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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 14-00438 BRO (MRWx)**	Date	February 13, 2015
Title	**SPORT DIMENSION, INC. V. THE COLEMAN COMPANY, INC.**		

Present: The Honorable	**BEVERLY REID O'CONNELL, United States District Judge**	
Renee A. Fisher	Not Present	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: (IN CHAMBERS)

ORDER GRANTING MOTION TO STRIKE EXPERT [88]

Pending before the Court is Plaintiff Sport Dimension, Inc.'s ("Sport Dimension") motion to strike and exclude the opinions of Peter Bressler, the expert witness hired by Defendant The Coleman Company, Inc. ("Coleman") to opine on the issues of functionality, obviousness, and infringement. (Dkt. No. 88.) Coleman opposed this motion on February 11, 2015, (Dkt. No. 98), and Sport Dimension replied on February 13, 2015, (Dkt. No. 104). After consideration of the papers filed in support of and in opposition to the instant motion, the Court deems this matter appropriate for decision without oral argument of counsel. *See* Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

On January 29, 2015, the Court granted Sport Dimension's motion to strike Mr. Bressler's testimony on the issue of functionality. (Dkt. No. 80.) In doing so, the Court observed that "it is an abuse of discretion to permit a witness to testify as an expert on the issues of noninfringement or invalidity unless that witness is qualified as an expert in the pertinent art." *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1363 (Fed. Cir. 2008). Upon review of the parties' papers filed in support of and in opposition to Sport Dimension's motion, the Court found that Mr. Bressler could not testify because he was not qualified in the pertinent art of personal flotation devices. (Dkt. No. 80 at 9–12.)

Sport Dimension now seeks to exclude Mr. Bressler's testimony on the issues of obviousness and infringement in addition to functionality. (Dkt. No. 88.) In *Sundance*, the Federal Circuit held that "a witness not qualified in the pertinent art [may not] testify as an expert on obviousness, or any of the underlying technical questions, such as the nature of the claimed invention, the scope and content of prior art, the differences between the claimed invention and the prior art, or the motivation of one of ordinary skill

in the art to combine these references to achieve the claimed invention." 550 F.3d at 1364 (footnote omitted); *accord Hypertherm, Inc. v. Am. Torch Tip Co.*, No. CIV. 05-CV-373-JD, 2009 WL 530064, at *1 (D.N.H. Feb. 27, 2009) ("To testify as a technical expert on issues of patent infringement and invalidity, the witness must be 'qualified as an expert in the pertinent art.'" (quoting *Sundance*, 550 F.3d at 1363)). As a result, the Court's previous determination that Mr. Bressler is not qualified in the pertinent art necessarily precludes him from testifying on the issues of obviousness and infringement as well. For this reason, and as explained more fully in the Court's January 29, 2015 order, (Dkt. No. 80), Sport Dimension's motion to strike is **GRANTED**.

The hearing set for February 17, 2015 is **VACATED**.

IT IS SO ORDERED.

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