

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ABS GLOBAL, INC.,

Plaintiff,

ORDER

v.

14-cv-503-wmc

INGURAN, LLC,

Defendant.

The court is in receipt of plaintiff ABS Global and counter-defendant Genus PLC's recent motion for clarification of the court's order on summary judgment. (Dkt. #580.) The motion is GRANTED IN PART AND DENIED IN PART.

The motion is granted with respect to ST's breach of contract claims based on Section 16 and 18 of the parties' 2012 Agreement. As confirmed by ST in response to ABS's motion, ST's only remaining claim for breach of contract is for breach of the confidentiality provision in Section 16 of the 2012 Agreement based on ABS's use of ST's media protocols or quality control data. With respect to the enforceability of the covenant not to compete in Section 18 of the 2012 Agreement under Texas law, the court will address its scope and the possibility of reformation after trial, if necessary.

The motion also is granted as to the court's rulings on the '987 patent claims, as follows:

- On page 71 of the Opinion and Order after III.B.2, the ruling should read: ABS's motion for summary judgment of non-infringement on Claim 2 is DENIED.
- Also on page 71 after III.B.4, the ruling should read: ABS's motion for summary judgment on non-infringement on Claim 6 is GRANTED.

- On page 72 at III.D.1, the description of remaining claims should read:

- I. '987 Patent

- a. ST's claim that ABS infringed Claims 2, 5.
- b. ABS's invalidity defenses as to Claims 1-10.

The motion, however, is denied as to ABS's request for clarification of the court's rulings on the '092 patent. In the summary judgment opinion, the court stated that "ABS/Genus does not oppose ST's partial motion for summary judgment on infringement of claims . . . 40-46 of the '092 patent." (7/21/16 Op. & Order (dkt. #572) 48.) In its motion for clarification, ABS explains that while the parties did not dispute infringement of claims 40-46 at the time of filing of summary judgment and claims construction, ST's supplemental expert reports somehow revived ABS's claim of non-infringement of claim 40, and by extension claims 41-46. (ABS's Mot. for Clarification (dkt. #580) 4 (citing ST's experts' supplemental reports (dkt. #413, Exs. 5-6)).) ABS fails to direct the court to any specific portions of these lengthy supplemental reports or, more critically, explain how ST's experts could raise a defense of non-infringement by ABS. Furthermore, these expert reports were served in March and April 2016, two to three months before ABS submitted their proposed liability verdict, which also excludes Claims 40-46 of the '092 Patent from the infringement question. (*See* ABS's Proposed Verdict (dkt. #491) (not listing these claims in Question No. 11) (submitted 6/24/16).) Whether or not ABS now wishes to dispute infringement of Claims 40-46, that ship sailed, and it is simply too late to withdraw its prior concession.

ORDER

IT IS ORDERED that plaintiff ABS Global and counter-defendant Genus PLC's recent motion for clarification of the court's order on summary judgment (dkt. #580) is GRANTED IN PART AND DENIED IN PART as stated above.

Entered this 26th day of July, 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge