

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

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TAURUS IP, LLC,

Plaintiff,

FINAL PRETRIAL  
CONFERENCE ORDER

v.

DAIMLERCHRYSLER CORPORATION,  
DAIMLERCHRYSLER COMPANY, LLC,  
MERCEDES-BENZ USA, INC.,  
CHRYSLER, LLC,  
CHRYSLER HOLDING, LLC and  
CHRYSLER FINANCIAL, LLC,

07-cv-158-bbc

Defendants.

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MERCEDES-BENZ USA, INC and  
DAIMLERCHRYSLER COMPANY, LLC,

Third Party Plaintiffs,

v.

TAURUS IP, LLC, ORION IP, LLC,  
PLUTUS IP WISCONSIN, LLC, and  
ERICH SPANGENBERG,

Third Party Defendants

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A final pretrial conference was held in this case February 28, 2008 before United States District Judge Barbara B. Crabb. Plaintiff Taurus IP, LLC and third party defendants Taurus IP, LLC, Orion IP, LLC, Plutus IP Wisconsin, LLC and Erich Spangenberg appeared by Michael John Newton, David Hanson, Mark Cameli and Rebecca Frihart. Defendants Chrysler, LLC and Mercedes-Benz USA appeared by Mitchell Stockwell and Joseph Wright.

The first issue taken up was defendants' motion for dismissal of their invalidity counterclaims without prejudice following the entry of summary judgment in their favor in infringement. Plaintiff and third party defendants had no objection to the motion and it was granted.

The next question was the form of the caption to use for the trial, now that the infringement claims have been resolved against plaintiff. The parties agreed that for the purpose of trial, the caption would read: Chrysler, LLC and Mercedes-Benz USA, plaintiffs v. Orion IP, LLC and Erich Spangenberg, defendants.

Counsel predicted that the case would 4-5 days to try. They understand that the jury will be selected on Monday, March 10 and they agreed that the magistrate judge could preside over the selection process. Trial in this case will begin on Wednesday, March 12. Trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

Plaintiffs (Chrysler and Mercedes-Benz) suggested that the damages could be decided

by the court, since they are limited to the attorney fees incurred by plaintiffs in the defense of this suit. Defendants agreed to consider the request and advise the court and opposing counsel of their decision.

Counsel agreed that with the exception of corporate representatives, all witnesses would be sequestered. Counsel are either familiar with the court's visual presentation system or will make arrangements with the clerk for some instruction on the system.

No later than noon on Friday, March 7, plaintiffs' counsel will advise defendants' counsel of the witnesses plaintiff will be calling on Monday and the order in which they will be called. Counsel should give similar advice at the end of each trial day; defendant's counsel shall have the same responsibility in advance of defendant's case. Also, no later than noon on the Friday before trial, counsel shall meet to agree on any exhibits that either side wishes to use in opening statements. Any disputes over the use of exhibits are to be raised with the court before the start of opening statements.

Counsel should use the microphones at all times and address the bench with all objections. If counsel need to consult with one another, they should ask for permission to do so. Only the lawyer questioning a particular witness may raise objections to questions put to the witness by the opposing party and argue the objection at any bench conference.

Counsel are to provide the court with copies of documentary evidence before the start of the first day of trial.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. 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. Before counsel give their opening statements, the court will give the jury the introductory instructions on the way in which the trial will proceed and their responsibilities during the trial.

Counsel discussed the form of the verdict. Final decisions on the instructions and form of verdict will be made at the instruction conference once all the evidence on liability is in.

The following rulings were made on the parties' motions in limine.

Plaintiffs Chrysler's and Mercedes-Benz's Motions

1. Motion to exclude evidence of plaintiffs' lack of reliance on warranty contained in art. 8.1. DENIED.

2. Motion to exclude references to other settlement agreements between Orion and third party companies with the exception of the redacted Orion-Ford settlement agreement used during the Chrysler settlement discussions and settlements in lawsuits expressly licensing the '658 patent. GRANTED.

3. Motion to exclude all references to Hyundai litigation concerning '627 and '342 patents. DENIED as moot.

4. Motion to exclude the testimony of Wab Kadaba and other lawyers from Kilpatrick-Stockton. DENIED.

\_\_\_\_5. Motions to exclude evidence relating to an “earlier invention date,” evidence of presumption of validity, DENIED as moot.

7. Motion to exclude expert testimony by Spangenberg. GRANTED.

8. Motion to exclude evidence of Chrysler’s corporate structure. GRANTED as irrelevant.

9. Motion to exclude evidence of agreement between Trilogy and Chrysler and testimony of damages by Fiorito. GRANTED as moot.

10. Motion to exclude narrow construction of “data categories.” GRANTED as moot.

#### Defendants Orion IP, LLC’s and Spangenberg’s Motions

1. Motion to preclude Chrysler from making negative references to PTO and making reference to Taurus as patent troll. GRANTED.

2. Motion to prohibit references to settlement amounts in cases related to the ‘658 patent or other patents owned by Taurus. GRANTED.

3. Motions 3, 4, 5, 6 and 7 are GRANTED because they relate to issues no longer in suit.

4. Motions 8 and 9 to exclude evidence are GRANTED as unopposed.

5. Motion 10 to exclude evidence about nature of infringement allegations in this case and in Texas. GRANTED.

6. Motion 11 to exclude evidence showing that but for the breach, plaintiffs Chrysler and Mercedes-Benz would not have signed agreement. GRANTED as unopposed.

7. Motion 12 to exclude evidence that defendants did not know that '658 patent had been transferred. DENIED.

8. Motion 13 to bifurcate issue of alter ego. GRANTED; the issue will be decided by the court.

Entered this 29th day of February, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

