Polyzen, Inc. v. Radiadyne, LLC

2016 | Cited 0 times | E.D. North Carolina | September 23, 2016

STATES COURT FOR EASTERN OF NORTH CAROLINA

WESTERN DIVISION

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On IN THE UNITED DISTRICT THE DISTRICT

No. 5:11-CV-662-D

YZEN, INC.,)

Plaintiff,)

v.) ORDER

RADIADYNE, LLC,)

Defendant.)

February 29, 2016, RadiaDyne, LLC ("RadiaDyne" or "defendant") moved for summary judgment concerning Polyzen, Inc.'s ("Polyzen" or "plaintiff') patent-infringement claim [D.E. 248] and filed a memorandum in support [D.E. 249]. Essentially, RadiaDyne contends that, as a matter of law, it at least jointly owns the patent at issue in this case, Patent 7,976,497 ("the '497 patent"), that RadiaDyne does not consent to Polyzen' s patent-infringement claim against RadiaDyne, and that Polyzen lacks standing to pursue the patent-infringement claim absent such consent.

Techs .. Inc. v. Gateway, Inc., 543 F.3d 710, 722 (Fed. Cir. March 21, 2016, Polyzen responded in opposition [D.E. 254] and filed a cross-motion for summary judgment on all ownership issues [D.E.

255]. April1, 2016, RadiaDyne replied [D.E. 256]. Additionally, on April 18, 2016, RadiaDyne filed a supplemental motion for summary judgment [D.E. 268], a memorandum in support [D.E. 270], and a statement of uncontested facts [D.E. 269]. Thereafter, 290].

As explained below, the court concludes that it lacks subject-matter jurisdiction over Polyzen's patent-infringement claim because RadiaDyne at least jointly owns the '497 patent,

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106--08, RadiaDyne has not to Polyzen's patent-infringement lawsuit, and lacks standing to sue for patent infringement without RadiaDyne's consent. Accordingly, the court denies RadiaDyne' s motion and supplemental motion for summary judgment concerning Polyzen' s patent infringement claim [D.E. 248, 268], denies Polyzen's cross-motion for summary judgment on all ownership issues [D.E. 255], but dismisses without prejudice Polyzen's patent-infringement claim for lack of subject-matter jurisdiction. Fed. R. Civ. 12(b)(1); cf. Fed R. Civ. 56. Furthermore, this ruling makes irrelevant much evidence at issue in various motions in limine. Thus, as explained below, the court grants Polyzen's motion in limine to exclude lawyer witnesses [D.E.

grants RadiaDyne' s motion in limine to exclude evidence regarding allegations of invalidity or improper inventorship ofRadiaDyne's patent portfolio [D.E. 181], grants RadiaDyne's motion in limine to exclude the testimony of Polyzen's technical expert Len Czuba [D.E. 189], and grants Polyzen' s motion in limine to exclude evidence regarding RadiaDyne' s patent portfolio and purported assignment of the '497 patent in suit to RadiaDyne [D.E. As for Polyzen's motion in limine to exclude portions of the testimony ofRadiaDyne's technical expert Michael Foreman [D.E. 179], the motion is granted in part and denied in part. As for RadiaDyne's motion in limine to partially exclude testimony ofPolyzen's damages expert Graham Rogers [D.E. 185], the motion is granted. Finally, as for RadiaDyne's motion to exclude evidence [D.E. 213], the motion is granted in part and denied in part.

I. In early John Isham, founder and president ofRadiaDyne, learned ofPolyzen when searchingthelntemetfor"medical balloons" and "medical devices." IshamDep. [D.E. 66-5] 131-38. Isham had an idea for a non-latex rectal medical balloon catheter used in connection with prostate treatment and was looking for someone to assist with producing and manufacturing it. Id.

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PRODUCT" Isham contacted Polyzen, but did not want to reveal the details of his idea until Polyzen entered into a Confidentiality Agreement. See id. February 9, RadiaDyne and Polyzen entered into a Confidentiality Agreement. See [D.E. 287-9]. The Confidentiality Agreement stated that "[b]oth parties agree that no right or license under any patent or trade secret now or hereafter owned or controlled by either party is granted to the other party by this agreement." Id. 2. February 12,

RadiaDyne and Polyzen began working together to develop a medical balloon device design and the technology and process necessary to produce and manufacture it. See Development & Commercialization Agreement DCA") [D.E. 284-1 3 .d; see also Isham Dep. [D.E. 66-5] 132-204; Strom Dep. [D.E. 66-4] 42-146.

March Rubin Shah, a Polyzen employee, sent Isham a quote for a project to "Design & Thermoform/ RF Weld Balloon-Phase See [D.E. 1 The quote totaled

and it included a price of for "design" and a price of for prototype production. Id. Tilak Shah, Polyzen's founder, created the quote. Id. 4; Tilak Shah 30(b)(6) Dep. [D.E. 132-1] 24. March 28, RadiaDyne issued a purchase order to Polyzen for a total of

See [D.E. RD 1132. March 29, Polyzen sent RadiaDyne its first invoice, and RadiaDyne paid a deposit See [D.E. RD 1131; [D.E. RD 1136.

July Polyzen's Rubin Shah emailed RadiaDyne's John Isham a "first draft" of the Development and Commercialization Agreement ("DCA") that Polyzen had prepared on July 18,

See [D.E. 284-1]. The "purpose of[the DCA was] to document various verbal agreements and understandings between the parties and define future expectations of each other as both parties continue the efforts on the product development and manufacturing of samples for a) feasibility study; b) functionality testing; c) clinical trials and future commercialization of specific design of rectal balloon catheter." [D.E. 284-2] 1. The first draft of the DCA defined "RADIADYNE

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PRODUCT" PRODUCT" in paragraph 2.e as"[s]pecific design of rectal balloon catheter for locating/supporting prostate during brachytherapy with Polyzen's Balloon Process Technology." Id. 2.e. The draft of the DCA also confirmed that "[t]he parties agree that RADIADYNE and RADIADYNE

will remain the properties of RADIADYNE." Id. 6.a. Thereafter, RadiaDyne and Polyzen agreed upon a three-layer balloon that Polyzen would make for RadiaDyne to sell to clinicians for "immobilizing the prostate during radiation therapy treatments for cancer patients." [D.E. 288] 3. The balloon design "included internal welds and a distal bulge when the balloon was inflated." I d.

July 27, Polyzen sent the three-layer balloon design to Isham, which he approved. [D.E. 284-3]; [D.E. 1 219. July 31, Isham sent Rubin Shah an email and told him that RadiaDyne wanted to launch the product at the trade show. [D.E.

RD 2649. Rubin Shah responded that same day and told Isham that Polyzen could meet the deadline despite it being "a very aggressive timeline." Id. Isham replied later in the day and asked for information on the manufacturing process so he could "submit [an] FDA Registration letter." Id.

August Polyzenpreparedan updated draft of the DCA. [D.E. 284-4]. Also on August 16, Ruben Shah ofPolyzen forwarded the updated draft to Isham ofRadiaDyne for his review. [D.E. 275] 87. The August 16, updated draft DCA stated:

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The purpose of this term sheet is to document various verbal agreements and understandings between the parties and defme future expectations of each other as both parties continue the efforts on the product development and manufacturing of samples for a) feasibility study; b) functionality testing; c) clinical trials and future commercialization of specific design of rectal balloon catheter, and this will serve as a reference document during initial stages of work between the parties until further manufacturing/supply agreement to be concluded. [D.E. 284-4] 1. The August 16, updated draft DCA contained the same definitions of "RADIADYNE and provisions for ownership of"RADIADYNE as the

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On October 2007, October 2007 July draft DCA. See id. 2.e, 6.a.

September 25, Polyzen filed a provisional patent application for what would become the '497 patent. See Tilak Shah 30(b)(6) [D.E. 284-7] Dep. 192. Polyzen did not inform RadiaDyne of the provisional patent application, and RadiaDyne was unaware of it. See id. 192-93; Tilak Shah Mar. 15, Dep. [D.E. 284-6] 89. Polyzen intended to file the patent application before the balloon was publicly displayed at the trade show. See Tilak Shah 30(b)(6) Dep. [132-1] 223-28.

September 26, Tilak Shah sent Isham quotes for two new phases: II, which consisted of the production of samples "for testing and trials," and which consisted of full-scale production ofthe medical balloons. See [D.E. 109-9] 2-7. RadiaDyne completed purchase orders for both phases. See [D.E. 109-11].

9, Polyzen and RadiaDyne entered into a "Development and Commercialization Agreement" that memorialized different rights and obligations of the two parties. See DCA [D.E. 284-8]. The DCA stated:

The purpose of this agreement is to document various verbal agreements and understandings between the parties and define future expectations of each other as both parties continue the efforts on the product development and manufacturing of samples for a) feasibility study; b) functionality testing; c) clinical trials and future commercialization of specific design of rectal balloon catheter. Id. 1. The DCA defined "RADIADYNE as "[s]pecific design of rectal balloon catheter for locating/supporting prostate during radiation therapy with Polyzen's Balloon Process Technology" and confirmed RadiaDyne's ownership of"RADIADYNE See id. 2.e, 6.a. In the DCA, at Isham's request, "radiation therapy" was substituted for "brachytherapy." See [D.E. 284-1].

25, at Polyzen's request, RadiaDyne tore up the DCA

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2008 2007, because Polyzen wanted to change paragraph 6.d concerning manufacturing of the "RADIADYNE

See [D.E. 284-9]. February 8, Polyzen and RadiaDyne entered into a new and almost identical DCA. See [D.E. Polyzen drafted the DCA with the assistance of Willy Man:froy, an intellectual property licensing specialist. See Tilak: Shah Dep. [D.E. 132-1] 191,262-64.

The DCA stated: The purpose of this agreement is to document various verbal agreements and understandings between the parties and define future expectations of each other as both parties

continue the efforts on the product development and manufacturing of samples for a) feasibility study; b) functionality testing; c) clinical trials and future commercialization of specific design of rectal balloon catheter. [D.E. 1. The DCA defined "RADIADYNE as "[s]pecific design of rectal balloon catheter for locating/supporting prostate during radiation therapy with Polyzen's Balloon Process Technology." Id. 2.e (emphasis omitted). The DCA defined Polyzen's Balloon Process Technology as YZEN'S film welded balloon technology, including film formulation, thickness and multi-layer film welded, designed to articulate desired shape and profile ofballoons for various applications. Functional coating, including anti-adhesion coating formulation and process to apply such formulation onto any device. provided coating services for a fee to cover all out-of-pocket expenses and overhead to prepare samples or coat the products for its customers." Id. 2.d. In the DCA, "[t]he parties agree[d] that RADIADYNE

and RADIADYNE will remain the properties ofRADIADYNE and

DEVICE and will remain the property of YZEN." Id. 6.a. In the DCA, the parties also agreed that definition and assignment of intellectual property survive any termination of the

DCA and the confidentiality agreement dated February 12, between the parties. ld. 7 .b.

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fll,lid March 12, Isham forwarded to Dielectrics, Inc. ("Dielectrics"), another manufacturer, the "product specification drawings" for the balloon which had sent to Isham.

[D.E. DIE 117-19.

September 25, filed a utility patent application for a "Multi-Layer Film Welded Articulated Balloon."

[D.E. 284-11]; Tilak 30(b)(6) Dep. [D.E. 132-1] The utility patent application would become the '497 patent. [D.E. 284-11].

September Isham forwarded to Dielectrics another email from Polyzen, which contained an attachment with an updated balloon design. [D.E. DIE 278-79. In November RadiaDyne terminated the DCA with Polyzen. Def.'s Am. Compl. [D.E. 91] 43.

July 12, the United States & Trademark Office issued No. 7,976,497 (''the '497 patent''). [D.E. 284-11]. The '497 patent listed Tilak and Christopher Strom as inventors and as the assignee. Id. The '497 patent issued with five claims, all reciting a three-layer "medical balloon device." Id. Col. 4, lines 19-54. 1

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1 The '497 patent's five claims are: 1. A medical balloon device, comprising: a first thermoplastic film layer comprising a first material, wherein the first layer includes a first edge; a second thermoplastic film layer comprising a second material, wherein the second layer includes a second edge joined to the first edge to form a bottom inflatable compartment between the first and second layer; a third thermoplastic film layer including proximal and distal portions and comprising a third material different from the first and second materials wherein the third layer includes a third edge joined to the second edge to form a top inflatable compartment between the second and third layer; and an opening in said bottom inflatable compartment to receive a lumen, wherein .the bottom inflatable compartment is in communication with the top inflatable compartment. 2. The medical balloon device of claim 1, wherein the second and third layers are secured intermediate said second and third edges so that the distal portion of the third

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On claims specify an inflated distal bulge or "arcuate shape." ld. Col. 4, lines 37-54 (claims 2-5).

November 21, 2011, Polyzen filed suit in this court against RadiaDyne alleging patent infringement of the '497 patent [D.E. 1]. December 13, 2011, RadiaDyne moved to dismiss Polyzen' s action for lack of jurisdiction and to correct ownership of the patent-in-suit [D.E. 1 December 23, 2011, RadiaDyne sued Polyzen in the United States District Court for the Southern District of Texas, alleging breach of contract, fraud, federal unfair competition under 15 § 1125(a), conversion, and trespass to chattels. See Complaint at 9-13, LLC v. Polyzen. Inc., No. 5:12-CV-102-D (E.D.N.C. Dec. 23, 2011), [D.E. 1]. February 24,2012, the Southern District of Texas transferred RadiaDyne' s case to this court. See Order, LLC v. Polyzen. Inc., No. 5:12-CV-102-D (E.D.N.C. Feb. 24, 2012), [D.E. 10]. July 2, 2012, the court consolidated the two cases [D.E. 26]. September 13,2012, the court denied without prejudice RadiaDyne's motion to dismiss for lack of jurisdiction and to correct ownership [D.E. 30].

June 4, 2013, RadiaDyne moved for partial summary judgment on co-inventorship as to claims 2-5 of the patent in suit [D.E. 65]. June 28, 2013, Polyzen filed a cross-motion for summary judgment on co-inventorship [D.E. 72]. October 31, 2013, the court denied both

layer bulges upwardly upon inflation. 3. The medical balloon device of claim 1, wherein the top inflatable compartment is adapted to distend to form a bulged conformation of the distal portion of the third layer relative to the proximal portion upon inflation. 4. The medical balloon device of claim 1, wherein the top inflatable compartment is further secured between the second and third layers intermediate said second and third edges to form an arcuate shape in the distal portion of the third layer upon inflation. 5. The medical balloon device of claim 1, wherein the second and third layers are secured at an intermediate portion so that said third layer upon inflation bulges upwardly between the intermediate portion and the third edge at the distal portion of the third layer. [D.E. 284-11].

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November 4, filed an amended complaint alleging patent infringement, breach of contract, and misappropriation of trade secrets [D.E. 89]. November 18, RadiaDyne answered and added an additional counterclaim ofbad faith trade-secret litigation [D.E. 91]. December 19, answered [D.E. 97].

May 23, both parties filed motions for partial summary judgment. moved for partial summary judgment on the validity of the patent-in-suit [D.E. and on its patent infringement claim [D.E. 116]. RadiaDyne moved for partial summary judgment onPolyzen' s trade secret-misappropriation claim [D.E. and on its breach-of-contract counterclaim [D.E. 112]. December 12, the court denied without prejudice Polyzen's motion for partial summary judgment on the validity of its patent [D.E. 141].

February 18, the court granted RadiaDyne' s motion for partial summary judgment on its breach-of-contract claim and requested briefing on specific performance. [D.E. 142] 18. The court also granted in part and denied in part RadiaDyne's motion for summary judgment on Polyzen's trade-secret-misappropriation claim. id. The court limited Polyzen's trade-secret misappropriation claim to the information contained in Note 1 of DIE 279. id.

March 6, asked the court to reconsider its order granting summary judgment to RadiaDyne on RadiaDyne' s breach-of-contract claim. [D.E. 146]. August 7,

the court granted Polyzen' s motion for reconsideration in part and denied RadiaDyne' s earlier motion for partial summary judgment on RadiaDyne' s breach-of-contract claim. [D.E. 165] 2-8. The court also denied RadiaDyne' s motion for judgment on the pleadings concerning Polyzen' s patent-infringement claim. id

January 29, the court held the pretrial conference. [D.E. 242]. At the pretrial

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10 conference, RadiaDyne presented information casting serious doubt on this court's subject-matter jurisdiction over Polyzen's patent-infringement claim. See id. February the court cancelled the trial scheduled to begin on February 24, and ordered RadiaDyne to submit a motion for summary judgment and memorandum explaining why it believed that the court lacked subject-matter jurisdiction over Polyzen's patent-infringement claim. See [D.E. 246].

February 29, RadiaDyne moved for summary judgment on Polyzen's patent infringement claim [D.E. 248] and filed a memorandum of support [D.E. 249]. March 21, Polyzen cross-moved for summary judgment on all ownership issues [D.E. 255]. April18, RadiaDyne filed a supplemental motion for summary judgment [D.E. 268], a memorandum in support [D.E. and a statement of uncontested facts [D.E. 269].

II. Summary judgment is appropriate if the moving party demonstrates that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter oflaw. Fed. R. Civ. 56(a). The party seeking summary judgment must initially show an absence of a genuine dispute of material fact or the absence of evidence to support the nonmoving party's case. Celotex Corp. v. 4 77 U.S. 317, 325 (1986). If a moving party meets its burden, the nonmoving party must forward with specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quotation and emphasis omitted). A genuine issue for trial exists if there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. Anderson v. Lobby. Inc., 477 242, 249 (1986). mere existence of a scintilla of evidence in support of the plaintiffs position [is] insufficient .... " Id. at252; see Beale v. Hardy, 769 F.2d213, 214 (4thCir. 1985) nonmoving party, however, cannot create a genuine issue of material fact through mere speculation or the building of one

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inference upon factual disputes that might affect the outcome under substantive law properly preclude summary judgment. Anderson, 477 at 248. In reviewing the factual record, the court views the facts in the light most favorable to the nonmoving party and draws reasonable inferencesinthatparty'sfavor. "Whencross-motionsforsummary judgment are before a court, the court examines each motion separately, employing the familiar standard under Rule 56 of the Federal Rules of Civil Desmond v. Charles Town Gaming. L.L.C., F.3d 351, 354 (4th Cir.

RadiaDyne seeks summary judgment on patent-infringement claim and contends that lacks standing to sue because RadiaDyne at least jointly owns the '497 patent and does not consent to patent-infringement claim in this lawsuit. e.g., Tech .. Inc. v. Int'l Trade F.3d 1319, 1325 (Fed. Cir. (holding that "[a]bsent the voluntary joinder of all co-owners of a patent, a co-owner acting lacks standing to sue for patent infringement (quotation omitted)); Lucent Techs .. Inc., 543 F .3d at 721-22 (same); Israel Bio-Eng' g

v. Amgen Inc., 475 F.3d 1256, 1264 (Fed. Cir. ("Where one co-owner possesses an undivided part of the entire patent, that joint owner must join all the other co-owners to establish

Ethicon. Inc. v. Surgical Corp., 135 F.3d 1456, 1468 (Fed. Cir. 1998) ("[A]s a matter of substantive patent law, all co-owners must ordinarily consent to join as plaintiffs in an infringement Schering Corp. v. Roussel-UCLAF F.3d 341, 345 (Fed. Cir. 1997)

co-owner has the right to impede the other co-owner's ability to sue infringers by refusing to voluntarily join in such a suit."). "Absent the voluntary joinder of all co-owners of a patent, a co owner acting alone will lack Israel Bio-Eng'g 475 F.3d at 1264--65.

as the party bringing the patent-infringement claim, must establish that it has standing to sue for patent infringement. MHL TEK. LLC v. Nissan Motor Co., 655 F.3d

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1266, 4 (Fed. Cir.). In support of its position that it has standing to sue RadiaDyne for patent infringement concerning the '497 patent, Polyzen contends that RadiaDyne is not the co owner of the '497 patent.

Subject-matter jurisdiction is the court's "statutory or constitutional power to adjudicate the case." Steel Co. v. Citizens for a Better Env't, 523 83, 89 (1998) (emphasis omitted). The court "must determine that it has subject-matter jurisdiction over [a claim] before it can pass on the merits of that [claim]." Constantine v. Rectors & Visitors of George Mason 411 F.3d 474,

(4th Cir. Polyzen has the burden of establishing that the court has subject-matter jurisdiction over its patent-infringement claim. See, e.g., Steel Co., 523 at Richmond. Fredericksburg & Potomac R.R. v. States, 945 F.2d 765, 768 (4th Cir. 1991).

The procedural posture of the case is complex, and RadiaDyne (at court's direction) used a motion for summary judgment to assert this court's lack of subject-matter jurisdiction. [D.E. 248, 268]. Likewise, Polyzen filed a cross-motion for summary judgment on all ownership issues [D.E. 255]. However, where the court may dismiss a claim under Rule 56 or Rule 12(b)(1) forlack of subject-matter jurisdiction, the Fourth Circuit has "observe[d] that[,] rather than granting summary judgment

pursuant to Rule 56[ ], the district court should ... dismiss[ ] the suit for want of jurisdiction under Rule 12(b)(1)." Williams v. States, F.3d 299, (4th Cir. 1995); see White Tail Park. Inc. v. Stroube, 413 F.3d 451,459 (4th Cir. Evans v. B.F. Perkins. Div. ofStandex Int'l Corp., 166 F.3d 642,647 & n.3 (4th Cir. 1999); see also Saval v. BL Ltd., F.2d

n.2 (4th Cir. 1983). Proceeding under the Rule 12(b)(1) framework is appropriate even where neither party has brought a motion under it. Williams, F .3d at (discussing procedural posture).

There are two ways the court may conclude that it lacks subject-matter jurisdiction under

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2008 · I · , Ru1e 12(b)(1). Lovern v. Edwards, F.3d 648, 654 (4th Cir. 1999). "The court may find insufficient allegations in the pleadings, viewing the alleged facts in the light most favorable to the plaintiff, similar to an evaluation pursuant to Ru1e 12(b)(6). Alternatively, after an evidentiary hearing, the court may weigh the evidence in determining whether the facts support the jurisdictional allegations." ld. (citations omitted). Thus, amotion under Ru1e 12(b)(1) permits "[a] trial court [to] consider evidence by affidavit, depositions or live testimony without converting the proceeding to one for summary judgment." Adams v. Bain, 697 F.2d 1213, (4th Cir. 1982); see v. United 441 F .3d n.2 (4th Cir. When the court weighs the evidence relevant to subject-matter jurisdiction, "the presumption of truthfulness normally accorded a complaint's allegations does not apply, and the district court is entitled to decide disputed issues of fact with respect to subject matter jurisdiction." Kerns v. United 585 F.3d 187, 192 (4th Cir. Here, neither party has requested an evidentiary hearing, but both have submitted competent evidence relevant to subject-matter jurisdiction. Thus, the court considers that evidence in resolving the dispute about subject-matter jurisdiction. id. at 192-93; White Tail Park. Inc., 413 F.3d at 459; Evans, 166 F.3d at 647; Williams, F.3d at F.2d at n.2.

In resolving whether Polyzen has standing to assert its patent-infringement claim, this court notes

that it has twice analyzed the '497 patent and the DCA. Specifically, on February 18, 2015, this court resolved pending motions for partial summary judgment. [D.E. 142]. In its order, the court discussed the '497 patent and the DCA. The court wrote:

The DCA assigns to RadiaDyne the so-called "RadiaDyne Product," or the "[s]pecific design of rectal balloon catheter for locating/supporting prostate during radiation therapy with Polyzen's Balloon Process Technology." 2.e, 6.a (original emphasis omitted and emphasis added). "Design" means, among other definitions, "a preliminary sketch or outline . . . showing the main features of something to be executed," or "the drawing up of specifications as to structure, forms, positions, materials ... in the form of a layout for setting up, building, or

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2008 2008 fabrication." Webster's Third New International Dictionary 611-12 (1993). The :aalloon Process Technology, which paragraph 2.e of the DCA expressly incorporates into the RadiaDyne Product, includes "Polyzen's film welded balloon technology ... designed to articulate desired shape and profile of balloons for various applications." ld. 2.d. [D.E. 142] 7-8. August 7, this court resolved Polyzen's motion for reconsideration concerning Polyzen' s breach-of-contract claim and again discussed the '497 patent and the DCA. The court wrote:

The relevant contractual language in the DCA states that "RadiaDyne Product will remain the

propert[y] of RadiaDyne." DCA [D.E. 109-16] 4 (paragraph 6.a). "Remain" means "to continue unchanged in form, condition, status, or quantity" or "continue to be." Webster's New International 1919 (1993). "Will remain" arguably falls into a grey zone between the strong operative language of" does hereby grant," which unambiguously creates a present interest, and the future-focused language of"will be assigned," which creates only an equitable interest and not legal title. Cf. Roche, 583 F .3d at 841 (noting that a promisee "might have gained certain equitable rights" against the inventor where the contract contained an agreement to assign); Arachnid, 939 F.2d at 1581 ("Although an agreement to assign in the future inventions not yet developed may vest the promisee with equitable rights in those inventions once made, such an agreement does not by itself vest legal title to patents on the inventions in the promisee."). The most natural reading, however, creates a present legal interest in RadiaDyne in an exclusive license. "Will remain" suggests that the RadiaDyne Product always has been and continues to be the property ofRadiaDyne; there was no additional right that needed to be assigned when the '497 patent application was filed and when the '497 patent issued. Thus, the DCA created by operation of law an exclusive license for RadiaDyne to the claims of the '497 patent covered by the definition ofRadiaDyne Product. Roche, 583 F .3d at 842 (noting that a present assignment creates a legal title in the patent "no later than the [patent] application's filing date"); Tilak 30(b)(6) Dep. [D.E. 132-1] 192 (Polyzen filed its provisional patent application on September 25, With the automatic issuance of an exclusive license, Polyzen did not breach the terms of the DCA because transferred to RadiaDyne, to the extent legally possible, the patent rights that the DCA created in RadiaDyne.

Here, there is a genuine issue of material fact as to the scope of the '497 patent and whether the DCA required Polyzen to assign the '497 patent to RadiaDyne or grant an exclusive license to specific claims of that patent. If the DCA required Polyzen to grant an exclusive license, the DCA also created that license by operation of law, thereby avoiding the breach of contract that the court previously determined occurred. Thus, the court grants Polyzen's motion for reconsideration [D.E. 146] and denies RadiaDyne's motion for partial summary

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judgment on its breach of contract claim [D.E. 112]. [D.E. 165] (emphasis omitted).

Under the DCA, RadiaDyne owns See id. 6. This court has held and continues to believe that the claims of the '497 patent cover

See [D.E. 142] [D.E. 165] see also [D.E. 254] 21, 23-24; [D.E. 284-11] Col. 4, lines 19-54 ('497 patent). Even though this court found a genuine issue of material fact as to ''whether the scope of the '497 patent is broader than the definition of RadiaDyne Product, with specific reference to claim four," [D.E. 165] 4, that issue does not change the fact that RadiaDyne and at least jointly own the '497 patent. Simply put, and RadiaDyne contractually allocated ownership of certain subject matter (including and later obtained the '497 patent covering the subject matter allocated, at least in part, to RadiaDyne during the contract period. Thus, RadiaDyne is a co-owner of the '497 patent. See, Lucent Techs .. Inc., 543 F.3dat721-22; Bushbergerv.Protecto Wrap Co., No. WL 725189, at *5 (E.D. Wise. Mar. 17, (unpublished).

All co-owners of a patent must be joined as plaintiffs to establish standing for a patent infringement claim. Lucent Techs .. Inc., 543 F.3d at 721-22; Israel Bio-Eng'g, 475 F.3d at 1264, 1268; Ethicon. Inc., 135 F.3dat 1468; Bushberger, WL 725189, at *5. RadiaDyne did not voluntarily join Polyzen' s patent-infringement claim concerning the '497 patent. Thus, the court lacks subject-matter jurisdiction over Polyzen' s patent-infringement claim. See, e.g., Lucent Techs .. Inc., 543 F.3d at 721-22; Israel Bio-Eng'g, 475 F.3d at 1264, 1268; Ethicon, Inc., 135 F.3dat 1468; Bushberger, WL 725189, at *5. Accordingly, the court denies RadiaDyne's motion for

judgment and supplemental motion for judgment, denies Polyzen' s cross-motion for judgment on all ownership issues, but dismisses without prejudice Polyzen' s patent-

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In opposition to this conclusion, Polyzen makes numerous arguments in both its response in opposition to RadiaDyne's motions and Polyzen's own cross-motion for summary judgment on all ownership issues. See [D.E. 254, 266, 268, 287]. First, Polyzen argues that the February Confidentiality Agreement defeats RadiaDyne' s contention that RadiaDyne at least jointly owns the '497 patent. See [D.E. 287] 8, 19-20. RadiaDyne, however, does not claim that the Confidentiality Agreement created or granted RadiaDyne' s ownership rights in the '497 patent. See [D.E. 4-5. Rather, RadiaDyne contends that RadiaDyne's ownership rights were created by conduct between the parties and are memorialized in the DCA. See id. Thus, Polyzen's argument fails.

Second, Polyzen argues that RadiaDyne really contends that the DCA assigned intellectual property to RadiaDyne without using the word assignment or referencing the transfer of intellectual property rights. See [D.E. 287] 12. RadiaDyne, however, does not contend that the DCA assigned or transferred patent rights. See [D.E. 5-11. Rather, RadiaDyne persuasively contends that it at least jointly owns the '497 patent based on: (1) the parties' agreement in the DCA that the balloon design would remain owned by RadiaDyne, as reflected in the DCA and the DCA's definitions of"RADIAI)YNE as encompassing the balloon design; (2) Polyzen's subsequent application for and procurement of the '497 patent that covers "RADIADYNE and, (3) the legal effect ofLucent' s "holding that when a party patents subject matter that it previously agreed would be owned or shared with another party, that other party

2 Alternatively, even if the summary-judgment standard applied to RadiaDyne' s motion, the court would grant summary judgment in favor ofRadiaDyne under Rule 56. See Fed. R. Civ. P. 56. The court reaches this conclusion after looking at the record in the light most favorable to Polyzen and drawing all reasonable inferences in Polyzen's favor. See 475 U.S. at 587-88.

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Third, Polyzen argues that Lucent is distinguishable. See [D.E. 287] 5-23. Although Polyzen correctly notes that the agreements between Polyzen and RadiaDyne did not have the identical ''New Work'' clause (including the reference to joint ownership) described in the claims of the '497 patent are directed to the specific design of the medical balloon device within the definition See [D.E. 8-12; cf. [D.E. 284-11] Col. 4, lines 19-54. Moreover, the DCA makes clear that will remain the property ofRadiaDyne. As such, this case falls within Lucent and Bushberger. See [D.E.

Fourth, Polyzen argues that Waterman v. Mackenzie, 138 U.S. 252 (1891), and its progeny defeat RadiaDyne' s standing argument because Waterman teaches that the owner of a patent cannot split up its ownership rights and assign different claims to different parties. See [D.E. 287] 17-23. In however, the Supreme Court was analyzing transactions that occurred after the patent issued. See 138 U.S. at 255--61. Here, in contrast to Waterman, this court is analyzing joint ownership of the '497 patent based on events that took place before the '497 patent issued and whether those events created at least joint ownership when the '497 patent issued. See Lucent Techs .. Inc., 543 F.3d at Bushberger, WL 725189, at *5. Thus, Lucent controls, and Waterman and its progeny do not.

Finally, the factual question concerning ''whether the scope of the '497 patent is broader than thedefinitionof'RADIADYNEPRODUCT,' withspecificreferencetoclaim4," [D.E.165] 4,does not legally change whether RadiaDyne at least jointly owns the '497 patent. See Lucent Techs .. Inc., 543 F.3d at 721-22; Bushberger, WL 725189, at *5. Even if a jury were to determine that

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210]. claim 4' s scope was broader than and included subject matter unrelated to the balloon design, Lucent teaches that the '497 patent still would at least be jointly owned by PolyzenandRadiaDyne. SeeLucentTechs .. Inc., 543 F.3dat717-22; seealsolsraelBio-Eng'g, 475 F.3d at 1264, 1268; Ethicop, Inc., 135 F.3d at 1468; Bushberger, WL 725189, at *5.

In sum, RadiaDyne at least jointly owns the '497 patent, and RadiaDyne does not consent to Polyzen' s patent-infringement claim against in this action. Accordingly, the court denies RadiaDyne' s motion for summary judgment and supplemental motion for summary judgment, denies Polyzen' s cross-motion for summary judgment on all ownership issues, but dismisses without prejudice Polyzen's patent-infringement claim for lack of subject-matter jurisdiction. See Fed. R. Civ. 12(b)(1); cf. Fed. R. Civ. 56. Because the court has considered and denied Polyzen's cross-motion for summary judgment on all ownership issues, the court dismisses as moot Polyzen' s motion for leave to file a cross motion [D.E. 247].

The court now resolves numerous motions in limine. In light of the court's ruling dismissing without prejudice Polyzen's patent-infringement claim, the court grants the following motions in limine involving evidence relevant to Polyzen's patent-infringement claim: (1) motion in limine to exclude lawyer witnesses [D.E. (2) RadiaDyne's motion in limine to exclude evidence regarding allegations of invalidity or improper inventorship s patent portfolio [D .E. 181]; (3) RadiaDyne' s motion in limine to exclude the testimony ofPolyzen' s technical expert Len Czuba [D.E. 189]; and (4) Polyzen's motion in limine to exclude evidence concerning RadiaDyne's patent portfolio and Polyzen's purported assignment of the '497 patent in suit to RadiaDyne [D.E.

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issue." 702. 702 A. Polyzenmoves to exclude portions of the testimony ofRadiaDyne' s technical expert Michael Foreman, specifically the portions ofF oreman' s proposed testimony concerning custom and practice as to ownership of intellectual property, use of non-disclosure agreements, and "structural integrity of prototypes and support of damages See [D.E. 179] 1-3. In support, Polyzen argues that the first two topics are not technical subjects and that Foreman has not conducted any studies or analysis to support his opinions. See id. 2-3. Polyzen also argues that the third topic is vague, that "structural integrity of has nothing to do with this action, and that Foreman is not qualified to testify about damages. See id. 3-4. RadiaDyne responds that Foreman is qualified as an expert, that his opinions on the customs and practices in the industry as to ownership of intellectual property and the use of non-disclosure agreements are relevant and reliable as to both Polyzen's patent-infringement claim and each party's breach-of-contract claim, that his prototype testimony is relevant and reliable as to Polyzen's alleged patent damages, and that Foreman permissibly may provide testimony underlying the basis for RadiaDyne' s damages expert's opinion. See [D.E.

Rule of the Federal Rules of Evidence governs the admission of expert testimony. See Fed. R. Evid. The proponent of the expert testimony must establish its admissibility by a preponderance of evidence. Cooper v. Smith & Nephew. Inc., 259 F.3d 194, 199 (4th Cir. A district court has broad latitude in its determination on the admissibility of proposed expert testimony. States v. Gastiaburo, 16 F.3d 582, 589 (4th Cir. 1994).

Rule provides that expert testimony is appropriate when it "will help the trier of fact to understand the evidence or to determine a fact in Fed. R. Evid. Rule further provides that a witness qualified as an expert may be permitted to testify if: (1) the testimony "is

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20 based upon sufficient facts or (2) the testimony is ''the product of reliable principles and

and, (3) the witness "has reliably applied the principles and methods to the facts of the ld. Courts have distilled Rule 702's requirements into two crucial inquiries: whether the proposed expert's testimony is relevant and whether it is reliable. Kumho Tire Co. v. Cannichael, 526 137, 141 (1999); Daubert v. Merrell Dow Pharm., Inc., 579, 589 (1993); States v. 429 F.3d 73, (4th Cir. The trial court must carry out the special gate keeping obligation of ensuring that expert testimony meets both requirements. Kumho Tire, 526

at 147.

To be relevant, the proposed expert testimony must be helpful to the trier of fact. See Daubert, at 591-92. "Testimony from an expert is presumed to be helpful unless it concerns matters within the everyday knowledge and experience of a lay Kopf v. 993 F.2d 374, 377 (4th Cir. 1993); accord Koger v. Norfolk S. Ry. Co., No. WL 692842, at *1 (S.D. Feb. 23, (unpublished). "[T]he test of reliability is flexible and the law grants a district court the same broad latitude when it decides how to determine reliability as it enjoys in respect to its ultimate reliability determination." States v. Wilson, 484 F.3d 267,274 (4th Cir. (emphasis and quotations omitted); see Kumho Tire, 526 at 141-42. A witness may qualify to render expert opinions in any one of the five ways listed in Rule knowledge, skill, experience, training, or education. See Kumho Tire, 526 at 147. When a party challenges an expert's qualifications, "'the test for exclusion is a strict one, and the purported expert must have neither satisfactory knowledge, skill, experience, training nor education on the issue for which the opinion is Kopf, 993 F.2d at 377 (quoting Thomas J. Kline, Inc. v. Lorillard, Inc., 878 F.2d 791, 799 (4th Cir. 1989)).

factors that may bear on the reliability of the expert's testimony include (1) whether

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On a theory or technique can be (and has been) tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) whether a technique has a high known or potential rate of error and whether there are standards controlling its application; and, (4) whether the theory or technique enjoys general acceptance within the relevant community. Kumho Tire, 526 at

at 593-94; United States v. Crisp, 324 F.3d 261,265-66 (4th Cir. "In making its initial determination of whether proffered testimony is sufficiently reliable, the court has broad latitude to consider whatever factors bearing on validity that the court finds to be useful; the particular factors will depend upon the unique circumstances of the expert testimony involved." v. Gislaved Gummi AB, 178 F.3d 257, 261 (4th Cir. 1999) (citing Kumho Tire, 526 at When proposed expert testimony pertains to damages, the testimony should be excluded when it "consists of an array of figures conveying a delusive impression of exactness in an area where a jury's common sense is less available than to protect it." Tyger

Co. v. Pensacola Constr. Co., 29 F.3d 137, 145 (4th Cir. 1994) (quotations and citations omitted); see Boucher v. Suzuki Motor Corp., 73 F.3d 18, 21 (2d Cir. 1996) (per curiam) ("Where lost future earnings are at issue, an expert's testimony should be excluded ... if it is based on unrealistic assumptions regarding plaintiffs future ... prospects.").

The court grants Polyzen's motion in limine in part and excludes Foreman from testifying concerning Polyzen's patent-infringement claim. Such testimony is irrelevant because Polyzen's patent-infringement claim is no longer in the case. To the extent that RadiaDyne seeks to have Foreman testify concerning custom and ownership of intellectual property, the use of non-disclosure agreements, and to provide an underlying basis for the testimony ofRadiaDyne's damages expert, and to the extent that Foreman's testimony relates to the claims and counterclaims remaining in the case, Polyzen's objection goes to the weight, not the admissibility, ofForeman's opinions. the

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Polyzen current record, the court is satisfied that Foreman's proposed testimony about claims and counterclaims other than the now-dismissed patent-infringement claim are relevant and sufficiently reliable. course, at trial, the court will have a much better sense of how Foreman's expert testimony fits with the claims and counterclaims remaining in the case. Accordingly, s motion in limine to exclude portions of the testimony of RadiaDyne' s technical expert Michael Foreman is granted in part and denied in part.

B. As for RadiaDyne's motion in limine to partially exclude the expert testimony ofPolyzen's damages expert Graham Rogers [D.E. 185], RadiaDyne seeks to exclude: (1) Rogers's testimony that was damaged by RadiaDyne's alleged trade-secret misappropriation; (2) Rogers's testimony that was damaged by RadiaDyne's alleged breach of contract; and, (3) Rogers's testimony that may recover patent damages before the July 11, issue date of the '497 patent. id. responds that RadiaDyne's objections go to the weight of the evidence, not the admissibility, and that RadiaDyne simply presents a different theory of liability and damages concerning breach-of-contract claim, trade-secret-misappropriation claim, and patent infringement claim. [D.E. 2-9.

Because the court has dismissed patent-infringement claim, the court grants RadiaDyne's motion in limine to exclude Rogers from testifying that may recover patent infringement damages before the July 11, issue date of the '497 patent. As for RadiaDyne's motion in limine to exclude Rogers's testimony that suffered damages from RadiaDyne's alleged trade-secret misappropriation and alleged breach of contract, RadiaDyne argues that Rogers's testimony is entirely disconnected from this case in light of this court's summary judgment ruling concerning trade-secret misappropriation and breach of contract and is, therefore, not relevant or

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80-82. reliable. See [D.E. 186] 2.

As for Rogers's testimony concerning damages arising from RadiaDyne' s alleged trade-secret misappropriation, Rogers opines that RadiaDyne's alleged trade-secret misappropriation unjustly enriched RadiaDyne by $3,336,262.34. See [D.E. 186-2] 6. At Rogers's deposition and in his report, however, Rogers did not identify any specific trade secret ofPolyzen at issue in this case.

[D.E. 186-3] 61--62,65--66,80-82,86-87,95-96, Rogers also failed to explain how (if at all) RadiaDyne or Dielectrics used any alleged Polyzen trade secret to make balloons for RadiaDyne. See id. 65--66. Furthermore, Rogers's expert report reveals that he did not even review the single document that might contain the Polyzen trade secret that remains at issue in this case. Compare [D.E. 186-2] 8-9 (listing document that Rogers reviewed in forming his opinions and failingtolistDIE297), with [D.E. 142] 13-18 (court's summaryjudgmentrulinglimitingPolyzen's trade-secret-misappropriation claim to Note 1 of DIE 297). Rather, Rogers's report and testimony assume that RadiaDyne's incremental profits from switching suppliers from Polyzen to Dielectrics was due solely and entirely to the alleged trade-secret misappropriation that Polyzen included in its amended complaint. [D.E. 186-3] Moreover, Rogers admitted that he did not try to connect Polyzen' s alleged unjust-enrichment damages arising from the alleged trade-secret misappropriation "in any specific way to any drawings or whether or not anything in those drawings was in the public domain at that time or whether or not there's any evidence that Dielectrics even used any of those drawings ... because [he] assume[d] liability." Id. 124-25.

Rogers's report and testimony concerning Polyzen' s trade-secret-misappropriation claim are deeply flawed in light of this court's summary judgment ruling concerning Polyzen's trade-secret misappropriation claim. See [D.E. 142] 13-18. In that ruling, this court limited Polyzen' s claim to Note 1 of DIE 279, which contains specifications ''that defme the depth of the three layers and,

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concerning crucially, the apparent materials for each layer." [D.E. 142] 14 (discussing [D.E. 109-20] DIE 279 and Tilak Shah Dep. [D.E. 113-11] 307). Rogers's report and testimony, however, do not state that the materials and thickness recited in Note 1 of DIE 279 are in any of the balloons that Dielectrics made for RadiaDyne.

Rogers's damages calculations are based on assumptions about Polyzen's trade-secret misappropriation claim that are unconnected to Note 1 of DIE 279 and the existing evidence. As such, the evidence is irrelevant and unreliable. Silicon Knights. Inc. v. Epic Games. Inc., No.

5:07-CV-275-D, 2011 WL 6748518, at *13-17 (E.D.N.C. Dec. 22, 2011) (unpublished), aff'd, 551 F. App'x 646 (4th Cir. 2014) (per curiam) (unpublished). Additionally, Rogers's damages calculations are based on assumptions regarding Polyzen' s on all of its claims that [are] no longer viable" in light of this court's summary judgment ruling. Id. at * 17. damages model premised on a false assumption is not reliable." Id.; see Children's Broad. Corp. v. Walt Disney Co., 245 F.3d 1008,1018 (8thCir. 2001); Pharmanetics. Inc. v. AventisPharm .. Inc., No. 5:03-CV-817- FL(2), 2005 WL 6000369, at *10 (E.D.N.C. 2005) (unpublished), aff'd, 182 F. App'x 267,272-73 (4th Cir. 2006) (per curiam) (unpublished). Thus, the court grants RadiaDyne's motion in limine to exclude Rogers from testifying that Polyzen suffered damages from RadiaDyne' s alleged trade secret misappropriation.

As for Rogers's testimony Polyzen' s breach-of-contract claim, Rogers opines that

is found liable for breach of contract, then Polyzen should receive damages based on paragraph 6.d of the 2008 [D.E. 186-2] 6. According to Rogers, the damages associated with RadiaDyne's breach of contract is $954,664.47 [calculated at 10% * RadiaDyne's original ($9,546,644.73)]." Id.

Rogers's testimony Polyzen' s breach-of-contract claim ignores this court's order

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"Physical Inventorship" of February See [D.E. 142] 11. In that order, this court held that "paragraph

6.d applies only and RadiaDyne 'enter[] into a manufacturing and supply agreement, and ... is unable or unwilling to supply RadiaDyne its volume requirement at a reasonable transfer ld. (alterations in original). The court also held that the "record shows that and RadiaDyne did not enter into a manufacturing and supply agreement, thus obviating the application of paragraph

ld. Accordingly, Rogers's opinion on contract damages is not tied to the facts of this case and is irrelevant and unreliable. See, Silicon Inc., WL 6748518, at *13-17;

Inc., WL at Thus, the court grants RadiaDyne's motion in limine to exclude Rogers from that suffered damages from RadiaDyne's alleged breach of contract.

c. As for RadiaDyne's motion to exclude evidence [D.E. 213], RadiaDyne asks the court to exclude Len Czuba' s exhibits concerning claim construction (Polyzen exhibits and 61) and infringement (Polyzen exhibits 64 and 65), Graham Rogers's March 14, expert report on damages (Polyzen exhibit 134), December infringement contentions (Polyzen exhibit 63), "RadiaDyne Chart re Infringement and "RadiaDyne Chart Re Infringement (Polyzen exhibits 66 and 67), "Document # 116-3 in (Polyzen exhibit 68), "Briefing on inventorship (Polyzen exhibit Steven Hultquist's declaration concerning inventorship (Polyzen exhibit 25), Tilak Shah's January 6, "declaration

(Polyzen exhibit 31), Tilak Shah's January 6, "declaration II" (Polyzen exhibit 32), Tilak Shah's March 6, "declaration III" (Polyzen exhibit 33), Chris Strom's January 6, declaration (Polyzen exhibit 34), Len Czuba' s declaration concerning inventorship (Polyzen exhibit 52), Hearing Exhibits re or "Time Line and prototypes prepared by Chris

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(Polyzen exhibits 35 and 169), and Steven Hultquist's testimony concerning inventorship of any patent, infringement of the '497 patent-in-suit, the s reasons for issuing the '497 patent-in-suit, or any aspect of the preparation of any application that matured into the '497 patent-in-suit as to which Hultquist did not have personal knowledge. See [D.E. 214] 6-15 (quotation omitted).

responds and agrees that the expert reports are inadmissible at trial, that briefing and infringement contentions are inadmissible at trial, and that declarations are inadmissible if a witness is available to testify. See [D.E. 227] 1-2. As for the demonstrative exhibits at exhibits 35 and 169, argues that these exhibits are not demonstrative exhibits prepared for trial, but are the "actual prototypes that made in under contract between and RadiaDyne. See id. 2-3. Thus, asks the court to reserve ruling on the admissibility ofPolyzen exhibits 35 and 69 until trial. Id. 3. As for Steven Hultquist's testimony, contends that he is a fact witness, that he will offer testimony based on his personal knowledge, and that he will not provide opinion testimony. See id.

The court agrees that the expert reports are inadmissible hearsay. See, e.g., Jones ex reL States v. Mass. Gen. Hosp., F.3d 479, 494-95 (1st Cir. Sigler v. Am. Honda Motor Co., 532 F.3d 469,486 (6th Cir. To the extent the expert reports concern Polyzen's patent-infringement claim, they also are inadmissible because they are irrelevant. Likewise, the court agrees that Polyzen's briefing and infringement contentions are inadmissible. Duha v. Agrium. Inc., 448 F.3d 867, 879 (6th Cir. Kimberly-Clark Worldwide. Inc. First Quality Baby .. LLC, No. WL at *23 (M.D. Nov. 3, (unpublished). Similarly, the court agrees that the six declarations referenced in RadiaDyne' s motion in limine are hearsay and are inadmissible for the truth of the matter asserted. See Fed. R. Evid.

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210]. Fox v. Leland Volunteer Fire/Rescue Inc., No. 7:12-CV-354-FL, WL *5 (E.D.N.C. Mar. 11, (unpublished). The declarations also are irrelevant to the extent they concern Polyzen' s patent-infringement claim. Thus, the court grants RadiaDyne' s motion to exclude Polyzen exhibits 25, 31, 32, 33, 34, 52, 61, 63, 64, 65, 66, 67, 68, 134.

As for Polyzen exhibits 3 5 and 169 and the testimony of Steven Hultquist, to the extent the evidence solely concerns Polyzen's patent-infringement claim, the evidence is irrelevant. Nonetheless, because the evidence may concern the remaining claims and counterclaims, the court will reserve ruling until

trial on the admissibility ofPolyzen exhibits 35 and 169 and Hultquist's testimony. Thus, RadiaDyne's motion to exclude evidence is granted in part and denied in part.

IV. In sum, the court DENIES RadiaDyne's motion [D.E. 248] and supplemental motion [D.E. 268] for summary judgment concerning Polyzen's patent-infringement claim, DENIES Polyzen's cross-motion for summary judgment on all ownership issues [D.E. 255], but DISMISSES without prejudice Polyzen' s patent-infringement claim for lack of subject-matter jurisdiction. See Fed. R. Civ. P. 12(b)(1); cf. Fed. R. Civ. P. 56. Additionally, the court DISMISSES as moot Polyzen's motion for leave to file a cross motion [D.E. 247]. Furthermore, the court GRANTS Polyzen's motion in limine to exclude lawyer witnesses [D.E. GRANTS RadiaDyne's motion in limine to exclude evidence regarding allegations of invalidity or improper inventorship of RadiaDyne' s patent portfolio [D.E. 181], RadiaDyne's motion in limine to exclude the testimony of Polyzen's technical expert Len Czuba [D.E. 189], and GRANTS Polyzen's motion in limine to exclude evidence regarding RadiaDyne's patent portfolio and purported assignment of the '497 patent in suit to RadiaDyne [D.E. Moreover, the court GRANTS in part and DENIES in part Polyzen's motion in limine to exclude portions of the testimony ofRadiaDyne's technical expert

27 SO 1.3 Michael Foreman [D.E. 179], GRANTS RadiaDyne's motion in limine to partially exclude the testimony of Polyzen's damages expert Graham Rogers [D.E. 185], and GRANTS in part and DENIES in part RadiaDyne's motion to exclude evidence [D.E. 213].

ORDERED. This day of September 2016.

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