

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

MEADWESTVACO	)	
CORPORATION, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO. 1:10cv511
	)	
REXAM PLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

THIS MATTER is before the Court on Plaintiffs MeadWestvaco Corporation and MeadWestvaco Calmar’s Motion Pursuant to Rule 39(a) to Find That No Jury Trial Right Exists for Any Issues Remaining in the Case. (Dkt. No. 446.)

The issue before the Court is whether a right to a jury trial exists where the patentees withdrew their damages claims and now seek only equitable relief under 35 U.S.C. § 283, as well as attorneys’ fees under 35 U.S.C. § 285, and the accused infringers have only asserted affirmative defenses and counterclaims for declaratory relief. The Court grants Plaintiffs’ Motion because the remaining relief requested is essentially equitable, which does not give rise to a jury trial.

Plaintiffs recently withdrew their claims for any legal damages for Defendants’ alleged past infringement of the asserted patents and are now seeking only injunctive relief under 35 U.S.C. § 283 and attorneys’ fees under 35 U.S.C. § 285. (Dkt. No. 445.) Thus, the nature of the remedy Plaintiffs seek is essentially equitable. Moreover, Defendants have asserted only affirmative defenses and counterclaims for declaratory relief. Because Plaintiffs’ and

Defendants' claims seek only equitable relief, they do not give rise to an independent right to a jury trial under Federal Circuit precedent. *See In re Technology Licensing Corp.*, 423 F.3d 1286 (Fed. Cir. 2005); *Tegal v. Tokyo Electron Am.*, 257 F.3d 1331 (Fed. Cir. 2001). Defendants' request for trial by jury on the issue of attorneys' fees is denied. Accordingly, for the foregoing reasons, it is hereby

ORDERED that Plaintiffs' Motion is GRANTED.

The Clerk is directed to forward a copy of this Order to counsel of record.

ENTERED this 31st day of August, 2011.

Alexandria, Virginia  
8/31/2011

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/s/  
Gerald Bruce Lee  
United States District Judge