

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

HEARTLAND RECREATIONAL VEHICLES, LLC)	
)	
)	
Plaintiff,)	
)	Case No. 3:08-CV-490 RLM CAN
vs.)	
)	
FOREST RIVER, INC.)	
)	
Defendant.)	

HEARTLAND RECREATIONAL VEHICLES, LLC'S MOTION TO DISMISS CERTAIN FOREST RIVER COUNTERCLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION IN LIGHT OF REVISED COVENANT NOT TO SUE

Pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure, Heartland Recreational Vehicles, LLC ("Heartland") respectfully moves to dismiss Forest River, Inc.'s ("Forest River") counterclaims alleging invalidity, non-infringement, and unenforceability. Such claims are moot in light of Heartland's revised covenant not to sue Forest River for infringement of U.S. Patent No. 7,278,650 ("the '650 patent").

The grounds for this Motion are set forth more fully in the accompanying Memorandum in Support of Heartland Recreational Vehicles, LLC's Motion to Dismiss Certain Forest River Counterclaims for Lack of Subject Matter Jurisdiction in Light of Revised Covenant Not to Sue. The revised covenant not to sue, which addresses the deficiencies noted by the Court in its Opinion and Order of February 4, 2010, is filed as an attachment contemporaneously with Heartland's Memorandum.

WHEREFORE, Heartland respectfully requests that this court dismiss Forest River, Inc.'s declaratory judgment counterclaims involving validity, infringement, and unenforceability.

BAKER & DANIELS LLP

By: /s/ David P. Irmischer

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ATTORNEYS FOR PLAINTIFF,
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CERTIFICATE OF SERVICE

The undersigned counsel for plaintiff Heartland Recreational Vehicles, LLC, hereby certifies that a copy of the foregoing HEARTLAND RECREATIONAL VEHICLES, LLC'S MOTION TO DISMISS CERTAIN FOREST RIVER COUNTERCLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION IN LIGHT OF REVISED COVENANT NOT TO SUE was served upon the following, this 19th day of February, 2010 by operation of the Court's ECF System.

Ryan M. Fountain
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/s/ David P. Irmischer

David P. Irmischer