

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HSM PORTFOLIO LLC and TECHNOLOGY  
PROPERTIES LIMITED LLC,

Plaintiffs;

v.

ELPIDA MEMORY INC., et al.,

Defendants.

Civil Action No. 11-770-RGA

**MEMORANDUM ORDER**

The Court now resolves certain issues that have arisen on the eve of trial. At the pretrial conference, Defendant objected to Plaintiffs seeking to introduce certain newspaper excerpts at trial. (D.I. 1228 at 94-99). At the Court's request, Plaintiffs have filed the newspaper articles, and both parties have filed letter briefs addressing whether the articles are admissible over a hearsay objection. (D.I. 1227, 1231, 1235, 1236).

Plaintiffs note there are two categories of newspaper articles: "Articles Regarding Thunderbird's Test Results" and "Articles Noting the Death of Al Vinal." (D.I. 1236 at p. 1). The articles are offered for their truth. That is, they are offered to show that the statements of the out-of-court declarant, the reporter, are true. They are therefore hearsay. Fed. R. Evid. 801(c). All of the newspaper articles are over twenty years old, however, and thus qualify as ancient documents under Fed. R. Evid. 803(16). The statements within the articles potentially constitute an additional layer of hearsay. Fed. R. Evid. 805. These statements are addressed separately.

For one article, entitled "Thunderbird Touts High Speed Chip; Some Smell Edsel," Plaintiffs assert that it is offered "to show that the Thunderbird announcement generated a public

reaction, and that the reaction included industry skepticism regarding the effectiveness of Thunderbird's inventions." (D.I. 1236 at p. 2; *see also* D.I. 1231, Exs. 1, 1a). The statements are not offered to prove whether the chips were successful or effective, but rather to show reactions within the industry. Since the statements contained within the article are not offered for the truth of the matter asserted, they are not hearsay. *See* Fed. R. Evid. 801(c)(2). This article is therefore admissible over a hearsay objection.

The other articles in the "Articles Regarding Thunderbird's Test Results" category include no statements from the industry. They contain only statements from Al Vinal and others at Thunderbird about what Thunderbird hoped to accomplish with its technology. These articles are not relevant to any issue in this case. They are therefore excluded.

Plaintiffs contend that the "Articles Noting the Death of Al Vinal" "show that the public took note of Al Vinal's passing and his legacy as an inventor." (D.I. 1236 at p. 1). Whether the public took note of Al Vinal's passing is not a material issue at dispute in this case. These articles are therefore excluded as irrelevant.

It is **SO ORDERED**.

Entered this 19 day of February, 2016.

  
United States District Judge