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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 CEMCO, LLC,

11 Plaintiff,

12 v.

13 KPSI INNOVATION, INC., et al.,

14 Defendants.

CASE NO. C23-0918JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court is Plaintiff CEMCO, LLC’s (“CEMCO”) motion for a permanent  
17 injunction. (PI Mot. (Dkt. # 219); PI Reply (Dkt. # 234).) Defendants KPSI Innovation,  
18 Inc. (“KPSI”), Serina Klein, James Klein, and Kevin Klein oppose the motion.<sup>1</sup> (PI Resp.  
19 (Dkt. # 227).)

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21 <sup>1</sup> Although CEMCO moved for a permanent injunction against all Defendants (PI Mot. at  
22 1), Defendants’ response to CEMCO’s permanent injunction motion omitted Kevin Klein (*see* PI  
Resp. at 1). From the record, the court understands that this omission was likely inadvertent, and

## 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”).<sup>2</sup> (*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.)

On May 10, 2022, a jury in the Central District of California returned a verdict finding, in relevant part, that FRG Products infringe the Patents. (*See id.* at 5 (“A jury . . . found that FRG products infringe the Patents.”)); *see also Seal4Safti, Inc. v. Cal. Expanded Metal Prods. Co.*, No. 2:20-cv-10409-MCS-JEM (C.D. Cal. May 10, 2022), Dkt. # 213 (the “California Jury Verdict”), at 4 (finding induced infringement of the Patents). At the time of the verdict, Seal4Safti, Inc. (“S4S”) sold the FRG Products, and Mr. Klein was a consultant for S4S. (Admitted Facts at 1; California Jury Verdict at 4-5.) The jury also found that S4S willfully induced infringement of the Patents. (California Jury Verdict at 4-5.)

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it construes Defendants’ response to CEMCO’s permanent injunction motion to include Kevin Klein.

<sup>2</sup> The court detailed the history of this infringement at length in its order awarding CEMCO enhanced damages and attorneys’ fees and costs (*see* 2/28/25 Order (Dkt. # 246)), and the court does not repeat that discussion here except as relevant to this order.

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

6 A few months after Ms. Klein incorporated KPSI, CEMCO initiated this lawsuit  
7 against Defendants. (Compl. (Dkt. # 1); *see also* 3d Am. Compl. (Dkt. # 69) (operative  
8 complaint).) CEMCO alleged that Defendants induced their customers to infringe the  
9 Patents by instructing customers to apply FRG Products to header tracks in an infringing  
10 manner. (3d Am. Compl. ¶¶ 91-139.) CEMCO also alleged that Defendants fraudulently  
11 transferred assets from S4S to KPSI to avoid paying monetary judgments rendered  
12 against S4S. (*Id.* ¶¶ 140-62.)

13 During discovery, Defendants committed discovery misconduct that jeopardized  
14 the case schedule, and then disobeyed a court order to produce documents by willfully  
15 and in bad faith withholding responsive materials. (*See* 8/13/24 Order (Dkt. # 111) at 3-  
16 4, 8-10; *see also* 6/4/24 Order (Dkt. # 99) (ordering Defendants to provide responsive  
17 materials).) Among other things, Defendants withheld videos of Mr. Klein instructing  
18 customers to apply FRG Products in ways that infringed the Patents, which supported  
19 CEMCO's core allegations in this case. (8/13/24 Order at 4-5.) The court issued case-  
20 dispositive sanctions and, in relevant part, entered default against Defendants on  
21 CEMCO's induced infringement claims. (*Id.* at 12.)  
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1 On December 9, 2025, after a six-day trial, the jury returned a verdict for  
2 CEMCO. (Verdict (Dkt. ## 213 (sealed), 214 (redacted)).) The jury found that CEMCO  
3 proved its fraudulent transfer claim, found that Mr. Klein, Ms. Klein, and KPSI willfully  
4 induced infringement of the Patents, and awarded damages to CEMCO on all of its  
5 claims. (*Id.*) On December 23, 2024, CEMCO moved for a permanent injunction. (PI  
6 Mot.) The motion is fully briefed and ripe for decision.

### 7 III. ANALYSIS

8 In patent cases, courts “may grant injunctions in accordance with the principles of  
9 equity to prevent the violation of any right secured by a patent, on such terms as the court  
10 deems reasonable.” 35 U.S.C. § 283. A plaintiff seeking a permanent injunction must  
11 show four elements:

12 (1) that it has suffered an irreparable injury; (2) that remedies available at  
13 law, such as monetary damages, are inadequate to compensate for that injury;  
14 (3) that, considering the balance of hardships between the plaintiff and  
defendant, a remedy in equity is warranted; and (4) that the public interest  
would not be disserved by a permanent injunction.

15 *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

16 Defendants concede that the court should issue a permanent injunction. (PI Resp.  
17 at 2.) Accordingly, the court only briefly addresses the four required elements, and then  
18 turns to the parties’ dispute over the scope of a permanent injunction.

#### 19 1. Elements of a Permanent Injunction

20 CEMCO states that it has and will continue to suffer irreparable harm from  
21 Defendants’ infringement because it is forced to compete with infringing products, and  
22 because the infringement harms its royalty base and its relationship with its exclusive

1 licensee. (PI Mot. at 5-8.) Monetary damages alone cannot compensate for some of  
2 these injuries, including business relationship injuries, and monetary damages are also  
3 “extremely difficult to quantify because the infringement is hidden behind walls.” (*Id.* at  
4 9-10.) As to the last two elements, CEMCO argues that it would effectively lose the right  
5 to exclude competitors without an injunction, and that an injunction would not harm  
6 Defendants or the public interest because an injunction would merely prohibit Defendants  
7 from infringing. (*Id.* at 10-11.) CEMCO also points out that trial testimony showed that  
8 KPSI continues to sell FRG Products. (*Id.* at 1; *see also* 12/4/24 Tr. (Dkt. # 230)  
9 402:2-4.)

10 Upon its review of the record, the court agrees with the parties that CEMCO has  
11 shown that it satisfies the elements necessary to obtain a permanent injunction.

## 12 2. Scope of a Permanent Injunction

13 The parties center their dispute on the scope of a permanent injunction.  
14 Injunctions must “describe in reasonable detail—and not by referring to the complaint or  
15 other document—the act or acts restrained or required.” Fed. R. Civ. P. 65(d)(1)(C).  
16 “Injunctions that by their terms apply to ‘any [product]’ within the scope of the patent  
17 claims do not meet the specificity requirement of Rule 65(d).” *ABC Corp. I v. P’ship and*  
18 *Unincorporated Ass’ns*, 52 F.4th 934, 946 (Fed. Cir. 2022). Thus, in the infringement  
19 context, courts must limit injunctions to the infringing products at issue and to products  
20 that are “not more than colorably different.” *ABC Corp. I v. P’ship and Unincorporated*  
21 *Ass’ns*, 52 F.4th 934, 946 (Fed. Cir. 2022). Additionally, courts must narrowly tailor  
22 injunctions “to remedy only the specific harms shown by a plaintiff, rather than to enjoin

1 all possible breaches of the law.” *Amazon.com v. Kurth*, C18-0353RAJ, 2019 WL  
2 3426064, at \*5 (W.D. Wash. July 30, 2019) (citing *Price v. City of Stockton*, 390 F.3d  
3 1105, 1117 (9th Cir. 2004)); *see also Oracle USA, Inc. v. Rimini Street, Inc.*, 81 F.4th  
4 843, 857 (9th Cir. 2023) (“[I]njunctive relief should be no more burdensome to the  
5 defendant than necessary to provide complete relief to the plaintiffs[.]”) (citation  
6 omitted).

7 In briefing its motion for a permanent injunction, CEMCO narrowed its request by  
8 agreeing to two of Defendants’ proposed changes.<sup>3</sup> (*See* PI Reply at 2-3.) However, the  
9 parties continue to dispute several aspects of CEMCO’s proposed injunction, including  
10 how to define the products covered by the injunction, how to describe the prohibited  
11 conduct, what conduct to prohibit, and whether to impose a daily fine if Defendants fail  
12 to comply. (*See* PI Resp. at 2-10; PI Reply 3-11.)

13 In assessing the parties’ arguments, the court bears in mind that, in a separate case,  
14 it has previously found Mr. Klein in contempt for inducing infringement of the Patents  
15 and violating a permanent injunction. *See* Order, *California Expanded Metal Prods. Co.*  
16 *v. Klein*, C18-0659JLR (W.D. Wash. Feb. 16, 2022), Dkt. # 301, at 52. And here, history  
17 seems poised to repeat itself. The jury found that all Defendants except Kevin Klein  
18 willfully induced infringement of the Patents. (Verdict (Dkt # 214).) The jury also found  
19 Ms. Klein and KPSI liable for fraudulent transfer on CEMCO’s theory that KPSI

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21 <sup>3</sup> Specifically, CEMCO agreed to (1) clarifying that the injunction dissolves when  
22 CEMCO can no longer enforce the Patents, and (2) modifying the scope of the injunction to  
enjoin “[m]aking, using, offering to sell, or selling” the relevant products. (PI Reply at 2-3.)

1 received assets from S4S that should instead have been used to pay a judgment in  
2 CEMCO’s favor for infringement of the Patents.<sup>4</sup> (*Id.*; *see also* 12/9/24 Tr. (Dkt. # 233)  
3 821:19-24, 825:8 - 826:6 (describing, in closing, CEMCO’s fraudulent transfer theory).)  
4 The court also heard at trial that David Tullis—KPSI’s outside sales representative and a  
5 former employee of S4S—simply disagrees that Defendants induced infringement of the  
6 Patents and would like to take over KPSI’s business. (12/4/24 Tr. 402:6-15.)

7 Turning to the scope of a permanent injunction, the court agrees with CEMCO that  
8 the injunction should last for “the life of” the Patents and include specific language to  
9 restrict future infringement.<sup>5</sup> (PI Mot. at 11-14; PI Reply at 2-4.) The court also agrees  
10 that Defendants must notify their customers of the injunction. Other courts have taken  
11 similar approaches, such as by requiring infringing defendants to include a copy of the  
12 injunction with each shipment of goods. *See, e.g., Halo Elecs., Inc. v Pulse Elecs., Inc.*,  
13 2:07-cv-00331-PMP-PAL, 2013 WL 3043668, at \*12 (D. Nev. June 17, 2013). Customer  
14 notification is particularly important here, where Mr. Klein has a history of encouraging  
15 customers to buy the same products under new brand names, in an effort to circumvent  
16 court orders and settlement agreements designed to curtail infringement. (*See, e.g.*,  
17 12/23/24 Trojan Decl. ¶¶ 7, 9; Exhibit 14 (Dkt. # 220-6) (email from Mr. Klein

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19 <sup>4</sup> Indeed, in email correspondence, Mr. Klein explained to a customer that S4S decided to  
20 wind up its business to “avoid” the consequences of its infringement of the Patents and “to make  
21 any judgments go ‘poof[.]’” (12/23/24 Trojan Decl. (Dkt. #220) ¶ 9; Exhibit 94 (Dkt. # 220-8).)

22 <sup>5</sup> Defendants argue that an injunction should simply incorporate the claims of the Patents,  
without referring to fire-rated head-of-wall constructions or assemblies. (*See, e.g.*, PI Resp. at  
2.) The court disagrees because that approach would not “describe in reasonable detail—and not  
by referring to the complaint or other document—the act or acts restrained or required.” *See*  
Fed. R. Civ. P. 65(d)(1)(C).

1 attempting to convince a prospective customer that, although Mr. Klein “was stuck under  
2 a number of prior agreements with [o]thers that handcuffed [him] personally[,] . . . the  
3 new folks . . . don’t have the same issues”); Exhibit 94 (email from Mr. Klein attempting  
4 to convince a customer that “KPSI is another company that has taken on all of the [S4S]  
5 product lines” and that KPSI therefore had “no legal issues”).)

6 Likewise, the court agrees that Defendants must cease providing technical support,  
7 including engineering judgments, for infringing uses of FRG Products, and must request  
8 that Underwriters Laboratories (“UL”), a third-party that provides and maintains listings  
9 of safety certifications, remove UL listings for FRG Products. The court shares  
10 CEMCO’s concern about Defendants instructing—and referring to UL listings to  
11 instruct—customers to install products in infringing ways. (PI Mot. at 13-14.) The court  
12 also notes that S4S transferred the maintenance of its UL listings to KPSI. (Agreed Facts  
13 at 5.) Accordingly, to prevent Defendants from again transferring UL listings (and other  
14 third-party safety certifications) to circumvent the court’s injunction, the court must  
15 restrict Defendants’ ability to transfer those certifications.

16 Nevertheless, the court rephrases some of CEMCO’s proposed language for clarity  
17 and to avoid overbreadth. For instance, CEMCO requests an injunction that (1) covers  
18 certifications that depict, describe, or “suggest[.]” using intumescent materials for fire-  
19 rated head-of-wall constructions or assemblies (PI Reply at 3), and (2) prevents  
20 Defendants from engaging “in any steps necessary” for creating certain third-party  
21 certifications (*id.* at 9-10). The court replaces the word “suggests” with “references” and  
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1 enjoins only “creating” third-party certifications or “facilitating” their creation, rather  
2 than taking any steps necessary for creating third-party certifications.

3 The court also disagrees with CEMCO’s definition of the covered products. The  
4 court cannot issue an injunction that covers products that are more than colorably  
5 different from the FRG Products at issue here, and CEMCO does not argue that its  
6 proposed definition meets that standard. (*See generally* PI Reply at 4 (arguing to the  
7 contrary that an injunction “should be delineated by the claims of the Patents; not  
8 FRG”).) The court also declines to broadly enjoin Defendants from referring to third-  
9 party certifications in all contexts, and instead tailors that portion of the injunction to  
10 Defendants’ advertising and customer communications.<sup>6</sup>

#### 11 IV. CONCLUSION

12 For the foregoing reasons, the court GRANTS in part and DENIES in part  
13 CEMCO’s motion for a permanent injunction (Dkt. # 219). The court ORDERS that, for  
14 the life of the Patents, Defendants are permanently enjoined from the following:

15 1. Making, using, offering to sell, or selling FRG Products or any product that is  
16 not more than colorably different from FRG Products (the “Intumescent Products”) for  
17 use in fire-rated head-of-wall constructions or assemblies as covered by the claims of the  
18 Patents;

19 2. Providing instructions in any medium (e.g., videos, in-person training,  
20 pamphlets, brochures, installation instructions, websites, and invoices) for using the

21 \_\_\_\_\_  
22 <sup>6</sup> At this stage, the court also declines to impose a daily fine for noncompliance, but  
CEMCO may request a daily fine in future contempt proceedings, if any.

1 Intumescent Products in fire-rated head-of-wall constructions or assemblies as covered by  
2 the claims of the Patents;

3 3. Referencing certifications from any third-party agency related to fire-safety or  
4 building code compliance, including but not limited to UL listings (collectively, “Third-  
5 Party Safety Certification”), concerning the Intumescent Products used for fire-rated  
6 head-of-wall constructions or assemblies as covered by the claims of the Patents, in any  
7 advertising or communications with customers or prospective customers;

8 4. Displaying or disseminating any Third-Party Safety Certification concerning the  
9 Intumescent Products used for fire-rated head-of-wall constructions or assemblies as  
10 covered by the claims of the Patents, in any medium (e.g., videos, in-person training,  
11 pamphlets, brochures, installation instructions, websites, and invoices);

12 5. Transferring or facilitating the transfer of any Third-Party Safety Certification  
13 or data files associated therewith concerning the Intumescent Products used for fire-rated  
14 head-of-wall constructions or assemblies as covered by the claims of the Patents, to any  
15 person or entity;

16 6. Modifying or submitting any proposal for modifying any Third-Party Safety  
17 Certification, where the modification depicts, describes, or references using the  
18 Intumescent Products for fire-rated head-of-wall constructions or assemblies as covered  
19 by the claims of the Patents;

20 7. Creating or facilitating the creation of any Third-Party Safety Certification that  
21 depicts, describes, or references using the Intumescent Products for fire-rated head-of-  
22 wall constructions or assemblies as covered by the claims of the Patents; and

1 8. Providing technical support, including engineering judgments, for Intumescent  
2 Products used for fire-rated head-of-wall constructions or assemblies as covered by the  
3 claims of the Patents.

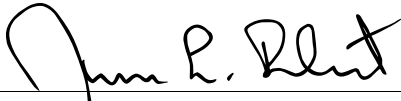
4 The court further ORDERS that, by **March 7, 2025**, Defendants shall:

5 9. Remove any Third-Party Safety Certification that depicts, describes, or  
6 references the use of the Intumescent Products for fire-rated head-of-wall constructions  
7 or assemblies as covered by the claims of the Patents from their websites and all  
8 advertising materials;

9 10. Send a notice of removal for each Third-Party Safety Certification that  
10 depicts, describes, or references the use of the Intumescent Products for fire-rated head-  
11 of-wall constructions or assemblies as covered by the claims of the Patents; and

12 11. Send a copy of this permanent injunction order to each of their customers.

13  
14 Dated this 28th day of February, 2025.

15   
16 JAMES L. ROBART  
17 United States District Judge  
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