

1
2
3
4
5
6
7
8
9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**
13

14 EVOLUTION CONCEPTS, INC., a
15 California corporation,

16 Plaintiff,

17 v.

18 JUGGERNAUT TACTICAL, INC., a
19 California corporation; and DOES 1-10,
20 inclusive,

21 Defendants.

22
23 **AND RELATED COUNTERCLAIMS**
24
25
26
27
28

Case No. 8:18-cv-01378-JLS-DFM
Hon. Josephine L. Staton

**JUDGMENT IN FAVOR OF
JUGGERNAUT TACTICAL, INC.
OF NON-INFRINGEMENT OF U.S.
PATENT NO. 8,756,845**

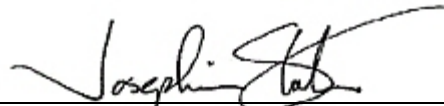
1 Pursuant to the Court's April 5, 2021 Order (Doc. No. 161) Granting
2 Defendant's Motion for Summary Judgment of Non-Infringement, Denying
3 Plaintiff's Motion for Summary Judgment, and Denying Defendant's Motion for
4 Sanctions, the Court directs entry of judgment as follows:

5 1. The Court grants final judgment of non-infringement of each and every
6 claim of U.S. Patent No. 8,756,845 ("the '845 Patent") in favor of Defendant.

7 2. The Court retains jurisdiction to hear any timely motion or application
8 for costs and/or attorneys' fees pursuant to Fed. R. Civ. P. 54(d), Local Rules 54-1,
9 *et. seq.*, including Local Rule 54-7, and any other applicable statute or rule.

10
11 **IT IS SO ORDERED.**

12
13 Date: April 22, 2021

14 
15 _____
16 Hon. Josephine L. Staton
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EVOLUTION CONCEPTS, INC.

V.

JUGGERNAUT TACTICAL, INC.

CASE NO. 8:18-cv-01378-JLS-DFM

**ORDER (1) GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT (Doc. 103);
(2) DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT (Doc.
104); AND (3) DENYING
DEFENDANT'S MOTION FOR
SANCTIONS (Doc. 94)**

Before the Court are three Motions: (1) Defendant Juggernaut's Motion for Summary Judgment (Def. Mot., Doc. 103; Def. Mem., Doc. 103-1); (2) Plaintiff Evolusion Concept, Inc.'s Motion for Summary Judgment (Pl. Mot., Doc. 104; Pl. Mem., Doc. 104-1); and (3) Defendant's Motion for Rule 11 Sanctions (Sanctions Mot., Doc. 94; Sanctions Mem., Doc. 94-1.) The parties opposed each other's motions (Pl. Opp'n, Doc. 137; Def. Opp'n, Doc. 136; Sanctions Opp., Doc. 133) and filed replies (Def. Reply, Doc. 138; Pl. Reply, Doc. 139; Sanctions Reply, Doc. 134.) Having considered the parties' briefs and held oral argument, for the reasons stated below, the Court now GRANTS Defendant's Motion for Summary Judgment as to non-infringement and DENIES Plaintiff's Motion for Summary Judgment as to infringement; concludes both parties' Motions as to validity are MOOT; and DENIES Defendant's Motion for Sanctions.

I. BACKGROUND

This is a patent infringement action filed by Plaintiff Evolusion Concepts, Inc. ("Evolusion") against Defendant Juggernaut Tactical, Inc. ("Juggernaut"), asserting patent infringement of U.S. Patent No. 8,756,845 ("the '845 patent"). (Compl., Doc. 1.) Evolusion is the assignee of all rights to the '845 patent. (Compl. ¶ 13.) Juggernaut asserted invalidity of the '845 patent as an affirmative defense and counterclaimed seeking declaratory judgment of noninfringement and/or invalidity. (Ans., Doc. 17; Countercl., Doc. 18.)

The '845 patent describes a method and device for converting a firearm with a detachable magazine to a firearm with a fixed magazine. ('845 Patent, Compl. Ex. A, Doc. 1-1.) Specifically, "the invention is a permanent fixture added to a semi-automatic firearm by removing the standard OEM magazine catch assembly and installing the [device.]" ('845 Patent at 7; Def. Statement of Uncontroverted Facts ("Def. SUF") ¶ 6, Doc. 103-2; Pl. Statement of Genuine Disputes ("Pl. SGD") ¶ 6, Doc. 137-1.) Juggernaut sells the AR-15 and AR-10 Hellfighter Mod Kits which, when installed, also convert a firearm with a detachable magazine into a firearm with a fixed magazine. (Pl. Statement of

Uncontroverted Facts (“Pl. SUF”) ¶ 6, Doc. 104-2; Def. Statement of Genuine Disputes (“Def. SGD”) ¶ 6, Doc. 136-1). Additionally, Juggernaut sells firearms with the Hellfighter Mod Kits installed. (Pl. SUF ¶ 8; Def. SGD ¶ 8.) The Hellfighter Mod Kits and the firearms with the kits installed are collectively referred to as the “Accused Products.”

The Court held a claim construction hearing in this case, during which the only term at issue was “upper tension bar.” (*See* Claim Construction Order at 2, Doc. 54.) The Court concluded that no construction of the term was necessary, and that “upper tension bar” was to be given its plain and ordinary meaning. (*Id.* at 7.) The parties thereafter filed cross-motions for summary judgment on the issue of infringement. (Doc. 72; Doc. 73.) After the motions were briefed, Juggernaut uncovered potential prior art—referred to as the “Schoenfeld Device”—prompting it to file a motion for leave to supplement its invalidity contentions and expert report on invalidity, and for leave to file a motion for summary judgment on the issue of invalidity. (Doc. 78.) The Court granted Juggernaut’s motion for leave to supplement its invalidity contentions and denied the parties’ cross-motions for summary judgment without prejudice, allowing the parties to file renewed motions addressing both infringement and invalidity. (Doc. 90.)

Evolution and Juggernaut have now re-filed motions for summary judgment, addressing both infringement and validity in light of the Schoenfeld device. (Pl. Mot. at 1; Def. Mot. at 1.) Juggernaut has also filed a motion for sanctions pursuant to Federal Rule of Civil Procedure 11, arguing that Evolution and its attorneys have violated Rule 11 by “continu[ing] to assert claims against Juggernaut with knowledge that . . . the asserted patent claims of the ’845 Patent are invalid as a matter of law in view of the Schoenfeld Device.” (Sanctions Mot. at 1.)

II. MOTIONS FOR SUMMARY JUDGMENT

A. Legal Standard

Summary judgment is proper “if the [moving party] shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “It is well-settled in this circuit and others that the filing of cross-motions for summary judgment, both parties asserting that there are no uncontested issues of material fact, does not vitiate the court’s responsibility to determine whether disputed issues of material fact are present.” *United States v. Fred A. Arnold, Inc.*, 573 F.2d 605, 606 (9th Cir. 1978). “[E]ach [cross-motion] motion must be considered on its own merits.” *Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (quoting William W. Schwarzer, et al., *The Analysis and Decision of Summary Judgment Motions*, 139 F.R.D. 441, 499 (Feb. 1992)). And “[t]he court must consider the appropriate evidentiary material identified and submitted in support of both motions, and in opposition to both motions, before ruling on each of them.” *Id.* at 1134.

In deciding a motion for summary judgment, “[t]he role of the court is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried.” *Myers v. Allstate Indem. Co.*, 109 F. Supp. 3d 1331, 1335 (C.D. Cal. 2015) (emphasis added). The moving party bears the initial burden of demonstrating the absence of a genuine dispute of fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “Once the moving party carries its initial burden, the adverse party ‘may not rest upon the mere allegations or denials of the adverse party’s pleading,’ but must provide affidavits or other sources of evidence that ‘set forth specific facts showing that there is a genuine issue for trial.’” *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (quoting Fed. R. Civ. P. 56(e)).

B. Discussion

1. Infringement

The '845 Patent has three independent claims: 1, 8, and 15. ('845 Patent; Pl. SGD ¶ 1.) Evolution initially alleged infringement of all independent claims, along with the dependent claims, but subsequently withdrew the allegation that independent Claim 15 infringes.¹ (Def. SUF ¶¶ 2–3; Pl. SGD ¶¶ 2–3.) Evolution now seeks summary judgment of (1) direct infringement of claims 1–3 and 8–10; (2) induced infringement of claims 1–3 and 8–10; (3) contributory infringement of claims 1–3 and 8–10; and (4) infringement of claims 1–3 and 9–10 under the doctrine of equivalents. (Pl. Mot. at 1.) Juggernaut has moved for summary judgment of non-infringement. (Def. Mot. at 1.)

a. *Direct Infringement of Independent Claims 1 and 8*

A patent is directly infringed when a party without authority “makes, uses, offers to sell, or sells any patented invention[] within the United States.” 35 U.S.C. § 271(a). Patent infringement is a two-step inquiry in which the court must (1) construe the asserted claim; and (2) “determine whether the accused product or process contains each limitation of the properly construed claims.” *Freedman Seating Co. v. American Seating Co.*, 420 F.3d 1350, 1356–57 (Fed. Cir. 2005) (citations omitted). The first step is a question of law; the second step is a question of fact. *Id.* at 1357. In a patent infringement case, “a literal infringement issue is properly decided upon summary judgment . . . when no reasonable jury could find that every limitation recited in the properly construed claim either is or is not found in the accused device.” *Bai v. L&L Wings, Inc.*, 160 F.3d 1350, 1353 (Fed. Cir. 1998).

¹ Evolution withdrew its allegation of infringement of claim 15 “[w]hen it became clear that the accused kits and firearms do not replace the factory-installed magazine catch assembly of a firearm.” (Pl. Mem. at 3–4.)

Independent claims 1 and 8 read as follows, with the disputed portion underlined:

Claim 1	Claim 8
<p>1. A firearm with a fixed magazine comprising a lower receiver having a magazine well configured to receive a magazine with a side-locking recess with a recess in the magazine well <u>a magazine catch bar</u> securely attached to the firearm, said magazine catch bar resting within the magazine side-locking recess an upper tension bar which extends towards and contacts the upper receiver.</p>	<p>8. A device for converting a firearm with a detachable magazine into a firearm with a fixed magazine comprising <u>a magazine catch bar</u> securely attached to the lower receiver of said firearm, said magazine catch bar resting within the magazine side-locking recess an upper tension bar which extends towards and contacts the upper receiver.</p>

The parties agree that whether the Accused Products infringe independent claims 1 and 8 depends entirely on whether the term “magazine catch bar,” which appears in each of the patent’s independent claims, includes a factory-installed Original Equipment Manufacturer (“OEM”) magazine catch bar. (Pl. Mem. at 1; Def. Mem. at 20.) No other facts related to infringement are disputed. The parties do not dispute that the Hellfighter Mod Kit converts a firearm with a detachable magazine into a firearm with a fixed magazine (Def. SGD ¶ 44).² Nor do they dispute how the Accused Products operate. They agree that an AR-15 with a Hellfighter Mod Kit installed is a firearm with an upper receiver and a lower receiver (*Id.* ¶¶ 41–42); that it may have a magazine with a recess in its side (*Id.* ¶ 46); that a magazine catch may rest within that recess in the side of the magazine, locking the magazine in place (*Id.* ¶ 45); that it may have a magazine well (*Id.* ¶ 48); and that the “upper” surface of the accused magazine lock component contacts the upper receiver (*Id.* ¶ 56.) And critically, the parties do not dispute that “[w]hen installed correctly, the Hellfighter Mod Kit does not replace the [OEM] magazine catch.” (*Id.* ¶ 49.) As stated above, the Accused Products include both (1) the Hellfighter Mod Kits; and (2) firearms with the Hellfighter Mod Kits installed. The Hellfighter Mod Kits alone do not contain any type of magazine catch bar, factory-installed or otherwise; rather, once

² Although the Court cites to Defendant’s “Statement of Genuine Disputes” here, the specific factual statements cited are undisputed unless otherwise noted. (See Def. SGD.)

installed on a firearm, the Hellfighter Mod Kits use the magazine catch assembly that is already factory-installed on the firearm.

The issue of infringement therefore hinges on the term “magazine catch bar.” If the term includes factory-installed magazine catch bars, the Accused Products infringe; if it does not, there is no infringement. Evolusion argues that “by the plain meaning of the words in the claim, a factory-installed magazine catch bar is one example of a magazine catch bar in the same way that a red car is one example of a car.” (Pl. Mem. at 18.) Conversely, Juggernaut contends that “[t]he patent as a whole, the claims, the specification including the figures, and statements by Evolusion make clear that the term ‘magazine catch bar’ exclude [sic] a standard OEM magazine catch assembly.” (Def. Mem. at 20.)

The Court first addresses various threshold arguments raised by Evolusion before turning to the construction of “magazine catch bar.”

i. Threshold Arguments

Evolusion makes various threshold arguments in support of its motion on the issue of infringement, none of which are persuasive.³

First, Evolusion argues that because Juggernaut failed to raise its claim construction arguments as to “magazine catch bar” during claim construction, its arguments are untimely and therefore waived. (See Pl. Opp. at 17.) While a district court may decline to consider a claim construction argument that was not raised during the claim construction phase of the litigation, *see, e.g., Cent. Admixture Pharmacy Servs.*, 482 F.3d 1347, 1356 (Fed. Cir. 2007) (affirming district court’s refusal to construe a term that was not raised during claim construction phase), “a district court may engage in claim construction during various phases of litigation, not just in a *Markman* order.” *Conoco, Inc. v. Energy & Env’t Int’l, L.C.*, 460 F.3d 1349, 1359 (Fed. Cir. 2006). Here, Juggernaut’s arguments regarding the term “magazine catch bar” are not new; the issue was briefed in its first summary

³ Although the Court refers to these arguments as “threshold arguments,” they in fact appear in various places throughout Evolusion’s briefing. The Court nonetheless addresses them together.

judgment filed over a year ago. (*See* Doc. 72.) This undercuts Evolusion’s argument that the late claim construction argument has “caused Evolusion to incur a year of unnecessary litigation expenses.” (Pl. Opp. at 18.) Evolusion also contends that Juggernaut expressly waived any ability to revisit claim construction because, in its Motion for Leave to Supplement Invalidity Contentions, Juggernaut claimed that the Shoenfeld Device does not affect claim construction. (*Id.* at 19.) The Shoenfeld Device, however, has no bearing on the construction of the term “magazine catch bar,” and the Court is unconvinced that Juggernaut’s motion constituted an “express waiver” of the ability to revisit claim construction on any term.⁴ The Court will therefore assess each party’s arguments as to the meaning of the term “magazine catch bar” in claims 1 and 8 of the ’845 Patent.

Second, Evolusion contends that, because Juggernaut admitted to paragraph 24 of the Complaint, summary judgment should be granted with respect to infringement of claim 1. (Pl. Mem. at 30). Paragraph 24 of the Complaint states: “Evolusion is informed and believes and based thereon alleges that Defendant sells and distributes complete rifles having a California Compliant AR Mod Kit installed thereon. Such a complete rifle meets all the limitations set forth in claim 1 of the ‘845 patent.” (Compl. ¶ 24.) Juggernaut’s

⁴ In its Reply, Evolusion also argues that Juggernaut is judicially estopped from asserting its “new, narrow definition of ‘magazine catch bar.’” (Pl. Reply at 2.) Evolusion cites to one non-binding case in support of its argument, in which a court applied the doctrine of judicial estoppel to hold that “[d]efendants are prohibited from abandoning their earlier, successfully advanced claim construction positions.” *Kanaeka Corp. v. Zhejiang Medicine Co., Ltd.*, Case No. CV 11-02389 SJO (SHSx), Doc. 845 at 33 (C.D. Cal. Apr. 5, 2018). One of the cases cited by that court, however, further explains that “[t]he doctrine of judicial estoppel provides that [w]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position[.]” *Biomedical Pat. Mgmt. Corp. v. California, Dep’t of Health Servs.*, 505 F.3d 1328, 1341 (Fed. Cir. 2007). In deciding whether the doctrine applies, courts thus consider whether the party’s later position is “clearly inconsistent” with its early position. *Id.* Here, nothing in Defendant’s interpretation of “magazine catch bar” is clearly inconsistent with prior positions taken earlier in the litigation such that accepting Defendant’s proposed interpretation would “compromise the integrity of the judicial process” or otherwise impose an “unfair detriment” on Evolusion. *Id.* And although Defendant failed to raise its argument regarding “magazine catch bar” during the claim construction phase, the Court has already determined that this argument was not waived and is appropriate for adjudication at the summary judgment stage.

Answer at paragraph 24 states: “Admitted.” (Ans. ¶ 24, Doc. 17.) Paragraphs 25 and 26 of Juggernaut’s Answer, however, specifically deny that any of the Accused Products infringe claim 1, and Juggernaut also counterclaimed seeking declaratory judgment of noninfringement. (Ans. ¶ 25–26; Countercl.) Because Evolusion’s argument that Juggernaut admitted to infringement of claim 1 would be entirely inconsistent with its Answer and Counterclaim, the Court declines to reach such a conclusion. *See Standfacts Credit Services, Inc. v. Experian Info. Solutions, Inc.*, 405 F. Supp. 2d 1141, 1150 (C.D. Cal. 2005) (“In light of the liberal pleading policy of Rule 8, ‘a pleading should not be construed as an admission against another alternative or inconsistent pleading in the same case.’”) (quoting *Molsbergen v. United States*, 757 F.2d 1016, 1019 (9th Cir. 1985)).

Third, Evolusion argues that Juggernaut failed to timely respond to Evolusion’s First Set of Requests for Admissions (“RFAs”). (Pl. Mot. at 30.) Specifically, Juggernaut did not timely respond to RFAs asking it to admit or deny that one or more of the Accused Products included all elements of claims 1 and 8. (*Id.*) Evolusion cites to Fed. R. Civ. P. 36(a)(3), which states that a matter is admitted if a party fails to respond within 30 days after being served; Evolusion therefore argues that “all requests in the RFAs are deemed admitted.” (*Id.*) Juggernaut counters that the responses were untimely due to the death of counsel’s father, and that Juggernaut sought a meet and confer to formally file a motion to withdraw admissions pursuant to Fed. R. Civ. P. 36(b), but that, as a result of the exchange, Juggernaut believed Evolusion accepted the submitted responses. (Def. Opp. at 24). The Court agrees with Juggernaut that “[u]se of RFAs to elicit an admission or denial of case dispositive issues is an improper use of RFAs.” (*See id.*) “[T]he purpose of requests for admission is to narrow the issues for trial by identifying and eliminating those matters on which the parties agree.” *AECOM Energy & Constr., Inc. v. Ripley*, No. CV 17-5398-RSW-LSSx, 2018 WL 6266462, at *3 (C.D. Cal. Oct. 3, 2018). Requests should not “‘be used . . . in the hope that a party’s adversary will simply concede essential elements’ of the case.” *Id.* (quoting *Conlon v. United States*, 474 F.3d 616, 622 (9th Cir.

2007)). The Court therefore declines to enter summary judgment on the basis of untimely RFAs.

Having dispensed with these threshold arguments, the Court now turns to main issue in dispute: the interpretation of the term “magazine catch bar.”

ii. “Magazine Catch Bar” as used in the Specification

“To begin with, the context in which a term is used in the asserted claim can be highly instructive.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir 2005) (observing that the term “steel baffles” in the disputed claim “strongly implies that the term ‘baffles’ does not inherently mean objects made of steel”). Here, both asserted claims recite only “a magazine catch bar securely attached to the firearm, said magazine catch bar resting within the magazine side-locking recess.” The claims do not include language such as “OEM” or “factory-installed.” Evolusion thus contends that a person of ordinary skill in the art would conclude “absent any other exclusionary limitations recited in the asserted claims,” the term “magazine catch bar” includes a factory-installed magazine catch bar. (Pl. Opp. at 5).

The *Phillips* court goes on, however, to state, “The claims, of course, do not stand alone. Rather, they are part of ‘a fully integrated written instrument[.]’” *Phillips*, 415 F.3d at 1315 (citing *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 389 (1996)). “For that reason, claims must be read in view of the specification, of which they are a part. . . . [T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.” *Id.* (internal citations omitted); see also *Netword, LLC v. Centraal Corp.*, 242 F.3d 1347, 1352 (Fed. Cir. 2001) (“The claims are directed to the invention that is described in the specification; they do not have meaning removed from the context from which they arose.”). Here, both parties make arguments based on the specification of the ’845 Patent in support of their proposed interpretations.

First, Juggernaut argues that “the specification makes clear that the ‘magazine catch bar’ cannot include a factory installed OEM magazine catch.” (Def. Mem. at 24.) The ’845 Patent states, “The invention is a permanent fixture added to a semi-automatic firearm by removing the standard OEM magazine catch assembly and installing the invention.” (’845 Patent at 7.) Because the specification “explicitly defines the invention as a feature added to the firearm after removing the standard OEM magazine catch assembly, the term ‘magazine catch bar’ must necessarily exclude the standard OEM magazine catch assembly.” (Def. Mem. at 25.) Juggernaut cites to *Verizon Servs. Corp. v. Vonage Holdings Corp*, which states that “[w]hen a patent thus describes the features of the ‘present invention’ as a whole, this description limits the scope of the invention.” 503 F.3d 1295, 1308 (Fed. Cir. 2007) (citing *Honeywell Int’l, Inc. v. ITT Indus.*, 452 F.3d 1312, 1318–19 (Fed.Cir.2006)).

Evolution responds that the above-quoted language from the specification ignores that the ’845 Patent “teaches two alternative illustrative embodiments of ‘the invention’ and makes clear that ‘the invention’ may be embodied in many other ways.” (Pl. Opp. at 10.) Specifically, the written description states, “Although the present invention will be described with reference to the exemplary embodiments shown in the drawings, it should be understood that the present invention can be embodied in many alternate forms or embodiments.” (’845 Patent at 8.) Evolution further argues that Juggernaut over-generalizes *Verizon* to stand for the proposition that “*in all cases*, when a patent’s written description describes any aspect of the ‘present invention,’ this instantly limits the scope of all claims.” (Pl. Opp. at 10) (emphasis in original). Evolution cites to cases specifically considering the language in *Verizon*, which clarify that “the use of the phrase ‘present invention’ or ‘this invention’ is not always so limiting, such as where the references to a certain limitation as being the ‘invention’ are not uniform, or where other portions of the intrinsic evidence do not support applying the limitation to the entire patent.” *Absolute Software, Inc. v. Stealth Signal, Inc.*, 659 F.3d 1121, 1136-37 (Fed. Cir. 2011).

While the Court agrees with Evolusion that the use of the phrase “this invention” is not “always so limiting,” *see id.*, here, there is no reason that the *Verizon* proposition would not apply. As described in Section II.B.1.iii *infra*, unasserted claim 15 also supports the interpretation that “magazine catch bar” excludes factory-installed magazine catch bars. And there is nothing else in the specification that is inconsistent with the cited description of the invention. The description clearly specifies that the invention is installed on a semi-automatic firearm “by removing the standard OEM magazine catch assembly and installing the invention,” and Evolusion has not offered a convincing reason why the Court should ignore this language. It therefore provides compelling support for Juggernaut’s proposed interpretation.

Second, Juggernaut argues that “[t]here are five figures in the ’845 Patent and not a single one of them depicts an OEM magazine catch assembly.” (Def. Mem. at 26.) Plaintiff’s expert, Dr. Batzer, was asked to “point to anything in the specification, not the claims, but the specification of any embodiment in the ’845 patent where they use an OEM magazine catch.” (Batzer Depo. at 47:3–6, Braxton Decl. Ex. D, Doc. 136-6). In response, he pointed only to the language in the description generally stating that “it should be understood that the present invention can be embodied in many alternate forms or embodiments.” (*Id.* at 47:7–10). Evolusion responds that “nowhere does the written description declare that a factory original magazine catch bar is in some way deficient, inadequate, or unable to serve as the claimed ‘magazine catch bar.’” (Opp. at 8.) It further argues that “the law does not require a patent to depict all possible embodiments of each and every recited claim.” (*Id.*). Again, while Evolusion’s broad statements of the law are accurate, that the ’845 Patent teaches the removal of the standard OEM magazine catch assembly without describing any way the invention would work with the standard OEM magazine catch bar intact—combined with the language describing the invention, discussed above—strongly supports Juggernaut’s interpretation of “magazine catch bar.”

iii. “Magazine catch bar” as used in the Claims

“Other claims of the patent in question, *both asserted and unasserted*, can also be valuable sources of enlightenment as to the meaning of the claim.” *Phillips*, 415 F.3d at 1314 (emphasis added). Here, there is one unasserted independent claim: claim 15. Claim 15 is “a method for converting a firearm with a detachable magazine into a firearm with a fixed magazine,” comprising the following steps:

1. Removing the **factory installed magazine release button assembly**,
comprising the steps of:
 - a. Depressing the magazine release button
 - b. Rotating the **factory installed magazine catch bar**
 - c. **Removing all parts of the factory installed magazine release button assembly**
2. Installing a **magazine catch bar** to the lower receiver of the firearm
3. Installing an upper tension bar to the lower receiver of the firearm

(Def. SUF ¶ 9; ’845 Patent) (bold emphasis added.) Notably, the limitation of removing the factory-installed magazine release button assembly, which includes the factory-installed magazine catch bar, is the reason Evolusion withdrew its claim of infringement with respect to claim 15. (*See* Pl. Mem. at 3–4.)

Juggernaut contends that the “same terms appearing in different claims should be given the same meaning ‘unless it is clear from the specification and prosecution history that the terms have different meanings at different portions of the claims.’” (Def. Mem. at 21) (quoting *Fin Control Sys. Pty. Ltd. V. OAM Inc.*, 265 F.3d 1311, 1318 (Fed. Cir. 2001).) Juggernaut therefore argues that, because claim 15 distinguishes between the factory-installed magazine catch bar and the magazine catch bar to be installed, the term “magazine catch bar” should be interpreted to exclude a factory-installed magazine catch bar in order to maintain a consistent meaning across all claims. (*Id.* at 23, citing Saley Decl. Ex. J at ¶ 21, Doc. 103-13.) Specifically, claim 15 recites the removal of the factory-

installed magazine catch bar, followed by a subsequent step of installing a “magazine catch bar.” In light of claim 15, then, “[t]he term ‘magazine catch bar’ must necessarily exclude a factory installed magazine catch bar.” (Def. Mem. at 23.)

Evolution responds that “the doctrine of claim differentiation dictates that the presence of a particular limitation in one claim gives rise to a presumption that the same limitation is not required by a different claim that does not recite that limitation.” (Pl. Opp. at 6.) Evolution cites to *Phillips* in support of this argument, apparently in reference to the statement that “[d]ifferences among claims can also be a useful guide in understanding the meaning of particular claim terms. For example, the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim.” *Phillips*, 415 F.3d at 1314–15 (internal citations omitted). Evolution’s reliance on *Phillips*, however, is misguided, as it ignores the crucial difference between a dependent claim and an independent claim. A dependent claim incorporates an independent claim by reference; it thus makes sense to presume that the dependent claim would add a new limitation that was not present in the independent claim. Here, however, claims 1, 8, and 15 are all independent claims; the presumption articulated in *Phillips*, therefore, is inapplicable. And “[b]ecause claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims.” *Id.* at 1314. As used in claim 15, a “magazine catch bar” is separate and distinct from the factory-installed magazine catch bar. It would therefore be inconsistent for the “magazine catch bar” recited in claims 1 and 8 to include factory-installed magazine catch bars. Further, such an interpretation would render the “factory-installed” limitation in claim 15 superfluous. *See Bicon Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (“[C]laims are interpreted with an eye toward giving effect to all terms in the claim.”) While Evolution attempts to draw various distinctions between asserted claims 1 and 8 and unasserted claim 15, *Phillips* makes clear that *all* claims may be valuable in determining the meaning of a claim

term. Claim 15 is therefore significant in construing the term “magazine catch bar,” and supports Juggernaut’s position that the term excludes factory-installed magazine catch bars.⁵

iv. Conclusion

Ultimately, “[t]he construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.” *Phillips*, 415 F.3d at 1316 (quoting *Renishaw PLC v. Marposs Societa per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998).) In light of the asserted and unasserted claims, along with the specification as a whole, the Court concludes that construing the claim term “magazine catch bar” to exclude a factory-installed magazine catch bar renders the patent internally consistent and in line with “what the inventors actually invented and intended to envelop with the claim.” *Id.*; see also *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1326 (Fed. Cir. 2012) (“It is necessary to consider the specification as a whole, and to read all portions of the written description, if possible, in a manner that renders the patent internally consistent.”) (citations and quotations omitted.)

Because the Accused Products use a factory-installed magazine catch bar, they cannot directly infringe claims 1 and 8 of the ’845 Patent.

b. *Direct Infringement of Dependent Claims 2–3 and 9–10*

Evolution further asserts that Juggernaut infringed dependent claims 2–3 and 9–10. A claim dependent on an independent claim can only be infringed if the independent claim is also infringed. *Monsanto Co. v. Syngenta Seeds, Inc.*, 503 F.3d 1352, 1359 (Fed. Cir. 2007). In other words, if an allegedly infringing product does not meet all limitations in an

⁵ Evolution additionally argues that Juggernaut’s “proposed construction” creates a contradiction in claim 15 because it would force claim 15 to read: “rotating the factory installed magazine catch bar that is not the factory installed magazine catch bar in a counterclockwise fashion until the factory installed magazine catch bar that is not the factory installed magazine catch bar is unthreaded.” (Pl. Opp. at 17.) This argument is nonsensical. Claim 15 would not read any differently because it already uses the terms “magazine catch bar” and “factory installed magazine catch bar” separately and distinctly.

independent claim, the corresponding dependent claims cannot be infringed. Because the Court already held that the Accused Products do not infringe independent claims 1 and 8, they likewise do not infringe dependent claims 2–3 and 9–10.

c. Infringement Under the Doctrine of Equivalents

In the alternative, Evolusion asserts that if literal infringement is not found, Juggernaut is liable for infringement under the doctrine of equivalents. A patentee may invoke infringement under the doctrine of equivalents if the allegedly infringing device “performs substantially the same function in substantially the same way to obtain the same result.” *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 608 (1950) (internal citations omitted). “A finding of equivalence is a determination of fact.” *Id.* at 609. The doctrine of equivalents “must be applied to individual elements of the claim, not to the invention as a whole.” *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 29 (1997). Furthermore, “it is important to ensure that the application of the doctrine, even as to an individual element, is not allowed such broad play as to effectively eliminate that element in its entirety.” *Id.* The doctrine of equivalents should allow the patentee to “claim those insubstantial alterations that were not captured in drafting the original patent claim but which could be created through trivial changes.” *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 733 (2002).

Evolusion argues that (1) Juggernaut’s magazine lock “provides the same structure, serves the same purpose, and functions in substantially the same way to achieve the same result as the upper tension bar described in the ’845 Patent”; and (2) if the Court finds that a factory-installed magazine catch bar does not meet the limitation of a magazine catch bar, it nonetheless “functions in substantially the same way to achieve the same result” as the magazine catch bars described in the ’845 patent. (Pl. Mot. at 29–30.) Juggernaut responds that, because the ’845 Patent consistently teaches that the factory magazine assembly should be removed, Evolusion “cannot now claim that inclusion of the OEM Factory Magazine Assembly . . . is an ‘insubstantial alteration.’” (Def. Opp. at 13.) It

further argues that the Accused Products do not function in the same way with the same result, because the Hellfire Mod Kit replaces the factory bolt catch and leaves the factory magazine assembly intact. (*Id.*)

“When a patent drafter discloses but declines to claim subject matter . . . this action dedicates that unclaimed subject matter to the public.” *Johnson & Johnston Associates Inc. v. R.E. Service Co., Inc.*, 285 F.3d 1046, 1054 (Fed. Cir. 2002). As analyzed above, the ‘845 Patent specifically defines “the invention” as “a permanent fixture added to a semi-automatic firearm by removing the standard OEM magazine catch assembly and installing the [device.]” (‘845 Patent at 7); it contains no embodiment that works with a factory installed magazine catch bar. The “[a]pplication of the doctrine of equivalents to recapture subject matter deliberately left unclaimed would ‘conflict with the primacy of the claims in defining the scope of the patentee’s exclusive right.’” *Id.* (citations omitted.)

Furthermore, the “doctrine of equivalents is premised on language’s inability to capture the essence of innovation.” *Festo*, 535 U.S. at 734. The shortcomings of the English language are clearly not at issue here; “magazine catch bar” and “factory-installed magazine catch bar” are already separately and distinctly identified both in the independent claims and written description. The assertion that a factory-installed magazine catch bar is an “insubstantial alteration” is therefore unconvincing. As such, and in light of the discussion in Section II.B.1.a, no reasonable trier of fact could find that a factory-installed magazine catch bar is the equivalent of “magazine catch bar” in claims 1 and 8. *See IXYS Corp. v. Advanced Power Tech., Inc.*, 321 F. Supp. 2d 1133, 1140 (N.D. Cal. 2004) (citing *Sage Prod., Inc. v. Devon Indus., Inc.*, 126 F.3d 1420, 1423 (Fed. Cir. 1997)) (“Although the presence of equivalents is a factual matter normally reserved for the fact finder, the trial court should grant summary judgment in any case where no reasonable fact finder could find equivalence.”); *see also Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 39 n.8 (1997) (“Where the evidence is such that no reasonable jury could

determine two elements to be equivalent, district courts are obliged to grant partial or complete summary judgment.”)

d. *Indirect Infringement of the ’845 Patent*

Evolution further contends that Juggernaut is liable for both types of indirect patent infringement: contributory infringement and induced infringement. As a threshold matter, direct infringement must be found in order to impose liability for indirect infringement. *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, 572 U.S. 915, 921 (2014) (“[O]ur case law leaves no doubt that inducement liability may arise if, but only if, there is direct infringement.”) (internal citations omitted); *see also Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972).

Because the Court already held that the Accused Products do not directly infringe the ’845 Patent, Evolution’s claims of indirect infringement must also fail.

e. *Conclusion as to Infringement*

In light of the foregoing, the Court GRANTS Juggernaut’s motion for summary judgment as to non-infringement and DENIES Evolution’s motion for summary judgment as to direct infringement, induced infringement, contributory infringement, and infringement by the doctrine of equivalents.

C. Validity

Each party also seeks summary judgment of the issue of validity in light of the Schoenfeld Device. As the parties acknowledged at oral argument, the Court need not reach Defendant’s affirmative defense of invalidity if it determines that the Accused Products do not infringe the ’845 Patent. *See Solar Sun Rings, Inc. v. Wal-Mart Stores, Inc.*, No. CV 11-6990 PSG JEMX, 2012 WL 4755408, at *2 (C.D. Cal. Oct. 5, 2012) (citing *Cardinal Chem. Co. v. Morton Int’l*, 508 U.S. 83, 93–94 (1993)) (holding that a motion for summary judgment as to the defense of invalidity was moot after a finding of non-infringement, and noting that “there is a critical distinction between whether a court should exercise jurisdiction over a counterclaim and whether a court should exercise

jurisdiction over an affirmative defense”); *see also Cardinal Chem. Co.*, 508 U.S. at 93 (“An unnecessary ruling on an affirmative defense is not the same as the necessary resolution of a counterclaim for a declaratory judgment.”).

Both parties’ motions are therefore MOOT as to validity.

III. MOTION FOR SANCTIONS

Juggernaut has also filed a motion for sanctions pursuant to Federal Rule of Civil Procedure 11. Rule 11(b) states that, by presenting the Court with a pleading, the signing attorney certifies that (1) “it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;” and (2) “the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.” Fed. R. Civ. P. 11(b)(1)–(2). Rule 11(c) provides that, if a court determines that Rule 11(b) has been violated, “the court may impose an appropriate sanction[.]”

Here, Juggernaut argues that Evolusion and its attorneys have violated Federal Rule of Civil Procedure Rule 11(b) by “continu[ing] to assert claims against Juggernaut with knowledge that . . . the asserted patent claims of the ’845 Patent are invalid as a matter of law in view of the Schoenfeld Device.” (Sanctions Mot. at 1.) The Court, however, is unconvinced that Evolusion violated Rule 11 by continuing to assert infringement after the discovery of the Schoenfeld Device. As noted above, Juggernaut’s position of non-infringement in its motion for summary judgment—that claims 1 and 8 of the ’845 Patent exclude factory-installed magazine catch bars—is necessarily inconsistent with its position that the Schoenfeld Device “clearly anticipates every asserted claim of the ’845 Patent.” (See Sanctions at 2.) It is undisputed that the Schoenfeld Device, like the Accused Products, is a device that converts a firearm with a detachable magazine into a firearm with a fixed magazine, and that “[b]oth the Schoenfeld Device and the Accused Product make use of a standard OEM magazine catch.” (Def. Mem. at 11–13; Pl. SGD ¶ 29.) Indeed,

Juggernaut crystallizes its summary judgment motion as follows: “If ‘magazine catch bar’ can include an OEM magazine catch, then the ‘845 Patent is invalid in light of the Schoenfeld Device. If not, there is no infringement.” (Def. Reply at 1.)

In other words, if Juggernaut can, on the one hand, put forth an argument of non-infringement that would also render its invalidity argument nonviable, it cannot, on the other hand, argue that invalidity in light of the Schoenfeld Device is so clear and obvious that Evolution violated Rule 11 by continuing to prosecute its claim of patent infringement. The Court therefore DENIES Juggernaut's Motion for Sanctions.

IV. CONCLUSION

For the foregoing reasons, the Court (1) GRANTS Juggernaut's motion for summary judgment as to non-infringement; (2) DENIES Plaintiff's motion for summary judgment as to infringement; (3) concludes that both parties' Motions as to validity are MOOT; and (4) DENIES Juggernaut's Motion for Sanctions. Juggernaut is ORDERED to submit to the Court, **no later than five (5) days from the date of this Order**, a proposed judgment pursuant to the Court's Procedures.

DATED: April 05, 2021

Josephine Tab

HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE