

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

3D SYSTEMS, INC.,

Plaintiff,

-vs-

Case No. 05-74891
Hon: AVERN COHN

ENVISIONTEC, INC., ENVISIONTEC
GMBH; and SIBCO, INC.,

Defendants.

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**ORDER ON DEFENDANTS' MOTION FOR RECONSIDERATION AND
CLARIFICATION OF ORDER GRANTING MOTION TO DISQUALIFY CO-INVENTOR
DR. PAUL JACOBS AS DEFENDANTS' EXPERT**

This is a patent case. Before the Court is defendants' motion for reconsideration of the order disqualifying Dr. Paul Jacobs as defendants' expert (Dkt. 118). The motion overstates the Court's reasons for disqualifying Dr. Jacobs. Dr. Jacobs worked for ten (10) years for plaintiff and agreed to keep confidential what he learned there. Dr. Jacobs is also a named inventor of a number of the patents asserted in this case.

In disqualifying Dr. Jacobs, the Court focused on Dr. Jacobs as a witness at trial. The Court failed to distinguish between his role as an expert at trial and his role as an expert with regard to the summary judgment phase of the case. At oral argument the Court said:

I haven't said that the declaration [filed by Dr. Jacobs] should
be stricken

Both parties have filed motions for summary judgment. It is the Court's intention to appoint a special master to report on and recommend the disposition of the motions.

Delaying consideration of the motions while defendants obtain a new expert will unnecessarily lengthen the time line of the case. Plaintiff will not suffer any disadvantage if Dr. Jacobs' affidavit(s) are part of the record before a special master. A special master certainly has the ability to separate the grain from the chaff in Dr. Jacobs' affidavit(s), *i.e.*, decide whether or not what he affirms is tainted by his prior association with plaintiff. This is a risk that defendants are taking. Accordingly, further consideration of the motion to reconsider will abide completion of the briefing on the motions for summary judgment and the reference to a special master for a report and recommendation. The parties can thresh out the propriety of Dr. Jacobs as a witness for defendants in the summary judgment phase of the case before the special master. The reference to the special master will include a request for a report and recommendation on the motion for reconsideration.

Accordingly, further proceedings on the motion for reconsideration are STAYED pending appointment of a special master, and the report and recommendation of the special master as above described.

The parties shall promptly meet in an effort to make a common recommendation to the Court as to a special master. If the parties fail to agree within thirty (30) days on a joint recommendation, each party shall submit within ten (10) days thereafter a recommendation for such appointment.

SO ORDERED.

Dated: October 31, 2008

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, October 31, 2008, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160