

October 8, 2019

VIA EMAIL – ssumitani@stetinalaw.com

Sam Sumitani
Stetina Brunda Garred & Brucker
75 Enterprise, Suite 250
Aliso Viejo, CA 92656

Re: Champion Power Equipment, Inc./Firman Power Equipment, Inc.

Dear Mr. Sumitani:

I am writing in response to your September 9, 2019, letter to Greg Montgomery and Firman Power Equipment, Inc. (“Firman”) as well as your letters to Firman’s customers, regarding Champion Power Equipment, Inc.’s allegations related to U.S. Patent No. 10,393,034.

Firman is an industry-leading innovator, constantly developing and producing novel power generation equipment. As I am sure Champion is aware, since early 2014, Firman has sold its RD9000E, 7500-watt dual fuel electric start portable generator. That innovative generator contained all of the features your letter identifies as infringing when found in Firman’s current generators.

You are no doubt aware that the “century-old axiom of patent law holds that a product ‘which would literally infringe if later in time anticipates if earlier.’ *Upsher-Smith Labs., Inc. v. PamLab, L.L.C.*, 412 F.3d 1319, 1322 (Fed. Cir. 2005) (quoting *Peters v. Active Mfg. Co.*, 129 U.S. 530, 537, 9 S.Ct. 389, 32 L.Ed. 738 (1889) (“That which infringes, if later, would anticipate, if earlier.”)). This leaves two potential outcomes for Champion. Either Firman’s sales of the RD9000E invalidates the ’034 patent, or Firman’s sales of its current generators do not infringe the ’034 patent. In either case, Champion’s ’034 patent does not prohibit Firman’s sales of dual-fuel generators.

We trust that this resolves the issues raised in your letter to Firman and your letters to Firman’s customers. Without addressing the propriety of your initial attempts to interfere with Firman’s existing contractual relationship by directly contacting its customers, please be aware that

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continuing to assert a patent that is known to be invalid or a non-infringed patent can give rise to antitrust liability. *See generally Handgards, Inc. v. Ethicon, Inc.*, 743 F.2d 1282 (9th Cir. 1984). Likewise, the bad faith assertion of a patent known to be deficient also creates liability under state unfair competition and tort laws. *See Golan v. Pingel Enter., Inc.*, 310 F.3d 1360, 1371 (Fed. Cir. 2002). Please therefore direct any further correspondence regarding this matter directly to me.

Nothing stated or unstated herein should be construed as a waiver of any of Firman's claims, remedies, or other rights or protections with respect to the subject matter of this letter, or any other; all such claims, remedies, and other rights and protections are hereby expressly reserved.

Very truly yours,

Davis Wright Tremaine LLP



Benjamin J. Byer