United States District Court Southern District of Texas

ENTERED

September 06, 2018 David J. Bradley, Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS GALVESTON DIVISION

CRYSTAPHASE PRODUCTS, INC.	§	
Plaintiff.	§ § 8	
VS.	8 §	CIVIL ACTION NO. 3:17–CV–00265
CRITERION CATALYSTS &	§ §	
TECHNOLOGIES, LP; CRITERION	§	
CATALYST COMPANY; SHELL	§	
GROUP; AND SHELL GLOBAL	§	
SOLUTIONS, INC.	§	
	§	
Defendants.	§	

ORDER ADOPTING MAGISTRATE JUDGE'S MEMORANDUM AND RECOMMENDATION

Pending before the Court is Plaintiff Crystaphase Products, Inc.'s Objections to Magistrate Judge's Memorandum and Recommendation ("Objections"). On June 26, 2018, Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint ("Motion to Dismiss") (Dkt. 27) was referred to Judge Andrew M. Edison pursuant to 28 U.S.C. § 636(b)(1). On August 20, 2018, Judge Edison filed a Memorandum and Recommendation recommending that the Defendants' Motion to Dismiss be GRANTED IN PART and DENIED IN PART. Specifically, Judge Edison recommended that the patent infringement claims (Counts I and II) be dismissed and the Lanham Act claim (Count III) survive the Motion to Dismiss.

On September 4, 2018, Plaintiff filed its Objections. In its Objections, Plaintiff does not contest the substance of Judge Edison's decision; rather, Plaintiff merely

"objects . . . to the extent that [Judge Edison] recommend[ed] dismissal of Crystaphase's

patent infringement claims with prejudice." Dkt. 47 at 1. In accordance with 28 U.S.C. §

636(b)(1)(C), this Court is required to "make a de novo determination of those portions

of the [magistrate judge's] report or specified proposed findings or recommendations to

which objection [has been] made." After conducting this de novo review, the Court may

"accept, reject, or modify, in whole or in part, the findings or recommendations made by

the magistrate judge." *Id.*; see also FED. R. CIV. P. 72(b)(3).

The Court has carefully considered the Objections; the Memorandum and

Recommendation; the pleadings and summary judgment record; and the briefing and

arguments of the parties. The Court ACCEPTS Judge Edison's Memorandum and

Recommendation and ADOPTS it as the opinion of the Court. It is therefore

ORDERED that:

(1) Defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN**

PART;

(2) Plaintiff's patent infringement claims (Counts I and II) are **DISMISSED**

without prejudice; and

(3) Plaintiff's Lanham Act claim (Count III) shall proceed;

It is so **ORDERED**.

SIGNED at Galveston, Texas, this 6th day of September, 2018.

George C. Hanks Jr.

United States District Judge

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