

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TOTAL CONTAINMENT, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
KEITH OSBORNE, BUFFALO	:	
ENVIRONMENTAL PRODUCTS CORP.,	:	
INTELPRO CORP., and OPW FUELING	:	
COMPONENTS, DIVISION OF DOVER	:	
CORPORATION	:	NO. 96-7241

MEMORANDUM AND ORDER

Fullam, Sr. J.

July , 1997

Plaintiff has filed a motion to "alter or amend" the judgment which was entered in this case on May 20, 1997.

Under the terms of the Settlement Agreement, the Osborne Group owned the patent, but granted a virtually exclusive license to the plaintiff. The Osborne Group could grant other licenses only with the consent of plaintiff, but could practice the patent itself, and could transfer its rights to a successor, so long as the successorship was achieved by the transfer of substantially all of the Osborne Group's assets or stock (at least 90 percent).

If plaintiff had consented, the Osborne Group would have licensed OPW to practice the patent, and would also have had the right to continue practicing the patent itself. In the May 20th judgment, I ruled that plaintiff had not given its consent to a licensing arrangement between the Osborne Group and OPW, but I also ruled, consistent with the plain meaning of the Settlement Agreement, that OPW could acquire the Osborne Group's rights by

purchasing its assets or stock (so long as the Osborne Group did not continue in business).

Since the Osborne Group had the clear right to sell its business to anyone it chose (so long as the purchaser was not already a "manufacturer" as defined in the Settlement Agreement), and had the right to assign its rights under the Settlement Agreement to any such purchaser, OPW, as the chosen purchaser will, upon acquisition of the Osborne Group's assets or stock have precisely the same rights as the Osborne Group itself had. OPW will, of course, be subject to the same restrictions on licensing and transfer as the Osborne Group.

The May 20th judgment also reflects my ruling that, since OPW was acquiring the Osborne Group's rights, plaintiff's claims of patent infringement had become moot. It was therefore appropriate to dismiss plaintiff's patent claims with prejudice. Of course, the judgment speaks only as of the date of its entry: If it should later develop that OPW no longer has the lawful right to practice the patent, plaintiff would be free to sue for infringement at that time.

Plaintiff's Motion to Alter or Amend the Judgment will be denied.

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ORDER

AND NOW, this        day of July, 1997, upon consideration of the plaintiff's Motion to Alter or Amend the Judgment and the defendants' response, IT IS ORDERED:

That the motion is DENIED.

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John P. Fullam, Sr. J.