

¶¶ 4, 5, 13.) Specifically, Plaintiff alleges that Defendant sells filters bearing Model Nos. RFC1700A and RFC0800A that infringe claims 1 and 4 of the '894 Patent. (Compl. ¶¶ 14–15.)

Defendant was personally served with a copy of the Complaint on November 5, 2015. (Dkt. No. 12-1, App. 77.) Nonetheless, Defendant made no answer or appearance in this case. On January 6, 2016, the Clerk entered default against Defendant. (Dkt. No. 10.) Subsequently, on June 7, 2016, Plaintiff filed its Motion for Entry of Default Judgment and Permanent Injunction and Attorney Fees. (Dkt. No. 12.) The Court held a hearing regarding Plaintiff's Motion on August 31, 2016.

II. Legal Standard

Federal Rule of Civil Procedure 55 governs the procedural requirements related to the entry of default and default judgment. Although default judgments are generally disfavored, the policy against default judgments is “counterbalanced by considerations of social goals, justice and expediency, a weighing process that lies largely within the domain of the trial judge’s discretion.” *Wooten v. McDonald Transit Associates, Inc.*, 788 F.3d 490, 496 (5th Cir. 2015) (quoting *In re Chinese–Manufactured Drywall Prods. Liab. Litig.*, 742 F.3d 576, 594 (5th Cir. 2014)). A default judgment becomes appropriate “when the adversary process has been halted because of an essentially unresponsive party.” *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass’n*, 874 F.2d 274, 276 (5th Cir. 1989) (quoting *H.F. Livermore Corp. v. Aktiengesellschaft Gebruder Loepfe*, 432 F.2d 689, 691 (D.C. Cir. 1970)).

A defaulting defendant “admits the plaintiff’s well-pleaded allegations of fact . . . and is barred from contesting on appeal the facts thus established.” *Nishimatsu Const. Co. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). However, a defaulting defendant “is not held to

admit facts that are not well-pleaded or to admit conclusions of law.” *Wooten*, 788 F.3d at 496 (quoting *Nishimatsu Const. Co.*, 515 F.2d at 1206). Thus, mere default by a defendant does not necessarily warrant a default judgment, as a default is not “an absolute confession by the defendant of his liability and of the plaintiff’s right to recover.” *Nishimatsu Const. Co.*, 515 F.2d at 1206. Instead, a plaintiff’s complaint must supply “an adequate foundation” for the default judgment. *Wooten*, 788 F.3d at 497. To determine whether a complaint is “well-pleaded” in the default judgment context such that it serves as a sufficient foundation for a default judgment, the complaint must provide the defendant with “fair notice” of the claim. *Wooten*, 788 F.3d at 498–99. However, the allegations in the complaint need not be sufficient to survive a motion to dismiss under Rule 12. *Wooten*, 788 F.3d at 498 n.3 (“[A] defendant ordinarily must invoke Rule 12 in order to avail itself of that rule’s protections. . . . Accordingly, as a default is the product of a defendant’s *inaction*, we decline to import Rule 12 standards into the default-judgment context.”).

When determining whether to grant a motion for default judgment, courts in this Circuit consider relevant factors, including “whether material issues of fact are at issue, whether there has been substantial prejudice, whether the grounds for default are clearly established, whether the default was caused by a good faith mistake or excusable neglect, the harshness of a default judgment, and whether the court would think itself obliged to set aside the default on the defendant’s motion.” *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998).

III. Default Judgment Analysis

Default judgment against Defendant is appropriate in this case. Plaintiff, in its Complaint, alleges sufficient facts to provide Defendant with “fair notice” of the claim against him. *See Wooten*, 788 F.3d at 498–99 (noting that a complaint need only provide “fair notice” to be

sufficient to support a default judgment). Plaintiff alleges that it owns the entire right to the '894 Patent (Compl. ¶ 11) and that Defendant sells replacement water filters that infringe claims 1 and 4 of that patent (Compl. ¶¶ 13–15). Plaintiff further alleges that Defendant was advised in writing of his infringing activity, given a copy of the '894 Patent, encouraged to consult with legal counsel, and asked to cease and desist the infringing conduct. (Compl. ¶¶ 16–17.) As such, Plaintiff alleges that Defendant's infringement was willful. (Compl. ¶ 20.) Taken as true, the well-pleaded facts alleged in the Complaint suffice to establish a claim of willful patent infringement.

Based on Defendant's willful patent infringement, the Court finds it appropriate to enter default judgment against Defendant. First, no material issues of fact are at issue in this case because the well-pleaded allegations regarding Defendant's liability are taken as true. *See Frame v. S-H, Inc.*, 967 F.2d 194, 205 (5th Cir. 1992) (“Unlike questions of actual damage, which must be proved in a default situation, conduct on which liability is based may be taken as true as a consequence of the default.”). Second, as discussed above, the grounds for default judgment have been established. Defendant was personally served, yet did not appear to defend himself against Plaintiff's allegations. Third, the record presents no evidence that Defendant's default was caused by a good faith mistake or excusable neglect. Fourth, Plaintiff has suffered substantial prejudice because Defendant's failure to appear has effectively halted the adversary process by which Plaintiff seeks to vindicate its rights. Fifth, any potential harshness of a default judgment against Defendant is mitigated by the fact that Plaintiff seeks only an injunction, rather than monetary damages for Defendant's infringement. Finally, the Court is not aware of any facts that would cause the Court to set aside a default judgment if Defendant so moved. Accordingly, when

considering the relevant factors, the Court finds that Plaintiff's request for default judgment should be **GRANTED**.

IV. Relief Sought

Although Plaintiff's Complaint initially sought monetary damages (Dkt. No. 1, at 5), Plaintiff no longer seeks monetary relief. (Dkt. No. 12 at 5 n.2.) Instead, Plaintiff's Motion requests a permanent injunction, costs, and attorneys' fees. (Dkt. No. 12.)

a. Injunctive Relief

The Patent Act provides that in cases of patent infringement a court "may grant injunctions 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 (2012). To obtain injunctive relief, Plaintiff must demonstrate: "(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." *eBay v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

Having considered the evidence presented by Plaintiff, the Court finds that Plaintiff has satisfied its burden under the four-factor *eBay* test. As to the first factor, Plaintiff will suffer irreparable harm if a permanent injunction does not issue in this case. "Price erosion, loss of goodwill, damage to reputation, and loss of business opportunities are all valid grounds for finding irreparable harm." *Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012). In addition to loss of market share (Dkt. 12 at 12), Plaintiff has also suffered price erosion due to Defendant's sales of the infringing filters at a substantially lower price point. This price erosion

has caused Plaintiff's trade partners to "express[] concern to Whirlpool about the economic benefit of continuing to sell genuine filters, such as the Whirlpool Filters, when cheaper, copycat products are so readily-available." (Dkt. 12-1, App. 27, ¶ 19.) Allowing Defendant to continue selling the infringing products would effectively force Plaintiff to compete against a direct competitor despite that competitor's infringement of Plaintiff's patents. This is the type of irreparable harm that, when considered along with the other *eBay* factors, warrants a permanent injunction.

As to the second *eBay* factor, the Court finds that remedies available at law are inadequate to compensate for the injury suffered by Plaintiff. Despite being personally served with Plaintiff's Complaint, Defendant failed to make an appearance in this case and instead continued to sell water filters that infringe Whirlpool's patents. (Dkt. No. 12 at 5.) See *Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1155 (Fed. Cir. 2011) (finding a permanent injunction appropriate when there was "no reason to believe that [defendant] will stop infringing, or that the irreparable harms resulting from its infringement will otherwise cease, absent an injunction"). Moreover, as discussed above, Plaintiff has suffered loss of market share, price erosion, and an inability to exclude others from practicing its patents. These are harms money damages cannot remedy in this case. Also, money damages would not adequately compensate Plaintiff because, due to Defendant's failure to appear in this case, there is no indication as to whether Defendant (an individual) could satisfy a money judgment if one were awarded. See *Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1369 (Fed. Cir. 2013) (noting that "an infringer's inability to pay a judgment . . . may demonstrate the inadequacy of damages").

The balance of hardships tips in Plaintiff's favor as well. As noted above, Plaintiff has suffered the irreparable injury of loss of market share, price erosion, and the loss of the right to

exclude as a result of Defendant's infringement. These injuries would continue if the Court does not issue a permanent injunction. Although such an injunction would significantly impair and possibly destroy Defendant's business, that alone cannot justify denial of an injunction. *See Windsurfing Int'l Inc. v. AMF, Inc.*, 782 F.2d 995, 1003 n.12 (Fed. Cir. 1986) (“[T]hat an injunction might therefore put [defendant] out of business, cannot justify denial of that injunction. One 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.”).

Finally, the public interest would not be disserved by a permanent injunction against Defendant. Rather, a permanent injunction would serve the public interest in maintaining a strong patent system. *Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 647 (Fed. Cir. 2015), cert. denied, 136 S. Ct. 2522 (2016) (noting that “the public interest nearly always weighs in favor of protecting property rights in the absence of countervailing factors, especially when the patentee practices his inventions”). As such, this factor also weighs in favor of issuing a permanent injunction in this case. Thus, Plaintiff's request for a permanent injunction against Defendant is **GRANTED**.

b. Attorneys' Fees

Under 35 U.S.C. § 285, the Court has discretion to award attorneys' fees and reasonable litigation expenses to a prevailing party in “exceptional” cases. An exceptional case is one that “stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated.” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014). District courts have discretion to consider the totality of the circumstances surrounding a particular case when determining whether to shift fees. *See id.* Since the decision in *Octane*

Fitness, district courts have come to different conclusions regarding awarding attorneys' fees in cases of default. *Compare High Tech Pet Prod., Inc. v. Shenzhen Jianfeng Elec. Pet Prod. Co.*, No. 6:14-CV-759-ORL-22TB, 2015 WL 926023, at *2 (M.D. Fla. Mar. 4, 2015) (finding a Lanham Act case "exceptional" and awarding fees in the default judgment context where there was a "significant disparity of the merits of the parties' respective positions" based on the Complaint) and *Ceiva Logic Inc. v. Frame Media Inc.*, No. SACV 08-00636-JVS, 2014 WL 7338840, at *4 (C.D. Cal. Dec. 19, 2014) (awarding attorneys' fees under 35 U.S.C. § 285 against a defaulting defendant where willful patent infringement was alleged in the Complaint), *with RCI TM Corp. v. R & R Venture Grp., LLC*, No. 6:13-CV-945-ORL-22, 2015 WL 668715, at *11 (M.D. Fla. Feb. 17, 2015) (holding that a Lanham Act case was not "exceptional" even though the Defendants willfully ignored demand letters and the Complaint).

Although Defendant, by defaulting, admits willful infringement, the Court nonetheless finds that based on the totality of the circumstances, an award of attorneys' fees is not appropriate in this case. A defendant's mere failure to appear in a case does not warrant fee shifting. *See RCI TM Corp. v. R & R Venture Grp., LLC*, No. 6:13-CV-945-ORL-22, 2015 WL 668715, at *11 (M.D. Fla. Feb. 17, 2015) (holding that even though defendants acted willfully in ignoring demand letters and the Complaint, "making a conscious choice to default is not enough to take this case out of the run of the mill category"). Moreover, the additional arguments put forth by Plaintiff are insufficient in this Court's view to raise this to the level of an "exceptional" case. As such, Plaintiff's request for attorneys' fees is **DENIED**.

c. Costs

Pursuant to Fed. R. Civ. P. 54(d)(1), and 28 U.S.C. § 1920, a prevailing party is entitled to recover taxable costs. To be a prevailing party in patent litigation, “one must ‘receive at least some relief on the merits,’ which ‘alters . . . the legal relationship of the parties.’” *Inland Steel Co. v. LTV Steel Co.*, 364 F.3d 1318, 1320 (Fed. Cir. 2004) (quoting *Former Employees of Motorola Ceramic Prods. v. United States*, 336 F.3d 1360, 1364 (Fed. Cir. 2003)). Under that definition, Plaintiff is a prevailing party. As such, Plaintiff’s request for costs is **GRANTED** and Plaintiff is **ORDERED** to submit a bill of costs.

V. Conclusion

For the foregoing reasons, Plaintiff’s Motion for Entry of Default Judgment and Permanent Injunction and Attorney Fees (Dkt. No. 12) is **GRANTED-IN-PART** and **DENIED-IN-PART**. Pursuant to Rules 55 and 58 of the Federal Rules of Civil Procedure, the Court enters this Final Judgment by Default. Defendant has not appeared or made any responsive pleading in this case, and the Clerk has entered default (Dkt. No. 10). Therefore, Defendant is **ADJUDGED** to willfully infringe Plaintiff’s United States Patent No. 7,000,894.

It is, therefore, **ORDERED** that Plaintiff Whirlpool Corporation shall recover from Defendant Ahmet Matt Ozcan d/b/a Hessla Plaintiff’s costs of Court, including post-judgment interest calculated pursuant to 28 U.S.C. § 1961, for which let execution issue if not timely paid.

It is further **ORDERED** that Defendant Ahmet Matt Ozcan, his subsidiaries, successors, assigns, officers, directors, agents, servants, employees, attorneys, and persons in active concert or participation with them (including any affiliated entities), are hereby restrained and enjoined, pursuant to Federal Rule of Civil Procedure 65(d) and 35 U.S.C. § 283 from infringing, directly or

indirectly, claims 1 and 4 of the '894 Patent by offering to sell or selling the RFC0800A model and RFC1700A model replacement water filters or any replacement water filters that are not more than colorably different from those specifically listed here.

It is further **ORDERED** that all relief not specifically granted herein, including Plaintiff's request for attorneys' fees, is **DENIED**. All pending motions not previously ruled on are **DENIED AS MOOT**.

So ORDERED and SIGNED this 24th day of October, 2016.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE