

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 07-cv-02261-PAB-MJW
(consolidated with 08-cv-01226-PAB-MJW)

ALCOHOL MONITORING SYSTEMS, INC.,

Plaintiff,

v.

ACTSOFT, INC.,
OHIO HOUSE MONITORING SYSTEMS, INC., and
US HOME DETENTION SYSTEMS AND EQUIPMENT, INC.,

Defendants.

ORDER

This matter comes before the Court on defendants' motion for review of the Clerk's ruling on the bill of costs [Docket No. 258]. Judgment entered in this case in favor of defendants on March 3, 2010 [Docket No. 245]. Defendants, as the prevailing parties, filed a proposed bill of costs [Docket No. 253]. On April 29, 2010, the Clerk of the Court allowed certain costs and disallowed others, ultimately taxing costs in the amount of \$5,259.00 [Docket No. 257]. On May 6, 2010, defendants filed the present motion challenging the reduction of its proposed costs. On March 7, 2011, the Federal Circuit affirmed in part and reversed in part the Court's grant of summary judgment, remanding for the Court to consider plaintiff's claim of infringement under the doctrine of equivalents [Docket No. 262].

Because plaintiff is no longer the “prevailing party” under Fed. R. Civ. P. 54(d) and the “prevailing party” has not yet been determined, resolution of defendant’s motion would be inappropriate at this time. See *Champagne Metals v. Ken-Mac Metals, Inc.*, 458 F.3d 1073, 1095 (10th Cir. 2006) (explaining that reversal and remand requires reconsideration of who the prevailing party is under Rule 54(d)); *Silicon Graphics, Inc. v. ATI Technologies, Inc.*, 607 F.3d 784, 801-02 (Fed. Cir. 2010) (“Because we vacate the district court’s summary judgment of non-infringement, [defendant] has not prevailed on any issue. We therefore leave it to the parties to reintroduce the prevailing party issue on remand as it becomes relevant.”).

Accordingly, it is

ORDERED that defendant’s Motion for Review of Taxation of Costs [Docket No. 258] is **DENIED** without prejudice.

DATED March 28, 2011.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge