

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TEK GLOBAL, S.R.L., et al.,

Plaintiffs,

v.

SEALANT SYSTEMS INTERNATIONAL,
INC, et al.,

Defendants.

Case No. [11-cv-00774-VC](#)

**ORDER RE TRIAL EXHIBITS 55, 56,
60, AND 145**

Exhibits 55 and 56 are not admissible to show copying because they don't evidence copying of a commercial embodiment of the invention claimed in the '110 patent. And even if the evidence were relevant because the product contained a portion of the invention, it would be excluded under Rule 403.

Sealant's substantive evidentiary objections to Exhibits 60 and 145 are overruled. With a limiting instruction (if Sealant desires one), and with the understanding that TEK will be prevented from placing undue emphasis on these exhibits at trial and will be required to explain their limited relevance during opening and closing, they are probative enough of copying to overcome Sealant's Rule 403 objection. And although TEK has not shown that these exhibits are business records, they are clearly statements of a party opponent (to the extent they are even being offered to prove the truth of the statements therein). Fed. R. Evid. 801(d)(2).

However, TEK has not yet given a proper explanation of how it can get Exhibits 60 and 145 exhibits into evidence, and the Court's preliminary research has not led to an easy answer. The two cases TEK cites, *Sea-Land Service* and *Brown*, do not seem to stand for the proposition that these exhibits may be admitted at trial without any further evidence of authentication and/or

without a sponsoring witness. TEK is therefore ordered to file a brief, not to exceed three pages, explaining how it proposes to get these exhibits into evidence. The brief must be filed by 3 pm on Saturday, March 11, 2017. Any response by Sealant, also limited to three pages, must be filed by 7 pm on the same day. Assuming the parties are able to give the Court clear guidance on the question, it will make a ruling Sunday so as to assist the parties in their preparation for opening statements.

IT IS SO ORDERED.

Dated: March 10, 2017



VINCE CHHABRIA
United States District Judge