ordinary principles of state contract law. *McCoy* v. *Mitsuboshi Cutlery, Inc.,* 67 F.3d 917, 920 (Fed. Cir. 1995). California law provides that ''[t]he language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.'' Cal. Civ. Code § 1638. In addition, ''[w]hen a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; . . . .'' Cal. Civ. Code § 1639. Thus, a party's ''subjective intent or understanding cannot be used to establish an intent independent from the express written terms of the agreement.'' *Sunniland Fruit, Inc.* v. *Verni,* 233 Cal. App. 3d 892, 898, 284 Cal. Rptr. 824 (1991).

It is well established that the interpretation of an unambiguous contract is solely a question of law, unless the interpretation turns on the credibility of extrinsic evidence. *Brobeck, Phleger & Harrison* v. *Telex Corp.,* 602 F.2d 866, 871–72 (9th Cir. 1979) (applying California law; citation omitted); *Parsons* v. *Bristol Development Co.,* 62 Cal. 2d 861, 865 (1965). Extrinsic evidence is not admissible to vary the terms of the contract, but only to prove a meaning to which the language of the contract is ''reasonably susceptible.'' *Brobeck,* 602 F.2d at 871–72; *Sunniland Fruit,* 233 Cal. App. 3d at 898. If the court finds that the language of the contract is unambiguous and not reasonably susceptible to the meaning suggested by the extrinsic evidence, then the case is particularly amenable to disposal on summary judgment because interpretation of the unambiguous contract is solely a question of law. *Brobeck,* 602 F.2d at 871–72; *Government Systems Advisors, Inc.* v. *United States,* 847 F.2d 811, 812 n.1 (Fed. Cir. 1988) (noting that under Federal Circuit law ''[c]ontract interpretation is a matter of law and thus amenable to decision on summary judgment.'').

Thus, California courts enforce unambiguous contracts containing exculpatory provisions similar to that contained in the 3D–EOS License Agreement according to their terms. For example, in *Appalachian Ins. Co.* v. *McDonnell Douglas Corp.,* 214 Cal. App. 1, 262 Cal. Rptr. 716 (1989), Western Union entered into a contract with McDonnell Douglas pursuant to which McDonnell was to manufacture an upper stage rocket for a Western Union communications satellite. The contract contained a provision stating that ''under no circumstances will [McDonnell] be liable to Purchaser under or in connection with this Agreement, for any tort, negligence, strict liability, contract or other legal or equitable theory, ...'' *Id.* at 12. In addition, the parties agreed to extend their inter-party waiver of liability ''to their respective contractors and subcontractors . . .''

Id. at 14. After the rocket failed, five insurance companies that paid a portion of the resulting claim filed suit against McDonnell and two of the subcontractors. The trial court granted summary adjudication in favor of the defendants, based on exculpatory clauses in the contract between the insured and McDonnell, and the court of appeals affirmed. Noting that ''[t]he language of the instrument must govern its interpretation if it is clear and explicit,'' the court rejected the plaintiffs' argument that the exculpatory provision regarding the subcontractors should be construed to reflect the intent set forth in the contrary provision of a related agreement:

''To ignore the differences in the language used in the two agreements would violate a fundamental rule of contract interpretation, that is, the words of a contract, if clear, must govern its interpretation. The words of the McDonnell Douglas/Western Union contract are clear; they unambiguously preclude a suit by Western Union against McDonnell Douglas' respective contractors and subcontractors, i.e., against Morton Thiokol and Hitco.''

Id. at 18. Similarly, here, EOS has unambiguously agreed not to sue 3D under the licensed patents based on 3D's manufacturing and sales activities at any time, for any reason. Under California law, the Court must enforce the contract. Accordingly, EOS cannot assert its patent infringement claims against 3D based upon 3D's manufacture and sale of the accused laser sintering systems.

C. Because EOS May Not Sue 3D Under the Licensed 3D Patents, EOS Cannot Obtain Damages Under Those Patents for any Manufacturing or Sales of the Accused Laser Sintering Systems That Occurred After August 31, 2001, the Date That DTM was Merged Into 3D

The undisputed evidence shows that on August 31, 2001, 3D filed with the California Secretary of State an Agreement of Merger between 3D and DTM. (SUF No. 7; Ex. 3) 3D also filed a Certificate of Approval of Agreement of Merger executed by the CEO and President and Secretary of 3D, and a Certificate of Approval of Agreement of Merger executed by the CEO and President and Secretary of DTM. (SUF. No. 7; Ex. 3) Pursuant to these filings, DTM was merged into 3D as of August 31, 2001, with 3D as the surviving entity. (SUF No. 8) The legal effect of these filings was that DTM's corporate existence was extinguished as of August 31, 2001.[2] Cal. Corp. Code §§ 1103, 1107(a); *Asher v. Pacific Power and Light Co.,* 249 F. Supp. 671, 677 (N.D. Cal. 1965). In recognition of these facts, this Court ruled on October 17 that ''[o]n August 31, 2001, 3D merged DTM into 3D. *DTM now no longer exists.*'' (Ex. 4, at p. 52) Thus, the Court need not revisit this issue, because its prior ruling is entitled to finality as law of the case. *Magnesystems,* 933 F. Supp. at 948–49.

As a result of the merger, 3D succeeded to the assets of DTM, including its laser sintering manufacturing and sales operations. Cal. Corp. Code § 1107(a). EOS cannot possibly fabricate a genuine issue as to the fact that it is now 3D, *not* DTM, that is making and selling the accused laser sintering systems, because the merger extinguished the existence of DTM *as a matter of law.* Cal. Corp. Code ¶ 1107(a). Accordingly, EOS is not entitled to obtain any damages or other relief based on the conduct of 3D in manufacturing and selling the accused laser sintering systems after August 31, 2001, because EOS agreed in paragraph 2.1(a) of the License Agreement not to assert any of the licensed patents against 3D ''based on the manufacture, use, sale or offer for sale of any apparatus made or sold by [3D] under the Licensed Patents, at any time, for any reason.'' (Ex. 1, ¶ 2.1(a), at p. 31)

[2] California law governs the effect of the merger, because the surviving entity–3D–is a California corporation. Cal. Corp. Code § 1108(b). (Shotting Decl. ¶ 4)

V. Conclusion

For the reasons set forth above, the Court should grant 3D's motion for summary adjudication that EOS may recover no damages or other relief as against 3D or nominal defendant DTM under the licensed 3D patents based upon the manufacture, use, sale or offer for sale of any of the accused laser sintering systems that occurs after August 31, 2001.

Dated: November 12, 2001.

Thomas, Walton & Graves LLB.

Philip J. Graves,

Attorneys for Defendants 3D Systems, Inc., DTM Corporation, and Compression, a division of Moll Industries, Inc.

[FR Doc. 02–4699 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 12, 2001, Chiragene, Inc., Technology Centre of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances to supply their customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 13, 2002.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–5792 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substance; Notice of Registration

By Notice dated July 13, 2001, and published in the **Federal Register** on July 23, 2001, (66 FR 38321), High Standard Products Corp., 14441 Beach Boulevard, #225, Westminster, California 92683, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture analytical reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of High Standard Products Corp. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated High Standard Products Corp. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–5794 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 31, 2001, ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by renewal and by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Fentanyl (9801)	II

The firm plans to bulk manufacture amphetamine, methamphetamine, and fentanyl for customers and to bulk manufacture the phenylacetone for the manufacture of the amphetamine. The bulk 2,5-dimethoxyamphetamine will be used for conversion into a non-controlled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 13, 2002.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–5793 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Market Street Market; Denial of Application

On or about August 27, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Market Street Market (MSM), located in Chehalis, Washington, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated November 2, 1998, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified MSM that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received September 6, 2001, as indicated by the signed postal return receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that MSM is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the