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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RICHARD SOWINSKI,
Plaintiff,

v.

CALIFORNIA AIR RESOURCES
BOARD,
Defendant.

Case No. 18-CV-03979-LHK

**ORDER DENYING PLAINTIFF’S
MOTION FOR RECONSIDERATION**

Re: Dkt. No. 19

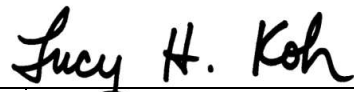
In this lawsuit, Plaintiff asserts that the same party infringed the same patent through the same conduct as Plaintiff did in Plaintiff’s previously dismissed case. *Compare* ECF No. 13 at 6, ¶ 1 (Plaintiff’s complaint in previous case alleging that “[s]ince 2013” Defendant has conducted cap-and-trade auctions that “directly infringe[]” Plaintiff’s patent) *with* ECF No. 1, ¶ 1 (Plaintiff’s instant Complaint alleging that “[s]ince 2013” Defendant has conducted cap-and-trade auctions that “directly infringe[]” Plaintiff’s patent). In his motion for reconsideration, Plaintiff even acknowledges that the instant lawsuit is predicated on the same conduct as Plaintiff’s previous suit. ECF No. 19 at 2 (“Defendant violates the patent on a yearly basis when it runs the CARB Auction.”).

As a result, *res judicata* bars Plaintiff’s instant lawsuit. *See Senju Pharm. Co., Ltd. v.*

1 *Apotex Inc.*, 746 F.3d 1344, 1349 (Fed. Cir. 2014) (“Claim preclusion will generally apply when a
2 patentee seeks to assert the same patent against the same party and the same subject matter.”); *see*
3 *also Single Chip Sys. Corp. v. Intermec IP Corp.*, 495 F. Supp. 2d 1052, 1062 (S.D. Cal. 2007)
4 (dismissing as barred by res judicata a later-in-time suit “assert[ing] identical facts in the type of
5 product and patent action” as the earlier suit). Therefore, the Court DENIES Plaintiff’s motion for
6 reconsideration.

7 **IT IS SO ORDERED.**

8 Dated: January 18, 2019



LUCY H. KOH
United States District Judge

United States District Court
Northern District of California

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