

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

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SANDISK CORP.,

Plaintiff,

v.

KINGSTON TECHNOLOGY CO., INC. and  
and KINGSTON TECHNOLOGY CORP.,

Defendants.

ORDER

07-cv-605-bbc

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SANDISK CORP.,

Plaintiff,

v.

KINGSTON TECHNOLOGY CO., INC. and  
KINGSTON TECHNOLOGY CORP.,

Defendants.

ORDER

07-cv-607-bbc

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Judgment was entered in this patent infringement suit on March 11, 2011 after I ruled on the parties' cross-motions for summary judgment. On March 14, 2011, defendants Kingston Technology Co., Inc. and Kingston Technology Corp. moved for correction of the judgment under Fed. R. Civ. P. 60(a). In particular, defendants ask that the judgment be corrected in three ways: (1) judgment should not be entered in favor of plaintiff for

infringement of certain claims of the '424 patent because these claims were dismissed by stipulation after I ruled in plaintiff's favor on its motion for summary judgment; (2) a typographical error stating that judgment is entered in defendants' favor on plaintiff's request for "post-filing damages" should be corrected to state that judgment is entered in defendants' favor on plaintiff's request for "pre-filing damages"; and (3) judgment should not be entered in plaintiff's favor on defendants' defense of lack of standing because the finding of non-infringement mooted that defense.

Plaintiff has no objections to the first two corrections and those errors should be corrected. However, plaintiff opposes vacating judgment on the question of standing because Rule 60(a) does not apply to such requests and it was not error to enter judgment on standing at any rate. I agree with plaintiff on this point. Rule 60(a) provides a mechanism by which "[t]he court may correct a clerical mistake or a mistake arising from oversight or omission." The entry of judgment for plaintiff on defendants' defense of lack of standing was not a clerical mistake or an oversight or omission; I granted plaintiff's motion for summary judgment on the issue of standing, so the judgment is consistent with the summary judgment order.

Defendants' contention that the defense was mooted does not mean it was a clerical mistake or an oversight or omission to enter judgment on that question. It was necessary to address the parties' dispute on standing *before* reaching questions of infringement and I did this in the summary judgment order. That conclusion was reflected in the judgment. I do not agree with defendants that the later determination of non-infringement mooted the

standing defense because that defense had to be decided as a threshold issue, but even if the defense were mooted, it would not be proper to “correct” that aspect of the judgment under Rule 60(a). Therefore, I will deny defendants’ Rule 60(a) motion with respect to its request to vacate the judgment in plaintiff’s favor on defendants’ standing defense.

ORDER

IT IS ORDERED that

1. The motion to correct the judgment under Rule 60(a) filed by defendants Kingston Technology Co., Inc. and Kingston Technology Corp., dkt. # 1082, is DENIED with respect to defendants’ request to vacate the judgment in favor of plaintiff on defendants’ defense of lack of standing and GRANTED in all other respects.

2. The judgment entered March 11, 2011, dkt. #1077, is VACATED. The clerk of court is directed to enter an AMENDED JUDGMENT consistent with this order.

Entered this 28th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge