UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CEMCO, LLC, Plaintiff, v. KPSI INNOVATION, INC., et al., Defendants.	CASE NO. C23-0918JLR ORDER

I. INTRODUCTION

Before the court are two motions filed by Plaintiff CEMCO, LLC ("CEMCO"): (1) a motion for attorneys' fees and costs (AF Mot. (Dkt. # 222); AF Reply (Dkt. # 241)); and (2) a motion for enhanced damages (ED Mot. (Dkt. # 225); ED Reply (Dkt. # 243)). Defendants KPSI Innovation, Inc. ("KPSI"), Serina Klein, and James Klein (collectively, "Defendants") oppose both motions. (AF Resp. (Dkt. # 239); ED Resp. (Dkt. # 237).) Because CEMCO did not move for attorney fees, costs, and enhanced damages against

Defendant Kevin Klein (AF Mot. at 1; ED Mot. at 1), the court does not include Kevin Klein when it discusses "Defendants" collectively here.

II. BACKGROUND

This case concerns Defendants' infringement of four patents owned by CEMCO. These are U.S. Patent Nos. 7,681,365; 7,814,718; 8,136,314; and 8,151,526 (collectively, the "Patents"). (*See* Compl. (Dkt. # 1) ¶ 10.) The Patents name Mr. Klein, a former CEMCO employee, as the sole inventor. (Admitted Facts (Dkt. # 207) at 1, 3.) Mr. Klein also developed the fire rated gasket products ("FRG Products") that are at issue. (*Id.* at 1.) Ms. Klein is Mr. Klein's wife and the sole owner and officer of KPSI; Kevin Klein is their son. (*Id.* at 1.) The court first discusses the prior litigation between the parties, and then turns to the present case.

A. The Prior Litigation

Mr. Klein was an owner and principal of BlazeFrame Industries, Ltd. ("BlazeFrame"). (Admitted Facts at 3.) In 2012, CEMCO sued Mr. Klein and BlazeFrame, alleging in relevant part that Mr. Klein wrongfully kept ownership of the Patents after his employment with CEMCO ended. (*Id.*); Fourth Am. Compl. ¶¶ 12-27, *Cal. Expanded Metal Prods. Co. v. Clarkwestern Dietrich Bldg. Sys. LLC*, No. 2:12-cv-10791-DDP-MRW (C.D. Cal. July 24, 2015) (the "First Case"), Dkt. #411. On October 2, 2015, the First Case settled. (8/20/24 Trojan Decl. (Dkt. # 117) ¶ 11, Ex. 10.) As part of that settlement, Mr. Klein and BlazeFrame agreed to assign their rights to the Patents to CEMCO. (*Id.* at 9.) Clarkwestern Dietrich Building Systems LLC ("ClarkDietrich"), another company involved in the litigation, obtained an exclusive license to practice the

Patents in 44 states, and Mr. Klein received a limited license to practice the Patents in the remaining six states. (*Id.* at 10; Admitted Facts at 3.)

In August 2016, CEMCO and ClarkDietrich sued Mr. Klein and BlazeFrame for allegedly violating the six-state restriction. *See generally* Compl., *Cal. Expanded Metal Prods. Co. v. Klein*, No. 2:16-cv-05968-DDP MRW (C.D. Cal. Aug. 10, 2016) (the "Second Case"), Dkt. # 1. On June 25, 2017, the Second Case settled, with Mr. Klein and BlazeFrame agreeing to terminate their limited license, and ClarkDietrich becoming the exclusive licensee of the Patents. (3d Am. Compl. ¶ 30; Answer to 3d Am. Compl. (Dkt. # 83) ¶ 30 (admitted); Admitted Facts at 4.)

A few days after the settlement, Mr. Klein started Safti-Seal, Inc. ("Safti-Seal"). (3d Am. Compl. ¶ 31; Answer to 3d Am. Compl. ¶ 31 (admitted).) Mr. Klein was Safti-Seal's sole owner and principal. (Admitted Facts at 4.)

In January 2018, CEMCO and ClarkDietrich sued Safti-Seal, BlazeFrame, and Mr. Klein, for infringing the Patents. *See generally*, Compl., *Cal. Expanded Metal Prods. Co. v. Klein*, No. C18-0659JLR (W.D. Wash Jan 10, 2018) (the "Third Case"), Dkt. # 1. The case settled in January 2020, with the defendants agreeing (1) that Safti-Seal's products infringed the Patents, and (2) to a permanent injunction enjoining them from infringing the Patents. Consent Judgment at 2-3, *Third Case* (W.D. Wash. Dec. 16, 2019), Dkt. # 159. Safti-Seal then ceased conducting business. (Admitted Facts at 4.)

Two months later, in March 2020, Jaroslaw Sydry and Leszek Orszulak formed Seal4Safti, Inc. ("S4S"). *See* 9/1/21 Order at 6, *Third Case* (W.D. Wash. Sept. 1, 2021), Dkt. # 251. Mr. Sydry and Mr. Orszulak also owned SteelTec Supply, Inc. ("SteelTec"),

a company that had manufactured products for Mr. Klein and BlazeFrame since 2008. *Id.* They formed S4S after learning that Safti-Seal would be subject to the permanent injunction because they wanted to continue selling Safti-Seal's products. *Id.* S4S retained Mr. Klein as a consultant and employed David Tullis as a salesperson.[1] *Id.* at 6, 9; (Admitted Facts at 1, 3.)

Mr. Klein told some of Safti-Seal's customers that the transition from Safti-Seal to S4S should be "seamless" and that Safti-Seal's products were simply being renamed to FRG. *See* 9/1/21 Order at 7-8, *Third Case* (W.D. Wash. Sept. 1, 2021). And in one email to a customer, sent on February 19, 2020, Mr. Klein described the transition from Safti-Seal to S4S as follows:

> [t]he simplest answer is that 'Jim Klein/Safti-Seal Inc.' [is] not selling [the infringing products] under the Safti-Frame or Safti-Strip identifiers. Rather a new company [(S4S)] has bought the rights to the technology, [trademark] 'Safti-Seal'. . . and understands any patents to be invalid.
>
> I was stuck under a number of prior agreements with [o]thers that handcuffed me personally but the new folks who I have been hired as a consultant for don't have the same issues. All of the fire rated and smoke-n-sound gasket material . . . will still be sold under the Safti-Seal brand, it is just the old 'Safti-Strip' will now be 'FRG' (fire rated gasket)[.]

(12/23/24 Trojan Decl. (Dkt. # 220) ¶ 7, Ex. 14 (Dkt. # 220-6).) For its part, S4S represented to its customers that it was doing business as Safti-Seal, sold products under the Safti-Seal brand name, and used the same website as Safti-Seal. *See* 9/1/21 Order at 8-9, *Third Case* (W.D. Wash. Sept. 1, 2021); (Admitted Facts at 3.) On March 31, 2020,

[1] Mr. Tullis also goes by "Mike," and the record sometimes refers to him as Mike Tullis.

Mr. Klein and Safti-Seal sold the design of the FRG Products and all rights to make those products to S4S. *See* 9/1/21 Order at 7, *Third Case* (W.D. Wash. Sept. 1, 2021).

On June 22, 2020, CEMCO moved to reopen the Third Case and initiate contempt proceedings. *See generally* Contempt Mot., *Third Case* (W.D. Wash. June 22, 2020), Dkt. # 166. The court reopened the case on October 19, 2020. *See* 10/19/20 Order, *Third Case* (W.D. Wash. Oct. 19, 2020), Dkt. # 190. On February 16, 2022, the court held Mr. Klein and S4S in contempt for violating the permanent injunction in the Third Case, based upon induced infringement of the Patents. *See* 2/16/22 Order at 54, *Third Case* (W.D. Wash. Feb. 16, 2022), Dkt. # 301.

Separately, while contempt proceedings in the Third Case were pending, S4S sued CEMCO in the Central District of California seeking, in relevant part, a declaratory judgment that the Patents were invalid and unenforceable. *See* Compl., *Seal4Safti, Inc. v. Cal. Expanded Metal Prods. Co.*, No. 2:20-cv-10409-MCS-JEM (C.D. Cal. Nov. 13, 2020) (the "Fourth Case"), Dkt. # 1; *see also* Answer ¶¶ 24-78, *Fourth Case* (C.D. Cal. Feb. 22, 2021) (counterclaims for infringement of the Patents), Dkt. # 20.

In May 2022, however, a jury in the Fourth Case found that the Patents were not invalid and that S4S had willfully induced infringement of the Patents. (8/20/24 Trojan Decl. ¶ 22, Ex. 21 (verdict form in the Fourth Case).) Later that year, the Central District of California concluded that the Fourth Case was "exceptional" under 35 U.S.C. § 285 and permitted CEMCO to move for its reasonable attorneys' fees. *See* 10/3/22 Order at 9, *Fourth Case* (C.D. Cal. Oct. 3, 2022), Dkt. # 287. The court based its conclusion, in part, on "[t]he incredible weakness of [the] invalidity case at trial" and its observation

that Mr. Klein had testified that prior art rendered the Patents obvious, even though he had previously submitted a sworn declaration to the U.S. Patent and Trademark Office explaining that the Patents were *not* obvious in light of the same prior art. *Id.*

On February 8, 2023, Ms. Klein incorporated KPSI. (Admitted Facts at 1.) She became KPSI's sole owner and president, and Mr. Klein became its technical director. (*Id.*) S4S transferred raw materials and inventory of FRG Products to KPSI, and KPSI began making and selling FRG Products. (*Id.* at 1, 5.) KPSI also used the same website that S4S had used, occupied the same factory space, and employed Mr. Tullis as its salesperson. (*Id.* at 3.)

On March 26, 2023, Mr. Klein emailed a customer and described the transition from S4S to KPSI as follows:

> S4S[,] in order to avoid what they feel is not right[,] is winding up their business to make any judgments go "poof[."]
>
> [] KPSI is another company that has taken on all of the Safti-Seal product lines . . . the[y] have no beef with [CEMCO] and no legal issues so there is no need for any holdbacks[.]
>
> [CEMCO] will try and link m[e] to KPSI which is no problem as KPSI is not "inducing" anyone to violate the permanent injunction that [I am] under regarding inducing U-share tracks with an intumescent strip . . . . [T]hey are just selling many gaskets for many uses[.]
>
> [] Your risk of being sued by [CEMCO] still exists as it always has since 2012 and does for all folks who construct wall assemblies with intumescent at the head of wall that meet[s] all the claim limitations [in the Patents]. . . . FRG in the eyes of the USPTO [is] patentably distinct from an "intumescent strip on a flange surface" and that would be one of your best defenses if [CEMCO] ever did decide to enforce their "wall assembly patents[."] Knowing all that we sold to you it seems that they would have made some attempt by now, although the new patents we have will cause them some issues . . . . Our business is full steam ahead and has increased

> 4x since you all decided to stop buying with not one customer ever being threatened with a lawsuit[.]

(CEMCO Trial Ex. # 94 (Dkt. # 220-8) at 2.)

B. Proceedings in This Case

On June 16, 2023, CEMCO initiated this lawsuit against Defendants. (Compl.; *see also* 3d Am. Compl. (Dkt. # 69) (operative complaint).) CEMCO alleged that Defendants induced their customers to infringe the Patents by instructing their customers to apply FRG products to header tracks in an infringing manner. (3d Am. Compl. ¶¶ 91-139.) CEMCO also alleged that Defendants fraudulently transferred assets from S4S to KPSI to avoid paying monetary judgments rendered against S4S. (*Id.* ¶¶ 140-62.)

During discovery, Defendants committed misconduct that jeopardized the case schedule, and then disobeyed a court order to produce documents by willfully and in bad faith withholding responsive materials. (*See* 8/13/24 Order (Dkt. # 111) at 3-4, 8-9; *see also* 6/4/24 Order (Dkt. # 99) (ordering Defendants to provide responsive materials).) In particular, Defendants withheld videos of Mr. Klein instructing customers to apply FRG Products in ways that infringed the Patents, which supported CEMCO's core allegations in this case. (8/13/24 Order at 4-5.) These videos also demonstrated that (1) Ms. Klein perjured herself in a declaration by stating that "[w]e never direct or encourage customers to place the strips at head of wall[,]" and (2) KPSI's interrogatory response that it "generally doesn't instruct its customers as to anything" was untruthful. (*See* 8/16/23 Serina Klein Decl. ¶ 8(b); 5/8/24 Trojan Decl. (Dkt. # 85) ¶ 19, Ex. 14 at 7 (KPSI interrogatory responses).)

Accordingly, the court issued case-dispositive sanctions and, in relevant part, entered default against Defendants on CEMCO's induced infringement claims. (*Id.* at 12.) Because of these sanctions, trial proceeded on (1) CEMCO's fraudulent transfer claims, (2) damages for CEMCO's induced infringement claims, and (3) whether Defendants willfully induced infringement of the Patents. (*See generally* Verdict (Dkt. ## 213 (sealed), 214 (redacted)).)

On December 9, 2025, after a six-day jury trial, the jury returned a verdict for CEMCO. (*See id.*) The jury found that CEMCO proved its fraudulent transfer claim and awarded damages to CEMCO of $785,788.78 on its induced patent infringement claims and $300,000 on its fraudulent transfer claim.[2] (*Id.* at 2-3.) The jury also found that Mr. Klein, Ms. Klein, and KPSI willfully induced infringement of the Patents. (*Id.* at 2.) On January 10, 2025, CEMCO filed its motions for attorneys' fees and costs (AF Mot.) and enhanced damages (ED Mot.) The parties fully briefed both motions (AF Resp.; AF Reply; ED Resp.; ED Reply), and they are now ripe for decision.

III. ANALYSIS

The court first addresses CEMCO's motion for enhanced damages and then turns to its motion for attorneys' fees, costs, and expert witness fees.

[2] The $785,788.78 award effectively represented slightly more than a 14% royalty on the $5,612,177 of KPSI's sales of FRG Products during the relevant time period. (*See* 12/9/25 Tr. (Dkt. # 233) 866:3-25 (agreement between the parties as to $5,612,777 in sales).) In closing at trial, CEMCO asked the jury to award a 20% royalty, and Defendants asked for a 6.5% royalty. (*Compare id* at 804:5-8 (CEMCO's argument) *with id.* at 834:5-6 (Defendants' argument).) On its fraudulent transfer claim, CEMCO asked the jury to award $493,000. (*Id.* at 823:19 - 824:1.) Defendants argued that CEMCO had not proven a fraudulent transfer, and, in any event, asked the jury to award no damages on that claim. (*Id.* at 853:23 - 854:6.)

A. Enhanced Damages

CEMCO's motion for enhanced damages seeks an award of $2,395,068.48, which represents (1) enhanced damages of $2,357,366.34 based upon the jury's award of $785,788.78 for induced infringement, and (2) an additional $37,702.14 in enhanced post-verdict supplemental damages based upon KPSI's sales of FRG Products in December 2024. (*See* ED Mot. at 3-4 & n.4, 13; 1/10/25 Trojan ED Decl. ¶¶ 11-12 & Ex. 5.) The court addresses each request in turn.

1. Enhancement of the Jury's Award

The court has discretion to increase compensatory damages for patent infringement up to three times the amount the jury awarded. *See* 35 U.S.C. § 284; *see also Am. Med. Sys., Inc. v. Med. Eng'g Corp.*, 6 F.3d 1523, 1532 (Fed. Cir. 1993) ("An award of enhanced damages under section 284 is within the discretion of the district court[.]"). Courts must reserve enhanced damages for "egregious cases of culpable behavior" where the defendant's conduct was "willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, [or] flagrant[.]" *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 103-04 (2016). "[A]n award of enhanced damages does not necessarily flow from a willfulness finding." *Presidio Components, Inc. v. Am. Tech. Ceramics Corp.*, 875 F.3d 1369, 1382 (Fed. Cir. 2017). Thus, even if the defendant's infringement is willful, courts retain discretion to determine whether the defendant's conduct is egregious enough to warrant enhanced damages. *Id.* In making an enhanced damages determination, courts may consider the nonexclusive "*Read* factors":

> (1) whether the infringer deliberately copied the ideas or design of another, (2) whether the infringer investigated the scope of the patent and formed a good-faith belief that it was invalid or that it was not infringed, (3) the infringer's behavior as a party to the litigation, (4) the defendant's size and financial condition, (5) the closeness of the case, (6) the duration of defendant's misconduct, (7) remedial action by the defendant, (8) the defendant's motivation for harm, and (9) whether the defendant attempted to conceal its misconduct.

Sunoco Partners Mktg. & Terminals L.P. v. U.S. Venture, Inc., 32 F.4th 1161, 1177 (Fed. Cir. 2022) (citing *Read Corp. v. Portec, Inc.*, 970 F.2d 816, 827 (Fed. Cir. 1992), *abrogated in part on other grounds by Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996)). Ultimately, however, courts must consider all the circumstances of the case. *Id.* at 1178. Courts need not discuss the *Read* factors, though the factors can "guide the enhancement analysis[.]" *Id.* at 1177-78.

Plaintiffs ask the court to award them enhanced damages based on the jury's finding of willful infringement, the substantive weakness of Defendants' litigation position, and Defendants' litigation misconduct. (*See* ED Mot. at 1.) Defendants argue that the court should not do so because they already "paid a severe price" when the court imposed terminating sanctions. (ED Resp. at 2.) Without those sanctions, say Defendants, CEMCO would have struggled to prove that some of KPSI's sales of FRG Products were infringing—something that "was always going to be a tall order in this case because the actual acts of infringement [] were alleged to have been committed by third par[ties], and because any evidence . . . is presumably buried inside walls in buildings." (*Id* at 3.) Defendants also argue that KPSI does not have the financial strength to "survive even an un-enhanced judgment in this case," and that Defendants

engaged in ameliorating conduct by (1) encouraging concerned customers to call CEMCO and (2) notifying customers "of CEMCO's patents" through disclaimers that referenced the patents. (*Id.* at 4-6.)

The court, however, sees this case differently. As to the first, second, fourth, sixth, and eight *Read* factors, Defendants engaged in bad faith, long-running, and brazen induced infringement of the Patents, and this case is not close. To start, the court does not credit Defendants' trial argument that they did not believe that they could infringe the Patents after Mr. Klein had obtained new patents. Mr. Klein has obtained several patents and has been filing for patents for "[c]lose to 20 years." (12/5/24 Tr. (Dkt. # 231) 568:3-4.) KPSI also incurred over $84,000 in "Patent Lawyer" expenses during 2024—as a line item separate from its litigation expenses—and Mr. Klein testified on multiple occasions at trial that he worked with patent attorneys in other contexts, including patent prosecutions. (*See, e.g.*, 2/3/25 Bageant Decl. (Dkt. # 238) ¶ 2, Ex. A. ("KPSI P&L 2024") (KPSI's 2024 profit and loss statement); 12/5/24 Tr. 533:17-23, 535:1-2, 599:8-9 (Mr. Klein's testimony).) Given Defendants' frequent use of patent attorneys and Mr. Klein's personal experience with patents, Defendants' professed ignorance of basic patent law rings false. The jury also did not credit Defendants' explanations, and it found that Defendants willfully induced infringement. (Verdict.)

Indeed, in the circumstances here, Defendants committed particularly egregious infringement. KPSI formed and began selling infringing FRG Products well after (1) a jury in the Fourth Case determined that the Patents were valid, that FRG Products infringed the Patents, and that S4S willfully induced infringement; and (2) the court in

the Third Case held S4S in contempt for inducing infringement and violating a permanent injunction. After these determinations, Mr. Klein wrote to a customer that S4S wound up its business to "to avoid what [it felt was] not right" and to "make any judgments 'go poof[,]'" and attempted to reassure the customer that KPSI was a different company with "no legal issues[.]" (CEMCO Trial Ex. # 94 at 2.) To the contrary, however, KPSI became the latest participant in a relay-race of infringement spanning more than a decade: BlazeFrame passed the baton to Safti-Seal, Safti-Seal passed it to S4S, and then S4S passed it to KPSI. Indeed, Ms. Klein testified at trial that KPSI continued to sell infringing FRG Products even after she learned that obtaining a new patent is not a defense to infringement. (12/4/24 Tr. (Dkt. # 323) 323:2-14.) And Mr. Tullis—the salesperson at Safti-Seal, then S4S, and now KPSI—likewise testified that KPSI is still selling the FRG Products. (12/4/24 Tr. 402:2-4.) He also testified that he disagreed with the jury verdict in the Fourth Case and asserted that, if KPSI cannot continue its business, he would like to take it over. (*Id.* at 402:6-15, 403:10-17.) Accordingly, Defendants remain undaunted by judicial determinations and CEMCO's efforts to stop their infringement, and they are poised to pass the infringement baton again.

The third and ninth *Read* factors also weigh heavily in favor of enhanced damages. Defendants' misconduct in this case and their efforts to conceal their infringement have shocked the court. The court imposed terminating sanctions after Mr. Klein and KPSI created training videos instructing customers how to install FRG products in an infringing manner and then withheld the videos during discovery, in violation of a court order to produce responsive documents. (*See* 8/13/24 Order at 9-12; 6/4/24 Order (ordering

Defendants to provide responsive materials and warning of the risk of case-dispositive sanctions).) Absent the court's terminating sanctions, these videos would have been powerful evidence of induced infringement at trial. Defendants created these videos while the litigation was pending, the videos went to the heart of CEMCO's induced infringement allegations, and the videos directly contradicted Defendants' earlier denials of CEMCO's allegations. For instance, the videos contradicted KPSI's interrogatory response that it "generally doesn't instruct its customers as to anything[,]" and Ms. Klein's declaration that "[w]e never direct or encourage customers to place the strips at head of wall." (5/8/24 Trojan Decl. ¶ 19, Ex. 14 at 7; 8/16/23 Serina Klein Decl. ¶ 8(b).)

Moreover, despite the court's terminating sanctions, Defendants' misconduct continued undaunted at trial. For instance, even though Ms. Klein is the sole owner and officer of KPSI (Admitted Facts at 1), she testified that she did not know that her consultant, Mr. Klein, and her salesperson, Mr. Tullis, were instructing customers to apply FRG Products in infringing ways, and that she thought the statements to the contrary in her declarations were true. (12/4/24 Tr. 347:11 - 348:17.) Furthermore, she then testified that she had simply assumed that Mr. Klein and Mr. Tullis did not instruct customers how to apply FRG Products, and that she signed her declaration without asking either of them. (*Id.* at 349:21-25, 350:9-12.) Later, even though videos exist of Mr. Klein teaching customers how to apply FRG Products, Ms. Klein attempted to deny and minimize that conduct in her testimony. (*See id.* at 353:7-9 ("I don't think [Mr. Klein] was teaching [customers] how to [apply FRG Products]. That was one incident.").)

Accordingly, the court had to excuse the jury to remind Ms. Klein that she was under oath and had an obligation to provide truthful testimony. (*Id.* at 353:25 - 354:5.)

Nevertheless, despite the court's warning, Mr. Klein's trial testimony was even worse. Although Ms. Klein had testified that Mr. Klein does "technical work, engineering[,]" and other tasks as KPSI's consultant, Mr. Klein initially refused to acknowledge that he does engineering judgments and stated that he does not have an engineering degree. (*Compare id.* at 356:25 - 357:1 (Ms. Klein's testimony) *with* 12/5/24 Tr. (Dkt. # 231) 561:1-11 (Mr. Klein's testimony).) Nevertheless, Mr. Klein later admitted that he performed engineering judgments for BlazeFrame, Safti-Seal, S4S, and KPSI, and that he was the only person at those companies who could do so. (12/5/24 Tr. 562:18-22, 563:4-10.) As another example, Mr. Klein admitted to settling the Second Case, but he disputed that he voluntarily agreed to the settlement. Instead, he asserted that a magistrate judge ordered him to agree to certain terms in the settlement and that he had no choice but to comply. (12/5/24 Tr. 539:12-17.) As a third example, Mr. Klein disputed that S4S began using Safti-Seal's trademark when it took over Safti-Seal's business, contending that "[a]nybody can use it if you want, because there's no trademark, in my mind." (*Id.* at 547:2-11.) Even after CEMCO confronted Mr. Klein with an email in which he told a customer that S4S bought the Safti-Seal trademark, Mr. Klein still refused to admit that he viewed the mark as a trademark, and he insisted that it was simply a "brand recognition[.]" (*Id.* at 551:1 - 552:7.; *see also id.* at 559:5-12 (Mr. Klein testifying that a "TM" designation next to "Safti-Seal" in a marketing document for

FRG Products "probably shouldn't be there because I don't have a registered trademark" and blaming his "website guy" for its presence).)

Finally, as a fourth and particularly blatant example, Mr. Klein testified that he met with Mr. Sydry, Mr. Orszulak, and their patent lawyer in January 2023 to discuss prior art for the Patents and filing for a reexamination, which he said informed his belief that the Patents were invalid. (12/6/24 Tr. (Dkt. # 232) 711:21 - 712:6.) This directly contradicted both KPSI's prior discovery responses and the Federal Rule of Civil Procedure 30(b)(6) deposition that Mr. Klein gave on behalf of KPSI. (*See* 1/10/25 Trojan ED Decl. (Dkt. # 226) ¶¶ 6, Ex. 123 at 11-12 (KPSI interrogatory responses stating that it was "not involved in any way with the re-examination proceeding[s]" for the Patents); 12/6/24 Tr. (Dkt. # 232) 723:20-23 (Mr. Klein's Rule 30(b)(6) deposition testimony for KPSI, read into the record at trial, that Mr. Klein did not recall discussing filing any reexamination proceedings with Mr. Sydry or Mr. Orszulak before they filed).)[3]

The fourth *Reed* factor also supports enhanced damages. Defendants contend that "the un-enhanced judgment in this case will wipe the Defendants and their business off the map." (ED Resp. at 4.) This argument, however, has no basis in the evidence. First, Defendants refer only to KPSI's financial state, and they do not assert that Mr. Klein and

[3] The court observes that this is part of a larger pattern of Mr. Klein contradicting his prior sworn statements to support his interests. For instance, in the Fourth Case, the Central District of California pointed out that Mr. Klein's trial testimony that prior art rendered the Patents obvious contradicted his prior sworn declaration that the Patents were *not* obvious in light of the *same* prior art. *See* 10/3/22 Order at 9, *Fourth Case* (C.D. Cal. Oct. 3, 2022).

Ms. Klein are unable to pay any judgment. (*See generally id.* at 3-4 (discussing only KPSI's net income).) Second, as to KPSI, Defendants base their argument entirely on KPSI's 2024 net income of $1,054,726.95, which is less than the jury's verdict of $1,085,788.78. (ED Resp. at 4; Verdict.) KPSI's profit and loss statement, however, shows that its 2024 revenue was over $5 million and its gross profit was $2,667,563.79—almost 2.5 times the jury's total damages award here. (KPSI P&L 2024.) KPSI's net income was lower than its gross profit mainly because it paid out over $715,000 in payroll expenses and sales commissions and spent over $434,000 on litigation expenses. (*Id.*) KPSI has no more than four individuals on its payroll: Ms. Klein, Mr. Klein, Kevin Klein, and Mr. Tullis. (*See* 12/4/24 Tr. 356:19-20, 357:20 - 358:1.) Also, Kevin Klein and Ms. Klein do not sell to customers, so KPSI's sales commissions all go to either Mr. Tullis or Mr. Klein. (*See id.* at 357:3-25.)

In short, the evidence shows that KPSI alone could absorb almost the entire un-enhanced judgment simply by using its net income from 2024, without dipping into its cash reserves or other assets or taking on liabilities. And this is *after* KPSI has already (1) fully paid Mr. Klein, Ms. Klein, Kevin Klein, and Mr. Tullis; (2) paid all its costs for the litigation against CEMCO; and (3) paid all its other expenses. (KPSI P&L 2024.) Moreover, Defendants' do not even account for KPSI's existing assets or the individual financial situations of Mr. Klein and Ms. Klein—a significant omission because KPSI has already paid Mr. Klein $1.2 million for work that Mr. Klein performed in 2023 and 2024. (12/4/24 Tr. 358:22 - 359:1.) Accordingly, the evidence shows that, without enhanced damages, Defendants would have little reason to rethink their ongoing infringement.

As to the seventh *Reed* factor, there are no material ameliorating circumstances here. Although Defendants argue that they notified customers of the Patents and sometimes told customers to call CEMCO, the evidence shows that mentioning the Patents to customers would do little good because Mr. Klein was the sole named inventor on the patents—any customer looking at the Patents would simply see Mr. Klein's name. (352:15-20; *see also* Admitted Facts at 1 ("James Klein is the sole named inventor of the Patents.").) Mr. Klein also undercut any efforts to tell customers to contact CEMCO by attempting to persuade customers by email that, unlike S4S, KPSI had no legal problems in selling FRG Products. (*See* CEMCO Trial Ex. # 94 at 2.)

Finally, Defendants argue that the court should not award enhanced damages because its terminating sanctions "relieved CEMCO of proving any act of infringement, ... [and CEMCO] received at trial a royalty on all sales, without regard to whether they actually intruded on CEMCO's patent rights." (ED Resp. at 3.) However, CEMCO put on unrebutted evidence at trial that FRG Products are mainly used in head-of-walls and thus infringe the Patents, and the parties also agreed on the amount of "infringing sales" in response to a question from the jury. (*See* ED Reply at 2-4; 12/9/24 Tr. (Dkt. # 233) 866:24-25 (agreeing on $5,612,777 in infringing sales).) Defendants essentially ask the court to undercut the effect of its terminating sanctions and award them a windfall by reducing the amount of infringing sales. The court declines to do so.

In sum, Defendants' egregious litigation conduct and blatant, willful infringement support a heavy award of enhanced damages, and all of the *Reed* factors and other relevant circumstances here either favor enhancement or do not materially weigh against

it. As the court explained above, Defendants have engaged in shocking conduct, and even terminating sanctions have not convinced Defendants to change their tactics. The court concludes that this case warrants trebled damages of $2,357,366.34, which represents three times the jury's award of $785,788.78 for induced infringement. (*See* Verdict.) Anything less simply would not deter Defendants from further wrongful conduct.

2. Enhanced Post-Verdict Supplemental Damages

CEMCO also requests enhanced post-verdict supplemental damages of $37,702.14. (ED Mot. at 3 & n.4.) CEMCO calculates this figure by (1) starting with $89,767, which represents Defendants' sales of FRG Products in December 2024 that the jury did not consider; (2) multiplying that figure by a rounded-down royalty rate of 14%, which the jury effectively awarded CEMCO on its induced infringement claims; and (3) trebling that result. (*See id*; 1/10/25 Trojan ED Decl. ¶¶11-12 & Ex. 5.) In their response, Defendants do not address CEMCO's request for enhanced post-verdict damages or CEMCO's calculation of post-verdict damages. (*See generally* ED Resp.) Thus, Defendants waive their arguments against such damages. *Cf. DZ Bank AG Deutsche Zentral-Genossenschaftsbank v. Connect Ins. Agency, Inc.*, No. C14-5880JLR, 2016 WL 631574, at *25 (W.D. Wash. Feb. 16, 2016) (noting, at the summary judgment stage, that a party waives its argument by providing no supporting argument for its position or failing to adequately develop its argument).

To receive full compensation for infringement, a patentee can move for supplemental damages for infringing sales that the jury did not consider and that precede

the start of a permanent injunction. *See Finjan, inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1212 (Fed. Cir. 2010). A court may assess and award post-verdict supplemental damages, and a court may enhance those damages as appropriate under 35 U.S.C. § 284. *See SynQor, Inc. v. Artesyn Techs., Inc.*, 709 F.3d 1365, 1384-85 (Fed. Cir. 2013); *see also* 35 U.S.C. § 284 ("When the damages are not found by a jury, the court *shall* assess them.") (emphasis added).

The court agrees with CEMCO that Defendants' sales in December 2024 support an un-enhanced award of $12,567 in post-verdict supplemental damages. (*See* ED Mot. at 3 & n.4; 1/10/25 Trojan ED Decl. ¶¶11-12 & Ex. 5.) The court further concludes that Defendants' conduct, discussed above, supports CEMCO's request to enhance that figure to $37,702.14. This represents the same trebling enhancement that the court applies to the jury's award for induced infringement. *See Ravgen, Inc. v. Lab. Corp. of Am. Hololdings*, No. 6:20-cv-00969-ADA, 2025 WL 284643, at *2 (W.D. Tex. Jan. 23, 2025) (awarding post-verdict supplemental damages enhanced "by the same amount that the [c]ourt enhances the jury award for willful infringement" where the defendant did not "provide any [separate] arguments against enhancing the post-verdict supplemental damages"). Accordingly, the court awards a total of $2,395,067.34 to CEMCO in enhanced damages.

B. Attorneys' Fees and Costs

The court next discusses CEMCO's motion for attorneys' fees, which includes three categories of requests: (1) attorneys' fees, (2) costs, and (3) expert witness fees and costs. (*See generally* AF Mot.)

3. Attorneys' Fees

"The court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285. An exceptional case "is simply one that stands out from others with respect to the substantive strength of a party's litigation position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014). A prevailing party "is one who has been awarded some relief by a court[.]" *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health & Hum. Res.*, 532 U.S. 598, 603 (2001).

For the reasons discussed above in awarding enhanced damages,[4] the court has no difficulty concluding that this case is exceptional, both because of the weakness of Defendants' litigation position and because of the unreasonable manner in which they litigated the case. In addition, CEMCO is the prevailing party. Indeed, CEMCO obtained an excellent result: it secured damage awards on all of its claims and obtained findings that Mr. Klein, Ms. Klein, and KPSI willfully induced infringement of the Patents. (*See* Verdict.) Thus, the court will award attorneys' fees under 35 U.S.C. § 285, and turns now to the appropriate amount of the award.

District courts typically calculate attorneys' fees awards by multiplying the number of hours reasonably expended by a reasonable hourly rate, a calculation referred to as the "lodestar" method. *See Camacho v. Bridgeport Find., Inc.*, 523 F.3d 973, 978

[4] The parties likewise rely upon their briefing on CEMCO's motion for enhanced damages to debate whether this case is exceptional. (*See* AF Resp. at 2-3.)

(9th Cir. 2008); *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564 (1986) (explaining the "strong presumption that the lodestar figure—the product of reasonable hours times a reasonable rate—represents a 'reasonable' fee"). From there, in rare cases and if circumstances warrant, a court may adjust the lodestar figure up or down based upon additional "*Kerr* factors." *See Camacho*, 523 F.3d at 982 (citing *Kerr v. Screen Extras Guild, Inc.*, 526, F.2d 67, 69-70 (9th Cir. 1975), *abrogated on other grounds by City of Burlington v. Dague*, 505 U.S. 557 (1992)). These factors are as follows:

> (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the 'undesirability' of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

Kerr, 526 F.2d at 70.

CEMCO requests $965,582.72 for discounted fees billed by the Trojan Law Offices ("TLO") and $29,166 for fees billed by Lane Powell PC ("Lane Powell"),[5] for a total of $994,748.72 in attorneys' fees. (AF Mot. at 3, 13.) Defendants do not dispute the requested fees for Lane Powell or the reasonableness of the hourly rates charged by

[5] Lane Powell PC is now part of Ballard Spahr LLP. (1/10/25 Swanson Decl. (Dkt. # 223) ¶ 1.) The court adopts the parties' convention of referring to the law firm as "Lane Powell."

TLO.[6] (*See generally* AF Resp. at 3-9.) However, Defendants argue that the court should reduce the requested fees for TLO by 30% "across the board" to account for TLO's block billing, which Defendants say includes (1) administrative and paralegal work performed by attorneys at attorney rates, and (2) fees related to CEMCO's fraudulent transfer claim. (*Id.*) The court addresses each argument in turn.

a. Administrative and Paralegal Work

Defendants assert that the court should reduce any award of attorneys' fees to account for the approximately 26% of certain TLO attorneys' billing entries that Defendants say include administrative or paralegal work. (AF Resp. at 6.) To support this assertion, Defendants count the total number of billing entries by three TLO attorneys, count the number of entries by those attorneys that Defendants say include "paralegal or administrative work[,]" and then divide the former by the latter. (*See* 2/3/25 Laske Decl. (Dkt. # 240) ¶ 5 (noting that three TLO timekeepers submitted a total of 687 billing entries, that 182 of those entries contained some paralegal or administrative work, and that 26.49% of the billing entries for those timekeepers therefore contained paralegal or administrative work).)

However, this methodology is so flawed that it offers no help to the court. First, by focusing on the number of billing *entries* that include some administrative or paralegal

[6] Moreover, in the Third Case, the court found that the rates charged by TLO are reasonable. *See* 11/21/23 Order at 6, *Third Case* (W.D. Wash. Now. 21, 2023), Dkt. # 377; (*see also* AF Mot. at 2 ("TLO's base rates have not significantly changed.").) After accounting for the discounts that TLO gave to CEMCO, TLO billed an effective average of $386 per hour for the work it performed in this case. (1/10/25 Trojan AF Decl. ¶ 6.)

work, Defendants' calculations reveal nothing about how many *hours* TLO allegedly spent on administrative tasks. Some entries by TLO timekeepers are just a fraction of an hour long, others are seven hours or more, and many include only one or two quick administrative tasks among several lengthy tasks that are appropriate for attorneys. (*See generally* 1/10/25 Trojan AF Decl. (Dkt. # 224) ¶ 4, Ex. 1 ("TLO Billing Entries"). Thus, Defendants' methodology depends entirely upon two false assumptions: (1) that each billing entry has an equal number of hours, and (2) that any entry that includes some administrative or paralegal work includes no attorney work.

Second, by limiting their calculations to the three TLO timekeepers who allegedly had some administrative or paralegal work in their billing entries, Defendants inflate the percentage of such work performed by TLO's attorneys. Defendants admit that two TLO timekeepers did not submit entries with any administrative or paralegal work. Including these timekeepers in Defendants' calculations would have decreased TLO's percentage of allegedly unbillable work.

Third, Defendants fail to appreciate that TLO has already accounted for and removed any unbillable hours from CEMCO's requested fee award. Specifically, in a sworn declaration, TLO quantified the actual number of hours that each of its timekeepers spent on administrative work and then subtracted that amount from those timekeepers' respective hours. (*See* 1/10/25 Trojan AF Decl. ¶ 20 (chart depicting each of TLO's seven timekeepers, their billed hours, and the number of administrative hours TLO removed from each timekeeper).) As a result, TLO completely removed all the hours for two of its timekeepers, and it removed a total of 33.3 additional hours for three

of its other timekeepers. (*Id.*) After reviewing TLO's billing entries, the court agrees that TLO removed an appropriate number of hours. (*See* TLO Billing Entries.) Thus, the court does not credit Defendants' concern about TLO billing for administrative work.[7]

Relatedly, the court finds no merit in Defendants' argument that TLO attorneys billed for work that paralegals should have performed at a lower billing rate. Although TLO used block billing here, its billing entries are detailed enough to describe the exact tasks that TLO timekeepers completed and to allow the court to assess whether those tasks are reasonable. (*See, e.g.*, AF Reply at 3-4 (example billing entries by TLO timekeepers); TLO Billing Entries); *see Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 188 F. Supp. 3d 343-44 (S.D.N.Y. 2016) (concluding that block billed entries may be detailed enough to allow a court to evaluate the reasonableness of the listed activities). After removing administrative work, the vast majority of TLO's billable hours came from three attorney timekeepers: 1,068.2 hours from Dylan Dang at an effective rate of $429 per hour; 933.4 hours from Francis Wong at an effective rate of $389 per hour; and 304.94 hours from Mehdi Poursoltani at an effective rate of $304 per hour. (*See id.* ¶¶ 14, 18-20.) Based on its detailed review of TLO's billing entries and its knowledge of hourly rates charged by patent counsel in the Seattle area, the court cannot

[7] In contrast, during contempt proceedings in the Third Case, TLO did not attempt to quantify and remove hours spent performing administrative tasks from its bills, such as time spent downloading or transmitting documents. *See* 11/21/23 Order at 12-13, *Third Case* (W.D. Wash. Now. 21, 2023), Dkt. # 377. Because this left the court with little ability to determine the time spent by TLO on administrative tasks, the court reduced the requested fees for TLO by 10%. *Id.*

conclude that TLO unreasonably billed paralegal work at attorney rates, and the court declines to reduce CEMCO's fee award on that basis.

The court also agrees with CEMCO that it can recover "a fully compensatory fee" because it "obtained excellent results[.]" (AF Mot. at 10 (quoting *City of Riverside v. Rivera*, 477 U.S. 561, 562 (1986)).) CEMCO successfully obtained terminating sanctions against Defendants on its primary claims of induced infringement, proved at trial that Mr. Klein, Ms. Klein, and KPSI willfully induced infringement of the Patents, and proved its fraudulent transfer claim. Defendants also do not argue that the court should reduce the fee award based on CEMCO's success. (*See generally* AF Resp.) Considering the length and complexity of this case, the hours that TLO has already removed from its bills, and the additional difficulties that Defendants created here, the court readily concludes that the 2,499.81 hours that TLO spent on this litigation at its timekeepers' effective rates was reasonable. (*See id.* ¶ 20.)

Indeed, in the contempt proceedings in the Third Case, TLO's invoices reflected that it spent approximately the same amount of time—2,470.04 hours—reopening the Third Case for contempt proceedings, conducting discovery, proving contempt damages, and performing related tasks. *See* 11/21/23 Order at 8-9, *Third Case*, (W.D. Wash. Nov. 21, 2023), Dkt. # 377. Here, TLO litigated three motions to dismiss and two motions for summary judgment, amended CEMCO's complaint twice, conducted extensive discovery including 22 subpoenas and 12 depositions, and conducted a six-day trial. (*See generally* Dkt.; 1/10/25 Trojan AF Decl. ¶¶ 21-23 (describing work performed in discovery).) The

court sees no basis to reduce CEMCO's requested attorneys' fees for administrative or paralegal work.

b. Work on Fraudulent Transfer Claim

"If an action combines patent and nonpatent claims, no award of fees pursuant to [35 U.S.C. §] 285 can be allowed for litigating nonpatent issues." *Monolith Portland Midwest Co. v. Kaiser Aluminum & Chem. Corp.*, 407 F.2d 288, 297 (9th Cir. 1969); *see also Kilopass Tech., Inc. v. Sidense Corp.*, 82 F. Supp. 3d 1154, 1166 (N.D. Cal. 2015) (awarding § 285 fees for "all reasonable attorneys' fees arising out of the patent-related litigation"). Although nonpatent issues might "be so intertwined with the patent issues that the evidence would, in large part, be material to both types of issues" and support an award under § 285, that does not occur to the extent that work on a claim "is [] wholly separate and separable . . . from the patent issues." *Stickle v. Heublein, Inc.*, 716 F.2d 1550, 1564 (Fed. Cir. 1983).

Defendants argue that CEMCO should not receive a § 285 award of TLO's fees related to CEMCO's fraudulent transfer claim because that claim is separate from CEMCO's induced patent infringement claims. (AF Resp. at 8.) CEMCO replies that Defendants used fraudulently-transferred assets to induce infringement and asserts that "[t]he fraudulent transfer claim would not be viable without the patent infringement claim." (AF Reply at 6-7.) The court agrees in part with Defendants. Even assuming that CEMCO would not have brought its fraudulent transfer claim without its infringement claims, that does not convert a fraudulent transfer claim into a patent claim. *See Stickle*, 716 F.2d at 1563. As CEMCO concedes, its fraudulent transfer claim

"required CEMCO to untangle the various threads of transfers that S4S made to KPSI[,] . . . to establish the nature of each transfer, the value of the assets, and Defendants' intent in taking those assets as part of a scheme for S4S to avoid paying [a] judgment[.]" (AF Mot. at 9-10.) Thus, the fraudulent transfer claim required CEMCO to prove elements distinct from those necessary to prove induced infringement, and to perform some extra work unraveling the details of transfers to KPSI.

Nevertheless, TLO's work on CEMCO's fraudulent transfer claim represents only a small portion of TLO's total billing in this case. (2/10/25 Trojan Decl. (Dkt. # 242) ¶ 3; *see also* AF Resp. at 9 (chart depicting Defendants' estimate that CEMCO's fraudulent transfer claim represented only 8.1% of TLO's total fees billed by dollar amount).)[8] Furthermore, at least a portion of TLO's work on the fraudulent transfer claim is sufficiently intertwined with CEMCO's patent claims to warrant a fee award under § 285. In essence, evidence that S4S transferred assets to KPSI to avoid judgments against S4S and to allow KPSI to continue S4S's infringement does double duty: it supports CEMCO's fraudulent transfer claim, and it also bears directly on Defendants' state of mind and whether they willfully induced infringement of the Patents. Because CEMCO needed to adduce some of this evidence at trial to prove willful infringement regardless of its fraudulent transfer claim, the court can award fees under § 285 for that portion of TLO's work.

[8] As stated above, Defendants' estimate overstates this percentage by assuming that any billing entry mentioning the fraudulent transfer claim also includes no work related to CEMCO's induced infringement claims. (*See* Laske Decl. ¶¶ 7-8.) The narratives in TLO's billing entries contradict this assumption. (*See generally* TLO Billing Entries.)

Accordingly, to properly account for the nonrecoverable time spent by TLO on CEMCO's fraudulent transfer claim, the court reduces TLO's total fees by 3%. The court awards CEMCO $29,166.00 for Lane Powell's fees and $936,615.24 for TLO's fees,[9] for a total attorneys' fees award of $965,781.24.

4. Costs

CEMCO also requests certain costs in connection with this litigation, comprising $3,795.00 for mediation costs and $11,264.82 for TLO attorneys' and expert witnesses' air travel and lodging in Seattle while attending hearings and the trial in this case. (AF Mot. at 12; *see also* 1/10/25 Trojan AF Decl. ¶¶ 25-27 (providing detailed information on travel and lodging costs).) Defendants do not respond to this request. (*See generally* AF Resp.)

"[N]on-expert, non-taxable costs are compensable under [35 U.S.C. §] 285." *Universal Elecs., Inc. v. Universal remote Control, Inc.*, 130 F. Supp. 3d 1331, 1341 (C.D. Cal 2015); *see also Kilopass Tech., Inc. v. Sidense Corp.*, 82 F. Supp. 3d 1154, 1174-75 (N.D. Cal. 2015) (awarding non-taxable travel and lodging expenses and document delivery fees under § 285). The costs requested by CEMCO are not taxable.

[9] To calculate the award for TLO's fees, the court first took the hours worked by each TLO timekeeper, less any hours worked on administrative tasks, and multiplied those hours by the timekeepers' respective discounted billing rates as shown in Mr. Trojan's declaration. (*See* 1/10/25 Trojan AJ Decl. ¶ 20.) This resulted in $997,873.56. Next, the court reduced that figure by $32,290.84 to avoid double-counting the amount it has already awarded to CEMCO for TLO's work in litigating terminating sanctions in this case. (*See id.* ¶ 20 & n.1; 9/30/24 Order (Dkt. # 146) at 2 (awarding attorneys' fees).) This resulted in an adjusted amount of $965,582.72. From there, the court applied a 3% reduction to account for the nonrecoverable portion of TLO's work on CEMCO's fraudulent transfer claim, arriving at a total award of attorneys' fees for TLO of $936,615.24.

See, e.g., Local Rules W.D. Wash. LCR 54(d)(3) (specifying taxable costs, with reference to statutory authority). The court, however, cannot compensate CEMCO for its expert witness costs under § 285, and the court therefore excludes from CEMCO's request $655.96 in costs associated with CEMCO's expert witnesses. *See Universal Elecs.*, 130 F. Supp. 3d at 1341; (1/10/25 Trojan AF Decl. ¶ 25 (including $655.96 in total costs associated with CEMCO's expert witnesses).) The court finds that CEMCO's remaining requested non-expert costs are reasonable. Accordingly, the court awards CEMCO its costs of $3,795.00 for mediation and $10,608.87 for TLO attorneys' air travel and lodging under 35 U.S.C. § 285.[10]

5. Expert Witnesses

Finally, CEMCO requests that the court exercise its inherent powers to award $97,198.23 in fees and costs that CEMCO paid for three expert witnesses. (AF Mot. at 13.) Including the $655.95 that the court excluded from CEMCO's request for costs under § 285, CEMCO's request for expert fees and costs totals $97,854.18. (*See* 1/10/25 Trojan AF Decl. ¶¶ 25 (including costs of $655.95 for expert witnesses), 31 (remaining costs and fees of $97,198.23 for expert witnesses); *see also* AF Mot. at 12-13 (requesting an award of expert witnesses' fees and costs); AF Reply at 7-8.)

[10] Unlike its award of TLO's attorneys' fees, the court does not reduce its award of costs in light of CEMCO's fraudulent transfer claim. Air travel, lodging, and mediation costs are fixed, and CEMCO would incur them regardless simply by pursuing its primary claims of induced patent infringement. The record contains no evidence or argument that CEMCO incurred additional air travel, lodging, or mediation costs because of its fraudulent transfer claim. (*See generally* AF Resp.; ED Resp.)

Defendants urge the court to award nothing for CEMCO's expert fees and costs, arguing that CEMCO's award should be limited to statutory awards of enhanced damages and attorneys' fees. In support, Defendants assert that they have not engaged in conduct justifying an award of expert fees as a sanction. (AF Resp. at 10-11.) The court disagrees with Defendants and grants CEMCO's request in part.

In addition to awarding attorneys' fees and costs under 35 U.S.C. § 285, a court may also impose sanctions or fees under its inherent powers. *PS Prods. Inc. v. Panther Trading Co. Inc.*, 122 F.4th 893, 898 (Fed. Cir. 2024); *see also Amstead Indus. Inc. v. Buckeye Steel Castings Co.*, 23 F.3d 374, 378 (Fed. Cir. 1994) ("[S]tatutes governing sanctions do not displace the federal courts' inherent power to impose sanctions for bad faith and vexatious conduct. . . . [but] a court must use caution when invoking its inherent powers to impose sanctions." (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991)). Courts have reserved their inherent powers for particularly egregious cases, such as when a party commits discovery abuses, brings suit under patents known to be invalid, and engages in misleading tactics at trial. *See Amstead*, 23 F.3 at 378 (citing *Mathis v. Spears*, 857 F.2d 749, 757-58 (Fed. Cir. 1988)). Courts have also used their inherent powers in the face of "fraud or abuse of the judicial process" or "numerous articulations of [] bad faith and vexatious litigation conduct[.]" *Takeda Chem. Indus., Ltd. v. Mylan Labs., Inc.*, 549 F.3d 1381, 1391 (Fed. Cir. 2008). The court concludes that Defendants' conduct is shocking and egregious enough to warrant at least a modest exercise of the court's inherent powers in addition to available statutory remedies. Therefore, it grants CEMCO a portion of its request for expert witness fees.

As the court detailed at length above, Mr. Klein continued his blatant infringement despite a contempt judgment in the Third Case and a judgment in the Fourth Case. And Defendants engaged in particularly egregious litigation conduct in this latest iteration of infringement after fraudulently transferring S4S's assets to KPSI—all to continue profiting from infringing the Patents and avoiding the consequences of that infringement. While this litigation proceeded, Mr. Klein created videos and other materials to induce *new* infringement. Defendants then concealed this direct evidence of CEMCO's claims by submitting false discovery responses, providing false deposition testimony, and disobeying a court order to turn over responsive materials. Even after the court imposed terminating sanctions, Defendants simply stepped up their efforts to avoid the consequences of their actions. At trial, the court had to remind Ms. Klein to testify truthfully. And despite the court's admonishment, Mr. Klein later took the stand and contradicted his own sworn statements and invented new explanations for his behavior. Considering that Mr. Klein behaved similarly in the Fourth Case—testifying at trial and contradicting a prior sworn declaration when it suited his interests—the court perceives a continuing pattern of abusing the trial process.

Accordingly, the court awards $23,838.50 to CEMCO for its expert witness fees and puts Defendants on notice that their continuing bad faith tactics have strayed into abuse of the judicial process. This figure represents the fees of Eric Bergman of Beam Fire and Life Safety, CEMCO's technical expert. (*See* 1/10/25 Trojan AF Decl. ¶¶ 22, 25.) CEMCO hired Mr. Bergman to investigate induced infringement by investigating whether Defendants' customers infringed the Patents by applying FRG Products to head-

of-walls. (*Id.* ¶ 22.) Defendants admit that this investigation is "a tall order" because the evidence is "buried inside walls in buildings." (ED Resp. at 3.) After the court imposed terminating sanctions, however, Defendants had to concede induced infringement at trial. Thus, out of CEMCO's three experts, Defendants' discovery misconduct bears the strongest nexus to Mr. Bergman's fees by necessarily obviating some of Mr. Bergman's work for CEMCO.

The court does not perceive that Defendants' litigation misconduct rendered unnecessary the fees and costs as to CEMCO's other experts. Because of this, and because the court has addressed a portion of Defendants' misconduct in other ways through terminating sanctions and a heavy award of damages, fees, and costs, the court denies the remainder of CEMCO's request.

IV. CONCLUSION

For the foregoing reasons, the court GRANTS CEMCO's motion for enhanced damages (Dkt. # 225) and GRANTS in part and DENIES in part CEMCO's motion for attorneys' fees and costs (Dkt. # 222). Specifically, the court ORDERS as follows:

(1) The court AWARDS CEMCO treble damages of **$2,395,068.48** pursuant to 35 U.S.C. § 284 by enhancing the jury's verdict (Dkt. # 214) on CEMCO's induced infringement claims and awarding enhanced post-verdict supplemental damages. The court HOLDS the parties liable for this amount as follows:

a) The court HOLDS Mr. Klein, Ms. Klein, KPSI, and Kevin Klein jointly and severally liable for **$798,356.16**, which represents: (1) the un-enhanced portion of the jury's verdict on CEMCO's induced infringement

claims of $785,788.78; plus (2) the un-enhanced portion of KPSI's sales of FRG Products in December 2024 of $12,567.38;

b) The court HOLDS Mr. Klein, Ms. Klein, and KPSI jointly and severally liable for **$1,596,712.32**, which represents: (1) the enhanced portion of the jury's verdict on CEMCO's induced infringement claims of $1,571,577.56; plus (2) the enhanced portion of KPSI's sales of FRG Products in December 2024 of $25,134.76;

(2) The court HOLDS Ms. Klein and KPSI jointly and severally liable for the jury's verdict of **$300,000.00** on CEMCO's fraudulent transfer claim;

(3) The court AWARDS CEMCO **$965,781.24** for its attorneys' fees and HOLDS Mr. Klein, Ms. Klein, and KPSI jointly and severally liable for this amount;

(4) The court AWARDS CEMCO **$3,795.00** for its mediation costs and HOLDS Mr. Klein, Ms. Klein, and KPSI jointly and severally liable for this amount;

(5) The court AWARDS CEMCO **$10,608.87** for its other costs and HOLDS Mr. Klein, Ms. Klein, and KPSI jointly and severally liable for this amount; and

(6) The court AWARDS CEMCO **$23,838.50** for its expert witness fees and HOLDS Mr. Klein, Ms. Klein, and KPSI jointly and severally liable for this amount.

Dated this 28th day of February, 2025.

JAMES L. ROBART
United States District Judge