

United States District Court,  
D. Maryland, Southern Division.

**STAR SCIENTIFIC, INC,**  
Plaintiff.

v.

**R.J. REYNOLDS TOBACCO COMPANY,**  
Defendant.

**March 31, 2004.**

Richard McMillan, Jr., Jonathan H. Pittman, Kathryn D. Kirmayer, Mark Michael Supko, Crowell and Moring LLP, Washington, DC, Andrew Jay Graham, Kramon And Graham PA, Baltimore, MD, for Plaintiff.

Barry Jay Rosenthal, Bromberg Rosenthal LLP, Rockville, MD, Dominic P. Zanfardino, Howard S. Michael, Justin B. Rand, Richard A. Kaplan, Robert G. Pluta, Brinks Hofer Gilson and Lione, Chicago, IL, for Defendant.

### ***ORDER***

ALEXANDER WILLIAMS, JR., **District Judge.**

On January 27, 2004, the Court received a Report and Recommendation from Special Master Philip G. Hampton [Paper No. 415] regarding Defendant R.J. Reynolds Tobacco Company's ("R.J.Reynolds") Motion for Summary Judgment No. 3: Patent Invalidity Based On Failure To Comply With 35 U.S.C. s. 112 [Paper No. 273]. The Special Master recommended that the Court enter an order denying R.J. Reynolds's motion for summary judgment.

After *de novo* review of the entire record, including the Special Master's Report and Recommendation, Star Scientific's filed objections [423], R.J. Reynolds's filed objection [427], Star Scientific's response to R.J. Reynolds's filed objection [434], and R.J. Reynolds's response to Star Scientific's filed objections [437], the Court finds that the Special Master fully considered the pleadings and supporting documents and carefully applied the law to the relevant facts. The Court agrees with the Special Master that since R.J. Reynolds does not present evidence regarding the indefiniteness of the "controlled environment" claim limitation, summary judgment of invalidity should be denied *vis-a-vis* this fact as to whether the claim language is indefinite, thereby preventing those skilled in the art from understanding the meaning of "anaerobic condition around the vicinity of the plant portion." Third, the Court agrees with the Special Master that since best mode and enablement are read in light of those skilled in the art, and those skilled in the art would recognize the preferred airflow recited in the specification of the patents-in-suit is an obvious error, this error does not invalidate the patents-in-suit.

Therefore, IT IS this 30th day of March, 2004, by the United States District Court for the District of

Maryland, hereby **ORDERED**:

1. That the Report and Recommendation dated January 27, 2004[415] BE, and the same hereby IS, **ADOPTED** *in toto*; AND;

2. Defendant R.J. Reynolds Tobacco Company's ("R.J.Reynolds") Motion for Summary Judgment No. 3: Patent Invalidity Based On Failure to Comply With 35 U.S.C. s. 112 [Paper No. 273] BE, and the same hereby IS, **DENIED**; AND;

3. That the Clerk of the Court mail copies of this Order to all counsel of record.

D.Md.,2004.

Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.

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