

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CLERK OF COURT  
1-22-16  
*[Signature]*

CIVIL ACTION NO. 13-10628-RGS

EXERGEN CORPORATION

v.

KAZ USA, INC.

**SPECIAL VERDICT QUESTIONS FOR THE JURY**

January 22, 2016

STEARNS, D.J.

**Infringement – Device Claims**

Q.1. Has Exergen proven by a preponderance of the evidence that Kaz directly infringed the device claims? Answer “Yes” or “No” for each claim. (“Yes” is a finding for Exergen. “No” is a finding for Kaz.)

'938 Patent

Claim 39: yes

Claim 40: yes

Claim 46: yes

Claim 49: yes

**Infringement – Method Claims**

Before you answer verdict question 2, first answer this predicate question: has Exergen proven by a preponderance of the evidence that users of Kaz’s accused thermometers directly infringe the following method claims?

'685 Patent

Claim 7: yes

Claim 14: yes

Claim 17: yes

'938 Patent

Claim 17: yes

Claim 24: yes

Claim 33: yes

Claim 60: yes

Claim 66: yes

For each method claim that you find is directly infringed by the end users, please answer the following two verdict questions.

Q.2a. Has Exergen proven by a preponderance of the evidence that Kaz induced infringement of any of the following method claims of the '685 and/or the '938 patent?

Answer "Yes" or "No" for each claim. ("Yes" is a finding for Exergen. "No" is a finding for Kaz.)

'685 Patent

Claim 7: yes

Claim 14: yes

Claim 17: yes

'938 Patent

Claim 17: yes

Claim 24: yes

Claim 33: yes

Claim 60: yes

Claim 66: yes

Q.2b. Has Exergen proven by a preponderance of the evidence that Kaz contributed to infringement of any of the following method claims of the '685 and/or the '938 patent?

Answer "Yes" or "No" for each claim. ("Yes" is a finding for Exergen. "No" is a finding for Kaz.)

'685 Patent

Claim 7: yes

Claim 14: yes

Claim 17: yes

'938 Patent

Claim 17: yes

Claim 24: yes

Claim 33: yes

Claim 60: yes

Claim 66: yes

### Validity – Written Description

Q.3. Has Kaz proven by clear and convincing evidence that the specification of the '685 and/or the '938 patent fails to contain a written description of the claimed invention sufficient to support any of the following claims?

Answer "Yes" or "No" for each claim. ("Yes" is a finding for Kaz. "No" is a finding for Exergen.)

'685 Patent

Claim 7: no

Claim 14: no

Claim 17: no

'938 Patent

Claim 17: no

Claim 24: no

Claim 33: no

Claim 39: no

Claim 40: no

Claim 46: no

Claim 49: no

Claim 60: no

Claim 66: no

### Validity – Enablement

Q.4. Has Kaz proven by clear and convincing evidence that the specification of the '685 and/or the '938 patent fails to contain a description of the claimed invention that is sufficiently full and clear to enable a person of ordinary skill in the art in the field to make and use the invention with respect to an of the following claims?

Answer “Yes” or “No” for each claim. (“Yes” is a finding for Kaz. “No” is a finding for Exergen.)

#### '685 Patent

Claim 7: no

Claim 14: no

Claim 17: no

#### '938 Patent

Claim 17: no

Claim 24: no

Claim 33: no

Claim 39: no

Claim 40: no

Claim 46: no

Claim 49: no

Claim 60: no

Claim 66: no

### Validity – Obviousness

Q.5. Has Kaz proven by clear and convincing evidence that any of the following claims of of the '685 and/or the '938 patent are invalid because the claimed subject matter is obvious in light of any of the prior art?

Answer “Yes” or “No” for each claim. (“Yes” is a finding for Kaz. “No” is a finding for Exergen.)

#### '685 Patent

Claim 7: no

Claim 14: no

Claim 17: NO

'938 Patent

Claim 17: NO

Claim 24: NO

Claim 33: NO

Claim 39: NO

Claim 40: NO

Claim 46: NO

Claim 49: NO

Claim 60: NO

Claim 66: NO

If in answering the above verdict questions, you have found any one or more of Exergen's asserted patent claims to be infringed and not invalid, please answer Q.6 and Q.7. Otherwise, you have reached a verdict.

**Damages**

Q.6. If you find that at least one asserted claim is not invalid and infringed, what amount, if any, is Exergen owed by Kaz as lost profits resulting from Kaz's infringement of one or more of those claims of the '685 and/or the '938 patent?

A.6. \$ 9,802,228  
(amount in figures)

nine Million Eight Hundred two thousand two Hundred  
twenty Eight  
(amount in words)

Q.7. For those infringing sales for which Exergen has not proved its entitlement to lost profits, what is the total dollar amount, if any, that you find to be adequate as a reasonable royalty to compensate Exergen for Kaz's infringement?

A.7. \$ 4,840,320  
(amount in figures)

Four Million Eight Hundred Forty Thousand three  
Hundred twenty  
(amount in words)

I certify that the foregoing answer(s) is (are) the unanimous answer(s) of the jury.

  
Foreperson

Dated: 1/22/16