

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

	)	
L-3 COMMUNICATIONS SECURITY	)	
AND DETECTION SYSTEMS	)	
CORPORATION DELAWARE	)	
	)	Civil Action No. 04-10339-RWZ
Plaintiff,	)	
	)	
v.	)	
	)	
AMERICAN SCIENCE &	)	
ENGINEERING, INC.	)	
	)	
Defendant	)	
	)	

**AS&E’S MOTION FOR RECONSIDERATION OF PARTIAL SUMMARY JUDGMENT
AND, IN THE ALTERNATIVE, ENTRY OF FINAL JUDGMENT AND A STAY
PENDING APPEAL**

Defendant American Science & Engineering, Inc. (“AS&E”) moves for reconsideration of the Court’s summary judgment decision of September 16, 2005, invalidating certain claims of U.S. Patent No. 5,903,623 (“the ‘623 patent”) under the on-sale bar of 35 U.S.C. § 102(b). Reconsideration is appropriate for two reasons. First, there is new evidence that reveals a discrepancy between the Court’s view of the AS&E contract at the center of L-3’s on-sale bar argument, and the United States Patent and Trademark Office’s view of that contract. Specifically, the Court and the PTO take opposite positions on whether that contract triggers an on-sale bar. Thus, there is a dispute of material fact which makes summary judgment inappropriate.

Second, reconsideration will allow the Court an opportunity to address two legal errors. This Court apparently shifted the burden of proof onto AS&E and inappropriately weighed or discounted AS&E's evidence when ruling that (a) the Mobile CargoSearch mobile x-ray

inspection system disclosed in the Contract anticipates the claims at issue and (b) this Court has declaratory judgment jurisdiction to invalidate those claims, this Court apparently shifted the burden of proof onto AS&E and inappropriately weighed or discounted AS&E's evidence.

Thus, AS&E asks the Court to (a) reconsider its ruling of September 16, 2005; (b) deny L-3's motion for summary judgment; and (c) dismiss L-3's complaint for lack of declaratory judgment jurisdiction as to the claims requiring backscatter imaging.

In the alternative, under Fed. R. Civ. P. 54(b), AS&E moves for entry of final judgment as to the invalidated claims (Claims 1-7, 9, 11-13, 19-21, 23-30, 32, 34-36, 42-48, 50, 52 and 53 of the '623 patent). AS&E will then appeal the judgment to the Court of Appeals for the Federal Circuit. To facilitate that appeal and for the sake of judicial economy, AS&E also seeks a stay of these proceedings pending the appeal.

RULE 7.1 CERTIFICATE

The undersigned certifies that counsel for the parties conferred in a good faith attempt to resolve and narrow the issues but were unable to do so.

Dated: October 7, 2005

AMERICAN SCIENCE AND
ENGINEERING, INC.

By its attorneys,

/s/ Erik P. Belt
Erik Paul Belt, BBO # 558620
BROMBERG & SUNSTEIN LLP
125 Summer Street
Boston, Massachusetts 02110
Tel: (617) 443-9292
Facsimile: (617) 443-0004
ebelt@bronsun.com