

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CNH AMERICA LLC and BLUE LEAF)	
I.P., INC.,)	
)	
Plaintiffs,)	
v.)	C.A. No. 08-945 (GMS)
)	
KINZE MANUFACTURING, INC.,)	
)	
Defendant.)	

MEMORANDUM

I. INTRODUCTION

On December 16, 2008, plaintiffs CNH America LLC and Blue Leaf I.P., Inc. (collectively, “CNH”) filed the instant action against Jon E. Kinzenbaw (“Kinzenbaw”) and Kinze Manufacturing, Inc. (“Kinze”).¹ CNH alleges that agricultural equipment manufactured by Kinze infringes United States Patent Nos. 5,842,428 and 6,109,193. (*See* D.I. 1.) Presently before the court is CNH’s motion for a preliminary injunction (D.I. 5). For the following reasons, the court will deny CNH’s motion.

II. STANDARD OF REVIEW

In general, a party moving for preliminary injunctive relief must establish its right to preliminary injunction in light of four factors: (1) the movant has some likelihood of success on the merits of the underlying litigation; (2) immediate irreparable harm will result if the relief is not granted; (3) the balance of hardships to the parties weighs in the movant’s favor; and (4) the public’s interest is best served by granting the injunctive relief. *See, e.g., Abbott Labs. v. Andrx Pharm., Inc.*, 452 F.3d 1331, 1334 (Fed. Cir. 2006). In a case such as this where a patentee seeks a preliminary

¹ Kinzebaw has since been dismissed as a party (*see* D.I. 111), leaving Kinze as the sole defendant in this case.

injunction against an alleged infringer, if the defendant raises “a substantial question concerning either infringement or validity, i.e., assert[s] an infringement or invalidity defense that the patentee cannot prove ‘lacks substantial merit,’ the preliminary injunction should not issue.” *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350-52 (Fed. Cir. 2001) (citations omitted). The alleged infringer, in this case, does not have to prove invalidity by clear and convincing evidence. *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1379 (Fed. Cir. 2009). As long as the defendant raises a substantial question, the preliminary injunction will be denied. *Girafa.com, Inc. v. Amazon.com, Inc.*, C.A. No. 07-787-SLR, 2008 WL 5155622 at *1 (D. Del. 2008).

If the plaintiff fails to demonstrate a likelihood of success on the merits, it must “clearly establish[] that monetary damages could not suffice.” *Abbott Labs.*, 452 F.3d at 1348. Even if the plaintiff succeeds in demonstrating a likelihood of success on the merits, a presumption of irreparable harm does not follow. *Girafa*, 2008 WL 5155622 at *1 (citation omitted). Therefore, it remains the plaintiff’s burden to establish that monetary damages could not suffice. As to the balance of hardships, the parties must “quantify the hardship, if any, [they] will face if an injunction” is not entered (or incorrectly entered). *Abbott Labs.*, 452 F.3d at 1348. Absent any other relevant concerns, the public interest factor is generally bound to the likelihood of success on the merits, as it is in the public interest to enforce a valid and infringed patent. Conversely, the public interest is best served by denying a preliminary injunction when a moving party has failed to establish that the patent is likely valid and infringed. *Girafa*, 2008 WL 5155622 at *1.

III. DISCUSSION

The court finds that CNH has failed to satisfy any of the four factors. As to likelihood of success on the merits, a number of arguments asserted by Kinze raise a substantial question as to

invalidity and infringement. For instance, in its brief opposing the instant motion, Kinze asserts that during the prosecution of its applications, CNH failed to properly disclose prior art references that would have rendered the patents invalid. Additionally, Kinze asserts that CNH breached its duty of candor with respect to the disclosure of a prior art reference during a re-examination of the patents-in-suit by “remaining silent about [the reference] and by affirmatively misrepresenting the scope of the prior art” (D.I. 58 at 5). CNH counters that this and other prior art references cited by Kinze are not invalidating (see D.I. 72 at 6-8). Nevertheless, Kinze’s assertions are sufficient to raise a substantial question as to invalidity for the purposes of CNH’s motion. Similarly, the parties’ written submissions demonstrate that a substantial question exists regarding whether Kinze’s product infringes the patents in suit. Given the presence of these issues, the court will not grant CNH the relief it requests at this time.

Furthermore, even if the court were to find that CNH has established a likelihood of success on the merits, CNH has not established that irreparable harm would occur in the absence of an injunction. While the court recognizes that continued sale of the allegedly infringing products likely will have some impact on the marketplace for the products covered by the patents-in-suit, CNH’s briefs and supporting declarations do not persuade the court that this case is unusual in that regard. The court further agrees with Kinze that CNH’s evidence pertaining to anticipated loss of sales and market share is, at least at this stage of the proceedings, largely speculative. Finally, to the degree that CNH can adduce evidence in support of its damages contentions and those damages can be linked to Kinze’s allegedly infringing activities, the court does not anticipate any greater difficulties in calculating damages than is attendant to most patent infringement cases.

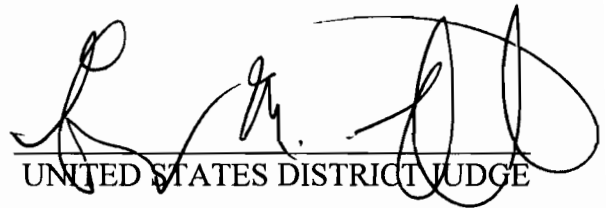
As for the third factor, the court finds that Kinze would suffer substantial harm if they were

enjoined from selling the allegedly infringing products, and that this hardship is not outweighed by the harm CNH would suffer if the sales continue, particularly since appropriate money damages can be awarded if CNH succeeds at trial. For these reasons, this is not an “exceptional” case for which a preliminary injunction would be appropriate, and the public interest would not be served by the issuance of such an injunction.

IV. CONCLUSION

For the reasons stated above, the court will deny CNH’s motion for preliminary injunction (D.I. 5).

Dated: November 13, 2009



UNITED STATES DISTRICT JUDGE

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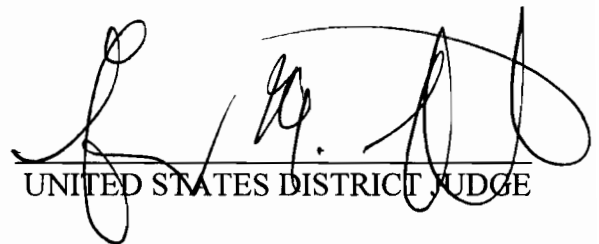
C.A. No. 08-945 (GMS)

ORDER

For the reasons stated in the court's memorandum of this same date, IT IS HEREBY
ORDERED that:

1. The defendants' Motion for Preliminary Injunction (D.I. 5) is DENIED.

Dated: November 13, 2009



UNITED STATES DISTRICT JUDGE