

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

GUNTERT & ZIMMERMAN
CONSTRUCTION DIVISION, INC.,

No. 20-CV-4007-CJW-KEM

ORDER

Plaintiff,

vs.

GOMACO CORP.,

Defendant.

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | INTRODUCTION | 3 |
| II. | RELEVANT BACKGROUND | 3 |
| III. | APPLICABLE LAW | 6 |
| IV. | ANALYSIS..... | 7 |
| A. | Likelihood of Success on the Merits | 7 |
| 1. | Validity | 9 |
| a. | Rio | 11 |
| b. | Littman | 13 |
| c. | Commander III..... | 14 |
| 2. | Infringement | 15 |

| | | |
|----|--------------------------------------|----|
| B. | Irreparable Harm | 17 |
| 1. | Supporting Evidence | 19 |
| 2. | Causal Nexus | 22 |
| 3. | Delay in Seeking an Injunction | 25 |
| C. | Balance of the Harms | 27 |
| D. | Public Interests | 28 |
| V. | CONCLUSION | 30 |

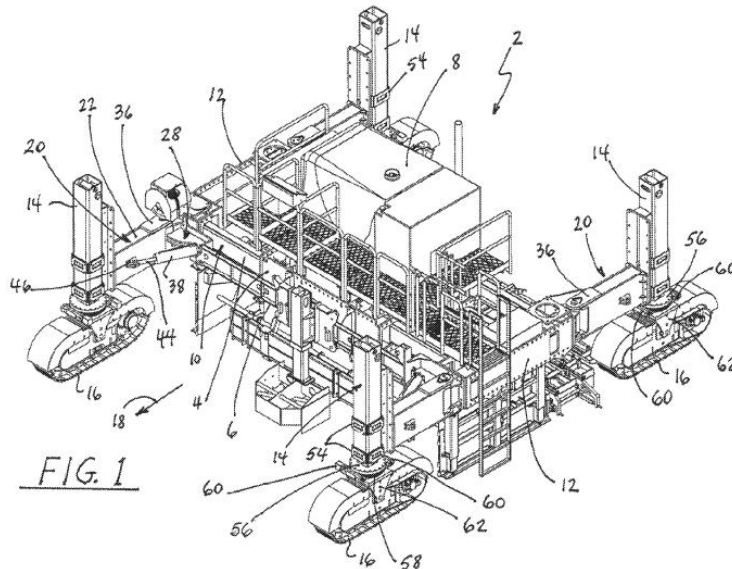
I. INTRODUCTION

This matter is before the Court on plaintiff Guntert & Zimmerman Construction Division, Inc.'s ("G&Z") Motion for Preliminary Injunction. (Docs. 40 & 51). Defendant Gomaco Corp. ("Gomaco") timely resisted G&Z's motion (Docs. 45, 48, 49, 50, 53, 55, 56, 60, & 61) and G&Z timely replied (Docs. 58 & 59). The Court held oral argument on the motion via video teleconference on September 11, 2020. (Doc. 64). Following the hearing, both parties timely submitted supplemental rebuttal briefs. (Docs. 67, 68, & 69). On September 17, 2020, in the interest of providing the parties with a quick answer, the Court entered a short order denying G&Z's motion, indicating it would later issue a full opinion. (Doc. 70). This is the full opinion providing the reasons for the Court **denying** G&Z's motion.

II. RELEVANT BACKGROUND

The Court's factual findings are based on G&Z's Amended Complaint and the parties' sworn declarations and exhibits submitted in support of their positions. The Court's factual findings here are provisional and not binding in future proceedings. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("[F]indings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits."); *SEC v. Zahareas*, 272 F.3d 1102, 1105 (8th Cir. 2001) (same). Affidavits submitted at the preliminary injunction stage need not meet the requirements of affidavits under Federal Rule of Civil Procedure 56(c)(4) or the Federal Rules of Evidence, but the Court may consider the "competence, personal knowledge and credibility of the affiant" in determining the weight to give the evidence. *Bracco v. Lackner*, 462 F. Supp. 436, 442 n.3 (N.D. Cal. 1978) (citing 11A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2949)). The Court will discuss additional facts as they become relevant to the Court's analysis.

G&Z, a California corporation, and Gomaco, an Iowa corporation, compete against each other in manufacturing and selling concrete slipform paving machines and related products and services. (Doc. 29, at 1–2, 8, 22). On July 24, 2018, the United States Patent and Trademark Office (“USPTO”) issued U.S. Patent No. 10,029,749 (the “‘749 Patent”) to the CEO of G&Z Ronald M. Guntert (“Mr. Guntert”) and two others. (Docs. 29, at 6; 43-1, at 1–2). The ‘749 Patent, titled AUTOMATICALLY ADJUSTING SWING LEGS FOR MOUNTING AND ALIGNING AND REORIENTING CRAWLERS, concerns one or more ‘swing legs’ affixed to large mechanical equipment, primarily paving machines. (Doc. 29, at 6–7). These swing legs provide paving machines with greater maneuverability while they spread, level, and finish concrete. (*Id.*, at 7). G&Z sells multiple models of paving machines with swing legs attached. (Doc. 43-1, at 1–2). G&Z asserts its automatically adjusting swing legs save customers time and money by eliminating the need for cumbersome manual adjustments, thus enabling paving projects to be completed faster. *See, e.g.*, (Doc. 29-6, at 5).



A paving machine with four swing legs attached, one at each corner. (Doc. 1-4, at 4).

Each swing leg is comprised of the following: (1) a crawler track (which moves the paving machine); (2) an upright jacking column (which raises and lowers the paving machine); (3) two angular transducers (which relay movement data to orient the paving machine's direction); (4) a processor (which receives the data from the transducers and orients the machine); and (5) a power drive (which moves the crawler track into different positions without manual adjustment). (Doc. 1-4, at 32); *see also* (Doc. 43, at 6-7). Each of these components is described in Claim 1 under the '749 Patent. (Doc. 1-4, at 32). Claim 11 similarly encompasses all these components but also specifies that the power drive "comprises a slew gear drive." (*Id.*, at 33).

G&Z asserts that Gomaco, a significantly larger company, is manufacturing and selling various paving machines which infringe on G&Z's patented swing leg technology. (Docs. 29, at 23-24; 43-1, at 2). Specifically, G&Z cites Gomaco's four-track GP3, four-track GP4, four-track GP-2400 with Slew Drive Option, three-track Xtreme Commander IIIx, and four-track Xtreme Commander IIIx (collectively, the "Accused Products"). (Docs. 29, at 24; 58, at 4 n.1).¹ G&Z asserts that the swing legs on the Accused Products infringe on Claims 1 and 11 of the '749 Patent and requests that the Court enjoin Gomaco from selling the Accused Products with the swing legs attached. (Doc. 43, at 11-12).

¹ Gomaco notes that G&Z originally asserted three more of Gomaco's paving machines infringed on Claims 1 and 11 of the '749 Patent, i.e. Gomaco's three-track Commander III, four-track Commander III, and GP-2400 Base Option. (Doc. 56, at 15); *see also* (Doc. 29, at 8). Gomaco argues these other machines do not infringe because they do not have a second transducer. (Doc. 56, at 15). In its reply, G&Z notes that it does not request a preliminary injunction as to these other machines. (Doc. 58, at 4 n.1). It is unclear whether G&Z is abandoning its '749 Patent infringement claims as to these machines entirely. At oral argument, it did not contest Gomaco's assertion that it "dropp[ed]" its claims as to these machines. (Doc. 65, at 49). Regardless, the Court will not consider these additional machines here.



A G&Z machine (left) and a Gomaco machine (right). (Docs. 1-7, at 7; 1-10, at 8).

On February 26, 2020, G&Z filed its Complaint in this Court asserting, among other things, direct infringement of the '749 Patent under Title 35, United States Code, Section 271(a). (Doc. 1, at 23). On June 4, 2020, G&Z filed an Amended Complaint containing the same claim. (Doc. 29, at 23). On June 18, 2020, Gomaco filed its Answer. (Doc. 39). On July 7, 2020, G&Z filed its Motion for Preliminary Injunction now before the Court. (Doc. 40).

III. APPLICABLE LAW

Courts consider the four factors established in *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981) (en banc) in determining whether to grant a motion for a preliminary injunction, which are: “(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.” *Jet Midwest Int’l Co. v. Jet Midwest Grp., LLC*, 953 F.3d 1041, 1044 (8th Cir. 2020) (quoting *Dataphase*, 640 F.2d at 114).

The movant bears the burden of establishing the propriety of a preliminary injunction. *Goff v. Harper*, 60 F.3d 518, 520 (8th Cir. 1995). “[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quoting 11A CHARLES ALAN WRIGHT & ARTHUR

R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2948 (2d ed. 1995)). “[T]he burden on the movant is heavy, in particular where . . . ‘granting the preliminary injunction will give [the movant] substantially the relief it would obtain after a trial on the merits.’” *United Indus. Corp. v. Clorox Co.*, 140 F.3d 1175, 1179 (8th Cir. 1998) (second alteration in original) (quoting *Sanborn Mfg. Co. v. Campbell Hausfeld/Scott Fetzer Co.*, 997 F.2d 484, 486 (8th Cir. 1993)).

When a preliminary injunction “involves substantive matters unique to patent law,” the law of the Federal Circuit governs. *Hybritech, Inc. v. Abbott Labs.*, 849 F.2d 1446, 1451 n.12 (Fed. Cir. 1988); *see also Keystone Retaining Wall Sys. v. Basalite Concrete Prods., LLC*, No. 10-CV-4085 (PJS/JJK), 2011 WL 6436210, at *2 (D. Minn. Dec. 19, 2011). “In patent cases, the Federal Circuit has held that a district court should deny a preliminary-injunction motion if the alleged infringer raises a substantial question concerning either infringement or validity, i.e., asserts an infringement or invalidity defense that the patentee cannot prove lacks substantial merit[.]” *Keystone*, 2011 WL 6436210, at *2 (quoting *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350–51 (Fed. Cir. 2001) (internal quotation marks omitted)).

IV. ANALYSIS

The Court will address the *Dataphase* factors as follows: (1) whether G&Z is likely to succeed on the merits, including whether the ‘749 Patent is valid and whether Gomaco’s products infringe; (2) whether G&Z is likely to suffer irreparable harm if an injunction is not granted; (3) the balance of the harms at issue to both parties; and (4) applicable public interests.

A. Likelihood of Success on the Merits

The Eighth Circuit Court of Appeals has rejected the notion that the phrase “likelihood of success on the merits” should be read to mean that a movant can “prove a greater than fifty [percent] likelihood that he will prevail on the merits.” *Dataphase*, 640

F.2d at 113. More recently, the Eighth Circuit has explained that in cases not seeking to enjoin “government action based on presumptively reasoned democratic processes,” courts should “apply the familiar ‘fair chance of prevailing’ test” to assess whether a movant has a likelihood of success on the merits. *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 732–33 (8th Cir. 2008). The “fair chance of prevailing” test “asks only whether a movant has demonstrated a ‘fair chance of prevailing’ in the ultimate litigation and . . . does not require a strict probabilistic determination of the chances of a movant’s success when other factors, for example irreparable harm, carry substantial weight.” *1-800-411-Pain Referral Serv., LLC v. Otto*, 744 F.3d 1045, 1053–54 (8th Cir. 2014) (citations omitted).

To succeed on this factor, “the patentee . . . must show that it will likely prove infringement, and that it will likely withstand challenges, if any, to the validity of the patent.” *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1376 (Fed. Cir. 2009). An accused infringer, however, can defeat a patentee’s showing of a likelihood of success on the merits by generating “a substantial question of validity or infringement.” *Trebro Mfg. v. FireFly Equip., LLC*, 748 F.3d 1159, 1165 (Fed. Cir. 2014). The Court recognizes that the substantial question standard “is arguably inconsistent” with the likelihood of success standard since “a patentee can establish that it is likely to prevail on the merits even if the [accused infringer] raises a substantial question about infringement or validity. A question can be ‘substantial’ even if it is not likely to result in a ruling in favor of the party raising it.” *See Keystone*, 2011 WL 6436210, at *2. This Court, however, is bound to apply the *Dataphase* factors here as modified by the Federal Circuit when dealing with patent-related claims. *Id.*

Thus, the Court will first examine the validity of the ‘749 Patent before turning to the merits of infringement.

1. Validity

“A patent shall be presumed valid.” 35 U.S.C. § 282(a). “The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.” *Id.* “[T]he alleged infringer must present sufficient evidence in support of its invalidity claim to raise a substantial question of invalidity, although the defense may not be entirely fleshed out.” *Circle R, Inc. v. Smithco Mfg., Inc.*, 919 F. Supp. 1272, 1290 (N.D. Iowa 1996) (quoting *New England Braiding Co. v. A.W. Chesterton Co.*, 970 F.2d 878, 883 (Fed. Cir. 1992) (internal quotation marks omitted)).² A substantial question is one that has substantial merit. *Amazon.com, Inc.*, 239 F.3d at 1350–51.

Title 35, United States Code, Section 102, is known as the anticipation provision. *See, e.g., Lewmar Marine, Inc. v. Bariant, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987). Section 102 states that a person is entitled to a patent unless the claimed invention was already described in some form of prior art or otherwise available to the public. 35 U.S.C. § 102(a). For the prior art to preclude the validity of a patent, it must disclose “all elements of a claimed invention arranged as in the claim.” *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1334 (Fed. Cir. 2008) (citation omitted, emphasis omitted). “Anticipation can be thought of as a kind of retrospective infringement, because ‘that which would literally infringe if later anticipates if earlier.’” *Regents of the Univ. of Minn. v. AGA Med. Corp.*, 835 F. Supp. 2d 711, 716 (D. Minn. 2011) (quoting *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005)).

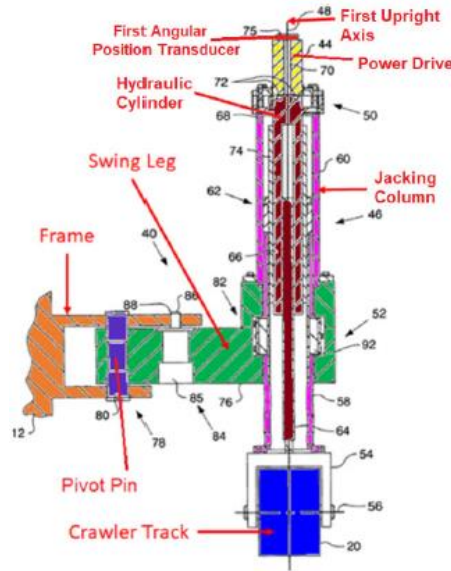
² In a parenthetical in its brief, G&Z appears to assert that Gomaco must show invalidity here by clear and convincing evidence. (Doc. 43, at 17). This is not the correct standard when ruling on a motion for a preliminary injunction. *See, e.g., Amazon.com, Inc.*, 239 F.3d at 1358–59 (“Vulnerability is the issue at the preliminary injunction stage The showing of a substantial question . . . thus requires less proof than the clear and convincing showing necessary to establish invalidity itself. That this is so is plain from our cases.”).

Even if some differences exist between the claimed invention and the prior art, Title 35, United States Code, Section 103—known as the obviousness provision—states that a patent may not be obtained if those differences “are such that the claimed invention as a whole would have been obvious . . . to a person having ordinary skill in the art[.]” “A patent is obvious if a combination of familiar elements according to known methods . . . does no more than yield predictable results.” *Meridian Mfg. v. C&B Mfg.*, 340 F. Supp. 3d 808, 828 (N.D. Iowa 2018) (quoting *KSR Int’l Co v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (internal quotation marks omitted)). In determining obviousness, courts consider “(1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) objective considerations of nonobviousness.” *Adv. Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1284–85 (Fed. Cir. 2000). Courts may also consider other surrounding circumstances such as commercial success, consumer demand, and the “failure of others” to satisfy such demand. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Obviousness is a question of law based on the underlying facts. *Honeywell Int’l, Inc. v. United States*, 596 F.3d 800, 806 (Fed. Cir. 2010).

Gomaco argues that the ‘749 Patent is invalid and should not have been issued by the USPTO in light of three pieces of prior art; Rio, Littman, and Gomaco’s Commander III. (Doc. 56, at 8–14). The Court will address each in turn.

a. Rio

Rio, issued on April 28, 2009, discloses a leg-like “support device” for “[w]ork machines” such as road mills. (Doc. 55-62, at 2).³ Gomaco argues that Rio discloses every element of Claims 1 and 11 of the ‘749 Patent. (Doc. 56, at 9–12). G&Z argues that the ‘749 Patent requires the power drive to be between the jacking column and the crawler track. (Doc. 58, at 5–6). The power drive in Rio, however, is connected to the top of the jacking column. (*Id.*, at 6). Gomaco, citing G&Z’s expert’s testimony, counters that “between” does not refer to the power drive’s physical location. (Doc. 56, at 11).



Claims 1 and 11 of the ‘749 Patent both require “a power drive between the jacking column and the crawler track, configured for translating relative rotational movements between the jacking column and the crawler track.” (Doc. 1-4, at 32–33). “[A]s a general rule, all terms in a patent claim are to be given their plain, ordinary and accustomed meaning to one of ordinary skill in the relevant art.” *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342 (Fed. Cir. 2001). Courts should avoid interpreting patents in such a way as to render some language redundant or meaningless. *Sunny Fresh Foods, Inc. v. Michael Foods, Inc.*, 205 F. Supp. 2d 1077, 1091, 1098 (D. Minn. 2002).

During his deposition, G&Z’s expert Dr. Kenneth Mark Bryden (“Dr. Bryden”) appeared to assert that “between” as used in the ‘749 Patent does not refer to the physical location of the power drive. (Doc. 55-60, at 20). Instead, Dr. Bryden suggested

³ The colorized and labelled version of Rio used here is taken from Gomaco’s expert Dr. William Singhose’s (“Dr. Singhose”) declaration. (Doc. 53-3, at 27). The original version is also in the record. (Doc. 55-62, at 2). G&Z has not asserted Dr. Singhose’s version is inaccurate and thus the Court relies on it here.

“between” could mean some type of link connecting two different units in a complex machine. (*Id.*). In other words, that the power drive serves as a *link between* the jacking column and the crawler track, not that it is *physically between* them. Dr. Bryden later submitted a second declaration clarifying that it is his opinion that the ‘749 Patent requires the power drive to be physically located between the jacking column and the crawler track and asserting that his prior testimony was mischaracterized. (Doc. 59-2). Regardless of what Dr. Bryden meant, “between” can refer to both an interval of space and a link “serving to connect or unite” two or more things. *Between*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/between>.

Although “between” is capable of multiple meanings, its first use in the power drive section of the ‘749 Patent can only be reasonably understood as referring to physical location. To interpret the language otherwise would render the first use of the word “between” redundant of its second use in the same section. In other words, to avoid redundancy, the language is best understood as “a power drive [*physically*] *between* the jacking column and the crawler track, configured for translating relative rotational movements [*as a link*] *between* the jacking column and the crawler track.” (Doc. 1-4, at 33) (emphasis added). If the first use of “between” also referred to some connective link, the language would only need to state “a power drive configured for translating relative rotational movements between the jacking column and the crawler track.”

The Court finds that Claims 1 and 11 of the ‘749 Patent require the power drive to be physically located between the jacking column and the crawler track. Thus, Rio does not disclose “all elements of [the] claimed invention arranged as in the claim” and does not invalidate the ‘749 Patent under Section 102. *See Finisar Corp.*, 523 F.3d at 1334.

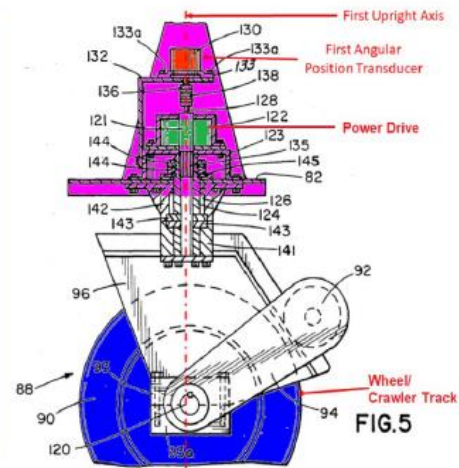
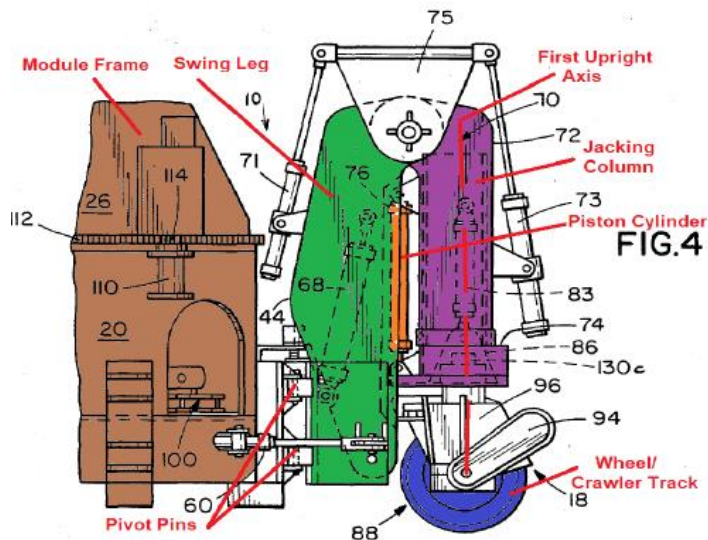
Gomaco has raised, however, a substantial question as to whether the difference between the ‘749 Patent and Rio would have been obvious to a person of ordinary skill

in the art. Both Rio and the ‘749 Patent discuss the same components in the context of support legs for large mechanical equipment, although they focus on different types of equipment. The differences between them, primarily the location of the power drive, appear to be minor and perceptible to someone of ordinary skill in the art. *See Adv. Displays Sys., Inc.*, 212 F.3d at 1284–85. G&Z states that the reason it placed the power drive between the jacking column and the crawler track “was to increase power available to rotate the track,” resolve “the problem of extreme torsional forces that accompany such power and load,” and minimize “undesirable play or backlash during steering.” (Doc. 69, at 8); *see also* (Doc. 40-5, at 27). Given that all these improvements are possible by merely moving one component of the swing leg, putting the power drive between the jacking column and the crawler track may have been a predictable result in the wake of Rio. Thus, Gomaco’s argument that the ‘749 Patent is invalid under Section 103 has some substantial merit even if it is not the likely outcome.

b. Littman

Littman, issued December 17, 1985, discloses “[a] prime mover” with several “elongated legs” which “enable the prime mover to move over a wide variety of terrains.” (Doc. 55-63, at 2).⁴ The power drive in Littman is inside the jacking column.

⁴ The colorized and labelled version of Littman used here is also taken from Dr. Singhose’s declaration. (Doc. 53-3, at 47). The original version is also in the record. (Doc. 55-63, at 6). G&Z has not asserted Dr. Singhose’s version is inaccurate and thus the Court relies on it here.



(*Id.*, at 6). Thus, like Rio, Littman does not disclose “all elements of [the] claimed invention arranged as in the claim” because the power drive is not physically between the jacking column and the crawler track. Moreover, Littman also does not have a processor or a slew gear drive in the power drive. (Docs. 53, at 13–14; 53-3, at 51–52; 55-63, at 6; 58, at 6). Littman also uses a wheel instead of a crawler track to move. Thus, Littman does not invalidate Claims 1 or 11 of the ‘749 Patent under Section 102.

Littman also does not invalidate the ‘749 Patent under Section 103. Littman was disclosed decades ago. Although they have similar functions, the design in Littman is visually distinct from the ‘749 Patent and lacks several of its key components. Unlike Rio, Littman is not just a few tweaks away from the ‘749 Patent but, rather, a whole redesign away. On balance, the differences between Littman and the ‘749 Patent contained in Claims 1 and 11 would not be obvious to a person of ordinary skill in the art and Gomaco has not raised a substantial question as to this prior art. *See Adv. Displays Sys., Inc.*, 212 F.3d at 1284–85.

c. *Commander III*

Gomaco’s Commander III does not invalidate the ‘749 Patent under Section 102 for the same reasons Rio and Littman fail; it does not have a power drive physically

between the jacking column and the crawler track. *See* (Docs. 53-3, at 58–61; 59-1, at 18–19). It similarly fails under Section 103, as Littman did, because it also does not have a processor. (*Id.*). Although Commander III is more visually comparable to the ‘749 Patent, its lack of a key component and different configuration of the existing components create a sufficiently wide gap between it and the ‘749 Patent such that the improvements of the ‘749 Patent are not merely a predictable upgrade.

Thus, the Court finds that Gomaco has raised a substantial question as to validity, specifically whether the claimed invention in the ‘749 Patent was obvious in light of Rio.⁵ Although the Court’s analysis could end here, *see Keystone*, 2011 WL 6436210, at *2, it will also examine the merits of infringement as well as the three remaining *Dataphase* factors.

2. Infringement

“To prove an accused product literally infringes the patent in suit, the product must contain each and every limitation of the asserted claim(s).” *Trebro Mfg.*, 748 F.3d at 1166. Again, at this stage, a patentee must only show it “will likely prove infringement.” *Titan Tire Corp.*, 566 F.3d at 1376. This likelihood, however, can be overcome if the accused infringer raises a substantial question as to infringement. *Trebro Mfg.*, 748 F.3d at 1165.

Gomaco asserts only one non-infringement argument as to the Accused Products; that they do not permit relative rotational movements of both the crawler track and the jacking column as required by Claims 1 and 11. (*Id.*). Gomaco notes that the Accused Products only permit relative rotational movement of the crawler track, not the jacking column. (*Id.*). G&Z counters that Claims 1 and 11 do not require the jacking column

⁵ Given that the Court finds that Rio alone presents a substantial question on the issue of obviousness, it need not assess to what extent Littman, Commander III, or other documents bolster such obviousness when considered in combination.

to rotate. (Doc. 58, at 4). Rather, they require the crawler track to rotate in relation to the jacking column. (*Id.*).

The ‘749 Patent requires “an upright jacking column secured to the swing leg, having a rotary connection between the jacking column and the crawler track permitting relative rotational movements of the crawler track and the jacking column about a first upright axis.” (Doc. 1-4, at 32). In isolation, it is not clear whether both the crawler track and the jacking column rotate or whether the crawler track merely rotates relative to the jacking column. The ‘749 Patent specifies elsewhere, however, that the crawler track pivots, turns, rotates, orients, and moves relative to the jacking column. (*Id.*, at 24–25, 32–33); *see also Fieldturf USA, Inc. v. Sports Constr. Grp. LLC*, 499 F. Supp. 2d 907, (N.D. Ohio 2007) (“Claim terms must be evaluated in the context of the claim as a whole[.]”). The ‘749 Patent never describes the jacking column as rotating but, rather, merely notes that it hydraulically raises and lowers the paving machine. *See, e.g.*, (Doc. 1-4, at 25).

Further, Gomaco’s suggested reading does not explain what “relative” means if both the crawler track and the jacking column rotate. In other words, one of these units must be stationary for the other’s movements to be “relative” to something. At oral argument, Gomaco theorized that perhaps some parts of the jacking column could rotate while others remained stationary, as seen in Rio. (Doc. 65, at 62–63). Although this is possible, this theory is not supported anywhere in the text of the ‘749 Patent. In short, adopting Gomaco’s reading would trade a small issue of clarity that is easily explained with context for a larger issue of clarity that has no textual support.

Thus, although the Court acknowledges that the cited sentence is somewhat unclear, the context unquestionably shows that Claims 1 and 11 require only the crawler track to have relative rotational movement, not the jacking column. Gomaco has not

raised a substantial question on infringement and thus the Court finds that G&Z's likelihood of success on the merits is strong.

B. Irreparable Harm

“[T]o warrant a preliminary injunction, the moving party must demonstrate a sufficient threat of irreparable harm.” *Wachovia Secs., L.L.C. v. Stanton*, 571 F. Supp. 2d 1014, 1044 (N.D. Iowa 2008) (citation omitted). The movant must show more than the mere possibility that irreparable harm will occur. Rather, the movant must show it is “likely to suffer irreparable harm in the absence of preliminary relief[.]” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Thus, “[s]peculative harm does not support a preliminary injunction.” *S.J.W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist.*, 696 F.3d 771, 779 (8th Cir. 2012); *see also Novus Franchising, Inc. v. Dawson*, 725 F.3d 885, 895 (8th Cir. 2013) (“[T]o demonstrate irreparable harm, a party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief.” (quoting *Iowa Utils. Bd. v. Fed. Commc'ns Comm'n*, 109 F.3d 418, 425 (8th Cir.1996))). “The failure to show irreparable harm is, by itself, a sufficient ground upon which to deny a preliminary injunction[.]” *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987).

G&Z asserts that, in the absence of an injunction, it will be irreparably harmed in several respects. (Doc. 43, at 17–21). Specifically, G&Z argues it will lose market share, business opportunities, and customer access. (*Id.*, at 17–19). G&Z cites Mr. Guntert's declaration to show the challenges it faces in the paving machine industry. (*Id.*). Mr. Guntert asserts that the industry is niche, that Gomaco is G&Z's only significant domestic competitor, and that customers exhibit a high degree of brand loyalty once they establish a relationship with a supplier. (*Id.*). Moreover, the paving machines sold by G&Z and Gomaco are expensive, long-lasting machinery. (*Id.*, at 18). Thus, not only is a single lost sale of a paving machine itself significant, but it also results in

the loss of ongoing sales of services and peripheral products and parts related to the paving machine and the loss of an opportunity to establish an ongoing customer relationship. (*Id.*).

G&Z also contends that each lost sale erodes its market share and essentially constitutes a direct sale to Gomaco, its direct competitor. (*Id.*, at 18–19). G&Z further notes that the paving machine market overall is shrinking due in part to the COVID-19 pandemic, which makes it particularly likely that G&Z will have to layoff employees in the absence of an injunction. G&Z also argues that its reputation and good will as an inventor in the industry will be damaged, it will lose the time and money it invested in developing the swing leg technology, and it will likely be unable to adjust its prices to compensate for these harms. (*Id.*, at 19–21).

Gomaco counters that G&Z has not provided any actual evidence of harm but instead relies on the self-serving statements of Mr. Guntert, its CEO. (Doc. 56, at 17–18). Gomaco also argues that G&Z has not shown any causal nexus between Gomaco’s allegedly infringing use of the swing legs and consumer demand. (*Id.*, at 21–22). Gomaco also asserts that there are more competitors in the paving machine market than just itself and G&Z and that G&Z’s financial difficulties resulting from the COVID-19 pandemic do not justify a finding of irreparable harm. (*Id.*, at 22–23). Gomaco further rejects any claim by G&Z that it will suffer reputational damage, loss of investment, or price erosion as speculative and unsupported. (*Id.*, at 23–24). Instead, it suggests monetary damages would sufficiently compensate any alleged infringement. (*Id.*, at 24). Gomaco contends the absence of irreparable harm is further demonstrated by G&Z’s delay in seeking a preliminary injunction. (*Id.*, at 24–25).

The Court will first examine (1) the supporting evidence for irreparable harm in the record before turning to (2) whether there is a causal nexus between the alleged

infringement and the harm and (3) the impact of G&Z's delay in seeking a preliminary injunction.

1. Supporting Evidence

G&Z's claims of irreparable harm are overly reliant on Mr. Guntert's statements and lack sufficient evidence. "[L]ost market share must be proven (or at least substantiated with some evidence)" to support a preliminary injunction. *Automated Merch. Sys. v. Crane Co.*, 357 Fed. App'x 297, 301 (Fed. Cir. 2009). Otherwise, a preliminary injunction would be granted in every case where a patentee practices the invention in a competitive market. *Id.* (citation omitted). Similarly, a patentee must submit evidence of harm to its reputation or good will, investment loss, or price erosion beyond mere conclusory statements. *See, e.g., id.* (holding a conclusory statement of price erosion to be insufficient); *City Cycle IP, LLC v. Caztek, Inc.*, No. 12-1285 (JNE/SER), 2012 WL 3656443, at *8 (D. Minn. Aug. 24, 2012) (noting the lack of evidence for the patentee's loss of investment assertions); *Mike's Train House, Inc. v. Broadway Ltd. Imps., LLC*, 708 F. Supp. 2d 527, 533 (D. Md. 2010) (finding the patentee's president's bare assertions of harm to its reputation and good will to be insufficient). All of G&Z's statements about the status of the market, its competition with Gomaco, its reputation and good will, and the potential losses it may suffer cite only to Mr. Guntert's declaration. (Doc. 43, at 17–21). G&Z has not provided the Court with projected market data, sales figures, customer surveys, circumstantial evidence, or any other support for G&Z's assertions.

Admittedly, *Trebro Manufacturing, Inc. v. FireFly Equipment, LLC*, 748 F.3d 1159 (Fed. Cir. 2014) presents a similar case on market share. In *Trebro*, the patentee's president testified that the sod harvester industry only had three real competitors (two of which were related entities), that every sale the accused infringer made was essentially a lost sale to the patentee, and that the patentee would lose market share as a result. *Id.*,

at 1164, 1170. There, however, the accused infringer was a new entrant on the market that had pre-sold six sod harvesters in addition to poaching an existing customer from the patentee. *Id.*, at 1170. Thus, the circumstances sufficiently indicated that the accused infringer was cutting into the patentee's market share. Here, although the paving machine market is also small and involves expensive, long-lasting machinery, Gomaco is not a new competitor. Because Gomaco already has an existing, large customer base, each sale it makes is not inherently taking up a new potential customer of G&Z or converting an existing G&Z customer as seen in *Trebro*. Under these circumstances, more evidence is necessary to show that Gomaco is encroaching on G&Z's market share, i.e. that Gomaco is snatching up customers that likely would have gone to G&Z.⁶ Again, the Court has no evidence before it indicating that G&Z has experienced or will experience the market share loss it alleges. The self-serving statements of one competitor against another, absent any actual or circumstantial evidence of loss of market share, cannot properly support a preliminary injunction.

G&Z's assertions of harm to its reputation and good will are similarly speculative. G&Z cites only Mr. Guntert's testimony. (Doc. 43, at 19–20). The Court has no

⁶ Moreover, Gomaco also argues that there are other competitors in the same market such as Wirtgen, Power Pavers, Miller Formless, HEM Paving, and Easi-Pour that take up a significant amount of sales. (Doc. 56, at 22). G&Z acknowledges at least Wirtgen but asserts that Gomaco is its only real competitor, based on Mr. Guntert's testimony. (Doc. 58, at 7). At his deposition, Mr. Guntert testified that G&Z, Gomaco, Wirtgen, and Power Pavers all compete in the domestic paving machine market. (Doc. 56-7, at 10). Mr. Guntert described Miller Formless, HEM Paving, and Easi-Pour as non-competitive "minor player[s]" in the domestic market. (*Id.*, at 11). Mr. Guntert later clarified that Gomaco is G&Z's "primary competitor," that Wirtgen was not "a real force in the market," and that they did not see much "head to head" competition from Power Pavers. (*Id.*, at 13). In sum, it is not clear to the Court to what extent G&Z and Gomaco also compete with these other companies. Suffice it to say, however, that the paving machine market is more complicated than Option A or Option B. Thus, although the Court gives this issue little weight due to the lack of evidence, it appears that not every sale lost by G&Z inherently goes to Gomaco.

evidence beyond Mr. Guntert's conclusory statements to support G&Z's reputation as an innovator in the industry, customers' association of G&Z with the swing legs, damage to G&Z's reputation, and so on. G&Z's reputational argument is also severely undercut by its delay in seeking a preliminary injunction, discussed further below.

As to price erosion, G&Z's allegations are vague and unsupported. G&Z's initial brief contains a heading which alleges price erosion but provides no explicit argument on this point. (Doc. 43, at 20–21). Instead, it implies that G&Z would not be able to adjust its pricing to compete against Gomaco in the absence of an injunction. (*Id.*, at 21). Despite Gomaco pointing out this deficiency in its resistance (Doc. 56, at 24), G&Z again cited price erosion in its reply without any explanation (Doc. 58, at 6). In its post-hearing reply brief, G&Z simply states that price erosion “is a natural extension of losing sales.” (Doc. 69, at 10). As discussed, G&Z has not sufficiently shown that it has lost or will lose sales. There is no other independent evidence of price erosion. Thus, the Court finds G&Z's assertions of price erosion to be speculative and conclusory.

G&Z also argues that, in the absence of an injunction, it will lose approximately \$1.5 million it spent researching and developing the swing legs. (Doc. 43, at 20–21). Again, G&Z relies on Mr. Guntert's statement alone, without any explanation, to support this figure. (*Id.*); *see also* (Doc. 43-1, at 6). To the extent this figure is accurate and has not been recouped, *see* (Docs. 56, at 23–24; 56-2, at 32–33), G&Z has not explained why money damages would not adequately compensate this loss. *See, e.g., Allen v. Wilford & Geske*, No. 10-4747 (JRT/JSM), 2010 WL 4983487, at *3 (D. Minn. Dec. 2, 2010) (noting that the ability to quantify money invested in a home weighed against a preliminary injunction and in favor of monetary damages). G&Z has not shown that it invested more in the development of the swing legs than is custom in the industry such that the innovation behind its investment warrants more than mere monetary damages. *See Medtronic, Inc. v. Daig Corp.*, No. 4-79-256, 1983 WL 62446, at *27 (D. Minn.

May 20, 1983) (granting a preliminary injunction in part because the patentee “invest[ed] an amount in research and development in excess of that generally found in the industry”). Indeed, monetary damages alone will only give rise to irreparable harm “in extraordinary circumstances.” *OAO Corp. v. United States*, 49 Fed. Cl. 478, 480 (2001). The Court finds this is not an extraordinary circumstance for the reasons discussed.

Despite its arguments, G&Z has not shown that monetary damages would be inadequate here. *See, e.g., Medtronic, Inc. v. Gibbons*, 527 F. Supp. 1085, 1092 (D. Minn. 1981) (“Irreparable injury is suffered where monetary damages are difficult to ascertain or are inadequate.”) (quoting *Danielson v. Local 275, Laborers Int’l Union of N.A.*, 479 F.2d 1033, 1037 (2d Cir. 1973)). If G&Z has indeed lost sales, such sales are “(without more) . . . presumed to be compensable through damages, so they do not require injunctive relief.” *Automated Merch. Sys.*, 357 Fed. App’x at 300–01. This is also true of its purported investment costs. G&Z’s assertions of lost market share, harm to its reputation and good will, and price erosion, however, are too speculative and unsupported to warrant the drastic and urgent relief of a preliminary injunction.

In sum, G&Z has not sufficiently substantiated its assertions of irreparable harm such that a preliminary injunction is appropriate.

2. Causal Nexus

In order to obtain a preliminary injunction, a patentee must show not only that it will suffer irreparable harm in the absence of an injunction but also that there is “a sufficiently strong causal nexus” between such harm and the alleged infringement. *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1374 (Fed. Cir. 2012). “[T]he causal nexus requirement is simply a way of distinguishing between irreparable harm caused by patent infringement and irreparable harm caused by otherwise lawful competition—e.g., sales that would be lost even if the offending feature were absent from the accused product.” *Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1361 (Fed. Cir. 2013) (citation,

internal quotation marks, and alteration omitted). Thus, the patentee must “show that the infringing feature drives consumer demand for the accused product.” *Apple Inc.*, 695 F.3d at 1375.

Even accepting that G&Z is facing loss of market share and related issues, there is no evidence indicating that Gomaco’s alleged infringement is causally related to such harm. In fact, quite the opposite.

G&Z cites only two potential lost sales, one to Croell, Inc. (“Croell”) in February 2020, and the other to Southwest Paving, Inc. in April 2020 (“Southwest”). (Doc. 43, at 9). G&Z argues, based on Mr. Guntert’s declaration, that it would have sold machines to these two entities but for Gomaco’s infringement. (Docs. 43, at 9; 58, at 7–8).

Croell and Southwest are not prior G&Z customers or even new customers in the industry. Rather, both are long-time customers of Gomaco. (Doc. 56-1, at 20). Croell has directly purchased six Gomaco machines over approximately 16 years. (*Id.*). It also purchased six other Gomaco machines secondhand with its first purchase dating back to 1996. (*Id.*). Southwest has directly purchased nine Gomaco machines over roughly 13 years. (*Id.*, at 20–21). Both companies have enrolled more than a dozen of their employees in Gomaco’s training program. (*Id.*). Neither company has ever purchased a G&Z machine. (Doc. 56-7, at 25). Notably, between 2010 when G&Z came out with its swing leg technology and 2015 when Gomaco allegedly began infringing on the ‘749 Patent (Doc. 29, at 21), Croell and Southwest purchased seven Gomaco machines between them, including two secondhand machines (Doc. 56-1, at 20–21). If the swing leg was a significant causal factor at all, Croell and Southwest presumably would have

stopped buying Gomaco machines and switched to G&Z during this period.⁷ They never did.

Further, although Mr. Guntert asserts in his declaration that Croell and Southwest declined to switch over to G&Z due to the swing leg issue (Doc. 43-1, at 5), his deposition testimony states otherwise. When asked why Southwest purchased a Gomaco machine instead of a G&Z machine, Mr. Guntert stated “[W]e were told . . . the final decision was made by the owner and that he had a relationship with Gomaco for many years and was not going to change plans.” (Doc. 56-7, at 25). When asked the same question about Croell, Mr. Guntert stated “It was very similar. . . . [T]he owner got involved and said . . . [‘]I’ve done business with Gomaco for years. I’m going to buy a Gomaco.’” (*Id.*, at 25–26). Despite his declaration, the evidence shows that Croell and Southwest’s decisions not to purchase G&Z machines had nothing to do with the presence of swing legs on Gomaco’s machines. Instead, the two entities continued to purchase Gomaco machines because they had an established relationship with Gomaco, irrespective of the swing leg technology.

In its reply, G&Z relies on the testimony of Kevin Klein (“Mr. Klein”), Gomaco’s vice president of engineering and research and development for the proposition that Gomaco would lose 33 percent of its business if it could not sell paving machines with swing legs attached. (Doc. 58, at 8); *see also* (Doc. 61, at 5). In his declaration, Mr. Klein stated that the GP-3, GP-4, GP-2400, and Commander III “accounted for

⁷ In its post-hearing reply brief, G&Z argues that Croell’s and Southwest’s purchases of paving machines with swing legs while their non-swing leg paving machines were still within their usable lifespan suggests the swing legs were an important feature. (Doc. 69, at 13). Both companies, however, regularly purchased paving machines, often purchasing non-swing leg machines within the usable lifespan of their older non-swing leg machines. (Doc. 56-1, at 20–21). Thus, their purchases suggest little more than their continued need for more paving machines.

approximately 33% of machines sold by Gomaco” (Doc. 56-1, at 25–26), not that Gomaco would lose 33 percent of its business or even that the machines constitute 33 percent of Gomaco’s total sales. At his deposition, when repeatedly asked whether Gomaco would lose 33 percent of its business if it could still sell those machines without swing legs, Mr. Klein answered as follows: “I don’t know,” (Doc. 61, at 25), “I can’t answer. I don’t know,” (*id.*, at 26), “I cannot answer your question. It’s just speculation. I don’t know how much we would lose,” (*id.*), “And, again, I can’t answer that question. I don’t know,” (*id.*). After a lengthy back-and-forth, Mr. Klein stated Gomaco could “[p]otentially” lose 33 percent of its business. (*Id.*). At best, this exchange shows merely that Mr. Klein speculated that the removal of the swing legs would substantially disrupt Gomaco’s business. This is far from a definite statement that Gomaco’s business relied on the sale of the swing legs, much less that the swing legs drive consumer demand.

In short, G&Z has not shown that there is a sufficiently strong nexus, or any nexus at all, between the alleged irreparable harm it may suffer and Gomaco’s alleged infringement.

3. Delay in Seeking an Injunction

“[D]elay in seeking a remedy is an important factor bearing on the need for a preliminary injunction.” *High Tech. Med. Instrumentation, Inc. v. New Image Indus.*, 49 F.3d 1551, 1557 (Fed. Cir. 1995). Significant delay can indicate “that there is no apparent urgency” supporting injunctive relief. *Id.*

G&Z’s delay in seeking an injunction also weighs against its claims of irreparable harm. Gomaco has sold some of the Accused Products for approximately five years. (Doc. 29, at 21). Mr. Guntert stated that he was aware of Gomaco’s use of the swing leg as early as 2016. (Doc. 56-7, at 14). Moreover, the ‘749 Patent was issued on July 24, 2018. (Doc. 1-4, at 2). G&Z did not file its Complaint against Gomaco until February 26, 2020, just more than 19 months later. Even then, G&Z did not file its

motion for a preliminary injunction until July 7, 2020, around four months later. In sum, G&Z waited approximately 23 months between the time the '749 Patent issued and the time it requested an injunction. This nearly two-year delay substantially undercuts G&Z's argument that urgent relief is necessary to prevent irreparable harm to its business. *See High Tech. Med. Instrumentation, Inc.*, 49 F.3d at 1557 (holding that a delay of 17 months militated against a preliminary injunction and compiling other similar cases).

G&Z did not address its delay in seeking an injunction in its brief or reply. When asked about the delay at oral argument, G&Z stated that "if the world hadn't changed, I don't know that we would be here." (Doc. 65, at 41). G&Z cited the COVID-19 pandemic and changes in government support for infrastructure programs as changed circumstances igniting its need for a preliminary injunction. (*Id.*, at 41–42). The Court is sympathetic that G&Z, like most other businesses, is now forced to adjust its operations to account for the economic disruption caused by COVID-19. Such unanticipated adjustments, however, do not warrant a preliminary injunction. A patentee cannot treat a patent infringement claim like an ace up its sleeve that it can lay down once economic downturn arises. Such a maneuver suggests not urgency, but rather, business strategy. The fact that G&Z is only now asserting this claim implies that the alleged harm is not related to the alleged infringement itself but rather an attempt to protect its business from economic uncertainty generally. Moreover, Mr. Guntert could not cite any specific customer G&Z lost due to the pandemic. (Doc. 56-7, at 27). Thus, even if the Court considered these changed circumstances, they do not appear to be particularly urgent. The Court has no reason to believe that G&Z is suffering worse during the pandemic than anyone else, much less as a result of Gomaco's alleged infringement.

Thus, the Court finds that G&Z's delay in moving for a preliminary injunction substantially undercuts its claim of urgency despite the changed circumstances cited.

Given that G&Z's allegations are not supported by sufficient evidence, G&Z has failed to identify a substantial causal nexus between the alleged harm and the alleged infringement, and G&Z's delay further suggests that urgency is not required, the Court finds irreparable harm is absent here. This alone would be a sufficient reason to deny G&Z's motion. *See Gelco Corp.*, 811 F.2d at 418. The Court will, however, analyze the two remaining *Dataphase* factors.

C. *Balance of the Harms*

"[T]he balance of harms analysis examines the harm of granting or denying the injunction upon both of the parties to the dispute and upon other interested parties, including the public." *Wachovia Secs., L.L.C.*, 571 F. Supp.2d at 1047. It is not the same analysis as the irreparable harm analysis. *Id.* The balance of harms analysis considers several factors including to what extent the parties' rights will be threatened, the potential economic harm to the parties, and whether the defendant has taken voluntary remedial action. *Id.* "[A]n illusory harm to the movant will not outweigh any actual harm to the non-movant." *Frank N. Magid Assocs., Inc. v. Marrs*, No. 16-CV-198-LRR, 2017 WL 3091457, at *5 (N.D. Iowa Jan. 9, 2017) (quoting *Interbake Foods, L.L.C. v. Tomasiello*, 461 F. Supp. 2d 943, 976–77 (N.D. Iowa 2006)).

Gomaco argues an injunction would harm it severely. (Doc. 56, at 25). Gomaco asserts that the Accused Products comprise a significant portion of its business and, if it were prohibited from manufacturing or selling them, it would have to layoff nearly 200 employees. (*Id.*). This accounts for approximately half its staff. (*Id.*). In contrast, Gomaco argues G&Z faces much smaller layoffs, if any, if the injunction is denied. (*Id.*, at 25–26).

G&Z argues the absence of an injunction would harm it more. (Doc. 43, at 21). G&Z asserts that it would not be able to compete against Gomaco, a larger company, if Gomaco is permitted to continue to infringe on the '749 Patent. (*Id.*). G&Z also cites

testimony indicating that Gomaco could easily remove the swing legs from its products and would be successful regardless of any injunction. (Doc. 58, at 8).

The Court finds this factor does not weigh in favor of either party. Given that the merits of infringement are strong, G&Z's rights under the '749 Patent are threatened by the absence of an injunction. As discussed, however, there is insufficient evidence to show that G&Z is currently being irreparably harmed because of Gomaco's alleged infringement. By that same token then, an injunction would disrupt Gomaco's right to otherwise lawfully compete. Both parties have asserted that they may experience some loss of business or employee layoffs. Admittedly, Gomaco asserts larger employee layoffs with more certainty than G&Z. Gomaco, a larger and more established company, appears to be better positioned to weather a downturn in business, however, than G&Z, a significantly smaller business. In short, the Court finds that the competing harms roughly balance each other out.

D. Public Interests

Under the final *Dataphase* factor, courts consider “both the public interests injured and the public interests served in granting or denying a preliminary injunction.” *Bellino Fireworks, Inc. v. City of Ankeny*, No. 4:17-cv-212-RGE-CFB, 2017 WL 11446135, at *20 (S.D. Iowa June 29, 2017) (citing *Sierra Club v. U.S. Army Corps of Eng'rs*, 645 F.3d 978, 997 (8th Cir. 2011)). “It is in the public interest to protect rights, so ‘the determination of where the public interest lies is also dependent on the determination of the likelihood of success on the merits.’” *Johnson v. Moody*, No. 4:16-cv-00449-RGE-SBJ, 2016 WL 8839427, at *10 (S.D. Iowa Nov. 14, 2016) (quoting *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008)). Indeed, public policy strongly favors enforcing patent rights. *PPG Indus., Inc. v. Guardian Indus. Corp.*, 75 F.3d 1558, 1567 (Fed. Cir. 1996). In patent cases, courts may properly consider whether the patentee could handle increased demand for its products should an injunction be granted against

the accused infringer. *See Am. Honda Motor Co. v. Carolina Autosports Leasing & Sales, Inc.*, 645 F. Supp. 863, 865–66 (D.N.C. 1986).

G&Z argues public interest favors an injunction to uphold its patent rights. (Doc. 43, at 22). G&Z also asserts that it can satisfy any increased demand that may result if Gomaco is enjoined from selling the Accused Products. (*Id.*). Gomaco argues free competition is in the public interest and that G&Z cannot meet the increased demand it would face if an injunction were granted. (Doc. 56, at 26).

As discussed, the merits of G&Z’s infringement claim are strong but its evidence of irreparable harm resulting from such infringement is insufficient. Thus, the need to protect its patent rights is significant, but not urgent. Although Mr. Guntert stated that G&Z can handle the increased demand (Doc. 43-1, at 6), the Court is skeptical. *See Bracco*, 462 F. Supp. at 442 n.3 (noting courts may consider the “competence, personal knowledge and credibility of the affiant” in determining the weight to give the evidence). G&Z sells approximately eight paving machines with swing legs per year. (*Id.*, at 5). In 2019, Gomaco sold 32 of the Accused Products. (Doc. 56-1, at 25). G&Z also has a much smaller service staff than Gomaco and lacks Gomaco’s nationwide presence. *See (id.*, at 19) (“Gomaco has local distributors in 34 states and over 165 cities nationwide.”). Even setting aside the production concerns raised by Gomaco (Doc. 56, at 21), it is doubtful that a substantially smaller company like G&Z could effectively sell and service around four times more paving machines than they normally do at the drop of a hat. It is also unclear to what extent other competitors could absorb some of these customers. Given that the machines at issue are necessary to pave highways, airports, and other forms of infrastructure, *see, e.g.*, (Doc. 56-1, at 2–3), it is important that customers have access to such machines and staff to service them if necessary.

Given the lack of urgency as to the patent rights at issue and the unlikelihood that G&Z will be able to drastically increase its operations in such a short time frame, the Court finds the public interest factor slightly weighs in favor of denying an injunction.

V. *CONCLUSION*

In review of the *Dataphase* factors, the Court finds (1) G&Z is likely to succeed on the merits of its infringement claim, although Gomaco has raised a substantial question as to the validity of the '749 Patent due to obviousness in light of Rio; (2) that G&Z has not provided sufficient evidence of irreparable harm or a substantial nexus between such harm and Gomaco's alleged infringement, particularly in light of its delay in seeking an injunction; (3) the balance of the harms is roughly equal to both parties; and (4) the public interests factor slightly weighs in favor of denying an injunction. Thus, on balance, the *Dataphase* factors weigh against granting an injunction.

For these reasons, plaintiff's Motion for Preliminary Injunction (Doc. 40) is **denied**.

IT IS SO ORDERED this 14th day of October, 2020.



C.J. Williams
United States District Judge
Northern District of Iowa