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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CALIFORNIA EXPANDED  
METAL PRODUCTS COMPANY,  
et al.,

Plaintiffs,

v.

JAMES A. KLEIN, et al.,

Defendants.

CASE NO. C18-0659JLR

ORDER ON DEFENDANTS'  
MOTIONS IN LIMINE

**I. INTRODUCTION**

Before the court are motions *in limine* brought by Defendants James A. Klein, Safti-Seal, Inc., and BlazeFrame Industries Ltd. (collectively, "Defendants"). (MIL (Dkt. # 119).) Plaintiffs California Expanded Metal Products Company and Clarkwestern Dietrich Building Systems LLC (collectively, "Plaintiffs") filed a response. (Resp. (Dkt. # 129).) The court has considered the parties' submissions, the relevant portions of the

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1 record, and the applicable law.<sup>1</sup> Being fully advised, the court addresses each of  
2 Defendants’ motions in turn.

## 3 II. ANALYSIS

### 4 A. Motion to Exclude Underwriter Laboratory Listings as Evidence of Literal 5 Infringement

6 Defendants move to exclude “argument and testimony that states or implies that  
7 Underwriter Laboratories (‘UL’) listing documents describe actual acts of infringement,  
8 or that invite the jury to infer from them that actual infringement has occurred.” (MIL at  
9 1.) Defendants argue that UL listings are irrelevant to Plaintiffs’ literal infringement  
10 claims, confusing to the jury, and inadmissible hearsay. (*See id.* at 1-2.)

11 The UL listings are relevant and the court will not exclude them at this time on the  
12 grounds that they will be confusing to the jury. Irrelevant evidence may be excluded  
13 under Federal Rule of Evidence 402. Fed. R. Evid. 402. Under Rule 401, evidence is  
14 relevant if it would make a fact of consequence to the determination of the action more or  
15 less probable. Fed. R. Evid. 401. Under Rule 403, the court has discretion to exclude  
16 relevant evidence if its probative value is outweighed by risk of unfair prejudice,  
17 confusion, or other considerations. Fed. R. Evid. at 403.

18 The UL listings are relevant to Plaintiffs’ infringement claims because the listings  
19 show how the Safti-Strip and Safti-Frame products may be assembled and installed in the  
20 marketplace. (*See Resp.* at 2-4.) Defendants may be correct that there is no evidence that

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21 <sup>1</sup> Plaintiffs request oral argument on Defendants’ motions (*see Resp.* at 1), but the court  
22 has determined that oral argument would not be of assistance in deciding the motions, *see* Local  
Rules W.D. Wash. LCR 7(b)(4). Thus, the court DENIES Plaintiffs’ request for oral argument.

1 users of Safti-Strip and Safti-Frame products follow the UL guidelines when assembling  
2 and installing those products. (*See* MIL at 1-2.) But that argument goes to the weight  
3 that the jury should give to the UL listings, not their admissibility. At this time, the court  
4 is also not convinced that the jury will be confused by the UL listings, and in any event,  
5 Defendants may seek a limiting instruction. For these reasons, the court will not exclude  
6 this evidence as irrelevant or confusing but reserves the right to limit this evidence if it  
7 becomes cumulative, confusing, or unfairly prejudicial.

8         The court reserves ruling on Defendants' hearsay objection to the UL listings.  
9 (*See* MIL at 2.) Hearsay is an out of court statement offered for the truth of the matter  
10 asserted. Fed. R. Evid. 801(c). Hearsay is inadmissible unless an exception to the  
11 hearsay rule applies. *See* Fed. R. Evid. 802. In response to Defendants' hearsay  
12 objection, Plaintiffs argue that the statements will not be offered for the truth of the  
13 matter asserted, and even if they are offered for the truth, the listings meet the business  
14 records exception found in Rule 803(6), the commercial publication exception in  
15 803(17), or the residual hearsay exception in Rule 807. (*See* Resp. at 6-7 (citing Fed. R.  
16 Evid. 803(6), 803(17), & 807).)

17         Hearsay admissibility determinations are highly fact- and context-specific. The  
18 court will not summarily rule that UL listings are offered for the truth of the matter  
19 asserted until the court sees the context in which Plaintiffs attempt to use the listings.  
20 Similarly, the court will not rule that a hearsay exception applies until it determines  
21 whether Plaintiffs have laid sufficient foundation to show that the UL listings fall under  
22 one of the hearsay exceptions identified in their response to Defendants' motion *in*

1 *limine*. (See Resp. at 6-7.) The court can more accurately rule on Defendants’ hearsay  
2 objections at trial.

3 Thus, the court DENIES this motion WITHOUT PREJUDICE to presentation at  
4 trial.

5 **B. Motion to Exclude Undisclosed Infringement Arguments**

6 Defendants move to exclude “any argument for infringement not set forth in  
7 Plaintiffs’ infringement contentions.” (MIL at 2.) Defendants argue that infringement  
8 arguments that were not adequately disclosed in the infringement contentions should be  
9 excluded as untimely and prejudicial. (See *id.* at 2-4.)

10 The court agrees with Plaintiffs that Defendants’ motion is too vague. (See Resp.  
11 at 8.) Defendants fail to specify which infringement contentions or arguments they seek  
12 to exclude. (See MIL at 2-4.) Absent that information, the court cannot determine  
13 whether Plaintiffs’ adequately disclosed those contentions or arguments in their  
14 infringement contentions or whether Defendants suffered prejudice as a result of  
15 Plaintiffs’ allegedly inadequate disclosures. Thus, the court will not issue the blanket  
16 ruling Defendants seek at this time. If, however, Plaintiffs advance arguments at trial that  
17 Defendants believe were not properly disclosed, Defendants may present this objection at  
18 trial and the court will address the objection at that time.

19 Thus, the court DENIES this motion WITHOUT PREJUDICE to presentation at  
20 trial.

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1 **C. Motion to Exclude Argument About Track Products**

2 Defendants move to exclude “evidence and argument that the Defendants’ metal  
3 track products infringe any patent literally.” (MIL at 4.) Defendants argue that the  
4 court’s summary judgment order granted Defendants’ cross-motion for summary  
5 judgment on Plaintiffs’ literal infringement claims for the metal track products. (*See id.*  
6 at 4-5.) The court’s order on Plaintiffs’ motion for clarification and its amended  
7 summary judgment order resolved the issues raised by this motion *in limine*. (*See*  
8 11/22/19 Order (Dkt. # 134); Am. Summ. J. Order (Dkt. # 135).) In those orders, the  
9 court clarified that it had not granted Defendants’ motion for cross-summary judgment on  
10 Plaintiffs’ literal infringement claims for the metal track products. (*See* 11/22/19 Order at  
11 4-7.) Thus, this motion *in limine* is DENIED.

12 **III. CONCLUSION**

13 For the reasons set forth above, the court rules on Plaintiffs’ motions *in limine*  
14 (Dkt. # 119) as follows:

- 15 • Defendants’ motion *in limine* to exclude Underwriter Laboratory listings as  
16 evidence of literal infringement is DENIED WITHOUT PREJUDICE to  
17 presentation at trial;
- 18 • Defendants’ motion *in limine* to exclude undisclosed infringement arguments  
19 is DENIED WITHOUT PREJUDICE to presentation at trial; and

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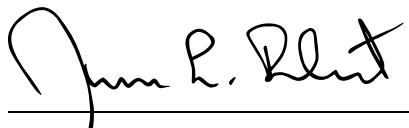
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- Defendants' motion *in limine* to exclude argument about track products is DENIED.

Dated this 26th day of November, 2019.



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JAMES L. ROBART  
United States District Judge