IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIAM C. FRAZIER; FRAZIER INDUSTRIES, INC.; AND AIRBURST TECHNOLOGIES, LLC.,

Plaintiffs,

v.

LAYNE CHRISTENSEN COMPANY AND PROWELL TECHNOLOGIES, LTD.,

Defendants.

FINAL PRETRIAL CONFERENCE ORDER

04-C-315-C

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A final pretrial conference was held in this case on Thursday, March 2, 2006. Plaintiffs appeared by Jane Schlicht and Jeff Sokol. Defendants were represented by Bruce Schultz, Richard Johnson, Paul Williams and Robert Adams.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. They understand that the magistrate judge will be presiding over jury selection on Monday after the jury has been selected in Rogers v. Herwig. The jury will consist of eight jurors to be selected from a qualified panel of fourteen. Each side will exercise three peremptory challenges against the panel. Following the selection of the jury, the jurors will

watch the Federal Judicial Center's video on patent cases.

The parties do not wish to have the witnesses sequestered. No later than March 6, 2006, defendants' counsel are to advise plaintiffs of the witnesses they will be calling on Tuesday, March 7, 2006.

Counsel are reminded to use the visual presenter and to address the court and not each other if there are issues to be raised.

Counsel agree to work together to prepare jury notebooks containing the relevant patents.

Turning to plaintiffs' motions in limine, I ruled that none of the Russian patents or articles may be introduced into evidence by defendants. Too many questions remain unanswered to my satisfaction about the manner in which defendants handled the translation of these documents and the adequacy of the notice they gave plaintiffs about a second set of translations that defendants had recently obtained.

Initially, defendants had the patents and articles translated by Gennady Carmi, the president of defendant ProWell Technologies, Ltd. This choice of translator raised obvious questions of bias and accuracy, yet defendants say they never considered those questions until plaintiffs filed their motion for partial summary judgment on January 3, 2006. At the final pretrial conference, however, defendants' counsel said that defendants had retained a second translator, Tatiana Scanlan, in December 2005.

Plaintiffs deposed defendants' expert, Dennis Williams, on December 8, 2005 without the benefit of Scanlan's translation. Because defendants did not give plaintiffs notice of their securing a second translation of the documents in question, plaintiffs did not know of the new translation at the time they deposed Dr. Williams.

Defendants did not give plaintiffs notice of the new translation until January 18, 2006. They must have had possession of it considerably earlier than that because Dr. Williams averred in an affidavit dated January 16, 2006, that he had reviewed the new translations of the Russian patents and articles and they did not change the opinions he expressed in his 2004 expert report, which were based on Carmi's translation.

Although Fed. R. Civ. P. 604 makes an interpreter subject to the rules governing expert witnesses, defendants never named Scanlan as an expert witness. For all of these reasons, I am disallowing the Russian patents and articles.

Plaintiffs' motion to limit defendants to evidence on obviousness and anticipation is GRANTED with one exception. Defendants may introduce evidence on the adequacy of the written description.

Plaintiffs' motion to bar lay witnesses from testifying about specialized knowledge is GRANTED. These lay witnesses may testify about their own work experience and personal knowledge.

Plaintiffs' motion to bar testimony from Dr. Williams about the "Jansen/Taylor

proposal" as being prior art is GRANTED. However, other witnesses may testify about the proposal for other purposes.

Plaintiffs' motion to bar testimony from John Brown and Jessica McAlpin is DENIED unless counsel reach a stipulation about the documents that these two witnesses would be introducing into evidence.

Defendants' objection to Roy Hesemann as a witness is GRANTED. Plaintiffs do not oppose the motion.

Defendants' objections to plaintiffs' exhibits as not adequately identified and not produced will be the subject of additional work by counsel, who will advise the court at the time of trial whether there are any remaining objections.

The parties' objections to deposition designations were ruled on at the final pretrial conference.

There was some discussion of instructions and the form of the verdict. Counsel will have another opportunity to discuss these matters after the close of evidence.

The parties anticipate that the evidentiary portion of the trial will take approximately

four days, which means that closing arguments may have to wait until Tuesday afternoon, March 14, 2006.

Entered this 3d day of March, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge