

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LOUIS C. TALARICO, II,
Plaintiff

v.

MARATHON SHOE COMPANY,
Defendant

Civil No. 00-239-P-C

**ORDER AFFIRMING THE
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge having filed with the Court on July 15, 2002, with copies to counsel, his Recommended Decision on Second Cross-Motions for Summary Judgment (Docket No. 115); and Plaintiff having filed his objection thereto on August 1, 2002, (Docket No. 116), to which objection Defendant, having been granted an enlargement of time in which to do so, filed its response (Docket No. 119) and a supplemental letter response (Docket No. 120) on August 23, 2002; and this Court having reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; and this Court having made a *de novo* determination of all matters adjudicated by the Magistrate Judge's Recommended Decision, and concurring with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision, it is **ORDERED** as follows:

- (1) Plaintiff's objection is hereby **DENIED**;
- (2) The Recommended Decision of the Magistrate Judge is hereby **AFFIRMED**;

- (3) The new cross-motion of Dr. Talarico for summary judgment is hereby **DENIED** and that of Defendant Marathon is hereby **GRANTED**;
- (4) The parties having addressed in written submissions the question of whether any infringement claim premised on the doctrine of substantial equivalents remains to be tried in this case, and the Court having fully reviewed and considered those submissions, the Court **FINDS** that any claim of infringement based on the doctrine of substantial equivalents was not timely and specifically pleaded by Plaintiff, and Plaintiff's claim to proceed thereon is hereby **DENIED**.

GENE CARTER
District Judge

Dated at Portland, Maine this 21st day of October, 2002.

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