

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Sig Sauer, Inc., Check-Mate
Industries, Inc., Check-Mate
International Products, Inc.,
Nordon, Inc., and Thomas
Pierce d/b/a Pierce Designs,
Plaintiffs

v.

Case No. 14-cv-461-SM
Opinion No. 2015 DNH 198

Freed Designs, Inc.,
Defendant

O R D E R

Sig Sauer's (et al.) motion for partial summary judgment with respect to lost profits (document no. 28) is denied without prejudice.

Although the issue may arise again, for purposes of resolving this motion, Sig Sauer concedes that Freed Designs held an implied exclusive license during the claimed patent infringement period. Sig Sauer next asserts that an "implied" exclusive license cannot recover lost profits damages. It cites no authority supporting the notion that while an exclusive licensee may recover lost profits damages for infringement, an implied exclusive licensee may not. The Federal Circuit does not seem to have drawn such a distinction, and I can see no rational reason to do so. See e.g. Weinar v. Rollform Inc., 744 F.2d 797,

806-08 (Fed. Cir. 1984) (affirming award of lost profit damages to a licensee with the exclusive right to sell in the entire United States); DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc., 469 F.3d 1005 (Fed. Cir. 2006).

Accordingly, the motion is DENIED.

SO ORDERED.


Steven J. McAuliffe
United States District Judge

October 23, 2015

cc: Brian M. Gaff, Esq.
Neal E. Friedman, Esq.
Michael J. Bujold, Esq.