

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

L-3 COMMUNICATIONS SECURITY
AND DETECTION SYSTEMS
CORPORATION DELAWARE,

Plaintiff,

v.

AMERICAN SCIENCE &
ENGINEERING, INC.,

Defendant.

CIVIL ACTION NO. 04-10339-RWZ

**L-3'S RESPONSE TO AS&E'S STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Pursuant to Local Rule 56.1, L-3 responds to the numbered paragraphs of AS&E's Statement Of Undisputed Material Facts as follows:

4. AS&E did not "fully" disclose to the PTO the government contract, DAAB10-95-C-0001, and its subject matter in the `495 provisional application. Nor was the contract "fully" disclosed in any application from which the patents-in-suit originated claiming priority to the `495 provisional application. AS&E did not disclose the date of that contract, which was more than one year before the filing date of the `495 provisional application. AS&E did not disclose that the contract was a prior art sale. In addition, AS&E never disclosed the actual text of the contract to the PTO.

The quoted language, that a "series of embodiments . . . are discussed . . . in Appendix 3" referred to embodiments "of the invention," which statement would have caused a reasonable examiner to understand, incorrectly, that the contract mentioned in Appendix 3 was not prior art.

5. The quoted statement inaccurately suggested that the contract was “recent,” without disclosing that it was prior art because it had been signed more than a year earlier.

6. As noted above in 4, several important details of the contract were not disclosed in Appendix 3 or elsewhere in the application papers.

Respectfully submitted,

L-3 COMMUNICATIONS SECURITY AND
DETECTION SYSTEMS CORPORATION
DELAWARE

Dated: January 19, 2005

/s/ James J. Foster

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