

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 18-11168-GAO

KOLOGIK CAPITAL, LLC,  
Plaintiff and Defendant-in-Counterclaim,

v.

IN FORCE TECHNOLOGY, LLC, BRANDON-COPYSYNC LLC,  
and BRANDON D. FLANAGAN,  
Defendants and Plaintiffs-in-Counterclaim.

ORDER ADOPTING REPORT AND RECOMMENDATION

September 21, 2023

O'TOOLE, D.J.

The magistrate judge to whom this matter was referred has filed a Report and Recommendation (“R&R”) concerning the parties’ cross-motions for summary judgment (dkt. nos. 301 & 305). The R&R recommends as follows:

For the reasons set forth above, I recommend GRANTING in part and DENYING in part Kologik’s Motion for Summary Judgment (Docket No. 301). The Court should enter a judgment of “no invalidity” as to Defendants’ challenge to the validity of the ’965 Patent. The Court should deny Kologik’s motion for summary judgment as to infringement of the ’965 Patent. And the Court should deny Kologik’s motion for sanctions under Rule 37(b)(2)(A).

For the reasons set forth above, I recommend GRANTING Defendants’ Motion for Summary Judgment of Noninfringement (Docket No. 305) . . . .

No objections to the R&R have been filed. “Given proper notice, . . . a party’s failure to assert a specific objection to a report and recommendation irretrievably waives any right to review by the district court and the court of appeals.” Santiago v. Canon U.S.A., 138 F.3d 1, 4 (1st Cir. 1998) (citing Henley Drilling Co. v. McGee, 36 F.3d 143, 150–51 (1st Cir. 1994), and 28 U.S.C. § 636(b)(1)).

The Court therefore ADOPTS the R&R (dkt. no. 350) as follows. Kologik's Motion for Summary Judgment (dkt. no. 301) is GRANTED in part as to no invalidity and DENIED in part as to infringement of the '965 Patent. Kologik's motion for sanctions (dkt. no. 301) is also DENIED. The defendants' Motion for Summary Judgment of Noninfringement (dkt. no. 305) is GRANTED. The Court does not adopt the magistrate judge's recommendation that judgment be entered dismissing Counts 20 and 22.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.  
United States District Judge