under the patent, (9) advantages of the patented component over old components, (10) the  
10 nature of the patented invention, (11) the extent to which the infringer has used the invention, (12)  
11 the portion of profit customarily allowed for use of the invention, (13) the portion of profit  
12 attributable to the invention, (14) expert testimony, and (15) outcome from hypothetical arm’s  
13 length negotiation at the time of infringement. Id. at 1119-20.

14 Although this analysis “necessarily involves an element of approximation and uncertainty,  
15 a trier of fact must have some factual basis for a determination of a reasonable royalty.”<sup>9</sup>  
16 Unisplay, 69 F.3d at 517. The amount of damages based on a reasonable royalty is an issue of  
17 fact, and the jury’s damages award is reviewed under the substantial evidence standard. See  
18 Micro Chemical, Inc. v. Lextron, Inc., 317 F.3d 1387.

19 Asetek’s expert, Dr. Mody, calculated a reasonable royalty rate of 16% but found the  
20 effective rate to be between 10% and 19%. ECF No. 200 (Transcript 12/09/2014) Tr. 854:8-12,  
21 862:24-863:2. Dr. Mody testified that she used the Georgia-Pacific factors in determining the  
22 reasonable royalty rate, and identified to the jury how the various factors applied to the products  
23 and patents at issue. Tr. 854:13-863:6. Dr. Mody started by looking at the patent license  
24

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25 <sup>9</sup> Not all Georgia-Pacific factors are relevant to any particular hypothetical negotiation.  
26 Gargoyles, Inc. v. United States, 37 Fed. Cl. 95, 103 aff’d, 113 F.3d 1572 (Fed. Cir. 1997);  
27 Damien Geradin, The Meaning of “Fair and Reasonable” in the Context of Third-Party  
28 Determination of FRAND Terms, 21 GEO. MASON L. REV. 919, 949 (2014) (“not all of the  
Georgia-Pacific factors will be relevant to every question regarding the fairness and  
reasonableness of proffered license terms”). These factors are not prioritized and may overlap.  
See ResQNet.com, Inc. v. Lansa, Inc., 594 F.3d 860, 869 (Fed. Cir. 2010).

1 agreement between Asetek and Corsair and took into account the value Asetek attributed to its  
2 intellectual property through the license. Tr. 856:21-858:5. Dr. Mody also looked at the benefits  
3 incorporated into the agreement, which included not only a royalty on products covered by  
4 Asetek's patents, but also purchases from Asetek directly. Based on that analysis, she concluded  
5 that a reasonable royalty would be in the range of 10% to 19%. Tr. 858:15-859:5; 865:24-866:4.  
6 Dr. Mody then testified that 14.5% is the middle of the range, and that certain Georgia-Pacific  
7 factors would pull the royalty rate below or above the midpoint, such as whether Asetek held a  
8 patent monopoly and the competitive relationship between Asetek and CMI. Tr. 866:8-869:1  
9 (discussing Georgia-Pacific factors 3, 4, and 5). Dr. Mody also discussed how Asetek and CMI's  
10 commercial success affected her analysis. Tr. 872:3-873:5.

11 Dr. Mody also testified that it would not be practical to make Asetek's business  
12 relationship with Corsair equivalent to Asetek's business relationship with CMI because CMI  
13 competes with Asetek, whereas Corsair does not. Tr. 857:10-871:21. Dr. Mody then testified that  
14 a reasonable royalty rate would be higher at the hypothetical negotiation between Asetek and CMI  
15 because of this competitive relationship. Tr. 882:2-16. Overall, Dr. Mody concluded that a  
16 reasonable royalty rate would be 16%. Tr. 854:8-12.

17 CMI argues that instead of properly applying the Georgia-Pacific factors, Dr. Mody  
18 computed a "pseudo lost profits analysis." ECF No. 269 at 10. CMI's expert, James Pampinella,  
19 testified that Dr. Mody misapplied the Georgia-Pacific factors and made faulty assumptions in  
20 arriving at her royalty rate figure. See, e.g., Tr. 972:19-973:6 ("She's basically implicitly  
21 assuming a lost-profits claim in that analysis."). Mr. Pampinella also described his own analysis  
22 for the reasonable royalty rate he calculated starting with the Corsair license and applying the  
23 Georgia-Pacific factors. Tr. 933:14-939:8. Mr. Pampinella concluded that Asetek would have  
24 agreed to license with a 4.5% royalty rate. Tr. 923:14-15.

25 The jury weighed both experts and found that Asetek proved it was entitled to a reasonable  
26 royalty rate of 14.5%. Dr. Mody's testimony, and her discussion of the application of the  
27 Georgia-Pacific factors, provided sufficient evidence to support the jury's royalty rate.  
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1 The Court denies CMI’s motion for entry of judgment as a matter of law.

2 **III. CMI’S MOTION FOR A NEW TRIAL**

3 CMI also argues that a new trial is warranted because the Court made several clearly  
4 erroneous findings of fact predicate to rejecting CMI’s invalidity defenses, and because certain  
5 jury instructions unfairly prejudiced CMI.

6 **A. Legal standard**

7 Under Federal Rule of Civil Procedure 50(b)(2) a new trial may be granted if there is not a  
8 “legally sufficient evidentiary basis” for the verdict. The district court has discretion to order a  
9 new trial rather than grant judgment as a matter of law. See Cone v. West Virginia Pulp & Paper  
10 Co., 330 U.S. 212, 215 (1947).

11 Under Federal Rule of Civil Procedure 59(a)(1), a court “may, on motion, grant a new trial  
12 on all or some of the issues.” A court may grant a new trial “if the verdict is contrary to the clear  
13 weight of the evidence, is based upon false or perjurious evidence, or to prevent a miscarriage of  
14 justice.” Molski v. M.J. Cable, Inc., 481 F.3d 724, 729 (9th Cir. 2007). A judge should not grant  
15 a new trial unless she “is left with the definite and firm conviction that a mistake has been  
16 committed.” Landes Constr. Co. v. Royal Bank of Canada, 833 F.2d 1365, 1371-72 (9th Cir.  
17 1987) (internal citations omitted). In considering a Rule 59(a) motion for a new trial, the Court “is  
18 not required to view the trial evidence in the light most favorable to the verdict. Instead, the  
19 district court can weigh the evidence and assess the credibility of the witnesses. Experience  
20 Hendrix L.L.C. v. Hendrixlicensing.com Ltd, 762 F.3d 829, 842 (9th Cir. 2014)

21 **B. Analysis**

22 CMI argues that the Court should grant a new trial pursuant to Rule 50 because the  
23 evidence was insufficient to support the jury’s verdict. The motion must be denied on this ground  
24 for the same reason the Court denied CMI’s motion for judgment as a matter of law.

25 CMI also advances additional arguments in support of its motion for new trial, however,  
26 that the Court addresses below.

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1                                   **1.       Clearly erroneous findings of fact**

2                   CMI contends that a new trial on the invalidity of the '764 patent is warranted under Rule  
3 59 because several findings of fact predicate to rejecting CMI's invalidity defenses are clearly  
4 erroneous. ECF No. 269 at 16. CMI challenges the factual finding that a "sucking channel" in the  
5 Koga prior art reference does not meet the "thermal exchange chamber" limitation in the '764  
6 patent.<sup>10</sup> CMI argues, as it did at trial, that so long as the sucking channel exchanges some heat,  
7 which Dr. Tilton admits the sucking channel does, it meets the "thermal exchange" limitation. Id.  
8 at 17-18.

9                   The Court, in its Order Entering Judgment in Favor of Asetek, accepted "the jury's implicit  
10 and explicit factual findings regarding the scope and content of the prior art, and the differences  
11 between the claimed invention and the prior art" because they were supported by substantial  
12 evidence. ECF No. 249 at 18. With respect to the Koga prior art reference, the Court concluded  
13 that CMI had not shown that a person of ordinary skill in the art would understand Koga's sucking  
14 channel to constitute a thermal exchange chamber. Id. The Court set forth several reasons  
15 supported by Dr. Tilton's testimony: the sucking channel's purpose was as a conduit delivering  
16 cooling fluid, the heat drawn off in the sucking channel was inconsequential, Koga teaches away  
17 from having the sucking channel sit on top of the thermal contact for effective heat transfer and  
18 cooling, and Koga did not disclose or suggest that the sucking channel exhibit heat-exchange  
19 features. Id. at 18-19.

20                   While the Koga sucking channel may exchange some heat, CMI has not demonstrated how  
21 this meets the "thermal exchange chamber" limitation. First, both Dr. Tilton and Dr. Carman  
22 testified that the primary purpose of the sucking channel was to serve as a conduit in delivering  
23 fluid. See ECF No. 213 (Transcript 12/15/2014) 1417:1-4 (Dr. Tilton testifying, "It's a fluid  
24 passage. . . . It only has one purpose, and that's to deliver fluid to the rotational center of the  
25 impeller."); ECF No. 215 (Transcript 12/16/2015) 1645:9 (Dr. Carman responding to a jury  
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27 \_\_\_\_\_  
28 <sup>10</sup> CMI also argues that the finding that the "water jacket" in the Ryu prior art reference does not  
meet the "thermal exchange chamber" limitation as similarly flawed. See ECF No. 269 at 18 n.9.

1 question: “The primary purpose [of the sucking channel] is to pass fluid to the pump room.”).  
2 Second, while the fluid may pick up heat, Dr. Tilton also testified that this is an inconsequential  
3 amount; and that this would occur anytime the surface was hotter than fluid flowing from that  
4 surface. Tr. 1418:5-25. Third, Dr. Tilton also testified that the Koga sucking channel is not a  
5 chamber, but rather, a conduit. Tr. 1417:5-25.

6 At bottom, the biggest problem with CMI’s argument is that it defies common sense.  
7 Under CMI’s theory, any kind of liquid container would be a thermal exchange chamber, since –  
8 as Asetek expert Dr. Tilton explained – “heat transfer will always happen between any two bodies  
9 that are at—at different temperatures.” Tr. at 1558:10-11. To take the colorful example in  
10 Asetek’s brief, even an insulated beer cooler would qualify as a “thermal exchange chamber”  
11 under CMI’s construction, because its insulation, being imperfect, will transfer some amount of  
12 heat from the outside air to the beer inside the cooler. The jury was within its rights to reject this  
13 theory.

14 CMI also cites Abbott Labs v. Sandoz, Inc., 566 F.3d 1282, 1299 (Fed. Cir. 2009) and  
15 Embrex Inc. v. Serv. Eng’g Corp., 216 F.3d 1343, 1352-53 (Fed. Cir. 2000). Abbott Labs and  
16 Embrex do not assist CMI’s contention. Those cases stand for the proposition that de minimis  
17 infringement is still infringement. Abbott Labs, 566 F.3d at 1299; Embrex, 216 F.3d at 1352-53.  
18 But infringement is not at issue here. Neither Abbott Labs nor Embrex addresses the question of  
19 the extent to which an item of prior art must meet the structural limitations of a claim before that  
20 art is relevant to the question of obviousness. And to the extent CMI is proceeding by way of  
21 analogy, the analogy is inapt.

22 The Court finds that sufficient evidence supports the jury’s finding that the sucking  
23 channel is not a thermal-exchange chamber. The Court declines to adopt CMI’s argument that the  
24 sucking channel meets the “thermal exchange chamber” as a matter of law.

25 **2. Clear weight of trial evidence**

26 CMI next argues that because Koga’s sucking channel meets the thermal exchange  
27 chamber limitation as a matter of law, a new trial on the invalidity of the ’764 patent is warranted  
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1 under Rule 59. However, the Court concludes that CMI has not shown that rejection of CMI’s  
2 invalidity defenses was against the clear weight of the evidence at trial.

3 Next, CMI asserts that the clear weight of trial evidence shows that the asserted claims of  
4 the ’362 patent and the ’764 patent are anticipated or rendered obvious over the prior art presented  
5 at trial, but makes no argument in support of this claim. Instead, CMI merely incorporates by  
6 reference 38 pages of its prior briefs. See ECF No. 269 at 19 (incorporating by reference ECF No.  
7 234 at 1-14 and ECF No. 235 at 2-23). CMI having made no argument, the Court will not address  
8 these claims further. “Issues raised in a brief which are not supported by argument are deemed  
9 abandoned.” Kohler v. Inter-Tel Technologies, 244 F.3d 1167, 1182 (9th Cir. 2001); see also  
10 Civil L.R. 7-4(a) (“[A] brief or memorandum of points and authorities filed in support, opposition  
11 or reply to a motion must contain: . . . [a]rgument by the party, citing pertinent authorities.”).

12 **3. Erroneous and prejudicial jury instructions**

13 “A jury verdict will be set aside, based on erroneous jury instructions, if the party seeking  
14 to set aside the verdict can establish that those instructions were legally erroneous, and that the  
15 errors had prejudicial effect.” Bettcher Indus., Inc. v. Bunzl USA, Inc., 661 F.3d 629, 641 (Fed.  
16 Cir. 2011).

17 CMI argues that a new trial under Rule 59 is warranted because the Court’s jury  
18 instructions were prejudicial in two respects: the jury instructions did not contain a construction  
19 for the “removably attached” limitation, and the instructions on deciding the royalty erroneously  
20 created the impression that the Court preferred Dr. Mody’s analysis to Mr. Pampinella’s analysis.  
21 See ECF No. 269 at 19-20.

22 CMI first argues that it was prejudiced with respect to the non-infringement defense on the  
23 ’362 patent because the jury instructions contained no construction for the “removably attached”  
24 limitation and because the Court declined to construe the term. The parties, however, did not  
25 dispute this term during their claim construction hearing, and it was not until CMI’s reply brief in  
26 support of its motion for summary judgment that it raised the issue. ECF No. 106 at 14-15. After  
27 oral argument on that motion, the Court determined that the term did not require construction.  
28

1 ECF No. 126 at 14 n.6. Moreover, CMI never requested a jury instruction on the point. The  
2 parties submitted two sets of proposed jury instructions, but CMI never requested an instruction  
3 construing “removably attached” and never mentioned the issue during the hearing on jury  
4 instructions. ECF No. 152 at 25, ECF No. 205 at 4.

5 CMI also argues that a trial is warranted under Rule 59 because jury instruction number  
6 24, on the reasonable royalty rate, gave the impression to the jurors that the Court favored Dr.  
7 Mody’s analysis over Mr. Pampinella’s analysis. See ECF No. 269 at 20. The paragraph in  
8 question read as follows:

9 This is just an example of how a reasonable royalty might be  
10 determined. Whatever methodology is employed to calculate  
11 damages, the reasonable royalty must reflect business realities to  
12 ensure that the damages awarded are adequate to compensate the  
13 patent owner for the infringement. Accordingly, a reasonable royalty  
14 rate need not be based solely on sales revenue. Instead, depending  
15 on the circumstances, the parties to the hypothetical negotiation may  
16 base a reasonable royalty in whole or part on other measures of  
17 value, including profits or non-monetary benefits. The testimony of  
18 experts may assist you in determining not only the amount of  
19 damages that are adequate to compensate for the infringement, but  
20 also how those damages should be estimated. But it is up to you,  
21 based on the evidence, to decide the royalty that is appropriate in  
22 this case.

23 ECF No. 217 at 25-26. CMI objects that the instruction improperly emphasizes the words  
24 “profits” and “non-monetary benefits,” thereby favoring Asetek expert Dr. Mody, who presented  
25 an effective royalty rate based on lost profits and discussed a non-monetary benefit that justified  
26 the rate. See ECF No. 269 at 20.

27 The instruction was not in error. It provides only that, depending on the circumstances, the  
28 royalty rate may be based on other measures of value. The Court did not instruct the jury  
specifically to consider profits or non-monetary benefits or to give Dr. Mody’s analysis more  
weight than Mr. Pampinella’s. The Court simply listed many of the factors, taken from the case  
law, which the jury could consider in evaluating the reasonable royalty evidence. The jury  
instruction did not dissuade or preclude the jury from fairly considering CMI’s evidence.

The Court concludes that CMI is not entitled to a new trial.

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1 **IV. ASETEK’S MOTION FOR ENTRY OF A PERMANENT INJUNCTION**

2 Asetek filed a motion for entry of a permanent injunction on June 29, 2015. ECF No. 266.  
3 Asetek asks the Court to prohibit CMI, and others acting in concert with CMI, such as Cooler  
4 Master Co., Ltd. of Taiwan (“Cooler Master”), from continuing to infringe the ’362 and the ’764  
5 patents.

6 **A. Legal standard**

7 A patentee may seek entry of a permanent injunction after a finding of infringement. See  
8 35 U.S.C. § 283 (“[A court] may grant injunctions in accordance with the principles of equity to  
9 prevent the violation of any right secured by patent, on such terms as the court deems  
10 reasonable.”). However, there is no presumption in favor of an injunction in patent infringement  
11 cases. See eBay, Inc. v. MercExchange, LLC, 547 U.S. 388, 392-93 (2006). The patentee bears  
12 the burden of showing that four traditional equitable factors support entry of a permanent  
13 injunction: (1) that the patentee has suffered irreparable harm; (2) that “remedies available at law  
14 are inadequate to compensate for that injury”; (3) that “considering the balance of hardships  
15 between the plaintiff and defendant, a remedy in equity is warranted”; and (4) that “the public  
16 interest would not be ‘disserved’ by a permanent injunction.” i4i Ltd. P’ship v. Microsoft Corp.,  
17 598 F.3d 831, 861 (Fed. Cir. 2010) (citing eBay, 547 U.S. at 391).

18 **B. Analysis**

19 Asetek asks the Court to enter a permanent injunction to prohibit CMI’s infringing sales of  
20 Cooler Master products. ECF No. 266. It argues that, along with establishing the equitable  
21 factors that support entry of a permanent injunction, a permanent injunction is warranted because  
22 Asetek has invested substantial resources to developing the market for liquid-cooling devices,  
23 refuses to grant licenses to competitors, and CMI continues to infringe despite an adverse jury  
24 verdict. ECF No. 266.

25 **1. The equitable factors**

26 **a. Irreparable harm**

27 To demonstrate irreparable harm in a patent infringement suit, a patentee must establish:  
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1 “1) that absent an injunction, it will suffer irreparable harm, and 2) that a sufficiently strong causal  
2 nexus relates the alleged harm to the alleged infringement.” Apple Inc. v. Samsung Electronics  
3 Co., 695 F.3d 1370, 1374 (Fed. Cir. 2012) (“Apple II”). Asetek argues that irreparable harm is  
4 shown by the following: Asetek and CMI are direct competitors; CMI’s continuing infringement  
5 interferes with Asetek’s right to exclusively practice its inventions; CMI’s infringement harms  
6 Asetek’s reputation; and permitting CMI to continue will encourage other infringers to enter the  
7 market. Asetek also argues that there is a sufficient causal nexus between the Asetek-patented  
8 features of CMI’s products and sales of those products.

9 **(1) Causal nexus**

10 Because the harm to be avoided is the sale of infringing products, a patentee must show  
11 that consumers purchase those products for their patented features. The patent owner is not  
12 “necessarily required to show that a patented feature is the sole reason” for consumers’ purchases,  
13 but rather must “show that the infringing feature drives consumer demand for the accused  
14 product.” Apple Inc. v. Samsung Electronics Co., 735 F.3d 1352, 1364 (Fed. Cir. 2013) (“Apple  
15 III”) (citations omitted). “[T]he relevant inquiry focuses on the objective reasons as to why the  
16 patentee lost sales,” Apple, Inc. v. Samsung Electronics Co., 678 F.3d 1314, 1328 (Fed. Cir. 2012)  
17 (“Apple I”), and “should focus on the importance of the claimed invention in the context of the  
18 accused product, and not just the importance, in general, of features of the same type as the  
19 claimed invention.” Apple III, 735 F.3d at 1364.

20 Here, there was ample evidence that the patented features of the cooling devices at issue  
21 drove demand for those products, and CMI does not contest that the requisite nexus is present.

22 **(2) Direct competition**

23 “Direct competition in the same market is certainly one factor suggesting strongly the  
24 potential for irreparable harm without enforcement of the right to exclude.” Presideo  
25 Components, Inc. v. Am. Technical Ceramics Corp., 702 F.3d 1351, 1363 (Fed. Cir. 2012)  
26 (citations omitted). Facts “relating to the nature of the competition between the parties” are  
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1 therefore “undoubtedly are relevant to the irreparable harm” inquiry. Robert Bosch LLC v. Pylon  
2 Mfg. Corp., 659 F.3d 1142, 1150 (Fed. Cir. 2011).

3 Here, the Court easily concludes that the parties are direct competitors. For one thing,  
4 Asetek and CMI have already stipulated that CMI competes with Asetek and Corsair in the liquid-  
5 cooling market. See ECF No. 198 (Transcript 12/08/2014) 561:16-17. The parties have also  
6 stipulated that CMI competes with Asetek for sales and that CMI priced its products with intent to  
7 capture market share from Asetek.<sup>11</sup> See Tr. at 561:16-562:5. Indeed, as to some CMI products,  
8 the only competitive products are ones manufactured by Asetek. ECF No. 130 at 4.

9 Notwithstanding this stipulation, CMI now argues that Asetek and CMI are not direct  
10 competitors because they distribute into different markets. ECF No. 287 at 3. CMI characterizes  
11 Asetek as a manufacturer and supplier of liquid cooling systems that sells to resellers and  
12 characterizes CMI as a reseller that sells computer peripherals to consumer channels. Id. CMI  
13 points out that, unlike Asetek, it does not participate at all in the original equipment manufacturer  
14 market. Id. at 3-4. And within the consumer market, CMI argues that the competition “is at best  
15 indirect,” because Asetek sells to other resellers and CMI is a reseller that sells to consumer  
16 channels. Id. at 4.

17 CMI’s arguments are misplaced. CMI and Asetek have already stipulated to material facts  
18 regarding the competitive relationship between the parties, and the jury was instructed to treat  
19 those facts as having been proved. See ECF No. 217 at 14; see also United States v.  
20 Mikaelian, 168 F.3d 380, 389 (9th Cir.1999) (“When parties enter into stipulations as to material  
21 facts, those facts will be deemed to have been conclusively proved, and the jury may be so  
22 instructed.”). Additionally, while CMI operates as a reseller of Cooler Master products, CMI also  
23 collaborates with Cooler Master in designing, selling, and setting prices for the liquid-cooling  
24 products. See ECF No. 198 (Transcript 12/08/2014) 560:14-561:2.

25 The Court concludes that Asetek and CMI are direct competitors.

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<sup>11</sup> Asetek, however, has not provided sufficient evidence that it actually lost market share as a  
result of CMI’s infringement.

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**(3) Core business and exclusivity**

That a patented product is at the “core” of a business is another salient, though not dispositive, factor courts consider when granting an injunction. See Robert Bosch, 659 F.3d at 1152.

Asetek’s CEO, André Eriksen, testified at trial that Asetek’s sole business centers around developing and selling liquid-cooling products and that the patents-in-suit are the foundation of all of Asetek’s products. See ECF No. 192 (Transcript 12/03/2014) 318:23-319:3. Further, Asetek has invested over \$75 million dollars and countless hours developing and selling these products and attests that it is seen as an innovator of these products. See Tr. 297:21-298:4. Finally, Asetek has received numerous requests to license its technology but has consistently refused. Tr. 432:22-434:14, 435:22-437:17. Asetek has engaged in multiple lawsuits to enforce its patent rights. See, e.g., Asetek Holdings, Inc. et al v. CoolIT Systems, Inc., Case No. 3:12-cv-04498-EMC. These factors all weigh in favor of finding that Asetek would be irreparably harmed if the Court did not issue a permanent injunction. See, e.g., Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc., No. CV 08-309-LPS, 2014 WL 2960035, at \*1 (D. Del. June 30, 2014) (finding irreparable harm where the patentee had practiced the patents-in-suit, sales of the embodiments constituted the core of the business, and had never licensed the patents-in-suit to any of its competitors).

**(4) Harm to reputation**

The possibility that the patentee will suffer “erosion in reputation and brand distinction” is relevant to a showing of irreparable harm. Douglas Dynamics, LLC v. Buyers Products Co., 717 F.3d 1336, 1344 (Fed. Cir. 2013); see also Celsis In Vitro, Inc. v. CellzDirect, Inc., 664 F.3d 922, 930–31 (Fed. Cir. 2012) (“Price erosion, loss of goodwill, damage to reputation, and loss of business opportunities are all valid grounds for finding irreparable harm.”). That is because when infringing products are on the market, a patentee’s products “lose some of [their] distinctiveness and market lure” because competitors can contend that they have similar features without acknowledging that those features infringe on the patentee’s intellectual property. Douglas Dynamics, 717 F.3d at 1344.



1           Asetek contends that “CMI’s infringement irreparably harms Asetek’s reputation as an  
2 innovator by allowing CMI to misrepresent Asetek’s inventions as its own.” ECF No. 264-3 at 17.  
3 CMI responds that Asetek has allowed infringing products to remain in the market by granting a  
4 license to Corsair, a reseller, who sold infringing products made by a company other than Asetek.  
5 ECF No. 287 at 5. The license was coupled with a covenant not to sue. Id. at 4-5. CMI argues  
6 that Asetek’s reputation could not truly be harmed by the sales of infringing products if it was  
7 willing to allow Corsair to purchase such products from others and resell them. Id. at 5. CMI also  
8 points out that it could have been a reseller of Asetek products but for a disagreement about the  
9 appropriate royalty rate. Id.

10           “While the fact that a patentee has previously chosen to license the patent may indicate that  
11 a reasonable royalty does compensate for an infringement, that is but one factor for the district  
12 court to consider. The fact of the grant of previous licenses, the identity of the past licensees, the  
13 experience in the market since the licenses were granted, and the identity of the new infringer all  
14 may affect the district court's discretionary decision concerning whether a reasonable royalty from  
15 an infringer constitutes damages adequate to compensate for the infringement.” Acumed LLC v.  
16 Stryker Corp., 551 F.3d 1323, 1328 (Fed. Cir. 2008). A patentee’s past willingness to license its  
17 patent is not sufficient per se to establish a lack of irreparable harm if a new infringer were not  
18 enjoined. Id. at 1328. Here, the evidence showed that Asetek gave a license to Corsair in part  
19 because Corsair was Asetek’s customer, not its competitor, and a license would encourage  
20 additional purchases of Asetek’s products. Also, Asetek agreed to the license during a difficult  
21 financial period. Finally, the license, which has since expired, was “short-lived.” ECF No. 295 at  
22 4. On these facts, the Court finds that the Corsair license was not representative of Asetek’s  
23 position in the market, and that Asetek would suffer reputational harm in the market without the  
24 issuance of an injunction.

25           In sum, the Court concludes that Asetek has shown that it would suffer irreparable harm in  
26 the absence of an injunction.

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**b. Inadequate remedies at law**

The second factor in the Court’s analysis requires the patentee to demonstrate that “remedies available at law, such as monetary damages, are inadequate to compensate” the patentee for the irreparable harm it has suffered. eBay, 547 U.S. at 391. The analysis for this factor overlaps with that for the first factor. MercExchange, L.L.C. v. eBay, Inc., 500 F. Supp. 2d 556, 582 (E.D. Va. 2007). Where there “is no reason to believe” that infringement or the irreparable harm resulting from infringement will otherwise cease absent an injunction, money damages are inadequate. Robert Bosch, 659 F.3d at 1155.

Money damages are inadequate to remedy the harm to Asetek from CMI’s continuing infringement. Even after the jury’s verdict, CMI continued to sell the infringing products in the United States through May 2015. ECF No. 266 at 7; ECF No. 266-2, Decl. of Jeffrey Smyth, Ex. 24.

Money damages would also be inadequate to compensate Asetek for difficult-to-calculate injuries such as harm to its reputation and inability to exclude others from practicing its patents. See Douglas Dynamics, 717 F.3d at 1345 (discussing how remedies at law are inadequate for reputational loss). Injunctive relief is the traditional remedy for loss of exclusivity, because the payment of money does not repair that injury. Brocade Commc’ns Sys., Inc. v. A10 Networks, Inc., No. C 10-3428 PSG, 2013 WL 140039, at \*4 (N.D. Cal. Jan. 10, 2013). “As the Federal Circuit instructs, ‘the axiomatic remedy for trespass on property rights is removal of the trespasser.’” Id. (quoting Presidio Components, Inc. v. Am. Technical Ceramics Corp., 702 F.3d 1351, 1362 (Fed. Cir. 2012)).

The Court finds that Asetek has shown that remedies at law are inadequate.

**c. Balance of the hardships**

The balance of hardships factor “assesses the relative effect of granting or denying an injunction on the parties.” i4i Ltd. P’ship, 598 F.3d at 862.

The balance of hardships weighs in Asetek’s favor. Denying an injunction would force Asetek to compete against its own patented technology. See Robert Bosch, 659 F.3d at 1156

1 (finding that the balance of hardships favored the patentee because requiring the patentee to  
2 compete against its own patented technology, along with the irreparable harms, places a  
3 substantial hardship on the patentee). As previously discussed, Asetek’s sole business is  
4 developing and selling liquid-cooling products. By comparison, CMI sells other products, with  
5 less than 10% of its revenue coming from liquid-cooling products. ECF No. 266 at 18; ECF No.  
6 203 (Transcript 12/11/2014) 1068:6-7.

7 CMI argues that “[t]he issuance of an injunction against CMI might erode consumer  
8 confidence in CMI in light of the negative public connotations often associated with an  
9 injunction.” ECF No. 287 at 13. This argument adds very little to CMI’s side of the ledger. The  
10 public will already know that a jury found that CMI infringes Asetek’s patents. It is difficult to  
11 see what additional harm CMI would suffer in consumers’ eyes from the issuance of an injunction.

12 Asetek has shown that it will suffer greater harm from the absence of an injunction than  
13 CMI would suffer from the issuance of one.

14 **d. Public interest**

15 The final factor of the injunction test asks whether a permanent injunction would disserve  
16 the public interest. The public interest generally favors protecting the rights of patentees and  
17 enforcing the patent system. See ActiveVideo Networks, Inc. v. Verizon Commc’ns, 694 F.3d  
18 1312, 1341 (Fed. Cir. 2012).

19 Asetek argues that the public interest would be served with a permanent injunction because  
20 the public has an interest in the protection of property rights. ECF No. 269 at 19. CMI counters  
21 that the public interest would not be served because it would have unintended anti-competitive  
22 effects. ECF No. 287 at 10.

23 The Court concludes that Asetek has shown that the public interest favors entry of a  
24 permanent injunction. The Court “agrees with the general premise that competition serves the  
25 public interest” because it advances innovation and enables competitive pricing. Douglas  
26 Dynamics, 717 F.3d at 1346. In the present case, however, permitting CMI to compete in the  
27 marketplace using Asetek’s patented technology would “have the effect of inhibiting innovation  
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1 and incentive.” Id. Accordingly, the Court concludes that the public has a greater interest in “the  
2 judicial protection of property rights in inventive technology” outweighs the interest in any of the  
3 alleged anti-competitive effects the injunction may have on CMI. Id.

4 The Court concludes that Asetek has satisfied all four factors in the injunction analysis.

5 **2. Entry of an injunction would not be premature**

6 CMI argues that entry of a permanent injunction would be premature because all of the  
7 asserted claims under the ’764 patent were rejected at the U.S. Patent and Trademark Office  
8 (“PTO”) in a post-issuance proceeding, and there is a good chance that some parts of this Court’s  
9 judgment will be overturned. ECF No. 287 at 11.

10 This is not a persuasive reason to delay issuing an injunction. The ’362 patent is currently  
11 not subject to reexamination, and the jury found that all of CMI’s accused products infringe the  
12 ’362 patent. See ECF No. 219. Because CMI’s products infringe Asetek’s valid patent rights  
13 regardless of the outcome of the ’764 reexamination proceeding, entry of an injunction is  
14 appropriate. Should patent ’764 be finally adjudged invalid in another proceeding, CMI can  
15 petition the Court to modify the injunction.

16 **3. Application of the injunction to Cooler Master**

17 Asetek asks that the injunction apply not only to CMI, but also to Cooler Master Co., Ltd.  
18 of Taiwan. It argues that Cooler Master “continues to play an active role in CMI’s infringement.”  
19 ECF No. 264-3 at 12.<sup>12</sup>

20 An injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure binds not only  
21 the parties, but also “the parties’ officers, agents, servants, employees, and attorneys” and “other  
22 persons who are in active concert or participation with” them. FED. R. CIV. P. 65(d)(2)(A)-(C).  
23 The phrase “active concert or participation” includes both aiders and abettors of, and privies of, an  
24 enjoined party. See Golden State Bottling Co., v. NLRB, 414 U.S. 168, 179-80 (1973) (citing

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26 <sup>12</sup> Cooler Master was originally named as a defendant, but the parties filed a stipulation of  
27 dismissal as to all claims between Asetek and Cooler Master. ECF No. 85. CMI and Asetek  
28 stipulated that CMI is authorized by Cooler Master to sell Cooler Master-branded liquid-cooling  
devices in the United States. CMI also collaborates with Cooler Master, in designing and selling  
Cooler Master-branded liquid-cooling products. ECF No. 198 (Transcript 12/08/2014) 560:9-16.

1 Regal Knitwear Co. v. N.L.R.B., 324 U.S. 9, 14 (1930)).

2 Although Cooler Master is not a party in this action, Asetek argues that Cooler Master is  
3 subject to an injunction because it acts in concert with CMI. ECF No. 266 at 22. CMI does not  
4 seriously dispute this, but argues that an injunction against non-party Cooler Master would be  
5 inappropriate since Asetek previously voluntarily dismissed Cooler Master with prejudice from  
6 the litigation. See ECF Nos. 85; 287 at 11-12.

7 The Court finds that Cooler Master is appropriately subject to an injunction. The parties  
8 agree that CMI is authorized by third party Cooler Master to sell Cooler Master-branded liquid-  
9 cooling devices in the United States. ECF No. 198 (Transcript 12/08/2014) 560:14-561:2. CMI  
10 and Cooler Master have an exclusivity agreement where CMI is Cooler Master’s exclusive U.S.  
11 distributor. See ECF No. 203 (Transcript 12/11/2014) 1106:25-1107:3. At least as importantly,  
12 the parties have stipulated that CMI and Cooler Master jointly developed the infringing products  
13 at issue. ECF No. 198 (Transcript 12/08/2014) 561:23-562:9.

14 These facts are sufficient to show that there is a “significant history and contractual  
15 relationship” between CMI and Cooler Master “bearing directly on the conduct to be enjoined”  
16 See Netlist Inc. v. Diablo Techs, Inc., No. 13-CV-05962-YGR, 2015 WL 163434, at \*2 (N.D. Cal.  
17 Jan. 12, 2015). For example, in Netlist, the court found that it was appropriate to name third  
18 parties in a preliminary injunction order as entities who acted in concert with the alleged infringer.  
19 Id. The third parties had worked with the defendant to develop an infringing product. Id. The  
20 defendant also announced that it had entered into an exclusive relationship with one of the third  
21 parties to design and manufacture the product. Id. At the time of the court’s decision, the third  
22 parties also had multiple fulfilled and unfulfilled purchase orders. Id. In sum, the court found that  
23 “the particular nature of the relationship here establishes an identity of interests, and lack of  
24 independence” between the defendant and the third parties to consider them in privity for the  
25 preliminary injunction. Id.

26 Similarly, in Aevoe Corp v. AE Tech. Co., 727 F.3d 1375, 1384 (Fed. Cir. 2013), the  
27 Federal Circuit affirmed the enforcement of an injunction against a reseller of products because it  
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1 was acting in concert with the accused patent infringer defendant. Id. The contractual relationship  
2 between the defendant and the reseller made the reseller a privy of the defendant, and therefore  
3 bound by the terms of the injunction. Id. Although the district court later amended the injunction  
4 to name the reseller, the order only confirmed that contracting partners of the defendant could not  
5 sell the infringing products. Id.

6 Because of Cooler Master’s past history in developing the infringing products and its  
7 contractual relationship with CMI, the Court finds that Cooler Master is an appropriate subject of  
8 the injunction under Rule 65(d)(2).

9 **4. Scope of the injunction**

10 Under Federal Rule of Civil Procedure 65, “every order granting an injunction and every  
11 restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall  
12 describe in reasonable detail, and not by reference to the complaint or other document, the act or  
13 acts sought to be restrained.” FED. R. CIV. P. 65(d). An injunction “cannot impose unnecessary  
14 restraints on lawful activity.” Riles v. Shell Exploration & Prod. Co., 298 F.3d 1302, 1311 (Fed.  
15 Cir. 2002); see also Johns Hopkins Univ. v. CellPro, Inc., 152 F.3d 1342, 1365 (Fed. Cir. 1998)  
16 (“judicial restraint of lawful non-infringing activities must be avoided.”).

17 Asetek is entitled to an injunction directed toward Defendants’ activities which cause  
18 domestic infringement as well as the activities of those persons or companies acting in concert  
19 with CMI. The Court will issue an injunction that enjoins CMI, as well as Cooler Master, from  
20 making, using, offering for sale or selling in the United States, or importing into the United States  
21 any of the accused products as well as from otherwise infringing or inducing others to infringe the  
22 claims of the one or more of United States Patents Nos. 8,240,362 and 8,245,764.

23 Asetek requests that the injunction take the following form:

24 (1) As used herein, “Infringing Products” shall mean the following  
25 Cooler Master products: Seidon 120M, Seidon 120XL, Seidon  
26 240M, Seidon 120V, Seidon 120V Plus, Nepton 140XL, [Nepton  
27 280L], Glacer 240L, and products not more than colorably different  
28 from them.

(2) CMI USA, Inc. and its subsidiaries and affiliated companies  
(collectively defined as “CMI”), as well as CMI’s successors,

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assigns, officers, directors, agents, servants, employees, representatives and attorneys, and those persons in active concert or participation with them who receive notice of the order are hereby immediately and permanently restrained and enjoined, pursuant to 35 U.S.C. § 283 and Fed. R. Civ. P. 65(d), from making, using, offering for sale or selling in the United States, or importing into the United States, or causing to be made, used, offered for sale, or sold in the United States, or imported into the United States, the Infringing Products.

(3) Cooler Master Co., Ltd. and its subsidiaries and affiliated companies (collectively defined as “Cooler Master”), as well as Cooler Master’s successors, assigns, officers, directors, agents, servants, employees, representatives and attorneys, and those persons in active concert or participation with them who receive notice of the order are hereby immediately and permanently restrained and enjoined, pursuant to 35 U.S.C. § 283 and Fed. R. Civ. P. 65(d), from making, using, offering for sale or selling in the United States, or importing into the United States, or causing to be made, used, offered for sale, or sold in the United States, or imported into the United States, the Infringing Products.

(4) CMI and Cooler Master shall provide written notice of this judgment and order, and the injunction ordered herein, to: their officers, directors, agents, servants, representatives, attorneys, employees, subsidiaries and affiliates, and those persons in active concert or participation with them, including any and all manufacturers, distributors, retailers, and service providers who have been involved in the making, using, selling, offering for sale or importing of any Infringing Products; and to all other persons or entities involved in any way with the making, using, selling, offering for sale or importing of any Infringing Products. CMI and Cooler Master shall take whatever means are necessary or appropriate to ensure that this order is properly complied with.

(5) CMI and Cooler Master shall include a copy of this Order and the written notice in paragraph (7) below along with every bill of sale for the Infringing Products and in the boxes in which the Infringing Products are shipped or sold, regardless of where they are sold, indicating that they infringe the patents-in-suit, are subject to an injunction in the United States, and thus cannot be sold, offered for sale, imported, or used in the United States.

(6) CMI and Cooler Master shall also require any manufacturer of the Infringing Products to include a copy of this Order and the written notice in paragraph (7) below along with every bill of sale for the Infringing Products and in the boxes in which the Infringing Products are shipped or sold, regardless of where they are sold, indicating that they infringe the patents-in-suit, are subject to an injunction in the United States, and thus cannot be sold, offered for sale, imported, or used in the United States.

(7) The written notice to be provided along with every bill of sale and in the boxes in which the Infringing Products are shipped or sold shall state:

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**This product is affected by a Permanent Injunction entered by the United States District Court for the Northern District of California in Civil Action No. 3:13-CV-00457-JST (copy enclosed). This product or its use infringes U.S. Patent Nos. 8,240,362 and 8,245,764, which are assigned to Asetek Danmark A/S. Accordingly, certain acts associated with this product are prohibited.**

**This product may not be sold, offered for sale, or used in the United States. Nor can this product be imported into the United States.**

CMI makes several objections to Asetek’s proposed language. First, CMI argues that the Seidon 120V Plus should not be identified as an infringing product, because the jury did not specifically find that the Seidon 120V Plus infringed. ECF No. 313 at 2. The parties stipulated, however, that the Seidon 120V Plus has the same pump head design as the Seidon 120V, which does infringe. See ECF No. 130 at 4; ECF No. 198 (Transcript 12/08/2014) 562:10-11. Because the Seidon 120V Plus is not colorably different from the Seidon 120V, the Court finds that it should be included in the injunction.

CMI also contends that Paragraph (4) of Asetek’s form of injunction “is overreaching and is abusive, and seeks to impose a[n unfair] competitive disadvantage on CMI.” The Court finds that the language in Asetek’s proposed form of injunction is appropriate in light of the evidence at trial.

CMI argues that it cannot “require” its manufacturers to include a copy of the injunction with the bill of sale for, or in the boxes of, the infringing products, as Asetek’s form of order requires. ECF No. 313 at 3. Asetek responds that the notice requirement and language of paragraphs (5)-(7) are based on the injunction in SynQor, Inc. v. Asrtesyn Techs., Inc., No. 2:07-CV-497-TJW-CE, 2011 WL 238645 (E.D. Tex. Jan. 24, 2011), aff’d 709 F.3d 1365 (Fed. Cir. 2013). The district court in SynQor, however, expressly grounded its language on the jury’s finding of induced infringement. Id. at \*7 (“Given the jury's finding of induced infringement . . .”). Asetek did not pursue an induced infringement theory at trial. The Court will not order CMI and Cooler Master to notify its manufacturers of its infringement or require the



1 order of infringement to be included in all future sales to its manufacturers.

2 For the foregoing reasons, the Court orders that the injunction take the following form:

3 (1) As used herein, "Infringing Products" shall mean the following  
4 Cooler Master products: Seidon 120M, Seidon 120XL, Seidon  
5 240M, Seidon 120V, Seidon 120V Plus, Nepton 140XL, Nepton  
6 280L, Glacer 240L, and products not more than colorably different  
7 from them.

8 (2) CMI USA, Inc. and its subsidiaries and affiliated companies  
9 (collectively defined as "CMI"), as well as CMI's successors,  
10 assigns, officers, directors, agents, servants, employees,  
11 representatives and attorneys, and those persons in active concert or  
12 participation with them who receive notice of the order are hereby  
13 immediately and permanently restrained and enjoined, pursuant to  
14 35 U.S.C. § 283 and Fed. R. Civ. P. 65(d), from making, using,  
15 offering for sale or selling in the United States, or importing into the  
16 United States, or causing to be made, used, offered for sale, or sold  
17 in the United States, or imported into the United States, the  
18 Infringing Products.

19 (3) Cooler Master Co., Ltd. and its subsidiaries and affiliated  
20 companies (collectively defined as "Cooler Master"), as well as  
21 Cooler Master's successors, assigns, officers, directors, agents,  
22 servants, employees, representatives and attorneys, and those  
23 persons in active concert or participation with them who receive  
24 notice of the order are hereby immediately and permanently  
25 restrained and enjoined, pursuant to 35 U.S.C. § 283 and Fed. R.  
26 Civ. P. 65(d), from making, using, offering for sale or selling in the  
27 United States, or importing into the United States, or causing to be  
28 made, used, offered for sale, or sold in the United States, or  
imported into the United States, the Infringing Products.

(4) Within 14 days of issuance of this order, CMI and Cooler Master shall provide written notice of this judgment and order, and the injunction ordered herein, to: their officers, directors, agents, servants, representatives, attorneys, employees, subsidiaries and affiliates, and those persons in active concert or participation with them. CMI and Cooler Master shall take whatever means are necessary or appropriate to ensure that this order is properly complied with.

(5) CMI and Cooler Master shall include a copy of this Order and the written notice in paragraph (6) below along with every bill of sale for the Infringing Products and in the boxes in which the Infringing Products are shipped or sold, regardless of where they are sold, indicating that they infringe the patents-in-suit, are subject to an injunction in the United States, and thus cannot be sold, offered for sale, imported, or used in the United States.

(6) The written notice to be provided along with every bill of sale and in the boxes in which the Infringing Products are shipped to or sold in the United States shall state:

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**This product is affected by a Permanent Injunction entered by the United States District Court for the Northern District of California in Civil Action No. 3:13-CV-00457-JST (copy enclosed). This product or its use infringes U.S. Patent Nos. 8,240,362 and 8,245,764, which are assigned to Asetek Danmark A/S. Accordingly, certain acts associated with this product are prohibited.**

**This product may not be sold, offered for sale, or used in the United States. Nor can this product be imported into the United States.**

(7) This injunction order shall remain in effect until both of U.S. Patent Nos. 8,240,362 and 8,245,764 have expired. Should either patent be finally adjudged invalid in another proceeding, either party may petition the Court to request a modification of the injunction.

**V. ASETEK’S MOTION TO ALTER JUDGMENT**

The jury’s award of \$404,941 was based on a reasonably royalty rate of 14.5% for infringing sales from November 28, 2012 through September 30, 2014. See ECF No. 219 at 5. In Asetek’s motion to alter judgment, Asetek requests that the Court amend the judgment to award Asetek supplemental damages, enhanced damages, and pre-and post-judgment interest. See ECF No. 267. Asetek also requests that the Court order an accounting and order CMI to produce updated sales and revenue information through the date of the injunction, so that the judgment may be amended to account for CMI’s infringing sales through the injunction. See id.

**A. Legal standard**

Section 284 of the Patent Act provides: “[u]pon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.” 35 U.S.C. § 284.

**B. Analysis**

**1. Supplemental damages**

Patentees are entitled to supplemental damage awards for infringing sales that a jury does not consider and precedes entry of a permanent injunction. See Finjan, Inc. v. Secure Computing Corp., 626 F.3d 1197, 1212-13 (Fed. Cir. 2010). The amount of supplemental damages is within

1 the sound discretion of the court. Amado v. Microsoft Corp., 517 F.3d 1353, 1362 n. 2 (Fed. Cir.  
2 2008).

3 In the present case, the jury’s damages award was limited to CMI’s infringing sales  
4 through September 30, 2014, although the verdict was entered on December 17, 2014. Asetek  
5 requests the Court award supplemental damages by applying the jury’s 14.5% reasonable royalty  
6 rate to the infringing sales made during this time period. The Court concludes that Asetek is  
7 entitled to supplemental damages to cover this period of infringing activity at the jury’s 14.5%  
8 rate.

9 **2. Accounting**

10 Asetek requests that the Court order an accounting and order CMI to produce updated sales  
11 and revenue information through the date of the injunction, so that the judgment may be amended  
12 to account for CMI’s infringing sales through the injunction. Courts may also grant motions for  
13 further accounting to consider certain periods of infringing activity. See, e.g., Metso Minerals,  
14 Inc. v. Powerscreen Int’l Distribution Ltd., 833 F. Supp. 2d 333, 347 (E.D.N.Y. 2011); Mikohn  
15 Gaming Corp. v. Acres Gaming, Inc., No. CV-S-97-1383-EJW, 2011 WL 34778689, at \*22 (D.  
16 Nev. Aug. 2, 2001). Asetek does not contest this request. Accordingly, as set forth below, the  
17 Court will order one if necessary after the parties have met and conferred.

18 **3. Enhanced damages**

19 Asetek requests that the Court award enhanced damages for sales occurring after the jury’s  
20 verdict. See ECF No. 267 at 5. Under section 284, the court may enhance damages awards up to  
21 three times the amount found or assessed. 35 U.S.C. § 284. An award of enhanced damages for  
22 infringement, as well as the extent of the enhancement, is committed to the discretion of the trial  
23 court. Read Corp. v. Portec, Inc., 970 F.2d 816, 826 (Fed. Cir. 1992), abrogated on other grounds  
24 by Markman v. Westview Instruments, Inc., 52 F.3d 967, 975 (Fed Cir. 1995).

25 Before a court enhances damages, the court must find willfulness. Spectralytics, Inc. v.  
26 Cordis Corp., 649 F.3d 1336, 1349 (Fed. Cir. 2011). However, even a finding of willfulness “does  
27 not mandate that damages be enhanced.” Read Corp., 970 F.2d at 826. “The paramount  
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1 determination in deciding to grant enhancement and the amount thereof is the egregiousness of the  
2 defendant's conduct based on all the facts and circumstances." Id.<sup>13</sup>

3 CMI first objects that Asetek stipulated before trial that it would not assert willful  
4 infringement, see ECF No. 130 at 6, and cannot now seek to avoid its stipulation to make a  
5 distinction between pre- and post-verdict sales. CMI further argues that its actions were not  
6 willful. See ECF No. 288 at 8. Finally, CMI contends that this was a "close" case. Id. at 15.

7 This Court was previously called upon to enforce another of the parties' stipulations when  
8 it sustained Asetek's objection to CMI raising the topic of the '764 patent reexamination during  
9 trial. See ECF No. 130 at 6; ECF No. 213 (Transcript 12/15/2014) 1480:7-1481:17. The Court  
10 decided that permitting CMI to impeach Asetek's expert with evidence of the reexamination  
11 proceedings would be "violative of the parties' stipulation" which is entitled to be "enforced by its  
12 terms." Tr. 1480:7-1481:17.

13 The circumstances here are different. Asetek did not violate the parties' stipulation. It did  
14 not assert willful infringement during trial. ECF No. 130 at 6. Asetek prevailed at the trial,  
15 however, and the jury found that CMI was infringing Asetek's patents. Following that verdict,  
16 CMI continued to sell its infringing products into the market. As the court noted in SynQor, there  
17 is no reason why a patentee's decision not to argue "pre-verdict willful infringement at trial should  
18 preclude the district court from finding willful infringement for post-verdict sales." 709 F.3d at  
19 1385 (emphasis in original).

20 Turning to the merits, the Court finds that CMI's conduct in selling infringing products  
21 after an adverse jury verdict constituted willful infringement. Although CMI's sales of infringing  
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23 <sup>13</sup> Courts may properly consider the following factors in determining whether to award enhanced  
24 damages and in what amount: (1) whether the infringer deliberately copied the ideas or design of  
25 another; (2) whether the infringer, when he knew of the other's patent protection, investigated the  
26 scope of the patent and formed a good-faith belief that it was invalid or that it was not infringed;  
27 (3) the infringer's behavior as a party to the litigation; (4) the defendant's size and financial  
28 condition; (5) the closeness of the case; (6) the duration of defendant's misconduct; (7) remedial  
action by the defendant, if any; (8) the defendant's motivation for harm; and (9) whether the  
defendant attempted to conceal its misconduct. Read Corp., 970 F.2d at 827-28. The parties do  
not discuss most of these factors, and so neither does the Court.

1 products began to drop in April 2014 and ceased in June 2014, sales actually increased in the three  
2 months following the jury's verdict. See ECF No. 267-6, Mody Decl. Ex. B. CMI asserts that it  
3 has phased out these products but does not explain why sales increased in the months following  
4 entry of the jury's verdict. See ECF No. 287 at 9.

5 CMI insists that it acted in good faith because it holds a good faith belief that its products  
6 do not infringe and cites to the reexamination of the '764 patent and appeal at the PTO. Id. at 3-4.  
7 CMI states that it has an objectionably reasonable belief that the '764 patent is invalid in light of  
8 the reexamination. Id. at 8. CMI cannot use this as a basis to disregard the jury's findings of  
9 infringement of the '362 patent.

10 Finally, the Court rejects the contention that this was a close case. CMI's products were  
11 direct copies of Asetek's products. Although CMI contests the continuing validity of the '764  
12 patent, it conceded that it infringed that patent. ECF No. 130 at 6. CMI and Cooler Master had  
13 Asetek Generation III products in their possession when they collaborated to design the infringing  
14 Seidon products, ECF No. 198 (Transcript 12/08/2014) 562:6-9, and they copied Asetek's  
15 Generation III pump for the infringing Seidon 120M/120XU240M products, as the jury and the  
16 Court so found. ECF No. 249 at 11 ("Cooler Master Co., Ltd./CMI USA and Zalman copied  
17 Asetek's Generation III and Generation IV commercial products, respectively."); ECF No. 219 at  
18 4 (finding copying of the claimed invention by others).

19 On these facts, the Court concludes that an enhancement for post-verdict damages is  
20 warranted. See SynQor, 709 F.3d at 1385 (upholding the district court's enhancement by a factor  
21 of 1.75 where the district court found the infringer's conduct egregious in continuing and increase  
22 in sales in face of an infringement verdict). Asetek requests that the Court double the jury's  
23 reasonable royalty rate because of CMI's willful infringement and "deliberate copying and  
24 litigation behavior." See ECF No. 268 at 5 (citing Stryker Corp. v. Davol Inc., 234 F.3d 1252,  
25 1259-60 (Fed. Cir. 2000)).

26 The Court will enhance damages for post-verdict sales by 1.75, as the SynQor court did,  
27 for an effective royalty rate of 25.375%. This amount reflects the degree of CMI's willfulness, as  
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1 described above, but does not unduly penalize CMI or generate a windfall for Asetek. CMI’s  
2 profit margins are comparable to this royalty rate. See ECF No. 267-4 (Mody Decl.) at 4. This  
3 enhanced royalty rate will apply from the date of the verdict until the date the permanent  
4 injunction goes into effect and the infringement ceases. TransPerfect Global, Inc. v. MotionPoint  
5 Corp., No. C 10-2590 CW, 2014 WL 6068384, at \*5 (N.D. Cal. Nov. 13, 2014).

6 **4. Prejudgment interest**

7 A prevailing patentee is also entitled to prejudgment interest, absent extraordinary  
8 circumstances. See 35 U.S.C. § 284; Gen. Motors Corp. v. Devex Corp., 461 U.S. 648, 657  
9 (1983) (“We hold only that prejudgment interest should be awarded under § 284 absent some  
10 justification for withholding such an award.”). Such interest is ordinarily awarded “from the date  
11 of the infringement to the date of judgment.” Junker v. HDC Corp., Case No. 3:07-cv-05094,  
12 2008 WL 3385819, at \*6 (N.D. Cal. July 28, 2008) (citing Informatica Corp. v. Bus. Objects Data  
13 Integration, Inc., 489 F.Supp.2d 1075, 1087 (N.D. Cal. 2007)). The purpose of awarding  
14 prejudgment interest is to fully compensate the patent holder for the infringement. Gen. Motors,  
15 461 U.S. at 653. The court is afforded wide latitude in the selection of interest rates in order to  
16 ensure this purpose is met. Uniroyal, Inc. v. RudkinWiley Corp., 939 F.2d 1540, 1545 (Fed. Cir.  
17 1991) (citations omitted); see also Junker, 2008 WL 3385819, at \*6 (stating that the court may use  
18 the prime rate, the prime rate plus a percentage, the U.S. Treasury rate, state statutory rate,  
19 corporate bond rate, or any other rate the court deems appropriate). The court may also assess  
20 compound interest to fully compensate the patentee. Fresenius Med. Care Holdings, Inc. v. Baxter  
21 Int’l, Inc., No. C 03-1431 SBA, 2008 WL 928535, at \*2 (N.D. Cal. Apr. 4, 2008).

22 Asetek requests that the court award prejudgment interest at the prime rate of 3.25%,  
23 compounded monthly. ECF No. 269 at 9. It contends that it was required to borrow money  
24 during the period of infringement at a much higher rate of 10 percent. ECF No. 296 at 15. CMI  
25 does not dispute Asetek’s entitlement to prejudgment interest, but requests that the Court apply the  
26 Treasury Bill rate compounded annually because Asetek “has offered no evidence that it needed to  
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1 borrow money because it was deprived of the damages award.” ECF No. 287 at 16 (emphasis in  
2 original).

3 The Court finds it reasonable to award Asetek prejudgment interest at the prime rate,  
4 compounded monthly. A patentee need not offer proof of borrowing at or above the prime rate “to  
5 be entitled to an award of prejudgment in interest at the prime rate.” Studiengesellschaft Kohle,  
6 m.b.H. v. Dart Indus., Inc., 862 F.2d 1564, 1579-80 (Fed. Cir. 1988); see also Uniroyal, 939 F.2d  
7 at 1545 (Fed. Cir. 1991), but there is evidence of such borrowing here. The Court considers this  
8 borrowing history, along with Asetek’s prior assertions that it has not yet reached profitability.  
9 See ECF No. 194, Tr. 426:2-4; ECF No. 266 at 18. The Court also concludes that the prime rate  
10 “more nearly approximates the position Asetek would have been in had CMI entered into a  
11 reasonable royalty agreement” with CMI. A&L Tech. v. Resound Corp., No. C 93-00107 CW,  
12 1995 WL 415146, at \*5 (N.D. Cal. June 29, 1995).

13 **5. Post-judgment interest**

14 Section 1961 provides that post-judgment interest “shall be calculated from the date of the  
15 entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury  
16 yield, as published by the Board of Governors of the Federal Reserve System, for the calendar  
17 week preceding.” 28 U.S.C. § 1961.

18 Asetek moves the Court for post-judgment interest. ECF No. 267 at 3. The Court orders  
19 CMI to pay post-judgment interest at the statutorily-mandated rate.

20 **6. Returned sales**

21 Despite calculating damages at trial that offset CMI’s sales revenues, Asetek now contends  
22 that it should receive a royalty for infringing products that were sold but returned, ECF No. 267 at  
23 9, although it provides no basis for its position. CMI points out that Dr. Mody previously treated  
24 negative sales as offsets to total revenue in determining CMI’s relevant sales. See ECF No. 288 at  
25 15. CMI also notes that Asetek’s own license with Corsair contemplates that manufactures bear  
26 the risk of the return. See ECF No. 288 at 15.

27 Asetek’s position is not commercially reasonable. The Court agrees with CMI that  
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1 consistent with the damages calculated by Asetek at trial, returned sales of accused products  
2 should offset sales revenues.

3 **7. Ongoing royalty**

4 Because the Court enters a permanent injunction in favor of Asetek, it need not impose an  
5 ongoing royalty rate.

6 **CONCLUSION**

7 For the reasons set for above, CMI's motion for entry of judgment as a matter of law and  
8 motion for a new trial are both denied. Asetek's motion for entry of a permanent injunction is  
9 granted. Asetek's motion for supplemental damages and prejudgment interest granted in part and  
10 denied in part.

11 CMI is ordered to produce to Asetek's counsel, within five court days of the date of this  
12 Order, a spreadsheet similar to CMIUSA-ASE00013784 that completely and accurately reflects all  
13 of CMI USA's revenues for sales of the Infringing Products in the United States since October 1,  
14 2014, through the date of this Order, including product returns that offset.

15 Asetek is ordered to submit revised calculations for supplemental damages, and pre- and  
16 post-judgment interest consistent with this Order, and a revised form of judgment reflecting the  
17 same, within seven court days of receipt of CMI's updated revenues as ordered in the preceding  
18 paragraph. For the reasons set forth elsewhere in this Order, Asetek's updated calculations may  
19 include enhanced damages, i.e., a 25.375% royalty rate, on CMI's revenues for sales of infringing  
20 products beginning January 1, 2015. Asetek shall bear in mind that "prejudgment interest can  
21 only be applied to the primary or actual damage portion and not to the punitive or enhanced  
22 portion" of the damages award. Underwater Devices Inc. v. Morrison-Knudsen Co., 717 F.2d  
23 1380, 1389 (Fed. Cir. 1983), overruled on other grounds by In re Seagate Tech., LLC, 497 F.3d  
24 1360 (Fed. Cir. 2007).

25 CMI may submit its objections, if any, to Asetek's revised form of judgment, within five  
26 court days after the judgment is submitted. CMI may only interpose objections it has not already  
27 made. Asetek may reply within five court days thereafter. The matter will then stand submitted  
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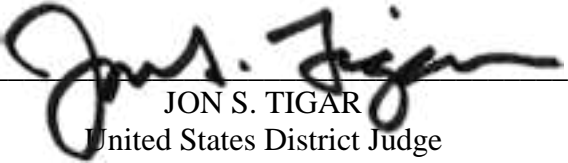


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unless the Court schedules a hearing.

IT IS SO ORDERED.

Dated: September 22, 2015

  
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JON S. TIGAR  
United States District Judge