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March 5, 2024

VIA CM/ECF & HAND DELIVERY

The Honorable Christopher Burke
United States District Court
844 North King Street
Wilmington, DE 19801

**Re: *Midwest Energy Emissions Corp., et. al v. Arthur J. Gallagher & Co., et al.,*
C.A. No. 19-1334-CJB**

Dear Judge Burke:

The Parties respectfully write pursuant to Your Honor's order at the conclusion of the jury trial in the above matter on March 1, 2024, which directed the Parties to file a form of judgment for the Court to enter. The Parties have a dispute over whether a judgment should be entered at this time.

CERT Defendants' Position:

The Parties agreed in the Pretrial Order to a bifurcated trial, where the issues of unenforceability and implied license would be tried to the Court at a bench trial. (D.I. 659, ¶ 61). Because the Court has yet to rule on the unenforceability of the patents and whether there was an implied license, we respectfully submit that a "final judgment" is premature and would be improper at this time. *State National Ins. Co. v. Cty. of Camden*, 824 F.3d 399, 408 (3d Cir. 2016) ("A final judgment is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."). The CERT Defendants request that the Court reserve entering a judgment in this matter until after the conclusion of the bench trial addressing these equitable issues. A similar procedure was followed at least in *CAO Lighting, Inc. v. General Electric Company et al*, C.A. No. 20-cv-681-GBW (D.I. 419). In addition, CERT noted in the Pretrial Order (D.I. 659, Ex. 22 p.20 n.24, p. 51 n.78) that the Court's previous disposition of the defense of express license as a matter of law in its denial of summary judgment should be put into a form to preserve the issue for appeal upon entry of final judgment. For example, a stipulated summary judgment in favor of Plaintiffs on that issue should be entered before final judgment. If the Court is inclined to enter an order in the form of a judgment, and with respect to Plaintiffs proposed form of judgment, the CERT defendants respectfully request that any such order expressly state that it is "partial" and not state that it is "final." The CERT defendants believe that any order that could potentially be interpreted to trigger post-trial briefing under Rules 50 and 59 before all defenses are adjudicated would be contrary to the Federal Rules, would lead to inefficient and piecemeal litigation, and would place an unnecessary burden on the Court in dealing with multiple sets of post-trial briefs.

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Morris James_{LLP}

Plaintiffs' Position:

Pursuant to the Court's order, ME2C provides the attached proposed form of judgment and requests that the Court enter this judgment. Mar. 1, 2024 Trial Tr. at 1319-1320:3. Defendants have not offered an alternative proposal nor identified any substantive disputes with the form of this judgment, and there is simply no reason why the Court cannot enter judgment on the issues resolved at trial. *See, e.g.*, Judgment, *American Axle & Mfg, Inc. v. Neapco Holdings, LLC*, C.A. No. 15-1168, D.I. 350, (entering judgment despite open issues—including equitable relief in the form of an injunction—in post-trial briefing schedule); Judgment, *Prolitec Inc. v. ScentAir Techs., LLC*, C.A. No. 20-984, D.I. 307 (entering judgment after jury verdict with ScentAir filing papers on its prosecution history estoppel defense after said judgment). Entering judgment now will ensure that post-judgment motion practice will proceed in a timely and efficient manner as it will start the clock on post-trial motions as the Court directed. Mar. 1, 2024 Trial Tr. at 1320:1-1320:3. If Defendants intend to proceed with their equitable defenses, they can propose a plan for doing so and the parties can work to resolve those outstanding issues. Whether they ultimately request a bench trial, evidentiary hearing, or some other approach—and Defendants have not informed ME2C of their specific plans—there is no reason to delay entering judgment on the issues resolved at trial. That is true even if the Court will eventually need to enter a “final judgment” later in the case. Indeed, entering judgment now will encourage both sides to resolve any outstanding equitable issues as quickly as possible so that this nearly five-year old case can finally conclude.

The Parties are available at the Court's convenience to address any questions or concerns.

Respectfully submitted,

/s/ Kenneth L. Dorsney

Kenneth L. Dorsney (#3726)

cc: All counsel of record (via CM/ECF and electronic mail)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MIDWEST ENERGY EMISSIONS CORP.)	
and MES Inc.,)	
)	C.A. No. 19-1334 (CJB)
Plaintiffs,)	
)	
v.)	JURY TRIAL DEMANDED
)	
ARTHUR J. GALLAGHER & CO., <i>et al.</i> ,)	
)	
Defendants.)	

PROPOSED JUDGMENT

Pursuant to Rule 58 of the Federal Rules of Civil Procedure and in accordance with the jury’s unanimous verdict (D.I. 692), the Court hereby **ENTERS JUDGMENT** as follows:

Judgment is hereby entered in favor of Plaintiffs Midwest Energy Emissions Corp. and MES Inc. (“Plaintiffs”) and against Defendants CERT Operations RCB LLC, Senescence Energy Products LLC, Bascobert (A) Holdings LLC, Larkwood Energy LLC, Rutledge Products LLC, Cottbus Associates LLC, CERT Operations II LLC, Marquis Industrial Company LLC, CERT Operations IV LLC, Springhill Resources LLC, CERT Operations V LLC, and Buffington Partners LLC (collectively, “CERT”) that CERT induced infringement of claims 25 and 26 of U.S. Patent No. 10,343,114 and claims 1 and 2 of U.S. Patent No. 10,596,517;

Judgment is hereby entered in favor of Plaintiffs and against Defendants Senescence Energy Products LLC, Bascobert (A) Holdings LLC, Larkwood Energy LLC, Rutledge Products LLC, Cottbus Associates LLC, Marquis Industrial Company LLC, Springhill Resources LLC, and Buffington Partners LLC that these specific Defendants contributed to infringement of claims 25 and 26 of U.S. Patent No. 10,343,114 and claims 1 and 2 of U.S. Patent No. 10,596,517;

Judgment is hereby entered in favor of Plaintiffs and against CERT that CERT willfully infringed claims 25 and 26 of U.S. Patent No. 10,343,114 and claims 1 and 2 of U.S. Patent No. 10,596,517;

Judgment is hereby entered in favor of Plaintiffs and against CERT that all claims of U.S. Patent Nos. 10,343,114 and 10,596,517 are not invalid;

Judgment is hereby entered in favor of Plaintiffs and against CERT for damages in the amounts provided below, subject to fees and enhancement under 35 U.S.C. § 284, motions for which may be subsequently brought and relief awarded:

Defendants	Amount
CERT Operations RCB LLC, for the amount of:	\$35,341,918
Senescence Energy Products LLC, for the amount of:	\$2,129,349
Bascobert (A) Holdings LLC, for the amount of:	\$1,296,829
Larkwood Energy LLC, for the amount of:	\$20,017,888
Rutledge Products LLC, for the amount of:	\$615,338
Cottbus Associates LLC, for the amount of:	\$11,282,514
CERT Operations II LLC, for the amount of:	\$11,119,113
Marquis Industrial Company LLC, for the amount of:	\$11,119,113
CERT Operations IV LLC, for the amount of:	\$447,025
Springhill Resources LLC, for the amount of:	\$447,025
CERT Operations V LLC, for the amount of:	\$10,173,949
Buffington Partners LLC, for the amount of:	\$10,173,949

Judgment is hereby entered that Plaintiffs are entitled to from CERT pre-judgment interest applicable to all sums awarded herein, at the prime rate, compounded quarterly, from the date of infringement through the date of entry of this Judgment;

Judgment is hereby entered that, pursuant to 28 U.S.C. § 1961, Plaintiffs are entitled to from CERT post-judgment interest applicable to all sums awarded herein, at the statutory rate, from the date of entry of this Judgment until paid; and

Judgment is hereby entered that pursuant to Federal Rule of Civil Procedure 54(d) and 28 U.S.C. § 1920, Plaintiffs are the prevailing party in this case and shall recover their costs from CERT.

This judgment is subject to modification based on the Court's ruling on the parties' post-trial motions brought under Fed. R. Civ. P. 50, 54, 59, and 35 U.S.C. §§ 284, 285.

Dated: _____

Magistrate Judge Christopher J. Burke