

Agreement to sell touch panel personal computers, CE touch panels and touch monitors, which products TECH never designed for ADC, or that ADC breached §1.3 of the Agreement as a result of ADC not selling these products for TECH. Mr. Kumar, Mr. Tiwari, Mr. Marchuk and Mr. Hohmann all testified that TECH never specifically designed CE touch panels, touch monitors, and touch panel personal computers for ADC. TECH therefore failed to prove an essential element of its case-that ADC breached material obligations under the Agreement.

3. With respect to §4.1 of the Agreement, TECH failed to prove by a preponderance of the evidence that ADC breached its obligation to use best efforts to distribute the Products in the Territory and to secure a fair and increasing share of the market for the Products in the Territory. Mr. Hohmann's testimony establishes that ADC increased its sales every year and TECH introduced no evidence to establish the size of the market or that ADC failed to capture a fair and increasing share of it. TECH therefore failed to prove an essential element of its case with respect to the claimed breach of § 4.1 of the Agreement.

4. With respect to §4.3 of the Agreement, TECH failed to prove by a preponderance of the evidence that ADC failed to keep confidential any information marked and identified confidential. There is no evidence in the record that plaintiff's Exhibit 224 was provided to KOYO and there is no evidence in the record establishing that or how KOYO used Plaintiff's Exhibit 224. TECH therefore failed to prove an essential element of its case with respect to the claimed breach of § 4.3 of the Agreement.

WHEREFORE, ADC requests that the Court enter judgment as a matter of law pursuant to FRCP 50(a) in its favor and against Plaintiff.

Respectfully submitted,

AUTOMATIONDIRECT.COM AND
THOMAS C. HOHMANN

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By :/s/ Barry F. Mac Entee
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