

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

3D SYSTEMS, INC.,

Plaintiff,

-vs-

Case No. 05-74891
Hon: AVERN COHN

ENVISIONTEC, INC., and
ENVISIONTEC GMBH,

Defendants.

MEMORANDUM

This is a patent case. Four patents are in suit. Because of its complexity, the Court appointed a special master, first to deal with claim construction issues, and subsequently to deal with cross-motions on the issue of infringement.

After receiving the special master's report and recommendation on the summary judgment issues, because of the prolixity of the objections to the recommendations, the Court entered an Order of Supplemental Reference to Special Master (Doc. 151) to simplify consideration of the objections. Particularly, the Court asked the special master to report upon and recommend in writing the appropriate disposition of each of the motions for summary judgment in light of the Report and Recommendation and the objections.

In response to the supplemental reference the special master filed:

- Special Master's Response To The Parties' Objections To His Report And Recommendations Filed May 12, 2009 (Dkt. 153 #1)
- Genuine Issues Of Material Fact That Require Trial (Dkt. 153 #2)

- Special Master's Superceding Report And Recommendations On The Parties' Summary Judgment Motions (Dkt. 153 #3)

The parties' responses are as prolix as their initial objections, and as they stand now defeat the expectations of the Court that the supplemental reference would focus the issues on the questions of infringement, and simplify the Court's task of determining whether or not there are issues for trial or that the case can be disposed of on motion.

As explained in Smith, *The Use Of Special Masters For Claim Construction*, 2 *Landslide* No. 1, p. 37:

When people have coughs or aches, they see their general physicians. When the issue is complex, a medical specialist in the field can help someone reach the right diagnosis quickly and accurately. So too with complex patent litigation. When a complex patent infringement case arises, it can be in the client's or the court's best interest to bring in an expert on patent law and technology – as a special master – to assist the judge.

The special master in his response to the supplemental reference assisted the Court by reporting on and making recommendations to the parties' objections to his initial report and recommendations. The parties' response should have been directed to those recommendations specifically, and not gone through what appears to be a rehash of their original objections. The response should have been a single paper complete in itself, and not a multitude of papers.

No useful purpose will be served by requiring a further response from the parties. The Court will hear oral argument on **Monday, November 23, 2009 at 10:00 a.m.**, as to whether or not there are issues for trial. As the Court understands it, what the special master recommends is that:

- defendants do not infringe the '143 and '157 patents
- whether or not defendants infringe the '981 and '934 patents require trial on the issues described by the special master

The oral argument should focus on the special master's response to the parties' objections to his report and recommendation (Dkt. 153 # 1).

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: October 29, 2009

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, October 29, 2009, by electronic and/or ordinary mail.

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