

United States District Court,  
N.D. Texas, Fort Worth Division.

**HIGHMARK, INC,**

v.

**ALLCARE HEALTH MANAGEMENT SYSTEMS, INC.**

Civil Action No. 4:03-CV-1384-Y

**March 23, 2007.**

Cynthia E. Kernick, Frederick H. Colen, Kevin S. Katona, Robert D. Kucler, Reed Smith, Pittsburgh, PA, Craig B. Florence, Robert T. Slovak, Gardere Wynne Sewell, Dallas, TX, Eugene Ledonne, Reed Smith LLP, New York, NY, for Plaintiff.

Joseph F. Cleveland, Jr., Brackett & Ellis, Fort Worth, TX, Alfredo L. Silva, Christopher J. Harrington, Mike McKool, Jr., Richter Darryl Burke, McKool Smith, V. Bryan Medlock, Jr., Sidley Austin LLP, Dallas, TX, John E. Hall, Eckert Seamans Cherin & Mellott, Pittsburgh, PA, Luke F. McLeroy, Ericsson Inc., Plano, TX, Steven G. Hill, Hill Kertscher & Wharton, Atlanta, GA, for Defendant.

***ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF SPECIAL MASTER***

**TERRY R. MEANS, District Judge.**

Defendant and counter-claimant Allcare Health Management System, Incorporated ("Allcare"), filed an amended motion for claim construction requesting the Court construe Claims 1, 52, 53, and 102 of United States Patent No. 5,301,105 (doc. # 287). After review of the amended motion, the responses and replies, and the supporting appendices, the Court concluded that the complexity of the issues presented in Allcare's amended motion could not be "addressed effectively and timely by the Court." See Notice Regarding Appointment of a Special Master (doc. # 353). Accordingly, the Court notified the parties of its intent to appoint a special master and granted the parties an opportunity to either agree on a special master or submit nominations.

On August 2, 2006, the parties notified the Court that they agreed to the appointment of Don W. Martens and the Court subsequently appointed him on August 16. Thereafter, Martens held a *Markman* hearing on November 8 and filed his report and recommendations on December 20.

Under Federal Rule of Civil Procedure 53(g)(2), Allcare filed certain objections to Martens's recommendations. The Court has reviewed Martens's report and recommendations, Allcare's objections and appendix, Highmark, Incorporated's ("Highmark"), response and supporting appendix, and Allcare's reply. FN1 After review, the Court **OVERRULES** Allcare's objections for the reasons stated in Martens's report and recommendations as well as for the reasons stated in Highmark's response, and the Court **ADOPTS**, in whole, Martens's recommendations. FN2 FED.R.CIV.P. 53(g)(1).

FN1. The Court conducted a *de novo* review of Allcare's objections under Rule 53(g)(3), (4).

FN2. In its reply, Allcare indicates that some of the terms in Claim 1 construed by Martens do not relate to its allegations of infringement of Claims 52, 53, and 102 of U.S. Patent No. 5,301,105. Nevertheless, the parties did request those terms in Claim 1 be construed and to the extent those terms are relevant or necessary to the determinations of patent validity and infringement in this case, the Court ADOPTS Martens's recommended construction.

N.D.Tex.,2007.

Highmark, Inc. v. Allcare Health Management System, Inc.

Produced by Sans Paper, LLC.