

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,	)	
	)	ORAL HEARING REQUESTED
v.	)	
	)	
AMERICAN SCIENCE &	)	
ENGINEERING, INC.	)	
	)	
Defendant	)	
	)	

**AS&E's MOTION TO DISMISS FOR LACK OF JURISDICTION,
FOR ATTORNEYS' FEES, AND TO STAY ALL PROCEEDINGS**

Defendant American Science & Engineering, Inc. ("AS&E") moves to dismiss all claims and counterclaims in this case and for an award of attorneys' fees and costs associated with having to defend this needless litigation. Dismissal is appropriate because AS&E has signed a covenant not to sue L-3 Communications Security and Detection Systems Corp. ("L-3") for infringement of U.S. Patent Nos. 5,903,623 and 6,292,533 by L-3's truck-mounted, transmission-only, mobile inspection systems. As discussed in detail in the accompanying memorandum, L-3 has already acknowledged that such a covenant moots its declaratory judgment claims.

Because AS&E's covenant moots L-3's claims, it necessarily divests this Court of jurisdiction over this matter. Thus, this Court should stay any further litigation activity, including AS&E November 30, 2005 deadline to respond to L-3's motion for summary judgment

and L-3's December 5, 2005 deadline to provide an expert report, until this Court can act on this motion and dismiss all claims and counterclaims filed in this proceeding.

Further, this Court should exercise its inherent power to award AS&E the fees and costs it incurred as a result of this matter. As discussed more fully in the accompanying memorandum, such an award is appropriate because L-3 is using this Court's judicial authority as a tool to force AS&E to cede rights in patents not in suit. Thus, it is only right that the Court order L-3 to compensate AS&E for the cost of participating in this vexatious litigation.

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: November 30, 2005

AMERICAN SCIENCE AND
ENGINEERING, INC.

By its attorneys,

/s/ Erik P. Belt

Erik Paul Belt, BBO # 558620

John F. Ward, BBO# 64668

BROMBERG & SUNSTEIN LLP

125 Summer Street

Boston, Massachusetts 02110

Tel: (617) 443-9292

Facsimile: (617) 443-0004

ebelt@bronsun.com

01945/00511 448532.1