

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VISTAN CORPORATION,
Plaintiff,

-v-

FADEI USA, INC., PAN AMERICAN
ENGINEERING and EQUIPMENT CO.,
INC., MANUEL SILVA, and MARIANI
PACKING CO., INC.,
Defendants.

FADEI USA, INC., PAN AMERICAN
ENGINEERING and EQUIPMENT CO.,
INC., MANUEL SILVA, and MARIANI
PACKING CO., INC.,
Counterclaimants,

-v-

VISTAN CORPORATION,
Counterdefendant.

CIVIL ACTION
NO. 10-4862 JCS

PROPOSED ORDER REGARDING EXPERT TESTIMONY AND EXTRINSIC
EVIDENCE AT CLAIM CONSTRUCTION HEARING

The Court, in accordance with the parties' stipulation, Orders as follows:

1. Plaintiff's Extrinsic Evidence and Defendants' Reservation. Plaintiff's proffered extrinsic evidence for the claim construction hearing will be limited to i) the dictionary definitions cited in their Preliminary Claim Constructions, which are attached to the Joint Prehearing Statement as Exhibit B, the substance of which is repeated at Exhibit D-1; and ii) expert opinion in the form of declarations only, from any of Plaintiffs' witnesses designated in Section VII.1 to the Joint Prehearing Statement (Mr. Silberman, Mr. Davis, and Mr. Jones), and only with regard to the construction of the term "active assembly." Defendants reserve the right challenge the admission of Plaintiff's extrinsic evidence at the time of the claim construction hearing, or by whatever other deadline such challenges are due.

2. Defendants' Extrinsic Evidence and Plaintiff's Reservation. Defendants' proffered extrinsic evidence for the claim construction hearing will be solely limited to i) expert opinion

1 testimony in the form of declarations only, from the two expert witnesses designated in Section
2 VII.2 of the Joint Prehearing Statement (Dr. Velinsky and Dr. Klopp). and *only* with regard to the
3 construction of the term “active assembly;” and ii) the photographs and video identified in section
4 VII.2.f of the Joint Prehearing Statement (together with any demonstratives as noted). Plaintiff
5 reserves the right challenge the admission of Defendants’ extrinsic evidence at the time of the
6 claim construction hearing, or by whatever other deadline such challenges are due.

7 3. Deposition of Designated Experts. There shall be no depositions of the witnesses
8 disclosed in the Joint Prehearing Statement with regard to claim constructions issues; provided,
9 however, that the Parties reserve the right to depose any such witnesses for purposes other than
10 claim construction in such witnesses’ capacity as a percipient witness or, to the extent ultimately
11 designated as testifying experts pursuant to FRCP 26, an expert witness.

12 4. No Admission of Relevance. The Parties’ agreement herein shall not be
13 considered an admission or concession by any Party as to the relevance or need for the Court to
14 consider the proffered extrinsic evidence.

15
16 Dated: 10/25/11 _____

17 The Hon. _____ Spero
18 United States District Court
19 Northern District of California
20 Judge Joseph C. Spero

