

United States District Court,
S.D. California.

CIMCORE CORPORATION, a California corporation, Romer, Inc., a California corporation, Homer Eaton, an individual, and Hexagon Metrology, AB, a Swedish limited liability company, Plaintiffs.

v.
FARO TECHNOLOGIES, INC., a Florida corporation,
Defendant.

Faro Technologies, Inc,
Counterclaimant.

v.
Cimcore Corporation, Romer, Inc., Homer Eaton, and Hexagon Metrology, AB,
Counterdefendants.

Civ. No. 03CV2355B (WMC)

Sept. 21, 2005.

Brenton R. Babcock, Philip Mark Nelson, Knobbe Martens Olson and Bear, Irvine, CA, for
Plaintiffs/Counterdefendants.

Daniel Bruso, Steven M. Coyle, William J. Cass, Cantor Colburn, Bloomfield, CT, Gerald L. McMahon,
Richard A. Clegg, Seltzer Caplan McMahon Vitek, San Diego, CA, for Defendant/ Counterclaimant.

**ORDER GRANTING DEFENDANT'S MOTION FOR RECONSIDERATION [90-1] AND MOTION
FOR A NEW MARKMAN HEARING [90-2] AND VACATING (1) SUPERSEDING MARKMAN
ORDER (DOC. NO. 85) AND (2) ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT OF INFRINGEMENT AND DENYING DEFENDANT'S CROSS MOTION OF NO
INFRINGEMENT (DOC. NO. 86)**

RUDI M. BREWSTER, Senior District Judge.

On November 23-24, 2004, the Court conducted a Markman hearing for asserted claims 1, 2 and 3 of United States Patent Number 5,829,148 ("the '148 patent) and subsequently issued a Claim Construction Order on November 30, 2004. *See* Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). On April 19, 2005, Plaintiff Cimcore-Romer filed its motion for summary judgment of infringement of the '148 patent, and Defendant Faro filed its own motion for summary judgment of non-infringement on May 27, 2005. On July 11, 2005, the Court issued a Superseding Markman Order and an Order granting Plaintiffs motion for summary judgment of infringement of the '148 patent and denying Defendant's motion for summary judgment of non-infringement of the '148 patent. On July 26, 2005, Defendant Faro filed a motion for reconsideration of the Court's summary judgment ruling and of its Markman order and a motion for a new Markman hearing. These motions were heard on September 19, 2005.

Because there is a defect in the Markman Order that served as the basis for the Court's summary judgment rulings, the Court hereby **GRANTS** Defendant Faro's Motion for Reconsideration of the Court's Summary Judgment Rulings and Motion for a new Markman Hearing. The new Markman Hearing will be held on **October 3, 2005, at 9:00 a.m.** in Courtroom 2 and will be limited in scope to the few claim elements that are at issue. Accordingly, the Court **VACATES** its (1) Superseding Markman Order (Doc. No. 85) and (2) Order Granting Plaintiff Cimcore-Romer's Motion for Summary Judgment of Infringement of the '148 patent and Denying Defendant Faro's Cross Motion for Summary Judgment of Non-Infringement (Doc. No. 86), both dated July 11, 2005. The Court vacates these orders without prejudice to each party and without comment on the merits of the case. The present Order is only indicia of the Court's desire to correct defects in its prior Markman Order and does not reflect any opinion on whether the accused device infringes the '148 patent or not.

The parties are given a hearing date for any new summary judgment motions of **November 7, 2005, at 10:30 a.m.** in Courtroom 2. Briefs shall be limited to twenty pages for simultaneous opening briefs and ten pages for response.

IT IS SO ORDERED.

S.D.Cal.,2005.

Cimcore Corp. v. Faro Technologies, Inc.

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