

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

BLITZSAFE TEXAS, LLC,	§	
	§	
<i>Plaintiff,</i>	§	Case No. 2:15-CV-01274-JRG-RSP
	§	
v.	§	
	§	
HONDA MOTOR CO., LTD., AMERICAN HONDA MOTOR CO., INC., HONDA OF AMERICA MANUFACTURING, INC., HONDA MANUFACTURING OF ALABAMA, LLC, HONDA MANUFACTURING OF INDIANA, LLC,	§ § § § § § § § §	
<i>Defendants.</i>	§	

**ORDER ON MOTIONS *IN LIMINE***

Before the Court are the parties’ motions *in limine*. The Court held a pretrial conference on January 11-12, 2017. For the reasons explained at the hearing, the Court rules as follows. A party must approach the bench before introducing evidence or argument in the presence of the jury about the subject matter of a motion *in limine* that has been granted.

**PLAINTIFF’S MOTIONS *IN LIMINE* (DKT. 331)**

1. MIL No. 1: Motion to Preclude the Use of Derogatory, Disparaging, and/or Pejorative References About Blitzsafe:

**GRANTED** with the exception that Defendants are not precluded from attempting to establish that Blitzsafe is a “company that doesn’t make anything” or a “company that doesn’t sell anything.”

2. MIL No. 2: Defendants Are Estopped from Re-Litigating Issues Instituted by The PTAB:

**DENIED.**

3. MIL No. 3: Defendants Should Not Be Permitted to Reference Pending, But Not Yet Instituted IPRs Filed by Honda, Nissan, Kia, Or Toyota:

**GRANTED.** Defendants are directed to approach the bench before introducing specific statements made by Blitzsafe during IPR regarding what is or is not covered by the asserted claims. While such statements are not hearsay, they may be properly excludable under Rule 403 if they are affected by the differing claim constructions employed by the PTAB.

4. MIL No. 4: Motion to Exclude Testimony Regarding Ira Marlowe's Past Litigations (Ventura, Fischer, Kiryashov):

**GRANTED** as to the fact that there was previous litigation. The parties are not precluded from presenting relevant testimony or argument concerning the underlying disputes.

5. MIL No. 5: Disparaging The United States Patent and Trademark Office:

**GRANTED.** Defendants are not precluded from criticizing the result reached by the Patent Office in this case.

6. MIL No. 6: Defendants Should Not Be Permitted to Refute Testimony that Defendants Did Not Produce Source Code for Their Accused Products to Blitzsafe:

**DENIED.**

7. MIL No. 7: Defendants Should Not Be Permitted to Present Evidence that Any Product of AAMP Was Licensed by AAMP Under the '786 Patent:

**CARRIED** with the related Partial Motion for Summary Judgment Regarding Marking.

\* \* \*

**VOLKSWAGEN'S MOTIONS *IN LIMINE* (DKT. 330)**

1. Motion *in Limine* to Preclude Blitzsafe from Asserting that VWGOA Was Required to but Did Not Produce Source Code:

**GRANTED-IN-PART.** Plaintiff's expert is not precluded from testifying that source code was not available to him but is precluded from testifying that Volkswagen failed to produce source code.

2. Motion *in Limine* to Preclude Blitzsafe from Presenting a Theory of Infringement Under the Doctrine of Equivalents:

**GRANTED-BY-AGREEMENT.**

3. Motion *in Limine* to Preclude Blitzsafe from Referencing IPR Proceedings:

**GRANTED-BY-AGREEMENT** as reciprocal.

4. Motion *in Limine* to Preclude Blitzsafe from Praising or Lauding the Patent Office in a Manner Inconsistent with the Presumption of Validity:

**GRANTED-BY-AGREEMENT** that any such statements will be consistent with the FJC video shown to the jury panel before jury selection.

5. Motion *in Limine* to Preclude Blitzsafe from Referring to VWGOA's Overall Size, Profitability, Wealth, Revenues, or Value:

**GRANTED-BY-AGREEMENT** except for sales, revenue and cost related to the accused products.

6. Motion *in Limine* to Preclude Blitzsafe from Referring to VWGOA's Retention of Experts:

**GRANTED-IN-PART.** The experts are not precluded from testifying about previous parties for whom they have testified but are otherwise precluded from testifying about retention by opposing counsel.

7. Motion *in Limine* to Preclude Blitzsafe from Referring to VWGOA'S "Copying" of Blitzsafe's Patents or Products:

**GRANTED.** If Plaintiff can identify evidence in the record that supports an inference of copying, Plaintiff may approach the bench to seek leave to refer to "copying" before the jury.

8. Motion *in Limine* to Preclude Blitzsafe from Referencing Any VWGOA or Any Affiliated Company's Unrelated Activities:

**GRANTED-BY-AGREEMENT.**

9. Motion *in Limine* to Preclude Blitzsafe from Making Prejudicial Statements About Foreign Car Manufacturers:

**GRANTED-BY-AGREEMENT.**

10. Motion *in Limine* to Preclude Blitzsafe from Asserting that the '342 Patent Is Entitled to Any Priority Date Earlier than June 27, 2006:

**GRANTED.**

\* \* \*

**HYUNDAI AND KIA DEFENDANTS' MOTIONS *IN LIMINE* (DKT. 324)**

1. To Preclude Blitzsafe from Soliciting or Offering Any Testimony, Evidence or Argument Concerning the Jury Verdict or Judgment of the *Affinity Labs* Case:

**GRANTED-BY-AGREEMENT.**

2. To Preclude Blitzsafe and its Witnesses from Relying on Source Code of Other Defendants:

**DENIED.**

3. To Preclude Blitzsafe from Presenting Argument or Evidence Based on the Subject Matter for Which Blitzsafe or Mr. Marlowe Asserted Attorney-Client Privilege, Including about Negotiation and Execution of the Ford, AAMP, LTI, or Other License Agreements in the Record:

**CARRIED** with related Motion to Strike.

4. To Preclude Any Evidence, Testimony, or Opinion Regarding Secondary Considerations of Non-Obviousness:

**DENIED.**

5. To Preclude Blitzsafe and its Witnesses from Referring to Disputes over Alleged Discovery Obligations of Hyundai Motor Corporation or Kia Motor Company:

**GRANTED-BY-AGREEMENT.**

6. To Preclude Blitzsafe and its Witnesses from Presenting Argument or Eliciting Testimony of Defendants Being “Foreign” or Owned by a Korean Entity:

**GRANTED-BY-AGREEMENT.**

7. To Preclude Blitzsafe and its Witnesses from Presenting Argument or Eliciting Testimony of Preliminary Claim Constructions or Any Other Constructions That Would Refer to Statements in the Court’s Claim Construction Order Apart from the Actual Claim Construction Themselves:

**GRANTED** to the extent that only the Court’s actual claim construction can be referenced in front of the jury.

8. To Preclude Blitzsafe from Asserting Claim 70 of the ’342 Patent Against Defendants:

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