

UNITED STATES DISTRICT COURT
Northern District of Indiana
South Bend Division

HEARTLAND RECREATIONAL)	
VEHICLES, LLC,)	
Plaintiff,)	
)	CASE NO.: <u>3:08-cv-490</u>
v.)	
)	
FOREST RIVER, INC.,)	JURY DEMAND
Defendant.)	

FOREST RIVER’S MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO HEARTLAND’S MOTION FOR PROTECTIVE ORDER QUASHING SUBPOENAS TO NON-PARTIES [DOCKET#57]

In its Reply in Support of its Motion for Protective Order (Docket Entry 71), Heartland asserts for the first time a new ground for granting the motion to quash, namely that Forest River “already has evidence clearly identifying who owns the ‘650 patent,” attaches a copy of the 2005 assignment of the patent, and presents the deposition testimony of Catterton Partners asserting that Heartland Recreational Vehicles, LLC is the owner of the patent (Reply at pages 2-3). However, since receiving that Reply, Forest River has discovered the attached Patent Collateral Agreement, executed by Heartland in 2008, which refers to a Security Agreement which contains another, later “assignment, mortgage, pledge and security interest in the patents” including the patent in this lawsuit (see the last paragraph of page 1 and Schedule A on the last page thereof). This new document contradicts the assertions of Heartland and the testimony of Catterton.

Forest River requests permission to file the attached sur-reply opposing these new grounds and explaining the relevance of the Patent Collateral Agreement in connection with the pending

motion. Forest River has sought the consent of Heartland to the filing of this motion, as indicated in the attached certificate under Rule 37, but that consent was denied. A proposed form of order is being sent concurrently to chambers.

Dated: November 12, 2009

Respectfully submitted,

s/Ryan M. Fountain

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Certificate of Service:

I certify that a copy of the foregoing document was served upon the Plaintiff in this case by depositing that copy with the United States Postal Service for delivery via First Class mail, postage pre-paid, on November 12, 2009, addressed for delivery to the following counsel for that party:

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s/Ryan M. Fountain

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