

**RUTTENBERG IP LAW,
A PROFESSIONAL CORPORATION**
GUY RUTTENBERG (State Bar No. 207937)
guy@ruttenbergiplaw.com
1801 Century Park East, Suite 2400
Los Angeles, California 90067
Phone: (310) 556-9651
Fax: (213) 402-3633

KNEAFSEY & FRIEND LLP
SEAN M. KNEAFSEY (SBN 180863)
skneafsey@kneafseyfriend.com
800 Wilshire Blvd., Suite 710
Los Angeles, California 90017
Phone: (213) 892-1200
Fax: (213) 892-1208

GROSSMAN LAW OFFICES
MARK M. GROSSMAN *admitted pro hac vice*
mgrossman@grossmanlegal.com
LEE F. GROSSMAN, *admitted pro hac vice*
lgrossman@grossmanlegal.com
225 W. Washington St., Suite 2200
Chicago, Illinois 60606
Phone: (847) 215-8380
Fax: (847) 215-8381

Attorneys for Defendant
MOC PRODUCTS COMPANY, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ILLINOIS TOOL WORKS, INC., DBA
WYNN'S, a Delaware Corp.,

Plaintiff,

vs.

MOC PRODUCTS COMPANY, INC.,
a Cal. Corp.,
Defendant.

AND RELATED COUNTER CLAIMS

Case No. 09 cv 1887 JLS (MDD)

**PROTECTIVE NOTICE OF
APPEAL**

1 Defendant and Counter-Claimant MOC PRODUCTS COMPANY, INC. in
2 the above-captioned action, hereby appeals to the United States Court of Appeals for
3 the Federal Circuit from the Court's Judgment of November 18, 2013 (ECF No.
4 413) and from all decisions, opinions, orders, and rulings subsumed therein and/or
5 made prior to entry of the November 18, 2013, Judgment in this action, including,
6 but not limited to, the following:

- 7 • ECF No. 99: ORDER on Claim Construction.
- 8 • ECF No. 219: ORDER (1) granting in part and denying in part ECF
9 No. 162 Plaintiff's Motion for Summary Judgment of Infringement;
10 (2) denying ECF No. 172 Defendant's Motion for Summary
11 Adjudication for Invalidity of U.S. Patent '638 Pursuant to 35 U.S.C.
12 § 102 and Under the Doctrine of Laches; and (3) granting in part and
13 denying in part ECF No. 175 Defendant's Motion for Summary
14 Adjudication for Invalidity of U.S. Patent Nos. '855 and '629 and
15 Non-Infringement of U.S. Patent No. '629 and No Liability Under the
16 Doctrine of Equitable Estoppel.
- 17 • ECF No. 224: ORDER (1) denying ECF No. 221 Motion for Leave
18 to File Summary Adjudication Motion for Invalidity of U.S. Patent
19 '638 Pursuant to 35 USC § 103 and (2) denying as moot ECF No. 223
20 Motion to Strike Ex Parte Motion ECF No. 289: ORDER on
21 Motions In Limine granting in part and denying in part ECF No. 247
22 Motion to Exclude; denying ECF No. 250 Motion to Exclude;
23 granting ECF No. 251 Motion to Exclude; granting ECF No. 252
24 Motion to Exclude; granting in part and denying without prejudice in
25 part ECF No. 253 Motion to Preclude; deferring ruling on ECF No.
26 254 Motion to Preclude; denying in part and deferring ruling in part
27 on 255 Motion to Preclude; granting in part and denying in part ECF
28 No. 256 Motion to Preclude; deferring ruling on ECF No. 257

1 Motion to Preclude.

- 2 • ECF No. 307: ORDER Granting In Part and Denying In Part
3 Plaintiff's Remaining Motions in Limine re ECF No. 254 Motion to
4 Preclude; ECF No. 255 Motion to Preclude; ECF No. 257 Motion to
5 Preclude. The Court grants in part ITW's remaining motions in limine
6 and shall exclude evidence from the jury that raises purely equitable
7 considerations, including ITW's motive for bringing suit, ITW's size
8 and market dominance, and ITW's knowledge of MOC's products.
9 The Court denies in part ITW's motions and will admit this evidence
10 during the bench trial. Finally, the Court declines to instruct the jury
11 on either of MOC's equitable defenses.
- 12 • ECF No. 383: ORDER on Post-Trial Matters for United States
13 Patent Number 6,073,638, Including (1) Motions for Judgment as a
14 Matter of Law and New Trial; and (2) Rulings on Equitable Matters
15 Tried to the Court re ECF Nos. 367 and 368 . The Court denies
16 MOC's JMOL motion and grants ITW's JMOL motion. In addition,
17 the Court finds that the defenses of laches and equitable estoppel do
18 not apply to bar recovery in this suit. MOC also requests a new trial
19 on the issue of anticipation, arguing that the jury's findings go against
20 the great weight of the evidence. The Court denies this request
21 because there is ample evidence in the record to support the jury's
22 conclusion and MOC's evidence is simply not so persuasive as to
23 warrant the discretionary grant of a new trial.
- 24 • ECF No. 409: ORDER: (1) Denying ECF No. 403 Ex Parte Motion
25 for Leave to File Sur-Reply; (2) Denying as Moot ECF No. 404
26 Motion to File Documents Under Seal; and (3) Granting ECF No.
27 407 Motion to Seal Previously Filed Document. The Court Grants
28 Defendant's motion to seal the opposition to the ex parte motion for

1 leave to file a sur-reply due to the confidential information included
2 in that document.

- 3 • ECF No. 410: ORDER Regarding ECF No. 385 Enhanced Damages,
4 Prejudgment Interest, and Attorney's Fees. For the reasons stated
5 above, the Court GRANTS IN PART AND DENIES IN PART ITWs
6 request for enhancement of damages, GRANTS ITWs request for
7 prejudgment interest, and DENIES ITWs request for attorneys fees.
8 The Court imposes a modest enhancement equivalent to 25% of the
9 jury's verdict, or \$1,387,930.50, and awards \$1,450,732 in
10 prejudgment interest, resulting in a total damages award of
11 \$8,390,384.50. ITW shall prepare and submit a proposed judgment as
12 expeditiously as possible.

13 Included herewith is payment of the filing fee (\$5.00) and the docketing fee
14 (\$450.00) as required by 28 U.S.C. § 1917 and Federal Circuit Rule 52(a)(3)(A),
15 respectively, and Federal Rule of Appellate Procedure 3(e).

16
17 DATED: December 18, 2013

RUTTENBERG IP LAW, PC

18
19 By: /s/ Guy Ruttenberg
20 Guy Ruttenberg
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on all counsel of record via the Court's Case Management/Electronic Case Filing and/or electronic mail on December 18, 2013.

By: /s/ Guy Ruttenberg

Attorney for Defendant
MOC Products Company, Inc.
Email: guy@ruttenbergiplaw.com