

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MUELLER SPORTS MEDICINE, INC.,  
a Wisconsin corporation,

Plaintiff,

v.

SPORTSTAR ATHLETICS, INC.,  
A Texas corporation,

Defendant.

ORDER

04-C-700-C

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On September 1, 2005, this court held the final pretrial conference, where Judge Crocker advised the parties of Judge Crabb's rulings on their motions in limine. This order sets forth those rulings.

Plaintiff's Motions in Limine

1. Plaintiff's motion to exclude all evidence or argument that the claims of patent '909 are indefinite is DENIED. However, Scheibl cannot provide expert testimony on any issue.

After the final pretrial conference I issued an opinion and order regarding the alleged indefiniteness of the patent '909 claims. Therefore, the substantive argument on this motion is now moot.

2. Plaintiff's motion to exclude extrinsic evidence regarding the definition of "zygomatic arch" is DENIED for reasons explained in the September 4 order.

#### Defendant's Motions in Limine

1. Defendant's unopposed motion to exclude any evidence of damages other than that disclosed in the expert report of Stanley D. Johnson is GRANTED.

\_\_\_\_\_ 2. Defendant's motion to exclude any testimony and the expert report of Michael Maloney is GRANTED. Neither party will be allowed to introduce expert testimony not revealed in accordance with Fed. R. Civ. P. 26(a)(2) and this court's Pretrial Conference Report.

\_\_\_\_\_ 3. Defendant's unopposed motion to exclude any testimony regarding the FDA approval or licensing of either Mueller or SportStar or their products or the quality of SportStar's products is GRANTED.

\_\_\_\_\_ 4. Defendant's motion to exclude plaintiff's exhibit showing prototype concept material for SportStar Face Gear is GRANTED because the material is not relevant.

\_\_\_\_\_ 5. Defendant's motion to exclude any advertising of SportStar Face Gear by third parties is GRANTED. Third party advertising can be introduced only if plaintiff has

evidence of inducement or contributory infringement by defendant.

Entered this 8th day of September, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge