

# Contentions & Expert Reports: A Match Made in [Someplace]

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282The interplay between contentions and expert reports in a patent case always requires considered judgment. The common sense rule that an expert may “expand on” but not “deviate from” a party’s contentions is easy to say but at times more difficult to practice. The role of an expert plainly is not to simply parrot contentions drafted by the attorneys. But contentions are supposed to provide notice of a party’s arguments, and that notice function would cease to exist if expert reports were not meaningfully limited by the disclosures in a party’s contentions.

Judge Dein determined in *Cozy, Inc. v. Dorel Juvenile Group, Inc.*, No. 21-10134-JGD (D. Mass. Nov. 6, 2023), that Cozy’s expert had provided a new infringement theory rather than simply “specif[ying] the application of a disclosed theory.” Cozy did its expert no favors. It successfully sought leave to amend its supplemental contentions to avoid having “the expert reports[] read completely different from the contentions served during discovery.” But it then tried to serve another round of contentions, which the court denied. Given that procedural history, Cozy’s expert plainly could not “rewrit[e] Cozy’s contentions so that they bear little resemblance to the [permitted] contentions.” Nor could he “redefine[] the claim limitations of the Asserted Patents in a manner that changes the nature of Cozy’s infringement theories.” The court ruled that the expert did both.

Cozy argued that the expert was required to (and did) incorporate the court's claim constructions. The court agreed that those constructions are "controlling" but nevertheless "do not give plaintiff license to alter its infringement theories without court approval of amendments to its infringement contentions."

Cozy has leave to submit a new report. The big question is whether it can stick to its prior contentions and still present a viable infringement claim.

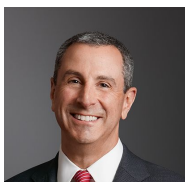
**As Cozy argued (successfully) in connection with its motion to amend its infringement contentions in order to assert the SSPI Contentions, "[a]t the end of the day, the goal is that when we arrive at expert discovery, we do not want the expert reports to read completely different from the contentions served during discovery. - Cozy, Inc. v. Dorel Juvenile Group, Inc., No. 21-10134-JGD (D. Mass. Nov. 6, 2023)**

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