

No. _____

In the
Supreme Court of the United States

PIETRO PASQUALE ANTONIO SGROMO
(A/K/A PETER ANTHONY SGROMO) PETITIONER

VS.

TARGET BRANDS INC. RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT
CASE NO.: 21-1702

PETITION FOR WRIT OF CERTIORARI

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PRO- PER PETITIONER

QUESTIONS PRESENTED

- A. Whether judicial notice of conflicting decisions in district courts satisfies the *de novo* review of the district court's determination of a party's standing?
- B. Whether a settlement judgment on consent regarding a particular property interest have preclusive effects upon a third-party who seeks rights to the property which they obtained through contractual relations with a party to the previous litigation?
- C. Whether a patent or copyright assignment can be oral?
- D. Whether an electronic signature satisfies the statute of frauds, and § 261?
- E. Whether *nunc pro tunc* agreements are sufficient to confer retroactive standing?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

RELATED CASES

Pietro Pasquale–Antonio Sgromo v. Leonard Gregory Scott, Eureka Inventions LLC, Federal Circuit Court of Appeals, Case No.: 21–1106— on appeal from the United States District Court for the Northern District of California, Case No. 4:19-cv-08170-HSG, Judge Haywood S. Gilliam Jr.— on petition to vacate JAMS Arbitration Reference No.: 1100080798, Hon. Harry Low (ret.);

Pietro Pasquale–Antonio Sgromo v. Target Brands Inc., Federal Circuit Court of Appeals, Case No.: 21–1702, on appeal from the United States District Court for the District of Minnesota in No. 0:20-cv-01030-JRT-LIB, Judge John R. Tunheim;

In re: Pietro Pasquale–Antonio Sgromo, Federal Circuit Court of Appeals, Case No.: 21–116, on petition for writ of mandamus to the United States District Court for the Northern District of California in Nos. 4:15-cv-00701-JSW, Judge Jeffrey S. White, and 4:17-cv-00205-HSG, Judge Haywood S. Gilliam, Jr.;

Pietro Pasquale Antonio Sgromo v. Bestway Enterprise Co. Ltd., Bestway (Hong Kong) International Ltd., Bestway Inflatables and Material Corporation, Eureka Inventions LLC, HEB Grocery Company LP, Academy Ltd, Bestway Global Holding Company Inc., Target Stores Inc., Wal-Mart Stores, Inc., and Wal-Mart Stores Texas, LLC, The United States District Court for the Eastern District of Texas – Marshall Division, Case No. 2:19-cv-00060-JRG-RSP, Judge Rodney Gilstrap;

Pietro Pasquale–Antonio Sgromo v. Imperial Toy LLC & HEB Grocery Company, LP, United States District Court for the Eastern District of Texas – Marshall Division, Case No. 2:19-cv-00068-RSP, Judge Rodney Gilstrap;

Bestway (USA), Inc., et al. v. Eureka Inventions LLC, Leonard Gregory Scott, Wagmore & Barkless LLC, Pietro Pasquale–Antonio Sgromo, United States Court of Appeals for the Ninth Circuit, Case No.s: 18–16228, 18–17040, 19–15709, 19–15797, Before: Peter L. Shaw, Appellate Commissioner;

In re: Imperial Toy LLC, United States District Court Northern District of California–San Jose Division, Case No. 19-cv-08431-EJD

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TREATISE

<i>"B.C. man recalls the night he 'escaped death' at a suspected serial killer's hands,"</i> Jesse Ferreras & Ted Chernecki Global News, February 2, 2018 10:19 pm— <u>https://globalnews.ca/news/4004184/bruce-mcarthur-peter-sgromo/</u>	4, fn[1]
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**In the
Supreme Court of the United States**

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix 4 to the petition and is

reported at October 6, 2021; or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the United States district court appears at Appendix 6 to the petition and is

reported at February 18, 2021; or,

has been designated for publication but is not yet reported; or,

is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was October 6, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following dates: December 20, 2021; January 12, 2022—and a copy of the order denying rehearing appears at Appendices 2 & 3.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The **Fourteenth Amendment** and **Fifth Amendment** “require that the courts shall be open to every person with a right to a remedy for injury to . . . property” Since due process guarantees access to the courts to remedy an injury to property, a necessary question is whether courts treat a patent as a property right that is afforded the same due process protections contemplated by the Fifth Amendment. It is fundamentally true that a patent-derived right is a property right that is on equal footing with rights associated with ownership of land or personal property. See also *Consol. Fruit-Jar Co. v. Wright*, 94 U.S. 92, 96 (1876) (“[a] patent for an invention is as a species of property”). much property as a patent for land.”); *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627, 642 (1999) (recognizing that patents “have long been considered a species of property”).

The **U.S. Patent Act** states that a patent, and each distinct claim of a patent, is presumed valid. 35 U.S.C. §282(a)(2012). The statute says “[e]ach claim of a patent...shall be presumed valid independent of the validity of other claims.” *Id.* Additionally, “dependent or multiple claims shall be presumed valid even though dependent upon an invalid claim.” *Id.* The presumption of validity places the “burden of establishing invalidity of a patent or any claim thereof . . . on the party asserting such invalidity.” *Id.* If the presumption of validity was not enough protection, the U.S. Patent Act also includes a short and clear statement that a patentee is entitled to civil redress if his or her patent is infringed. 35 U.S.C. § 281 (1952) (“[a] patentee shall have remedy by civil action for infringement of his patent.”).

Title 35 of the United States Code outlines the clear congressional intent to codify the process by which a patentee can secure patent rights for their works and inventions. Title 35 outlines what a patentee must do to get patent rights and the process of securing such rights for their works or inventions. See generally, 35 U.S.C. § 1–390 (outlining requirements for grant of a patent). Since the framers thought patent rights were important, Congress used its constitutional power to create the USPTO to systematically administer patent rights. 35 U.S.C. § 1 (2000); 35 U.S.C. § 2 (2012). The U.S. Patent Act requires an applicant to submit a written application for a patent to the USPTO consisting of a specification, drawings or specimens, and an oath or declaration stating that the individual believes himself or herself to be the original inventor. 35 U.S.C. §§111, 115(b) (2012). The U.S. Patent Act explicitly allows an applicant to appeal adverse USPTO decisions to the U.S. Patent Trial and Appeal Board or the U.S. Court of Appeals for the Federal Circuit. 35 U.S.C. §§ 134, 141. The rules governing the transfer and assignment of patent rights clearly envision a scheme of written assignment by providing that patents “shall be assignable in law by an instrument in writing.” 35 U.S.C. § 261.

STATEMENT OF THE CASE

This is certainly an extraordinary case that if writ is not issued could lead to a decision that would turn 200 years of the Patent Act on its head— giving rise to oral patent assignments, non-exclusive rescinded licenses tantamount to patent assignments — even when the inventor— patent holder was not a party to the rescinded agreements. The Petitioner has non-disclosure agreements and consulting contracts to support he is the patentee— yet one court actually ruled them non-dispositive which leads to a more serious issue— wage theft. The Petitioner prior to becoming an independent inventor-licensor-consultant had two decades in the 'C-suite' negotiating and litigating¹ license agreements both as a licensee and licensor.

The Fed Cir has denied Petitioner's due-process rights to an oral hearing despite it awarding his intellectual property to Chinese manufacturers. The Petitioner is beginning to believe that somehow escaping a knife-attack in San Francisco² only to flee back to Toronto where he survived an attack by a serial killer³ may not be a coincidence after all. The Court taking *carte blanche* judicial notice of conflicting decisions is eschewing its long-standing principal that it must trace the chain of title to the patent in order to adjudicate Petitioner's appeal on standing:

THE '440 PATENT

On May 16, 2006 the USPTO granted U.S. Patent No.: 7,046,440 entitled 3-D Vision System for Swimming Pools (the "440 Patent") to inventor, Jeffrey L. Kaehr and on or about December 2010, Sgromo's British Columbia Canada Corporation— Wide Eyes Marketing Ltd. ("WEM") acquired the entire right, title and interest in and to the invention without limitation the Patent and all rights thereto in the '440 Patent. [Appx-21]. On or about December 2012, WEM successfully defended the validity and ownership of the '440 Patent in Case No." cv-11-03046, *AquaWood LLC v. WEM, Sgromo*, (C. D.Cal.) [2013] (the "Aqua Action/Court") [Appx-22].

On or about February 23, 2013 Sgromo and Scott in their individual capacities entered into a Living Together Agreement (the "LTA" or the "Arbitration Agreement") [Appx-23]. The LTA expressly states in relevant part:

1. ". . . all property owner by either as of the date of this agreement, obtained during the agreement shall be considered to be and shall remain the separate property of each. Neither will have any claim to the separate property of the other absent a written agreement transferring ownership. This includes but it not limited to personal income . . . royalty income . . . business interests, legal settlements . . ." [Id., §1];

¹ Petitioner was point person for negotiating license deals with inventors and major studios. He also directed litigation, see e.g. *Wham-O, Inc. v. Paramount Pictures Corp.*, 286 F. Supp. 2d 1254 (N.D. Cal. 2003).

² Ten days after Petitioner directed counsel to file the Eureka Action Petitioner was attacked by a knife. The DA stated "there was more to the case." The suspect plead guilty to a felony— much like the serial killer Petitioner escaped (see fn.3).

³ See e.g., "B.C. man recalls the night he 'escaped death' at a suspected serial killer's hands," Jesse Ferreras & Ted Chernecki Global News, February 2, 2018 10:19 pm— <https://globalnews.ca/news/4004184/bruce-mcarthur- peter-sgromo/>

2. "Greg [Scott] acknowledges – Pete[r Sgromo]'s income comes from WEM (and possible other LLC names) . . . Greg [Scott] acknowledges this does not give him ownership rights of any kind in WEM or any other LLC Pete[r Sgromo] owns." [Id., §2];
3. "Neither shall be liable or responsible for the individual debts incurred by the other in his own name or company name." [Id., §3]

¶¶ . . . ¶¶

10. ". . . the parties agree to binding [sic] arbitration in San Francisco using JAMS expedited process or a similar expedited affordable arbitration." [Id., §10]

¶¶ . . . ¶¶

39. "The foregoing constitutes the entire Agreement between the parties and may be modified only in writing signed by all parties . . . " [Id., §39].

On or about May 7, 2013 WEM entered into a non-exclusive license agreement (the "WEM '440 Agreement") with Bestway (USA) Inc., Bestway (hong Kong) Int'l Ltd., and Bestway Inflatables & Materials Corp., (collectively "Bestway") [Appx-23]. Scott proffers an "Assignment of Patent Rights" with an electronic typed signature "By: /Peter A. Sgromo/ President, Wide EyesMarketing, Ltd." — dated June 2013 [Appx-25] — he purports to be a valid assignment of the '440 Patent to him. However, the necessary assignment from WEM to Sgromo in order to support the *purported* transfer to Scott and in turn to Eureka did not occur until April 1, 2020. [Appx-27] (Sgromo "acquire[d] the entire right, title and interest in and to the '440 Inventions, including without limitation the '440 Patent and all rights appurtenant thereto— including the right to sue for past and ongoing infringement . . . in consideration for the incomplete payment of Assignee's consulting services relating to the Assignor's License of the '440 Patent to various third-parties — effective th[e] 1st Day of April 2021."). [Id.]. Scott contradicts himself in his own declaration— when an attorney suggested ""[they] can put the patent in Greg[Scott]'s name and he can do an exclusive license the llc," to which Petitioner replied, "No. Let's just go with paying me a royalty" Scott admitted that he "d[id] not recall if that email [wa]s complete, but [his] understanding was that the patent was assigned to him, and [he] licensed it over to Eureka." [Appx-26, ¶11]. All Eureka had was a non-exclusive oral license of the '440 Patent from WEM to Eureka⁴, which allowed Eureka and Bestway to enter into a broader⁵ license agreement collateral to the WEM '440 License. [Appx-28].

⁴ WEM was bound by a settlement agreement in the Aqua Action "the exception of the [180-day] sell-off[clause] by Manley of the 3D Shark Lagoon Pool pursuant to the resolution of prior infringement claim by Licensor [WEM]" [Appx-24, §14].

⁵ The WEM '440 License was limited to "above ground swimming pools" in the territory of the U.S. — custom to industry definition such pools are "framed" compared to inflatable pools or in-ground pools.

THE '298 PATENT

On or about January 2006, Sgromo and colleague and co-inventor Robert W. "Bob" Ranftl ("Ranftl") invented a ramped children's backyard water slide (the "'298 Slide"). [Appx-29]. On or about October 2014, Sgromo and Ranftl entered into a consulting and license agreement for the '298 Slide supported by a three-year consulting agreement between Sgromo as an individual and Bestway. [Appx-30]. Because Sgromo is a Canadian National, Bestway successfully petitioned to the Dept. of Homeland Security – U.S. Customs & Border Patrol a temporary work [TN] visa under NAFTA. The agreement called for a \$90,000.00 consulting fee plus a 3% royalty on all sales in the U.S. Territory. [Id.].

On or about June 7, 2014 Sgromo joined Bestway executives in Minneapolis to pitch the '298 Water Slide to Target at their headquarters. Based on the positive feedback on the '298 Slide Sgromo was able to grant Eureka an oral non-exclusive license as Ranftl had granted Sgromo an *exclusive* oral license [Appx-31, ¶¶ 7–10] this allowing a collateral non-exclusive license between Eureka and Bestway thereby expanding rights to the '298 Slide—globally [Appx-32].

On or about July 14, 2014 Sgromo and Ranftl filed a provisional patent, followed by a full patent application on July 14, 2015 which would be granted by the USPTO on December 6, 2016— U.S. Patent No.: 9,511,298 entitled " Water Slide." [Appx-33].

THE H2O-GO! MARKS & TRADE-DRESS

On or about January 2014, Petitioner invented the H2O-GO! mark and trade-dress [Appx-34]. Under the WEM-'440 License Petitioner was obligated to offer Bestway "right of first refusal on other 3D ['440 Patent] technologies . . . and all other products directly related to [Bestway's] business." [Appx-24, §6]. Because "[t]he parties agree[d] not to disclose . . . any confidential information . . . without first obtaining the written consent of the other party"—on or about May 2014 Petitioner traveled to Bestway's offices in Phoenix, AZ and confidentially disclosed further '440 Patent inventions and the H2O-GO! mark and trade-dress. [Appx-35]. Unbeknownst to Petitioner however, Bestway had already registered the H2O-GO! word-mark with the PTO without consent. [Appx-36]. It is still unclear how Bestway learned of the mark 3–months before Petitioner had presented it. [Appx-36].

THE OPTION AGREEMENTS THAT RESCINDED THE EUREKA LICENSES

Disputes arose around Bestway's first-refusal rights over the new inventions (the "OptionProducts") Petitioner presented at the May 2014 new product summit [Appx-35] and royalties Eureka believed it was owed under the Eureka-Bestway '440 & '298 License Agreements (the "Subject Licenses"). Eureka filed suit in Nor Cal Dist Court in Case No.: 15-CV-701-JSW, *Eureka v. Bestway* (the "Eureka Action"). However Eureka lacked standing and defaulted on Bestway's cross-action. The parties dismissed their actions against each other "with prejudice" [Appx-12].

To resolve their separate disputes, Sgromo and Bestway entered into a settlement agreement [Appx-37] with Petitioner for the '440 Patent as well several other of Sgromo's inventions [Id., 2nd recit. ("Mr. Sgromo was responsible for creating and developing most, if not all of the toy products developed, sold and/or licensed by Eureka"); [see also Id., 8th recit.] ("Mr. Sgromo and Bestway both believe that Mr. Sgromo has superior claims to the Option Products."); Id., 9th recit. ("Mr. Sgromo, through his company W&B, has agreed to license to Bestway the exclusive rights to exploit the Option Products") [emphasis added]—

and "WHEREAS . . . the Parties wish[ed] to resolve the issues regarding Bestway's rights to exploit the Option Products; and . . . Mr. Sgromo through his company W&B agreed to license to Bestway the exclusive rights to exploit the Option Products . . . and the License Agreements (the "Option Agreements") attached [t]hereto further memorialized the Agreement between the Parties." [Id., 8th –11th recit.]. Under the Option Agreements [Appx-38] the parties essentially agreed to forego all past consulting *quantum meruit* for a simple solution— a royalty of five–percent (5%) of net sales [see for e.g., Id., §5] if and only if Bestway decided to launch any of the inventions Appellant had presented over the past 2 years:

"LICENSE GRANT— Subject to the terms and conditions set forth herein, B&W grants to Bestway the sole and exclusive worldwide rights (including, without limitation, all patent, trade secret, copyright, trademark, know-how, and other proprietary and intellectual property rights) to manufacture, have manufactured, market, promote, advertise, use, offer-to-sell, sell, distribute, and import the Licensed Product and any extensions, modifications or improvements thereto. B&W further grants to Bestway the sole and exclusive worldwide rights to manufacture, have manufactured, market, promote, advertise, use, offer-to-sell, sell, distribute, and import any invention which is embodied in the Licensed Product or which is the subject of any patents to issue from any patent applications which have been or may be filed covering all or any portion of the Licensed Product (the "License").

B&W also grants to Bestway all merchandising rights in the Licensed Product, including but not limited to the packaging, commercials, displays, trademarks and copyrights (the "Merchandising Rights")." [Id., §§2.01–.02].

The Agreement was the final expression of the parties intentions:

"This Agreement, including all attached Appendices which are incorporated herein by reference as though fully set forth herein, embodies the complete and final agreement between the Parties, and supersedes all prior negotiations and agreements between the Parties, either oral or verbal, concerning its subject matter" [Id., §18.04].

On or about March 28, 2017, Bestway on its own free will terminated the Option Agreements [Appx-39] whilst acknowledging §3.04(a) of the Option Agreements which expressly defines Bestway's rights upon termination:

"Bestway's Rights Upon Termination. Upon termination of this Agreement, the License and all other rights granted to Bestway under this Agreement shall immediately terminate; provided, however, that there shall be no restriction on the right of Bestway's customers to continue to use a Licensed Product purchased prior to the date of termination. Notwithstanding the foregoing, Bestway shall have the right (but not the obligation) for a period of One Hundred and Eighty (180) days after such termination, to sell off its existing inventory of Licensed Products and complete the sale of any Licensed Product in process; provided that the royalty provisions of § 5 apply to such sales."

(emphasis provided) [Appx-38, §3.04(a)].

The Option Agreements clearly have a reversionary rights clause because "all rights granted to Bestway under th[e] Agreement shall immediately terminate" [Ibid.] and those rights granted are clearly defined as to ownership:

"W&B will hold all patent rights to the initial concepts or designs of the License Product provided by W&B to Bestway hereunder . . . Bestway will have first refusal rights to purchase any patents or patent rights from B&W . . . The ownership rights in all trademarks and copyrights related to the Licensed Product that are developed, created, or originated by B&W shall remain the property of B&W but are licensed [] to Bestway . . ." [Id., §§9.01–.04];

and;

"[t]h[e] Agreement, including all attached Appendices which are incorporated herein by reference as though fully set forth herein, embodies the complete and final agreement between the Parties, and supersedes all prior negotiations and agreements between the Parties, either oral or verbal, concerning its subject matter." [Id., §18.04].

The Fed Cir erred when it took judicial notice of the Interpleader and Texas Court under the guise of a proper *de novo* whilst completely ignoring the 9th Cir ORDER. Had the 21–1702 Court conducted a proper *de novo* review it would have found the 9th Cir ruled the decision non– final as it failed to meet the requirements under Fed Civ Rule 54[b]. [Appx-10] ("order is not appealable unless it disposes of all claims as to all parties or judgment is entered in compliance with rule"); citing *Frank Briscoe Co., Inc. v. Morrison-Knudsen Co., Inc.*, 776 F.2d 1414, 1416 (9th Cir. 1985) ("order disposing of fewer than all claims or parties is not appealable absent express determination from district court that there is no just reason for delay under Rule 54(b)" [Id.]

Had the Fed Cir conducted a proper *de novo* review of *at a minimum* the §664.6 Court's Order before dismissal it would have learned the Court had still lawfully found that "Sgromo is arguing the Bestway Defendants breached a separate settlement agreement that he reached with them, that agreement is not part of this case and will not be enforced by this Court" [Appx-11, fn.4]. A proper *de novo* review coupled with a hearing— the Petitioner would have explained that the Settlement Agreement not only rescinded the Subject Licenses on which the Interpleader and Texas Courts relied but that Settlement "Agreement and the

License Agreements attached [t]hereto further memorialized the Agreement between the Parties." [Id., fn.4]. Those License Agreements are the Option Agreements which are dispositive to the '440 & '298 Patents and H2O- GO! marks. [Appx-38].

Further, had a complete *de novo* review had been conducted the 21-1702 Court would have found that on or about October 2, 2019 the 9th Circ. ordered Eureka unseal certain documents revealing that Eureka had indeed rescinded the Eureka-Bestway License Agreements [Appx-9].

"(a) With the exception of any claim relating to any term and/or the performance of this Agreement, Eureka and Bestway hereby release each other from all actions, causes of action, suits, rights, debts, sums of money, accounts, accountings, covenants, contracts, controversies, agreements, promises, indemnities, liabilities, damages, judgments, executions, claims, or demands of every nature whatsoever, in law or equity or arbitration, whether based on contract, tort, statutory or other legal or equitable theory of recovery, whether known or unknown, asserted or unasserted, which one may have against the other arising at any time prior to the Effective Date, including all claims that in any way relate to, arise from, or are in any manner connected to the Subject Licenses.

(b) The Parties hereto expressly acknowledge and agree that this Agreement fully and finally releases and forever resolves all claims referenced in subparagraph (a) above, including those that are unknown, unanticipated or unsuspected or that may hereafter arise as a result of the discovery of new and/or additional facts, and the parties expressly waive all rights under § 1542 of the Civil Code of California, which the parties acknowledge they have read and understood and which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." [Id., §§11(a)(b)].

Under an abundance of caution Petitioner signed the exact release [Appx-37, §§8(a)(b)] despite not being a party to the Subject Licenses nor the Eureka Action. Therefore the Texas and Interpleader Actions are not only non-final decisions but are completely erroneous because they solely rely on the rescinded Subject Licenses to which Petitioner is not a party.

The arguments between the arbitration, the Interpleader and the Arb. Review Court all conflict with each other and are circular arguments. By way of example, the Arb. Review Court –in its review of the *collateral estoppel doctrine* [see Argument below] found – "[t]he arbitration concerns the LTA and deals with all property, business interest and investments as between Sgromo and Scott" (emphasis provided) and "noted, [the arbitrator] explicitly stated that the arbitration only concerned Mr. Scott and Mr. Sgromo" – yet found the arbitrator "concluded that Mr. Sgromo failed to establish that Mr. Scott had failed to establish that Mr. Scott had misrepresented any terms of the transfers of the Intellectual Property to Eureka or

of the rights to the resulting royalties." [Appx-18, §C, ¶¶4-5]. This is absurd, because the arbitrator's finding that "Sgromo offered to transfer his ownership rights to the intellectual property to Eureka as repayment to Scott of the unpaid rent and loans made" whilst acknowledging "a dispute over the correctness of the \$100,000 debt . . . [but] Sgromo nevertheless transferred the intellectual property for valid consideration" [Appx-19, §I, ¶7]— is based on the erroneous conclusion of law that Eureka and WEM were parties to the LTA. The arbitrator offers no explanation how such an action could escape the "modified only in writing signed by all parties" clause of the LTA [Appx-23, §39]; or the "separate property— absent a written agreement transferring ownership" clause [Id., §1]; or the waiver of liability by the other in his name or company name— i.e. Eureka [Id., §3]. Yet, the Arb Review Court nonetheless found "Mr. Sgromo offers no evidence to support his contention that the award fails to "draw essence from the agreement" is completely erroneous. [Appx-18, §C, ¶6].

THE '243 & '422 PATENTS

On or about October 6, 2009 Sgromo filed a provisional patent which was granted by the USPTO on June 30, 2015— U.S. Patent No.: 9,069,243 entitled "System and Method for Generating a Three-Dimensional Image on a Pre-Printed Lined Substrate" (the "'243 Patent"). [Appx-40].

On or about March 2009, Sgromo invented a system to produce holographic images in a bubble when viewed through holographic stereoscopic glasses. [Appx-41]. On or about October 6, 2009 Sgromo filed a provisional patent for the invention which would be granted by the USPTO on February 18, 2014— U.S. Patent No.: 8,654,422 entitled "Holographic Bubble Generating System" [Appx-40].

THE '243 & '422 PATENT LICENSE HISTORY

On or about September 25, 2008 Petitioner traveled to North Hills, CA to the offices of Imperial Toy LLC ("Imperial") where he entered into a non-disclosure-agreement ("NDA") with them. [Appx-42]. At that meeting Petitioner confidentially disclosed the '243 Invention. On or about March 25, 2009 Petitioner confidentially disclosed the '422 Invention to Imperial. [Appx-41]. On or about December 2009, Petitioner granted WEM an exclusive oral license to the '243 & '422 Patent Applications, and in turn WEM entered into a non-exclusive License Agreement for the Applications with Imperial. [Appx-45]. However, Imperial materially breached the Agreement when it failed to showcase the inventions at New York's Toy Fair. [Id., §12(f)]. Petitioner began to work with Toys R Us directly and Imperial threatened legal action. The parties agreed to resolve their disputes by negotiating a new deal [Appx-43] which the parties (Petitioner on behalf of WEM) signed in Hong Kong on or about May 17, 2010. [Appx-44].

The Agreement expressly excludes any agreement to assign any patent rights in the future to the '422 Patent defined as Licensed Grant 1(a) [Id., §1(a)] to which Imperial's counsel of record replied on the Agreement "I don't see how the 3D Stereoscopic Holographic Viewing System can be a licensed Product under 1(v) and then Imperial is excluded from protecting it by patent." [Id., §2(a), at "Comment [gtl2]." The explanation is quite simple— Imperial had nothing more than a 'bare' license as Petitioner had already notified Imperial he had filed the '422 Patent in the detailed settlement e-mail that led to the settlement license agreement — where Imperial reminded Petitioner of their NDA [Appx-43, ¶12]— Petitioner expressly disclosed that he was "developing a line under the holospec patent [he] filed and [was] actively

presenting it so ha[d] to have the samples done for presentations regardless" [Id., ¶5] as Imperial was concerned about billable costs under the TN NAFTA Consulting Agreement [Id., ¶¶ 5, 23–4; see also Appx–46] And as a result, Imperial signed–off on *rejecting* his counsel's comment [Appx–44, §2].

Respondents *proffer* two documents entitled "ASSIGNMENT" filed with the PTO as a *purported* assignment of the '243 & '422 Patents they *purport* "WHEREAS Peter Sgromo ([t]hereinafter referred to as Assignor)" on October 7, 2010 signed via electronic signature "AND Assignor acknowledges an obligation of assignment of this invention to Assignee at the time the invention was made." [Appx–47]. However, the only agreement that exists at the time "the invention was made" is the NDA— which expressly states, "[i]n consideration of the opportunity to view the concept and discuss it with Inventor, Imperial agrees that it will not commercially exploit this item, or disclose to any third party, information regarding this design without the consent of Inventor. ¶ . . . ¶ [t]his document contains the entire agreement between the parties and any modification must be in writing signed by both parties." [Appx–42].

JA–RU ASSUMES THE WEM LICENSES

On or about November 2019, Imperial filed for bankruptcy in Nor Dist. – San Jose. Purchaser sought to assume the WEM licenses and believed the '243 & '422 Patents Assignments were covenants that ran with the WEM Licenses. Petitioner argued to the court he was "disputing the patent assignment agreement, not the [WEM] license agreements – the purported patent assignment agreements between myself as an individual, and Imperial" and requested a later hearing. [Appx–17, p.144]— to which the court acknowledged "the corrected supplement just says" "Licensor" so [the Court] do[es]n't actually know what's seeking to be assumed and assigned" [Ibid.] — to which Imperial argued "the debtor has an ownership interest, as found by the Texas District Court. It is the owner of the patents. The reason it is the owner of the patents is because they received a worldwide exclusive license to the patents in those license agreements." [Id., pp.144–45]. Sgromo finally argued "the debtor is arguing that the license agreements gave these patent rights, yet that is not what they filed with the PTO. What they've filed with the PTO is not an assignment from Wide Eyes Marketing to Imperial – they've purported an assignment from me as an individual to Imperial – and in order for there to be a valid assignment from [the] agreements, there must be an assignment from myself to Wide Eyes Marketing, and in turn to Imperial." [Id., p.146]. The Bankruptcy Court approved the assumption of the WEM Agreements and the Patent Assignments nonetheless, under the guise of assignment rights under those licenses.

This was absurd and to prove it was absurd Petitioner appealed the cure amount on behalf of himself as an individual on December 26, 2019 [Appx–16, p.134] whilst serving Purchaser, Ja–Ru "30–DAY NOTICE OF NONPAYMENT OF ROYALTIES UNDER 11(e)(4) OF COSMIC AND 3D LICENSE AGREEMENTS ("LICENSES")" [Appx–48]. However, the BR Review Court found that "Ja–Ru raise[d] several arguments in opposition to Mr. Sgromo's appeal, including that Mr. Sgromo lacks standing to bring this appeal. Because this Court agrees that Mr. Sgromo lacks standing to appeal the cure amount due in connection with the Wide Eyes Licenses, the Court's analysis begins and ends there. ¶¶ Mr. Sgromo has failed to demonstrate that he has Article III standing or prudential standing to appeal the cure amounts due as to the Wide Eyes Licensing Agreements or otherwise challenge Ja–Ru's assumption of those agreements." [Appx–16, §III, ¶¶1,4]. In fact, Petitioner was happy Ja–Ru assumed the licenses but when it failed to cure royalty payments the WEM Licenses automatically terminated on January 20th 2020 and "[i]n the event of termination . . . [a]ll rights [t]herein granted to Licensee shall automatically revert

to Lessor which shall be free to exploit same without any further obligation to Licensee" [Appx-44, §11(e)(4)]. In fact, the Licenses had automatically terminated when Imperial filed bankruptcy [Id., 11(e)(2)].

CORRECTIVE ASSIGNMENTS BY DECLARATION TO THE USPTO

Given the termination of the Option Agreements and Imperial-WEM Licenses and the confirmed rescission of the Eureka Licenses, Petitioner sought to correct the patent and trademark assignments with the PTO via declaration [Appx-49]— subsequently the PTO issues corrective assignments on documents containing its seal on letterhead [Appx-50]. Therefore, the Fed Cir erred when it found that "Sgromo did not hold ownership of any of the patents or trademarks . . . as indicated by publicly available assignment forms, Scott, Bestway, or Imperial Toy owned the ['243,] '422, '440, and '298 patents and the H2O-GO! trademarks . . . [a]lthough Sgromo is listed as an inventor on the ['243,] '298 and '422 patents, he had assigned them to others . . . [because the corrective] assignments Sgromo filed for the ['243,] '422 patent, '440 patent, and H2O-GO! trademarks have no legal effect," citing 37 C.F.R. 3.54 ("The recording of a document . . . is not a determination by the Office of the validity of the document or the effect that document has on the title to an application, a patent, or a registration."). [emphasis provided] [Appx-4, pp.15–16]. But, the USPTO expressly referenced the Option Agreements when it issued its "NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT" finding that the "LICENSE AGREEMENT TERMINATED [SEE ATTACH. PP.2-3] AND ALL RIGHTS GRANTED [SEE P.3, SECT.2] IMMEDIATELY TERMINATE [IBID., SECT. 3.04]; LICENSOR RETAINS OWNERSHIP [ID., PP.7-8, SECT. 9.01 & 9.04] IN IP THAT ORIGINATED WITH HIM [SEE PP.12-18]." [Appx-50, at PTAS 505982351, dated March 26, 2020].

However, Imperial shifted its argument from the WEM Licenses as the dispositive factor in the *purported* patent assignments to the conveyances to the PTO as collateral agreements. The Target Court deemed "the "unsigned and unwitnessed" patent assignments" valid because the "Court f[ou]nd[] that the nondisclosure and consulting agreements are irrelevant to ownership of the ['243 &] '422 Patent[s], and even if they were relevant, are superseded by the later, signed, assignment of the ['243 &] '422 Patent[s] from Sgromo to Imperial" [Appx-6, p.35, ¶2]— thus allowing Respondents to eschew the WEM Agreements altogether and present a new argument. However, the Court failed to identify *which* Agreement under which — *purportedly* the "Assignor acknowledge[d] an obligation of assignment of this invention to Assignee at the time the invention was made." [Appx-47]. But rather than give Petitioner his Constitutional right to be heard— the Target Court ruled "[i]n sum, despite numerous bites at the apple in this district and various other courts around the country, Sgromo has repeatedly failed to plausibly demonstrate ownership of, or any interest in, the patents and trademarks at issue here." [Appx-6, p.36, ¶1].

REASONS FOR GRANTING THE PETITION

If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. *At a later hearing*, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. "The Supreme Court has not . . . embraced the general proposition that a wrong may be done if it can be undone." (emphasis added) *Stanley v. Illinois*, 405 U.S. 645, 647 (1972).

This is no new principle of constitutional law. The right to a prior hearing has long been recognized by the Supreme Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the form of a hearing "appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313, and "depending upon the importance of the interests involved and the nature of the subsequent proceedings" (*Boddie v. Connecticut*, 401 U.S. 371, 378)— this Honorable Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. See e.g., *Bell v. Burson*, 402 U.S. 535, 542; *Wisconsin v. Constantineau*, 400 U.S. 433, 437; *Goldberg v. Kelly*, 397 U.S. 254; *Armstrong v. Manzo*, 380 U.S., at 551; *Opp Cotton Mills v. Administrator*, 312 U.S. 126, 152-153; *United States v. Illinois Central R. Co.*, 291 U.S. 457, 463; *Londoner v. City County of Denver*, 210 U.S. 373, 385-386. "That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." *Boddie*, at 378-379.

Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence. *Santiago v. Warminster Township*, 629 F.3d 121, 134 n.10 (3d Cir. 2010). In addition, the availability of a corrective remedy such as is provided by Federal Rule of Civil Procedure 60(b) — which authorizes the reopening of cases in which final orders have been inadvisedly entered — renders the lack of prior notice of less consequence. *Gonzalez v. Crosby*, 545 U.S. 524, 529 (2005).

The Fed Circ ORDER denying an oral hearing in 21-1106 and denial to re-open 21-1702 to be provided an opportunity to be heard — after it and the District Court refused an evidentiary hearing violates these tenets and it erred when it did not overturn the District Court's denial of an injunction against Target Brands Inc., enjoining it, its directors, officers, agents, employees, successors, subsidiaries, assigns, and all persons acting in privity or in concert or participation with Target from communicating, offering and selling Petitioner's trade secrets, inventions and Intellectual Property described herein to third parties. "Any party that desires plenary consideration by the Article III judge of any issue need only ask," not even a failure to object preclude further review by the district judge, *sua sponte* or at the request of a party, under a *de novo* or any other standard." *Thomas v. Arn*, 474 U.S. 140, 154 (1985).

LAW & ARGUMENT

There is good cause to grant the petition as appellant will be able to show that he is further entitled to an injunction because he can show he will likely succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *AstraZeneca LP v. Apotex Corp.*, 633 F.3d 1042, 1050 (Fed. Cir. 2010), citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 25 (2008). When this standard is met, courts have issued preliminary injunctions prohibiting the sale of products in both utility and design patent cases. *Id.* at 1045. And like a patent owner, a copyright holder possesses "the right to exclude others from using his property." *Fox Film Corp. v. Doyal*, 286 U. S. 123, 127 (1932), ("[a] copyright , like a patent, is at once the equivalent given by the public for benefits bestowed by the genius and meditations and skill of individuals and the incentive to further efforts for the same important objects") (internal quotation marks omitted). *Id.*, 127–128. But, if an appellate court will only reverse a preliminary injunction if the district court has "abused its discretion, committed an error of law, or seriously misjudged the evidence" (*Hybritech Inc. v. Abbott Lab.*, 849 F.2d 1446, 1449, 7 USPQ2d 1191, 1194 (Fed. Cir. 1988))— it should then reverse the denial of a preliminary injunction, whereas in the present case it has "abused its discretion, committed an error of law, [and] seriously misjudged the evidence."

1. SUCCESS ON THE MERITS

If a patentee moves for a preliminary injunction and the alleged infringer does not challenge validity , the very existence of the patent with its concomitant presumption of validity satisfies the patentee's burden of showing a likelihood of success on the validity issue. *Purdue Pharma L.P. v. Boehringer Ingelheim GmbH*, 237 F.3d 1359, 1365 (Fed. Cir. 2001). The Respondents do not challenge the validity of the patents and trademarks. While proffering shifting arguments, they argue the Petitioner assigned his patent rights in an unsigned, unwitnessed manner— albeit for no consideration

A. THE RESPONDENTS ARE COLLATERALLY ESTOPPED

In *Mast, Foos Co. v. Stover Mfg. Co.*, the Supreme Court has carefully avoided the danger posed by a too rigid application of the discretionary rule of comity in patent matters. As the court explained "[i]f it were, the indiscreet action of one court might become a precedent, increasing in weight with each successive adjudication, until the whole country was tied down to an unsound principle." 177 U.S. 485, 488 (1900). Notwithstanding, permitting repeated litigation of the same issue as long as the supply of unrelated defendants holds out reflects either the aura of the gaming table or "a lack of discipline and of disinterestedness on the part of the lower courts, hardly a worthy or wise basis for fashioning rules of procedure." *Kerotest Mfg. Co. v. C-O-Two Co.*, 342 U.S. 180, 185 (1952).

In the present case, the result of the settlement agreements voluntarily entered into between Appellant and the Imperial, Bestway and Eureka parties (the "Licensees") renders them, and in turn Target estopped from challenging the validity of the H2O-GO! marks and copyrights; and the '440, '243, '422 and '298 Patents. *Flex-Foot, Inc. v. CRP, Inc.*, 238 F.3d 1362, 1370 (Fed. Cir. 2001). The Eureka Action to which Sgromo was *not* a party resulted in a settlement agreement. Case 4:15-cv-00701-JSW, *Eureka v. Bestway*, ("[t]he parties to the

interpleader action did not move to relate that case to this one at the time . . . but the [Eureka] Court determined they are not related."). [Appx-11, fn.1]. But in that case— Scott acknowledged in his sworn declaration dated October 2, 2015 that— "Mr. Sgromo has asserted that he is the owner of the intellectual property rights underlying the licenses in this case" [Appx-12, Scott Decl., ¶3] and rather than file a counter-action naming Sgromo— on or about November 9, 2015— before the court entered into a stipulation to dismiss the case where Bestway and Eureka dismissed their claims against each other "with prejudice." [Appx-12]. Additionally, Bestway and Eureka released each other from "any claims that in any way relate to, arise from, or are in any manner connected to the Subject [Eureka-Bestway] Licenses . . . and the parties expressly waive[d] all rights under § 1542 of Cal Civ Code. [Appx-9, §§11(a)(b)]. "[S]uch a dismissal with prejudice and accompanying settlement agreement certainly gives rise to contractual estoppel of "unrelated defendants" like Target challenge to the '298 patent; the '440 patent; and the H2O-GO! marks validity. *Flex-Foot*, at 1366.

Equally, Respondents are estopped from challenging the '243 & '422 Patents because Imperial breached a "material provision of the [12-04-09] Agreement" [Appx-45] because Imperial promised it "shall introduce the Licensed Products on or before February, 2010 at the Toy Industry Association's Toy Fair in New York, NY" (Id., §12(f))— and failed to do so. Sgromo proceeded to build a relationship with Toys R US to mitigate his damages but Imperial threatened legal action. The parties settled their dispute vis-à-vis a second, more narrow Agreement [Appx-44]. Nothing in the original agreement or the settlement license agreement is tantamount to anything more than a "bare license" and it is estopped from arguing that the *purported* collateral agreements to the NDA, the TN Visa Consulting Agreement and the WEM Licenses because Sgromo raised the argument at the bankruptcy hearing [Appx-17] and "§ 315(e)(1)'s estoppel provisions apply to grounds that the petitioner . . . "with respect to that claim." *Uniloc 2017 LLC v. Facebook Inc.*, 989 F.3d 1018, 1023 (Fed. Cir. 2021).

B. PATENTS "SHALL BE ASSIGNABLE BY AN INSTRUMENT IN WRITING"

"In the context of an assignment of a patent, [the parties] can agree verbally until the cows come home, and that patent isn't assigned until there's a writing." *U.S. v. Solomon*, 825 F.2d 1292, 1296 (9th Cir. 1987). The rules governing the transfer and assignment of patent rights clearly envision a scheme of written assignment by providing that patents "shall be assignable in law by an instrument in writing." 35 U.S.C. § 261; see also *Solomon*, at 1296.. Not even will "common corporate structure . . . overcome the requirement that even between a parent and a subsidiary, an appropriate written assignment is necessary to transfer legal title from one to the other." *Abraxis Bioscience, Inc. v. Navinta LLC*, 625 F.3d 1359, 1366 (Fed. Cir. 2010).

The Target Court erred when it found the "assignment agreement of the '440 Patent to Scott . . . states that all of the Assignor's right, title, and interest in and to the patent. . ." [Appx-6, pp.34-5]. This erroneous conclusion of law falls flat on its face because the "ASSIGNMENT OF PATENT RIGHTS" Document proffered by Scott [Appx-25] fails to meet the § 261 requirement⁶— it is neither signed nor witnessed. Neither can such a conclusion be

⁶ The document proffered merely contains a typed signature "By: /Peter a. Sgromo/ President, Wide Eyes Marketing Ltd." It does not meet the *prima facie* evidence of an assignment ("[a] certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths . . . of a diplomatic or consular officer of the United States or . . . an official designated by a foreign country . . ." (Sgromo is and

drawn from the essence of the LTA because it requires a "written agreement transferring ownership" [Appx- 23, §1] and expressly states that sharing the residence "does not give [Scott] ownership rights of any kind in WEM." [Id., §2]. While the AR Review Court found the arbitrator "correctly reasoned, Eureka was not a party to the LTA . . . [and] did not determine the ownership rights of third parties, and correctly explained "[t]he arbitration concerns the LTA and deals with all property, business interest and investments "as between Sgromo and Scott" [Appx-18, §C, ¶¶4-5] it offers no explanation how WEM transferred its ownership rights "to Eureka as repayment to Scott of the [purported] unpaid rent and loans made." [Appx-19, §I, ¶7; see also LTA [Appx-23, §3] ("[n]either shall be liable or responsible for the individual debts incurred by the other in his own name or company name.")]

The AR Review Court erred when it found the arbitrator "did not determine the ownership rights of third parties, but rather explained that ""[t]he arbitration concerns the LTA and deals with all property, business interest and investments as between Sgromo and Scott"" and that the arbitrator "explicitly stated that the arbitration only concerned Mr. Scott and Mr. Sgromo." [Appx-18, §C, ¶4]. Whether Sgromo and WEM are part of the same corporate structure and are not "complete strangers," therefore, is irrelevant because there was no valid written assignment from Sgromo to WEM. 35 U.S.C. § 261 (assignments of patents must be in writing); see also *Enzo APA& Son, Inc. v. Geapag A.G.*, 134 F.3d 1090, 1093 (Fed. Cir. 1998). Common corporate structure does not overcome the requirement that even between a parent and a subsidiary, an appropriate written assignment is necessary to transfer legal title from one to the other. *Lans v. Digital Equipment Corp.*, 252 F.3d 1320, 1328 (Fed. Cir. 2001). To-date no respondent in any action has provided proof of any transfer from WEM to Sgromo at the time before April 1, 2020. [Appx- 27] and it is therefore established only WEM had standing on the '440 Patent *prior* to the commencement of the Target Action.

The Target Court also erred when it found "that the nondisclosure and consulting agreements are irrelevant to ownership of the ['243 &] '422 Patent, and even if they were relevant, are superseded by the later, signed, assignment of the ['243 &] '422 Patent[s] from Sgromo to Imperial." [Appx-6, p.35, ¶2]. However, those *purported* assignments also do not meet § 261 with the electronic signature. Still, any writing must be authenticated before the writing, or secondary evidence of its content, may be received in evidence. Evid. Code, § 1401; see also *People v. Valdez*(2011) 201 Cal.App.4th 1429, 1435. "Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law." Cal. Evid. Code, § 1400; see also *Valdez*, at p. 1435, (proponent meets its burden of producing evidence to show authenticity of writing "when sufficient evidence has been produced to sustain a finding that the document is what it purports to be."); *People v. Skiles* (2011) 51 Cal.4th 1178, 1187, [126 Cal.Rptr.3d 456, 253 P.3d 546] ("[w]riting can be authenticated by circumstantial evidence and by its contents.") and Respondents did not prove by a preponderance of the evidence that Sgromo was the person who electronically signed the October 7, 2010 Patent Assignments. Cal. Civ. Code, § 1633.9, subd. (a). Substantial evidence supports this finding. *Ruiz v. Moss Bros. Auto Group, Inc.*, 232 Cal.App.4th 836, 842 (Cal. Ct. App. 2014); see also *Orr v. Bank of America*, 285 F.3d 764, 777 (9th Cir. 2002), ("[a] declaration of an attorney who lacks personal knowledge of a document is inadequate to authenticate the document properly.").

C. NUNC PRO TUNC ASSIGNMENTS CANNOT CONFER STANDING

It is established that *nunc pro tunc* assignments are insufficient to confer retroactive standing (*Gaia Technologies, Inc. v. Reconversion Technologies, Inc.*, 93 F.3d 774, 780 (Fed. Cir. 1996))— especially where no written transfer of rights under patent had been made at the time claims were brought (*Enzo*, at 1093). This is fatal to Target's defence because *all purported* patent assignments are *nunc pro tunc* assignments.

The *purported* '243 & '422 Assignments state that "Assignor – Peter Sgromo acknowledges an obligation of assignment of this invention to Assignee at the time the invention was made" [Appx–47] but the only Agreements that existed at any time remotely close to the inventions is the NDA between Sgromo as an individual and Imperial [Appx–42]. Therefore when the Target Court held "that the nondisclosure and consulting agreements are irrelevant to ownership of the ["243 &] '422 Patent" it was endorsing an oral assignment. *Enzo*, at 1093 ("a license may be written, verbal, or implied, if the license is to be considered a virtual assignment to assert standing, it must be in writing.").

Equally, the *purported* '298 Patent and H2O–GO! marks "Assignment" is executed on May 6, 2019 but backdated to September 26, 2017 but references "the June 17, 2014 Agreement between the parties" [Appx–51]— but that is the rescinded, non-exclusive license agreement to which Sgromo was not a party. [Appx–32]. It does not exist because "Eureka and Bestway release[d] each other [*inter alia*] from all . . . claims, or demands of every nature whatsoever, in law or equity or arbitration, whether based on contract, tort, statutory or other legal or equitable theory of recovery, whether known or unknown, asserted or unasserted, which one may have against the other arising at any time prior to the Effective Date, including all claims that in any way relate to, arise from, or are in any manner connected to the Subject Licenses . . . and the parties expressly waive all rights under Cal Civ Code § 1542" [Appx–9, §§11(a)(b)]. The "June 17, 2014, license agreement" referenced in the *purported* Assignment [Appx–51] is unambiguously defined as the "Slide License" [Appx–9, 3rd recit.] and the Eureka '440 License and the Slide License are "collectively" referred to as "the Subject Licenses" (Id., §3). No more precise words in the English language could have been employed to mutually terminate and rescind the "Subject Licenses" and any relationship whether explicit or implied (cf. Civ. Code, §§ 13; 1541; see also *Larsen v. Johannes*, 7 Cal. App. 3d 491, 499 (Cal. Ct. App. 1970))—and the parties thereto were discharged and released. (Rest., Contracts § 402, subd. (1).)

2. IRREPARABLE HARM

In *eBay*, the Supreme Court rejected categorical rules for awarding or denying injunctive relief to patentees. *Id.*, at 393. Specifically, the Court ruled that it was error to conclude that a patentee who did not practice its invention could not suffer irreparable harm. The Court held that this would improperly bar injunctive relief in a "broad swath of cases" and that "traditional equitable principles do not permit such broad classifications." *Id.* Such a categorical rule would, for example, prejudice patent holders who were unable "to bring their works to market themselves." *Id.* The Federal Circuit has likewise held that "[e]ven without practicing the claimed invention, the patentee can suffer irreparable injury." *Presidio Components, Inc. v. Am. Tech. Ceramics Corp.*, 702 F.3d 1351, 1363 (Fed. Cir. 2012). In *Broadcom Corp. v. Qualcomm Inc.*, 543 F.3d 683 (Fed. Cir. 2008), for example, the court held that the patentee had "provided evidence of irreparable harm, despite the fact that it does not currently practice the claimed inventions," noting that this was "consistent with *eBay*." *Id.* at 703; see also *Trebro Mfg., Inc. v. Firefly Equip., LLC*, 748 F.3d 1159, 1171 (Fed. Cir. 2014)

("on this record, the fact that Trebro does not presently practice the patent does not detract from its likely irreparable harm").

Further, a plaintiff's past willingness to license its patent is not sufficient per se to establish lack of irreparable harm if a new infringer were licensed. See *eBay*, 547 U.S. at 393, 126S.Ct. 1837 (rejecting the district court's conclusion that "a plaintiff's willingness to license its patents and its lack of commercial activity in practicing the patents would be sufficient to establish that the patent holder would not suffer irreparable harm if an injunction did not issue") (quotations omitted). *Acumed LLC v. Stryker Corp.*, 551 F.3d 1323, 1328-29 (Fed. Cir. 2008).

Applying these settled principles to facts substantially the same as those here, the district court in *Joyal Products, Inc. v. Johnson Electric North America, Inc.*, No. CIV. A. 04-5172 JAP, 2009 WL 512156 (D.N.J. Feb. 27, 2009), aff'd, 335 F. App'x 48 (Fed. Cir. 2009), granted injunctive relief to protect the value of the patent at issue where the patentee had ceased operations and wanted to sell its patent to another company in the market. *Id.* at *11. Plaintiff Joyal Products owned a patent that covered a process for making electrical connections in certain machines. *Id.* At *1. Joyal sued its competitor for patent infringement and partway through the litigation it ceased operating and sold off many of its assets. *Id.* at *11 and n.2. At trial, the defendant was found to infringe and Joyal sought a permanent injunction despite that it had ceased practicing the patent several years earlier. *Id.*

As in *Joyal*, here Petitioner is not seeking to license his patents and trademarks but instead is actively conducting consumer research and developing a new product and trade channel strategy in a post-covid-19 era so that he may commercialize the "asset[s] for maximum value." *Id.* The court should recognize that "the 'principal value of a patent is its statutory right to exclude,'" and therefore "absent the right to exclude competitors from practicing the method covered by the patent, the patent's value would be diminished in a manner that would be difficult to quantify." *Polymer Technologies, Inc. v. Bridwell*, 103 F.3d 970, 976 (Fed. Cir. 1996).

It is usually recognized in trademark infringement cases that there is not an adequate remedy at law to redress infringement and infringement by its nature causes irreparable harm. *Tally-Ho, Inc. v. Coast Community College*, 889 F.2d 1018, 1029 (11th Cir. 1989). Moreover, a presumption may arise in a case of trademark infringement where, as here, the court has held that the plaintiff has established a likelihood of success on the merits. *E. Remy Martin Co., S.A. v. Shaw-Ross International Imports, Inc.*, 756 F.2d 1525, 1530 (11th Cir. 1985). Even if irreparable injury were not presumed in this case, Sgromo has shown that he will suffer irreparable injury if an injunction is not issued in this case. Sgromo advances evidence that he has lost the ability to control the nature and quality of the services provided under Target's infringing mark.

3. THE BALANCE OF HARDSHIPS

The overwhelming majority of decisions addressing injunction motions have focused solely on whether the plaintiff has shown a likelihood of success on the merits and irreparable harm, rather than on balancing the hardships. See e.g., *Random House, Inc. v. Rosetta Books L.L.C.*, 283 F.3d 490, 492 (2d Cir. 2002) (considering the balance of hardships but finding the standard unsatisfied); *Consumers Union of U.S., Inc. v. Gen. Signal Corp.*, 724 F.2d 1044, 1054 (2d Cir. 1983). *Salinger v. Colting*, 607 F.3d 68, 75 n. 5 (2d Cir. 2010) ("[t]hus, once a plaintiff establishes a likelihood of success on the merits, the only additional requirement is a showing that the plaintiff will be irreparably harmed if the preliminary injunction does not issue." And it "is not appropriate . . . for an infringer to cite to losses suffered as a result of enjoining that infringement as a 'hardship,' where, as here, Appellant has made a strong showing of

validity and infringement." *High Tech Med. Instrumentation v. New Image*, 49 F.3d 1551, 1554 (Fed. Cir. 1995).

The Respondents do not refute the products infringe. Notwithstanding, a device does not infringe simply because it is possible to alter it in a way that would satisfy all the limitations of a patent claim. *Hap Corp. v. Heyman Mfg. Co.*, 311 F.2d 839, 843, 135 USPQ 285, 288 (1st Cir. 1962) ("[t]he question is not what [a device] might have been made to do, but what it was intended to do and did do . . . that a device could have been made to do something else does not of itself establish infringement."), cert. denied, 373 U.S. 903, 83 S.Ct. 1290, 10 L.Ed.2d 198 (1963). Of course, if a device is designed to be altered or assembled before operation, the manufacturer may be held liable for infringement if the device, as altered or assembled, infringes a valid patent. *Paper Converting Mach. Co. v. Magna-Graphics Corp.*, 745 F.2d 11, 19, 223 USPQ 591, 597 (Fed. Cir. 1984) (components of a machine held to infringe when components are ready for assembly and serve "no useful noninfringing purpose"); *Hansen v. Siebring*, 231 F. Supp. 634, 644, 142 USPQ 465, 472 (N.D. Iowa), aff'd, 346 F.2d 474 (8th Cir.), cert. denied, 382 U.S. 943, 86 S.Ct. 400, 15 L.Ed.2d 352 (1965).

Here Target attempts numerous work-arounds in an attempt to disguise their theft once again by its false advertising the Aqua Ramp is "water-filled" but still "inflatable" with air; blatantly infringed on the '440 Patent again; or simply removed the stereoscopic glasses but achieving the same result of 'enhancing the bubble viewing system.' The Court should be persuaded that the balance of hardships favors Sgromo because it is unlikely he will be compensated for the infringing sales that have already occurred, much less final sales Target would seek to complete. Moreover, Target's hardship is the result of its calculated business risk to enter the relevant market with its devices. Therefore, the Court should find that the balance of hardships favors the entry of an injunction. *Coloplast A/S v. Generic Med. Devices, Inc.*, No. C10-227 BHS, at *4 (W.D. Wash. Aug. 9, 2012)

Lastly, the harm Defendants face is, to a large extent, self-inflicted. After Target's OEM supplier, Bestway terminated the license on their own free will, Target took a calculated risk in launching products carrying the H2O-GO! marks with trade dress virtually identical to that Sgromo created under the previous licenses Cf. *SmithKline Beecham Consumer Healthcare, L.P. v. WatsonPharm., Inc.*, 63 F. Supp. 2d 467, 472 (S.D.N.Y. 1999), amended, No. 99-CV-9214 (DC), 1999 WL 1122478 (S.D.N.Y. Sept. 20, 1999) and order dissolved due to a change in circumstances, No. 99-CV-9214 (DC), 1999 WL 1243894 (S.D.N.Y. Dec. 22, 1999) (finding that the balance of equities favored the plaintiff despite the fact that the defendant "would suffer substantial financial losses if its launch of the product is delayed," because "[a]ny harm that [defendant] would suffer by the issuance of a preliminary injunction is largely the result of its own doing.").

4. THE PUBLIC INTEREST

The fourth factor that must be considered by the district court in determining whether to issue a preliminary injunction is the impact of the injunction on the public interest. Typically, in a patent infringement case, although there exists a public interest in protecting rights secured by valid patents, (*Smith Intern., Inc. v. Hughes Tool Co.*, 718 F.2d 1573, 1581 (Fed. Cir. 1983)) the focus of the district court's public interest analysis should be whether there exists some critical public interest that would be injured by the grant of preliminary relief (*Datascope Corp. v. Kontron Inc.*, 786 F.2d 398, 401 (Fed. Cir. 1986)) and therefore, "encouraging research and development efforts leading to patent protection." *Henkel Corp. v. Coral, Inc.*, 754 F. Supp. 1280, 1309 (N.D. Ill. 1991).

"[T]here is an important public interest in protecting the legal system against manipulation by parties, especially those prone to involvement in repeat litigation, who might contrive to moot cases that otherwise would be likely to produce unfavorable precedents." *BenitecAus. v. Nucleonics*, 495 F.3d 1340, 1353 (Fed. Cir. 2007), citing Hart and Wechsler, *The Federal Courts and the Federal System* 204 (5th ed.2003). The Respondents have engaged in *fast and loose* litigation and the lower courts have allowed shifting arguments—all of which offend the Patent Act. The public interest includes a consideration of whether, by shifting market benefits to the infringer while litigation is pending for patents that are likely to withstand the attack, the incentive for discovery and development of new products is adversely affected. The statutory period of exclusivity reflects the congressional balance of interests, and warrants weight in considering the public interest." *Id.* Therefore, the public interest in recognizing and incentivizing inventive work such as that performed by Sgromo often outweighs any purported "interest" in obtaining inexpensive infringing products.

Equally, "[t]rademark infringement, by its very nature, adversely affects the public interest in the 'free flow' of truthful commercial information." *Big Boy Restaurants v. Cadillac Coffee Co.*, 238 F.Supp.2d 866, 873 (E.D. Mich. 2002) (quoting *Gougeon Bros., Inc. v. Hendricks*, 708 F.Supp. 811, 818 (E.D. Mich. 1988)). Allowing Target to continue their use of Sgromo's trademarks runs afoul of the statutory protections guaranteed to him. , and increases the chance that potential customers might inadvertently purchase Target's 'Aqua Ramp' when they intend to procure Sgromo's H2O-GO! Speed Ramp. *Audi AG v. D'Amato*, 469 F.3d 534, 550 (6th Cir. 2006)(affirming the district court's decision to issue an injunction to "prevent consumers from being misled."). Hence, the need for injunctive relief based on the public interest.

CONCLUSION

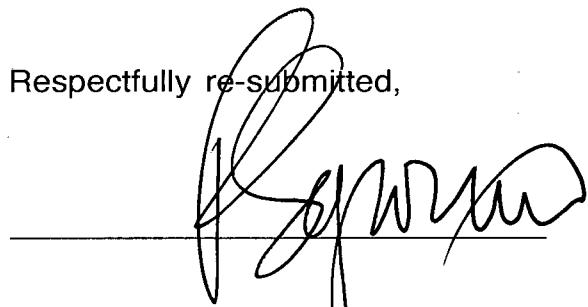
Petitioner prays this court will vacate the judgment of the Court of Appeals in Case No.: 21-1702, *Sgromo v. Target* and:

- [1]. A declaratory ORDER that the Imperial–Ja–Ru Inc. 3D & Cosmic Licenses are a non-exclusive Agreements;
- [2]. A declaratory ORDER that the Imperial–Ja–Ru Inc. 3D & Cosmic License Agreements were terminated as a matter of law and all rights reverted to Appellant;
- [3]. That the Appellant–Imperial NDA is an integrated agreement and is therefore dispositive on the rights of the '243 & '422 Patents;
- [4]. A declaratory ORDER that the *purported* '243 Patent Assignment Agreement is not an executed Agreement and there was no transfer of any rights from Appellant to Imperial–Ja–Ru Inc.;
- [5]. A declaratory ORDER that the *purported* '422 Patent Assignment Agreement is not an executed Agreement and there was no transfer of any of the '422 rights from Appellant to Imperial–Ja–Ru Inc.;

- [6]. A declaratory ORDER that the Appellant–Eureka–Bestway Settlement Agreements are integrated and are dispositive on the Appellant's rights to the H2O–GO! trademarks and the '440 & '298 Patents;
- [7]. A declaratory ORDER that the six [6] Bestway Option Agreements are non-exclusive Licenses and collateral agreements to the Appellant–Bestway and Eureka–Bestway Settlement Agreements;
- [8]. A declaratory ORDER that the Bestway Option Agreements were terminated and as a matter of law all rights reverted to Appellant;
- [9]. A declaratory ORDER that Sgromo–Scott LTA is an integrated agreement;
- [10]. A declaratory ORDER that the *purported* WEM–Scott '440 Patent Assignment is not an executed Agreement;
- [11]. A declaratory ORDER that Scott, Bestway, Eureka and their privies—namely Target in the present case are collaterally estopped from any claims that relate to the H2O–GO! trademarks and '440 & '298 Patents;
- [12]. A declaratory ORDER that Target is *knowingly* infringing on the H2O–GO! trademarks and '440 & '298 Patents— and Appellant is entitled to treble damages;
- [13]. A declaratory ORDER that Target is infringing on the '422 Patent;
- [14]. An ORDER that Target shall provide a complete list, including contact names, addresses, email addresses, telephone numbers, facsimile numbers of third parties including but not limited to retailers (whether online or brick & mortar), sales agents, manufacturers agents, sales representatives, sub-licensees, distributors that have offered for sale any of the products that use any of the inventions, trademarks, and intellectual property described herein;
- [15]. Entering a permanent injunction against Target enjoining it, its directors, officers, agents, employees, successors, subsidiaries, assigns, and all persons acting in privity or in concert or participation with Bestway from communicating, offering and selling Petitioner's trade secrets, Inventions and Intellectual Property described herein to third parties;
- [16]. Refer the action back to the district court for trial consistent with this court's ORDERS; and
- [17]. Granting such other and further relief as this Honorable Court may deem just and proper.

The petition for a writ of certiorari should be granted.

Respectfully re-submitted,

A handwritten signature in black ink, appearing to read "BRIAN D. WYNN". The signature is fluid and cursive, with "BRIAN" at the top and "D. WYNN" below it.

Date: March 21, 2022
Originally submitted January 26, 2022

APPENDIX - 1

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**PIETRO PASQUALE-ANTONI SGROMO, AKA
PETER ANTHONY SGROMO,
*Plaintiff-Appellant***

v.

**LEONARD GREGORY SCOTT, EUREKA
INVENTIONS LLC,
*Defendants-Appellees***

2021-1106

Appeal from the United States District Court for the Northern District of California in No. 4:19-cv-08170-HSG, Judge Haywood S. Gilliam Jr.

ON MOTION

PER CURIAM.

O R D E R

Peter Sgromo requests oral argument in the above-captioned appeal and requests that argument be heard along with Appeal No. 21-1702.

Upon consideration thereof,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

January 13, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court



UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

PETER R. MARKSTEINER
CLERK OF COURT

CLERK'S OFFICE
202-275-8000

January 12, 2022

Peter Sgromo
3-113 Marks Street S
Thunder Bay, Ontario, P7E 1L8
Canada

Re: Sgromo v. Target Brands Inc., Appeal No. 2021-1702

Dear Mr. Sgromo,

This letter responds to your submission received by the Clerk's Office on January 10, 2022. Final judgment has been entered in this case and it is now closed in this court.

The above appeal was decided on October 6, 2021, the petition for rehearing was denied on December 13, 2021, and the mandate issued on December 20, 2021. Thus, no action will be taken on the submitted document. Further related filings in this closed case will receive no response.

Very truly yours,

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court
By: M. Hull, Deputy Clerk

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**PETER SGROMO, AKA PIETRO PASQUALE-
ANTONIO SGROMO,
*Plaintiff-Appellant***

v.

**TARGET BRANDS INC.,
*Defendant-Appellee***

2021-1702

Appeal from the United States District Court for the District of Minnesota in No. 0:20-cv-01030-JRT-LIB, Judge John R. Tunheim.

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

Before MOORE, *Chief Judge*, NEWMAN, LOURIE, DYK, PROST, O'MALLEY, REYNA, TARANTO, CHEN, HUGHES, STOLL, and CUNNINGHAM, *Circuit Judges*.

PER CURIAM.

O R D E R

Peter Sgromo filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on December 20, 2021.

FOR THE COURT

December 13, 2021

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**PETER SGROMO, AKA PIETRO PASQUALE-
ANTONIO SGROMO,
*Plaintiff-Appellant***

v.

**TARGET BRANDS INC.,
*Defendant-Appellee***

2021-1702

Appeal from the United States District Court for the District of Minnesota in No. 0:20-cv-01030-JRT-LIB, Judge John R. Tunheim.

Decided: October 6, 2021

PETER SGROMO, Thunder Bay, Ontario, Canada, pro se.

JOHN S. ARTZ, Dickinson Wright PLLC, Ann Arbor, MI, for defendant-appellee. Also represented by STEVEN A. CALOIARO, Reno, NV; JAMES J. LUKAS, JR., Greenberg Traurig, P.A, Chicago, IL.

Before LOURIE, O'MALLEY, and CHEN, *Circuit Judges*.

PER CURIAM.

Pietro Pasquale Antonio Sgromo appeals from a decision of the United States District Court for the District of Minnesota granting Target Brands, Inc.'s ("Target") motion to dismiss for lack of jurisdiction and denying Sgromo's motion for a preliminary injunction. *See Sgromo v. Target Brands, Inc.*, No. CV 20-1030, 2021 WL 632496 (D. Minn. Feb. 18, 2021). We *affirm*.

BACKGROUND

Sgromo alleges that he owns U.S. Patents 7,046,440 ("the '440 patent"), 8,654,422 ("the '422 patent"), and 9,511,298 ("the '298 patent"), and the H2O-GO! trademarks. These patents and trademarks relate to pool decorations and structures, but their subject matter is not relevant here. The present action is not Sgromo's first attempt at asserting infringement of these patents and trademarks, and other courts have found that Sgromo does not own any of these patents or trademarks. For context regarding the present action, we briefly summarize the prior court decisions.

In April 2019, the District Court for the Northern District of California, in a suit brought in that court, found that Leonard Scott, not Sgromo, was the rightful owner of the '440 patent and enjoined Sgromo from filing any claim in federal or state court pertaining to royalty payments arising from use of this patent. *See Bestway (USA), Inc. et al. v. Sgromo et al.*, No. 17-CV-205, Dkt. No. 148 (N.D. Cal. Apr. 18, 2019); S.A. 53–54.¹ In September 2019, the District Court for the Eastern District of Texas dismissed Sgromo's complaint in that court for infringement of the '440 patent for lack of standing because Sgromo had not shown a written transfer of all substantial rights of the '440

¹ "S.A." refers to the Supplemental Appendix filed with Target's brief.

patent to himself and because other district court proceedings had already concluded that he was not the owner of the '440 patent. *See Sgromo v. Bestway Enter. Co. Ltd.*, No. 19-CV-60, 2019 WL 4686719, at *3 (E.D. Tex. Aug. 29, 2019), *R. & R. adopted*, 2019 WL 4673756, at *1 (E.D. Tex. Sept. 25, 2019).

In 2019, the Northern District of California and Eastern District of Texas courts found that Sgromo failed to demonstrate ownership of the '298 patent. *See Sgromo*, 2019 WL 4686719, at *4–5; J.A. 7.

In September 2019, the Eastern District of Texas court dismissed Sgromo's complaint for infringement of the '422 patent for lack of standing because Imperial Toy, LLC ("Imperial Toy") was assigned the rights to the '422 patent. *See Sgromo v. Imperial Toy LLC*, 2019 WL 4394565, at *2 (E.D. Tex. Sept. 13, 2019). In November 2019, Imperial Toy filed for bankruptcy, and despite Sgromo asserting that he was the rightful owner of the '422 patent, the bankruptcy court overruled Sgromo's objection and approved the sale of the '422 patent free and clear of any claim by Sgromo. J.A. 21–22; S.A. 76, 101.

Finally, the Eastern District of Texas court found that Sgromo did not show that he was the owner of the H2O-GO! trademarks. *See Sgromo*, 2019 WL 4686719, at *5–6.

Thus, other tribunals had determined that Sgromo lacked ownership of the patents and trademark sufficient to bring suit on them.

In the present case Sgromo sued Target in the United States District Court for the District of Minnesota for infringement of the '440, '422, and '298 patents, and the H2O-GO! trademarks. J.A. 3–4. Sgromo alleged that Wide Eyes Marketing, Ltd. ("WEM"), a company owned and operated by Sgromo, acquired ownership of the '440 patent on December 10, 2010. J.A. 4. In May 2013, WEM granted a non-exclusive license to Bestway (Hong Kong)

International Ltd. and Bestway (USA), Inc. (collectively, “Bestway”). *Id.* Bestway then terminated the license in March 2017. *Id.* As a result, Sgromo claimed that the ’440 patent exclusively reverted to WEM. *Id.* In April 2020, Sgromo filed a purported assignment from WEM to himself in the U.S. Patent and Trademark Office (“USPTO”). S.A. 244–48.

Regarding the ’422 patent, Sgromo alleged that he licensed this patent to Imperial Toy but that the license terminated due to non-payment of royalties and all rights in the ’422 patent reverted to him. J.A. 4–5. In March 2020, Sgromo filed a “corrective assignment” which he claimed showed that the rights in the ’422 patent reverted to him. J.A. 30. As for the ’298 patent, Sgromo claimed that he licensed the patent to Bestway in 2013, Bestway terminated the license in 2017, and all rights reverted to him. *Id.* And, regarding the H2O-GO! trademarks, Sgromo alleged that he granted a non-exclusive license to the trademarks to Bestway, but Bestway terminated the agreement in March 2017, and the rights exclusively reverted to him. *Id.* In April 2020, Sgromo filed documents that he alleged are assignments of the H2O-GO! trademarks. S.A. 305–10.

Shortly after bringing suit, Sgromo filed a motion for a preliminary injunction. S.A. 344. Target then moved to dismiss the case for lack of subject matter jurisdiction.

A magistrate judge issued a report and recommendation that recommended granting Target’s motion to dismiss and also recommended denying Sgromo’s motion for a preliminary injunction. J.A. 8. The magistrate judge found that WEM, not Sgromo, owned the ’440 patent. J.A. 26–29. WEM then assigned the patent to Scott. *Id.* This meant that, Scott, not Sgromo, held all the rights to the ’440 patent and these rights never reverted to WEM or were later assigned to Sgromo, as Sgromo claimed. *Id.*

With regard to the ’422 patent, the magistrate judge found that although Sgromo was listed as an inventor,

Imperial Toy was the assignee of the patent and held all ownership rights to the patent. J.A. 29–31. With regard to the '298 patent, the magistrate judge found that although Sgromo was listed as an inventor, Eureka Inventions was the original assignee of the patent and then assigned all ownership rights to Bestway. J.A. 31–33. With regard to the H2O-GO! trademarks, the magistrate judge found that the trademarks were issued to and owned by Bestway and that Sgromo failed to demonstrate that he held any ownership rights over these trademarks. J.A. 33–35. The magistrate judge also found that Sgromo's purported assignments for the '422 and '440 patents and the H2O-GO! trademarks were not actual assignment documents but instead declarations and a notice of recordation with no legal effect. J.A. 26–35.

Because Sgromo lacked ownership of any of the asserted patents and trademarks, the magistrate judge recommended granting Target's motion to dismiss for lack of subject matter jurisdiction on the ground that Sgromo lacked standing to assert claims for infringement. J.A. 41. In addition, because Sgromo also failed to demonstrate that he had a fair chance of prevailing on any of his claims, the magistrate judge recommended denying Sgromo's motion for a preliminary injunction. J.A. 41–42. Judge John Tunheim adopted the report and recommendation and dismissed the claims. J.A. 2–14.

Sgromo then filed the present notice of appeal to this court, appealing the district court's grant of Target's motion to dismiss and denial of Sgromo's motion for a preliminary injunction. S.A. 433. We have jurisdiction under 28 U.S.C. § 1291.

DISCUSSION

We review a grant or denial of a motion to dismiss for lack of standing *de novo*, but the underlying facts used to support the decision are reviewed for clear error. *See Hewlett-Packard Co. v. Acceleron LLC*, 587 F.3d 1358, 1361

(Fed. Cir. 2009). “A finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948).

Because the grant, denial, or modification of a preliminary injunction is not unique to patent law, we apply the regional circuit law when reviewing and interpreting such decisions. *See, e.g., Aevoe Corp. v. AE Tech Co.*, 727 F.3d 1375, 1381 (Fed. Cir. 2013). The Eighth Circuit reviews a district court’s decision granting or denying a preliminary injunction for abuse of discretion. *See Barrett v. Claycomb*, 705 F.3d 315, 320 (8th Cir. 2013). A district court abuses its discretion by basing its decision, *inter alia*, on an erroneous legal standard or clearly erroneous findings of fact. *Id.*

Sgromo argues that the district court erred by failing to properly apply contract law in interpreting the assignments and corresponding ownership of the patents and trademarks at issue in this case. Target contends that this argument is baseless because the court did not engage in any contract interpretation. We agree with Target. The court did not engage in any contract interpretation in finding that Sgromo did not own any of the patents or trademarks at issue. To the extent that Sgromo contends that the court erred in finding that he did not have ownership of the patents and trademarks at issue, we disagree.

Sgromo did not hold ownership of any of the patents or trademarks when he asserted them. At all relevant times, as indicated by publicly available assignment forms, Scott, Bestway, or Imperial Toy owned the ’422, ’440, and ’298 patents and the H2O-GO! trademarks. *See* J.A. 26–35, 63; S.A. 111–22, 170–75. Although Sgromo is listed as an inventor on the ’298 and ’422 patents, he had assigned them to others and lacked ownership of these patents when he attempted to sue on them. In addition, the purported

assignments Sgromo filed for the '422 patent, '440 patent, and H2O-GO! trademarks have no legal effect. *See* 37 C.F.R. § 3.54 ("The recording of a document . . . is not a determination by the Office of the validity of the document or the effect that document has on the title to an application, a patent, or a registration.").

The district court's findings regarding ownership in the present case are consistent with those of the other courts that have found that Sgromo holds no ownership rights to the '422, '440, and '298 patents and the H2O-GO! trademarks. Because Sgromo lacked ownership of the patents and trademarks at issue when he brought this suit, he lacks standing to assert his claims for infringement. *See Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1309 (Fed. Cir. 2003) ("[T]o assert standing for patent infringement, the plaintiff must demonstrate that it held enforceable title to the patent *at the inception of the lawsuit.*"') (emphasis in the original). We therefore affirm the court's dismissal of Sgromo's action.

Sgromo also asserts infringement of U.S. Patent 9,069,243 for the first time on appeal. This patent was not asserted against Target at the district court and cannot be raised for the first time on appeal. *See Sage Prods., Inc. v. Devon Indus., Inc.*, 126 F.3d 1420, 1426 (Fed. Cir. 1997) ("With a few notable exceptions . . . appellate courts do not consider a party's new theories, lodged first on appeal. If a litigant seeks to show error in a trial court's overlooking an argument, it must first present that argument to the trial court.").

In light of our affirmance of the dismissal of Sgromo's action, the portion of the district court's decision addressing Sgromo's motion for a preliminary injunction is moot. Thus, we do not address Sgromo's appeal from that portion of the court's decision.

CONCLUSION

For the foregoing reasons, the decision of the district court is *affirmed*.

AFFIRMED

COSTS

Costs are awarded to Target.

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**In re: PIETRO PASQUALE ANTONIO SGROMO,
*Petitioner***

2021-116

On Petition for Writ of Mandamus to the United States District Court for the Northern District of California in Nos. 4:15-cv-00701-JSW, Judge Jeffrey S. White, and 4:17-cv-00205-HSG, Judge Haywood S. Gilliam, Jr.

ON MOTION

PER CURIAM.

O R D E R

Pietro Pasquale Antonio Sgromo moves for reconsideration of this court's April 1, 2021 order dismissing his petition for a writ of mandamus for lack of jurisdiction and dismissing the motion to proceed *in forma pauperis* as moot. Bestway (USA), Inc., Bestway (Hong Kong) International Ltd., and Bestway Inflatables and Material Corporation oppose.

This court's order held that issuing a writ of mandamus here would not be necessary or appropriate in aid of this court's jurisdiction. We explained that Mr. Sgromo had

failed to timely appeal from certain challenged orders. We further explained that he had already appealed other challenged orders to the appropriate regional circuit, whose decision was outside of our review authority. Mr. Sgromo has shown no basis to reconsider that decision.

Accordingly,

IT IS ORDERED THAT:

The motion for reconsideration is denied.

FOR THE COURT

June 15, 2021

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

s28

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

In re: PIETRO PASQUALE ANTONIO SGROMO,
Petitioner

2021-116

On Petition for Writ of Mandamus to the United States District Court for the Northern District of California in Nos. 4:15-cv-00701-JSW, Judge Jeffrey S. White, and 4:17-cv-00205-HSG, Judge Haywood S. Gilliam, Jr.

ON PETITION AND MOTION

PER CURIAM.

O R D E R

Pietro Pasquale Antonio Sgromo petitions this court for a writ of mandamus directing the United States District Court for the Northern District of California to grant Mr. Sgromo relief in two separate cases. Mr. Sgromo also moves to proceed *in forma pauperis*.

The two cases referenced in the petition involved related disputes over royalty payments and compliance with license agreements. The first case, *Eureka Inventions, LLC v. Bestway (USA), Inc.*, No. 4:15-cv-00701-JSW, resulted in a settlement agreement in 2015. In March 2020, Mr. Sgromo moved to enforce the agreement, which was denied

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PIETRO PASQUALE ANTONIO SGROMO,

Civil No. 20-1030 (JRT/LIB)

Plaintiff,

v.

TARGET BRANDS, INC.,

MEMORANDUM OPINION AND ORDER
ADOPTING REPORT AND
RECOMMENDATION OF THE
MAGISTRATE JUDGE

Defendant.

Pietro Pasquale Antonio Sgromo, 32600 Bobcat Drive, Mission, British Columbia V2V 5L1, pro se.

Craig S. Krummen, **GREENBERG TRAURIG LLP**, 90 South Seventh Street, Suite 3500, Minneapolis, MN 55402; James J. Lukas, Jr., **GREENBERG TRAURIG LLP**, 77 West Wacker Drive, Suite 3100, Chicago, IL 60601; John S. Artz, **DICKINSON WRIGHT PLLC**, 350 South Main Street, Suite 300, Ann Arbor, MI 48104; Steven A. Caloiaro, **DICKINSON WRIGHT PLLC**, 100 West Liberty Street, Suite 940, Reno, NV 89501, for defendant.

Plaintiff Pietro Pasquale Antonio Sgromo initiated a patent and trademark infringement action against Defendant Target Brands, Inc. ("Target"). Target filed a Motion to Dismiss, arguing that Sgromo could not demonstrate that he had standing to assert the patents and trademarks at issue. The Magistrate Judge issued a Report and Recommendation ("R&R"), concluding that Sgromo failed to establish a plausible foundation for ownership of the patents and thus lacked standing for his claims, and recommending dismissal of the case for lack of subject matter jurisdiction.

Sgromo has filed Objections to the R&R, arguing that the Magistrate Judge reached erroneous conclusions of law as to ownership of the patents and trademarks.¹ Because Sgromo has not demonstrated a plausible basis for ownership of the patents and therefore lacks standing to assert infringement claims, the Court will overrule his objections, adopt the R&R, and dismiss the case without prejudice.

BACKGROUND

The facts and procedural history of this case are described in detail in the R&R. Because Sgromo does not specifically object to the statement of facts and procedural history in the R&R, the Court only briefly summarizes the background here.

I. ASSERTED PATENTS AND ALLEGATIONS

Plaintiff Sgromo initiated this action on April 27, 2020, (Compl., Apr. 27, 2020, Docket No. 1), and filed an Amended Complaint on May 21, 2020, (Am. Compl., May 21,

¹ Sgromo also filed a Motion for Evidentiary Hearing after filing his Objections to the R&R, asserting that the Court must hold an evidentiary hearing to address his objections to the Magistrate Judge's factual findings and to resolve conflicts in the parties' testimony regarding which Agreements govern ownership of the patents. (Mot. Evidentiary Hearing, Nov. 9, 2020, Docket No. 72.) Target requests that the Court strike the Motion as an improper filing. (Mem. Opp. Mot. Evidentiary Hearing, Nov. 16, 2020, Docket No. 74.)

The Court will strike this Motion for several reasons. First, Local Rule 72.2(b) does not permit additional motions for review of Magistrate Judge orders beyond the opportunity to file objections, an opportunity of which Sgromo has availed himself. Second, Sgromo has not followed proper procedures for filing a civil motion pursuant to Local Rule 7.1. Third, Sgromo does not appear to object to the Magistrate Judge's factual findings. Rather, his Objections explicitly challenge "erroneous conclusions of law" as to each patent. Thus, the Court finds that such an evidentiary hearing is unwarranted, even if it were properly requested.

2020, Docket No. 9.) Sgromo alleges patent and trademark infringement against Defendant Target Brands, Inc. (See *id.* ¶¶ 28–43.)

Three patents are at issue. First, Sgromo alleges infringement of United States Patent No. 7,046,440 (“the ‘440 Patent”). (*Id.* ¶¶ 36–39.) Wide Eyes Marketing, Ltd. (“WEM”), a company owned and operated by Sgromo, acquired ownership rights to the ‘440 Patent on December 10, 2010.² (*Id.* ¶ 8). Sgromo alleges that he assigned non-exclusive rights to the ‘440 Patent to Bestway³ in May 2013, and Bestway terminated the license in March 2017. (*Id.* ¶ 9.) As a result, Sgromo claims the rights to the ‘440 Patent exclusively reverted to him. (*Id.*)

Second, Sgromo alleges infringement of United States Patent No. 8,654,422 (“the ‘422 Patent”). (*Id.* ¶¶ 28–31.) When the provisional patent application was filed for the ‘422 Patent, Sgromo was listed as one of the two inventors. (*Id.* ¶ 10; *id.* ¶ 10, Ex. 4 at 2, Apr. 27, 2020, Docket No. 1-4.) However, after the application was submitted but before the actual patent was issued, Sgromo assigned purportedly “less than all

² The Amended Complaint states that “Sgromo acquired the entire right, title and interest in and to” the ‘440 Patent, (Am. Compl. ¶ 8), but the documentation attached to the initial Complaint shows that the patent was actually assigned to WEM and not to Sgromo personally, (See Am. Compl. ¶ 8, Ex. 2 at 3, 8–9, Apr. 27, 2020, Docket No. 1-2.) Irrespective of most exhibits not being included with the Amended Complaint, the Court will take judicial notice of the filings and public records referenced by the Complaint. *See, e.g., Mills v. City of Grand Forks*, 614 F.3d 495, 498 (8th Cir. 2010) (“The court may consider the pleadings themselves, materials embraced by the pleadings, exhibits attached to the pleadings, and matters of public record.” (citation omitted)).

³ “Bestway” refers collectively to Bestway (USA) Inc., Bestway (Hong Kong) Intl. Ltd., and Bestway Inflatables & Material Corp. (Shanghai). (Am. Compl. ¶ 9.)

substantial rights" to the '422 Patent to Imperial Toy, LLC, and the assignment was recorded with the United States Patent and Trademark Office ("USPTO"). (Am. Compl. ¶ 11.) When the USPTO issued the '422 Patent, Imperial Toy, LLC was listed as the sole assignee. (*See id.* ¶ 11, Ex. 4 at 2.) Sgromo alleges that the license terminated for non-payment of royalties and all rights in the '422 Patent reverted to him. (Am. Compl. ¶ 11.)

Third, Sgromo asserts United States Patent No. 9,511,298 ("the '298 Patent"), (*id.* ¶¶ 32–35), issued on February 28, 2014 to Sgromo. (*Id.* ¶ 12.) Sgromo licensed the '298 Patent to Bestway in November 2013, and Bestway terminated the license in March 2017. (*Id.* ¶ 13.) Sgromo claims that the exclusive rights then reverted to him. (*Id.*)

Sgromo also claims trademark infringement related to the "H2O-GO" mark. (*Id.* ¶ 14.) Sgromo alleges that he licensed non-exclusive rights to practice the trademark to Bestway, but Bestway terminated the agreement in March 2017, and the rights exclusively reverted to Sgromo. (*Id.* ¶ 14.)

To support his allegations that all of the patents and trademarks at issue have reverted exclusively to him, Sgromo points the Court to documents from the United States Patent and Trade Office confirming recordation of assignments or "corrective" assignments to Sgromo.⁴ (*See id.* ¶¶ 9–14 (referencing Exhibits 3, 5, 7, and 10)).

⁴ It appears that Sgromo only filed Exhibit 10, related to the Trademarks, with his Amended Complaint. (Am. Compl. ¶ 14, Ex. 10, May 21, 2020, Docket No. 9.) The other documents are submitted as exhibits with his initial Complaint, (see Compl. ¶ 9, Ex. 3; *id.* ¶ 11, Ex. 5; *id.* ¶ 13, Ex. 7), of which the Court takes judicial notice, *see supra* note 2.

II. PRIOR DISPUTES AND LITIGATION

The present action is not Sgromo's first attempt at asserting patent infringement related to these patents and trademarks. The Magistrate Judge described the chain of title for the patents and resolution of various related lawsuits in detail, (*see* R&R at 4–9), so the Court will review the relevant prior findings in brief.

In June 2013, WEM assigned the '440 Patent to Leonard Gregory Scott, who was the sole member of Eureka Inventions, LLC. (2nd Decl. Craig S. Krummen at 2, Ex. 2 at 2, June 15, 2020, Docket No. 26-2; 1st Decl. Craig S. Krummen ("1st Krummen Decl.") at 2, Ex. 8 at 7, June 8, 2020, Docket No. 22-8.) Eureka later entered licensing agreements with Bestway, and a dispute arose regarding the scope of the license. (1st Krummen Decl., Ex. 17 at 2, June 8, 2020, Docket No. 22-17.) Through an action to which Sgromo was not a party, Eureka and Bestway agreed that Bestway would pay Eureka royalties for the use of the '440 Patent. (*Id.* at 3.) A dispute nonetheless arose between Sgromo and Scott about whom was entitled to the royalties, which ultimately led Bestway to seek a declaratory judgment, and the Northern District of California found that Eureka and Scott were the rightful and sole owners of the '440 Patent. (1st Krummen Decl. at 2, Ex. 3 at 3, June 8, 2020, Docket No. 22-3.) The '298 Patent was also at issue in this royalty payment dispute between Scott and Sgromo, and the same court concluded that Sgromo failed to demonstrate ownership in the '298 Patent as well. (*Id.* at 3 (referring to the '298 Patent as part of the "Water Slide License Agreement").

In November 2019, Imperial Toy filed for bankruptcy, and despite Sgromo asserting that he was the rightful owner of the '422 Patent, the bankruptcy court overruled Sgromo's objection and approved the sale of the '422 patent free and clear of any claim by Sgromo, thus negating any ownership interest held by Sgromo. (1st Krummen Decl. at 2, Ex. 6 at 11, June 8, 2020, Docket No. 22-6; *id.*, Ex. 7 at 13–17, June 8, 2020, Docket No. 22-7.)

Finally, the Eastern District of Texas found that Sgromo did not show he was the owner of the trademarks at issue here. *Sgromo v. Bestway Enter. Co.*, No. 19-60, 2019 WL 4686719, at *6–8 (E.D. Tex. Aug. 29, 2019), *report and recommendation adopted*, 2019 WL 4673756 (E.D. Tex. Sept. 25, 2019). In that decision, the court also found that Sgromo lacked standing to assert the '440 and '298 Patents. *See Sgromo*, 2019 WL 4686719, at *3–5.

III. PROCEDURAL BACKGROUND

Sgromo now alleges that Target offers children's bubble blowing toys, backyard water slides, and inflatable swimming pools that infringe the '440, '298, and '422 patents and the H2O-GO! trademarks without his permission or consent. (See Am. Compl. ¶¶ 15–23.)

Sgromo filed a Motion for Preliminary Injunction, (Mot. Prelim. Inj., May 24, 2020, Docket No. 11), which the Court stayed pending resolution of Target's later-filed Motion to Dismiss for Lack of Subject Matter Jurisdiction, (Mot. Dismiss, June 15, 2020, Docket

No. 23; Order, June 18, 2020, Docket No. 34.) Sgromo filed a Motion for Leave to Amend the Pleadings, seeking to join additional parties and claims related to the same patents and trademarks asserted in his operative Complaint. (Mot. Leave to Amend Compl., July 27, 2020, Docket No. 52.)

On October 7, 2020, Magistrate Judge Brisbois issued his Order and Report and Recommendation (“R&R”) on Target’s Motion to Dismiss. (R&R, Oct. 7, 2020, Docket No. 68.) The Magistrate Judge denied Sgromo’s Motion for Leave to Amend Complaint and denied Target’s request to stay proceedings as moot. (Order at 27, Oct. 7, 2020, Docket No. 67.) The Magistrate Judge recommended denying Sgromo’s Motion for Preliminary Injunction and granting of Target’s Motion to Dismiss. (R&R at 28.)

Sgromo now objects to the Magistrate Judge’s recommendation that the case be dismissed for lack of jurisdiction, (Obj., Oct. 22, 2020, Docket No. 69).

DISCUSSION

I. STANDARD OF REVIEW

Upon the filing of an R&R by a magistrate judge, “a party may serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2); *accord* D. Minn. LR 72.2(b)(1). “The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *accord* D. Minn. LR 72.2(b)(3). “The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to

the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3); *accord* D. Minn. L.R. 72.2(b)(3). “Objections which are not specific but merely repeat arguments presented to and considered by a magistrate judge are not entitled to *de novo* review, but rather are reviewed for clear error.” *Montgomery v. Compass Airlines, LLC*, 98 F. Supp. 3d 1012, 1017 (D. Minn. 2015).

II. STANDING

Target moves to dismiss Sgromo’s Amended Complaint for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Under Rule 12(b)(1), the plaintiff bears the burden to prove the Court has subject matter jurisdiction. *Osborn v. United States*, 918 F.2d 724, 730 (8th Cir. 1990). In a factual, as opposed to facial, jurisdictional challenge, the Court may consider matters outside the pleadings and may weigh the evidence in deciding whether it has jurisdiction over the claims. *Id.* at 729–30.

Here, Target argues that Sgromo lacks standing to assert his claims. Under Article III of the Constitution, the Court’s exercise of judicial power is limited to actual cases and controversies, and standing is the threshold question in determining whether the Court may hear this case. *See 281 Care Comm. v. Arneson*, 638 F.3d 621, 626–27 (8th Cir. 2011). To satisfy the constitutional minimum of standing, plaintiffs must show they “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Because standing is “not dispensed in gross,” a

plaintiff must establish standing for each claim and form of relief sought. *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017) (quotation omitted).

The Patent Act imposes an additional layer of standing analysis, which is the subject of this Motion. “[T]o assert standing for patent infringement, the plaintiff must demonstrate that it held enforceable title to the patent *at the inception of the lawsuit*.” *Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1309 (Fed. Cir. 2003). To survive a motion to dismiss, the plaintiff must demonstrate a plausible foundation for ownership of the patent at issue. *Jim Arnold Corp. v. Hydrotech Sys. Inc.*, 109 F.3d 1567, 1571–72 (Fed. Cir. 1997); *see also Morrow v. Microsoft Corp.*, 499 F.3d 1332, 1338 (Fed. Cir. 2007) (stating that the plaintiff in an infringement action bears the burden of demonstrating standing).

III. ANALYSIS

Sgromo objects to the Magistrate Judge’s conclusions that he failed to demonstrate ownership of the patents and therefore lacks standing. Sgromo’s objections challenge the Magistrate Judge’s tracing of the chains of title for the asserted patents, attempt to relitigate prior cases, and raise new arguments for the first time about the validity of past assignments, such as alleging that they bear fraudulent signatures. After conducting a de novo review, the Court agrees with the Magistrate Judge and finds that Sgromo has not met his burden to establish ownership of any of the patents or trademarks at issue, and thus lacks standing for his claims.

Sgromo alleges that he has submitted confirmation from USPTO of assignments or reversion of the patents to him, which distinguishes this action from his prior, unsuccessful attempts to claim ownership interest in the patents and trademarks at issue. However, Sgromo has not provided actual documentation of assignments, but merely confirmation of receipt of documents submitted to USPTO by Sgromo himself to show “corrective assignment” of the patents to Sgromo. Receipts of recordation by USPTO have no legal effect. *See* 37 C.F.R. § 3.54 (“The recording of a document [for an assignment] is not a determination by the Office of the validity of the document or the effect that document has on the title to an application, a patent, or a registration.”). Without evidence of an underlying written instrument legally assigning the patent or interests therein to Sgromo, Sgromo cannot satisfy his burden to establish standing, as he cannot demonstrate a plausible foundation for his claim of ownership of the asserted patents. *See* 35 U.S.C. § 261 (“Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing.”).

As to his objections concerning rights to the individual patents and trademarks, Sgromo first objects to the Magistrate Judge’s conclusion that Sgromo failed to demonstrate rights in the ‘440 Patent because the assignment of the ‘440 Patent from Sgromo to Scott was not signed and therefore was not legally operative; and, even if it was valid, that Scott, at most, had a bare license to the patent, as evidenced by other licenses to the same patent. However, upon review, the assignment of the ‘440 Patent

to Scott is signed by Sgromo and the agreement states that **all** of the Assignor's right, title, and interest in and to the patent and represents that the Assignor, WEM, was the sole owner and holder of record title to the patent at the time of the assignment. Thus, the '440 Patent objection is implausible and meritless toward establishing standing.

Regarding the '422 Patent, Sgromo argues that the Magistrate Judge reached an erroneous conclusion of law because Sgromo's rights in the '422 Patent should be determined based on nondisclosure and consulting agreements between Sgromo and Imperial Toy, rather than the "unsigned and unwitnessed" patent assignment. Sgromo again argues that, at most, he granted a license to Imperial Toy, and thus he retains ownership. The Court finds that the nondisclosure and consulting agreements are irrelevant to ownership of the '422 Patent, and even if they were relevant, are superseded by the later, signed, assignment of the '422 Patent from Sgromo to Imperial. The Magistrate Judge correctly concluded that Sgromo lacks standing to assert the '422 Patent.

Lastly, as to the '298 Patent and the H2O-GO trademarks, Sgromo objects to what he refers to as the Magistrate Judge "reinstating" the licensing agreements between Bestway and Eureka. However, the only documentation of Sgromo's purported current rights to the '298 Patent and trademarks are the legally inoperative receipts from USPTO. Accordingly, the Magistrate Judge did not err in concluding that Sgromo did not satisfy his burden to establish standing for his infringement claims.

In sum, despite numerous bites at the apple in this district and various other courts around the country, Sgromo has repeatedly failed to plausibly demonstrate ownership of, or any interest in, the patents and trademarks at issue here. Accordingly, the Court will overrule Sgromo's objections, adopt the R&R, and dismiss the case without prejudice. Because the Court lacks subject matter jurisdiction over this action, the Court will also deny Sgromo's Motion for Preliminary Injunction. *See Barrett v. Dep't of Health & Human Servs.*, 14 F.3d 26, 27 (8th Cir. 1994).

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS**
HEREBY ORDERED that:

1. Plaintiff's Objections to the Report and Recommendation [Docket No. 69] are

OVERRULED;

2. The Magistrate Judge's Report and Recommendation [Docket No. 68] is

ADOPTED;

3. Plaintiff's Motion for Preliminary Injunction [Docket No. 11] is **DENIED**;

4. Plaintiff's Motion for Evidentiary Hearing [Docket No. 72] is **DENIED**;

5. Defendant's Motion to Dismiss for Lack of Jurisdiction [Docket No. 23] is

GRANTED; and

6. Plaintiff's Amended Complaint [Docket No. 9] is **DISMISSED without prejudice**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: February 18, 2021
at Minneapolis, Minnesota.



JOHN R. TUNHEIM
Chief Judge
United States District Court

**Additional material
from this filing is
available in the
Clerk's Office.**