

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL NO. 14-14706-RWZ

EMSEAL JOINT SYSTEMS, LTD.

v.

MM SYSTEMS CORPORATION

JUDGMENT OF NON-INFRINGEMENT

April 18, 2018

ZOBEL, S.D.J.

The court hereby finds:

1. The patent in issue in this litigation is U.S. Patent No. 6,532,708 B1, titled “Expansion and Seismic Joint Covers,” and confirmed in part by Ex Parte Reexamination Certificate 6,532,708 C1, and in part by Ex Parte Reexamination Certificate 6,532,708 C2 (collectively, “the ’708 Patent”).

2. The asserted independent claims of the ’708 Patent are Claims 4 and 6, as amended (the “Asserted Claims”).

3. The accused products are MM Systems Corporation’s (“MM” or “MM Systems”) expansion joint systems, SHD, SHS, DSS and SSD (the “Accused Products”).

4. All Asserted Claims include the limitation “each layer of compressible foam sealant has a low modulus elastomeric sealant applied to the top surface thereof...”

5. In response to the parties’ motion to construe the claim limitation “low modulus elastomeric sealant” (the “Disputed Limitation”), the court held the Disputed Limitation to mean “[a] substance used to seal a surface or opening to prevent the passage of a liquid or gas, possessing a property of elasticity, and having at 100 percent elongation a psi of 60 or less.” See Docket # 109 (Claim Construction Order).

6. The Accused Products all bear an elastomeric sealant applied to the top surface of the compressible foam sealant. The Accused Products have an elastomeric sealant possessing a modulus at 100 percent elongation in excess of 60 psi.

7. The parties stipulate and agree that under the court’s construction of the Disputed Limitation, none of the Accused Products infringe the Asserted Claims.

8. This action and the disposition of Counts I (Patent Infringement) and II (Unjust Enrichment) of plaintiff’s First Amended Complaint (Docket # 75) fall within the scope of Fed. R. Civ. P. 54(b) because the case includes multiple claims and two, but not all, have been finally decided.

9. There is no just reason for delay of entry of judgment against plaintiff on Counts I and II at this time based upon the court’s Claim Construction Order. Final adjudication of these claims, which are all based upon alleged infringement of the ‘708 Patent, by appeal or otherwise, will expedite resolution of the matter.

Accordingly, it is ORDERED:

1. Pursuant to Fed. R. Civ. P. 54(b), that final judgment of non-infringement be entered against plaintiff on Counts I and II of plaintiff’s First Amended Complaint.

2. That during the pendency of any appeal of this Judgment, no further discovery or other action shall occur.

Upon the conclusion of any appeal to the United States Court of Appeals for the Federal Circuit and the United States Supreme Court, this court shall schedule a status conference to address any further proceedings necessary in light of the decision(s) on appeal.

April 18, 2018

DATE

/s/Rya W. Zobel

RYA W. ZOBEL
SENIOR UNITED STATES DISTRICT JUDGE