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United States Court of Appeals for the Federal Circuit

04-1516

KÁLMÁN GYÖRY,

Plaintiff-Appellant,

v.

REEBOK INTERNATIONAL, LTD.,

Defendant-Appellee.

DECIDED: February 14, 2005

Before MAYER, Circuit Judge, FRIEDMAN, Senior Circuit Judge, CLEVINGER, Circuit Judge.

PER CURIAM.

Kálmán Györy (“Györy”) appeals the dismissal of his suit against Reebok International, Ltd. (“Reebok”) for alleged infringement of United States Patent No. 4,134,156 (“the ’156 patent”). Györy v. Reebok Int’l Ltd., No. 03-CV-10077 (D. Mass. June 4, 2004). We affirm.

With the benefit of an earlier application, Györy’s ’156 patent claimed priority from June 11, 1976, and it issued on January 16, 1979. Under 35 U.S.C. § 154(c)(1), the term of the ’156 patent expired on June 11, 1996. Györy commenced this action on

January 6, 2003. Because “no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint,” 35 U.S.C. § 286, and because an act must be performed “during the term of the patent” to constitute an act of infringement, 35 U.S.C. § 271(a), Györy cannot recover and his complaint was properly dismissed for failure to state a claim. We have considered Reebok’s request for attorney fees, and we decline to award them.