

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NORGREN AUTOMATION SOLUTIONS,  
LLC,

Plaintiff,

vs.

Case No. 14-13400  
HON. GERSHWIN A. DRAIN

PHD, INC.,

Defendant.

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**APPOINTMENT AND ORDER OF REFERENCE TO SPECIAL MASTER**

This is a complex patent case involving United States Patent Nos. RE39,786 and RE41,223. Because of the complexity of the subject matter and having received no objections to the Court's Notice of Proposed Appointment and Order of Reference to Special Master and Supplement to Proposed Appointment (Dkt. Nos. 33 and 34),

IT IS ORDERED that:

1. Claim construction is referred to Richard D. Grauer, 1006 Stratford Lane, Bloomfield Hills, MI 48304, phone number (248) 712-6678, fax number (248) 712-6660, e-mail address: [rick@graueradr.com](mailto:rick@graueradr.com), as Special Master to decide upon and report and recommend in writing the

appropriate construction of the claims at issue.<sup>1</sup>

2. Copies of papers submitted to the Special Master shall also be filed simultaneously with the Court and served pursuant to applicable federal rules. Forwarding letters or informal communications need not be filed but should be served on the opposite party.
3. Communications between the Special Master and the parties, as well as submissions to the Special Master, may be accomplished by electronic mail, and the parties shall designate the persons who will receive such electronic mail.
4. The Special Master shall review the submitted material and confer with the parties following that review to determine if further information is needed and a schedule for submitting such additional information.
5. The Special Master may conduct the *Markman* hearing on June 23, 2015, and any other hearings and meetings at a location directed by him after consultation with the parties.
6. The Special Master will not have the power to impose sanctions against a party under Federal Rule of Civil Procedure 53(c), but may recommend

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<sup>1</sup> The Court has not yet determined whether it will also refer dispositive motions for report and recommendation.

sanctions to the Court.

7. A petition for review by the Court of the recommendations of the Special Master shall be submitted in writing within (10) days of receipt of the Special Master's report. Review of the recommendations of the Special Master by the Court shall be governed by 28 U.S.C. § 636(b)(1)(B) and (c).
8. The Special Master shall keep detailed records of his time and expenses. The Special Master shall render detailed bills for all fees and expenses and such bills shall be paid within 30 days as follows: fifty percent (50%) by Plaintiff and fifty percent (50%) by Defendant. The first bill shall be rendered at the time of the filing of the Special Master's report, and shall be submitted directly to counsel for the parties, who shall take responsibility for prompt payment. A second bill shall be rendered if there are any post-report expenses or time incurred by the Special Master. The Special Master shall keep the parties informed of the time being spent with a bi-weekly progress report.
9. The Special Master may communicate *ex parte* with the Court to seek guidance in executing his duties. The Special Master may also communicate *ex parte* with the Court to assist the Court with legal

analysis of the parties' submissions and to assist the Court with understanding highly specialized matters and to provide the Court with technical expertise. The Special Master shall keep the Court informed about his progress and activities with a bi-weekly progress report.

IT IS SO ORDERED.

Dated: May 7, 2015

/s/Gershwin A Drain  
GERSHWIN A. DRAIN  
UNITED STATES DISTRICT JUDGE