

United States District Court,  
D. Maryland, Southern Division.

**STAR SCIENTIFIC, INC,**  
Plaintiff.

v.

**R.J. REYNOLDS TOBACCO COMPANY,**  
Defendant.

**March 31, 2004.**

Richard McMillan, Jr., Jonathan H. Pittman, Kathryn D. Kirmayer, Mark Michael Supko, Crowell and Moring LLP, Washington, DC, Andrew Jay Graham, Kramon and Graham PA, Baltimore, MD, for Plaintiff.

Barry Jay Rosenthal, Bromberg Rosenthal LLP, Leonard Samuel Goodman, Venable LLP, Rockville, MD, Dominic P. Zanfardino, Howard S. Michael, Justin B. Rand, Richard A. Kaplan, Robert G. Pluta, Abby L. Lernek, Cynthia Ann Homan, Danielle Anne Phillip, Harold V. Johnson, Jeffrey M. Nichols, Jerold A. Jacover, K. Shannon Mrksich, Patricia Leahu, Ralph Joseph Gabric, Robert Mallin, Brinks Hofer Gilson and Lione, Chicago, IL, August J. Borschke, Rj Reynolds Tobacco Co, Winston Salem, NC, David B. Hamilton, Womble Carlyle Sandridge and Rice PLLC, Baltimore, MD, for Defendants.

### ***ORDER***

**ALEXANDER WILLIAMS, JR., District Judge.**

On February 10, 2004, the Court received a Report and Recommendation from Special Master Philip G. Hampton [Paper No. 422] regarding Defendant R.J. Reynolds Tobacco Company's ("R.J.Reynolds") Motion for Summary Judgment No. 2: No Direct Infringement of the Patents-In-Suit [Paper No. 272]. The Special Master recommended that the Court enter an order denying R.J. Reynolds's motion for summary judgment.

After *de novo* review of the entire record, including the Special Master's Report and Recommendation, Star Scientific's filed objections [431], R.J. Reynolds's filed objection [433], Star Scientific's response to R.J. Reynolds's filed objection [444], and R.J. Reynolds's response to Star Scientific's filed objections [447], the Court finds that the Special Master fully considered the pleadings and supporting documents and carefully applied the law to the relevant facts. The Court agrees with the Special Master that since Star Scientific's evidence establishes the existence of direct infringement, as well as disputed issues of material fact, R.J. Reynold's motion for summary judgment regarding Star Scientific's testing of curing barns should be denied. The Court further agrees with the Special Master that since Star Scientific has presented evidence that supports its claim of direct infringement and presented evidence showing that material facts are in dispute, R.J. Reynolds has not met its burden of establishing that summary judgment of non-infringement is warranted. Finally, the Court agrees with the Special master that Star failed to make out a colorable case for the application of 35 U.S.C. s. 295, and that Star Scientific's request under s. 295 to shift the burden of proof to R.J. Reynolds should be denied.

Therefore, IT IS this 30th day of March, 2004, by the United States District Court for the District of Maryland, hereby **ORDERED**:

1. That the Report and Recommendation dated February 10, 2004[422] BE, and the same hereby IS, **ADOPTED** *in toto*; AND;
2. Defendant R.J. Reynolds Tobacco Company's ("R.J.Reynolds") Motion for Summary Judgment No. 2: No Direct Infringement of the Patents-In-Suit [Paper No. 272] BE, and the same hereby IS, **DENIED**; AND;
3. That the Clerk of the Court mail copies of this Order to all counsel of record.

D.Md.,2004.  
Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.

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