

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ARDISAM, INC., d/b/a YUKON TRACKS
and SPRING FORM, INC.,

Plaintiffs,

v.

AMERISTEP, INC., HUNTER'S VIEW, LTD.
and EASTMAN OUTDOORS,

Defendants.

OPINION AND
ORDER

03-C-553-C

In this civil action, plaintiffs Ardisam, Inc. and Spring Form, Inc. contended that defendants Ameristep, Inc., Hunter's View, Ltd. and Eastman Outdoors infringed plaintiffs' U.S. Patent No. 5,038,812 (the '812 patent) by making, using, selling and offering for sale hunting blinds that utilize and embody the patented invention, which is a "quickly erectable, quickly collapsible, self supporting portable structure." In an August 2, 2004, opinion and order I granted defendants' motion for summary judgment, finding that defendants' products did not infringe the '812 patent. Plaintiff appealed the judgment and on May 26, 2005, the United States Court of Appeals for the Federal Circuit dismissed plaintiff's appeal for lack of jurisdiction, stating that outstanding counterclaims of invalidity remain in this

case. Inexplicably, on June 3, 2005, this court entered judgment in favor of defendants without addressing the outstanding counterclaims.

Presently before the court is plaintiff Spring Form, Inc.'s emergency motion for entry of final judgment or in the alternative, for certification of the court's final order under Fed. R. Civ. P. 54(b). According to plaintiff, when this court found that defendant Ameristep's product did not infringe plaintiff's patent, this court should have dismissed as moot all of Ameristep's counterclaims, including its counterclaims for noninfringement, invalidity, patent unenforceability, laches, equitable estoppel, lack of standing, patent misuse and intentional interference with contractual relations. I agree that with the exception of defendant's "intentional interference with contractual relations" claim, each of the other claims should have been dismissed as moot with this court's finding of noninfringement. Plaintiff alleges that defendant Ameristep has treated this court's judgment as final, even though its counterclaims against plaintiff were never expressly dismissed. In other words, even if defendant's claim of intentional interference with contractual relations was not mooted by the finding of noninfringement, defendant has abandoned it by failing to object to the June 3, 2005 entry of judgment.

In order for plaintiff to appeal from this court's August 2, 2004 opinion, this court must dispose of all claims in this case. I agree that the June 3, 2005 judgment does not reflect the finality of all the claims and therefore, it must be vacated.

Accordingly, IT IS ORDERED that this court's judgment entered on June 3, 2005 is VACATED as incomplete;

IT IS ORDERED that defendant's counterclaims for noninfringement, invalidity, patent unenforceability, laches, equitable estoppel, lack of standing and patent misuse are DISMISSED as moot;

IT IS FURTHER ORDERED that defendant Ameristep will have until June 15, 2005 in which to advise this court whether it intends to pursue its counterclaim of intentional interference with contractual relations against plaintiff Spring Form, Inc. If not, I will amend the judgment to expressly dispose of all of defendant Ameristep's counterclaims so that the judgment in favor of defendants is final and appealable.

Entered this 10th day of June, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge