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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CYNTEC COMPANY, LTD.,  
Plaintiff,  
v.  
CHILISIN ELECTRONICS CORP., et al.,  
Defendants.

Case No. 18-cv-00939-PJH

**ORDER RE POST-TRIAL MOTIONS**

Re: Dkt. Nos. 285, 286, 288, 294

United States District Court  
Northern District of California

Before the court are the post-trial motions filed by the parties in the above-captioned case. Defendants Chilisin Electronics Corp. and Chilisin America Ltd. (collectively "Chilisin") filed a renewed motion for judgment as a matter of law under Rule 50(b) (Dkt. 285) and a motion for a new trial under Rule 59 (Dkt. 286). Plaintiff Cyntec Company Ltd. ("Cyntec") filed a motion for permanent injunction and enhanced damages (Dkt. 288). Chilisin also filed a motion to seal in connection with its opposition to Cyntec's motion for permanent injunction and enhanced damages (Dkt. 294). The matters are fully briefed and suitable for resolution without oral argument. Having read the papers filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court rules as follows.

**BACKGROUND**

This is a patent case, in which Cyntec filed suit against Chilisin for infringement of patents relating to electronic chokes. After a seven-day trial, a jury returned a verdict in Cyntec's favor, finding that Chilisin willfully infringed every asserted claim of the patents-in-suit. See Dkt. 269. The jury awarded the full amount of damages sought by Cyntec,

1 namely, \$1,552,493 in lost profits and \$320,463 in reasonable royalties, for a total  
2 damages award of \$1,872,956. See id.

3 Before the court are the parties' post-trial motions, as described above.

4 **DISCUSSION**

5 Chilisin's renewed motion for judgment as a matter of law under Rule 50 (Dkt. 285)

6 A. Legal standard

7 Judgment as a matter of law is appropriate when "a party has been fully heard on  
8 an issue during a jury trial and the court finds that a reasonable jury would not have a  
9 legally sufficient evidentiary basis to find for the party on that issue ...." Fed. R. Civ. P.  
10 50(a)(1); see also Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 149 (2000).

11 A party must make a motion for judgment as a matter of law under Rule 50(a)  
12 before a case is submitted to the jury. If the judge denies or defers ruling on the motion,  
13 and if the jury then returns a verdict against the moving party, the party may renew its  
14 motion under Rule 50(b). In ruling on the renewed motion, the court may either "allow  
15 judgment on the verdict, if the jury returned a verdict," or "order a new trial," or "direct the  
16 entry of judgment as a matter of law." Fed. R. Civ. P. 50(b).

17 The standard for judgment as a matter of law "mirrors" that for granting summary  
18 judgment. Reeves, 530 U.S. at 150. The court "should review all of the evidence in the  
19 record," but "may not make credibility determinations or weigh the evidence." Id.; see  
20 also Josephs v. Pac. Bell, 443 F.3d 1050, 1062 (9th Cir. 2006). The court should give  
21 credence to the evidence favoring the non-moving party, as well as that evidence  
22 supporting the moving party that is uncontradicted and unimpeached, to the extent that it  
23 comes from disinterested witnesses. Reeves, 530 U.S. at 151.

24 The test applied is whether the evidence permits only one reasonable conclusion,  
25 and that conclusion is contrary to the jury's verdict. Josephs, 443 F.3d at 1062. The  
26 verdict must be upheld if the evidence is adequate to support the jury's conclusion, even  
27 if it is also possible to draw a contrary conclusion from the same evidence. Johnson v.  
28 Paradise Valley Unified Sch. Dist., 251 F.3d 1222, 1227 (9th Cir. 2001). The court "may

1 not substitute its view of the evidence for that of the jury.” Id. (citing Gilbrook v. City of  
2 Westminster, 177 F.3d 839, 856 (9th Cir. 1999)).

3 Because it is a renewed motion, a proper post-verdict Rule 50(b) motion is limited  
4 to the grounds asserted in the pre-deliberation Rule 50(a) motion. Thus, a party cannot  
5 properly “raise arguments in its post-trial motion for judgment as a matter of law under  
6 Rule 50(b) that it did not raise in its pre-verdict Rule 50(a) motion.” EEOC v. Go Daddy  
7 Software, Inc., 581 F.3d 951, 961 (9th Cir. 2009) (citing Freund v. Nycomed Amersham,  
8 347 F.3d 752, 761 (9th Cir.2003)).

9 While Rule 50(b) “may be satisfied by an ambiguous or inartfully made motion”  
10 under Rule 50(a), a party must still put the opposing party and the court on adequate  
11 notice of the basis for its motion. See Go Daddy Software, 581 F.3d at 961; Freund, 347  
12 F.3d at 761.

13 B. Analysis

14 1. Infringement

15 a. Specific accused products

16 Chilisin’s first argument is that the court should enter judgment as a matter of law  
17 “on products Cyntec did not analyze.” Dkt. 285 at 8. Specifically, Chilisin argues that  
18 fourteen of the 310 accused products contain at least one powder that Cyntec did not  
19 test. See Dkt. 25 at 8.

20 Cyntec first responds that Chilisin has waived its argument with respect to the  
21 fourteen accused products in question by not raising it as part of its original Rule 50(a)  
22 motion. See Dkt. 297 at 8 (citing Trial Transcript (Trial Tr.) at 866:1-879:21, 1260:10-  
23 1262:23). Cyntec further argues that Chilisin’s argument fails on the merits, because  
24 Cyntec’s expert, Dr. Paul Kohl, testified that he analyzed the characteristics of all  
25 accused products, including the fourteen products in Chilisin’s motion.

26 The court agrees that Chilisin’s Rule 50(a) motion did not raise the issue of  
27 whether Cyntec failed to test powders included in fourteen of the accused products.  
28 Chilisin’s first Rule 50(a) motion on August 27, 2021 did not raise the argument, nor did

1 Chilisin’s “renewed” Rule 50(a) motion on August 31, 2021 raise the issue. See Trial Tr.  
2 vol. 5 (Dkt. 260) at 866-81; vol. 7 (Dkt. 266) at 1260-63. Accordingly, this argument is  
3 waived and may not be raised on this renewed motion under Rule 50(b). See Freund,  
4 347 F.3d at 761.

5 Moreover, even if the court were to consider the merits of Chilisin’s motion on this  
6 issue, giving credence to the evidence of the non-moving party, Chilisin has not shown  
7 that the evidence permits only one reasonable conclusion, and that conclusion is contrary  
8 to the jury’s verdict. As Cyntec argued, its expert testified that he reviewed the material  
9 specifications for each of the powders used in the accused products, and that “the larger  
10 alloy powder is harder in every case than the smaller iron powder.” See Trial Tr. vol. 3  
11 (Dkt. 255) at 378:25-379:2, 404:1-19.

12 Accordingly, Chilisin’s renewed motion for judgment as a matter of law is DENIED  
13 as to its argument that Cyntec did not prove infringement for fourteen of the accused  
14 products.

15 b. Infringement of the ’037 patent by direct sales

16 Next, Chilisin argues that the court should grant judgment as a matter of law that  
17 direct sales do not infringe the ’037 patent. See Dkt. 285 at 9. Chilisin argues that the  
18 ’037 patent is a method patent, and that “there is no dispute Chilisin manufactures the  
19 accused chokes entirely outside of the United States,” and “thus Cyntec’s only viable  
20 theory at trial was that Chilisin induced others to import chokes.” Id.

21 Chilisin’s argument relies on a quotation from Cyntec’s counsel during trial stating  
22 that “with regard to the ’037 patent, we are only asserting induced infringement.” See  
23 Dkt. 285 at 9 (citing Trial Tr. vol. 5 at 868:23-869:3). However, the full trial transcript  
24 shows that Cyntec’s counsel corrected himself, stating “with regards to the ’037 patent . .  
25 . we did assert [direct] infringement under 271(g) in our infringement contentions, just to  
26 be clear.” See Trial Tr. vol. 5 (Dkt. 260) at 869:18-23.

27 Cyntec’s opposition brief further argues that, after the hearing, Cyntec clarified  
28 with Chilisin via email that it had not withdrawn or waived its claim for direct infringement

1 under section 271(g), and cited portions of its pretrial papers disclosing the substance of  
2 the theory. See Dkt. 297 at 11 (citing Dkt. 298, Ex. 3). Cyntec argues that “Chilisin did  
3 not respond to that email or dispute its contents.” Id. at 11.

4 In its reply, Chilisin does not discuss Cyntec’s corrective statement in the trial  
5 transcript or the email sent by Cyntec to Chilisin after the Rule 50(a) hearing, instead only  
6 arguing that Cyntec has waived its argument for infringement under section 271(g). See  
7 Dkt. 306 at 8. Chilisin further argues, for the first time in reply, that “the court never  
8 instructed the jury on relevant exceptions to section 271(g), such as the exception that a  
9 product is non-infringing if it becomes ‘a trivial and non-essential component of another  
10 product.’” Id. at 9. However, Chilisin provides no basis for the court to conclude that  
11 such an instruction would have been relevant on the “trivial and non-essential  
12 component” exception, such that a reasonable jury would not have a legally sufficient  
13 evidentiary basis to find for Cyntec on that issue.

14 Because Chilisin’s motion on this issue is premised on its argument that “Cyntec’s  
15 theory for the ’037 patent was limited to inducement,” (See Dkt. 285 at 9) and because  
16 the record shows that Chilisin was aware of Cyntec’s intent to proceed under a theory of  
17 direct infringement under section 271(g), Chilisin’s motion is DENIED.

18 c. The “by means of” limitation

19 Chilisin’s next argument is that Cyntec has not shown that Chilisin infringed the “by  
20 means of” element of the asserted claims. Chilisin first re-argues the substance of its  
21 claim construction argument, that hardness must be the primary factor affecting the  
22 formation temperature, rather than having just an “effect or impact” on the temperature.  
23 See Dkt. 285 at 10.

24 As an initial matter, Cyntec correctly points out that Chilisin’s original Rule 50(a)  
25 motion did not ask the court to amend its original claim construction. See Trial Tr. at  
26 873:20-23. However, in its reply, Chilisin acknowledges that it “is not seeking  
27 reconsideration here,” and clarifies that it is discussing the claim construction as  
28 background “because it is the first step in performing an infringement analysis.” See Dkt.

1 306 at 10. Given the representations in Chilisin’s reply, the court will not address the  
2 substance of Chilisin’s argument regarding claim construction of the “by means of” term.

3 Chilisin next argues that “Cyntec failed to show hardness has an impact on the  
4 accused chokes’ formation temperature.” See Dkt. 285 at 11. Specifically, Chilisin  
5 argues that “[g]iven that the causal relationship between hardness difference and  
6 formation temperature was expressly claimed, under the court’s construction, Cyntec  
7 must prove that the hardness difference in Chilisin’s products is a cause of their lower  
8 formation temperature.” Id.

9 Chilisin then provides a more robust version of its current argument:

10 In order to understand Cyntec’s lack of proof, it is instructive to review the  
11 portion of the trial transcript where Cyntec’s expert actually analyzed the  
12 disputed limitation. When Cyntec’s infringement expert performed his  
13 analysis of “limitation 1E” of the ’312 patent (the “by means of” limitation),  
14 he only relied on a single piece of evidence: Exhibit 50. Cyntec’s expert  
15 testified that Exhibit 50 shows Chilisin’s mixed powder chokes have better  
16 performance than a single-powder choke without annealing, but that does  
17 not answer the critical question: what caused that better performance and  
18 lack of annealing? Was it the size differences between the magnetic  
19 powders, was it the hardness difference, or was it something else? Exhibit  
20 50 does not say, and indeed the exhibit says nothing about hardness  
21 whatsoever. There is also nothing in Exhibit 50 about formation  
22 temperature, and nothing about what caused a given product to form at a  
23 given temperature.

19 Cyntec’s analysis for claim 1 of the ’037 patent was even more sparse. Its  
20 expert gave ipse dixit testimony that hardness has an impact on formation  
21 temperature, but for support he referred back to his prior testimony on claim  
22 1 of the ’312 patent. As noted, that prior testimony relied on a single exhibit  
23 that says nothing about hardness and nothing about formation temperature.  
24 This was Cyntec’s entire analysis of this critical, disputed limitation, and it  
25 was plainly deficient. At most, Cyntec’s expert showed the accused chokes  
26 have certain performance characteristics, but its own asserted patents say  
27 those same performance characteristics could be caused by size  
28 differences, not hardness differences.

25 See Dkt. 285 at 11-12 (emphasis added and internal citations omitted).

26 Chilisin’s current argument bears little resemblance to the argument made in its  
27 Rule 50(a) motions. This was the substance of Chilisin’s initial Rule 50(a) motion on  
28 August 27, 2021:

1 No infringement of any claim that includes the "by means of" limitation. We  
2 have had this argument with plaintiffs a number of times. We think the claim  
3 is clear.

4 Prior to the trial, all the witnesses seemed to agree that the claim related to  
5 the forming step and that the differences in hardness of the particles has to  
6 impact the temperature at which the choke is formed. All of the evidence is  
7 that the chokes are formed at room temperature regardless of the powders  
8 that are used. There can be no infringement of that step if the chokes with  
9 a single powder are molded at room temperature and the chokes with a  
10 dual powder are molded at room temperature.

11 ...  
12 And their argument that you don't have to later perform an annealing step to  
13 meet the performance characteristics of a customer is nowhere in the claim,  
14 and we don't think any reasonable jury can conclude the products infringe.

15 Trial Tr. vol. 5 (Dkt. 260) at 873:16-874:3, 874:9-13 (emphasis added).

16 During the hearing on Chilisin's "renewed" Rule 50(a) motion on August 31,  
17 Chilisin simply reasserted its original grounds for the motion:

18 You know this one is coming, the no infringement of the "by means of"  
19 limitation of the '312 and '037 patent. There is no way for Cyntec to prove,  
20 and they have not proven, that we infringed the "by means of" limitation  
21 under the Court's interpretation of that term.

22 Trial Tr. vol. 7 (Dkt. 266) at 1261:11-15.

23 To summarize, the argument made in Chilisin's Rule 50(a) motion was an  
24 argument that there was no temperature change in the first place, because "the chokes  
25 are formed at room temperature." Trial Tr. vol. 5 (Dkt. 260) at 873:20-25. That was also  
26 the argument made during Chilisin's closing argument to the jury. See, e.g., Trial Tr. vol.  
27 7 (Dkt. 266) at 1219:21-1221:25 ("All the chokes are molded at room temperature, and,  
28 therefore, the hardness difference has no impact on the temperature at which the choke  
is formed or molded.")

Chilisin's current argument on its Rule 50(b) motion is a causation argument,  
arguing that any "performance characteristics" such as a lower temperature were not  
necessarily caused by a hardness difference, but could have been caused by a size  
difference or other difference(s). See, e.g., Dkt. 285 at 13 ("Nothing in Cyntec's evidence  
shows whether it was size, hardness, or something else that led to the formation

1 temperatures used for each accused product.”). This was an argument that Chilisin  
2 made, and the court rejected, during summary judgment. See, e.g., Dkt. 170 at 20-22  
3 (“Defendants offer one broad argument as to why their devices do not infringe on  
4 plaintiff’s claims: there is no evidence that forming the magnetic body of the choke at a  
5 temperature lower than the melting point of the wire is the result of the hardness  
6 difference between two magnetic powders used to form the choke.”) (“defendants argue  
7 that Kohl’s opinion does not differentiate between the size difference and the hardness  
8 difference as having the desired effect”).

9 As a threshold matter, the court concludes that Chilisin’s current Rule 50(b) motion  
10 on the “by means of” issue is based on an entirely different premise than its Rule 50(a)  
11 motion. Given that Rule 50(b) specifically provides that any motion be a “renewed” Rule  
12 50(a) motion, the shifting-sands nature of Chilisin’s “by means of” argument creates a  
13 procedural hurdle in that it now “raise[s] arguments in its post-trial motion for judgment as  
14 a matter of law under Rule 50(b) that it did not raise in its pre-verdict Rule 50(a) motion.”  
15 Go Daddy Software, 581 F.3d at 961 (citing Freund, 347 F.3d at 761). For that reason  
16 alone, the court concludes that Chilisin’s Rule 50(b) motion must be DENIED as to the  
17 “by means of” issue.

18 Moreover, even if the court were to reach the merits of the “by means of” issue,  
19 the record shows that this issue is not suited for judgment as a matter of law. Chilisin’s  
20 own motion argues that the “testimony at trial confirmed that both size and hardness  
21 difference may impact formation temperature,” and that under the court’s construction,  
22 Cyntec need only show that hardness have “an effect or impact,” even if it is not “the  
23 primary or most significant factor.” See Dkt. 285 at 10, 13; see also, e.g., Trial tr., vol. 3  
24 (Dkt. 255) at 394:5-8, 404:14-17, 405:5-13. Based on the trial testimony, the jury found  
25 that Chilisin’s accused products did meet the “by means of” limitation, and Chilisin has  
26 given the court no basis to conclude that “the evidence permits only one reasonable  
27 conclusion, and that conclusion is contrary to the jury’s verdict.” Instead, Chilisin appears  
28 to be asking the court to conduct its own weighing of the evidence and to reach a

1 conclusion contrary to the jury's. Accordingly, even if the court were to reach the merits  
2 of Chilisin's argument, Chilisin does not satisfy the standard for judgment as a matter of  
3 law under Rule 50(b).

4 Chilisin makes an additional argument that Cyntec's infringement theory "relies on  
5 irrelevant evidence." See Dkt. 285 at 14. As before, Chilisin's argument is primarily one  
6 of causation. It argues that "[a]ll of Cyntec's evidence, including its own internal testing,  
7 varied both size and hardness together," and thus, "it is impossible for Cyntec to say  
8 which of the two caused the lower formation temperatures it observed." Id. at 15.  
9 Chilisin again asks, "what causes reduced formation temperatures? Is it size differences,  
10 hardness differences, or something else entirely?" Id.

11 For the same reasons discussed above, the parties presented evidence regarding  
12 the effect of the hardness difference on the formation temperature, and the jury found  
13 that the accused products fell within the scope of the claim as construed by the court.  
14 Chilisin has provided no basis for concluding that "the evidence permits only one  
15 reasonable conclusion, and that conclusion is contrary to the jury's verdict." Accordingly,  
16 for the same reasons mentioned above, even if the court were to reach the merits of  
17 Chilisin's argument on the "by means of" issue, Chilisin does not satisfy the standard for  
18 judgment as a matter of law under Rule 50(b).

19 2. Damages

20 a. Lost profits

21 Next, Chilisin argues that the court should grant judgment as a matter of law of no  
22 lost profits damages. See Dkt. 285 at 16. Specifically, Chilisin raises three arguments  
23 regarding lost profits. First, Chilisin argues that Cyntec "presented no evidence it would  
24 have made all the sales it purportedly lost to Chilisin in the 'but for' world." See id. at 16.  
25 Next, Chilisin argues that "Cyntec's market share analysis is unfounded." Id. at 18.  
26 Finally, Chilisin argues that "Cyntec's importation percentages are unfounded." Id. at 21.

27 As an initial matter, only one damages-related argument was raised in Chilisin's  
28 first Rule 50(a) motion on August 27, 2021. See Trial Tr. vol. 5 (Dkt. 260) at 866-77.

1 Specifically, the only damages-related issue raised at the August 27 hearing was the  
2 issue related to importation of the accused products manufactured outside of the United  
3 States. See id. at 876:13-879:7.

4 However, when Chilisin made its “renewed” Rule 50(a) motion on August 31,  
5 2021, it stated that it was raising “two damages issues.” See Trial Tr. vol. 7 (Dkt. 266) at  
6 1261:16-19. The first issue was “no damages for any – all of the sales made outside of  
7 the United States.” Id. Chilisin’s counsel then stated:

8 Second damages issue, no lost profits, failure by Cyntec to prove the share  
9 of sales that Cyntec would have made but for Chilisin’s sale of the accused  
10 products.

11 Id. at 1261:20-22.

12 Given that Rule 50(a) provides that a motion “may be made at any time before the  
13 case is submitted to the jury,” the court concludes that the additional damages-related  
14 issue raised by Chilisin at the August 31 hearing is properly included within the scope of  
15 the present Rule 50(b) motion. And as the court understands it, that “second damages  
16 issue” raised at the August 31 hearing corresponds with the first issue raised in Chilisin’s  
17 present motion, namely, that Cyntec “presented no evidence it would have made all the  
18 sales it purportedly lost to Chilisin in the ‘but for’ world.”

19 However, neither of Chilisin’s Rule 50(a) motions raised the issues that Chilisin  
20 now raise regarding the Cyntec’s market share analysis – specifically, the contentions  
21 that Cyntec failed to “accurately defin[e] the relevant market” and to “recreate sales for  
22 the entire marketplace for the relevant damages period.” See Dkt. 285 at 20-21.

23 Because these were not arguments raised in any Rule 50(a) motion, the court concludes  
24 that they are waived, and Chilisin’s Rule 50(b) motion is DENIED to the extent it is based  
25 on challenging Cyntec’s market share analysis.<sup>1</sup> And to the extent that Chilisin did  
26 preserve a general “market share” argument by using the word “share” at the August 31

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27 <sup>1</sup> Moreover, even if the court were to consider the merits of a standalone argument  
28 regarding Cyntec’s market share analysis, its argument would fail for the same reasons  
as its arguments regarding the but-for analysis, as discussed below.

1 hearing, the court concludes that such argument overlaps with Chilisin’s first argument  
2 that Cyntec failed to prove that it would have made sales “but-for” the infringement. See  
3 Trial Tr. vol. 7 (Dkt. 266) at 1261:16-22 (asserting argument of “failure by Cyntec to prove  
4 the share of sales that Cyntec would have made but for Chilisin’s sale of the accused  
5 products.”).

6 That leaves two issues for the court’s analysis: (1) the but-for analysis, and (2) the  
7 importation rate issue. On issue (1), Chilisin argues that Cyntec must show that it would  
8 have made Chilisin’s sales “but for” the alleged infringement, and Chilisin argues that  
9 “Cyntec cannot meet this burden because it introduced no evidence that its products  
10 were qualified as replacements for all of Chilisin’s 310 accused chokes.” See Dkt. 285 at  
11 16. Chilisin also argues that “Cyntec’s lost profits theory is fatally flawed because Cyntec  
12 introduced no evidence at trial that it had gone through a ‘design win’ process to sell  
13 chokes to all of the customers who purchased the accused Chilisin chokes.” Id. at 17.

14 In its opposition, Cyntec argues that “Chilisin’s argument is incorrect because it  
15 ignores the fact that Cyntec proffered evidence at trial showing that Cyntec was the  
16 market incumbent, not Chilisin, and that Chilisin was trying to copy Cyntec products that  
17 had already been qualified by brand companies.” See Dkt. 297 at 18. Cyntec then cites  
18 numerous trial exhibits showing “Chilisin discussing its efforts to ‘cross’ (meaning copy)  
19 Cyntec’s patented products.” Id. (citing exhibits).

20 The court agrees that the evidence at trial included many examples of Chilisin  
21 discussing efforts to make their products in line with the specifications of Cyntec’s  
22 products. See, e.g., Trial Ex. 122 (“will mettle same dimensions with Cyntec’s . . . we will  
23 try to meet theirs as close as possible.”); Trial Ex. 1363 (products’ “characteristics need  
24 to completely match Cyntec characteristics”); Trial Ex. 57 (products “need to be exactly  
25 the same (sorry, no room for negotiation because the client prefers Cyntec”).) Given that  
26 evidence, there was more than a reasonable basis for the jury to conclude that Cyntec  
27 would have made Chilisin’s sales but for the alleged infringement. Accordingly, Chilisin’s  
28 motion is DENIED on this issue.

1 Turning to issue (2) regarding the importation rate, Chilisin argues that “Cyntec  
2 gave the jury no reliable evidence regarding importation rates.” See Dkt. 285 at 21.  
3 Chilisin first challenges the SEC data cited by Cyntec’s expert, arguing that it does not  
4 break down importation rates on a product-by-product basis. Id. Chilisin then further  
5 challenges data from the Gartner research firm, arguing that it is “irrelevant.” Id. at 22.

6 In its opposition, Cyntec first argues that it is required to prove damages only to a  
7 “reasonable certainty, not mathematical precision.” See Dkt. 297 at 22. Cyntec then  
8 argues that even Chilisin’s own witnesses confirmed the reliability of data from the  
9 Gartner firm. See Dkt. 297 at 22. Cyntec argues that “[w]hat Chilisin is doing is  
10 challenging the weight that should be placed on the Gartner data,” which is “not  
11 acceptable at this stage of the proceeding” when the court “may not weigh the evidence  
12 or assess credibility.” Id. Cyntec further argues that its damages expert considered the  
13 Gartner data, which did provide specific information on types of products, in conjunction  
14 with the SEC filings “to confirm the accuracy and reasonableness of the importation  
15 information.” Id.

16 The court concludes that Chilisin is asking the court to substitute its view for that of  
17 the jury here. The parties presented their competing arguments regarding whether  
18 Cyntec had proven damages to a reasonable certainty, and the jury found that the  
19 importation data to be sufficiently reliable on which to base a damages award. There  
20 was substantial evidence for the jury’s verdict, and it is not the case that the evidence  
21 permitted only one reasonable conclusion, which is contrary to the jury’s verdict.  
22 Accordingly, Chilisin’s Rule 50(b) motion is DENIED on this issue.

23 b. Royalty base and rate

24 Chilisin then argues that “the court should grant judgment as a matter of law on  
25 Cyntec’s royalty base and rate.” See Dkt. 285 at 24.

26 First, Chilisin argues that “the court should limit Cyntec’s royalty base” because  
27 “over 95% of Cyntec’s reasonable royalty damages base came from estimated  
28 importation by third parties.” Dkt. 285 at 24. Chilisin argues that the “importation

1 percentages are speculative,” and thus judgment as a matter of law should be granted to  
2 remove those sales from the royalty base.

3 This argument is the same in substance as the importation-rate argument made in  
4 connection with lost-profits damages, and the court rejects it for the same reason.  
5 Cyntec did provide evidence regarding importation rates, and the jury accepted that  
6 evidence, and the court finds no basis to overturn the jury’s verdict on this issue. Thus,  
7 Chilisin’s Rule 50(b) motion is DENIED as to the royalty base issue.

8 Next, Chilisin argues that “the court should limit Cyntec’s royalty rate.” See Dkt.  
9 285 at 25. Chilisin argues that “Cyntec has no valid support” for the 5% royalty rate  
10 awarded by the jury. Id.

11 Chilisin did not raise any issue related to the royalty rate in either of its Rule 50(a)  
12 motions. See Trial Tr. vol. 5 (Dkt. 260) at 866-881, vol. 7 (Dkt. 266) at 1260-1263.  
13 Thus, the court finds that this issue is waived, and may not be raised on a renewed Rule  
14 50(b) motion, and Chilisin’s motion is DENIED as to the royalty rate issue.

15 c. Damages period

16 Next, Chilisin argues that “the court should grant judgment as a matter of law  
17 limiting the damages period.” See Dkt. 285 at 26. Chilisin argues that “all damages  
18 should start on December 17, 2017, the date Chilisin first received notice of the asserted  
19 patents.” Id.

20 Regarding direct sales, Chilisin’s argument is based on its earlier argument that  
21 “Cyntec’s infringement theory for the ’037 patent was that Chilisin induced others to  
22 import infringing chokes.” See Dkt. 285 at 26. However, as discussed above, Chilisin  
23 relies on a single quote from Cyntec’s counsel that he corrected at the same hearing (in  
24 fact, the correction is on the same page of the trial transcript as the initial misstatement).  
25 See Trial Tr. vol. 5 (Dkt. 260) at 869. Thus, this argument is rejected for the same  
26 reasons discussed above, Chilisin’s Rule 50(b) motion is DENIED to the extent it seeks  
27 to exclude damages for the ’037 patent from before December 17, 2017.

28 Chilisin’s remaining arguments on this issue are arguments that were not raised

1 during either of its Rule 50(a) motions, and are being raised for the first time on this Rule  
2 50(b) motion. Specifically, Chilisin argues that damages for direct sales under the '312  
3 patent cannot begin before December 2017 because Cytotec's products were not marked  
4 with its patent numbers, and further argues that indirect sales damages should not begin  
5 until December 2017. See Dkt. 285 at 27.

6 As discussed above, the only damages-related issues raised in Chilisin's Rule  
7 50(a) motions related to (1) importation rates, and (2) the but-for analysis. Because  
8 Chilisin may not raise arguments on this motion that were not raised in its Rule 50(a)  
9 motions, Chilisin's motion on these other issues regarding limitation of the damages  
10 period is DENIED.

11 3. Willfulness

12 Finally, Chilisin argues that the court should grant judgment as a matter of law of  
13 no willful infringement. Chilisin argues that willful infringement requires "egregious cases  
14 of misconduct beyond typical infringement," and argues that the standard is not met here.  
15 See Halo Elecs., Inc. v. Pulse Elecs., Inc., 136 S.Ct. 1923, 1935 (2016).

16 When Chilisin initially moved for judgment as a matter of law on August 27, 2021,  
17 the parties appeared to agree that Cytotec's willfulness claim would be limited to the time  
18 after December 2017. Specifically, Cytotec's counsel stated that "[t]he willfulness claim,  
19 Your Honor, we would limit to after receipt of the notice letter." Trial Tr. vol. 5 (Dkt. 260)  
20 at 872:13-14; see also id. at 872:20-22 ("And so we believe that willfulness would be  
21 proper after the receipt of the letter, and we would be willing to limit our willfulness case  
22 to the date period after that.")

23 Cytotec now argues that Chilisin "withdrew its motion" as a result of the previous  
24 exchange, and thus "abandoned its motion on this issue," preventing it from raising the  
25 argument on this motion. See Dkt. 297 at 26.

26 However, at the August 31 hearing, when Chilisin re-asserted its Rule 50(a)  
27 motion, it continued to assert a willfulness argument. Specifically, Chilisin argued on its  
28 'renewed' Rule 50(a) motion: "Third is the no willfulness, no evidence of any willful,

1 wanton, malicious, bad faith, deliberate, consciously wrong, flagrant, or characteristic of a  
2 pirate behavior.” Trial Tr. vol. 7 (Dkt. 266) at 1261:7-9.

3 Because Chilisin continued to assert its willfulness argument even after the parties  
4 agreed to limit the temporal scope of Cyntec’s willfulness claim, the court concludes that  
5 Chilisin has not waived or abandoned its argument on willfulness.

6 On the merits, Chilisin now argues that willful infringement requires “egregious  
7 cases of misconduct beyond typical infringement” and that “there is no evidence that  
8 anything egregious happened” in this case. See Dkt. 285 at 27.

9 Cyntec points to numerous trial exhibits showing that Chilisin intended to copy  
10 Cyntec’s products, including emails stating that their products “need to completely match  
11 Cyntec characteristics” because clients “prefer Cyntec.” See Dkt. 297 at 27 (citing trial  
12 exhibits). Cyntec argues that the evidence presented at trial was “more than adequate  
13 evidence on which the jury could find willful infringement,” and the court agrees. That  
14 evidence will be discussed more fully below, in the context of Cyntec’s motion for  
15 permanent injunction and enhanced damages.

16 As before, Chilisin appears to be asking the court to weigh the evidence differently  
17 than the jury did, rather than meeting its burden under Rule 50 to show that the evidence  
18 permits only one reasonable conclusion, and that conclusion is contrary to the jury’s  
19 verdict. Accordingly, Chilisin’s Rule 50(b) motion is DENIED as to willfulness.

20 For the reasons discussed above, Chilisin’s motion for judgment as a matter of law  
21 under Rule 50(b) is DENIED in full.

22 Chilisin’s motion for new trial under Rule 59 (Dkt. 286)

23 A. Legal standard

24 Whether to grant a new trial is a matter of the trial court’s discretion. City  
25 Solutions, Inc. v. Clear Channel Communications, 365 F.3d 835, 843 (9th Cir. 2004).

26 The court may grant a motion for a new trial even if the verdict is supported by substantial  
27 evidence, if it concludes that the verdict is contrary to the clear weight of the evidence, is  
28 based on evidence which is false, or would result in a miscarriage of justice. Silver Sage

1 Partners, Ltd. v. City of Desert Hot Springs, 251 F.3d 814, 819 (9th Cir. 2001); see also  
2 Molski v. M.J. Cable, Inc., 481 F.3d 724, 729 (9th Cir. 2007). The court may weigh the  
3 evidence and may evaluate the credibility of the witnesses, and is not required to view  
4 the evidence from the perspective most favorable to the prevailing party. United States v.  
5 Kellington, 217 F.3d 1084, 1095 (9th Cir. 2000).

6 However, where a movant claims that a verdict is against the clear weight of the  
7 evidence, doubts about the correctness of the verdict are not sufficient grounds for a new  
8 trial. Landes Constr. Co., Inc. v. Royal Bank of Canada, 833 F.2d 1365, 1372 (9th Cir.  
9 1987). “Courts are not free to reweigh the evidence and set aside the jury verdict merely  
10 because the jury could have drawn different inferences or conclusions or because judges  
11 feel that other results are more reasonable.” Tennant v. Peoria & Pekin Union Ry. Co.,  
12 321 U.S. 29, 35 (1944). The trial court, after having given full respect to the jury's  
13 findings, must have a definite and firm conviction that the jury has made a mistake.  
14 Landes Constr. Co., 833 F.2d at 1371-72 (citations omitted).

15 B. Analysis

16 Chilisin’s first argument is that, if the court denies Chilisin’s Rule 50(b) motion, it  
17 alternatively requests a new trial on each issue. For the same reasons set forth in the  
18 court’s denial of Chilisin’s Rule 50(b) motion, and for the additional reason that Chilisin  
19 has not met its burden to show that the judgment on any issue contradicts the clear  
20 weight of the evidence, the court also DENIES Chilisin’s Rule 59 motion for a new trial to  
21 the extent it is based on the same grounds raised in the Rule 50(b) motion.

22 Chilisin also raises two additional grounds for seeking a new trial: (1) invalidity of  
23 the patents-in-suit for anticipation and obviousness, and (2) remittitur as an alternative to  
24 a new trial on damages. See Dkt. 286 at 5.

25 1. Invalidity

26 a. Anticipation

27 Regarding invalidity by anticipation, Chilisin first argues that it “established at least  
28 a triable case of anticipation by inherency.” See Dkt. 286 at 8. Chilisin points to the

1 Shafer reference as disclosing “a first powdered iron” and “a second powdered iron” with  
2 “differing electrical characteristics . . . to maximize its efficiency.” See id. Chilisin further  
3 argues that “Cyntec’s arguments at trial against Schafer [sic] never foreclosed  
4 anticipation or inherency as a matter of law.” See Dkt. 286 at 10.

5 In its opposition, Cyntec argues that Chilisin had the burden to show anticipation  
6 by clear and convincing evidence, not just the “mere possibility” of anticipation. See Dkt.  
7 296 at 7-8 (citing ATEN Int’l Co. v. Uniclass Tech. Co., 932 F.3d 1364, 1368 (Fed. Cir.  
8 2019)). Cyntec further argues that an “anticipation by inherency” argument requires the  
9 evidence to “make clear that the missing descriptive matter is necessarily present.” Dkt.  
10 296 at 8 (emphasis added by Cyntec); see also Allergan, Inc. v. Apotex Inc., 754 F.3d  
11 952, 960-61 (Fed. Cir. 2014); Finnigan Corp. v. Int’l Trade Comm’n, 180 F.3d 1354, 1365  
12 (Fed. Cir. 1999) (inherency “may not be established by probabilities or possibilities. The  
13 mere fact that a certain thing may result from a given set of circumstances is not  
14 sufficient.”).

15 Given the high standard to show anticipation by clear and convincing evidence,  
16 the court concludes that Chilisin has not met its burden to show the right to a new trial on  
17 anticipation, and thus Chilisin’s motion is DENIED as to invalidity by anticipation.

18 b. Obviousness

19 Regarding invalidity by obviousness, Chilisin argues that its expert explained why  
20 the Shafer reference, in combination with the Nakamura reference or other references,  
21 would have rendered the asserted claims obvious. See Dkt. 286 at 11. Chilisin further  
22 argues that its expert “demonstrated a motivation to combine Shafer with Nakamura.” Id.  
23 at 12.

24 In its opposition, Cyntec argues that “the evidence demonstrated that there was no  
25 motivation to combine the Shafer and Nakamura references,” because “the high  
26 temperature treatment discussed in Nakamura was for a wholly different reason than the  
27 ones discussed” in the patents-in-suit. See Dkt. 296 at 11 (citing Forest Labs., LLC v.  
28 Sigmapharm Labs., LLC, 918 F.3d 928, 934 (Fed. Cir. 2019)). Cyntec also argues that

1 Chilisin’s own expert “acknowledged that the central problem that the inventors of the  
2 ’037 and ’312 patents sought to solve was not at issue at all in the Nakamura reference.”  
3 Dkt. 296 at 12.

4 As with anticipation, given the high standard of clear and convincing evidence that  
5 needs to be met by a party asserting obviousness, the court concludes that Chilisin has  
6 not met its burden to show the right to a new trial on obviousness, and thus Chilisin’s  
7 motion is DENIED as to invalidity by obviousness.

8 2. Remittitur

9 Chilisin’s final argument on this motion is that “the court should order remittitur.”  
10 See Dkt. 286 at 14. Chilisin explains that this motion is based on the same arguments  
11 made in its Rule 50(b) motion related to (1) lost profits, and (2) the royalty rate. Id. The  
12 court concludes that Chilisin has not met its burden to show that the jury’s verdict on  
13 these issues is contrary to the clear weight of the evidence, and thus Chilisin’s motion is  
14 DENIED.

15 For the reasons discussed above, Chilisin’s motion for a new trial under Rule 59 is  
16 DENIED in full.

17 Cyntec’s motion for permanent injunction and enhanced damages (Dkt. 288)

18 A. Motion for permanent injunction

19 1. Legal standard

20 A patentee seeking a permanent injunction must make a four-part showing: (1) it  
21 suffered an irreparable injury; (2) remedies available at law, such as monetary damages,  
22 are inadequate to compensate for that injury; (3) the balance of hardships between the  
23 plaintiff and defendant shows that a remedy in equity is warranted; and (4) the public  
24 interest would not be disserved by a permanent injunction. eBay v. MercExchange,  
25 L.L.C., 547 U.S. 388, 391 (2006).

26 2. Analysis

27 Cyntec argues that all four factors weigh in favor of granting an injunction in this  
28 case. As an initial matter, Chilisin asks the court to stay resolution of Cyntec’s motion

1 while it attempts to seek production of an alleged agreement with Apple. See Dkt. 294-6  
2 at 24-26. Chilisin’s attempt to seek discovery on that issue has already been denied, and  
3 the court will not stay consideration of Cyntec’s motion on that basis. See Dkt. 304.

4 a. Irreparable harm

5 On the first factor, Cyntec argues that it has suffered irreparable harm and will  
6 continue to do so unless Chilisin is enjoined. See Dkt. 288-1 at 12. Cyntec argues that  
7 courts have found irreparable harm have considered factors such as (1) whether the  
8 patentee and alleged infringer are in direct competition, (2) whether the patentee lost  
9 market share due to the competition, (3) whether the patentee was unwilling to license its  
10 technology, and (4) whether the alleged infringement affected the patentee’s ability to  
11 compete in the design win process. See Dkt. 288-1 at 12-16 (citing Broadcom Corp. v.  
12 Emulex Corp., 732 F.3d 1325, 1336 (Fed. Cir. 2013); Douglas Dynamics, LLC v. Buyers  
13 Prods. Co., 717 F.3d 1336, 1345 (Fed. Cir. 2013); i4i Ltd. v. Microsoft Corp., 598 F.3d  
14 831, 861 (Fed. Cir. 2010)).

15 Regarding direct competition, Cyntec cites a number of trial exhibits showing that  
16 Chilisin sought to directly compete with Cyntec. See Dkt. 288-1 at 13-14 (citing, e.g.,  
17 Trial Ex. 1363 (Chilisin email stating that products “need to completely match Cyntec  
18 characteristics”), Trial Ex. 117 (Chilisin stating “we have lowering our cost than their  
19 major supplier (Cyntec) in order to get into the business”)).

20 Cyntec also argues that the design win process leads to an “incumbency effect”  
21 which compounds the harm to the patentee. See Dkt. 288-1 at 14-16 (citing Broadcom,  
22 732 F.3d at 1336).

23 In its opposition, Chilisin first argues that Cyntec’s delay in bringing this lawsuit  
24 shows a lack of irreparable harm. See Dkt. 294-6 at 12-14. As to direct competition,  
25 Chilisin argues that “the actual scope of competition is unclear.” Id. at 14. Chilisin then  
26 argues that it “did not engage in predatory pricing” and that “Cyntec’s copying evidence is  
27 irrelevant.” Id. at 17-18.

28 In its reply, Cyntec argues that Chilisin has not presented evidence of any delay.  
See Dkt. 307 at 3. Cyntec argues that it sent a demand letter to Chilisin in December

1 2017, and then filed suit three months later. Id. Cyntec argues that there is no evidence  
2 that, prior to that, Cyntec had obtained the accused products and analyzed them for  
3 infringement. Id.

4 Overall, the court concludes that the first factor weighs in favor of an injunction.  
5 Chilisin’s arguments do not undermine the extensive evidence at trial that Chilisin did  
6 directly compete with Cyntec, including through the design win process. In particular, the  
7 fact that Chilisin designed its products to “completely match Cyntec characteristics”  
8 shows that the parties were in competition. See Trial Ex. 1363; see also Trial Ex. 122  
9 (“will mettle same dimensions with Cyntec’s . . . we will try to meet theirs as close as  
10 possible.”); Trial Ex. 57 (products “need to be exactly the same (sorry, no room for  
11 negotiation because the client prefers Cyntec”).) The court further notes that the Federal  
12 Circuit has considered a jury award of lost profit damages to be an implicit finding of  
13 direct competition. See Presidio Components, Inc. v. American Technical Ceramics  
14 Corp., 702 F.3d 1351, 1363 (Fed. Cir. 2012). The court thus concludes that Cyntec has  
15 shown that it would suffer irreparable harm in the absence of an injunction.

16 b. Adequacy of monetary damages

17 As to the second eBay factor, Cyntec argues that monetary damages are  
18 inadequate to compensate it for ongoing and future infringement. See Dkt. 288-1 at 16-  
19 18. Cyntec argues that monetary damages cannot remedy Cyntec’s loss of customer  
20 goodwill and exclusivity, and that the full extent of Chilisin’s infringement “defies  
21 valuation.” Id. In particular, Cyntec focuses on the fact that it has never licensed its  
22 patents to any third party, “electing instead to enjoy the exclusivity offered by its patent  
23 rights.” Id. at 16 (citing Dkt. 288, Ex. C at 159-60).

24 In its opposition, Chilisin argues that “the scope of proven harm is limited,” and  
25 that “Cyntec offers no proof of lost exclusivity or goodwill.” See Dkt. 294-6 at 20-22.

26 Overall, the court concludes that the second factor weighs in favor of an injunction.  
27 In particular, the court notes that Cyntec was unwilling to license patents-in-suit, and  
28 Chilisin does not appear to respond to that argument. The court thus concludes that  
Cyntec has shown that monetary damages are inadequate to compensate it for Chilisin’s

1 infringement.

2 c. Balance of hardships

3 As to the third eBay factor, Cyntec argues that the balance of hardships tips in  
4 favor of an injunction. See Dkt. 288-1 at 18-19. Cyntec points to trial testimony showing  
5 the relative importance of the patented technology to Cyntec’s business, as well as  
6 testimony showing that Chilisin is a more diversified business. Id.

7 In its opposition, Chilisin argues that Cyntec is a wholly-owned division of a  
8 company that is larger than Chilisin. See Dkt. 294-6 at 22. Chilisin also argues that “the  
9 parties’ settlement history shows a lack of any need for court intervention.” Id. at 23.

10 Overall, the court concludes that the third eBay factor weighs in favor of an  
11 injunction. Cyntec’s evidence has shown the hardships that it would face in the absence  
12 of an injunction, and Chilisin has not presented evidence that it would suffer harm that  
13 would tip the balance of hardships in its favor. Accordingly, the court concludes that  
14 Cyntec has shown that the balance of hardships favors an injunction.

15 d. Public interest

16 As to the fourth eBay factor, Cyntec argues that the public interest favors  
17 “upholding Cyntec’s patent rights and granting the narrow injunction.” See Dkt. 288-1 at  
18 19-20. Cyntec emphasizes the fact that the proposed injunction is “narrowly tailored,  
19 takes effect prospectively, and applies only to Chilisin (and not its customers).” Id. at 19.  
20 Cyntec argues that the limited nature of the proposed injunction ensures that “the  
21 products that are already in Chilisin’s customers’ hands do not need to be destroyed, and  
22 customers may continue to use them without any restrictions.” Id.

23 Cyntec further argues that the infringing products are not “goods which require any  
24 deferential treatment, such as medical devices or other items that may raise health and  
25 safety concerns.” See Dkt. 288-1 at 20. Cyntec also argues that an injunction would not  
26 create any supply chain shortages because Cyntec has the manufacturing capacity to  
27 meet any additional demand that would result from an injunction. Id.

28 In its opposition, Chilisin argues that the public interest would not be served by  
Cyntec’s proposed injunction. See Dkt. 294-6 at 23-24. Chilisin first argues that the

1 injunction would prevent it from “ensuring that customers who lawfully purchased chokes  
2 received necessary information and updates, for example.” Id. Second, Chilisin argues  
3 that the proposed injunction contains no express limits on extraterritoriality, and proposes  
4 new language regarding activity outside of the United States. Id. at 24.

5 In its reply, Cyntec states that it is “willing to confer with Chilisin to reach  
6 agreement on a narrow exception allowing the conveyance of safety information.” See  
7 Dkt. 307 at 9. As to extraterritoriality, Cyntec argues that its proposed injunction already  
8 “specifically covers only infringing activity in the United States.” Id.

9 Overall, the court concludes that the public interest weighs in favor of an  
10 injunction. As Cyntec points out, the Federal Circuit has held that “the public interest  
11 nearly always weighs in favor of protecting property rights in the absence of  
12 countervailing factors, especially when the patentee practices his inventions.” See Apple  
13 Inc. v. Samsung Elecs. Co. Ltd., 809 F.3d 633, 647 (Fed. Cir. 2015).

14 Having considered the eBay factors, the court concludes that Cyntec has made a  
15 sufficient showing, and its motion for permanent injunction is GRANTED, subject to the  
16 following: in its reply, Cyntec represents that it is willing to revise its proposed injunction  
17 to create a narrow exception allowing for the conveyance of safety information. See Dkt.  
18 307 at 9. The court thus directs Cyntec to submit a proposed revised injunction  
19 incorporating such an exception. Thus, while Cyntec’s motion for permanent injunction is  
20 granted based on the showing made in the papers, the injunction remains subject to the  
21 court’s approval of the form of the proposed injunction. Cyntec shall have **fourteen (14)**  
22 **days** from the date of this order to submit a revised proposed injunction.

23 B. Enhanced damages

24 1. Legal standard

25 Courts have the discretion to “increase the damages up to three times the amount  
26 found or assessed.” 35 U.S.C. § 284. “The paramount determination in deciding to grant  
27 enhancement and the amount thereof is the egregiousness of the defendant's conduct  
28 based on all the facts and circumstances.” Read Corp. v. Portec, Inc., 970 F.2d 816,  
826-27 (Fed. Cir. 1992), abrogated in part on other grounds by Markman v. Westview

1 Instruments, Inc., 517 U.S. 370 (1996). The Read court set forth the following factors for  
2 courts to consider when deciding whether to award enhanced damages:

- 3 (1) whether the infringer deliberately copied the ideas or design of another,
- 4 (2) whether the infringer, when he knew of the other's patent protection,  
5 investigated the scope of the patent and formed a good-faith belief that it was  
6 invalid or that it was not infringed,
- 7 (3) the infringer's behavior as a party to the litigation,
- 8 (4) defendant's size and financial condition,
- 9 (5) closeness of the case,
- 10 (6) duration of defendant's misconduct,
- 11 (7) remedial action by the defendant,
- 12 (8) defendant's motivation for harm, and
- 13 (9) whether defendant attempted to conceal its misconduct.

14 Read, 970 F.2d at 826; see also SRI Int'l, Inc. v. Cisco Systems, Inc., 14 F.4th 1323,  
15 1330 (Fed. Cir. 2021) (citing and applying the Read factors).

## 16 2. Analysis

17 As to factor (1), Cyntec argues that Chilisin deliberately copied its design, pointing  
18 to trial exhibits showing that Chilisin sought to “completely match Cyntec characteristics.”  
19 See Dkt. 288-1 (citing, e.g., Trial Ex. 56, 57, 120, 122, 1363). Chilisin argues that “there  
20 has been no copying” because there is no evidence that Chilisin tested the powders in  
21 Cyntec's products. See Dkt. 294-6 at 27. Because Chilisin does not meaningfully rebut  
22 Cyntec's evidence of copying, the court concludes that the first Read factor weighs in  
23 favor of enhanced damages.

24 As to factor (2), Cyntec argues that Chilisin offered no evidence of any good faith  
25 belief of non-infringement or invalidity. See Dkt. 288-1 at 22-23. Cyntec argues that  
26 there is no evidence in the record that Chilisin conducted any investigation into Cyntec's  
27 concerns. Id. at 22. Chilisin argues that it had a good faith belief of non-infringement and  
28 invalidity, pointing to the arguments made in its motion for judgment as a matter of law  
and motion for a new trial. The court concludes that the second Read factor does not

1 weigh either for or against enhanced damages.

2 As to factor (3), Cytotec argues that “Chilisin advanced meritless invalidity  
3 defenses that needlessly consumed the court’s time and drove up litigation costs.” See  
4 Dkt. 288-1 at 23-24. Specifically, Cytotec points to Chilisin’s indefiniteness defense,  
5 which was emphasized in pretrial papers and mentioned in Chilisin’s opening statement,  
6 but “entirely abandoned” in its trial presentation. Id. Chilisin argues that it “litigated in  
7 good faith.” See Dkt. 294-6 at 28-29. With regard to indefiniteness, Chilisin argues that  
8 “even up through pretrial, the parties were still arguing over the meaning of the ‘by means  
9 of limitation” and “[i]ndefiniteness was part of that claim construction dispute.” Id.  
10 Chilisin contends that “[o]nce the court issued its construction, indefiniteness became  
11 moot.” Id.

12 The court concludes that the third Read factor weighs in favor of enhanced  
13 damages. Chilisin’s argument regarding indefiniteness highlights the unreasonableness  
14 of its own conduct. Chilisin argues that “once the court issued its construction,  
15 indefiniteness became moot,” but even though the court issued its construction in June  
16 2019 and its summary judgment order in September 2020, Chilisin continued to litigate  
17 the issue through the start of trial. See, e.g., Dkt. 83, 170. In fact, the court specifically  
18 noted that Chilisin had attempted, on multiple occasions, to reopen claim construction.  
19 See Dkt. 192. Ahead of a status conference in May 2021, Chilisin filed a case  
20 management statement asking for an additional claim construction hearing on the “open  
21 claim construction issue” regarding the “by means of” term. See Dkt. 181. At the status  
22 conference, the court made clear that there was no “open claim construction issue,” as  
23 the claims were construed in May 2019, and denied any request to reopen claim  
24 construction. See Dkt. 183. The court then directed the parties to submit a proposed jury  
25 instruction on the “by means of” term, but rather than submit a jury instruction, “Chilisin  
26 submitted a newly-proposed claim construction.” See Dkt. 192 at 1. The court stated  
27 that “Chilisin’s attempt to reopen claim construction is untimely and directly contrary to  
28 the court’s instructions at the case management conference.” Id. at 1-2. Overall, the

1 court concludes that Chilisin’s litigation conduct with regard to indefiniteness and  
2 construction of the “by means of” term is sufficient to weigh the third Read factor in favor  
3 of enhanced damages.

4 As to factor (4), Cytotec argues that “Chilisin’s size and financial condition are  
5 sufficiently large to favor enhanced damages.” See Dkt. 288-1 at 24-25. Cytotec argues  
6 that Chilisin’s own documents show that its annual revenue exceeds \$252 million. Id. at  
7 25 (citing Trial Ex. 129). Chilisin’s opposition brief does not address this Read factor.  
8 The court concludes that the fourth Read factor weighs in favor of enhanced damages.

9 As to factor (5), Cytotec argues that “this case was not close.” Cytotec argues that  
10 “the jury ultimately rejected each of Chilisin’s non-infringement defenses, found Chilisin to  
11 be a willful infringer, and awarded Cytotec the full measure of damages requested.” See  
12 Dkt. 288-1 at 25. Chilisin argues that this was a close case, pointing to its Rule 50(b)  
13 motion for judgment as a matter of law and Rule 59 motion for a new trial. See Dkt. 294-  
14 6 at 29. The court concludes that the fifth Read factor weighs in favor of enhanced  
15 damages.

16 As to factors (6) and (7), Cytotec argues that “despite the duration of misconduct,  
17 Chilisin has taken no remedial action.” See Dkt. 288-1 at 25-26. In particular, Cytotec  
18 points to trial exhibits showing that Chilisin continued to copy Cytotec’s technology even  
19 after learning of Cytotec’s patents and continued to sell the infringing products at least  
20 through trial. See Trial Ex. 57, A-808. Chilisin argues that it investigated Cytotec’s claims  
21 after receiving the December 2017 notice letter, and suggests that it did not need to stop  
22 selling the accused products because “Chilisin had been selling those products for nearly  
23 three years before Cytotec sent its letter.” See Dkt. 294-6 at 29-30. Because Cytotec’s  
24 evidence shows that, even after this suit was filed, Chilisin continued to make their  
25 products “exactly the same” as Cytotec’s, with “no room for negotiation because the client  
26 prefers Cytotec,” the court concludes that the sixth and seventh Read factors weigh in  
27 favor of enhanced damages. See Trial Ex. 57 at 2.

28 As to factor (8), Cytotec argues that Chilisin intended to harm Cytotec. See Dkt.

1 288-1 at 26-27. Cytotec again points to trial evidence showing that Chilisin deliberately  
2 copied Cytotec's products and sought to undercut Cytotec on price. Id. (citing Trial Ex. 57,  
3 105, 107, 117, 132, 1363). Chilisin argues that there is no evidence that Chilisin intended  
4 to harm Cytotec. See Dkt. 294-6 at 30. Based on the evidence cited by Cytotec, the court  
5 concludes that the eighth Read factor weighs in favor of enhanced damages.

6 Cytotec's motion does not address the ninth and final Read factor.

7 Having considered the Read factors, the court concludes that the totality of the  
8 circumstances weigh in favor of enhanced damages. In particular, as mentioned above,  
9 the evidence showing that Chilisin sought to deliberately copy Cytotec's products as  
10 closely as possible even well after the filing of this lawsuit. See, e.g., Trial Ex. 57.  
11 Accordingly, Cytotec's motion for enhanced damages is GRANTED, and the court will  
12 multiply all applicable damages by a factor of three.

13 However, there is an issue with the amount of trebled damages sought by Cytotec.

14 The jury awarded Cytotec \$1,552,493 in lost profits and \$320,463 in reasonable  
15 royalties, for a total damages award of \$1,872,596. See Dkt. 269 at 4. The amount of  
16 the jury's award was the same as that in the summary of damages submitted at trial by  
17 Cytotec's damages expert. See Trial Ex. 1342. Cytotec's expert's summary was in turn  
18 based on calculations of direct sales damages and indirect sales damages. See Trial Ex.  
19 1300, 1301, 1343, 1344.

20 Cytotec's direct sales damages calculations for both lost profits and reasonable  
21 royalty include damages going back to November 2016. See Trial Ex. 1300, 1301.  
22 However, as discussed above, Cytotec conceded during trial that its willfulness claim is  
23 limited to any infringement after Chilisin's receipt of Cytotec's notice letter in December  
24 2017. See Trial Tr., vol. 5 (Dkt. 260) at 872:13-14 ("The willfulness claim, Your Honor,  
25 we would limit to after receipt of the notice letter."). Thus, to the extent that Cytotec's  
26 motion seeks trebling of the entire jury damages award of \$1,872,596, including damages  
27 from before December 2017, that request goes beyond the scope of Cytotec's willfulness  
28 claim.

1           Accordingly, while Cyntec’s motion for enhanced damages is GRANTED, and the  
2 court will apply a multiplier of three to a subset of the awarded damages, the court will not  
3 apply the multiplier to the entire amount awarded by the jury, given that no enhanced  
4 damages are appropriate for the time period before notice to Chilisin in December 2017.  
5 Instead, the court has reviewed the damages breakdowns submitted as trial exhibits, and  
6 has determined that \$1,840,144 represents the amount of damages from 2018 onwards.  
7 See Trial Ex. 1342 (citing Trial Ex. 1300, 1301, 1343, 1344). Applying the multiplier of  
8 three to only that amount, then adding back the non-trebled damages, results in a total  
9 lost profits damages award of \$4,602,671 and a total reasonable royalties award of  
10 \$950,573, for a total damages award of \$5,553,244. The court therefore revises its prior  
11 judgment to reflect a total damages award of \$5,553,244.

12 Motion to seal (Dkt. 294)

13           Chilisin filed a motion to seal portions of its brief in opposition to Cyntec’s motion  
14 for permanent injunction and enhanced damages, and to seal three supporting exhibits.  
15 See Dkt. 294. Pursuant to Civil Local Rule 79-5, Cyntec filed a supporting declaration  
16 narrowing the request, arguing that only portions of one exhibit should be sealed, but that  
17 the remaining exhibits and the opposition brief need not be sealed. See Dkt. 302.

18           Because Cyntec does not seek sealing of the information in Chilisin’s opposition  
19 brief, the motion to seal is DENIED as to that request, and Chilisin shall file an  
20 unredacted version of the opposition brief on the public docket. As to the limited portion  
21 of Exhibit H for which Cyntec maintains a claim of confidentiality due to concerns about  
22 business competitors having access, the motion to seal is GRANTED.

23 **CONCLUSION**

24           For the reasons set forth above, Chilisin’s Rule 50(b) motion for judgment as a  
25 matter of law (Dkt. 285) is DENIED, Chilisin’s Rule 59 motion for a new trial (Dkt. 286) is  
26 DENIED, Cyntec’s motion for permanent injunction and for enhanced damages (Dkt. 288)  
27 is GRANTED subject to the court’s approval of a revised proposed injunction, and  
28 Chilisin’s motion to seal (Dkt. 294) is GRANTED in part and DENIED in part.

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As directed above, Cyntec is to submit a revised version of its proposed injunction within fourteen (14) days of the date of this order.

**IT IS SO ORDERED.**

Dated: May 6, 2022

          /s/ Phyllis J. Hamilton            
PHYLLIS J. HAMILTON  
United States District Judge