

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

PIERCE MANUFACTURING INC., and
OSHKOSH CORPORATION,

Plaintiff,

v.

Case No.: 8:18-cv-617-JSM-TGW

E-ONE, INC. and REV GROUP, INC.,

Defendants.

ORDER

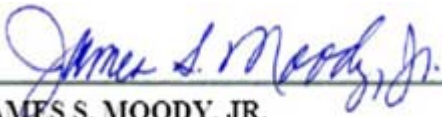
The Court rules, over Plaintiffs' objections, that the preliminary injunction entered November 5, 2018 (Doc. 108) ("Preliminary Injunction") shall be modified to allow E-One, Inc. ("E-One") to sell its Metro 100 single rear axle quint ("Metro 100 Quint") during the pendency of any delay caused by the COVID-19 pandemic ("Interim Sales") and the following terms will govern the Interim Sales and the amount of damages, if applicable, that will be awarded by the Court for those Interim Sales:

1. Defendants are permitted to sell the Metro 100 Quint from May 1, 2020 until 14 days before the date jury selection is scheduled to begin (the "Interim Sales Period"). During the Interim Sales Period, Defendants may sell the Metro 100 Quint to fire departments, either directly or through a distributor that has a contract to sell the Metro 100 Quint to a fire department. Any such Interim Sales, as defined by the receipt of a purchase order from a bona fide purchaser, shall not be subject to any future injunction, regardless of the outcome of the jury trial in this case.
2. Any sales, as defined by the date of receipt of the purchase order, made before the Interim Sales Period remain governed by the Preliminary Injunction. E-One may not alter any Metro 100 Quints or HR 100 Quints sold or in production before the Interim Sales Period in a manner that would violate the Preliminary Injunction in place at the time the truck was sold.
3. To the extent that Plaintiffs prove at trial that one or more claims of U.S. Patent No. 9,597,536 (the "536 Patent") are valid and infringed by the Metro 100 Quint, the following damages shall be awarded to Plaintiffs for any Interim Sales that fall within the scope of the claims found valid and infringed:

- a. For purposes of this agreement only (and without any prejudice to either party's ability to argue otherwise during trial), if infringement is found by the jury, then Interim Sales of a Metro 100 Quint with a cumulative capacity of water and foam of at least 500 gallons will be deemed to fall within the scope of claims 1, 5, and 20 of the 536 Patent. Interim Sales of a Metro 100 Quint with a cumulative capacity of water and foam of less than 500 gallons will only be deemed to fall within the scope of claim 20 of the 536 Patent, not claims 1 and 5.
- b. If the jury awards lost profit damages for any sales during trial, then Defendants shall pay Plaintiffs lost profit damages for any Interim Sales that fall within the scope of the claims found valid and infringed and that were made in competition with Pierce Manufacturing Inc.'s ("Pierce") 107' Ascendant single rear axle quint ("Ascendant 107") or Pierce's 110' Ascendant single rear axle quint ("Ascendant 110").
 - i. The lost profit damages for competing sales during the Interim Sales Period will be the same as the lost profit damages found by the jury for prior infringing sales (on an average per-truck basis).
 - ii. For each Interim Sale that falls within the scope of a claim found valid and infringed but in which Pierce's Ascendant 107 or Ascendant 110 was not in competition with E-One's Metro 100 Quint, Defendants shall pay a reasonable royalty in an amount equal to that awarded by the jury on a per truck basis.
 - iii. As used herein, "competition" exists where Defendants sell a Metro 100 Quint and Pierce also submitted a competing response to an RFP, RFQ, or any other kind of solicitation for an Ascendant 107 or an Ascendant 110 for that same sale.
- c. If the jury does not award any lost profit damages, then for each Interim Sale that falls within the scope of a claim found valid and infringed Defendants shall pay the same amount the jury awarded as the reasonable royalty on an average per-truck basis.
- d. To the extent the jury finds that E-One and/or REV Group, Inc.'s infringement was willful, then Defendants' Interim Sales shall also be found willful and subject to any enhancement by the Court. To the extent that the jury does not find Defendants' infringement willful, Plaintiffs may still request that the Court find Defendants' Interim Sales to be willful acts under 35 U.S.C. § 285 and enhance the damages award for the Interim Sales.

4. Defendants shall provide an accounting of all Metro 100 Quint sales that have occurred during the Interim Sales Period, including the date of the sale, the purchaser (both dealer and end user), sales price, the manner of purchase (e.g., consortium, bid, etc.), and expected completion date. Such an accounting shall be provided to Plaintiffs 14 days before jury selection is scheduled to begin. Prior to the conclusion of trial, Plaintiffs shall notify Defendants of the Interim Sales in which Pierce competed and that would therefore be subject to lost profit damages as specified above, and Pierce shall provide a sworn declaration identifying the customer, the RFP, RFQ, or other solicitation number (if available), date of bid, and combined water/foam tank capacity for each Ascendant 107 or Ascendant 110 offered in competition with Defendants. Defendants reserve the right to challenge whether any Interim Sale was made in competition with Pierce.
5. The jury will not be informed of the Interim Sales.
6. Defendants agree to not use any Interim Sales to argue that Plaintiffs have not suffered irreparable harm or that Plaintiffs are not entitled to a permanent injunction.
7. This agreement may be altered by further order of the Court, or by a written agreement signed by all parties.
8. Plaintiffs maintain their objection to these Interim Sales.

DONE and **ORDERED** in Tampa, Florida, this 8th day of April, 2020.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE