UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ILLINOIS TOOL WORKS, INC. dba WYNN'S, a Delaware Corp.,

Plaintiff,

vs.

MOC PRODUCTS COMPANY, INC., a California Corp.,

Defendant.

CASE NO. 09CV1887 JLS (MDD)

ORDER GRANTING *EX PARTE* MOTION FOR PERMISSION TO BRIEF WILLFULNESS

(ECF No. 291)

Presently before the Court is MOC Products Company, Inc.'s ("MOC") *Ex Parte* Motion for Permission to Brief Willfulness Either as Part of the Briefing Previously Ordered by the Court or Separately in Light of *Bard v. W.L. Gore & Associates*, 682 F.3d 1003 (Fed. Cir. 2012). (*Ex Parte* Mot., ECF No. 291) Also before the Court is a response filed by Plaintiff Illinois Tool Works, Inc. d/b/a Wynn's ("ITW"). (Resp., ECF No. 292) ITW does not oppose additional briefing on the issues identified by MOC,[1] and the Court finds that it would be aided by the parties' comments on the Federal Circuit's recent opinion in *Bard*. Accordingly, the Court **GRANTS** MOC's ex parte request.

[1] ITW does oppose MOC's request—to the extent it is making such a request—for the Court to issue a pre-trial ruling on whether the objective prong of willfulness is met. However, the supplemental briefing requested by the Court is not intended as a second round of motions in limine; rather, it is intended to aid the Court and the parties in preparing and finalizing the jury instructions, and in determining how this case should be presented to the Court and to the jury.

The parties are **HEREBY DIRECTED** to address in their supplemental briefs the impact of *Bard* as it pertains to the jury instructions and as it pertains to the presentation of this case to the Court and to the jury. The deadline for the parties to file their supplemental briefs is unchanged: the initial briefs are due on or before September 10, 2012, and the replies are due on or before September 17, 2012. The page limitations of the briefs are **HEREBY EXTENDED** by three pages each, to eighteen pages and thirteen pages, respectively.

IT IS SO ORDERED.

DATED: August 31, 2012

Janis L. Sammartino

Honorable Janis L. Sammartino
United States District Judge