

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 HOLOGRAM USA, INC., a Delaware)
4 corporation; MUSION DAS HOLOGRAM)
5 LIMITED, a corporation organized under the)
6 laws of the United Kingdon; and UWE)
7 MAASS, an individual,)

8 Plaintiffs,)

9 vs.)

Case No.: 2:14-cv-00772-GMN-NJK

10 PULSE ENTERTAINMENT, INC., a Georgia)
11 corporation; JOHN C. TEXTOR, an)
12 individual; PROMETHEUS GLOBAL)
13 MEDIA, LLC, a Delaware limited liability)
14 company; DICK CLARK PRODUCTIONS,)
15 INC., a Delaware corporation; JOHN)
16 BRANCA and JOHN MCCLAIN, Executors)
17 of the Estate of Michael J. Jackson; MJJ)
18 PRODUCTIONS, INC., a California)
19 corporation, and DOES 1 through 10,)

20 Defendants.)

ORDER

21 Pending before the Court is the Emergency Motion for Temporary Restraining Order
22 (ECF No. 3) filed by Plaintiffs Hologram USA, Inc., Uwe Maass, and Musion Das Hologram
23 Limited (collectively, "Plaintiffs"). Defendants John Branca, Dick Clark Productions, Inc.,
24 MJJ Productions, Inc., John McClain, Prometheus Global Media, LLC, Pulse Entertainment,
25 Inc., and John C. Textor (collectively, "Defendants") filed a Response. (ECF No. 17.) The
Court set a hearing and heard arguments on the Motion on Friday, May 16, 2014, at 2:30 PM.
(ECF Nos. 15, 19.) This order follows.

1 **I. BACKGROUND**

2 This case arises from the alleged intentions of Defendants to infringe United States
3 Patent Nos. 5,865,519 and 7,883,212, (the “Asserted Patents”) both of which are exclusively
4 licensed by Plaintiff Hologram USA. (Compl. ¶¶ 23, 29.) Defendants consist of a number of
5 entities and individuals that take part in the production of the annual Billboard Music Awards
6 that will take place on May 18, 2014, at the MGM Grand Hotel & Casino in Las Vegas,
7 Nevada. (*Id.* ¶¶ 9–14.) Specifically, Plaintiffs allege that Defendants intend to incorporate a
8 performance, using the patented technology, by a Michael Jackson hologram in which the
9 hologram “will reportedly dance across the stage . . . [and] perform one of his ‘new’ songs.”
10 (*Id.* ¶ 26 (quotation marks omitted).) Because Defendants lack a license to practice the
11 Asserted Patents, Plaintiffs filed this action asserting claims for patent infringement. (*Id.* ¶¶ 33–
12 48.) In addition, Plaintiffs filed the instant motion requesting that the Court temporarily enjoin
13 Defendants from presenting the alleged performance.

14 **II. LEGAL STANDARD**

15 Federal Rule of Civil Procedure 65 governs preliminary injunctions and temporary
16 restraining orders, and requires that a motion for temporary restraining order include “specific
17 facts in an affidavit or a verified complaint [that] clearly show that immediate and irreparable
18 injury, loss, or damage will result to the movant before the adverse party can be heard in
19 opposition,” as well as written certification from the movant’s attorney stating “any efforts
20 made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b).

21 Temporary restraining orders are governed by the same standard applicable to
22 preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181
23 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Furthermore, a temporary restraining order “should
24 be restricted to serving [its] underlying purpose of preserving the status quo and preventing
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1 irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose*
2 *Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

3 A preliminary injunction may be issued if a plaintiff establishes: (1) likelihood of
4 success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3)
5 that the balance of equities tips in his favor; and (4) that an injunction is in the public interest.
6 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “Injunctive relief [is] an
7 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
8 entitled to such relief.” *Id.* at 22.

9 **III. DISCUSSION**

10 For the reasons discussed in this Order, the Court finds that Plaintiffs have failed to
11 carry their burden of establishing that they are likely to succeed on the merits of their patent
12 infringement claims and that they are likely to suffer irreparable harm. Accordingly, the Court
13 cannot issue the requested injunctive relief.

14 **A. Likelihood of Success on the Merits**

15 To demonstrate a likelihood of success on the merits, a patentee must show that (1) the
16 patentee will likely prove that the accused infringer infringes the asserted patent; and, (2) the
17 patentee's infringement claim will likely withstand the accused infringer's challenges to the
18 validity and enforceability of the patent. *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239
19 F.3d 1343, 1350 (Fed. Cir. 2001).

20 In this case, the Court need not reach the second element because Plaintiffs have failed
21 to carry their burden of demonstrating that Defendants likely infringe either of the Asserted
22 Patents. Plaintiffs must show that they will likely establish that “each and every limitation of a
23 [patent] claim is present, either literally or equivalently, in the accused device.” *Tate Access*
24 *Floors, Inc. v. Interface Architectural Resources, Inc.* 279 F.3d 1357, 1365 (Fed. Cir. 2002).
25 However, the Court is completely unable to make such a determination. Specifically, Plaintiffs

1 have failed to provide the Court with sufficient information about the accused apparatus to
2 enable the Court to compare any of the claims in the Asserted Patents to the accused apparatus.
3 Furthermore, Defendants deny that the apparatus they intend to employ will infringe the
4 Asserted Patents. For this reason, the Court cannot grant the requested injunctive relief.

5 **B. Likelihood of Irreparable Harm**

6 Plaintiffs assert that they will suffer irreparable injury in the form of “price erosion, loss
7 of goodwill, damage to reputation, and loss of business opportunities.” (Mot. for TRO 9:6–7,
8 ECF No. 3.) The Court well recognizes that these types of injuries may form a basis for a
9 finding of irreparable harm. *See Abbott Labs. v. Sandoz, Inc.*, 544 F.3d 1341, 1361–62 (Fed.
10 Cir. 2008) (providing cases in which these types of injuries were determined irreparable and
11 incapable of being compensated by money damages). However, simply reciting these
12 categories of injuries cannot result in an automatic finding of irreparable harm.

13 Here, Plaintiffs attempt to carry this burden by asserting that “Defendants have
14 obviously been able to leverage past and existing infringement of Plaintiffs’ patents along with
15 their contacts in the entertainment business to obtain significant projects like the Billboard
16 Music Awards.” (Mot. for TRO 13:12–14.) Plaintiffs further contend that “[t]hese projects
17 threaten to put Defendants in a superior marketing position to Plaintiffs.” (*Id.* at 13:14–15.) To
18 support this assertion, Plaintiffs rely solely on the Affidavit of Alkiviades David, the majority
19 owner of Plaintiff Hologram USA, Inc., the exclusive licensee of the Asserted Patents in the
20 United States and Canada. (*See generally* David Decl., ECF No. 4.) The Court cannot find that
21 these speculative statements from an interested party are sufficient to carry this burden. *See*
22 *Abbott Labs. v. Andrx Pharm., Inc.*, 452 F.3d 1331, 1348 (Fed. Cir. 2006) (“[A]bsent the
23 presumption of irreparable harm and in light of the arguable sufficiency of monetary damages,
24 Abbott has not established that irreparable harm supports the grant of the injunction.”).

1 Accordingly, the Court concludes that Plaintiffs have failed to provide sufficient
2 evidence that the asserted harms are indeed irreparable. Indeed, Plaintiffs even represented to
3 the Court, during the hearing on this motion, that they possessed an alternative resolution.
4 Thus, even if Plaintiffs had carried their burden of establishing a likelihood of success on the
5 merits, their request for injunctive relief would still fail.

6 **IV. CONCLUSION**

7 **IT IS HEREBY ORDERED** that the Motion for Temporary Restraining Order (ECF
8 No. 3) is **DENIED**.

9 **DATED** this 16th day of May, 2014.

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13 Kent J. Dawson
14 United States District Judge
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