

THE HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

G3 GENUINE GUIDE GEAR INC.,

Plaintiff,

vs.

MARKER DEUTSCHLAND GMBH,

Defendants.

CASE No. 2:15-cv-00561-TSZ

**STIPULATION AND ORDER AS TO
ASSERTION OF CLAIMS 35 AND 37 OF
U.S. PAT. NO. 8,746,728**

In the interest of minimizing the number of issues that must be presented to this Court and the jury during trial, Plaintiff G3 Genuine Guide Gear Inc. (“G3”) and Defendants Marker Deutschland GmbH and Marker Volkl USA, Inc. (collectively “Marker”) hereby stipulate that G3 will not assert infringement of claims 35 and 37 of U.S. Pat. No. 8,746,728 (“the ‘728 patent”), and Marker will not assert counterclaims or affirmative defenses as to claims 35 and 37, unless and until this Court’s claim construction Order (Dkt. 28) or its decision as to the validity of claim 1 of the ‘728 patent (Dkt. 64 & 65) is reversed.

On January 4, 2017, the parties entered a stipulation as to infringement of claim 1 of the ‘728 patent and that G3 would assert only claims 1, 35, and 37 at trial. On May 9, 2017, this

STIPULATION AND AS TO STAY OF ASSERTION
OF CLAIMS 35 AND 37 OF U.S. PAT. NO. 8,746,728
Civil Action No. 2:15-cv-00561-TSZ

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1 Court denied Marker's motion for summary judgment that claim 1 is invalid as anticipated and
2 granted G3's cross motion for summary judgment that claim 1 is valid and not anticipated by the
3 prior art. Dkt. 64. This Court filed an additional Order on May 15, 2017 explaining its reasoning
4 with respect to its validity decisions. Dkt. 65. Thus, by stipulation and this Court's decisions,
5 validity and infringement with respect to claim 1 were established as of May 9, 2017.

6 If all claims and defenses pertaining to claims 35 and 37 are withdrawn, the trial will be
7 directed principally to the issue of damages. Therefore, this stipulation would substantially
8 reduce the cost of trial for this Court and the parties as well as the length of trial. G3 would need
9 to assert claims 35 and 37 only if this Court's Order on claim construction or its decision as to
10 the validity of claim 1 were to be reversed on appeal. Accordingly, the parties believe that a stay
11 as to claims 35 and 37 is appropriate and request that the Court grant this stipulation for purposes
12 of simplifying the trial.

13 Marker has reserved the right to appeal the Court's claim constructions and the Court's
14 decisions as to the validity of claim 1. G3 reserves the right to move this Court to reintroduce
15 claims 35 and 37 in the event that Marker's appeal is in any way successful.

16 The net effect of this Stipulation and Order, if entered by the Court, is as follows:

- 17 (1) The trial presently set to commence on September 5, 2017 will not need to include the
18 issues of validity or the application of the claims to the accused products but would
19 be directed mainly to damages and willfulness as to claim 1;
- 20 (2) If no party appeals this Court's Judgment, the case will be final;
- 21 (3) If at least one party were to appeal, but this Court's Judgment were to be affirmed, the
22 case will be final; and
- 23 (4) Only in the event that the Federal Circuit were to reverse a decision related to
24 infringement and/or validity of claim 1 and remand for further proceedings in this
25 Court could claims 35 and/or 37 be asserted again.

DATED this 27th day of July, 2017.

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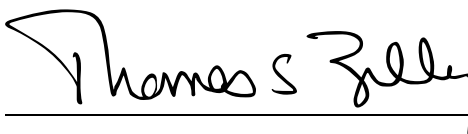
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Pursuant to the parties' stipulation, IT IS SO ORDERED.

DATED this 28th day of July, 2017.



Thomas S. Zilly
United States District Judge