

Judge Richard G. Stearns: ELECTRONIC ORDER entered denying 308 Motion in Limine; denying 316 Motion in Limine. The main thrust of Kaz's motion to exclude Exergen's damages analysis under the entire market value rule (EMVR) is that the primary driving factor in the sales of Exergen's temporal thermometers is the location for taking the temperature. Kaz contends that because that location merely reflects an unpatentable law of nature, the use of the EMVR is improper. This argument impermissibly borrows a partial analysis under section 101. The court is not aware of the use of a section 101 analysis in the context of damages, but it falls short even at face value. As the Supreme Court has acknowledged in its section 101 cases, ultimately all inventions utilize a law of nature (or abstract concept) on some level, and useful and novel applications of laws of nature are patentable. To determine whether a claim is patentable, in addition to determining whether the claim uses a law of nature, the court must look to the combination of elements to determine whether the claim offers more by way of an inventive concept. To the extent that an application of a law of nature is patentable, there is no reason why that application cannot also be the primary driving factor in the sales of products embodying the claims. If it were otherwise, there could no patent protection for an important invention such as the solar panel because the driving factor in its success is that it relies on a law of nature - that is, the sun's energy. (RGS, int2) (Entered: 01/07/2016)

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Exergen Corporation v. Kaz USA, Inc.
1-13-cv-10628 (MAD), 1/7/2016, docket entry 344