

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

CASE NO.: CV 15-02611 SJO (VBKx) DATE: May 5, 2016

TITLE: HeadBlade, Inc. v. Products Unlimited, LLC d/b/a Cobra Razors

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**PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE**

Victor Paul Cruz Not Present  
Courtroom Clerk Court Reporter

**COUNSEL PRESENT FOR PLAINTIFF: COUNSEL PRESENT FOR DEFENDANT:**

Not Present Not Present

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**PROCEEDINGS (in chambers): ORDER GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT [Docket No. 42]**

This matter is before the Court on Plaintiff HeadBlade, Inc.'s ("Plaintiff" or "HeadBlade") Motion for Default Judgment Against Defendant Products Unlimited, LLC d/b/a Cobra Razors ("Motion"), filed March 29, 2016. Defendant Products Unlimited, LLC d/b/a Cobra Razors ("Defendant" or "Products Unlimited") has not opposed the Motion within the time period prescribed by Local Rule 7-9, and has not appeared in this action since the withdrawal of its counsel on November 30, 2015. The Court found this matter suitable for disposition without oral argument and vacated the hearing set for May 9, 2016. See Fed. R. Civ. P. 78(b). For the following reasons, the Court **GRANTS** HeadBlade's Motion.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

HeadBlade alleges the following in its Complaint for Patent Infringement ("Complaint"), filed April 8, 2015. HeadBlade, a privately-held company incorporated under the laws of the State of California with its principal place of business in Gardena, California, is the owner of U.S. Patent Nos. 6,018,877 (the "'877 Patent") and 6,112,421 (the "'421 Patent") (together, the "Asserted Patents"), both of which are directed to razors and/or shavers for shaving a user's head and face. (Compl. ¶¶ 1, 8-11, ECF No. 1.) HeadBlade's razor products, which have been on sale since at least 1999 and which have won numerous design awards, embody the features of the Asserted Patents. (Compl. ¶¶ 12-13.)

Products Unlimited, a company incorporated under the laws of the State of Delaware with its place of business in Yorklyn, Delaware, is also a purveyor of shaving products that infringe claims of the Asserted Patents ("Cobra Razor Products"), including the CR1000 Razor. (Compl. ¶¶ 2, 15.) Products Unlimited ordered HeadBlade razor products embodying the features of the Asserted Patents from HeadBlade at or around the time Cobra Razors was developing the Cobra Razor Products. (Compl. ¶ 16.) On March 4, 2015, HeadBlade sent a letter to Products Unlimited regarding infringement of the Asserted Patents, and Products Unlimited responded to this letter by denying any infringement on March 13, 2015. (Compl. ¶ 17.)

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Products Unlimited, which was served on April 23, 2015, did not respond to HeadBlade's Complaint in the time period provided by Rule 12(a) of the Federal Rules of Civil Procedure, and HeadBlade asked the clerk of court to enter default against it on May 18, 2015. (See Proof of Service, ECF No. 11; Appl. for Clerk to Enter Default, ECF No. 12.) The clerk entered default on May 19, 2015, and on June 17, 2015, the Court issued a minute order requiring HeadBlade to show cause by no later than June 25, 2015 as to why the action should not be dismissed for lack of prosecution. (Default by Clerk ("First Default"), ECF No. 15; Order to Show Cause re Dismissal for Lack of Prosecution, ECF No. 16.) On June 24, 2015, the day before the expiration of this deadline, Products Unlimited made its first appearance, filing a motion to set aside the clerk's entry of default. (See Mot. to Set Aside Default, ECF No. 17.)

The Court granted Products Unlimited's motion to set aside the clerk's entry of default on July 16, 2015, and Cobra Razors filed its Answer on July 30, 2015. (Order Granting Mot. to Set Aside Default, ECF No. 25; Answer, ECF No. 26.) A scheduling conference was held on September 21, 2015. (See Minutes of Scheduling Conference, ECF No. 31.) On November 13, 2015, Kushner Carlson, PC, counsel for Products Unlimited, filed a motion to withdraw as counsel that was not opposed by HeadBlade, citing its client's inability and refusal to pay any further fees or costs. (Mot. to Withdraw as Counsel, ECF No. 32; Notice of Non-Opp'n to Mot. to Withdraw as Counsel, ECF No. 33.) The Court granted Kushner Carlson's withdrawal motion on November 30, 2015. (Order Granting Mot. to Withdraw as Counsel, ECF No. 34.)

On December 18, 2015, HeadBlade moved for an order continuing the claim construction hearing date and all prior scheduled dates, and asking the Court to require Products Unlimited to obtain counsel within 10 days. (See Mot. to Continue Court's Schedule, ECF No. 35.) The Court granted in part and denied in part this motion, continuing the requested deadlines but denying HeadBlade's request to order Products Unlimited to obtain new counsel; instead, the Court authorized HeadBlade to file a motion to strike Products Unlimited's Answer and subsequently move for the entry of default judgment. (Order Granting in Part & Den. in Part Mot. to Continue Court's Schedule, ECF No. 36.) HeadBlade moved to strike Products Unlimited's Answer on January 21, 2016, and the Court granted HeadBlade's motion on February 8, 2016. (Mot. to Strike Answer to Compl., ECF No. 37; Order Granting Pl.'s Mot. to Strike Def. Products Unlimited's Answer, ECF No. 38.) HeadBlade thereafter asked the clerk of court to enter default against Products Unlimited, and the clerk of court entered a second default against Products Unlimited ("Second Default") on March 1, 2016. (Second Req. for Clerk to Enter Default, ECF No. 39; Second Default by Clerk, ECF No. 40.) HeadBlade filed the instant motion on March 29, 2016. (Mot., ECF No. 42.)

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II. DISCUSSION

Obtaining a default judgment is a two-step process. First, the plaintiff must establish default by affidavit or otherwise, after which the court clerk enters default. Fed. R. Civ. P. 55(a). Second, the plaintiff must apply to the court for a default judgment if the plaintiff's claim is for an uncertain sum or a sum that cannot be made certain by computation. Fed. R. Civ. P. 55(b).

A. Procedural Requirements for Default Judgment

Pursuant to the Local Rules of the Central District of California, applications for default judgment must be accompanied by a declaration that includes the following information:

- (a) When and against what party the default was entered;
- (b) The identification of the pleading to which default was entered;
- (c) Whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative;
- (d) That the Servicemembers Civil Relief Act (50 U.S.C. App. § 521) does not apply; and
- (e) That notice has been served on the defaulting party, if required by [Fed. R. Civ. P.] 55(b)(2).

L.R. 55-1; see *also* Fed. R. Civ. P. 55(b)(2).

The Court finds that HeadBlade has satisfied each of these procedural requirements. First, the clerk of court entered the Second Default against Products Unlimited on March 1, 2016. (See Decl. Tamany V. Bentz in Supp. Mot. ("Bentz Decl.") ¶ 21, ECF No. 43; Second Default by Clerk.) Second, HeadBlade has identified the pleading against which default was entered. (See Bentz Decl. ¶¶ 16, 21; Second Default by Clerk.) Third, HeadBlade has declared that Products Unlimited is neither a minor nor an incompetent person, and has further declared that the Servicemembers Civil Relief Act does not apply. (Bentz Decl. ¶¶ 4-5.) Finally, HeadBlade has declared that notice of the instant Motion was served on Products Unlimited's principal on March 21, 2016. (Bentz Decl. ¶ 3.)

B. Substantive Requirements for Default Judgment

A district court's decision to grant or deny default judgment is discretionary. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In exercising its discretion, a court considers the following seven factors:

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- (1) The possibility of prejudice to the plaintiff;
- (2) The merits of plaintiff's substantive claim;
- (3) The sufficiency of the complaint;
- (4) The sum of money at stake in the action;
- (5) The possibility of a dispute concerning material facts;
- (6) Whether the default was due to excusable neglect; and
- (7) The strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

*Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Once the court clerk has entered a party's default, "the well-pleaded factual allegations of the complaint are taken as true, except for those allegations relating to damages." *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003) (citing *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987)). The Court considers each *Eitel* factor in turn.

1. Possibility of Prejudice to Plaintiff

Under the first *Eitel* factor, the Court examines whether a plaintiff will be prejudiced if the request for entry of default judgment is denied. *Eitel*, 782 F.2d at 1471. A plaintiff who is denied a default judgment and is subsequently left without other recourse for recovery has a basis for establishing prejudice. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

In this case, Products Unlimited has failed to defend itself in this patent infringement litigation, and therefore HeadBlade does not have any other recourse for recovery against this alleged infringer. Moreover, HeadBlade alleges that Products Unlimited has continued to sell infringing products on its website and through third-party online retailers since its Answer was stricken. (Bentz Decl., Exs. H-I.) Thus, Products Unlimited has continued to offer for sale products that allegedly "directly compete with HeadBlade's" products. (Decl. Todd Greene in Supp. Mot. ("Greene Decl.") ¶¶ 18-19, ECF No. 42.) The Court therefore finds that the first *Eitel* factors weighs in favor of granting default judgment against Products Unlimited.

2, 3. Merits of the Substantive Claim and Sufficiency of the Complaint

The second and third *Eitel* factors focus on the merits of a plaintiff's substantive claims and the sufficiency of the complaint. See *Eitel*, 782 F.2d at 1471. Together, "these two factors require that a plaintiff state a claim on which the plaintiff may recover." *PepsiCo*, 238 F. Supp. 2d at 1175. After default has been entered by the clerk, the Court takes the well-pleaded factual allegations of the complaint as true, except for those allegations relating to damages. See *TeleVideo Sys.*, 826 F.2d at 917-18.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

CASE NO.: CV 15-02611 SJO (VBKx)

DATE: May 5, 2016

In its Complaint, HeadBlade alleges that Products Unlimited's shaving products directly and indirectly infringe at least one claim of both Asserted Patents. (See *generally* Compl.) The Court now examines whether Novelty has sufficiently alleged facts that would permit recovery under these theories of liability.

a. Direct Patent Infringement

To prevail on its direct infringement claims, HeadBlade must show the following: (1) ownership of the Asserted Patents; (2) infringement of one or more claims of the Asserted Patents by "making, selling or using" devices embodying the patented inventions; (3) that HeadBlade has given Products Unlimited notice of its infringement; and (4) a demand for damages and/or injunctive relief. See *McZeal v. Spring Nextel Corp.*, 501 F.3d 1354, 1356-57 (Fed. Cir. 2007); see also 35 U.S.C. § 271(a) ("Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.").

HeadBlade has sufficiently alleged each of these elements. First, HeadBlade alleges that it is the owner of the Asserted Patents, and has corroborated these allegations through the declaration of HeadBlade's President and founder, Todd Greene, who is the named inventor of both Asserted Patents. (Compl. ¶ 11, Exs. A, B; Greene Decl. ¶ 1.) Second, HeadBlade alleges that Products Unlimited sells Cobra Razor Products that infringe the Asserted Patents, and has submitted declarations demonstrating that such products are sold through Products Unlimited's website, [www.cobrazors.com](http://www.cobrazors.com), and through third-party sites such as Amazon. (Compl. ¶¶ 15; Bentz Decl. ¶¶ 18-20, Exs. G-I.) HeadBlade's infringement contentions, which were served on Products Unlimited on October 5, 2015, specify that HeadBlade alleges infringement of claims 1 through 11 of the '877 Patent and claims 1 and 3 through 12 of the '421 Patent and provide claim charts mapping the elements of the asserted claims to features of the Cobra Razor Products. (Bentz Decl. ¶ 12, Ex. F.) Third, HeadBlade alleges that it provided notice to Products Unlimited regarding its infringement of the Asserted Patents through a letter sent on March 4, 2015, to which Products Unlimited responded on March 13, 2015. (Compl. ¶ 17.) Finally, HeadBlade has included in its prayer for relief a demand for permanent injunctive relief and for damages for Products Unlimited's infringement of one or more claims of the Asserted Patents. (Compl. p. 7.)

Thus, HeadBlade has pled facts sufficient to establish claims of direct infringement of the '877 and '421 Patents. Accordingly, *Eitel* factors 2 and 3 weigh in favor of granting default judgment against Products Unlimited as to these direct infringement claims.

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CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

CASE NO.: CV 15-02611 SJO (VBKx)

DATE: May 5, 2016

b. Indirect Patent Infringement

HeadBlade also alleges that Products Unlimited has both induced infringement of claims of the Asserted Patents in violation of 35 U.S.C. section 271(b) and contributorily infringed these claims in violation of 35 U.S.C. section 271(c). (See Compl. ¶¶ 21-22, 31-32.) The Court does not find that HeadBlade has sufficiently alleged these indirect infringement claims.

"To establish liability under section 271(b), a patent holder must prove that once the defendants knew of the patent, they 'actively and knowingly aid[ed] and abett[ed] another's direct infringement.'" *DSU Med. Corp. v. JMS Co., Ltd.*, 471 F.3d 1293, 1305 (Fed. Cir. 2006) (quoting *Water Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988)). In the case at bar, both of the Asserted Patents claim "[a] razor for selectively shaving the head and face of the user," with various elements. (Compl., Ex. A at cols. 4:53-6:8; Ex. B at cols. 5:33-6:32.) HeadBlade has provided no argument or authority indicating how Products Unlimited, which allegedly manufactures and sells the Cobra Razor Products, induces its customers or anyone else to infringe these "razor" claims. Thus, the Court does not find that HeadBlade has sufficiently alleged that Products Unlimited induces infringement of any claims of the Asserted Patents.

To prevail on a claim of contributory infringement, the patentee must show (1) that the defendant made and sold the accused instrumentality; (2) that such an instrumentality "has no substantial non-infringing uses;" (3) that the defendant "engaged in conduct . . . within the United States that contributed to another's direct infringement;" and (4) that another "engaged in an act of direct infringement." *DSU Med. Corp.*, 471 F.3d at 1303. For reasons similar to those stated above, the Court does not find that HeadBlade has sufficiently alleged that Products Unlimited contributorily infringed any of the claims of the Asserted Patents, as the claims are directed to the "razor" products themselves, and there are no factual allegations that the Cobra Razor Products are "articles which are only adapted to be used in a patented combination . . ." *Metro-Goldwyn-Mayer Studois, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 932 (2005) (quoting *New York Scaffolding Co. v. Whitney*, 224 F. 452, 459 (8th Cir. 1915)).

Because the Court finds HeadBlade's allegations regarding induced and contributory infringement to be inadequate, it concludes that *Eitel* factors 2 and 3 weigh against granting default judgment as to these indirect infringement claims.

4. Sum of Money at Stake

The fourth *Eitel* factor concerns the amount plaintiff requests in monetary damages. See *Eitel* 782 F.2d at 1471. Default judgment is disfavored where the sum of money at stake is too large or unreasonable in relation to the defendant's conduct. See *Truong Giang Corp. v. Twinstar Tea Corp.*, No. C 06-03594 JSW, 2007 WL 1545173, at \*12 (N.D. Cal. May 29, 2007) (citing *Totten v. Hurrell*, No. 00-2718, 2001 U.S. Dist. LEXIS 20259, at \*2 (N.D. Cal. Nov. 28, 2001)).

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

CASE NO.: CV 15-02611 SJO (VBKx)

DATE: May 5, 2016

HeadBlade seeks an award of \$500,000 in addition to \$1.50 for each sale of Products Unlimited's Cobra Razor Products, arguing that such an award is "reasonable under the circumstances and supported by the *Georgia Pacific* factors." (Mot. 8.) HeadBlade admits that this is "[a] significant sum of money," (Mot. 8), and the Court therefore finds that this factor weighs against granting default judgment.

5. Possibility of a Dispute Concerning Material Facts

The fifth *Eitel* factor examines the likelihood of a dispute between the parties regarding the material facts surrounding the case. *Eitel*, 782 F.2d at 1471-72. Although Products Unlimited filed an Answer in this case, the Answer was stricken after Products Unlimited refused to continue participating in this litigation after it broke ties with its former attorneys. (See Answer; Order Granting Pl.'s Mot. to Strike Def. Products Unlimited's Answer.) In any event, Products Unlimited admitted a number of allegations relevant to HeadBlade's claims, including that it sells and advertises its products within this judicial district and that it substantively responded to HeadBlade's letter regarding Products Unlimited's alleged infringement of the Asserted Patents. (See Answer ¶¶ 6, 17.) The remainder of Products Unlimited's Answer consisted primarily of blanket denials and a purported lack of knowledge and information regarding other allegations. (See Answer ¶¶ 10-16, 18-37.) Accordingly, this factor is neutral.

6. Possibility of Excusable Neglect

The sixth factor considers whether the defendant's default is the result of excusable neglect. *Eitel*, 782 F.2d at 1472. The possibility of excusable neglect is remote where the defendant is provided proper notice of the pending suit, but does not contact the court or the plaintiff in any manner. See *Philip Morris*, 219 F.R.D. at 501.

In this case, Products Unlimited received notice of the instant lawsuit, of its Second Default, and of the instant Motion. (See Proof of Service; Bentz Decl. ¶¶ 3, 16, 21.) Moreover, Products Unlimited filed an Answer in this case, but opted not to continue participating in this litigation after it broke ties with its former attorneys. (See Answer; Order Granting Mot. to Withdraw as Counsel; Order Granting Pl.'s Mot. to Strike Def. Products Unlimited's Answer.) As such, the possibility of excusable neglect is low, and this factor favors default judgment. See *PepsiCo*, 238 F. Supp. 2d at 1172.

7. Public Policy Favoring Decision on the Merits

The final *Eitel* factor requires the Court to consider the strong federal policy in favor of making decisions on the merits. *Eitel*, 782 F.2d at 1472. Courts have recognized, however, that "this preference, standing alone, is not dispositive." *PepsiCo*, 238 F. Supp. 2d at 1177 (citation omitted). Thus, the Court finds that this factor weighs slightly against granting default judgment.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

CASE NO.: CV 15-02611 SJO (VBKx)

DATE: May 5, 2016

8. Conclusion Regarding the Eitel Factors

On balance, the Court finds the *Eitel* factors to weigh in favor of granting default judgment against Products Unlimited.

C. Relief Sought

In its Complaint, HeadBlade prays for relief in the form of a permanent injunction, compensatory and enhanced damages, attorneys' fees, interest, and costs. (Compl. p. 7.) In the instant Motion, HeadBlade requests a permanent injunction, reasonable royalty and enhanced damages in the amount of \$500,000 plus \$1.50 per Cobra Razor Product, and attorneys' fees in an amount to be determined at a later date. (Mot. 10-25.) In support of this request, HeadBlade asserts that Products Unlimited's infringement has been "willful" and contends that this case is "exceptional" within the meaning of 35 U.S.C. section 285.

The Court considers the propriety of each category of requested relief in turn.

1. Permanent Injunction

The Patent Act authorizes injunctive relief "in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable." 35 U.S.C. § 283. Permanent injunctions may be granted by courts when ruling on motions for default judgment. *S.E.C. v. Worthen*, 98 F.3d 480, 484 (9th Cir. 1996) (affirming permanent injunction entered by default); *Parker W. Int'l, LLC v. Clean Up Am., Inc.*, No. C-08-2810 EMC, 2009 WL 2916664, at \*6-7 (N.D. Cal. Sept. 1, 2009).

To receive injunctive relief, a patentee must show: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Hynix Semiconductor Inc. v. Rambus Inc.*, 609 F. Supp. 2d 951, 965-66 (N.D. Cal. 2009) (Whyte, J.). In the instant case, HeadBlade has submitted a declaration from Todd Greene, HeadBlade's CEO who is also the inventor of the Asserted Patents, in which Mr. Greene declares that HeadBlade and Products Unlimited manufacture razors and replacement razor blades that directly compete with one another. (Greene Decl. ¶¶ 16-19.) Mr. Greene also declares that "[t]he effect on HeadBlade's market share resulting from the sale of Cobra Razors CR1000 product is difficult to quantify," in part because HeadBlade has not licensed either Asserted Patent and because that Mr. Greene is not aware of any license agreements entered into by Products Unlimited. (Greene Decl. ¶¶ 21-24.) Moreover, Mr. Greene avers that multiple HeadBlade customers have expressed to him the opinion that Products Unlimited is copying HeadBlade's razors, and has attached screen-captures of comments by Internet users both

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 15-02611 SJO (VBKx)

DATE: May 5, 2016

expressing this opinion and suggesting that they might try this copycat product, which Cobra Razors itself touted as being better priced. (Greene Decl. ¶ 16, Exs. D-F.) Although Mr. Greene does not declare that HeadBlade's reputation has been harmed as a result of either the similarity between its products and the Cobra Razor Products or Cobra Razors' Internet comments,<sup>1</sup> the Court finds that there is a substantial likelihood of such reputational harm. HeadBlade further declares that Products Unlimited has continued to offer its accused Cobra Razor Products for sale both on its own website, [www.cobrarazors.com](http://www.cobrarazors.com), and on third-party sites such as Amazon even after the Second Default was entered. (Bentz Decl. ¶¶ 17-20, Exs. G-I.) HeadBlade has also introduced evidence demonstrating that Products Unlimited recently assigned a patent directed to aspects of its Cobra Razor Products to a separate entity named Project Razor LLC, demonstrating a risk that Products Unlimited may continue to sell the accused instrumentalities through this entity. (Bentz Decl., Ex. P.)

Because (1) "[o]ne who elects to build a business on a product found to infringe cannot be heard to complain if an injunction against continuing infringement destroys the business so elected," *Broadcom Corp. v. Qualcomm, Inc.*, 543 F.3d 683, 704 (Fed. Cir. 2008); (2) "injunctions are tools for prospective relief designed to alleviate future harm," *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 862 (Fed. Cir. 2010); (3) "[d]irect competition in the same market is certainly one factor suggesting strongly the potential for irreparable harm without enforcement of the right to exclude," *Presidio Components, Inc. v. Am. Tech. Ceramics Corp.*, 702 F.3d 1351, 1363 (Fed. Cir. 2012); and (4) "[a plaintiff's] right to exclude is a fundamental tenet of patent law," *Edwards Lifesciences AG v. CoreValve, Inc.*, 699 F.3d 1305, 1314 (Fed. Cir. 2012), the Court finds that an injunction should issue in this case.

2. Reasonable Royalty Damages

The Patent Act provides that "[u]pon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court." 28 U.S.C. § 284. "The royalty may be based upon an established royalty, if there is one, or if not, upon the supposed result of hypothetical negotiations between the plaintiff and defendant." *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1554 (Fed. Cir. 1995). "The hypothetical negotiation requires the court to envision the terms of a licensing agreement reached as the result of a supposed meeting between the patentee and the infringer at the time the infringement began." *Id.*; see also *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1312 (Fed. Cir. 2011). A set of factors commonly known as the Georgia Pacific factors are relevant to a determination of a

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<sup>1</sup> Curiously, Mr. Greene instead declares that "[t]he HeadBlade razors to this day continue to enjoy commercial success," which tends to undercut the likelihood that HeadBlade has suffered an irreparable injury as a result of Products Unlimited's sales. (Greene Decl. ¶ 29.)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 15-02611 SJO (VBKx)

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reasonable royalty. *Unisplay S.A. v. Am. Elec. Sign Co.*, 69 F.3d 512, 517 n.7 (Fed. Cir. 1995) (citing *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970)).

HeadBlade correctly acknowledges that several *Georgia-Pacific* factors are inapplicable given the absence of any licensing information and the lack of an established licensing policy on the part of HeadBlade. (See Mot. 16-17.) HeadBlade points, however, to correspondence between HeadBlade's counsel and Products Unlimited's counsel revealing that HeadBlade offered to license the Asserted Patents for a lump sum payment of \$500,000 and a \$1.50 per unit royalty—the reasonable royalty damages sought here—and that Products Unlimited replied by rejecting the offer but stating that it would be "open to entering in a license for a modest royalty." (Bentz Decl., Exs. D-E.) HeadBlade has also provided documentation revealing that Products Unlimited has offered the Cobra Razor Products for sale at \$18.99 per razor, and walks through an analysis using its own costs as an approximation to demonstrate that a \$1.50 per unit royalty would amount to less than 10% of the profit of each razor sold.<sup>2</sup> (See Mot. 21-22 [citing Bentz Decl., Ex. H; Greene Decl. ¶ 27].) HeadBlade also contends that "a lump sum payment of \$500,000 is reasonable in this case to account for future infringement and the willful nature of Products Unlimited's infringement." (Mot. 22.)

Although the Court concludes that HeadBlade has provided sufficient evidence as to why a \$1.50 per unit royalty is reasonable in this case to compensate HeadBlade for Products Unlimited's alleged infringement, it also finds that HeadBlade has failed to provide sufficient evidence or argument regarding why a \$500,000 lump sum royalty should be awarded, given willfulness is determined by the totality of the circumstances and must be proven by clear and convincing evidence. *Gustafson, Inc. v. Intersystems Indus. Prod., Inc.*, 897 F.2d 508, 510 (Fed. Cir. 1990). HeadBlade's contention that \$500,000 is reasonable in this case to account for future infringement" is squarely in conflict with HeadBlade's request for injunctive relief, which requires a showing that "remedies available at law, such as monetary damages, are inadequate to compensate for that injury." *Hynix*, 609 F. Supp. 2d at 965-66. Accordingly, the Court concludes that HeadBlade is entitled to a \$1.50 per unit royalty for Products Unlimited's sales of Cobra Razor Products.

3. Attorney's Fees and Costs

HeadBlade also requests that the Court find this case to be "exceptional" within the meaning of 35 U.S.C. section 285 and consequently award HeadBlade its reasonable attorneys' fees. "[A]n

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<sup>2</sup> The Court notes, however, that HeadBlade's "analysis" does not take into account a number of non-manufacturing costs, including distribution, research and development, and other fixed costs that would lessen the profitability of Products Unlimited's razors. Indeed, the Court is unaware of many products that have a profit margin of 89.5%.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 15-02611 SJO (VBKx)

DATE: May 5, 2016

'exceptional' case is simply one that stands out from others with respect to the [1] substantive strength of a party's litigating position . . . or the [2] unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014).

The Court agrees with HeadBlade that this case is "exceptional," as Products Unlimited's conduct while this litigation has been pending has been unreasonable. Notwithstanding being on notice of its alleged infringement before the filing of the operative Complaint, Products Unlimited has continued to advertise its allegedly infringing razor products online, both on its own website and through third-party websites. (See Bentz Decl. ¶¶ 17-20, Exs. G-I.) Products Unlimited has even used an alias on third-party websites to continue offering its products for sale, and has continued to prosecute its own patent applications while in default in the instant litigation. (Bentz Decl. ¶¶ 17-18, Exs. G, P.) Products Unlimited's founder has even assigned a pending patent application to an entity called Project Razor LLC, perhaps contemplating using this separate entity to continue selling infringing products. (Bentz Decl., Ex. P.) All of this conduct occurred after Products Unlimited filed its Answer after defaulting a first time, and later refused to continue cooperating with and paying its retained counsel, requiring that default be entered a second time. For these reasons, the Court finds this case to be "exceptional" within the meaning of 35 U.S.C. section 285, and the Court will accordingly award its reasonable attorneys' fees, to be determined after HeadBlade submits a separate motion for attorneys' fees.<sup>3</sup>

III. RULING

For the foregoing reasons, **IT IS HEREBY ORDERED** that:

1. Plaintiff HeadBlade, Inc.'s Motion for Default Judgment Against Defendant Products Unlimited, LLC d/b/a Cobra Razors [Docket No. 42] is **GRANTED**;
2. Effective as of the date this default judgment and permanent injunction is entered by the Court and continuing until the expiration of U.S. Patent Nos. 6,018,877 and 6,112,421 ("HeadBlade Patents"), Products Unlimited, LLC d/b/a Cobra Razors and its subsidiaries, affiliates, officers, directors, agents, servants, employees, successors, and assigns, and all other persons and organizations in active concert or participation with it, including, *inter alia*, Project Razor LLC, shall be permanently **RESTRAINED AND ENJOINED** from engaging in any of the following activities:
  - a. making, using, selling, or offering for sale in the United States, or importing into the United States, razors under the trade name Cobra Razors, including 2-in-1 razors, such as the Head Shaving Razor CR1000, or any razor that is

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<sup>3</sup> The Court cautions HeadBlade when drafting its motion for attorneys' fees that the Court will not compensate it for work performed that was not required to prevail in this litigation.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 15-02611 SJO (VBKx)

DATE: May 5, 2016

substantially the same and infringes any of the claims of the HeadBlade Patents;

- b. otherwise directly infringing any of the claims of the HeadBlade Patents; and
  - c. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) and (b), above;
3. Products Unlimited, LLC d/b/a Cobra Razors is **ORDERED** to pay to HeadBlade, Inc. a \$1.50 per unit royalty on all products sold by it that infringe one or more claims of the HeadBlade Patents, plus prejudgment and post-judgment interest at a rate of 10% per annum from the date of this judgment until HeadBlade's damages are paid in full;
  4. Products Unlimited, LLC d/b/a Cobra Razors is **ORDERED** to pay to HeadBlade, Inc. its reasonable attorneys' fees in an amount to be determined after HeadBlade's forthcoming motion for attorneys' fees has been submitted and reviewed by the Court; and
  5. The Clerk of the Court is directed to enter judgment in accordance with this Order, which shall constitute a final order pursuant to Federal Rule of Civil Procedure 54. The Court retains jurisdiction over this Final Judgment for the purpose of ensuring compliance with the terms hereof.

IT IS SO ORDERED.