

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

EMD CROP BIOSCIENCE INC.,
EMD CROP BIOSCIENCE CANADA INC.
and MCGILL UNIVERSITY,

Plaintiffs,

ORDER

10-cv-283-bbc

v.

BECKER UNDERWOOD, INC.,

Defendant.

On November 3, 2011, I granted defendant Becker Underwood, Inc.'s motion for summary judgment on the claims by plaintiffs EMD Crop Bioscience Canada Inc. and McGill University that defendant infringed plaintiffs' United States Patent No. 6,979,664. Dkt. #202. In the same order, I granted defendant's motion for summary judgment on the false marking and marking claims filed by plaintiffs EMD Crop Bioscience Canada's and EMD Crop Bioscience Inc. and denied plaintiffs' motions on the same claims. The court entered judgment in favor of defendant on November 9, 2011 and the EMD plaintiffs appealed to the Court of Appeals for the Federal Circuit on December 9, 2011.

While the appeal was pending, the parties negotiated a settlement of all claims

asserted in this action and the EMD plaintiffs agreed to dismiss all claims in this action against defendant with prejudice. The parties filed a notice of voluntary dismissal in the court of appeals, and the appeal was dismissed on May 23, 2012. Now the EMD plaintiffs and defendant have filed a joint motion with this court under Fed. R. Civ. P. 60(b)(6), requesting that the court withdraw the November 3 opinion, vacate the November 9 order granting judgment to defendant and dismiss the case. Under Rule 60(b), a court may reopen a final judgment for several reasons, including “any other reason that justifies relief.” The parties contend that their recent settlement justifies such relief in this case. They state that although McGill University has not joined the motion, it does not oppose it.

The parties have not explained why it is necessary to withdraw the summary judgment opinion and vacate the judgment. In some cases, it may be that a settlement agreement depends on the vacatur of judgment. However, the parties state in their motion that the settlement is not conditioned on the granting of the vacatur motion and they do not suggest that the judgment will impede enforcement of the settlement in any way.

Moreover, the parties fail to explain why the court should withdraw the summary judgment opinion. It is not my practice to withdraw opinions on request of counsel. Not only is it impractical to do so in an electronic world, but it suggests that the opinion is the property of the parties, which it is not. Because the parties have failed to explain why the judgment should be vacated or the summary judgment opinion should be withdrawn, I am

denying the motion.

ORDER

The motion to withdraw the court's opinion and order on summary judgment and vacate the judgment, dkt. #213, filed by plaintiffs EMD Crop Bioscience Canada Inc., EMD Crop Bioscience Inc. and defendant Becker Underwood, Inc. is DENIED.

Entered this 30th day of May, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge