

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WEBASTO THERMO & COMFORT
NORTH AMERICA, INC. and
WEBASTO-EDSCHA CABRIO USA, INC.,

Plaintiffs/Counter-Defendants,

Case No. 16-cv-13456

v.

Paul D. Borman
United States District Judge

BESTOP, INC.,

R. Steven Whalen
United States Magistrate Judge

Defendant/Counter-Plaintiff.

ORDER DENYING BESTOP'S OBJECTIONS TO THE
SPECIAL MASTER'S REPORT AND RECOMMENDATION AND
ADOPTING THE REPORT AND RECOMMENDATION (ECF NO. 148)

On November 29, 2018, Special Master Gaynell Methvin issued his Report and Recommendation on claim construction, recommending “that the Court find that **no construction** is required for any of the limitations of the ‘342 patent and that all terms be given their ordinary and customary meaning.” (ECF No. 148, Special Master’s Report and Recommendation 76, PgID 3305) (emphasis in original). On December 19, 2018, Bestop, Inc. (“BesTop”) filed what it captioned a “Limited Objection to the Special Master’s Report and Recommendation.” (ECF No. 150, PgID 3316.) Webasto Thermo & Comfort North America, Inc. and Webasto-Edscha Cabrio USA,

Inc. (“Webasto”) filed a Response to BesTop’s Objections. (ECF No. 151, PgID 3321.)

BesTop’s “Limited Objection” is not a valid Objection to any recommendation made by the Special Master. This Court’s Order appointment of Special Master Methvin was “limited to empowering Mr. Methvin to hold a claim construction hearing, to receive evidence on claim construction issues consistent with the evidence submitted by the parties with their *Markman* submissions, and to file a Rule 53 Report and Recommendation with the Court on the correct construction and/or definiteness of the disputed claim terms at issue in this case.” (ECF No. 88, Order Appointing Special Master 2, PgID 2232.) Mr. Methvin received the relevant claim construction submissions by the parties, held a claim construction hearing, and issued his Report recommending that no claim construction of the disputed terms was necessary and that all disputed terms be given their “ordinary and customary meaning.” (ECF No. 148, Report 76, PgID 3305.) BesTop has filed no objection to any of the Special Master’s claim construction recommendations. BesTop’s “Limited Objection” is directed to an issue as to which the Special Master was not empowered to, and did not in fact, make a recommendation – whether BesTop has the right to amend its non-infringement and validity contentions. The Court expresses no opinion on this issue, which is not properly before the Court, and DENIES BesTop’s “Limited Objection.”

Accordingly, the Court having reviewed the Report and Recommendation, and there being no timely and valid objections to the Report under 28 U.S.C. § 636(b)(1) and E.D. Mich L.R. 72.1(d), the Court ADOPTS the Report and Recommendation and concludes that all claim terms shall “be given their ordinary and customary meaning.”

IT IS SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: January 8, 2019