

United States District Court,
W.D. Michigan, Southern Division.

THE SHANE GROUP, INC,
Plaintiff.

v.

BCI BURKE COMPANY, L.L.C,
Defendant.

No. 1:02-CV-58

Aug. 12, 2002.

G. Thomas Williams, McGarry Bair LLP, Grand Rapids, MI, Thomas N. Young, Young & Basile, P.C., Troy, MI, for Plaintiff.

Richard A. Gaffin, Miller, Canfield, Paddock & Stone, PLC, Grand Rapids, MI, for Defendant/Counter-Claimant.

OPINION

GORDON J. QUIST, District Judge.

Plaintiff, The Shane Group, Inc. ("Shane Group"), has sued Defendant, BCI Burke Company, L.L.C. ("Burke"), alleging that BCI is infringing Shane Group's patent for a playground structural member. Now before the Court is Shane Group's motion for preliminary injunction.

I. Facts

Shane Group is the assignee of United States Patent No. 5,557,900 (the "'900 Patent"), which describes a "Playground Structural Member Using Recycled Plastic." The '900 Patent was issued by the United States Patent and Trademark Office on September 24, 1996. The patented invention is a structural support consisting of a steel tube encased within an envelope of synthetic plastic recycled material with an enlarged spherical-shaped head. The support contains a clamp and bracket which are used to support various pieces of playground equipment such as slides or tubes. Recreation Creations, Inc. ("RCI"), a subsidiary of Shane Group, manufactures and sells playground equipment, including support posts described in the '900 patent.

Burke is a competitor of RCI and markets and sells a support post referred to as the Plasticore product, which is similar to the RCI support post. The Plasticore product consists of a steel tube encased in a cylindrical sleeve of recycled plastic, with one end being open and the other end containing a hemispherical aluminum cap. The tube contains a clamshell clamp with a socket for receiving a pipe or other element of playground equipment. Shane Group asserts that Burke's Plasticore product infringes the '900 Patent.

II. Preliminary Injunction Standard

Shane Group seeks a preliminary injunction prohibiting Burke from further infringing the '900 Patent pursuant to 35 U.S.C. s. 283, which states:

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.

A court must consider and weigh four factors in determining whether a preliminary injunction is appropriate: "(1) the movant's reasonable likelihood of success on the merits; (2) the irreparable harm the movant will suffer if preliminary relief is not granted; (3) the balance of hardships tipping in its favor; and (4) the adverse impact on the public interest." *Reebok Int'l Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1555 (Fed.Cir.1994). To be entitled to a preliminary injunction, the movant must establish both likelihood of success and irreparable harm. *Vehicular Techs. Corp. v. Titan Wheel Int'l, Inc.*, 141 F.3d 1084, 1088 (Fed.Cir.1998). In a patent case, a plaintiff must demonstrate likelihood of success by showing, in light of the presumptions and burdens applicable in a trial on the merits, that it will likely prove infringement and that its infringement claim will withstand any challenge to validity. *Id.*

III. Analysis

A. Likelihood of Success

Shane Group asserts that it has established a reasonable likelihood of success on the merits because the Burke Plasticore product contains all six elements of Claim 1 of the '900 Patent: (1) a "playground structural member" including a "rigid elongated metal tube having an upper end, a lower end, an axis and an outer surface"; (2) an "envelope formed of recycled synthetic plastic material encasing said tube throughout its length"; (3) "an enlarged head adjacent said tube upper end"; (4) uniform thickness of the envelope; (5) "a bracket circumscribing the envelope cylindrical outer surface ... including a contractible clamp"; and (6) "an attachment tab". (Pl.'s Br. Supp. at 7-8.) Shane Group contends that the accused product infringes the '900 Patent both literally and under the doctrine of equivalents. Burke argues that Shane Group cannot establish likelihood of success because Shane Group cannot prove infringement and there are substantial questions regarding the enforceability of the '900 Patent. Burke also argues that Shane Group cannot demonstrate irreparable harm.

1. Infringement

In determining an infringement claim a court must engage in a two-step analysis: (1) "the claims must be correctly construed to determine the scope of the claims"; and (2) "the claims must be compared to the accused device." *Kahn v. Gen. Motors Corp.*, 135 F.3d 1472, 1476 (Fed.Cir.1998). In construing a claim, a court must look first to the language of the claim. "[T]he analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to 'particularly point[] out and distinctly claim[] the subject matter which the patentee regards as his invention.' " *Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1331 (Fed.Cir.2001)(quoting 35 U.S.C. s. 112, para. 2). The court may refer to the other intrinsic evidence-the specification and prosecution history, if in evidence-"[t]o acquire proper context to understand claim terms." *Envirco Corp. v. Clestra Cleanroom, Inc.*, 209 F.3d 1360, 1365 (Fed.Cir.2000). If the claim language is clear on its face, the other intrinsic evidence should be considered only to determine whether a deviation from the clear language is specified,

such as where the patentee has chosen to be his own lexicographer and uses terms in a manner different from their ordinary meaning or if a patentee has relinquished a potential claim in an amendment to the claim or in an argument to overcome or distinguish a reference. *Interactive Gift Express*, 256 F.3d at 1331. If intrinsic evidence is inadequate to permit construction, the court may consider extrinsic evidence, such as expert and inventor testimony, dictionaries, and learned treatises. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed.Cir.1995).

Claim 1, which provides the basis for dispute, states:

A playground structural member characterized by its economy of manufacture, durability and color fastness comprising, in combination, a rigid elongated metal tube having an upper end, a lower end, an axis and an outer surface, an envelope formed of recycled synthetic plastic material encasing said tube throughout its length and outer surface, said envelope having an upper end, a lower end and an outer surface, said envelope upper end comprising an enlarged head adjacent said tube upper end, the envelope wall thickness as defined by said tube outer surface and said envelope outer surface between said head and said envelope lower end being substantially uniform and said envelope outer surface between said head and envelope lower end being cylindrical, a bracket circumscribing said envelope cylindrical outer surface, said bracket including a circumferentially contractible clamp, operating means selectively contracting said clamp for firmly mounting said bracket upon said envelope, and an attachment tab mounted upon said bracket.

(900 Patent Claim 1, *Shaneour Aff. Ex. S1*, attached to Pl.'s Br. Supp.) The two issues are: (1) whether the claim is limited to a unitary sleeve or envelope consisting of a plastic cylinder and enlarged head, in which case there would not be literal infringement, or whether the claim includes a two-piece covering consisting of a plastic sleeve and separate enlarged head as in the case of Burke's product; and (2) whether the "operating means" element of the bracket is limited to the structure described in the specification pursuant to 35 U.S.C. 112, para. 6.

a. The Envelope

The relevant language of the claim pertaining to the first issue is "**an envelope formed of recycled synthetic plastic material encasing said tube throughout its length and outer surface, said envelope having an upper end, a lower end and an outer surface, said envelope upper end comprising an enlarged head adjacent said tube upper end.**" There is no indication that the term "envelope" was intended to have a novel meaning or that "envelope" is a term of art subject to various meanings. Thus, the Court must presume that the ordinary meaning of the term applies and may look to the dictionary definition of the term. *Teleflex, Inc. v. Ficosa N. Am. Corp.*, No. 01-1372, 2002 WL 1358720, at (Fed. Cir. June 21, 2002).

The word "envelope" means "something that envelops; a wrapper, integument, or surrounding cover." *The Random House Dictionary of the English Language* 650 (7th ed.1987). To "envelop" means "to wrap up in or as in a covering." *Id.* While the claim does not expressly state that the envelope is a single piece which includes the plastic sleeve and the enlarged head, the description of the envelope indicates that the enlarged head is an integrated part of the envelope, i.e., a single covering. The "envelope" consists entirely of "recycled synthetic plastic material," and has an upper and lower end, with the upper end consisting of "an enlarged head". The claim thus describes a single plastic piece which covers the entire length of the tube. This construction is consistent with the drawing and specification. Element 14 of the drawing depicts the envelope, which includes both the plastic sleeve, or lower end (26), and the enlarged plastic head (16),

which is part of the upper end (22). The plastic covering is shown as a continuous piece. Similarly, the specification, which states that the "synthetic plastic envelope 14 ... usually includes an enlarged head formed by the plastic material which may be in the illustrated spheroid configuration," suggests that the enlarged head is integral part of the envelope. The specification also states that "[t]he synthetic plastic envelope 14 includes an upper end 22, upon which the head 16 is defined." Therefore, the Court concludes that the enlarged plastic head is part of the envelope, and Shane Group cannot demonstrate literal infringement.

Shane Group argues that even if Burke's separate-head post does not literally infringe the '900 Patent, it infringes under the doctrine of equivalents. Burke contends, however, that prosecution history estoppel precludes Shane Group from relying on the doctrine of equivalents. The Supreme Court has described prosecution history estoppel as follows:

In some cases the Patent and Trademark Office (PTO) may have rejected an earlier version of the patent application on the ground that a claim does not meet a statutory requirement for patentability. When the patentee responds to the rejection by narrowing his claims, this prosecution history estops him from later arguing that the subject matter covered by the original, broader claim was nothing more than an equivalent. Competitors may rely on the estoppel to ensure that their own devices will not be found to infringe by equivalence.

Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 122 S.Ct. 1831, 1835 (2002). Thus, "[w]here the original application once embraced the purported equivalent but the patentee narrowed his claims to obtain the patent or to protect its validity, the patentee cannot assert that he lacked the words to describe the subject matter in question." *Id.* at 1839.

In *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 117 S.Ct. 1040 (1997), the Supreme Court held that in considering whether prosecution history estoppel applies, a court must examine the reason for the applicant's surrender of subject matter during patent prosecution. *Id.* at 30-31, 117 S.Ct. at 1049. The Court held that where there is no indication that the Patent and Trademark Office requested a change with the intent to limit a range of equivalents, prosecution history estoppel should not apply. *Id.* at 32, 117 S.Ct. at 1050. In *Festo*, the Court held that amendments made to satisfy any requirement of the Patent Act, as well as amendments made to avoid prior art, may give rise to estoppel. The inquiry in determining whether an amendment may estop the patentee is whether the amendment is cosmetic or whether it narrows the scope of the patent. 122 S.Ct. at 1840. Even though an amendment may support an estoppel, a court should not consider the amendment a complete bar to all equivalents but should measure the breadth of the estoppel by examining what was surrendered during the prosecution. *Id.* at 1841. An amendment does not "foreclose claims of equivalence for aspects of the invention that have only a peripheral relation to the reason the amendment was submitted." *Id.*

As originally filed, the '900 Patent application contained two independent claims. Claim 1 described a structural member consisting of a metal core encased in a sleeve of recycled plastic, and Claim 8 described a structural member consisting of a metal core encased in a sleeve of recycled plastic with an enlarged head. (Patent Application, Abstract of the Disclosure at 9-10, Def.'s Br. Opp'n Ex. B.1.) Claims 12 and 13 described the bracket. (*Id.* at 10-11.) The Examiner rejected original claims 1-11 and 14-17 in view of U.S. Patent No. 3,205,626 (the "Attenberger '626 Patent"), which disclosed a structural member consisting of a steel core and a plastic envelope encasing the length of the steel core, with the upper end region of the envelope defining an enlarged head. (Examiner's Action at 2, Def.'s Br. Opp'n Ex. B.3.) The Attenberger

'626 Patent indicated that the enlarged head was separately attached rather than part of the plastic sleeve. While the Examiner observed that the Attenberger '626 Patent did not indicate that the envelope was made of recycled plastic materials, he concluded that the use of recycled plastic in place of conventional plastic materials would have been an obvious choice of design by one of ordinary skill in the art. In addition, the Examiner noted that the spheroid configuration of the head in the '900 Patent would have been a matter of design choice. The Examiner did indicate, however, that Claims 12 and 13 would be allowable if rewritten in independent form including all of the limitations of the base claim (Claim 8). The applicant then cancelled claims 1-7 and 12 and combined Claims 12 and 13 with Claim 8, producing the present Claim 1.

Shane Group contends that the amendment cannot establish prosecution history estoppel with regard to a non-integral enlarged head because the amendment was made to avoid the prior art by including a bracket on the envelope, not by claiming an envelope with a unitary enlarged head. The Court agrees. In this case, the amendment was made to avoid the Attenberger '626 Patent by adding the limitations relating to the bracket in Claim 12 to the base claim in original Claim 8, not by adding language indicating a one-piece envelope construction, which was already included in original Claim 8. In other words, the Examiner was not concerned with whether the '900 Patent disclosed a one-piece envelope but with whether it disclosed a steel core and plastic envelope with a bracket. Thus, the reason for the amendment "bear[s] no more than a tangential relation to the equivalent in question." *Id.* at 1842.

Although an accused product may not literally infringe a patent, infringement may still be found under the doctrine of equivalents. "To infringe a claim under the doctrine of equivalents, an accused device must include an equivalent for each literally absent claim limitation." *Toro Co. v. White Consolidated Indus., Inc.*, 266 F.3d 1367, 1370 (Fed.Cir.2001). Equivalence is determined by the "insubstantial differences" test. *Roton Barrier, Inc. v. Stanley Works*, 79 F.3d 1112, 1126 (Fed.Cir.1996). A difference may be insubstantial where the infringer simply separates one component of the claimed product into two components. *Toro Co.*, 266 F.3d at 1370.

Shane Group contends that Burke's separate metal post cap is equivalent to the one-piece enlarged plastic head described in the '900 Patent. As the Court observed at oral argument, however, this argument ignores the fact that the '900 Patent criticizes the use of metal in playground support components. In particular, the '900 Patent states that the objects of the invention include "provid[ing] a playground structural member ... having a safe 'soft' feel and covering which utilizes recyclable synthetic plastic materials" and which is "less likely to injure playing children than steel surfaced playground equipment." The specification also states that the plastic envelope "is also 'soft' to the feel as compared to a steel column, and because of the softer material and limited compressibility of the envelope, the likelihood of children being injured by encounter with the structural member is reduced." Furthermore, the specification states that the envelope "will have a softer feel than a structural member formed of steel, and is capable of absorbing limited impact rendering the structural member preferable in instances wherein children's heads and limbs may engage the member." The statements in the '900 Patent criticizing the use of metal components in playground support members are similar to the statements made in the patent-in-issue in *Dawn Equipment Co. v. Kentucky Farms Inc.*, 140 F.3d 1009 (Fed.Cir.1998). There, the patent-in-issue for a device for repositioning farm implements stated that products using the technique of the accused device were time consuming and prone to misadjustment. The court held that "[t]hese statements in the patent alone strongly suggest, if not mandate, judgment in" the defendant's favor. *Id.* at 1016. In this case, the statements in the '900 Patent are sufficient to defeat any claim of equivalence because the aluminum head poses the same risks and problems the '900 Patent intended to avoid. FN1 Accordingly, Shane Group cannot show likelihood of success.

FN1. At oral argument, Shane Group's counsel argued that the language in the specification disavowing use of metal in playground supports should be disregarded because the recycled plastic used in the post covered by the '900 Patent is just as hard as metal and would cause a similar injury. As the Court pointed out, however, Shane Group (or its assignor) chose the language of the patent and therefore must live with it.

b. The Bracket

Burke also contends that Shane Group cannot establish infringement because Claim 1 uses means plus function language. Burke contends that pursuant to 35 U.S.C. s. 112, para. 6, the operating means must be limited to the structure described in the specification or its reasonable equivalents. Burke points out that the clamp in the '900 Patent is shown as having two semi-circular elements with ears which are tightened by means of a bolt and a nut, whereas Burke's product contains a hinged clamp drawn together by a tamper-resistant Allen screw. Burke contends that if the term operating means is limited to the structure described in the specification, literal infringement is avoided because the Burke clamp is different from the structure shown in the specifications.

A claim limitation may be expressed in means-plus-function format pursuant to 35 U.S.C. s. 112, para. 6, which states:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Infringement under this section requires that "the relevant structure in the accused device perform the identical function recited in the claim and be identical or equivalent to the corresponding structure in the specification." *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1267 (Fed.Cir.1999). The test is "whether the 'way' the assertedly substitute structure performs the claimed function, and the 'result' of that performance, is substantially different from the 'way' the claimed function is performed by the 'corresponding structure, acts, or materials described in the specification,' or its 'result.'" *Id.* In determining the scope of a claim under 35 U.S.C. s. 112, para. 6, the first step is to identify the claimed function. *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1324 (Fed.Cir.2001). The function of a means-plus-function limitation includes only those limitations set forth in the claim and may not be narrowed or broadened beyond the claim language. *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, No. 01-1198, 2002 WL 1478487, at (Fed.Cir. July 11, 2002). The second step involves identification of the structure, if any, disclosed in the specifications and equivalents thereof that perform the same function. *Telemac Cellular Corp.*, 247 F.3d at 1324. "In order to qualify as corresponding, the structure must not only perform the claimed function, but the specification must clearly associate the structure with performance of the function." *Cardiac Pacemakers, Inc.*, 2002 WL 1478487, at *5.

The relevant language here is "operating means selectively contracting said clamp." This language indicates that the function is the means for selectively contracting the clamp or bracket. The structure which corresponds to the claimed function of means for contracting the clamp is the bolt and nuts shown as 36 and 38 in the specification. In contrast, the bracket on Burke's product is contracted with a single Allen screw. Therefore, there is no literal infringement because Burke's product employs a different system for contracting the clamp. Shane Group has demonstrated that the Allen screw used in Burke's product is

equivalent to the nut and bolt combination used in the '900 Patent. FN2 (Shaneour 6/28/02 Aff. para. 3, Pl.'s Reply Br. Ex. 6.) Burke does not dispute this point. However, because the Court has already found that Shane Group cannot show infringement with respect to the enlarged head element, Shane Group cannot demonstrate likelihood of success.

FN2. Burke's counsel essentially conceded at oral argument that an Allen screw is equivalent to the nut and bolt system of contraction specified in '900 Patent, but argued that Shane Group's equivalence argument fails on the basis of invalidity. In particular, Burke submitted evidence showing use of the clamp on the Burke product since the early 1990's. (Ahern Aff. para. 5 & Exs. 1-4.) The Court will address this argument in the discussion on invalidity.

2. Invalidity

Burke also contends that Shane Group cannot establish likelihood of success because there are substantial questions relating to the validity of the '900 Patent. At the preliminary injunction stage, the party opposing the relief sought is not required to make out a case of actual invalidity. *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1359 (Fed.Cir.2001). Rather, the issue is vulnerability, which "requires less proof than the clear and convincing showing necessary to establish invalidity itself." *Id.* On the other hand, to succeed, the patentee is not required to prove validity, but need only show that the alleged infringer's defense lacks substantial merit. *New England Braiding Co. v. A.W. Chesterton Co.*, 970 F.2d 878, 882-83 (Fed.Cir.1992).

In support of its claim of invalidity, Burke has submitted evidence showing that posts covered with recycled plastic were in use in the industry prior to the date the '900 Patent was issued. Specifically, a brochure dated 1994-more than one year prior to the filing date of the application for the '900 Patent-by Landscape Structures, Inc. shows a playground structural support with a metal core and recycled plastic face plates. (Landscape Structures Brochure, Def.'s Br. Opp'n Ex. G.) The Landscape Structures post also contains a bracket which penetrates the post. In addition, Burke has submitted its own brochures showing that it used the same clamp included on its Plasticore product on a metal post since the early 1990's. (Ahern Aff. para. 5 & Exs. 1-4.) Burke contends that the Landscape Structures brochure and its own brochures, dated more than one year prior to the application for the '900 Patent, are prior art which invalidates the '900 Patent. *See* 35 U.S.C. s. 102(b).

Shane Group contends that there are important differences between the Landscape Structures and Burke posts and the post described by the '900 Patent. First, the Landscape Structures post contains sections of exposed aluminum, unlike the post in the '900 Patent, which is completely covered in plastic. Second, the bracket of the Landscape Structures post penetrates the post, whereas the '900 Patent claims a bracket that circumscribes the post and contracts. Shane Group also notes that while it is true that Burke used a clamp with a screw-type operating means on a metal post prior to the issuance of the '900 Patent and there is no limit on its right to continue to do so, the '900 Patent prevents Burke from producing a post covered in recycled plastic containing a clamp.

Having reviewed the evidence submitted by Burke, the Court concludes that Burke has raised substantial questions regarding the validity of the '900 Patent. Shane Group concedes that it could not obtain a patent on a metal post encased in recycled plastic. It was able to obtain its patent by including a clamp on the post. However, as Burke's evidence shows, at least one producer of playground equipment was using recycled

plastic to cover support posts before the '900 Patent was issued. While the Landscape Structures post did not use recycled plastic in exactly the same manner as set forth in the '900 Patent, the use was very similar. Moreover, the prior art submitted by Burke shows that placement of a clamp on a post as shown in the '900 Patent was common in the industry and was not a new or unique idea. Because the only difference between the post in the '900 Patent and those already in use is the plastic envelope-which alone would not be patentable-there are substantial questions regarding the validity of the '900 Patent.

B. Irreparable Harm

A movant who makes a strong showing of likelihood of success on the merits is entitled to a presumption of irreparable harm. *Canon Computer Sys., Inc. v. Nu-Kote Int'l, Inc.*, 134 F.3d 1085, 1090 (Fed.Cir.1998)(citing *Powder Co. v. Ireco Chems.*, 773 F.2d 1230, 1232-33 (Fed.Cir.1985)). Shane Group is not entitled to this presumption because it has not made a strong showing of likelihood of success on the merits. Shane Group argues, however, that it has demonstrated irreparable harm because it has shown that it experienced a drop in sales revenues which coincided with former RCI sales representatives beginning employment with Burke, which was almost immediately followed by Burke's introduction of the accused product. (Shaneour Aff. para. 4, 7, attached to Pl.'s Br. Supp.)

The Court concludes that Shane Group has failed to demonstrate irreparable harm. First, Shane Group has failed to demonstrate that Burke's product infringes the '900 Patent. Second, Burke has submitted evidence showing that RCI no longer sells a post with an enlarged head as depicted in the '900 Patent. Instead, RCI now sells a post without an enlarged head. (RCI 1999 Brochure, Def.'s Br. Opp'n Ex. E.)

C. Public Interest

In considering the public interest in patent cases, it is important to bear in mind the public interest in the protection of patents. *See Hybritech Inc. v. Abbott Labs.*, 849 F.2d 1446, 1458 (Fed.Cir.1988). However, "the focus of the district court's public interest analysis should be whether there exists some critical public interest that would be injured by the grant of preliminary relief." *Id.*

In this case, Shane Group has not made a particularly strong showing of likelihood of success, nor has it identified another public interest consideration weighing in favor of the requested relief. Moreover, there is a public interest in free competition and, at this point in the proceedings, there has been no showing that it would be unfair for Burke to continue to compete with Shane Group and RCI. *See Ill. Tool Works, Inc. v. Grip-Pak, Inc.*, 906 F.2d 679, 684 (Fed.Cir.1990). Thus, this factor does not favor the relief sought.

D. Balancing of Hardships

The balance of harm weighs against issuing the requested relief primarily because Shane Group has failed to show that Burke's product infringes the '900 Patent. Although Shane Group claims that RCI will continue to lose sales if the preliminary injunction is not issued, both parties are free to compete and to sell their products in the marketplace. On the other hand, Burke would be adversely impacted if it is enjoined from selling the accused product because it could not compete at all. Therefore, the balance of hardships weigh against granting a preliminary injunction.

IV. Conclusion

For the reasons stated above, Shane Group has failed to demonstrate a likelihood of success on the merits as

well as irreparable harm. In addition, the public interest and balancing of hardship factors do not weigh in favor of granting the requested injunctive relief. Accordingly, the Court will deny the motion.

An Order consistent with this Opinion will be entered.

ORDER

In accordance with the Opinion filed this date,

IT IS HEREBY ORDERED that Plaintiff's Motion for Preliminary Injunction Under Rule Fed.R.Civ.P. 56(a) (docket no. 10) is **DENIED**.

W.D.Mich.,2002.

The Shane Group, Inc. v. BCI Burke Co., L.L.C.

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