

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROAD WIDENER, LLC,

Plaintiff,

-v-

1:20-CV-160

ROBERT H. FINKE & SONS, INC.

Defendant.

APPEARANCES:

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DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On February 18, 2020, plaintiff Road Widener, LLC (“Road Widener”) filed this patent infringement action against defendant Robert H. Finke & Sons, Inc. (“Finke & Sons”). Dkt. No. 1. At issue is a patent describing a flexible skid steer attachment device designed for use in paving shoulders and widening roads.

On September 18, 2020, the parties requested a claim construction hearing pursuant to Local Patent Rule 4.4(a). Dkt. No. 32. Thereafter, the matter was referred to recalled U.S. Magistrate Judge David E. Peebles for the “sole purpose of conducting a *Markman* hearing and issuing a Report and Recommendation regarding the construction of disputed patent claim terms.” Dkt. No. 47.

On May 13, 2021, Judge Peebles advised by Report & Recommendation (“R&R”) how the disputed terms of the patent should be construed. Dkt. No. 48. Both parties filed and briefed objections. Dkt. Nos. 49–52. This Court

overruled the parties' objections and adopted Judge Peebles's R&R on June 30, 2021.¹ Dkt. No. 53.

On September 10, 2021, Road Widener filed an emergency motion that sought to strike certain portions of Finke & Sons' revised non-infringement contentions. Dkt. No. 58. Defendant opposed and moved for a judgment on the pleadings. Dkt. No. 62. Both motions were referred to Judge Peebles for his recommendation. Dkt. No. 65.

On December 9, 2021, Judge Peebles advised by R&R that Road Widener's motion to strike be granted and that Finke & Sons' motion for a judgment on the pleadings be denied. Dkt. No. 68. Defendant has filed objections, Dkt. No. 73, which have been fully briefed, Dkt. No. 75.

Upon *de novo* review of the portions to which Finke & Sons has objected, the R&R is accepted and will be adopted. *See* 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. The Report & Recommendation (Dkt. No. 68) is accepted and adopted;
2. Road Widener's emergency motion to strike (Dkt. No. 58) is GRANTED;
3. Finke & Sons' revised non-infringement contentions addressing

¹ Based on the parties' agreement, the Order adopting the R&R corrected two inadvertent errors.

- (1) whether the SM2100 has angled walls for receiving debris at an angle of deflection which “minimizes” the impact of debris on a conveyer belt;
- (2) whether the SM2100 has a support frame “supported by at least two support brackets”;
- (3) whether the SM2100 includes a “power system” “system,” or “hydraulic system” for powering the conveyer system; and
- (4) whether the SM2100 includes at least one “contact roller rotatably attached” to the support frame are STRICKEN; and

4. Finke and Sons’ motion for a judgment on the pleadings (Dkt. No. 62) is

DENIED.

IT IS SO ORDERED.



David N. Hurd
U.S. District Judge

Dated: January 12, 2022
Utica, New York.