



1 Plaintiff also seeks a declaration that it has not infringed any of the claims of the  
2 patents identified in the complaint, namely United States Patent No. 6,904,359, United States Patent  
3 No. 6,486,801, United States Patent No. 6,714,859, United States Patent No. 6,317,060, United States  
4 Patent No. 6,748,320, United States Patent No. 6,952,645, United States Patent No. 7,030,781, and  
5 United States Patent No. 7,400,970. Plaintiff argues that defendants' failure to file infringement  
6 contentions effectively precludes the assertion of any defense to plaintiff's request for  
7 declaratory judgment of non-infringement. Dkt. # 28 at 1-2. Defendants concede that they can  
8 no longer show infringement of these patents, but argue that the declaratory relief should be  
9 limited to those products or versions of products that were made and sold as of June 9, 2011, the  
10 day on which defendants asserted their counterclaims.

11 Defendants make no attempt to explain the import of that particular date. Plaintiff  
12 filed a complaint seeking a declaration that none of its existing products infringed any of the  
13 eight identified patents. Defendant pursued infringement claims as to five of those patents plus  
14 the '891 patent, effectively conceding that the other three patents were not infringed. See  
15 Polymer Indus. Prods. Co. v. Bridgestone/Firestone, Inc., 347 F.3d 935, 938 (Fed. Cir. 2003)  
16 (“[A] claim for a declaration of noninfringement makes a counterclaim for patent infringement  
17 compulsory.”). In its motion for summary judgment, plaintiff met its burden of showing that  
18 there is no genuine issue of fact precluding the requested declaratory relief. Defendants have not  
19 shown that the requested relief should be temporally constrained simply because they filed  
20 counterclaims that are now wholly unsupported. The Court therefore declares that, as of the date  
21 of this order, plaintiff “has not infringed, and is not infringing, any valid and enforceable claim”  
22 of the eight patents identified in the complaint. The Court offers no opinion regarding the  
23 infringement status of any new product plaintiff may make or offer for sale after entry of this  
24 order.  
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1 For all of the foregoing reasons, plaintiff's motion for summary judgment is  
2 GRANTED. Defendants' counterclaims are DISMISSED with prejudice. As of the date of this  
3 order, plaintiff has not infringed, and is not infringing, any valid and enforceable claim of the  
4 eight patents identified in the complaint. The Clerk of Court is directed to enter judgment in  
5 favor of plaintiff and against defendants.

6 Dated this 14th day of June, 2012.

7 

8 Robert S. Lasnik

9 United States District Judge