

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

CHEESE SYSTEMS, INC.,

Plaintiff,

v.

TETRA PAK CHEESE AND POWDER
SYSTEMS, INC. and TETRA LAVAL
HOLDINGS & FINANCE S.A.,

Defendants,

v.

CUSTOM FABRICATING & REPAIR, INC.

Third Party Defendant.

A final pretrial conference was held in this case on March 13, 2014, before U.S. District Judge Barbara B. Crabb. Plaintiff Cheese Systems, Inc., and third party defendant Custom Fabricating & Repair, Inc, (now defendants for trial purposes) appeared by John Fredrickson, Michael Griggs and Sarah Wong. Defendants Tetra Pak Cheese and Powder Systems, Inc., and Tetra Laval Holdings & Finance, S.A., (now plaintiffs) appeared by Philip Hirschhorn, Lloyd Smith and Ed Pardon. Counsel predicted that the case would take 4 days to try. They understand that 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.

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 introductory instructions on the way in which the trial will proceed and their responsibilities as jurors. The court will not play the patent video produced by the Federal Judicial Center. Counsel may discuss the patenting process briefly during their opening statements.

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

For the purpose of trial, Tetra Pak Cheese and Powder Systems, Inc., and Tetra Laval Holdings & Finance, S.A., will be referred to as plaintiffs and plaintiff Cheese Systems, Inc., and third party defendant Custom Fabricating and Repair, Inc., will be referred to as defendants. No later than noon on the Friday before trial, counsel for Tetra Pak will advise defendants' counsel of the witnesses plaintiffs 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; defendants' counsel shall have the same responsibility in advance of their 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 keep in mind that opening statements are just that. Arguments are

to be reserved for the end of the trial.

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 copies of documentary evidence to the court before the start of the first day of trial. Counsel know that matters that have been kept under seal during the pendency of this case, including exhibits, will be disclosed to the public to the extent they are the subject of testimony. The jury will see all of the exhibits that are received in evidence but the exhibits themselves will not be part of this court's record; counsel are responsible for retaining their own exhibits.

Miscellaneous questions of use of deposition testimony and exhibits were resolved. Plaintiffs do not have to play supplemental deposition testimony by defendants' witnesses (each side is responsible for playing whatever deposition testimony it wishes to introduce); defendants may not use as evidence the assertions of invalidity they exchanged with plaintiffs early in the case; expert reports may not be shown to the jury or introduced into evidence; and defendants may not refer specifically to the Jay patents or any other patents as patents that they reviewed before concluding that their invention would not infringe plaintiffs' patent.

Counsel discussed the form of the verdict and the instructions on liability. The parties agreed that court include an "available" acceptable, non-infringing substitute as an element

in the lost profits instruction. Defendants will not rely on expert testimony with regard to reasonable royalty but will introduce testimony. Final decisions on the instructions and form of verdict will be made at the instruction conference at the close of evidence.

Entered this 14th day of March, 2014.

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