

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

BRUCE SAFFRAN,

Plaintiff,

v.

JOHNSON AND JOHNSON, and CORDIS
CORPORATION,

Defendants.

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§ CV 2:07 CV 0451 (TJW)
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ORDER

Before the court is Plaintiff’s Motion to Compel Defendants’ Compliance with P.R. 3-3 (Dkt. No. 44). The Motion is GRANTED, and the “Invalidity Contentions” Defendants have served are STRICKEN. Local Patent Rule 3-3 (a) requires the defendants to identify “each item of prior art that allegedly anticipates each asserted claim or renders it obvious.” Rule 303(b) requires that if the defendant contends that “a combination of items of prior art makes a claim obvious, *each such combination*, and the motivation to combine such items, must be identified . . .” The “Invalidity Contentions” Defendants have served do not comply with the plain reading or spirit of the rule.

The patent “rules are designed to require parties to crystallize their theories of the case early in the litigation and to adhere to those theories once they have been disclosed.” *O2 Micro International Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1364 (Fed. Cir. 2006) (citing *Nova Measuring Instruments Ltd. v. Nanometrics, Inc.*, 417 F.Supp.2d 1121, 1123 (N.D.Cal.2006)). The purpose of the rules is to put the parties on notice of the information its adversary anticipates using at trial. The defendants’ almost 800 pages of “Invalidity Contentions” do not put the plaintiffs on real

or useful notice. The defendants' current "Invalidity Contentions" are an attempt to end run the rules. They do not specifically identify combinations of references that the defendants anticipate using at trial, and they include language purporting to make the contentions merely illustrative. The "Invalidity Contentions" are therefore STRICKEN. The defendants are granted leave to file new "Invalidity Contentions" that comply with the letter and spirit of the rule, and that specifically identify the combination of references they *anticipate using at trial*. The new "Invalidity Contentions" must be filed within 20 days of this order.

SIGNED this 24th day of February, 2009.

A handwritten signature in black ink that reads "T. John Ward". The signature is written in a cursive style with a horizontal line underneath it.

T. JOHN WARD
UNITED STATES DISTRICT JUDGE