

United States District Court,
S.D. Ohio, Western Division.

WORKER AUTOMATION, INC,
Plaintiff/Counterclaim Defendant.

v.

GENESIS SYSTEMS GROUP,
Defendant/Counterclaim Plaintiff.

No. C-3-02-241

Nov. 14, 2003.

Barry S. Galen, Attorney at Law, Dayton, OH, for Plaintiff/Counterclaim Defendant.

Joel Robert Chambers, Theodore R. Remaklus, Wood, Herron & Evans, Cincinnati, OH, Jeffrey D. Harty, Michael G. Voorhees, R. Scott Johnson, McKee Voorhees & Sease PLC, Des Moines, IA, for Defendant/Counterclaim Plaintiff.

ENTRY AND ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATIONS (Doc. # 47) AND THE ASSOCIATED ERRATA (Doc. # 48)

THOMAS M. ROSE, District Judge.

The Court has conducted a *de novo* review of the Report and Recommendations of United States Magistrate Judge Sharon L. Ovington (Doc. # 47) and the associated Errata (Doc. # 48). This case was originally referred pursuant to 28 U.S.C. s. 636(b).

The Report and Recommendations were filed on October 21, 2003, and the Errata on October 28, 2003. Due to an error in the e-mail address of Worker Automation's Counsel, the Report and Recommendation was not electronically served on said Counsel when filed. The Report and Recommendation was however served on Counsel at the Final Pretrial Conference held in chambers on October 23, 2003. Based upon the October 23rd date, the time for filing objections has now passed.

Noting that no objections to the Report and Recommendations have been filed and that the time for filing such objections under Fed.R.Civ.P. 72(b) has expired, the Court hereby ADOPTS said Report and Recommendations.

It is therefore ORDERED that

1. The Report and Recommendations (Doc. # 47) filed on October 21, 2003, and the associated Errata (Doc. # 48) are ADOPTED; and

2. Genesis Systems Group's Motion for Partial Summary Judgment of Literal Infringement (Doc. # 31) is GRANTED and each and every element in Claim 1 of United States Patent Number 5,873,569 is found in Worker Automation, Inc.'s accused workpiece positioner known as ARCworker FM in violation of 35 U.S.C. s. 271(a);

3. Genesis Systems Group's Motion for Partial Summary Judgment of No Invalidity (Doc. # 30) is GRANTED and United States Patent Number 5,873,569 is not invalid under 35 U.S.C. s.s. 101, 102, and 103;

4. Genesis Systems Group's Motion for Partial Summary Judgment of No Invalidity under 35 U.S.C. s. 112 (Doc. # 32) is GRANTED and United States Patent Number 5,873,569 is not invalid under 35 U.S.C. s. 112; and

5. Genesis Systems Group's Motion for Partial Summary Judgment of No Enforceability for Inequitable Conduct (Doc. # 33) is GRANTED and United States Patent Number 5,873,569 is not unenforceable due to inequitable conduct.

The Court notes that Genesis Systems Group has withdrawn its claim for willful infringement leaving no liability issues to be tried. The only remaining issue is damages. Unless the Parties are able to reach an agreed settlement regarding damages and inform the Court thereof, the telephone conference currently scheduled for November 20, 2003, at 3:30 p.m. will be conducted as scheduled.

DONE and ORDERED.

S.D.Ohio,2003.

Worker Automation, Inc. v. Genesis Systems Group

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