

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

WORKER AUTOMATION, INC.,
Plaintiff,
v.
GENESIS SYSTEMS GROUP,
Defendant.

No. 3-:02-CV-241

Feb. 12, 2004.

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

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.

**ENTRY AND ORDER OVERRULING PLAINTIFF'S RULE 60(b) MOTION (Doc. # 58);
ADOPTING MAGISTRATE JUDGE OVINGTON'S REPORT AND RECOMMENDATION
REGARDING DEFENDANT'S MOTION FOR ENTRY OF INJUNCTIVE RELIEF (Doc. # 66) AND
ENTERING INJUNCTIVE RELIEF**

THOMAS M. ROSE, District Judge.

Now before the Court is Plaintiff Worker Automation's Rule 60(b) Motion for Relief from Judgment (Doc. # 58.) and Magistrate Judge Ovington's Report and Recommendation regarding Defendant's Motion for Injunctive Relief (Doc. # 66). The pertinent part of the procedural history will first be set forth followed by the standard of review and an analysis of the Motions.

Procedural History

On October 21, 2003, Magistrate Judge Ovington entered her Report and Recommendations granting Defendant Genesis's Motions for Partial Summary Judgment. (Doc. # 47.) The Report and Recommendations were adopted without objection on November 14, 2003. Later on November 14th, Worker Automation filed objections to the Magistrate's Report and Recommendation. (Doc. # 56.) Since Worker Automation's objections were not timely filed, they were converted to a Rule 60(b) Motion for Relief from Judgment. It is this Motion for Relief from Judgment that is now before the Court and ripe for decision.

Standard of Review

Rule 60(b) provides for relief from judgment for mistake; inadvertence; excusable neglect, newly discovered evidence, fraud, or for other reasons. Fed.R.Civ.P. 60(b). In this case, Worker Automation has not alleged that Genesis has committed fraud, misrepresentation or misconduct. Nor has Worker Automation

alleged that the Report and Recommendation is void or has been satisfied, released or otherwise discharged. The Court interprets Worker Automation's objections as an attempt to show a mistake, present newly discovered evidence or show another reason justifying relief from the judgment.

Analysis of the Motions

Specifically, Worker Automation argues that the Court has incorrectly applied the existing law to the facts of this case. However, Worker Automation does not present new law that was not available to the Court at the time the Report and Recommendation was rendered and adopted. Nor does Worker Automation present newly discovered facts that were not available to the Court at the time the Report and Recommendation was rendered and adopted. Therefore, Worker Automation's Rule 60(b) Motion is OVERRULED.

Had Worker Automation's Objections To the Magistrate's Report and Recommendations been timely filed, they would have been overruled. As required by 28 U.S.C. s. 636(b) and Federal Rule of Civil Procedure 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Defendant's objections to the Magistrate Judge's Report and Recommendation are not well taken.

In addition to the objections themselves, Worker Automation's Rule 60(b) Motion includes a request to supplement objections. Specifically, Worker Automation requests leave to file additional affidavits in support of its objections. However, no reason is given as to why the affidavits were not available earlier when the original motions were being considered and the Court can only assume they would merely reargue what has already been extensively briefed by the Parties. Worker Automation's request to supplement objections is also OVERRULED.

Since the briefing of Worker Automation's Rule 60(b) Motions, Magistrate Judge Ovington has entered a Report and Recommendation regarding Genesis's Motion for Entry of Injunctive Relief that is unopposed. (Doc. # 66.) The Court has reviewed the Report and Recommendations of Magistrate Judge Ovington, and, noting that no objections have been filed thereto and that the time for filing such objections under Fed.R.Civ.P. 72(b) has expired, hereby ADOPTS said Report and Recommendations.

Pursuant to the most recent Report and Recommendation (Doc. # 66) which has now been adopted by the Court, the following injunction is entered:

Plaintiff and Counterclaim-Defendant Worker Automation, Inc., its officers, agents, servants, employees, attorneys and those persons in active concert or participation with them are permanently enjoined and restrained during the life of United States Letters Patent 5,873,569 from infringing the claims of this patent by any acts of making, using, offering for sale or selling or inducing others to make, use or sell the patented work piece positioner or colorable variations thereof, including but not limited to the act of making, using, offering for sale or selling or inducing others to make, use or sell any in the line of products currently known as the ARCworker FW.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and ORDERED.

S.D.Ohio,2004.

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