

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

3
4 ADOBE SYSTEMS INCORPORATED,

No. C 11-2243 CW

5 Plaintiff,

ORDER DENYING
WITHOUT PREJUDICE
DEFENDANTS'

6 v.

MOTIONS TO STRIKE
(Docket Nos. 249
AND 255) AND
DENYING AS MOOT
THE RELATED
MOTIONS TO SEAL
(Docket Nos. 252
and 258)

7 WOWZA MEDIA SYSTEMS, LLC; and
8 COFFEE CUP PARTNERS, INC.,
9 formerly known as WOWZA MEDIA
SYSTEMS, INC.,

10 Defendants.

11 _____/

12 On January 31, 2013, Defendants Wowza Media Systems, LLC and
13 Coffee Cup Partners, Inc., formerly known as Wowza Media Systems,
14 Inc. filed two motions to strike portions of the expert reports of
15 Drs. Srinivasan Jagannathan and Peter Alexander, served by
16 Plaintiff Adobe Systems, Inc. on December 18, 2012. Defendants
17 noticed its motions for hearing on March 7, 2013. Defendants
18 contend that Dr. Jagannathan's report includes information that
19 was not disclosed in Adobe's interrogatory responses to Defendants
20 and that this information should be excluded pursuant to Federal
21 Rule of Civil Procedure 37(c)(1). Defendants contend that the
22 disputed portions of Dr. Alexander's report raise previously
23 undisclosed infringement allegations omitted from Adobe's
24 infringement contentions.

25 The Court previously set a briefing and hearing schedule for
26 the parties' cross-motions for summary judgment and claim
27 construction and Daubert motions. See Docket Nos. 161, 248.
28 Under that schedule, Adobe is required to file its motions,

1 contained in a single brief, by March 1, 2013, and Defendants are
2 required to file their cross-motions and oppositions to Adobe's
3 motions, contained in a single brief, by April 9, 2013. The Court
4 has set a hearing on those motions for May 9, 2013 at 2:00 p.m.

5 Defendants' instant motions are in essence a premature
6 attempt to exclude evidence that they anticipate Adobe will offer
7 in support of its unfiled motions for claim construction and
8 summary judgment. This piecemeal approach is inefficient for the
9 Court and the parties. It would require Adobe to prepare and file
10 its summary judgment, claim construction and Daubert motions prior
11 to the hearing or ruling on the instant motions.¹ In addition,
12 Civil Local Rule 7-3(a) requires that evidentiary or procedural
13 objections to a motion must be contained in the opposition brief.

14 Accordingly, the Court DENIES Defendants' motions to strike
15 (Docket Nos. 249 and 255) and DENIES as moot Defendants' related
16 motions to seal (Docket Nos. 252 and 258). Denial is without
17 prejudice to Defendants raising these arguments in their
18 cross-motion and opposition to Adobe's motion for summary
19 judgment, claim construction and to exclude evidence under
20 Daubert.

21 IT IS SO ORDERED.

22
23 Dated: 2/4/2013


24 CLAUDIA WILKEN
25 United States District Judge

26
27 ¹ The Court notes that Defendants received the challenged
28 expert reports more than six weeks before filing the instant
motions to strike and thus could have filed these motions sooner
in order to avoid this overlap, but did not.