

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MIDWEST ENERGY EMISSIONS CORP.)	
and MES INC.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 19-1334 (CJB)
)	
ARTHUR J. GALLAGHER & CO., et al.,)	
)	
Defendants.)	

**DEFENDANTS’ BRIEF IN SUPPORT OF THEIR MOTION FOR JUDGMENT AS A
MATTER OF LAW AS TO NO INDUCED INFRINGEMENT, NO CONTRIBUTORY
INFRINGEMENT, AND NO WILLFUL INFRINGEMENT**

Kenneth L. Dorsney (#3726)
Cortlan S. Hitch (#6720)
MORRIS JAMES LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
Telephone: (302) 888-6800
kdorsney@morrisjames.com
chitch@morrisjames.com

*Attorneys for Defendants
CERT Operations IV LLC,
CERT Operations V LLC,
CERT Operations RCB LLC,
CERT Operations II LLC,
Senescence Energy Products, LLC,
Springhill Resources LLC,
Buffington Partners LLC,
Bascobert (A) Holdings LLC,
Larkwood Energy LLC,
Cottbus Associates LLC,
Marquis Industrial Company, LLC,
Rutledge Products, LLC*

Dated: April 5, 2024

Table of Contents

I.	Introduction	1
II.	Legal Standard	1
III.	CERT is entitled to JMOL of no inducement of infringement.	1
A.	A finding that CERT took an affirmative act to encourage a power plant to directly infringe is not supported by substantial evidence.	2
B.	A finding that CERT had specific intent to cause infringement is not supported by substantial evidence.	9
C.	A finding that CERT caused the power plants to perform all steps of the claimed methods is not supported by substantial evidence.	9
IV.	CERT is entitled to JMOL of no contributory infringement.	12
A.	A finding that refined coal was especially made and adapted for use in an infringement is not supported by substantial evidence.	12
B.	The record lacks substantial evidence CERT knew that refined coal did not have substantial non-infringing uses and was especially made an adapted for an infringing use.	14
C.	A finding that refined coal lacks substantial non-infringing uses is not supported by substantial evidence.	14
V.	CERT is entitled to JMOL of no indirect infringement based on lack of knowledge.	17
VI.	CERT is entitled to JMOL of no willful infringement.	17
VII.	Conclusion	20

Table of Authorities

Cases

<i>Bard Peripheral Vascular, Inc. v. W.L. Gore & Assoc., Inc.</i> , 682 F.3d 1003 (Fed. Cir. 2012)	8
<i>Bayer HealthCare LLC v. Baxalta Inc.</i> , 989 F.3d 964 (Fed. Cir. 2021)	17
<i>Commil USA, LLC v. Cisco Systems, Inc.</i> , 575 U.S. 632 (2015).....	14, 19
<i>Eko Brands, LLC v. Adrian Rivera Maynez Enterprises, Inc.</i> , 946 F.3d 1367 (Fed. Cir. 2020)	17
<i>Enplas Display Device Corp. v. Seoul Semiconductor Co., Ltd.</i> , 909 F.3d 398 (Fed. Cir. 2018)	2
<i>Environmental Manufacturing Solutions, LLC v. Peach State Labs, Inc.</i> , No. 6:09-cv-395-Orl-28DAB, 2011 WL 1262659 (M.D. Fla. Mar. 31, 2011)	15
<i>Ericsson, Inc. v. D-Link Systems, Inc.</i> , 773 F.3d 1201 (Fed. Cir. 2014)	2, 9
<i>Global-Tech Appliances, Inc. v. SEB S.A.</i> , 563 U.S. 754 (2011).....	passim
<i>Golden v. United States</i> , 955 F.3d 981 (2020).....	10
<i>Goodman v. Pennsylvania Tpk. Comm'n</i> , 293 F.3d 655 (3d Cir. 2002)	7
<i>Hodosh v. Block Drug Co., Inc.</i> , 833 F.2d 1575 (Fed. Cir. 1987)	15
<i>HZNP Medicines LLC v. Actavis Lab'ys UT, Inc.</i> , 940 F.3d 680 (Fed. Cir. 2019)	passim
<i>In re Bill of Lading Transmission & Processing Sys. Pat. Litig.</i> , 681 F.3d 1323 (Fed. Cir. 2012)	15, 17
<i>In re Lemington Home for the Aged</i> , 777 F.3d 620 (3d Cir. 2015)	1

Lexmark Int’l, Inc. v. Static Control Components, Inc.,
572 U.S. 118 (2014)..... 11

Lucent Techs., Inc. v. Gateway, Inc.,
580 F.3d 1301 (Fed. Cir. 2009) 17

MEMC Electronic Mtls, Inc. v. Mitsubishi Mtls Silicon Corp.,
420 F.3d 1369 (Fed. Cir. 2005) 8

Microsoft Corp. v. DataTern, Inc.,
755 F.3d 899 (Fed. Cir. 2014) 2, 3, 6

Midwest Energy Emissions Corp. v. Arthur J. Gallagher & Co.,
No. CV 19-1334-CJB, 2023 WL 7411710 (D. Del. Nov. 3, 2023)..... 15

Nalco Co. v. Chem-Mod, LLC,
883 F.3d 1337 (Fed. Cir. 2018) 16

Nat’l Presto Indus. v. W. Bend Co.,
76 F.3d 1185 (Fed. Cir. 1996) 8

Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.,
843 F.3d 1315 (Fed.Cir. 2016) 5, 9

Roche Diagnostics Corp. v. Meso Scale Diagnostics, LLC,
30 F.4th 1109 (Fed. Cir. 2022) 8

Schillinger v. United States,
155 U.S. 163 (1894)..... 10

Takeda Pharm. U.S.A., Inc. v. West-Ward Pharm. Corp.,
785 F.3d 625 (Fed. Cir. 2015) 4

TecSec, Inc. v. Adobe Inc.,
978 F.3d 1278 (Fed. Cir. 2020) 1

United States v. Gilead Scis., Inc.,
No. CV 19-2103 (MN), 2024 WL 1251282 (D. Del. Mar. 22, 2024) 1

University of Texas Southwestern Med. Center v. Nassar,
570 U.S. 338 (2013)..... 11

Wrinkl, Inc. v. Facebook, Inc.,
No. 20-cv-1345-RGA, 2021 WL 4477022 (D. Del. Sep. 30, 2021)..... 17, 20

ZapFraud, Inc. v. Barracuda Networks, Inc.,
528 F. Supp. 3d 247 (D. Del. 2023)..... 17

Statutes

35 U.S.C. § 271(c) 13, 14

Rules

Fed. R. Civ. P. 50(a) 1

Fed. R. Civ. P. 50(b) 1

Fed. R. Civ. P. 59 1

Treatises

W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on Law of Torts* 265 (5th ed. 1984) 11

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.