IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02640-REB-KMT

WYERS PRODUCTS GROUP, INC., et al.,

Plaintiffs,

v.

CEQUENT PERFORMANCE PRODUCTS, INC. et al.,

Defendants.

PLAINTIFFS' RESPONSE TO CEQUENT CONSUMER PRODUCTS, INC.'S MOTION TO PARTIALLY DISMISS

Plaintiffs Wyers Products Group, Inc., and Philip W. Wyers ("Wyers") hereby respond to defendant Cequent Consumer Products, Inc.'s ("Cequent Consumer") motion to partially dismiss [#146] ("Motion"), stating as follows:

Cequent Consumer's Motion is, in essence, a joinder in co-defendant Cequent Performance Product, Inc.'s ("Cequent Performance") renewed motion to partially dismiss [#139]. Wyers has fully responded to that renewed motion, setting forth the reasons it should be denied. Among other things, the renewed motion to partially dismiss attempts to assert the fact-intensive affirmative defense of issue preclusion under Rule 12(b)(6). The subject of Cequent's challenge, claims 23 and 27 of U.S. Patent No. 6,672,115 ("the '115 patent"), have never been litigated and are presumed valid. 35 USC § 282; *Microsoft v. i4i Ltd Partnership*, 564U.S. ----, 131 S.Ct. 2238, 2242 (2011). Cequent has not carried its burden to prove its affirmative defense of issue

preclusion by clear and convincing evidence via its Rule 12(b)(6) renewed motion to dismiss, nor could it.

Wyers response in opposition to Cequent Performance Products, Inc.'s renewed motion to partially dismiss [#147], is incorporated in its entirety herein by this reference. For the reasons stated in such response, both Cequent Consumer's and Cequent Performance's Rule 12(b)(6) motions to partially dismiss should be denied.

WHEREFORE, for all of the foregoing reasons, Plaintiff Wyers respectfully requests that the Court deny Cequent Consumer's Motion [#146].

Dated this 21st day of May, 2014.

Respectfully submitted,

LATHROP & GAGE LLP

s/ *Aaron P. Bradford*

Aaron P. Bradford
Alexander C. Clayden
Jessie L. Pellant
Cindy N. Pham
950 17th Street, Suite 2400
Denver, Colorado 80202
Phone: (720) 931-3200
Fax: (720) 931-3201
Email: abradford@lathropgage.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2014, I electronically filed the foregoing **PLAINTIFFS' RESPONSE TO CEQUENT CONSUMER PRODUCTS, INC.'S PARTIAL MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

David B. Cupar
Matthew J. Cavanagh
600 Superior Avenue East, Suite 2100
Cleveland, Ohio 44114
dcupar@mcdonaldhopkins.com
mcavanagh@mcdonaldhopkins.com

Andrew J. Petrie
Featherstone Petrie DeSisto LLP
600 17th Street, Suite 2400 S
Denver, Colorado 80202
apetrie@featherstonelaw.com

s/Lorraine L. Labash