UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONTINENTAL AUTOMOTIVE SYSTEMS US, INC.,

Plaintiff,

v.

SHRADER ELECTRONICS, INC., et al.,

Defendants.
_____/

Case No. 11-14525

HONORABLE STEPHEN J. MURPHY, III

ORDER GRANTING DEFENDANTS LEAVE TO FILE PARTIAL MOTION FOR SUMMARY JUDGMENT

Plaintiff Continental Automotive Systems US. Inc. ("Continental") filed this action against defendants Shrader Electronics, Inc. and Shrader-Bridgeport International, Inc. (together "Shrader"), claiming that Shrader's tire pressure monitoring system ("TPMS") products infringe four patents owned by Continental. The matter before the Court is Shrader's request for permission to file an early summary judgment motion regarding the validity of Continental's patent, U.S. Patent No. 7,004,019 (the "'019 patent").

Generally in a patent case, a court's analysis of infringement and invalidity is a two-step process: the court construes the patents at issue, and then based on that construction, the jury determines whether infringement has occurred. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384 (1996) (describing "two elements of a simple patent case, construing the patent and determining whether infringement occurred"). But here, Shrader contends that the Court can determine whether Shrader infringed Continental's '019 patent *without* claim construction, by looking to Continental's own allegations of infringement. In short, if Shrader can show that the accused features of its allegedly infringing tire sensors are not materially different than the features Shrader used in tire

sensors that predate Continental's ‘019 patent, then Continental's patent will necessarily be invalid and Continental's infringement claims will fail. For the purposes of this summary judgment motion only, Shrader will concede infringement. Claim construction will then be unnecessary because Continental's own infringement allegations will suffice to prove that the infringing device embodies the patented invention. The only questions of fact to resolve on summary judgment will be (1) whether the allegedly infringing device differs materially from Shrader's prior art; and (2) whether Shrader can show that its prior art was "on sale" at least one year before Continental filed for its patent.

Shrader cites two Federal Circuit cases approving of this approach. *See Evans Cooling Sys. v. GMC*, 125 F.3d 1448 (Fed. Cir. 1997); *Vanmoor v. Wal-Mart Stores, Inc.*, 201 F.3d 1363 (Fed. Cir. 2000)). In *Evans*, Evans contended that GM's LT-1 engine contained a cooling system that infringed Evans' patent. GM sought to prove that the infringing feature of its LT-1 engine had been on sale for more than a year prior to Evans' securing his patent. The Federal Circuit held that the suit could be resolved by using Evans' infringement contentions to determine whether GM had placed the allegedly infringing cooling system on sale before Evans took out its patent, thus invalidating the patent. *Evans Cooling Sys.*, 125 F.3d 1448, 1451 (Fed. Cir. 1997) ("Although GM bore the burden of proving that the LT1 engine embodied the patented invention or rendered it obvious for purposes of the summary judgment motion, this burden is met by Evans' allegation, forming the sole basis for the complaint, that the LT1 engine infringes."); *see also Vanmoor v. Wal-Mart Stores, Inc.*, 201 F.3d 1363, 1366 (Fed. Cir. 2000) (following *Evans* and holding that "[a]lthough Wal-Mart and the manufacturers bore the burden of proving that the cartridges that were the subject of the pre-critical date sales anticipated the '331 patent,

that burden was satisfied by Vanmoor's allegation that the accused cartridges infringe the '331 patent."). Shrader seeks to proceed in the same manner here.

The Court will grant Shrader's request because it presents the possibility of simplifying the litigation, narrowing the issues, and saving the parties from engaging in possibly needless discovery through the early resolution of one of Continental's claims. Shrader is directed to file its proposed motion on the docket. The Court will grant Continental limited additional time for discovery to facilitate its response to the motion, and will adjourn the scheduled Markman hearing, as set forth below.

ORDER

WHEREFORE it is hereby **ORDERED** that Shrader's request to file an early summary judgment motion regarding Continental's '019 patent is **GRANTED**. Shrader is directed to immediately file its proposed motion on the docket. The parties shall have thirty days from filing of the motion to conduct discovery related to the motion. At the end of the thirty days, Continental shall have twenty-one days to file its response to Shrader's motion for summary judgment.

IT IS FURTHER ORDERED that the Markman hearing presently scheduled for August 3, 2012, is **ADJOURNED** pending resolution of the motion for summary judgment. The due date for the parties' responsive claim construction briefs remains unchanged.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: June 28, 2012
I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on June 28, 2012, by electronic and/or ordinary mail.

Carol Cohron
Case Manager