

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3

4 DUHN OIL TOOL, INC.,

5 Plaintiff/Counterclaim-
6 Defendant,

7 vs.

8 CAMERON INTERNATIONAL CORPORATION,

9 Defendant/Counterclaim-
10 Plaintiff.

1:05-cv-01411 OWW GSA

ORDER RE DEFENDANT CAMERON'S
MOTIONS IN LIMINE (DOCKET
NOS. 528 and 531).

11 Pending before this Court are Defendant Cameron's Motions in
12 Limine filed December 14, 2010 (Doc. 528 and 531). The Court
13 having considered all the parties' respective moving and
14 opposition papers and related documents and oral arguments, finds
15 as follows:
16

- 17 1. Cameron's Motion in Limine No. 1, Reference to the Macando
18 Prospect or Gulf of Mexico Oil Spill.

19 Cameron's Motion in Limine No. 1 is GRANTED, and is
20 reciprocal to both parties.
21

- 22 2. Cameron's Motion in Limine No. 2, Duhn Oil's Reasons for
23 Terminating John Rogers.

24 Cameron's Motion in Limine No. 2 is GRANTED in part and
25 DENIED in part. Duhn Oil may offer evidence as to reasons for
26 John Rogers' termination, but limited to the reasons in the
27 following documents: D096730, D096731, D09762 and D096736-37.
28

1 3. Cameron's Motion in Limine No. 3, Asserting an Advice of
2 Counsel Defense Regarding Duhn Oil's Intent for Inequitable
3 Conduct.

4 Cameron's Motion in Limine No. 3 is GRANTED. Duhn Oil does
5 not object.

6 4. Cameron's Motion in Limine No. 4, Subsequent Remedial
7 Measures

8 Cameron's Motion in Limine No. 4 is GRANTED in part and
9 DENIED in part. Duhn Oil may offer evidence of the design changes
10 Cameron made to its mandrels, on the issue of willful
11 infringement but cannot argue that these design changes are
12 "subsequent remedial measures" within the meaning of Fed. R.
13 Evid. 407.
14

15 5. Cameron's Motion in Limine No. 5, Financial State of Cameron

16 Cameron's Motion in Limine No. 5 is GRANTED, and is
17 reciprocal to both parties.
18

19 6. Cameron's Motion in Limine No. 6, Reference to Motions in
20 Limine

21 Cameron's Motion in Limine No. 6 is GRANTED.

22 7. Cameron's Motion in Limine No. 7, Reference to Denied
23 Summary Judgment

24 Cameron's Motion in Limine No. 7 is GRANTED.

25 8. Cameron's Motion in Limine No. 8, Requests for Stipulations
26 and Documents

1 Cameron's Motion in Limine No. 8 is GRANTED, and is
2 reciprocal to both parties.

3 9. Cameron's Motion in Limine No. 9, Reference to Objections
4 During the Reading of Deposition Testimony

5 Cameron's Motion in Limine No. 9 is GRANTED. If reference is
6 made to deposition testimony containing objections, the Court
7 will rule on the objection as the deposition is read.
8

9 10. Cameron's Motion in Limine No. 10, The Nature of Any Fact
10 Witness's Preparation for Trial or for Deposition Testimony
11 with that Witness's Counsel

12 Cameron's Motion in Limine No. 10 is GRANTED in part and
13 DENIED in part. Fact witnesses may be questioned regarding the
14 nature of their preparation for trial or for deposition
15 testimony, unless attorney-client privilege applies.
16

17 11. Cameron's Motion in Limine No. 11, References to Courtroom
18 Attendees

19 Cameron's Motion in Limine No. 11 is GRANTED, and is
20 reciprocal to both parties.

21 12. Cameron's Motion in Limine No. 12, Connections to
22 California

23 Cameron's Motion in Limine No. 12 is GRANTED in part and
24 DENIED in part. References to California, e.g., geographic
25 operations, scope of operations, where people do business, and a
26 witness's geographic background, are permitted if relevant and
27
28

1 not used to exploit locality prejudice. No locality prejudice
2 shall be permitted.

3 13. Cameron's Motion in Limine No. 13, Focus Groups

4 Cameron's Motion in Limine No. 13 is GRANTED.

5 14. Cameron's Motion in Limine No. 14, Failure to Call a
6 Witness at Trial

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8 Cameron's Motion in Limine No. 13 is DENIED without
9 prejudice. If applicable, either party has the right to a
10 "Failure to Produce Stronger Evidence" instruction if supported
11 by the evidence or law.

12 15. Cameron's Motion in Limine No. 15, Providing Legal Opinions
13 or Misleading the Jury

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15 Cameron's Motion in Limine No. 15 is DENIED without
16 prejudice. Legal opinions expressed by any patent expert may be
17 admissible, subject to offer of proof. Cameron's Motion in Limine
18 No. 15 is GRANTED as to misleading the jury.

19 16. Cameron's Motion in Limine No. 16, Settlement Discussions

20
21 Cameron's Motion in Limine No. 16 is GRANTED, and is
22 reciprocal to both parties.

23 17. Cameron's Motion in Limine No. 17, Undisclosed Expert
24 Opinion Testimony

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26 Cameron's Motion in Limine No. 17 is GRANTED in part. The
27 Court reserves ruling on Motion in Limine No. 17 as it relates to
28 Duross O'Bryan.

1 18. Cameron's Motion in Limine No. 18, Reference to Claims of
2 Privilege

3 Cameron's Motion in Limine No. 18 is GRANTED.

4 19. Cameron's Motion in Limine No. 19, Reference to Privileged
5 Subject Matter

6 Judgment is reserved on this motion. Parties will approach
7 the bench before presenting any evidence or arguments regarding
8 John Rogers' communications with Cameron's counsel.

9 20. Cameron's Motion in Limine No. 20, Presumption of Validity

10 Cameron's Motion in Limine No. 20 is GRANTED in part and
11 DENIED in part, and is reciprocal to both parties. The Court will
12 instruct the jury on the law applicable to the case, including
13 the presumption of validity. This does not bar reference in the
14 Patent Tutorial.
15 Patent Tutorial.

16 21. Cameron's Motion in Limine to Exclude Portions of
17 Plaintiff's Expert Stuart Levy's Proposed Testimony

18 Cameron's Motion in Limine to Exclude Portions of
19 Plaintiff's Expert Stuart Levy's Proposed Testimony is GRANTED in
20 part and DENIED in part.

21 Cameron's motion to exclude Mr. Levy's background
22 information suggesting that he was a PTO official responsible for
23 deciding patent appeals, interpreting the patent laws, resolving
24 claim construction issues, and supervising patent examiners is
25 GRANTED in part and DENIED in part. Mr. Levy may *briefly* explain
26 GRANTED in part and DENIED in part. Mr. Levy may *briefly* explain
27 GRANTED in part and DENIED in part. Mr. Levy may *briefly* explain
28

1 his prior employment at the PTO; however, such testimony should
2 be relevant, concise, and non-redundant. Mr. Levy cannot state
3 that he made "final decisions" for the Department of Commerce or
4 for the Executive Branch of the government.

5 Cameron's motion to exclude Mr. Levy's proposed testimony
6 concerning the knowledge, skill, ability or competence of PTO
7 examiners is GRANTED.
8

9 Cameron's motion to exclude Mr. Levy's proposed testimony
10 that Duhn Oil commissioned a prior art search by a professional
11 search firm based entirely on documents withheld by Duhn Oil
12 during discovery is DENIED, provided the disputed documents are
13 produced.
14

15 Cameron's motion to exclude Mr. Levy's proposed testimony
16 regarding the "level of skill" or credibility of another expert
17 witness is GRANTED.

18 Cameron's motion to exclude Mr. Levy's proposed testimony
19 at p. 40, ¶ 110 of his report, concerning communication between
20 Jennifer Duncan and Stuart Casillas, is DENIED.
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22
23 IT IS SO ORDERED.

24 Dated: January 12, 2011

25 /s/ Oliver W. Wanger
26 Oliver W. Wanger
27 United States District Judge
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