

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN TABLE SAWS INCORPORATING
ACTIVE INJURY MITIGATION TECHNOLOGY
AND COMPONENTS THEREOF

Inv. No. 337-TA-965

**ORDER NO. 16: GRANTING COMPLAINANTS' EMERGENCY MOTION TO
STRIKE NEW INVALIDITY CONTENTIONS**

(May 16, 2016)

On May 11, 2016, Complainants SawStop, LLC and SD3, LLC (collectively "SawStop") filed an emergency motion to strike (*Motion to Strike*) three new invalidity contentions from Respondents Robert Bosch GmbH and Robert Bosch Tool Corporation's (collectively "Bosch") prehearing brief on the basis that that they were not presented in Bosch's Ground Rule 7.5 disclosures and/or in Bosch's expert's original report. (Motion Docket No. 965-022.) SawStop notes that the new invalidity contentions were similarly struck by Order No. 14 from Dr. Dubowsky's (Bosch's expert) supplemental expert report. *See* Order No. 14 (Granting Complainants' Motion To Strike In Part Respondents' Supplemental Expert Report Of Dr. Steven Dubowsky).

On May 12, 2016, Bosch filed a response in opposition (*Opposition*) to SawStop's *Motion to Strike*. Bosch does not dispute that it failed to raise the disputed invalidity contentions in its Ground Rule 7.5 Disclosure of Invalidity Contentions and/or in the original expert report but argues, again, that Order No. 11 (Supplemental Order Construing Claim Terms) changed the case and made it more complicated. (*Opposition* at 2.)

As noted in Order No. 14, “Bosch should have timely raised [the new invalidity contentions] in its Ground Rule 7.5 validity disclosures, but for whatever reason did not.” *See* Order No. 14 at 4. I also found that “Bosch has failed to establish good cause for the inclusion of its new invalidity arguments.” *Id.* at 4-6. Similarly, Bosch may not raise in its pre-hearing brief any invalidity contentions that were not raised in its Ground Rule 7.5 Disclosures. *See Certain Silicon Microphone Packages and Products Containing Same*, Inv. No. 337-TA-825, Order No. 17, 2012 WL 4829455, *1 (Oct. 5, 2012) (granting motion to strike arguments in pre-hearing brief that were not timely or adequately disclosed in invalidity contentions). And Bosch “agree[s] that if the ALJ applies the reasoning of Order No. 14, which concerned expert opinions, to Respondents’ contentions, then the ALJ would strike those two contentions from Respondents’ prehearing brief as well.” (*Opposition* at 1.)

With respect to the lack of written description and enablement arguments for the ’927 and ’279 patent claims, Bosch failed to raise them in Dr. Dubowsky’s original expert report. In addition, as noted in Order No. 14, “Bosch utterly fails to explain how its new written description/enablement argument sprung from my findings in Order No. 11 . . . [and] failed to establish good cause for the inclusion of its new written description/enablement argument.” *See* Order No. 14 at 5. Further, I specifically noted in Order No. 11, for both the ’927 patent and the ’279 patent that “I find no basis to alter the construction I gave the term in Order No. 7.” *See* Order No. 11 at 35-39. Thus, Bosch cannot establish good cause on the basis of Order No. 11.

Accordingly, SawStop’s *Motion to Strike* (Motion Docket No. 965-022) is GRANTED.

SO ORDERED.



Thomas B. Pender
Administrative Law Judge

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CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 16** has been served upon the following parties via first class mail and air mail where necessary on

MAY 16 2016



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