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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,) No. CR 03-95-WBS
15)
Plaintiff,)
16)
v.) DEFENDANT AMR MOHSEN’S MOTIONS
17) IN-LIMINE
AMR MOHSEN and ALY MOHSEN,)
18)
Defendants.) Date: January 24, 2006
Time: 10:30 a.m.
19 _____ Hon. William B. Shubb
20

21 Defendant Amr Mohsen, through his attorneys Bruce Locke and John Balazs, moves the
22 Court in-limine (1) to exclude the testimony of the Honorable William Alsup, U.S. District Judge,
23 under Federal Rules of Evidence 401, 402, and 403; and (2) to bar the government from referring
24 to its “consciousness of guilt” evidence in its opening statement and delaying the presentation of
25 this evidence until after the government has presented the rest of its evidence on counts 1-20.

26 As set forth in Dr. Amr’s Mohsen’s trial brief, although some of Judge Alsup’s rulings,
27 which are set forth in written orders and reporter’s transcripts, may be admissible, Judge Alsup
28 has no relevant testimony to provide at trial. *See Amr Mohsen’s Trial Brief*, at 8-9. The Court

1 should thus bar the government from calling Judge Alsup as a witness.

2 Second, the Court should also bar the government from referring to its so-called
3 “consciousness of guilt” evidence in its opening statement and should require the government to
4 delay the presentation of this evidence until it has presented the rest of its evidence on counts
5 1-20. This includes evidence of the following:

- 6 (1) Dr. Mohsen’s alleged attempts to intimidate witnesses, including arson of a
7 witness’s home and car;
- 8 (2) Dr. Mohsen’s alleged efforts to stage vandalism to Tom Huang’s and his
9 wife’s vehicles;
- 10 (3) Dr. Mohsen’s alleged efforts to fabricate a mental health defense;
- 11 (4) Dr. Mohsen’s alleged efforts to fabricate a post-indictment “88-95” defense
12 with co-defendant Aly Mohsen based on writings seized from Dr. Mohsen’s
13 jail cell and recorded conversations; and
- 14 (5) Dr. Mohsen’s alleged efforts to obstruct witnesses’ testimony, i.e. intending
15 to “tamper” with his sister regarding Dr. Mohsen’s alleged efforts to flee the
16 country before trial and by intending to use his wife to “tamper” with Ali
17 Moussa.

18 As set forth more fully in Dr. Mohsen’s trial brief at 11-15, the defense intends to object to
19 this evidence, *inter alia*, under Federal Rule of Evidence 403 because its minimal, if any,
20 probative value is substantially outweighed by its danger of unfair prejudice, confusing the issues,
21 needless presentation of cumulative evidence, and a waste of time. The probative value of
22 evidence must be considered in light of the other evidence admitted at trial and in light of any
23 concessions the defendant makes concerning the charges at trial. *Old Chief v. United States*, 519
24 U.S. 172, 184-85 (1997). Here, where the government will present other substantial, direct
25 evidence of the charges in counts 1-20 and the defense will present only a materiality defense, the
26 consciousness of guilt evidence has no added probative value. On the other hand, the challenged
27 evidence is extremely prejudicial and creates a very real danger of confusing the issues at trial or
28 having the jury convict Dr. Mohsen because of the uncharged acts, even though they are not
convinced beyond a reasonable doubt that the alleged fraud, perjury, and obstruction conduct was
material to the underlying patent litigation. The Court should thus wait to hear the other evidence
at trial before ruling on the defense’s Rule 403 and other objections and should order the

1 prosecution not to mention the evidence in its opening statement before the Court has decided
2 these evidentiary issues at trial.

3 Dr. Mohsen does not request an evidentiary hearing on this motion.

4 DATED: January 17, 2006

5 Respectfully submitted,

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7 /s/ John Balazs
8 BRUCE LOCKE
9 JOHN BALAZS

10 Attorneys for Defendant
11 AMR MOHSEN
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