

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEAR CORPORATION,

Plaintiff,

v.

NHK SEATING OF AMERICA INC.,

Defendant.

Case No. 2:13-cv-12937
Honorable Laurie J. Michelson

**ORDER REAPPOINTING SPECIAL MASTER AND
REFERRING MOTION FOR SUMMARY JUDGEMENT [113] AND MOTION TO
STRIKE [121] TO THE SPECIAL MASTER**

Plaintiff Lear Corporation maintains that Defendant NHK Seating of America, Inc. has infringed the claims of five utility patents. Given the volume and complexity of the issues raised in this case, the Court finds that there is good cause to appoint a special master. Accordingly, the Court ORDERS as follows:

- (1) pursuant to the parties' recommendation, Retired Judge James F. Davis is reappointed as special master pursuant to Federal Rule of Civil Procedure 53;¹
- (2) Judge Davis will "proceed with all reasonable diligence," Fed. R. Civ. P. 53(b), to issue two reports and recommendations;
 - a. the first report and recommendation, to be issued at least one month prior to the second, will address Lear's Motion to Strike NHK's Untimely Noninfringement Contentions or, in the Alternative, to Allow Lear to Amend to its Infringement Contentions (ECF No. 121);

¹ The Court previously appointed Judge Davis to serve as a special master in this case and to prepare a report and recommendation construing the claim terms in dispute.

- b. a second report and recommendation will address NHK's Motion for Summary Judgment on the Basis of Non-Infringement (ECF No. 113);
- (3) when Judge Davis requires that a document be filed on the docket (e.g., a report and recommendation), he will send that document to counsel for both parties with a request that counsel docket the document; counsel shall immediately do so;
 - (4) if the parties request a hearing, Judge Davis shall hold a hearing on the two pending motions (the parties are to make arrangements with Judge Davis directly); aside from that, Judge Davis may order the parties to attend meetings at times and locations he decides but only after consultation with the parties;
 - (5) Judge Davis may have ex-parte communications with the Court regarding procedural matters;
 - (6) Judge Davis may have communications with the parties and without the Court so long as those communications are in furtherance of his reports and recommendations;
 - (7) before finalizing his report and recommendation on NHK's motion for summary judgment, Judge Davis shall submit a draft of the report and recommendation to counsel for the purpose of receiving their suggestions; counsel will then have 14 days to provide Judge Davis with their suggestions; upon receipt of counsel's suggestions, Judge Davis shall note with particularity the suggestions and may revise his report and recommendation as he deems appropriate; revised or not, within 30 days of receiving counsel's suggestions, Judge Davis shall send his final report and recommendation to all counsel who will then docket the final report and recommendation immediately;

- (8) any objections to Judge Davis' final reports and recommendations (either on Lear's motion to strike or NHK's motion for summary judgment) must be docketed not later than 10 days after the report and recommendation has been docketed; any responses to any objections are due 7 days after the objections are filed;
- (9) regarding NHK's motion for summary judgment only, pursuant to the parties' agreement, each side is only permitted to ask (via objections) this Court to review two (or, if truly necessary, three) issues; for purposes of preserving an issue for appeal, the parties may object to any number of Judge Davis' findings;
- (10) if objections are filed, the Court will decide the objections in accordance with Rule 53(f);
- (11) Judge Davis may use law clerks or paralegals at his discretion;
- (12) Judge Davis shall render detailed monthly bills for all fees and expenses at the same rates ordinarily charged clients for his services, and such bills shall be paid promptly as follows: 50% by Lear and 50% by NHK; the monthly bills shall be submitted directly to counsel for the parties who shall take responsibility for prompt payment by their respective clients within 30 days.

SO ORDERED.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Date: January 15, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel of record and/or pro se parties on this date, January 15, 2019, using the Electronic Court Filing system and/or first-class U.S. mail.

s/William Barkholz
Case Manager