

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-1218

CUSTOM METALCRAFT, INC.,

Plaintiff-Appellant,

v.

HOOVER MATERIALS HANDLING GROUP, INC.,

Defendant-Appellee.

2007-1242

CUSTOM METALCRAFT, INC.,

Plaintiff-Appellee,

v.

HOOVER MATERIALS HANDLING GROUP, INC.,

Defendant-Appellant.

ON MOTION

Before SCHALL, GAJARSA, and LINN, Circuit Judges.

LINN, Circuit Judge.

ORDER

Custom Metalcraft, Inc. moves to dismiss Hoover Materials Handling Group, Inc.'s appeal, 2007-1242. Hoover moves to stay disposition of the motion to dismiss. Custom Metalcraft opposes.

On February 8, 2007, the United States District Court for the Western District of Missouri certified its judgment of noninfringement pursuant to Fed. R. Civ. P. 54(b). Custom Metalcraft appealed, appeal no. 2007-1218. Hoover filed a cross-appeal, appeal no. 2007-1242, seeking review of an order granting summary judgment that the patent was not invalid on certain grounds. On May 9, 2007, after Hoover filed its appeal, the district court denied Hoover's motion to certify its disposition of Hoover's invalidity counterclaims pursuant to Rule 54(b).

Because there is no final judgment disposing of Hoover's counterclaims concerning invalidity, Hoover's appeal must be dismissed. Nystrom v. Trex Co., Inc., 339 F.3d 1347 (Fed. Cir. 2003).

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to dismiss appeal no. 2007-1242 is granted.
- (2) Hoover's motion to stay is denied.
- (3) A copy of this order shall be transmitted to the merits panel assigned to hear appeal no. 2007-1218 to inform the panel of the disposition of the cross-appeal.

FOR THE COURT

June 5, 2007
Date

/s/ Richard Linn
Richard Linn
Circuit Judge

cc: Scott R. Brown, Esq.
Robert C. Haldiman, Esq.

s8

ISSUED AS A MANDATE (as to 2007-1242 only): June 5, 2007