STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW Re: Defendant Valley Custom Tire, Inc.'s Motion for Summary Judgment [69]

After consideration of Defendant Valley Custom Tire, Inc. d/b/a VCT Wheels' ("VCT") Motion for Summary Judgment [69], this Court makes the following findings of fact and conclusions of law:

UNCONTROVERTED FACTS

1. Plaintiff John Zhao is the inventor of the following design patents (collectively, "Patents-in-Suit"):

a. U.S. Design Patent No. D617,720 S, titled

"Front Face of a Vehicle Wheel" ("the '720 Patent");

b. U.S. Design Patent No. D620,425 S, titled "Front Face of a Vehicle Wheel" ("the '425 Patent");

c. U.S. Design Patent No. D620,867 S, titled "Front Face of a Vehicle Wheel" ("the '867 Patent");

d. U.S. Design Patent No. D639,220 S, titled "Front Face of a Vehicle Wheel" ("the '220 Patent").

Def. VCT's Stmt. of Uncontroverted Facts ("SUF") ¶¶ 1-4; First Amended Compl. ("FAC") ¶¶ 11, 13, 15, 17.

2. Plaintiffs Wah Hung International Machinery, Inc. d/b/a Velocity Wheel ("Wah Hung"); Tyfun International, Inc. ("Tyfun"); and John Zhao ("Zhao") (collectively, "Plaintiffs") have identified that the following wheel models infringe on the Patents-in-Suit: Gitano G68, Gitano G78, Gitano G88, and Gitano G98 (collectively, the "accused products"). SUF ¶ 6; FAC

¶¶ 20-24.

3. VCT has not made or manufactured any of the accused products. SUF ¶¶ 7; 12; 13.

4. VCT has not used the accused products. Id. ¶ 8.

5. VCT has not offered the accused products for sale. Id. ¶¶ 9; 12; 13.

6. VCT has not sold the accused products. Id. ¶¶ 10; 12; 13.

7. VCT has not imported the accused products. Id.

¶ 11.

CONCLUSIONS OF LAW

1. To be liable for patent infringement under 35 U.S.C. § 271(a), VCT must make, use, offer to sell, sell, or import a patented invention without authority.

2. Plaintiffs have not shown that VCT has made, used, offered to sell, sold, or imported the accused products.

3. Thus, VCT is not liable for patent infringement under 35 U.S.C. § 271(a).

4. To be liable for patent infringement under 35 U.S.C. § 271(b), VCT must actively induce infringement.

5. Plaintiffs have not demonstrated that VCT has actively induced infringement.

6. Under 35 U.S.C. § 285, the court in exceptional cases may award reasonable attorneys' fees to the prevailing party.

7. A case may be deemed exceptional for the purposes of 35 U.S.C. § 285 when there has been some material inappropriate conduct related to the matter in litigation, such as willful infringement, fraud or inequitable conduct in procuring the patent, misconduct during litigation, vexatious or unjustified litigation, conduct that violates Fed. R. Civ. P. 11, or like infractions. See, e.g., Cambridge Prods. Ltd. v. Penn Nutrients Inc., 962 F.2d 1048, 1050-51 (Fed. Cir. 1992); Beckman Instruments, Inc., v. LKB Produkter AB, 892 F.2d 1547, 1551 (Fed. Cir. 1989).

8. Absent misconduct in conduct of the litigation or in securing the patent, however, sanctions may be imposed against the patentee only if both: (1) the litigation is brought in subjective bad faith; and (2) the litigation is objectively baseless. Professional Real Estate Investors v. Columbia Pictures Industries, 508 U.S. 49, 60-61, 123 L. Ed. 2d 611, 113

S. Ct. 1920 (1993); see also Old Reliable Wholesale, Inc. v. Cornell Corp., 635 F.3d 539, 543-44 (Fed. Cir. 2011).

9. The prevailing party must demonstrate that a case is exceptional by clear and convincing evidence. Forest Labs., Inc. v. Abbott Labs., 339 F.3d 1324, 1327-28 (Fed. Cir. 2003).

10. VCT fails to establish by clear and convincing evidence that this case is exceptional. Therefore, it is not entitled to attorneys' fees.

IT IS SO ORDERED.