

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RAVIN CROSSBOWS, LLC,

Plaintiff,

vs.

HUNTER'S MANUFACTURING
COMPANY, INC. d/b/a TENPOINT
CROSSBOW TECHNOLOGIES,

Defendant.

Case No. 5:23-cv-00598-SL

Judge Sara Lioi

**REPORT OF PARTIES' OHIO
PLANNING MEETING UNDER
FED. R. CIV. P. 26(f), LR 16.3(b)(3)
AND LPR 2.1**

TenPoint's Preliminary Note: Defendant Hunter's Manufacturing Company, Inc. d/b/a TenPoint Crossbow Technologies ("TenPoint") ~~TenPoint~~ filed a motion to postpone the case management conference, (Doc. No. 86 at 16), and continues to believe that a postponement would be in the interest of both parties and the Court, as explained therein. TenPoint's participation in the Rule 26(f) conference and this Report should not be construed as a withdrawal of the motion to postpone.

Ravin's Preliminary Note: Plaintiff Ravin Crossbows, LLC ("Ravin") opposes TenPoint's Motion to Postpone the Case Management Conference and will timely file its opposition on or before May 19, 2023.

- 1) Pursuant to the April 12, 2023 Case Management Conference Scheduling Order, (Doc. No. 84 at 4), along with Fed. R. Civ. P. 26(f), LR 16.3(b)(3) and LPR 2.1, a meeting was held via phone on May 15, 2023, and was attended by:

- Kadie M. Jelenchick counsel for ~~_plaintiff Ravin Crossbows, LLC~~ ("Ravin");
- Michelle A. Moran counsel for Ravin;
- John M. Skeriotis counsel for ~~_defendant Hunter's Manufacturing Company, Inc. d/b/a TenPoint Crossbow Technologies~~ ("TenPoint"); and
- Sergey Vernyuk counsel for TenPoint.

Ravin's Position:

Prior to this dispute's transfer to this Court from the United States District Court for the District of Nevada, the district in which TenPoint is incorporated and resides, the parties conducted a Rule 26(f) conference on May 9, 2022, which was continued to May 19, 2022. (Doc. No. 34 at 2.) As noted throughout this Report, it is Ravin's position that the parties' submissions, past deadlines, and discovery that occurred while the case was pending in the District of Nevada, pursuant to the Scheduling Order entered by the Nevada Court, (Doc. No. 36), should not be redone or ignored because TenPoint participated "under protest" and wanted to litigate the dispute elsewhere.~~treated as if they had never occurred because the case had not been pending in this District at that time.~~ To discard and redo what was already completed contravenes the purpose of Rule 1 of the Federal Rules of Civil Procedure to "secure the just, speedy and inexpensive determination" of this case. Courts regularly require parties to litigate and adhere to deadlines in the case while motions to transfer are pending because the work needs to be done regardless of the forum. *See Automated Packaging Sys., Inc. v. Free-Flow Packaging Int'l, Inc.*, No. 5:14-CV-2022, 2018 WL 400326, at *5 (N.D. Ohio Jan. 12, 2018) (requiring parties to continue with claim construction briefing while a motion to transfer was pending because "the claim construction work the parties have engaged in to-date would have had to have been done in whatever forum the case was litigated"); *Evolutionary Intel., LLC v. Sprint Nextel, Inc.*, No. 6:12-CV-00791, 2013 WL 12162396, at *1 (E.D. Tex. Sept. 18, 2013) (requiring defendant to serve invalidity contentions while motion to transfer was pending because defendant "will be required to serve contentions regardless of the venue"); *Columbia Sportswear N. Am., Inc. v. Seirus Innovative Accessories, Inc.*, 265 F. Supp. 3d 1196, 1208 (D. Or. 2017) (transferring case weeks before trial which proceeded accordingly) (*see Columbia Sportswear N. Am., Inc. v. Seirus Innovative Accessories, Inc.*, Case No. 3:17-01781, Doc. No. 403, (S.D. CA Nov. 22, 2017)). TenPoint offers no authority that prior party submissions or Court Orders are ignored and must be redone or vacated, respectively, when a case is transferred based on purported party convenience. Indeed, expectation is to the contrary. *See, e.g., Eyetalk365, LLC v. Zmodo Tech. Corp. Ltd.*, Case No. 3:17-02714-RCJ-PAL, Doc. No. 103 at 2-3 (D. Nev. March 23, 2018) (adopting plaintiff's proposed discovery plan and scheduling order in which "claim construction proceed[s] [] based on the claim construction briefing that closed prior to transfer [and] all deadlines which expired when the case was still in the Western District of North Carolina be regarded as completed in this district"). Further, TenPoint offers no explanation for how its selective approach for what needs to be redone comports with Rule 1 of the Federal Rules of Civil Procedure.

TenPoint's Position:

Ravin filed this suit in an inconvenient forum (confirmed by the Nevada Court (Doc. No. 74)), so TenPoint raised and continuously maintained its objection to litigating in that forum. (*See* Doc. No 19 at 2-3; Doc. No. 34 at 2-3; Doc. No. 45; Doc. No. 47 at 2, 6; Doc. Nos. 48, 51; Doc. No. 56 at 12; Doc. No. 58; Doc. No. 69 at 2-3.) TenPoint explained that this District's rules should govern and proceeded under the Nevada Court's rules and orders under protest. (*See* Doc. No. 34 at 2-3.) TenPoint is not saying that *everything* needs to be redone (e.g., interrogatory answers, document productions, and depositions can be utilized just as well in this District as in Nevada). But the governing rules and requirements

for the rest of this case (as further discussed throughout the Report) need to be what they should have been from the beginning – this District’s.

- 2) The parties have exchanged the pre-discovery disclosures required by Fed. R. Civ. P. 26(a)(1) and the Court’s prior order(s).
- 3) The parties generally agree with the Court’s recommendation that this case be assigned to the Complex Track. (*See* Doc. No. 84 at 2.) However, the parties disagree as to when the start time for calculating time to completion should begin.

Ravin’s Position:

Ravin agrees with the Court’s recommendation that this case be assigned to the Complex Track with the understanding that the starting date for calculating time allowed under the Complex Track is December 17, 2021, the date the Complaint was filed. Otherwise, Ravin proposes that the case be assigned to the Expedited Track.

TenPoint’s Position:

TenPoint agrees with the Court’s recommendation that this case be assigned to the Complex Track. However, because TenPoint promptly pointed out that Ravin filed this case in an inconvenient forum and moved for its transfer (*see* Doc. No. 17), any delay by the Nevada Court in ruling on that motion was outside this Court’s control, so the time that this case was pending in Nevada cannot be charged to this Court. Furthermore, TenPoint explained (Doc. No. 25 at 3) that Ravin could have expedited this case by consenting to the transfer once TenPoint filed the transfer motion, but Ravin refused, thus prolonging the pendency of this case in an inconvenient forum. For this reason, any time calculation for the LR 16.2(a)(2) goal should start from when this case arrived in this Court (March 2023).

- 4) This case is suitable for one or more of the following Alternative Dispute Resolution (“ADR”) mechanisms.

÷Ravin’s Position:

At this time, Ravin does not believe that this case is suitable for ADR.

TenPoint’s Position:

—TenPoint believes that ADR (e.g., mediation) should always be considered.

- 4)5) The parties do not consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

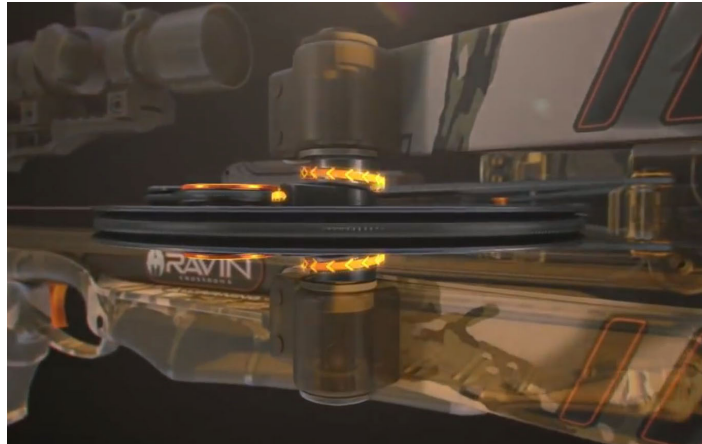
- 5)6) Nature of Dispute

- a) Describe the field of the claimed invention:

Ravin’s Position:

Ravin’s six asserted patents, U.S. Patent Nos. 9,354,015 (“the ’015 Patent”), 9,494,379 (“the ’379 Patent”), 9,879,936 (“the ’936 Patent”), 10,254,073 (“the ’073 Patent”), 10,712,118 (“the ’118 Patent”), and 11,085,728 (“the ’728 Patent”) (collectively, “Patents-in-Suit”) solve problems associated with limited cam

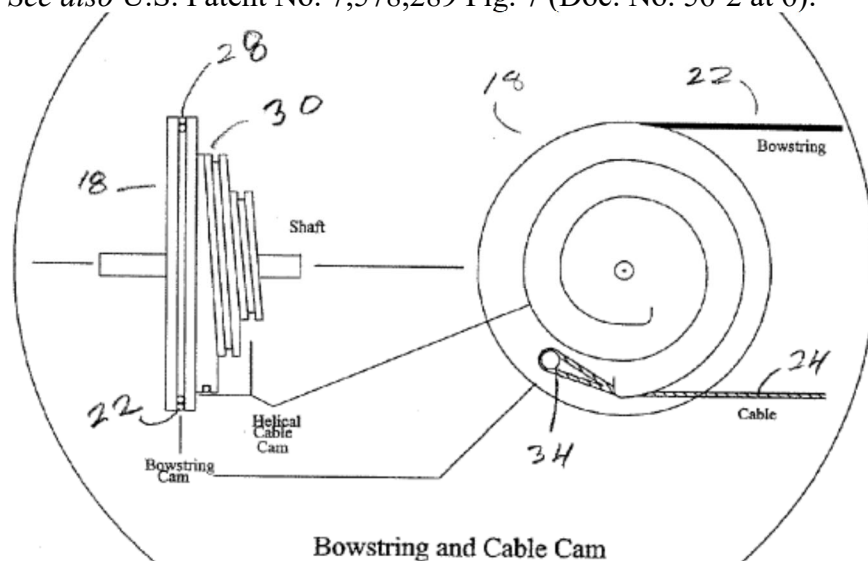
rotation found in conventional crossbow systems. As disclosed and claimed in the Patents-in-Suit, the power cables wrap along the journal away from the cam (as illustrated below), increasing the rotational limit of the cam that results in an increase of the power stroke length for the crossbow's drawstring while maintaining a narrow axle-to-axle width.



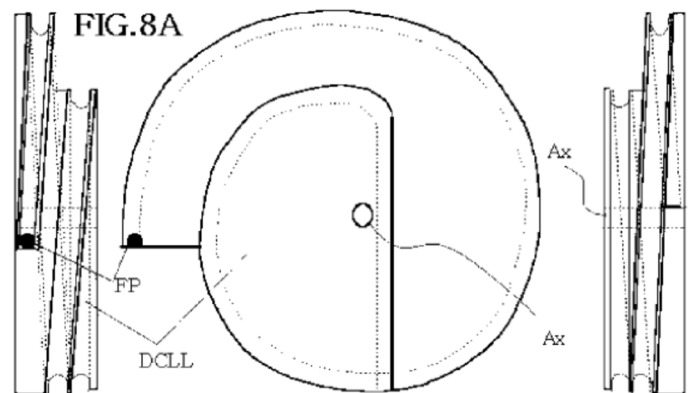
This in turn increases the amount of energy storage capacity and arrow speed while avoiding the problems with increasing cam size, such as the expense and unwieldiness of the crossbow.

TenPoint's Position:

TenPoint disagrees that the asserted claims of the Patents-in-Suit are patentable, as multiple prior art references disclose helical cam grooves or tracks (called "journals" in the Patents-in-Suit), which increase the rotational amount of the cables received therein. For example, U.S. Patent App. Pub. No. 2012/0125302 discloses crossbow cable grooves that "have a spiral or helical shape, so as to wind a plurality of turns of a flexible element [i.e., cable]." (Doc. No. 32-2 at 13 [0106].) *See also* U.S. Patent No. 7,578,289 Fig. 7 (Doc. No. 56-2 at 6):



See also U.S. Patent No. 8,833,349 Fig. 8A (Doc. No. 56-3 at 11):



b) Claims asserted:

Asserted Patent	Asserted Claims
'015 Patent	1–9 and 11–16
'379 Patent	1–7 and 9–19
'936 Patent	1–7 and 9–19
'073 Patent	1–6, 8–29, and 31–34
'118 Patent	1–6, 8–15, and 19
'728 Patent	10–13 and 15

Ravin’s Position:

Ravin has detailed the bases for its infringement positions for each of the asserted claims in its Infringement Contentions served May 23, 2022, which were supplemented to add newly introduced TenPoint products with leave of the Nevada Court, (Doc. No. 65), on February 3, 2023. Neither the Scheduling Order in the District of Nevada nor the Local Patent Rules in this District require any general reduction in the number of asserted claims at any point in a case. However, in the interest of streamlining its case, Ravin will consider a claim reduction deadline following the issuance of the Court’s claim construction order.

TenPoint’s Position:

TenPoint believes that asserting 103 (!) claims is unreasonable and results in an unmanageable and unduly burdensome case, as is already evidenced by the dispute regarding construction of 43 claim terms. Ravin cannot possibly hope to go to a

jury trial with over one hundred claims and will assuredly drop claims as the case nears trial. Narrowing the claims earlier will reduce the overall litigation costs by eliminating issues that are likely to be abandoned anyway and by allowing the Court to dedicate resources to truly dispositive issues. Therefore, TenPoint believes that Ravin should considerably reduce the number of asserted claims now before the case proceeds further.

- c) Number of claim terms for construction. While this dispute was venued in the District of Nevada, the parties fully briefed their positions on claim construction (Doc. Nos. 47, 47-1, 50, 50-1 – 50-23, 56, 56-1 – 56-14, 57, 57-1 – 57-5) over TenPoint’s objection that (a) Ravin did not comply with the District of Nevada’s Local Patent Rule 1-14 by failing to propose constructions for terms TenPoint identified as needing construction~~each term identified by either party, as required~~, and (b) claim construction (including briefing) should not proceed in light of the then-pending Motion to Transfer (*see* Doc. No. 48). The Scheduling Order in the District of Nevada contemplated a Claim Construction Tutorial and Hearing to be scheduled for no later than December 23, 2022, and a Claim Construction Order to be issued by February 21, 2023. (Doc. No. 36 at 2, ll.14-15, 17.) However, as of March 17, 2023, when this case was transferred to this Court, the Claim Construction Tutorial and Hearing had not ~~even~~ been scheduled.

Ravin’s Position:

Ravin requests that the Court construe six claims terms and correct one claim term to address a minor typographical error.

Ravin fully complied with its claim construction obligations, including the District of Nevada’s Local Patent Rule 1-14. While TenPoint proposed constructions for 35 additional terms and phrases, Ravin opposed, arguing that these terms and phrases need not be construed by the Court – a position Ravin advanced throughout the parties’ exchanges leading to claim construction briefing, which was then thoroughly briefed in its Opening Claim Construction Brief, (Doc. No. 50 at 25-29), and Reply Claim Construction Brief, (Doc. No. 57 at 10-11; Doc. No. 57-2 – 57-5). Notwithstanding TenPoint’s suggestion to the contrary, Ravin was not required to proffer an alternative position or otherwise propose constructions in this scenario.

The parties have fully briefed their respective positions on claim construction. While the briefing cycle in Nevada deviated from this District’s typical cross-briefing approach, Ravin had 36 pages to detail its positions while TenPoint took 50 pages for its arguments after self-helping itself to a unilateral enlargement of its Responsive Brief, (Doc. No. 53).

In Ravin’s view, even indulging TenPoint’s identification of 43 terms for construction, the Claim Construction Hearing should take no more than one day. (Doc. No. 47 at 4.)

To further shorten the hearing, Ravin is willing to limit oral argument to those “significant disputed terms/phrases” that the parties previously identified in their LPR 1-15 Joint Claim Construction and Prehearing Statement:

SIGNIFICANT DISPUTED TERMS/PHRASES

The parties identify the following term to be most significant to the resolution of the case:

1. “first ends”

Ravin identifies two additional terms to be most significant to the resolution of the case:

2. “mounted to”; and

3. “pass under.”

TenPoint identifies two additional terms to be most significant to the resolution of the case:

4. “about” when referring to inches or degrees; and

5. “wherein the [first and second / upper and lower] power cable [take-up] journals comprise a width at least twice a width of the [first and second pairs of / upper and lower] power cables.”

(Id. at 5.)

TenPoint’s Position:

TenPoint disagrees that only the seven claim terms identified by Ravin need to be addressed. TenPoint previously explained (*see* Doc. No. 47 at 4; Doc. No. 53 at 2, 4; Doc. No. 55 at 2-4; Doc. No. 56 at 10-12) that Ravin’s assertion of over one hundred claims, as well as its unjustified failure to admit that the asserted prior art met many of the claim terms, indicates that the parties must ascribe different meaning or scope to approximately 43 terms, which requires the Court to construe those terms. However, Ravin then deliberately chose to disregard the District of Nevada’s Local Patent Rule 1-14, which required both parties to “exchange proposed constructions of *each* term identified by *either* party for claim construction,” thus rendering TenPoint’s proposed constructions for 35 terms unopposed. TenPoint thus proposes that, in light of the number of disputed terms, Ravin be required to limit the number of asserted claims before the parties proceed further with claim construction, which would commensurately reduce the number of disputed claim terms. (Without a reduction, a claim construction hearing on 43 disputed terms will likely take at least three days.) Otherwise, TenPoint proposes (as it had previously) that its proposed construction for the 35 terms for which

Ravin failed to propose a construction be summarily adopted, and the parties can then focus their claim construction briefing on the remaining seven terms for which Ravin did propose constructions. (See Doc. No. 47 at 4; Doc. No. 53 at 4; Doc. No. 55 at 3; Doc. No. 56 at 10-12, 29.).

Consistent with their briefing, the parties also request the Court adopt their agreed-upon constructions for four additional terms.

- d) Describe the allegedly infringing activity or product:

Ravin's Position:

Since 2018, TenPoint has offered for sale and sold crossbows that use and incorporate the inventions claimed in the Patents-in-Suit. Specifically, the following TenPoint crossbows infringe certain claims of the Patents-in-Suit:

Vengent S440, Viper S400, Viper S400 Oracle X, Stealth NXT, Shadow NXT, Turbo S1, NXT 400, Viper 430, Stealth 450, Stealth 450 Oracle X, Vapor RS470, Vapor RS470 Xero, Havoc RS440, Havoc RS440 Xero, Siege RS410, Nitro X, Nitro XRT, XR-410, Nitro 505, Nitro 505 Oracle X, Nitro 505 Xero, Flatline 460, and Flatline 460 Oracle X.

Ravin has detailed the bases for its infringement theories in its infringement contentions, which were served on May 23, 2022, and corrected on May 26, 2022. (Doc. No. 36 at 1, ll.25-26.) Following TenPoint's introduction of five new crossbows as part of its 2023 product line which was announced in late December 2022, Ravin sought, (Doc. No. 63) – and the Nevada Court granted on good cause shown, (Doc. No. 65) – leave to supplement Ravin's infringement contentions. On February 3, 2023, Ravin served its supplemental infringement contentions, to which TenPoint failed to respond.

TenPoint's Position:

TenPoint disagrees with Ravin's infringement allegations and has served its initial noninfringement contentions on July 7, 2022.

- e) Describe any potentially non-infringing alternative designs:

Ravin's Position:

Ravin is unaware of any non-infringing alternative design – and despite discovery directed to this issue, TenPoint has not offered any such design – that would accomplish the narrow profile, *i.e.*, an axle-to-axle width of less than 8 inches when the crossbow is fully drawn, without a significant decrease in power or arrow speed. TenPoint is free to practice the prior art, which it has elected not to do.

TenPoint's Position:

TenPoint disagrees that a non-infringing alternative design requires the characteristics described in the preceding paragraph. Furthermore, at least the prior art identified by TenPoint (*see, e.g.*, Doc. No. 56 at 13; Doc. No. 86-1 at 23-25)

discloses alternative designs of bows with helical cams that are non-infringing because (by virtue of being prior art) they predate the Patents-in-Suit.

- f) The parties have not stipulated that the above-described designs infringe the patents in issue.

6/7 Anticipated Motions

- a) The parties anticipate filing the following motions:
- i) Preliminary injunction. Proposed briefing schedule: N/A
- ii) To add/substitute parties. Proposed briefing schedule: N/A

Ravin's Position:

Under the Scheduling Order in the District of Nevada, the deadline to file any motion to amend pleadings or join parties was set for December 23, 2023, which passed without any motion from either Ravin or TenPoint. (See Doc. No. 36 at 2, 1.16.) This deadline was not tethered in any way to either the close of fact discovery or issuance of a claim construction order. Any motion to amend pleadings or join parties such motion raised now must first satisfy the heightened good cause requirements of Fed. R. Civ. P. 16(b)(4) before meeting the requirements of Fed. R. Civ. P. 15(a)(2).

TenPoint's Position:

As TenPoint previously explained (Doc. No. 69 at 3, 5-6), the Nevada Court's Local Patent Rules set the deadline to amend pleadings at 90 days before the close of fact discovery, which occurs after the claim construction order is issued, and both parties confirmed this understanding in their prior Rule 26(f) Report (Doc. No. 34 at 7, 11). Because the prerequisite claim construction order had not issued (indeed, a claim construction hearing had not even been scheduled by the Nevada Court, as explained above in ¶6(c)), TenPoint moved to amend the Nevada Court's scheduling order (which was entered only "until that motion [to transfer] is decided," Doc. No. 36 at 1) to extend these dates. The Nevada Court denied that motion as moot in light of the transfer. (Doc. No. 74 at 9.) Thus, consistent with the directive of Fed. R. Civ. P. 15(a)(2), TenPoint believes that leave to amend should be freely given here and that the circumstances of this case easily establish any required good cause, as explained in its prior motion (Doc. No. 69).

TenPoint anticipates moving to amend the pleadings to add a counterclaim for patent unenforceability due to inequitable conduct, the briefing of which would be governed by LR 7.1.

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ii)iii) [Other]. Proposed briefing schedule:

Ravin's Position:

Ravin anticipates filing a motion for summary judgment regarding TenPoint's infringement of certain claims of the Patents-in-Suit. Ravin is considering requesting leave to file a second summary judgment motion directed to challenging certain TenPoint invalidity defenses. No modification to any briefing deadlines are necessary.

There should be parity in the number of summary judgment motions each party may file. (Compare "TenPoint does not believe that Ravin can justify a second summary judgment motion and will thus oppose any such request" with TenPoint "anticipates filing a motion for summary judgment regarding certain infringement and[] invalidity issues.")

TenPoint's Position:

TenPoint does not believe that Ravin can justify a second summary judgment motion and will thus oppose any such request. (See Doc. No. 81 at 9 (this Court typically allows only one summary judgment motion per party).)

TenPoint also anticipates filing a motion for summary judgment regarding certain infringement and/or invalidity issues. TenPoint proposes that the briefing schedule for summary judgment motions be governed by LR 7.1 and L. P. R. 6.1 (except that the deadline be extended from 10 days to 45 days after end of expert discovery to allow sufficient time to generate, receive, and review transcripts from expert depositions).

As explained above in ¶6(b)-(c), TenPoint believes that Ravin has asserted an unreasonable number of claims and should narrow them. If Ravin does not voluntarily narrow the number of asserted claims, and if the Court does not order such limitation at the case management conference, TenPoint anticipates filing a motion to that effect, the briefing of which would be governed by LR 7.1.

~~TenPoint anticipates moving to amend the pleadings to add a counterclaim for patent unenforceability due to inequitable conduct, the briefing of which would be governed by LR 7.1.~~

Ravin's Position:

~~Under the Scheduling Order in the District of Nevada, the deadline to file any motion to amend pleadings or join parties was set for December 23, 2023, which passed without any motion from either Ravin or TenPoint. (See Doc. No. 36 at 2, 1.16.) Any such motion raised now must first satisfy the heightened good cause requirements of Fed. R. Civ. P. 16(b)(4) before meeting the requirements of Fed. R. Civ. P. 15(a)(2).~~

TenPoint's Position:

~~As TenPoint previously explained (Doc. No. 69 at 3, 5-6), the Nevada Court's Local Patent Rules set the deadline to amend pleadings at 90 days before the close of fact discovery, which occurs after the claim construction order is issued, and both parties confirmed this understanding in their prior Rule 26(f) Report (Doc. No. 34 at 7, 11). Because the prerequisite claim construction order had not issued (indeed, a claim construction hearing had not even been scheduled by the Nevada Court, as explained above in ¶ 6(c)), TenPoint moved to amend the Nevada Court's scheduling order (which was entered only "until that motion [to transfer] is decided," Doc. No. 36 at 1) to extend these dates. The Nevada Court denied that motion as moot in light of the transfer. (Doc. No. 74 at 9.) Thus, consistent with the directive of Fed. R. Civ. P. 15(a)(2), TenPoint believes that leave to amend should be freely given here and that the circumstances of this case easily establish any required good cause, as explained in its prior motion (Doc. No. 69).~~

- b) The following issues may be the proper subject of an early motion for summary judgment or partial summary adjudication:
- i) ___ Inventorship or Indefiniteness (describe basis)

TenPoint's Position:

—TenPoint believes that certain claim terms are indefinite, as explained in its initial invalidity contentions (served on July 7, 2022). However, in light of the necessity for Ravin to reduce the number of asserted claims, coupled with this Court's allowance of just one summary judgment motion typically, TenPoint does not anticipate an early motion on this issue at this time.

- ii) ___ Invalidating sale, offer for sale, or display (describe basis)
- iii) ___ Other (describe basis)

7)8) Protective Order

- a) The parties have not agreed to the form Patent Protective Order set forth in Appendix C to the Local Patent Rules.

Ravin's Position:

While the case was venued in the District of Nevada, a Stipulated Protective Order ("SPO") was agreed to by the parties, (Doc. No. 38), and entered by the Nevada Court on May 31, 2022. (See Doc. No. 39.) Provided the Court has no objection, the SPO entered in the District of Nevada shall govern the treatment of confidential information. However, due to the concerns outlined below in 8(c), Ravin anticipates moving the Court to amend ¶ 6(b) of the SPO to restrict access to Ravin's confidential information to only TenPoint's outside counsel.

TenPoint's Position:

From the outset, TenPoint maintained that this case should be in this District, not Nevada, and that this District's Rules should govern. (Doc. No. 34 at 2-3.) This District's Patent Protective Order (L. P. R. App. C) was not used only because this case initially was filed in Nevada. In light of the transfer, TenPoint believes that this Court should enter a replacement protective order, because the prior SPO references District of Nevada local rules (e.g., Doc. No. 39 at ¶9) and vests jurisdiction in the Nevada Court to resolve disputes and enforce violations of the SPO (e.g., *id.* at ¶22; Doc. No. 38 at 18). Because this case is pending in this District, and because of the Court's familiarity with this District's Patent Protective Order, TenPoint believes that it makes most sense to use it, with a minor modification to ¶11(b) to allow the parties to destroy electronic copies of designated information, rather than requiring their return. TenPoint's response to Ravin's concern regarding ¶6(b) of the SPO is addressed below in ¶8(c).

- b) The parties do not agree about whether to submit an alternative proposed protective order for adoption by the Court.

Please see response to 8(a).

- c) Identify any issues the Court should be aware of with respect to the confidentiality concerns of the parties:

Ravin's Position:

Ravin has serious reservations about TenPoint's ability to maintain the confidentiality of Ravin's confidential information. It has recently come to Ravin's attention that TenPoint has violated certain terms of the Stipulated Protective Order entered by the Court in *Ravin Crossbows, LLC v. Hunter's Manufacturing Company, Inc., d/b/a TenPoint Crossbow Technologies*, Case No. 5:18-cv-1729-SL ("2018 Litigation"). (See Doc. No. 128.) More specifically, while reviewing documents produced in the instant case, Ravin's counsel uncovered an executive at TenPoint who received Ravin's confidential sales information produced during the mediation undertaken by the Special Master to resolve the 2018 Litigation had improperly disclosed and used Ravin's confidential sales information. In view of TenPoint's use of Ravin confidential information outside the confines of the 2018 Litigation and the mediation that precipitated Ravin's disclosure, Ravin filed a Motion for Contempt in the 2018 Litigation. (Doc. No. 162 (redacted), Doc. No. 163 (sealed).) The Court has referred the Motion to Magistrate Judge Henderson, (Doc. No. 165), who entered an Order setting deadlines for TenPoint to file its opposition by May 24, 2023, and Ravin to file its reply by May 31, 2023. (May 11, 2023 Order.) An in-person hearing in front of Magistrate Judge Henderson is scheduled for June 6, 2023. (May 15, 2023 Order.)

TenPoint's Position:

TenPoint is in the process of reviewing this situation and Ravin's motion for contempt, and preparing its response. As TenPoint's investigation is still ongoing, it is not yet prepared to fully address Ravin's position here.

- ~~8)9)~~ The parties have consented, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to the electronic exchange of pleadings, notices, discovery, and other mandated disclosures not otherwise served electronically via the Court's electronic filing system.
- ~~9)10)~~ The parties have discussed settlement and the appropriateness of Alternative Dispute Resolutions.
- ~~10)11)~~ The parties have discussed the appointment of a Special Master.
- ~~11)12)~~ If, in the proposed schedule, the parties are advocating a departure from the dates set forth in the Local Patent Rules, set forth the basis for said departure:

Ravin's Position:

The specifics of this case creates good cause to depart from the Local Patent Rules for the dates for the events listed below such that LPR 4.7, 5.1, 6.1, and LR 7.1 should not flow from the date of the entry of a claim construction order. Ravin understands that the Court will schedule a claim construction hearing at a time convenient for the Court. However, delaying the close of fact discovery, expert discovery, and dispositive motions until there is a ruling on claim construction, when this case has already been proceeding for nearly seventeen months and the parties were facing a April 24, 2023 opening expert report deadline at the time of the case's transfer to this District, runs contrary to this District's implementation of a "differentiated case management ('DCM') system" that permits "the Court to manage its civil docket in the most effective and efficient manner, to reduce costs and to avoid unnecessary delay." (LR 16.1(a).)

This case has been pending since December 17, 2021, albeit in another forum. Nevertheless, prior to the transfer to this Court, this case proceeded according to a schedule that contemplated the close of fact discovery by May 23, 2023, an expert discovery cutoff by June 23, 2023, and a dispositive motion deadline of August 4, 2023. (See Doc. No. 36 at 1, 1.18, 2, 11.22-24.) Under this District's Local Rule 16.2, Tracks and Evaluation of Cases, if this case is assigned to be a "Complex" case, which the Court has recommended, then this case should be completed by mid-December 2023. (LR 16.2 (a)(2)(C) (24 months after filing the case in December 2021).) Consistent with the timing contemplated by a "Complex" designation, Ravin proposes the below schedule to move this case to completion without further delay. This case has made significant progress as can be discerned from review of the proceedings to date and Ravin's disclosure of its Attorney Fees and Costs as required by the Court, which will be submitted in advance of the Case Management Conference contemporaneously with this Report. (Doc. No. 84 at 5.) Ravin's proposed schedule maintains the momentum of the case to minimize unnecessary delay and expense. Further delay also prejudices Ravin, as Ravin and TenPoint are direct competitors in the high-end crossbow market, and TenPoint continues to introduce infringing crossbows during the pendency of this case.

As discussed above in ¶6(c) and set forth below in ¶15, the parties have completed all pre-claim construction disclosures and briefing contemplated by the Local Patent Rules. In addition:

- Written discovery has been exchanged, including interrogatory responses and requests for admission;
- Documents have been produced;
- Ravin has disclosed technical and damages experts under the SPO; and
- Depositions have been taken. Ravin has deposed five TenPoint witnesses and issued notices for four other depositions, which were served on November 17, 2022. Ravin agreed to proceed with these four depositions the week of April 17, 2023 to accommodate the witnesses' identified limited availability. But for the anticipated civil unrest in Akron the week of April 17, these depositions would have already occurred. TenPoint has not noticed any depositions or subpoenaed any third-party witnesses.

In view of the substantial amount of work that has already occurred in a forum where TenPoint is incorporated and subject to personal jurisdiction and venue, Ravin proposes the following dates for close of discovery and dispositive motions:

- (a) LPR 4.7: Close of Fact Discovery: June 23, 2023;
- (b) LPR 4.6: Claim Construction Hearing: 5 weeks after the CMC;
- (c) LPR 5.1(b): Opening Expert Reports: June 26, 2023;
- (d) LPR 5.1(c): Rebuttal Expert Reports: July 24, 2023;
- (e) LPR 5.2: Close of Expert Discovery: August 28, 2023;
- (f) LPR 6.1: Dispositive Motions: September 11, 2023;
- (g) LR 7.1: Response to 6.1 Dispositive Motions: October 9, 2023;
- (h) LR 7.1: Reply ISO 6.1 Dispositive Motions: October 23, 2023; and
- (i) LPR 6.2: Trial: January 2024.

TenPoint's Position:

TenPoint believes that this District's Local Patent Rules should govern and has stated and maintained this from early on in the case (*see* Doc. No. 34 at 3.) This District's Rules are set up to allow an efficient, orderly, and predictable progression of the case. The Rules recognize the importance of a claim construction order on the rest of the case (including expert reports, final patent contentions on infringement and invalidity, finishing discovery, and the scope of dispositive motions), as TenPoint explained previously with respect to the Nevada Court's rules, which likewise trigger such actions from the claim construction ruling (*see* Doc. No. 69 at 7). This is why TenPoint moved to amend the Nevada Court's Scheduling Order when the subsequent deadlines were coming due with a claim construction hearing not even scheduled. (*See* Doc. No. 69.) Should Ravin's inefficient proposal be adopted, the parties would need to hedge their bets on all of the above actions

and essentially double up each action (one under each party's proposed construction). And should the Court construe any of the 43 disputed claim terms differently from either party's proposal, those actions would likely need to be revisited. *See Homeland Housewares, LLC v. Whirlpool Corp.*, 865 F.3d 1372, 1376 (Fed. Cir. 2017) (the court is not limited to the constructions proposed by the parties and may adopt one not proposed by either party).

Even aside from the claim construction ruling, each of the parties still has multiple depositions to take. Furthermore, TenPoint noted numerous deficiencies in Ravin's discovery responses during the parties' meet-and-confer in March 2023. While Ravin has since supplemented some of its interrogatory answers and explained that its documents were being produced on a rolling basis, Ravin last week informed TenPoint that it has substantially completed the requested document production. Because TenPoint does not believe that Ravin's supplementations have addressed TenPoint's concerns, this dispute will most likely need to be addressed by the Court, following which Ravin will need time to supplement its discovery. In short, Ravin's above-proposed dates are simply not feasible.

Ravin's sole proffered reason for this inefficiency is that this case has been pending since December 2021. However, the decision where to file is fully on Ravin – it chose to file in a forum with a considerably longer time-to-trial pendency (*see* Doc. No. 86-1 at 9). Even if Ravin originally believed that TenPoint would want to litigate in Nevada, once TenPoint filed its transfer motion, Ravin should have consented to TenPoint's requested transfer if it really wanted to move this case along, as TenPoint previously explained (Doc. No. 25 at 3). Moreover, this Court is not responsible for the Nevada Court's delay, and it is unfair to ask this Court to revamp its established procedures for something over which it had no control. Both parties and this Court recommend that this case be characterized as "Complex" (*see* ¶3), so it would be inappropriate to heedlessly rush the case without a compelling reason (which Ravin has not provided). Because this case was transferred to this Court just two months ago (March 2023), the 24-month completion goal of LR 16.2(a)(2)(C) should start from then, leaving plenty of time for the required activity in accordance with the L. P. R. until a trial in March 2025.

Furthermore, Ravin's actions undermine its claims of prejudice from delay. As TenPoint previously explained (Doc. No. 86 at 14-15), half of Ravin's Patents-in-Suit had issued by January 2018, and TenPoint contacted Ravin regarding a potential license to those patents in November 2017. Three of the allegedly infringing crossbow models were introduced in TenPoint's 2018 catalog, and Ravin was aware of the alleged infringement more than five years ago. Ravin even sued TenPoint in this District in a case pending before this Court (no. 5:18-cv-1729), where it could have asserted its infringement claims – but Ravin intentionally decided not to, waiting until the end of 2021 before filing its suit. Ravin also decided not to move for a preliminary injunction, which further undercuts any claim of undue prejudice from a delay. In short, Ravin has not offered sufficient justification for such a radical departure from, and complete abandonment of, the L. P. R.

Thus in response to Ravin's above-proposed list of dates (which mostly relate to actions that occur after claim construction under the L. P. R.), TenPoint proposes the following:

- (a) Claim Construction Hearing: subject to the Court's convenience, 30 days after the parties submit responsive claim construction briefs, as provided by L. P. R. 4.6 (*see* ¶15(o) below);
- (b) Final Infringement Contentions: 15 days after the Court's claim construction ruling, as provided by L. P. R. 3.10(b);
- (c) Final Noninfringement Contentions and Final Invalidity and Unenforceability Contentions: 30 days after the Court's claim construction ruling, as provided by L. P. R. 3.10(c);
- (d) Final Validity and Enforceability Contentions: 45 days after the Court's claim construction ruling, as provided by L. P. R. 3.10(d);
- (e) Close of Fact Discovery: 30 days after the Court's claim construction ruling, as provided by L. P. R. 4.7;
- (f) Non-Claim Construction Opening Expert Reports: 60 days after the Court's claim construction ruling, as provided by L. P. R. 5.1(b);
- (g) Non-Claim Construction Rebuttal Expert Reports: 30 days after the L. P. R. 5.1(b) Opening Expert Reports, as provided by L. P. R. 5.1(c);
- (h) Close of Non-Claim Construction Expert Discovery: 40 days after the L. P. R. 5.1(c) Rebuttal Expert Reports, as provided by L. P. R. 5.2;
- (i) Dispositive Motions: 45 days after the close of Expert Discovery, as explained above in ¶7(a)(iv);
- (j) Response to Dispositive Motions: 30 days after Dispositive Motions, as provided by LR 7.1(d);
- (k) Reply ISO Dispositive Motions: 14 days after Response, as provided by LR 7.1(e); and
- (l) Trial: subject to the Court's convenience, 90 days after the Court's ruling on dispositive motions, which would allow the parties to adequately evaluate what issues remain at that time, prepare for a final pretrial conference (*see* ¶17 below), and prepare for trial.

~~12~~13) If the parties anticipate needing to propound interrogatories and/or take depositions in excess of the number provided in the Federal Rules of Civil Procedure, set forth the proposed limit and basis for the request, keeping in mind the proportionality requirements of Fed. R. Civ. P. 26(b)(1): N/A.

~~13~~14) Relating to electronic discovery, the parties ~~(select one)~~disagree:

_____ agree that there will be no discovery of electronically-stored information; or

_____ have agreed to a method for conducting discovery of electronically-stored information, including the form or forms in which it should be produced; or

_____ have agreed to follow the default standard for discovery of electronically-stored information (Appendix K to N.D. Ohio Local Rules).

Ravin's Position:

An ESI Order has been entered in this case. (*See* Doc. No. 44.)

TenPoint's Position:

As explained above (*see* ¶8(a)), because Ravin filed this case in an inconvenient forum, TenPoint has maintained throughout that the case should be in this District and be governed by this Court's Rules. This Court's Default Standard for Discovery of Electronically Stored Information (LR App. K) was not used only because this case was initially filed in Nevada. In light of the transfer, TenPoint believes that LR App. K governs electronic discovery, rather than the Nevada Court's ESI Order (Doc. No. 44). Should Ravin wish to modify any of its provisions, TenPoint is happy to consider its proposals.

14)15) Proposed Schedule (through Claims Construction)

Ravin's Position:

Should the Court require Ravin to narrow its infringement case and reduce the number of asserted claims prior to the Claim Construction Hearing, the parties need not re-do the submissions called for by LPR 4.1(a), 4.1(c), LPR 4.2(a), or LPR 4.2(b). Rather, any terms originally subject to a claim construction dispute that are contained only in claims no longer at issue can be struck from these disclosures. In other words, the identification of terms and proposed constructions will be narrowed to only cover the asserted claims.

No dates need to be included for expert discovery for claim construction. The parties did not use any claim construction experts leading up to or in fully briefing their positions in the District of Nevada. It is too late to disclose any claim construction experts now.

TenPoint's Position:

As explained above (*see* ¶6(c)), Ravin's assertion of an unreasonable number of claims and its unjustified failure to admit that the asserted prior art met many of the claim terms resulted in 43 disputed claim terms (for 35 of which Ravin unilaterally decided not to propose a construction, in deliberate violation of the Nevada Court's rules). So while the parties went through several of the below actions already on their way to claim construction, construing 43 terms (because of Ravin's failures) appears to be unwieldy. TenPoint thus believes that Ravin should reduce the number of asserted claims and that several of the below actions be redone thereafter. TenPoint previously explained that should the transfer motion be granted, the claim construction briefing and other actions would need to be redone. (*See* Doc. No. 19 at 3; Doc. No. 48 at 4; Doc. No. 51 at 6.)

- a) Infringement Contentions (LPR 3.1-3.2) – Served on TenPoint on May 23, 2022, and supplemented on February 3, 2023;
- b) Non-Infringement Contentions (LPR 3.3-3.4) – Served on Ravin on July 7, 2022;
- c) Invalidity/Unenforceability Contentions (LPR 3.5) – Served on Ravin on July 7, 2022;
- d) Preliminary ID of Claim Terms to Construe (LPR 4.1(a)) –

Ravin's Position:

Served on TenPoint on August 8 and served on Ravin on August 10, 2022;

TenPoint's Position:

14 days after Ravin reduces the number of asserted claims;

- e) Validity/Enforceability Contentions (LPR 3.7) – Served on TenPoint on July 21, 2022;
- f) Final ID of Claim Terms (LPR 4.1(c)) –

Ravin's Position:

Parties served one another on August 22, 2022;

TenPoint's Position:

20 days after service of the L. P. R. 4.1(a) lists, as provided by L. P. R. 4.1(c);

- g) Preliminary Claim Constructions (LPR 4.2(a), (b)) –

Ravin's Position:

Parties served one another on August 22, 2022;

TenPoint's Position:

15 days after service of the L. P. R. 4.1(c) lists, as provided by L. P. R. 4.2(a);

- h) Claim Construction Expert (if any), ID & Report (LPR 4.3(a)) –

Ravin's Position:

N/A

TenPoint's Position:

15 days after service of the Preliminary Claim Constructions, as provided by L. P. R. 4.3(a);

- i) Rebuttal Claim Construction Expert, ID & Report (LPR 4.3(b)) –

Ravin's Position:

N/A

TenPoint's Position:

15 days after service of the initial expert claim construction reports, as provided by L. P. R. 4.3(b);

- j) Expert Discovery Deadline (LPR 4.3(c)) –

Ravin's Position:

N/A

TenPoint's Position:

15 days after service of the rebuttal expert claim construction reports, as provided by L. P. R. 4.3(c);

- k) Final Claim Construction (LPR 4.2(c)) –

Ravin's Position:

N/A

TenPoint's Position:

5 days after completion of expert claim construction discovery (or 50 days after service of the Preliminary Claim Constructions if no expert is identified), as provided by L. P. R. 4.2(c);

- l) Opening Claim Construction Submissions (LPR 4.4(a)) –

Ravin's Position:

Ravin's Opening Brief filed September 27, 2022, (Doc. No. 50), no additional briefing permitted;

TenPoint's Position:

15 days after service of the Final Claim Constructions, as provided by L. P. R. 4.4(a);

- m) Responsive Claim Construction Submissions (LPR 4.4(b)) –

Ravin's Position:

TenPoint's Responsive Brief filed October 18, 2022, (Doc. No. 56), no additional briefing permitted;

TenPoint's Position:

30 days after filing of the Opening Claim Construction Submissions, as provided by L. P. R. 4.4(b);

- n) Joint Claim Construction & Prehearing Statement (LPR 4.5) –

Ravin's Position:

Filed September 6, 2022, (Doc. No. 47), but Ravin proposes resubmitting in this District's format no later than May 25, 2023, or on a date convenient for the Court;

TenPoint's Position:

5 days after filing of the responsive claim construction briefs, as provided by L. P. R. 4.5;

- o) Proposed Claim Construction Hearing (LPR 4.6) –

Ravin's Position:

June 29, 2023, ~~5~~ weeks after CMC, subject to the Court's convenience;

TenPoint's Position:

Subject to the Court's convenience, 30 days after filing of the responsive claim construction briefs, as provided by L. P. R. 4.6.

~~15)~~16) Proposed Advice of Counsel Notification (LPR 4.8):

Ravin's Proposal: June 23, 2023;

TenPoint's Proposal: 90 days before the close of fact discovery, as provided by L. P. R. 4.8.

~~16)~~17) Proposed target date for final pretrial conference:

Ravin's Proposal: December 15, 2023;

TenPoint's Proposal: 10 days before trial date (*see* ¶18 below).

~~17)~~18) Proposed target date for trial (two-week standby period):

Ravin's Proposal: January 2024;

TenPoint's Proposal: subject to the Court's convenience, 90 days after the Court's ruling on dispositive motions, which would allow the parties to adequately evaluate what issues remain at that time and prepare for trial and its preceding final pretrial conference.

~~18)~~19) Other matters for the attention of the Court:

TenPoint's pending Motion to Stay, (Doc. No. 86):

Ravin's Position:

On May 5, 2023, TenPoint filed a Motion to Stay Case and Motion to Postpone Case Management Conference pending resolution of TenPoint's request for *inter partes* review ("IPR"), which is pending in front of the U.S Patent and Trademark Office's Patent Trial and Appeal Board ("PTAB"). (Doc. No. 86.) Ravin opposes the Motion and will timely file its opposition on or before May 19, 2023.

Under the three factor test used in this District, courts must consider: “[1] the stage of litigation; [2] whether a stay would simplify the issues of the case; and, [3] whether a stay would unduly prejudice the non-moving party.” *Lincoln Elec. Co. v. Seabery Soluciones SL*, No. 1:15-CV-1575, 2016 U.S. Dist. LEXIS 184317, at *6 (N.D. Ohio June 17, 2016). TenPoint cannot establish any entitlement to a stay.

The first factor, the stage of the litigation, weighs against a stay. As discussed above regarding the progress of the case, as set forth in ¶6(c) and in ¶15, the parties have completed all pre-claim construction disclosures and briefing contemplated by the Local Patent Rules. Further, Ravin has expended significant resources pursuing discovery in this case to comply with the deadlines entered by the Nevada Court. Moreover, complying with the expected 24-month timeline for a complex case, this case should be completed well before the PTAB would render a final written decision by its statutory deadline in July 2024, provided the IPR is even instituted.

The second factor also weighs against a stay as a stay will not simplify the issues of the case. TenPoint elected to challenge one claim out of the 103 asserted claims from one of the six asserted patents. Nothing precluded TenPoint from attempting to raise challenges to the other asserted claims from the other asserted patents in other IPRs.

~~As a threshold matter~~Moreover, prior to institution of the IPR, which the PTAB has until July 11, 2023, to decide whether to grant or deny TenPoint’s petition, any simplification is purely speculative. And if the IPR is instituted, the extent of potential simplification continues to be speculative. While the challenged claim has some similar elements to the 102 unchallenged claims, the IPR petition is directed solely to claim 1 of the ’015 Patent. Any PTAB final written decision is pertinent only to this single claim. Regardless of the outcome of any IPR relating to claim 1 of the ’015 Patent, the Court must still address the validity of Ravin’s other asserted claims based on those arguments TenPoint raised in the litigation, the vast majority of which TenPoint has not challenged. *See* 35 U.S.C. § 282(a).

The third factor also weighs against a stay. A stay is highly prejudicial to Ravin because TenPoint is a direct competitor and continues to manufacture, offer to sell, and sell infringing crossbows to the detriment of Ravin in the form of lost sales and other damages. As set forth above in ¶6(d), TenPoint introduced five new infringing crossbows in December 2023, and TenPoint has given no indication it will cease its manufacture or sale of the alleged infringing crossbows during the pendency of TenPoint’s proposed stay of indefinite duration.

TenPoint’s Position:

TenPoint has moved to stay this case pending a decision by the U.S. Patent and Trademark Office’s Patent Trial and Appeal Board on whether to institute a petition for *inter partes* review (“IPR”) filed by TenPoint, and if the IPR is instituted, then until its completion. (Doc. No. 86.) As explained in that motion, a stay will result in a simplification of the relevant issues and corresponding reduction in the burden of litigation on both parties and the Court, because the USPTO will lend its expert opinion to the heart of what Ravin itself

repeatedly alleged is its innovation in the Patents-in-Suit. Even though some time has passed since its inception, this case is still closer to its beginning than its end with much work remaining to be done (including narrowing claims, re-briefing claim construction issues, holding a claim construction hearing, resolving discovery disputes, preparing expert reports on infringement, invalidity, and damages, taking various depositions, preparing final contentions on infringement and invalidity, briefing dispositive motions, and preparing for and conducting trial itself). As this Report illustrates, there are a plethora of issues and actions that must be addressed before this case is ready for trial, and the parties disagree on a number of them, which provides further support for staying this case until the IPR is resolved. Lastly, as explained in the stay motion (Doc. No. 86 at 14-15) and ¶12 above, Ravin’s own delay belies its claim of a stay being “highly prejudicial,” underscored by its failure to seek a preliminary injunction. At very least, this case should be stayed until the Board’s institution decision (due by July 11 – less than two months away), which will further confirm the wisdom of waiting until the USPTO fully reviews Ravin’s alleged invention. (*See id.* at 6.)

Dated: May 18, 2023

Respectfully submitted,

/s/**DRAFT**

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