UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-03720-GW (JEMx)	Date	April 16, 2012
Title	Homeland Housewares, LLC. v. Sorensen Research and Development Trust		

Present: The Honorable	John E. McDermott, United States Magistrate Judge

S. Anthony	
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:

Proceedings: **ORDER DENYING PLAINTIFF'S MOTION TO COMPEL THE CONTINUATION OF THE DEPOSITION OF PAUL BROWN (Docket No. 83)**

Declaratory Plaintiff Homeland Housewares, LLC ("Homeland") seeks to compel Paul Brown to answer deposition questions that he was instructed not to answer by counsel for Defendant Sorensen Research and Development Trust ("Sorensen"). Brown is the co-inventor of U.S. Patent No. 6,599,460 (the '460 patent), which Homeland's products allegedly infringe. Brown also conducted testing in support of Sorensen's patent infringement allegations. Homeland's Motion to Compel is DENIED.

Fed. R. Civ. P. Rule 30(c)(2) provides that a lawyer may instruct a deponent not to answer a question "when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)." Sorensen correctly claims that the questions Brown was instructed not to answer were hypothetical questions calling for expert testimony contrary to limitations ordered by the Court, in this instance the deadline for expert reports which has not arrived yet. Brown was being deposed on his personal knowledge as a percipient witness, not as an expert. Accordingly, Brown testified about his testing. He specifically testified that he did not build test molds to analyze Homeland's accused infringed products.

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Brown had no prior personal knowledge of the "short shot" molds presented to him at the deposition. There is nothing in the record that Brown knew anything about the source or methodology of the molds and photographs. Every question Brown was instructed not to answer was a hypothetical question calling for expert testimony ("if you understood," "if I were to tell you," "if short shots revealed," "if I represented to you"). Rule 26(b)(4)(A) provides that a party may depose a designated expert after a report is provided. Brown has not been designated as an expert as of now nor has he produced an expert report. Rule 26(b)(4)(D) provides that a party may not discover the opinions of a non-testifying expert. The fact that Brown is the inventor of the '460 patent makes no difference. Homeland is not entitled to make Brown their own expert, nor is it fair to expect him to render opinions off the top of his head on matters not within his personal knowledge, and without proper foundation. Only when and if Brown is designated an expert witness can Homeland properly pose the questions in dispute. Homeland, of course, is free to retain its own expert and present its "short shot" evidence to dispute infringement.

cc: Parties

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