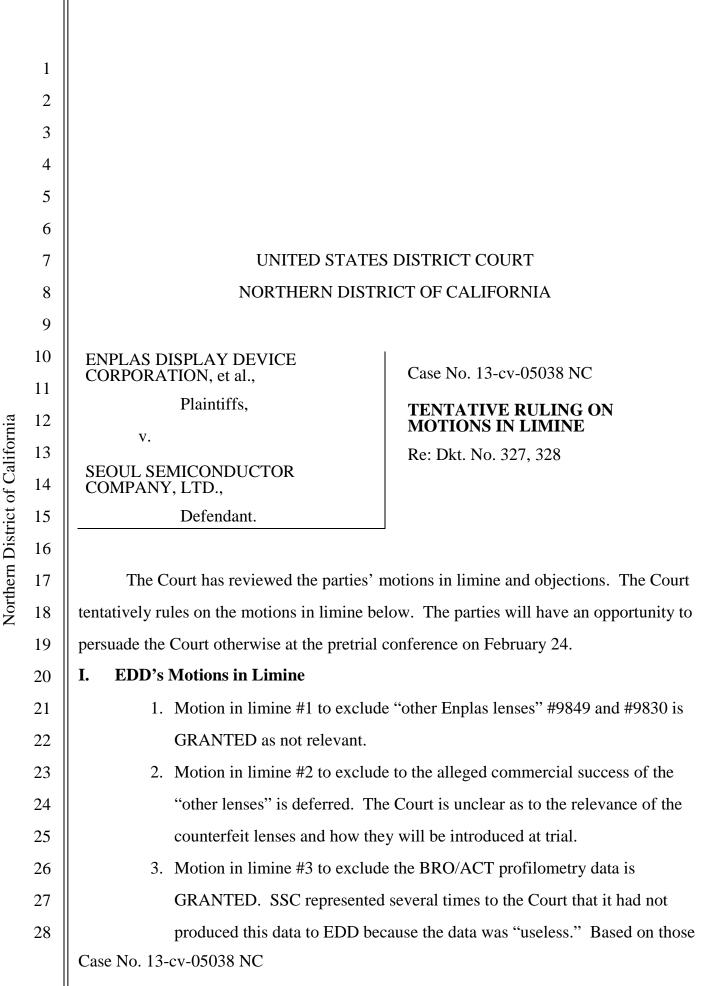
United States District Court



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representations, and the fact that Enplas did not timely request the information after the discovery cut off, the Court concludes that the data is not relevant.

- 4. Motion in limine #4 to exclude the financials of non-party Enplas corporation is deferred. The Court is inclined to grant the motion because Enplas corporation's financials are not relevant to this case. However, the Court would like the parties to further address factors that Davis will use in her Georgia-Pacific analysis.
- 5. Motion in limine #5 and #6 to exclude the late disclosed witnesses Kyung Suk Woo, Kyung Hee Ye, and Kevin Garcia are granted. Rule 26 requires initial disclosure of all individuals "likely to have discoverable information ... along with the subjects of that information," to be supplemented "in a timely manner" upon learning that the initial disclosure is incomplete or incorrect. Fed. R. Civ. P. 26(a),(e). When a party fails to timely disclose a witness, the Court must exclude that witness, unless the failure was "substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). In analyzing whether to exclude a witness for untimely disclosure, courts consider: "(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence, and (5) the nondisclosing party's explanation for [the] failure to disclose the evidence." San Francisco Baykeeper v. W. Bay Sanitary Dist., 791 F. Supp. 2d 719, 733 (N.D. Cal. 2011); Pinterest, Inc. v. Pintrips, Inc., 13-cv-04608 HSG, 2015 WL 2268498, at *7 (N.D. Cal. May 14, 2015). Here, the witnesses were disclosed on January 22, 2016, so are not timely, and Enplas has had no opportunity to depose the witnesses.
- 6. Motion in limine #7 to exclude SSC's damages theory based on the "other lenses" is deferred. As noted above, the Court seeks further argument from 2

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Northern District of California United States District Court

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1	the parties as to what information Davis intends to present as to the
2	hypothetical negotiation between the parties.
3	II. SSC's Motions in Limine
4	SSC's motions in limine #1 as to the counterfeit lenses and #5 as to the inequitable
5	conduct defense have been resolved by stipulation of the parties.
6	1. Motion in limine #2 to exclude testimony about Enplas' patents is deferred. The
7	Court tentatively finds that Enplas' own patents are not relevant to the question
8	of infringement. Additionally, the Court tentatively finds that presenting
9	evidence of Enplas' patents at the infringement stage is highly prejudicial to
10	SSC and confusing to the jury because it suggests that Enplas cannot infringe if
11	it has its own patents. However, the Court is inclined to permit testimony about
12	Enplas' patents as it is relevant to damages and the commercial success of
13	Enplas' lenses.
14	2. Motion in limine #3 to exclude dropped claims and theories is GRANTED
15	because these are not relevant to the lawsuit and are highly prejudicial.
16	3. Motion in limine #4 to exclude any claim construction testimony inconsistent
17	with the Court's claim construction order is GRANTED.
18	4. Motion in limine #5 to exclude Dr. Pelka from giving expert testimony is
19	GRANTED because Dr. Pelka was not disclosed as an expert, and has not
20	written an expert report. FRE 702. However, the Court is unclear how this
21	ruling would apply to Dr. Pelka's anticipated testimony, so the parties should be
22	prepared to further address the scope of Dr. Pelka's testimony.
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24	IT IS SO ORDERED.
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26	Dated: February 22, 2016 NATHANAEL M. COUSINS
27	United States Magistrate Judge
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