

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

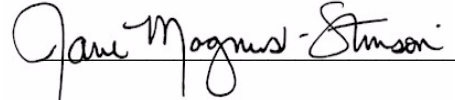
CAPITAL MACHINE COMPANY, INC., and IN-)	
DIANA FORGE, LLC,)	
<i>Plaintiffs,</i>)	
)	
vs.)	1:09-cv-00702-JMS-DML
)	
MILLER VENEERS, INC., <i>et al.</i> ,)	
<i>Defendants.</i>)	

ORDER

Presently before the Court in this patent-infringement action is Defendants’ Motion to Strike Exhibit 2 to Plaintiffs’ *Markman* Brief. [Dkt. 215.] Pursuant to Federal Rule of Civil Procedure 12(f), they ask the Court to strike an expert report attached to Plaintiffs’ *Markman* brief, contending that the information contained in the report is irrelevant under Federal Circuit precedent because the report goes to possible infringement and not claim construction, the only issue presently under consideration. In the alternative, they seek leave to depose the expert.

The Court **DENIES** Defendants’ motion [dkt. 215]. First, as a matter of procedure, Rule 12(f) only authorizes the Court to strike matter “from a pleading.” Fed. R. Civ. Pro. 12(f). A brief is not a pleading. *See* Fed. R. Civ. Pro. 7(a) (listing the only recognized pleadings). Second, and more substantively, Plaintiffs have indicated that they filed the report for a very limited purpose: for its “readily-available summary of the infringement allegations.” [Dkt. 218 at 2.] They expressly disclaim any greater use for it. [*Id.* (calling the substance of the report “irrelevant at this juncture”).] The Court will, therefore, only consider the report for that limited purpose, and only to the extent authorized by Federal Circuit precedent. No motion to strike is necessary; the Court can separate the wheat from the chaff on its own. Because no deposition is needed either, given the limited use for the report, no leave is given.

05/02/2011



Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

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