

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROHM AND HAAS ELECTRONIC)
MATERIALS, LLC,)
)
Plaintiff,)
)
v.) C.A. No. 06-297-GMS
)
HONEYWELL INTERNATIONAL, INC.,)
)
Defendant.)
_____)

MEMORANDUM

I. INTRODUCTION

On May 5, 2006, Rohm and Haas Electronic Materials, LLC (“Rohm and Haas”) filed this patent infringement action against Honeywell International, Inc. (“Honeywell”) for infringement of two Rohm and Haas patents.¹ On July 18, 2007, the parties’ jointly notified the court by telephone, and later by letter, that they had reached a settlement agreement in the case. (D.I. 74.) Presently before the court is the plaintiff’s motion to enforce that settlement agreement. (D.I. 77.) For the reasons that follow, the court will grant the plaintiff’s motion in part and deny the motion in part.

¹ The patents at issue in this case include: U.S. Patent Nos. 6,471,128 (the “128 patent”) and 6,773,864 (the “864 patent”) (collectively, the “patents in suit”). In the complaint, Rohm and Haas alleges that Honeywell infringes these patents by, among other things, making and selling the “SLAM 248” product, which is used as an antireflective coating for semiconductor wafers. (D.I. 1.)

II. BACKGROUND

Rohm and Haas filed the complaint in this action back in May 2006. (D.I. 1.) On August 28, 2006, Honeywell filed its answer to the complaint. (D.I. 10.) On December 1, 2006, Honeywell sent the U.S. Patent and Trademark Office (the “PTO”) written requests seeking reexamination of the patents in suit. (D.I. 83 at 5.) On January 25, 2007 and March 23, 2007, respectively, the PTO granted Honeywell’s reexamination requests for each of the two patents in suit. (*Id.*)

On May 1, 2007, the parties informed the court that they had reached an “agreement in principle” to settle the case. (D.I. 78 at 4.) As a result, on May 2, 2007, the parties filed a joint stipulation requesting that the scheduling order in the case be amended in order to provide the parties time to complete a formal settlement agreement. (D.I. 55.) Specifically, the joint stipulation stated that “[t]he parties have reached an agreement in principle to settle the case” and requested that the case be stayed for 30 days. (*Id.*) On June 1, 2007, the parties filed a second joint stipulation requesting a further extension of time to formalize a settlement agreement. (D.I. 56.) Again, in that stipulation, the parties advised the court that they had reached an agreement in principle to settle the case. (*Id.*)

After advising the court of their agreement in principle to settle, the parties continued to engage in settlement discussions. (D.I. 83 at 9.) Between May 29, 2007 and June 19, 2007, the parties’ exchanged numerous drafts and revisions to the proposed settlement, and participated in several conference calls to discuss unresolved business issues related to the proposed settlement. (*Id.*) On or about June 20, 2007, the parties reached an apparent impasse over the terms of the settlement agreement, and as a result decided at the time to end settlement negotiations. (*Id.*) Nonetheless, by June 22, 2007, the parties had resolved their impasse, and again resumed settlement

negotiations. (*Id.*)

As part of the parties' ongoing settlement negotiations, on June 22, 2007, Rohm and Haas sent Honeywell a draft settlement and license agreement (*i.e.*, the "June 22 Draft") to review. (D.I. 83 at 9.) The June 22 Draft included paragraph 3.5, which stated simply that the "'128 and '864 Patents are currently being reexamined by the PTO.'" (*Id.*) In response to that language in the June 22 Draft, on June 26, 2007, Honeywell proposed modifying paragraph 3.5 to include a requirement that Rohm and Haas "provide [Honeywell] a copy of all documents received from, or sent to, the PTO relating to the Pending Reexamination *immediately* after their receipt or submission." (*Id.*) (emphasis added). On June 28, 2007, Rohm and Haas responded to Honeywell's proposed modification to paragraph 3.5 with a further revised draft settlement and license agreement (*i.e.*, the "June 28 Draft"). (*Id.*) In the June 28 Draft, Rohm and Haas proposed changing paragraph 3.5 to state that Rohm and Haas "agrees to provide [Honeywell] a copy of any *final rejection* received from the PTO that rejects all of the Asserted Claims of either the '128 or the '864 Patents *within a reasonable time* after received by [Rohm and Haas]." (D.I. 83 at 10) (emphasis added).

On July 2, 2007, the parties held a teleconference to discuss the June 28 Draft. (D.I. 83 at 10.) Following that teleconference, Rohm and Haas emailed Honeywell "the latest draft reflecting [the parties'] discussions" earlier that day (*i.e.*, the "July 2 Draft"). (*Id.* at 11.) According to Honeywell, the July 2 Draft contained only "some of Honeywell's language" regarding the pending reexaminations at issue. (*Id.*) Also, on July 2, 2007, the parties filed another joint stipulation, this time (1) advising the court that the "parties have reached an agreement to settle this case and are in the process of completing and executing a formal agreement that is acceptable to both parties", and

(2) requesting that the “deadline to submit a joint claim chart . . . be extended one week”.² (D.I. 72.)

On July 12, 2007, Honeywell proposed revising the July 2 Draft (*i.e.*, the “July 12 Draft”). (D.I. 83 at 11.) Specifically, in the July 12 Draft, Honeywell proposed replacing the term “within a reasonable time” in paragraph 3.5, with the term “*promptly.*” (*Id.*) (emphasis added). Also, on July 12, 2007, Rohm and Haas’ reexamination counsel met separately with the PTO in an interview to discuss the pending reexaminations involving the patents in suit. (*Id.*) Specifically, following that interview, the record reflects that the PTO sent a copy of the reexamination interview summary (the “July 12 Interview Summary”) to Honeywell’s reexamination and litigation counsel on July 12, 2007 at the address on file with the PTO.³ (D.I. 78 at 10.) In addition, the PTO also sent Rohm and Haas’ reexamination counsel a copy of the July 12 Interview Summary on the same date it was sent to Honeywell’s counsel. (*Id.*)

On July 16, 2007, in response to Honeywell’s proposed July 12 Draft, Rohm and Haas emailed another revised draft agreement to Honeywell (*i.e.*, the “July 16 Draft”). The July 16 Draft included a proposal to again change paragraph 3.5 -- this time replacing the term “promptly” with the term “*diligently.*” (D.I. 83 at 12) (emphasis added).

² On July 9, 2007, the parties filed yet another joint stipulation indicating the same. (*See* D.I. 73.) On July 10, 2007, in response to the parties’ now fourth joint stipulation, the court entered an oral order stating that it would not entertain any additional stipulations to extend time regarding submission of the joint claim chart -- setting the deadline for the parties to submit the joint claim chart in the case for July 16, 2007. (*Id.*)

³ Honeywell does not contest that the PTO Examiner mailed a copy of the July 12 Interview Summary to Honeywell’s counsel’s “prior address.” (*See* D.I. 83 at 22.)

In the email attaching the July 16 Draft, Rohm and Haas further indicated that it:

would like to call the Court tonite [*sic*] to leave a message that an agreement has been reached and that the parties will be working to execute the agreement tomorrow. Because . . . as a courtesy to the Court, we should notify the Court what is going on regarding the settlement.

(*Id.* at 12.)

On July 17, 2007, the parties held another teleconference to discuss the July 16 Draft. (D.I. 83 at 12.) Following that teleconference, at 3:38 p.m. that afternoon, Rohm and Haas emailed Honeywell the revised version of the July 16 Draft (*i.e.*, the “July 17 Revision”). (*Id.*) In that email, Rohm and Haas stated that:

Enclosed is the *FINAL* version based on our teleconf. earlier today and the version [Honeywell] sent to me at 2:45 today. I think we’re done. Please circulate and if there’s no further changes, execute.

(*Id.* at 12) (emphasis added). Shortly thereafter, at 3:44 p.m., Honeywell responded to Rohm and Haas’ email, stating that: “It looks like we have got this finalized. I will make a final read, and if it is consistent with my expectations, I will circulate for execution.” (*Id.*) Later that evening, at 6:32 p.m., Rohm and Haas sent another email to Honeywell, stating that:

The agreement has been signed by [Rohm and Haas] and is being faxed to each of you. Tomorrow, a signed original will be sent to [Honeywell’s in-house counsel] by FedEx overnight delivery. I look forward to receiving the same from Honeywell.

(D.I. 83 at 12.)

Early the next morning, on July 18, 2007, at 6:09 a.m., Honeywell’s counsel sent an email to Rohm and Haas’ counsel advising of her availability for that day. (*See* D.I. 90 at 7.) In her email, Honeywell’s counsel advised that the parties “should call Judge Sleet this morning and tell him *we*

have reached a settlement . . . [and that] [o]nce [Rohm and Haas] receive[d] the signed agreement from [Honeywell], we can make arrangements to file the Stipulation of Dismissal with the Court.” (*Id.* at Tab X) (emphasis added.) Later that morning, at 10:13 a.m., the parties’ agreed to place a joint call to the court regarding settlement. (*Id.* at 7-8.)

Accordingly, on July 18, 2007, the parties placed a joint telephone call to the court. (D.I. 90 at 8.) Counsel for both Honeywell and Rohm and Haas participated in that call.⁴ (*Id.*) During the call, counsel advised the court that:

[B]oth parties were calling to announce that a settlement agreement had been reached. . . . that the parties were exchanging signed agreements now and would be filing a joint stipulation of dismissal once that process was completed . . . that the parties would be filing a joint letter to confirm what was said during the joint telephone call. . . . [and that the parties’ apologized for] failure to file a joint claim chart on July 16th.

(*Id.*) Shortly after the joint call, at 11:14 a.m., counsel filed a letter with the court stating:

The Parties wish to advise the Court that they have reached a settlement in the above-referenced case. Presently, the parties are exchanging signed agreements and after that process has been completed, the parties will submit a stipulation of dismissal.

(D.I. 74.)⁵

On July 20, 2007, Honeywell informed Rohm and Haas that Honeywell had since learned of the July 12 Interview Summary, and the fact that, on July 12, 2007, Rohm and Haas met with the PTO to discuss the pending reexaminations involving the patents in suit. (D.I. 83 at 14.) At that

⁴ Honeywell does not dispute that its counsel initiated and participated in the July 18, 2007 joint call to the court.

⁵ Honeywell does not contest that the July 18, 2007 letter to the court was filed jointly with the approval and at the behest of both parties.

time, Honeywell further informed Rohm and Haas that “Honeywell was prepared to resume the litigation unless [Rohm and Haas] was willing to negotiate a substantially different deal involving no up-front payment.” (*Id.* at 15.) Later, on July 25, 2007, Honeywell’s litigation counsel advised Rohm and Haas’ litigation counsel that she now “intended to advise the Court there was no settlement.” (*Id.*)

The next day, on July 26, 2007, Honeywell submitted a letter advising the court of what it characterized as a “settlement breakdown.” (D.I. 75.) In response, on July 27, 2007, Rohm and Haas submitted a letter stating that, in accord with the June 18 Letter, and contrary to Honeywell’s claims, the parties had in fact reached a “definite agreement” to settle the case. (D.I. 76.) Thereafter, on July 31, 2007, Rohm and Haas filed the instant motion to enforce the parties’ July 17, 2007 settlement agreement. (D.I. 77.) The parties completed briefing on the motion on September 4, 2007. (D.I. 83, 89).

III. THE PARTIES’ CONTENTIONS

Rohm and Haas contends that the parties entered into a binding agreement to settle this case and that agreement should be enforced. (D.I. 78 at 1.) Specifically, the plaintiff contends that, on July 17, 2007, the parties reached a settlement agreement, and that all of the terms of their settlement agreement were final, complete, and reduced to writing (as reflected in the July 17 Revision).⁶ (*Id.*) Rohm and Haas contends that the parties’ settlement is further evidenced by the July 18, 2007 joint call to the court, and the July 18, 2007 letter notifying the court that the parties had settled the case. (*Id.*) In addition, Rohm and Haas maintains that Honeywell’s refusal to honor their agreement, and

⁶ Rohm and Haas also contends that as part of the July 17 Revision, the parties agreed to dismiss this case and to enter into a patent licensing agreement. (D.I. 78 at 1.)

sign the settlement papers is “meritless” -- and is really an attempt by Honeywell to renegotiate the terms of the settlement it had previously agreed to. (*Id.*) Rohm and Haas further maintains that it should be awarded attorneys’ fees and costs, as a result of Honeywell’s refusal to sign the settlement agreement, and it having to bring this motion. (D.I. 78 at 1.)

Honeywell, on the other hand, opposes enforcement of the settlement agreement in this case on several grounds. First, it contends that it never intended to be bound by the July 17 Revision. (D.I. 83 at 17.) Second, it contends that the July 17 Revision is not an enforceable contract because the parties understood that it would not be binding until signed by the parties’ authorized representatives. (*Id.* at 1.) Third, Honeywell claims that, even if the July 17 Revision were binding, it should, nonetheless, be rescinded due to Rohm and Haas’ “fraudulent or negligent” failure to disclose certain information regarding reexaminations of the patents in suit. (*Id.* at 2.) Finally, Honeywell contends that the court should rescind the settlement agreement in this case because of its “legitimate mistake” concerning the status of the reexaminations of the patents in suit. (*Id.* at 26.)

IV. STANDARD OF REVIEW

“[A]n agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing.” *Read v. Baker*, 438 F. Supp. 732, 735 (D. Del. 1977). A district court has jurisdiction to enforce a settlement agreement entered into by litigants in a case pending before it. *See Leonard v. University of Delaware*, 204 F. Supp.2d 784, 786 (D. Del. 2002). A motion to enforce a settlement agreement closely resembles a motion for summary judgment and employs a similar standard of review. *See Tierman v. Deroe*, 923 F.2d 1024, 1031 (3d Cir. 1991). The court “must treat all the non-movant’s assertions as true, and when these assertions conflict with those of the

movant, the former must receive the benefit of the doubt.” *Id.* at 1032.

V. DISCUSSION

Here, after having considered the record in this case, the parties’ submissions, and the applicable law, the court concludes that the parties entered into an enforceable agreement to settle this case on July 17, 2007. Specifically, the court finds that: (1) the parties reached a definite and final settlement agreement on all essential terms on July 17, 2007; (2) their agreement was reduced to writing; and (3) their agreement constituted a binding contract under Delaware law. The court is not persuaded by the various grounds Honeywell asserts for refusing to settle this case, and for not, otherwise, complying with the terms of the parties’ settlement agreement. The court will, therefore, grant the plaintiff’s motion to enforce the parties’ settlement agreement.⁷

A. Whether the Parties Reached an Enforceable Agreement to Settle the Case

Delaware law favors the voluntary settlement of contested suits. *See Clark v. Ryan*, No. 628-K, 1992 WL 163443, at *5 (Del. Ch. June 17, 1992). When parties agree to settle a lawsuit, a binding contract is deemed to have been created. *See Corbesco, Inc. v. Local 542, Int’l Union of Operation Eng’rs*, 620 F. Supp. 1239, 1244 (D. Del. 1985). To determine whether a contract was formed, the parties’ “overt manifestation of assent-not subjective intent-controls” the result. *Id.* It is well-settled that the court “has jurisdiction to enforce a settlement agreement entered into by the parties in a case currently pending before it.” *Liberate Technologies, LLC v. Worldgate Communications, Inc.*, 133 F. Supp. 2d 357, 358 (D. Del. 2001); *see also The*

⁷ The court does not find that an award of attorneys’ fees and costs is appropriate in this case. Therefore, the plaintiff’s request for attorneys’ fees is denied.

Intellisource Group, Inc. v. Williams, C.A. No. 98-57-SLR, 1999 U.S. Dist. LEXIS 12446, at *10 (D. Del. Aug. 11, 1999). To do so, the court must determine whether the settlement agreement at issue is an enforceable contract under Delaware law. *See Intellisource*, 1999 U.S. Dist. LEXIS 12446, at *12. “Under Delaware law a contract ‘comes into existence if a reasonable person would conclude, based on the objective manifestations of assent and the surrounding circumstances, that the parties intended to be bound by their agreement on all essential terms.’” *Id.* (citation omitted).⁸ In other words, an enforceable contract exists where a reasonable person would conclude that the parties had reached a definite and final agreement on all essential terms. *Id.*

In this case, the court concludes that the parties reached a definite and final settlement agreement on all essential terms. The objective facts and circumstances of this case support this conclusion. Specifically, on May 1, 2007, the parties informed the court that they had reached an “agreement in principle” to settle the case. (D.I. 78 at 4.) On July 17, 2007, the plaintiff emailed a revised version of the parties’ proposed settlement agreement to the defendant. (D.I. 83 at 12.) In that email, the plaintiff referred to the revised version as the “*final version*.” (*Id.*) (emphasis added.) In its reply to the plaintiff’s July 17, 2007 email, the defendant responded: “[i]t looks like we have got this *finalized*.” (*Id.*) (emphasis added.) That next morning, the defendant sent an email to the plaintiff requesting that they jointly “call Judge Sleet . . . and tell him *we have reached a settlement*.” (D.I. 90 at Tab X) (emphasis added.) Later that morning, as agreed, the

⁸ *See also Loppert v. Windsortech, Inc.*, 865 A.2d 1282, 1285 (Del. Ch. 2004) (“whether a reasonable negotiator in the position of one asserting the existence of a contract would have concluded, in that setting, that the agreement reached constituted agreement on all of the terms that the parties themselves regarded as essential and thus that that agreement concluded the negotiations”).

parties placed a joint telephone call to the court, notifying the court that they had, indeed, reached a settlement agreement in the case. (*Id.* at 8.) In addition, after advising the court of their settlement by telephone, the parties also sent a letter to the court confirming that “*they have reached a settlement* in the above-referenced case.” (D.I. 74) (emphasis added.)

Based on the undisputed facts, the parties’ objective manifestations of assent, including the representations made to the court, and the surrounding circumstances, the court concludes that the parties entered into a final, complete and enforceable agreement to settle this case on July 17, 2007.⁹ Honeywell’s claim that it never agreed to be bound by the settlement agreement is at odds with the record in this case. Honeywell’s unequivocal statements to the court and its written communications with Rohm and Haas severely undermine this assertion.

The court is also not persuaded by Honeywell’s contention that “the parties positively agree[d] that there will be no binding contract until the formal document is executed.”¹⁰ (D.I. 83 at 17.) To the contrary, the parties’ conduct and the record in this case; especially Honeywell’s email of July 18, 2007 to Rohm and Haas stating that a settlement had been reached, and the statements made to the court confirming the same, belie Honeywell’s assertion. There is

⁹ The essential terms of the parties’ settlement are memorialized in writing in the July 17 Revision.

¹⁰ Relying on the Delaware Court of Chancery’s decision in *Transamerican Steamship Corp. v. Murphy*, Honeywell claims that the parties agreed that the settlement in this case would not be binding until the formal document was reviewed, approved, and signed by the parties’ authorized representatives. *Cf. Transamerican Steamship Corp. v. Murphy*, No. 10511, 1989 Del. Ch. LEXIS 13, at *3 (Del. Ch. Feb. 14, 1989) (“Where one of the contracting parties states that he will not be bound until an event such as the signing of a memorandum that might not otherwise be required - - - occurs, he will not be bound before that condition is satisfied, even though an agreement on all of the material terms of the contract have been reached.”) The court, however, does not agree that any such statement was made or otherwise agreed to in this case.

absolutely no evidence that the parties' settlement agreement was conditioned or contingent upon the signing of the formal settlement document. The undisputed facts and surrounding circumstances in this case indicate that a final, complete, and binding settlement agreement was created on July 17, 2007.

Furthermore, the court finds that Honeywell's counsel unequivocally agreed to and entered into a binding settlement agreement with Rohm and Haas, and that Honeywell is, thus, legally bound by that agreement. Under Delaware law, an "attorney of record in a pending action who agrees to a compromise of a case is presumed to have lawful authority to make such an agreement." *Clark*, 1992 WL 163443, at *5 (quoting *Aiken v. National Fire Safety Counsellors*, 127 A.2d 473, 475 (Del. Ch. 1956)). Moreover, once a party shows that an "attorney purported to unequivocally settle the case," the opposing party bears the burden of rebutting the attorney's agency.¹¹ *Aiken*, 127 A.2d at 475.

Here, the record reflects that Honeywell's counsel unequivocally agreed to and entered into a binding agreement to settle the case. On July 17, 2007, Rohm and Haas' counsel sent the "final version" of the proposed settlement agreement to Honeywell's counsel. (D.I. 83 at 12.) Honeywell raised no objections and made no corrections to that "final version" sent by Rohm and Haas on July 17, 2007. The next morning, Honeywell's counsel sent an email to Rohm and Haas' counsel requesting that they jointly "call Judge Sleet . . . and tell him *we have reached a settlement.*" (D.I. 90 at Tab X) (emphasis added.) Counsel then placed a joint telephone call to the court, during which they reported that they had, indeed, reached an agreement to settle the

¹¹ "[A] presumption in connection with proof in a civil action is not to be confused with the question of implied or apparent authority of an agent to bind his principal."

case. (*Id.* at 8.) In addition, after advising the court of their settlement by telephone, counsel for Rohm and Haas and Honeywell sent a letter to the court confirming that “*they [the parties] have reached a settlement* in the above-referenced case.” (D.I. 74) (emphasis added.) Given these facts, Honeywell will not be heard to claim that its counsel did not have authority to act and did not, in fact, act on its behalf.¹² Honeywell is, therefore, bound by its counsel’s agreement to settle this case. Thus, the parties’ July 17, 2007 written agreement constitutes a definite, final and enforceable settlement agreement under Delaware law.

B. Whether the Settlement Agreement Should Be Rescinded Due to Rohm and Haas’ Fraudulent or Negligent Misrepresentation

Next, Honeywell claims that the settlement agreement should be rescinded due to Rohm and Haas’ alleged “fraudulent or negligent” failure to disclose certain information regarding reexaminations of the patents in suit. The court disagrees. Rohm and Haas had no duty to disclose the information at issue to Honeywell.

To establish fraud, the party seeking rescission must demonstrate: (1) a false statement or misrepresentation; (2) the defendant knew the statement was false or made with reckless indifference to the truth; (3) the statement induced the plaintiff to enter the agreement; (4) the plaintiff’s reliance was reasonable; and (5) the plaintiff was injured as a result. *See Lord v. Souder*, 748 A.2d 393, 402 (Del. 2000). Mere silence, however, will not constitute fraud, since

¹² The court notes that Honeywell points to Article 16 of the settlement agreement, which states, “[T]he Parties hereto have caused this Agreement to be duly effective and delivered as of the date and year first above written by the signatures of their duly authorized representatives,” as well as “other exchanges between the parties during their lengthy settlement negotiations”. The court, however, is not persuaded. Absent more, this language does not clearly remove agency from or somehow rescind, after-the-fact, Honeywell’s attorneys’ lawful authority to reach and enter into the settlement agreement.

there is no general duty to disclose a material fact known by one party. *See Matter of Enstar Corp.*, 593 A.2d 543, 550 (Del. Ch. 1991). The duty to speak only arises: (1) from a contractual or fiduciary relationship, (2) when disclosures are necessary to prevent statements actually made from being misleading, or (3) “if [one party] knows that the other is about to enter into [a contract] under a mistake . . . and that the other, because of the relationship between them, the customs of the trade or other objective circumstances, would reasonably expect a disclosure of those facts.” *In re Student Fin. Corp.*, No. 03-507-JJF, 2004 WL 609329, at *5 (D. Del. Mar. 23, 2004). Similarly, negligent misrepresentation only differs from fraud in that a party’s knowledge of falsity or reckless disregard of the truth need not be proven. *See Homan v. Turoczy*, No. 19220, 2005 WL 2000756, at *13 (Del. Ch. Aug. 12, 2005).

Here, Rohm and Haas had no duty to disclose information regarding the July 12 Interview Summary to Honeywell. First, as Rohm and Haas correctly notes, the July 12 Interview Summary was a “non-event.” (D.I. 78 at 13.) The July 12 Interview Summary was not a final office action rejecting all claims. Moreover, as part of the July 12 Interview Summary, the PTO (and the issuing examiner) made no new decisions, agreements, rejections, or final actions regarding the patentability of any of the pending claims. In that interview, the PTO also gave no indication of its intent to amend its prior decision to invalidate the ‘128 patent. Besides, at the time of the July 12 Interview, Honeywell was (or should have been) fully aware that the ‘128 patent had already been invalidated, and that Rohm and Haas had filed amended claims on June 11, 2007 in response to the PTO’s rejection of the ‘128 patent. The status of the patent reexaminations remained virtually unchanged throughout the parties’ negotiations. The record reflects that there was simply no new information for Rohm and Haas to disclose, and therefore

no affirmative duty to do so.

Indeed, Honeywell agreed to settle on terms that specifically accounted for the contingencies of reexamination. Specifically, the agreement contains the following two provisions:

3.5 Reexamination. If, at any time during the Royalty Period, the Examiners assigned to the *Pending Reexaminations* issue final rejections of all the Asserted Claims of the patents in suit, Honeywell's obligation to pay any Royalty under this Agreement shall cease, and shall not resume unless and until such rejections are withdrawn by the Examiner or reversed on appeal to the Board of Patent Appeals or the Federal Circuit ...

...

3.7 Royalty Termination Provision. HONEYWELL's obligation to pay a Royalty hereunder shall cease on the earlier of the date that *Rohm and Haas* abandons the prosecution of the *Pending Reexaminations*, or the date there is a final non-appealable decision affirming the issuance of *Ex Parte Reexamination* Certificates in the *Pending Reexaminations* ...

(D.I. 89 at 7-8) (emphasis added.) Honeywell will not be permitted to use the litigative process as a lever to exact concessions not otherwise obtainable at the bargaining table.

Thus, based on the facts and circumstances before the court, Honeywell's allegations of fraud or negligent misrepresentation as grounds for rescinding the parties' settlement agreement must fail.

C. **Whether the Settlement Agreement Should Be Rescinded Due to Honeywell's Unilateral Mistake**

Likewise, Honeywell's claim that the settlement agreement should be rescinded due to unilateral mistake also fails. A party to a contract may rescind a contract due to unilateral mistake if: (1) enforcement of the agreement would be unconscionable; (2) the mistake relates to

the substance of the consideration; (3) the mistake occurred regardless of the exercise of ordinary care; and (4) it is possible to place the other party in the status quo. *See In re Enstar Corp.*, 604 A.2d 404, 411 (Del. 1992). A contract is unconscionable where there is an absence of meaningful choice, and the contract terms unreasonably favor one of the parties. *See Tulowitzki v. Atl. Richfield Co.*, 396 A.2d 956, 960 (Del. 1978). Superior bargaining power alone does not permit a finding of unconscionability or unfairness. *Id.* Rather, a contract is unconscionable only when no rational or reasonable person would enter into it. *Id.*

Under Delaware law, the settlement agreement at issue in this case is not unconscionable.¹³ First, as the plaintiff correctly points out, the settlement agreement was purposefully entered into by sophisticated parties, presumably to avoid significant risk and expense in litigating. Second, this agreement was the product of months of intensive negotiations, involving both in-house and outside counsel for both parties. Third, there is no evidence that one party enjoyed superior bargaining power over the other, or that any unfairness existed between the parties that would give rise to even a hint that the agreement here is somehow unconscionable. Based on this record, the court finds that the settlement agreement (and the enforcement thereof) is not unconscionable as a matter of law. Honeywell's allegations, therefore, do not justify rescission of the settlement agreement due to a unilateral mistake.

D. Rohm and Haas' Request for Attorneys' Fees and Costs

"Attorneys' fees and costs are not ordinarily recoverable and unless specifically authorized by statute are awarded only in extraordinary cases." *Hobbs v. American Investors*

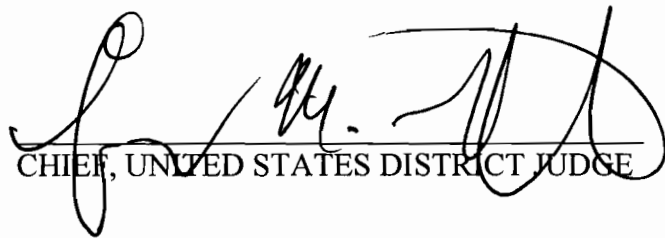
¹³ The other grounds for rescinding an agreement on the bases of unilateral mistake are not applicable to the facts presented in this case and will therefore not be discussed.

Mgt., Inc., 576 F.2d 29, 35 (3d Cir. 1978). There are, however, exceptions to this rule. Specifically, a court has “the power to assess attorneys’ fees for the willful disobedience of a court order as part of the fine to be levied on a defendant . . . and the authority to award attorneys’ fees when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Id.* The court finds that Honeywell’s conduct in this case does not rise to such a level. Therefore, the plaintiff’s request for attorneys’ fees and costs is denied.

VI. CONCLUSION

For the foregoing reasons the plaintiff’s motion to enforce the settlement agreement (D.I. 77) is granted in part and denied in part.

Dated: April 16, 2009



CHIEF, UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROHM AND HAAS ELECTRONIC
MATERIALS LLC,

Plaintiff,

v.

HONEYWELL INTERNATIONAL, INC.,

Defendant.

C.A. No. 06-297-GMS

ORDER

For the reasons stated in the court's Memorandum of this same date, IT IS HEREBY
ORDERED that:

1. The plaintiff's motion to enforce that settlement agreement (D.I. 77) is
GRANTED IN PART and DENIED IN PART.
2. The defendant is ordered to execute the July 17, 2007 settlement agreement, as
agreed to and in accord with the parties' July 18, 2007 telephone call to the court,
and their July 18, 2007 letter to the court.
3. The parties' shall file the agreed-upon stipulation of dismissal of this case, in
accordance with the July 17, 2007 settlement agreement.
4. The plaintiff's request for an award of attorneys' fees and costs associated with
bringing this motion is DENIED.

Dated: April 16, 2009


CHIEF, UNITED STATES DISTRICT JUDGE