IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MAGNETAR TECHNOLOGIES CORP., a Nevada Corporation, and G&T CONVEYOR CO., a Florida Corporation,	)	
Plaintiffs	)	C.A. No. 07-127-LPS
v.	)	
SIX FLAGS THEME PARKS INC., *et al.*,	)	
Defendants.	)	

DEFENDANTS' EMERGENCY MOTION FOR LEAVE TO FILE A SUPPLEMENTAL MARKMAN BRIEF

Defendants Six Flags Theme Parks, Inc., Tierco Maryland, Inc., Great America LLC, KKI, LLC, Magic Mountain LLC, Park Management Corp., Riverside Park Enterprises, Inc., Six Flags Over Georgia II, LP, Six Flags St. Louis LLC, Texas Flags, Ltd., Astroworld, LP, Darien Lake Theme Park and Camping Resort, Inc., Elitch Gardens, LP, SeaWorld Parks & Entertainment, Cedar Fair LP, Paramount Parks, Inc., Knott's Berry Farm, Kings Island Company, and Cedar Fair hereby move for leave to file a supplemental Markman brief, not to exceed ten pages, and to add one term—"between"—to the list of terms in the '125 patent to be construed.

Defendants have contacted Plaintiffs with regard to the motion and Plaintiffs have indicated that they will oppose.

This short motion is filed on an emergency basis in order that it can be heard, decided, and, if allowed, briefs filed without further continuing the April 14, 2011 Markman hearing.

ARGUMENT

On November 2, 2010, the Court issued an order setting a Markman hearing for March 16, 2011 and, on January 5, 2011, the parties filed a stipulation extending fact discovery to July 1, 2011.

Subsequent to the filing of the stipulation extending the discovery period, Defendants retained new lead counsel in this action.

On February 24th, new counsel received the case files from prior lead counsel and Plaintiffs assented to a motion to continue the Markman hearing to allow new counsel time to get up to speed on the case. The Court granted the motion and continued the Markman hearing to April 14, 2011.

Having reviewed the files in detail and, in particular, the patents, the file histories, and the Markman briefs that were filed by predecessor counsel in 2009, Defendants have concluded that the term "between" in the '125 patent requires construction.

As it stands, asserted claim 3 must be indefinite because it is unclear whether "between" would cover magnets that are above or below the track. This term also presents an important infringement issue, as many of the accused rides have magnets that are above or below the track and clearly would not infringe under Defendants' construction, which, consistent with the specification, would require that the magnets be positioned within the vertical extent of the track when the track is in a horizontal orientation.

For these reasons, Defendants now move for leave to file a supplemental Markman brief, not to exceed ten pages, and to add the term "between" to the list of terms in the '125 patent to be construed.

The supplemental brief would address the "between" term, and also would also address the existing terms, to the extent necessary to make the written arguments consistent with new counsels' view of the case.

Defendants are mindful of the fact that the Court has previously indicated that no new briefs should be filed, but must make this motion to address deficiencies in the arguments presented by prior counsel, who was eventually fired for failing to properly prosecute this case.

Defendants do not seek to withdraw the original briefs, or to submit entirely new briefs followed by new responsive briefs, but only the very minimum of additional argument that is believed to be necessary to put the case into the proper posture for argument.

CONCLUSION

WHEREFORE, Defendants respectfully request that this motion be ALLOWED. A proposed order is attached hereto as Exhibit A.

Dated: March 17, 2011

/s/ Sean T. O'Kelly

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