

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-1193

SENSORMATIC ELECTRONICS, LLC,

Plaintiff-Appellee,

v.

PHILIP VON KAHLE (Assignee for the benefit of the creditors of
The Tag Company US, LLC),

Defendant,

and

PHENIX LABEL COMPANY,

Defendant-Appellant,

and

DENNIS GADONNEIX,

Defendant.

Appeal from the United States District Court for the Southern District of
Florida in case no. 06-CV-81105, Judge Daniel T.K. Hurley.

ORDER

Before BRYSON, LINN, and DYK, Circuit Judges.

PER CURIAM.

The judgment in this case is affirmed. With respect to the inequitable conduct claim, we uphold the district court's ruling of no inequitable conduct based on the court's

finding that the inventors did not act with the intent to deceive the Patent and Trademark Office; we do not address the question whether the information that was not disclosed was material. With respect to the public use issue, we uphold the district court's conclusion that the appellant Phenix failed to prove by clear and convincing evidence that the invention was in public use more than one year before the filing date for the patent; we do not address the question whether any alleged use of the invention during the period prior to the filing date of the patent fell within the experimental use exception to the public use doctrine.

FOR THE COURT

February 17, 2010
Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Mark L. Levine
Robert R. Waters