

Appeal Nos. 17-7035

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

American Society for Testing and Materials; National Fire Protection Association, Inc.; American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc.,

Appellees,

v.

Public.Resource.Org, Inc.,

Appellant.

Appeal from the United States District Court for the District of Columbia,
Hon. Tanya S. Chutkan, Case Nos. 1:13-cv-01215-TSC-DAR
and 1:14-cv-00857-TSC-DAR (consolidated)

UNDERLYING DECISIONS FROM WHICH APPEAL ARISES

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April 6, 2017

Pursuant to the Clerk's Order of March 7, 2017, Defendant-Appellant Public.Resource.Org, Inc. seeks review of the following rulings by the Honorable Tanya S. Chutkan, United States District Judge for the District of Columbia:

A. American Society for Testing and Materials et al. v. Public.Resource.Org, Inc., 1:13-cv-01215-TSC-DAR

- Dkt. No. 172, Order Denying Motion to Strike Expert Report, entered September 21, 2016 (attached as **Exhibit A**).
- Dkt. No. 175, Memorandum and Opinion (attached as **Exhibit B**), and Dkt. No. 176, Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendant's Cross-motion for Summary Judgment (attached as **Exhibit C**), entered February 2, 2017.
- Dkt. No. 182, Amended Order, entered April 3, 2017 (attached as **Exhibit D**).

B. American Educational Research Association et al. v. Public.Resource.Org, Inc., 1:14-cv-00857-TSC-DAR

- Dkt. No. 115, Order Denying Defendant's Motion to Strike Expert Declaration, entered September 21, 2016 (attached as **Exhibit E**).
- Dkt. No. 117, Memorandum and Opinion (referenced above as **Exhibit F**), and Dkt. No. 118, Order Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment and Denying

Defendant's Cross-motion for Summary Judgment (attached as **Exhibit G**), entered February 2, 2017.

Dated: April 6, 2017

FENWICK & WEST LLP

By: /s/ Andrew P. Bridges
Andrew P. Bridges

*Attorneys for Respondent
Public.Resource.Org, Inc.,*

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR TESTING)	
AND MATERIALS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 13-cv-1215 (TSC)
v.)	
)	
PUBLIC.RESOURCE.ORG, INC.,)	
)	
Defendant.)	

ORDER

Defendant Public Resource moves to strike the expert report of John C. Jarosz (“Jarosz Report”) (ECF No. 118-12, Ex. 1) on the basis that it does not meet the requirements of Federal Rule of Evidence 702. The Jarosz Report is used primarily to support Plaintiffs’ economic arguments regarding the harm to their revenue and incentives if the court were to find that incorporation of their standards by reference into federal regulations revokes or destroys their copyrights, or Defendant was otherwise allowed to continue posting the standards on its website. For the reasons stated herein, Defendant’s motion is DENIED.

A district court has “‘broad discretion in determining whether to admit or exclude expert testimony.’” *United States ex rel. Miller v. Bill Harbert Int’l Constr., Inc.*, 608 F.3d 871, 895 (D.C. Cir. 2010) (quoting *United States v. Gatling*, 96 F.3d 1511, 1523 (D.C. Cir. 1996)). Under the Supreme Court’s decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), this court is “‘required to address two questions, first whether the expert’s testimony is based on ‘scientific knowledge’ and second, whether the testimony ‘will assist the trier of fact to understand or determine a fact in issue.’” *Meister v. Med. Eng’g Corp.*, 267 F.3d 1123, 1126

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