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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JET IMPORTS, LLC,

Plaintiff(s),

v.

HJC I, LLC,

Defendant(s).

2:11-CV-709 JCM (CWH)

ORDER

Presently before the court is defendant HJC I, LLC’s motion for partial summary judgment. (Docs. # 37 & 38). Plaintiff Jet Imports, LLC has responded. (Doc. # 41). Plaintiff failed to meet the deadline to file its response and subsequently filed a motion for an extension of time. (See doc. # 39). The next day plaintiff filed its response. The court, finding good cause, considers plaintiff’s response. Thus, plaintiff’s motion for an extension of time (doc. # 39) is denied as moot.

1. Factual Background

Plaintiff, Jet Imports LLC d/b/a Life Is Tennis makes and sells women’s tennis bags. These bags are patented under three patents; two design patents and a utility patent. The patent at issue in this motion, the utility patent, is patent number 7,395,930 B2 (patent ‘930) and was obtained in 2008.

In August 2008, Jet Imports, Inc.¹ assigned the patents to plaintiff and the assignment was recorded with the patent trademark office (PTO). Upon assignment, all confidential and proprietary information was transferred from Jet Imports, Inc. to plaintiff.

¹ Jet Imports, Inc. is not the same company as plaintiff, Jet Imports, LLC.

1 From March 2007 to September 2007, Jet Imports, Inc. hired Heather Combs as an office
2 manager. In this position, plaintiff claims Combs had access to and knowledge of Jet Imports, Inc.’s
3 business information. After leaving Jet Imports, Inc., Combs formed HJC I, LLC, defendant in this
4 matter. Defendant makes and sells women’s tennis bags. Plaintiff contends that defendant “has
5 designed, promoted, distributed, and sold certain tennis bags that utilize a design and functionality
6 that is virtually identical to Plaintiff’s patented designs.” (Doc. # 1, ¶ 17). Plaintiff notified defendant
7 of this alleged infringement and defendant continues to sell these bags.

8 On May 5, 2011, plaintiff brought this instant action against defendant for patent
9 infringement. The parties briefed claim construction issues for all three patents and came to an
10 agreement as the definitions for the relevant claims.² Following the briefing process, defendant filed
11 a motion for partial summary judgment arguing that patent ‘930 was invalid due to the obviousness
12 of several of the claims pursuant to 35 U.S.C. § 103. Plaintiff filed a response.

13 **2. Standard of Review**

14 The Federal Rules of Civil Procedure provide for summary adjudication when the pleadings,
15 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
16 show that “there is no genuine issue as to any material fact and that the movant is entitled to a
17 judgment as a matter of law.” FED. R. CIV. P. 56(a). A principal purpose of summary judgment is “to
18 isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24
19 (1986).

20 Where a moving party’s papers are insufficient to support a motion for summary judgment,
21 or reveal a genuine issue of material fact, summary judgment is inappropriate. *Martinez v. Stanford*,
22 323 F.3d 1178, 1182-83 (9th Cir. 2003). At summary judgment, a court’s function is not to weigh
23 the evidence and determine the truth, but to determine whether there is a genuine issue for trial. *See*
24 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to
25 be believed, and all justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence

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27 ² For the purposes of this motion, the court acknowledges the agreed construction for ‘930 claims
28 1, 2, 6, 10-15, and 19. (*See* doc. # 35, 2:35-12:27).

1 of the nonmoving party is merely colorable or is not significantly probative, summary judgment may
2 be granted. *See id.* at 249–50.

3 **3. Discussion**

4 Defendant filed a motion for partial summary judgment on the basis that the “subject matter
5 of claims 1, 2, 6, 10-15, and 19 of the ‘930 patent is taught or suggested by prior art and thus, these
6 claims are invalid as obvious.” (Doc. # 38, 3:24-25). The parties agree on the definitions of the
7 claims at issue in defendant’s motion for partial summary judgment. (*See docs.* # 33; 34, 1; 35, 2:13-
8 14).

9 Patent ‘930, as a utility patent, focuses on the function of the bags. Thus, the claims at issue
10 relate to the structure of the bags. Claim 1 shows an accessory compartment, an apex, a component
11 to close the accessory compartment, a racquet compartment, and a carrying strap. (Doc. #1-4, 34-35).
12 Claims 2, 6, 10, 13, 14, and, 19 are dependent on claim 1, meaning they incorporate all the
13 limitations of the base claim and incorporate a feature to those limitations. (Doc. # 1-4, 35-36).
14 Claim 2 shows a carrying strap with a support position, a padded portion, and loops coupling the
15 padded portion to the support position. Claim 6 shows the racquet compartment having a generally
16 truncated egg-shaped cross-section. Claim 10 shows a fence hook and a pocket to store the fence
17 hook. Claim 13 shows a zipper extending within portions of both the first sidewall and the second
18 sidewall. Claim 14 show a drawstring closure. Claim 19 shows a zipper extending from one side of
19 the bag, over the top of the bag, to the other side of the bag. Claims 11 and 12 show a cooler
20 compartment positioned in spaced relation to the racquet compartment of the bag with a pocket on
21 the strap. Lastly, claim 15 shows an accessory compartment, an apex, a component to close the
22 accessory compartment, a racquet compartment, and a carrying strap.

23 a. 35 U.S.C. § 103(b) – Invalidity for obviousness

24 “A patent shall be presumed valid” and “[t]he burden of establishing in-validity of a patent
25 or any claim thereof shall rest on the party asserting such invalidity.” 35 U.S.C. § 282. “Because
26 patents are presumed valid, a moving party seeking to invalidate a patent at summary judgment must
27 submit such clear and convincing evidence of facts underlying invalidity that no reasonable jury
28

1 could find otherwise.” *TriMed, Inc. v. Stryker Corp.*, 608 F.3d 1333, 1340 (Fed. Cir. 2010);
2 *Microsoft Corp. v. i4i Ltd. P’ship*, 131 S.Ct. 2238, 2246 (2011). “This burden is especially difficult
3 when the prior art was before the PTO examiner during prosecution of the application,” *Hewlett-*
4 *Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1467 (Fed. Cir. 1990), this burden extends to
5 references that are cumulative of those considered by the examiner, *Metabolite Laboratories, Inc.*
6 *v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1368 (Fed. Cir. 2004).

7 Obviousness is a question of law with underlying factual issues. *See KSR Int’l Co. v. Teleflex*
8 *Inc.*, 550 U.S. 398, 427 (2007). A patent shall not issue “if the differences between the subject matter
9 sought to be patented and the prior art are such that the subject matter would have been obvious at
10 the time the invention was made to a person having ordinary skill in the art to which said subject
11 matter pertains.” 35 U.S.C. § 103(a); *KSR*, 550 U.S. at 406–07. What a particular reference discloses
12 is a question of fact, as is the question of whether there was a reason to combine certain references.
13 *See McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1352 (Fed. Cir. 2001); *Para–Ordnance Mfg.,*
14 *Inc. v. SGS Imps. Int’l, Inc.*, 73 F.3d 1085, 1088 (Fed. Cir. 1995). Under the four-part test for
15 obviousness detailed in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966), the
16 court must consider (1) the scope and content of the prior art; (2) the difference between the prior
17 art and the claimed invention; (3) the level of ordinary skill in the art; and (4) any objective evidence
18 of nonobviousness. *See also, Transocean Offshore Deepwater Drilling, Inc. v. Maersk Contractors*
19 *USA, Inc.*, 617 F.3d 1296,1303 (Fed. Cir.2010); *see also Bayer Schering Pharma AG v. Lupin*
20 *Ltd.*, 2:10-CV-01166-KJD, 2012 WL 1080296, at *13 (D. Nev. Mar. 30, 2012).

21 An invention “composed of several elements is not proved obvious merely by demonstrating
22 that each of its elements was, independently, known in the prior art.” *KSR*, 550 U.S. at 418. Rather,
23 “it can be important to identify a reason that would have prompted a person of ordinary skill in the
24 relevant field to combine the elements in the way the claimed new invention does,” *id.*, although
25 such a reason need not be explicitly stated in the prior art, *see id.* at 419; *see also Duramed*
26 *Pharmaceuticals, Inc. v. Watson Laboratories, Inc.*, 413 F. App’x 289, 293 (Fed. Cir. 2011).

1 b. Analysis

2 i. *Level of ordinary skill*

3 Defendant argues that features of the ‘930 patent would have been obvious to one of ordinary
4 skill in the art. A determination of obviousness requires a factual finding of the level of ordinary skill
5 in the pertinent art, 35 U.S.C. § 103(a). *Graham*, 383 U.S. at 17. “Factors that may be considered
6 in determining the ordinary level of skill in the art include: 1) the types of problems encountered in
7 the art; 2) the prior art solutions to those problems; 3) the rapidity with which innovations are made;
8 4) the sophistication of the technology; and 5) the educational level of active workers in the field.”
9 *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 666-67 (Fed. Cir. 2000) (citing *Custom Accessories, Inc. v.*
10 *Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986).

11 Defendant has not provided the court with sufficient factual basis or argument to allow the
12 court to find the ordinary skill in the art. While defendant states that features of the ‘930 patent
13 would have been obvious to one of ordinary skill in the art, defendant does not provide *what* the
14 ordinary skill in the art actually is. Instead, defendant extrapolates a level of skill from prior art as
15 to particular elements challenged.

16 For example, defendant states that the ordinary skill in the art for the carrying strap in claim
17 1 is that “it was known to use hoops and loops which may be releasably, selectively, and
18 interchangeably connected to produce various configurations for the straps connected to the hooks.”
19 (Doc. # 38, 9:22-10:1). Further, defendant states that the ordinary skill in the art for claim 10 is that
20 “given the well know problem of hooks inadvertently snagging objects, a person of ordinary skill
21 in the art would know to provide a pocket to hold the fence hook to prevent the fence hook from
22 inadvertently snagging object.” (Doc. # 38, 12:1-3).

23 Defendant does not provide any factual basis beyond the referenced prior art. While prior art
24 is certainly relevant when determining the ordinary skill in the art, the court finds that without more,
25 defendant has fallen short of meeting its burden. Thus, defendant has not offered clear and
26 convincing evidence that a person of ordinary skill in the art would have thought patent ‘930
27 obvious.

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