

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

COMPOSITE RESOURCES INC.,  
Plaintiff/Counter Defendant,  
v.  
RECON MEDICAL LLC,  
Defendant/Counter Claimant.

Case No. 2:17-cv-01755-MMD-VCF

ORDER

This is now just a patent case about tourniquets used to stop the flow of blood to a body part when that body part is severely injured where Plaintiff and Counter Defendant Composite Resources, Inc. ("CRI") seeks only an injunction preventing Defendant and Counter Claimant Recon Medical LLC from selling its allegedly infringing tourniquets. (ECF No. 210.) Before the Court is Recon's motion to dismiss this case under the anti-claim-splitting doctrine.<sup>1</sup> (ECF No. 211 ("Motion").) As further explained below, the Court declines to dismiss this case under the anti-claim-splitting doctrine and will deny the Motion because the applicable factors do not favor dismissing this case. The Court further reiterates that this will be a jury, not bench, trial.

Trial in this case been delayed because of the COVID-19 pandemic, though it was eventually reset to November. (ECF No. 191.) Recon filed a notice in September that it had filed for Chapter 11 bankruptcy. (ECF No. 192.) But CRI obtained an order from the Bankruptcy Court stating that it could pursue injunctive relief on its patent infringement claim only in this Court. (ECF Nos. 195, 195-1.) Recon nonetheless later filed the Motion,

---

<sup>1</sup>CRI filed a response (ECF No. 217) and Recon filed a reply (ECF No. 218) on an expedited briefing schedule (see ECF No. 210). This order does not address the pending motions in limine. (ECF No. 201, 202.)

1 asking the Court to exercise its discretion under the anti-claim-splitting doctrine to dismiss  
2 this case and accordingly force CRI to seek any and all relief against Recon in the  
3 Bankruptcy Court. (ECF No. 211.)

4 CRI, having previously dismissed its claim for monetary damages for patent  
5 infringement in this Court (ECF No. 203), and in response to the Motion, states that it has  
6 abandoned any intention of filing a proof of claim in Recon's bankruptcy proceedings for  
7 patent infringement damages (ECF No. 217 at 19-22). CRI supported this representation  
8 with a declaration from its Chief Financial Officer Derek G. Thompson (ECF No. 217-1),  
9 in which he confirms "that CRI will *not* file any proof of claim for patent infringement  
10 damages." (*Id.* at 4 (emphasis in original).) Earlier in this litigation, the Court granted CRI  
11 summary judgment on its trademark and federal unfair competition claims. (ECF No. 152  
12 at 16-23.) The parties seem to agree that CRI could, and will, pursue claims for damages  
13 and injunctive relief on those claims in the bankruptcy proceedings. (ECF Nos. 217 at 19-  
14 22, 218 at 4.)

15 The anti-claim-splitting doctrine prohibits duplicative litigation. *See Fairway Rest.*  
16 *Equip. Contracting, Inc. v. Makino*, 148 F. Supp. 3d 1126, 1129-30 (D. Nev. 2015). It is  
17 similar to claim preclusion but applies when the first suit has not yet been resolved. *See*  
18 *Adams v. California Dep't of Health Servs.*, 487 F.3d 684, 688-89 (9th Cir. 2007), *overruled*  
19 *on other grounds in Taylor v. Sturgell*, 553 U.S. 880, 904 (2008) (as stated in *Ross v. Bd.*  
20 *of Trustees of California State Univ.*, 741 F. App'x 442 (9th Cir. 2018), *cert. denied*, 140  
21 S. Ct. 149 (2019)); *see also Phillips v. Salt River Police Dep't*, 586 F. App'x 381 (9th Cir.  
22 2014) (confirming the Ninth Circuit continues to apply the anti-claim splitting doctrine as  
23 laid out in *Adams* even after *Taylor*). Under the anti-claim splitting doctrine, "[a]fter  
24 weighing the equities of the case, the district court may exercise its discretion to dismiss  
25 a duplicative later-filed action, to stay that action pending resolution of the previously filed  
26 action, to enjoin the parties from proceeding with it, or to consolidate both actions." *Adams*,  
27 487 F.3d at 688.

28

1 To determine whether the anti-claim splitting doctrine applies here, the Court must  
2 “examine whether the causes of action and relief sought, as well as the parties or privies  
3 to the action, are the same.” *Id.* at 689. There is no dispute here that the parties are the  
4 same between this case and Recon’s bankruptcy case. Thus, the question is whether the  
5 causes of action and relief sought are the same. *See id.* “To ascertain whether successive  
6 causes of action are the same, we use the transaction test, developed in the context of  
7 claim preclusion.” *Id.* In applying the transaction test, the Court must consider four factors,  
8 where the fourth factor is the most important:

9  
10 (1) whether rights or interests established in the prior judgment would be  
11 destroyed or impaired by prosecution of the second action; (2) whether  
12 substantially the same evidence is presented in the two actions; (3) whether  
13 the two suits involve infringement of the same right; and (4) whether the two  
14 suits arise out of the same transactional nucleus of facts.

15 *Id.* (citation omitted); *see also Fairway*, 148 F. Supp. 3d at 1130-32 (applying the same  
16 transaction test and eventually finding the anti-claim splitting doctrine barred claims).

17 CRI argues in pertinent part that the anti-claim-splitting doctrine no longer applies  
18 to this case because it has now abandoned any intention of filing a proof of claim in the  
19 bankruptcy proceedings for patent infringement damages. (ECF No. 217 at 19-22.) Recon  
20 replies that the anti-claim-splitting doctrine continues to apply despite CRI having dropped  
21 its patent monetary damages claim in the bankruptcy proceedings because the causes of  
22 action in the two cases are the same for purposes of the doctrine, and CRI seeks an  
23 injunction in both proceedings. (ECF No. 218 at 5-10.) The Court agrees with CRI.

24 To start, however, the Court notes its agreement with Recon that the fourth factor  
25 regarding the transactional nucleus of facts, *see Adams*, 487 F.3d at 689, favors granting  
26 Recon’s Motion because CRI’s claims in both this case and the bankruptcy proceedings  
27 involve Recon’s sale of tourniquets that CRI seeks to prohibit, and thus the two suits arise  
28 out of the same transactional nucleus of facts. (ECF No. 218 at 6.) However, the Court  
finds that the other three factors favor CRI and outweigh the fourth factor. Most notably,

1 the two actions no longer involve infringement of the same right. Indeed, Recon concedes  
2 that “the rights created by Plaintiff CRI’s claims for patent infringement, trademark  
3 infringement, and unfair competition are different.” (*Id.* at 8.) And the Court agrees: patent  
4 rights are different from trademark and unfair competition rights. And in part because of  
5 this fundamental difference, the evidence presented in the two proceedings may overlap,  
6 but must be different because CRI will try to prove patent infringement in this case, and  
7 an ongoing violation of its trademark and unfair competition rights—along with  
8 corresponding damages—in the bankruptcy proceeding.<sup>2</sup> Factors three and four therefore  
9 favor finding that the anti-claim-splitting doctrine does not bar this case. *See Adams*, 487  
10 F.3d at 689 (listing the factors).

11 Moreover, and contrary to Recon’s argument (ECF No. 218 at 7-8, 9-10), the first  
12 factor also favors finding that the anti-claim-splitting doctrine does not bar this case. *See*  
13 *Adams*, 487 F.3d at 689. Recon argues that action on injunctive relief in one action could  
14 impair injunctive relief in the other, because, for example, the Bankruptcy Court could grant  
15 CRI an injunction while this Court could deny it, or vice-versa. (ECF No. 218 at 7-8, 9-10.)  
16 But the Court disagrees because this has become only a patent case, while the dispute  
17 between CRI and Recon before the Bankruptcy Court has become a trademark and unfair  
18 competition case. Thus, while the decisions of this Court and the Bankruptcy Court as to  
19 whether to grant an injunction are governed by the same legal factors, they are not the  
20 same decision because they depend on different rights, and findings on the infringement  
21 of, or remedies for the alleged infringement of, those rights—which depends on the  
22 adjudication of different facts.

23 In sum, three of the four *Adams* factors favor finding that the anti-claim-splitting  
24 doctrine does not bar this case. The Court accordingly declines to exercise its discretion  
25 to dismiss this case under the anti-claim-splitting doctrine. *See Adams*, 487 F.3d at 688

---

27 <sup>2</sup>Even Recon notes, “there may be additional evidence that is relevant to Plaintiff  
28 CRI’s trademark and unfair competition claims[.]” (ECF No. 218 at 8.)

1 (explaining that the Court has discretion to apply this doctrine and dismiss a duplicative  
2 case but is not required to).

3 That leaves one outstanding issue. Towards the end of its response brief, CRI asks  
4 the Court to reconsider its decision that this will be a jury trial, and instead hold a bench  
5 trial. (ECF No. 217 at 22.) The Court declines to do so and reiterates that this will be a jury  
6 trial. First, CRI's request contained within its response brief does not comply with Local  
7 Rules LR 7-2 and LR 59-1. Second, the Court wishes to have the jury's assistance in  
8 resolving the factual question of whether infringement occurred. (ECF No. 210 at 4.) Third,  
9 and as noted in the Court's most recent order (see *id.* at 3), "[i]n close cases, a court  
10 should err on the side of preserving the right to a jury trial." See *Granite Rock Co. v. Int'l*  
11 *Bhd. of Teamsters, Freight, Constr., Gen. Drivers, Warehousemen & Helpers, Loc. 287*  
12 (*AFLCIO*), 649 F.3d 1067, 1069 (9th Cir. 2011) (citation omitted).

13 It is therefore ordered that Recon's motion to dismiss (ECF No. 211) is denied.

14 DATED THIS 8<sup>th</sup> Day of November 2021.



15  
16  
17 MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE

18

19

20

21

22

23

24

25

26

27

28