

DEC 15 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CYCLONE USA, INC., a Nevada
corporation,

Plaintiff-counter-defendant -
Appellee,

LL&C DEALER SERVICES, LLC,

Defendant-counter-claimant -
Appellee,

v.

SEI KIM, DBA Korean Industrial Design
Company, Erroneously Sued as Korean
Industrial Design Corporation,

Defendant-counter-claimant-
3rd-party-plaintiff - Appellant,

_____,'

and

JAY KIM,

Third-party-defendant.

No. 10-55735

D.C. No. 2:03-cv-00992-AJW

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the Central District of California
Andrew J. Wistrich, Magistrate Judge, Presiding

Submitted December 8, 2011**
Pasadena, California

Before: NOONAN, GOULD, and IKUTA, Circuit Judges.

Sei Kim appeals the district court's award of \$500 for a single transaction of false patent marking by Cyclone USA under 35 U.S.C § 292. On September 16, 2011, Congress amended 35 U.S.C. § 292 and made the amendments retroactive on pending cases. Leahy-Smith America Invents Act, Pub. L. No. 112-29, § 16(b)(4), 125 Stat. 329 (2011). The penalty under the amended § 292(a) is no longer available to a private party such as Sei Kim. Instead, § 292(b) now grants Sei Kim the right to recover damages to compensate for competitive injury due to the false patent marking. We **VACATE** and **REMAND** for a calculation of Cyclone USA's liabilities under the amended statute.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).