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June 23, 2023

VIA ECF

Hon. Theodore D. Chuang
United States District Court
District of Maryland
6500 Cherrywood Lane
Greenbelt, MD 20770

RE: GCE Gas Control Equipment Inc. v. 3B Medical Manufacturing, LLC
Civil Case No. 8:22-cv-02550-TDC

Dear Hon. Judge Chuang:

The Parties jointly submit this letter to request a status conference and the Court's guidance in the above-referenced case regarding two matters with which the Parties seek the Court's assistance.

First, on March 24, 2023, the Court entered an Amended Scheduling Order [Dkt. No. 35] amending the previous Scheduling Order [Dkt. No. 26]. Specifically, the Parties will complete claim construction briefing on June 21, 2023 and would like to discuss whether the Court would revise the schedule by entering either Party's proposal put forward in the Joint Motion to Amend Scheduling Order [Dkt. No. 33] for post-claim construction case deadlines. After a status conference, and with the Court's guidance and approval, the Parties would respectfully request leave to file a motion to amend the schedule with whichever previous proposal of the Parties the Court prefers.

GCE's Further Statement: Relatedly, the U.S. Patent Trial and Appeal Board ("PTAB") is scheduled to issue an institution decision regarding the *inter partes* review proceeding GCE initiated against the '614 Patent on or before July 11, 2023. Upon institution, GCE intends to seek a stay of these proceedings pending a final written decision by the PTAB in least that IPR.¹ GCE believes any modified schedule should take into account the awaited decision by the PTAB.

3B's Further Statement: Regarding a potential stay of this matter based on the two IPRs filed by GCE, 3B opposes a stay at this time. GCE initially filed this action and 3B believes discovery should proceed and the claim construction process should be completed. Further, 3B believes

¹ GCE has also filed an IPR petition challenging the validity of the other patent-in-suit, the '614 Patent. The deadline for the PTAB to issue an institution decision is that proceeding is on or around September 15, 2023. GCE would seek to stay this case until both IPRs are finally concluded.

neither of the IPRs filed by GCE will be instituted and because there are substantive differences between the two IPRs, even if the '614 Patent IPR is instituted that is not sufficient to warrant a stay.

Second, the Parties have attempted to agree to a Protective Order governing discovery in this case but have unable to agree on certain parts therein. Specifically, despite multiple meet and confer conferences, the Parties are unable to agree, to the extent necessary, on the scope and content of a prosecution bar designation that is sought by GCE for information produced in discovery as well as related items including, but not limited to, the manner of production of such information, use and designation of such information in depositions, and required disclosures of experts/consultants to view such information. The Parties jointly wish to discuss with the Court the manner in which the Court would like the Parties to present these disputed issues to the Court for resolution.

Respectfully submitted,

/s/Robert M. Masters

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division**

GCE GAS CONTROL EQUIPMENT INC.,

Plaintiff/Counter-Defendant,

$$V.$$

3B MEDICAL MANUFACTURING, LLC,

Defendant/Counter-Plaintiff.

C.A. No. 8:22-cv-02550-TDC

DEMAND FOR JURY TRIAL

JOINT MOTION TO AMEND SCHEDULING ORDER

In response to the Court’s Order granting the Parties leave to file this Motion to Amend the Scheduling Order (Dkt. 32), Plaintiff GCE Gas Control Equipment Inc. (“Plaintiff” or “GCE”) and Defendant 3B Medical Manufacturing, LLC’s (“Defendant” or “3B”) (collectively, “the Parties”) submit this Joint Motion to Amend Scheduling Order.

I. REQUEST TO AMEND SCHEDULING ORDER

A. Jointly Proposed Modifications:

The Parties jointly request, as proposed in the schedule below, to modify the process of the claim construction exchanges between the Parties for a streamlined exchange of claim terms, evidence, and proposed constructions leading to the required Joint Statement and Opening Briefing. One reason the Parties propose this change is because the current schedule does not appear to provide for an exchange of proposed constructions and evidence as to terms identified by an opposing party ahead of opening briefs. The Parties believe these changes will allow the parties to prepare briefing more efficiently by knowing the positions of each side with regards to claim terms proposed by either side well ahead of opening briefs.

B. GCE's Proposed Modification

GCE's request for an additional Court event: GCE respectfully requests the Court schedule a Post-Claim Construction Hearing Status Conference. GCE has filed a petition for *inter partes* review ("IPR") of U.S. Patent No. 11,389,614 and intends to file a petition for IPR of U.S. Patent No. 10,357,628 (collectively, "the Patents-In-Suit"). Should GCE's petitions be instituted by the Patent Trial and Appeal Board ("PTAB"), the Court may wish (and the Parties may move) to stay these proceedings until final decisions as to the validity of the claims of the Patents-in-Suit are issued by the PTAB in the IPRs. GCE reserves the right to supplement, amend, or alter this statement.

GCE's request to modify certain deadlines Additionally, GCE respectfully requests to adjust deadlines for the following items:

- **Motions to amend the pleadings or for joinder of additional parties.** GCE is currently investigating whether other entities beyond 3B have any interest in the Patents-in-Suit such that they should be added as parties to this matter. To complete its investigation, GCE needs discovery into the relationship between GCE and the owner of the Patents-in-Suit (Vbox, Inc.), and the related ownership of and rights in the Patents-In-Suit. Accordingly, GCE respectfully requests the Court move this deadline to no earlier than June 9, 2023, and to a later date if 3B does not produce all relevant documents and information to GCE at least 60 days prior to June 9, 2023. GCE reserves the right to supplement, amend, or alter this statement.

- **Claim Construction Dates.** GCE proposes adjusting the items related to claim construction 2-4 weeks each such that the process allows for more meet and confer time to narrow the terms in dispute.
- **Post Claim Construction Dates:** GCE proposes deferring identifying post-claim construction dates until the additional proposed August 15, 2023 status conference.

C. 3B's Response to GCE's Positions

- **GCE's Status Conference Request and Claim Construction/Post Claim**

Construction Dates: 3B does not oppose having a status conference after the Claim Construction Hearing, but would respectfully request that such Status Conference instead be held within two weeks of the issuance of the Court's Claim Construction Ruling (at the Court's convenience). GCE has now filed an IPR regarding U.S. Patent No. 11,389,614 but has not yet filed any IPR regarding U.S. Patent No. 10,357,628 nor is 3B aware of the basis for any such IPR. 3B does not agree that any stay of the case is, or would be, necessary or appropriate, but has no objection to a status conference to inform the Court of the status of any IPR that is filed.

However, 3B does not see any reason to delay the claim construction process/dates and, with the Parties' agreed upon proposed modifications to the process of exchanging terms and evidence, prefers to proceed along the timeline originally provided by the Court. As to post claim construction dates, 3B respectfully requests the Court set those deadlines based off of the Court's Claim Construction Ruling (much like disclosure of advice of counsel) as proposed by 3B to provide the Parties a clear schedule going forward. 3B reserves the right to supplement, amend, or alter this statement.

- Motions to Amend the Pleadings or For Joinder of Additional Parties:** 3B disagrees that any entities beyond 3B need to be added as parties to this matter. That said, 3B does not oppose the moving the deadline to join parties or amend pleadings to June 9, 2023 – the date proposed by GCE. However, 3B opposes any suggestion of extending that date further at this time or to tying any such date for amending to producing “all relevant documents and information to GCE at least 60 days prior...” GCE is free to seek relevant discovery and 3B will respond to such requests accordingly, but there is no affirmative duty of 3B to produce what is characterized as “all relevant documents and information” in this instance. 3B believes six months should be more than enough time for GCE to seek any discovery it believes necessary. 3B reserves the right to supplement, amend, or alter this statement.

3B opposes some of the revised deadlines as proposed by GCE in the schedule below and provides its proposed dates (or proposals to leave various deadlines on the current date).

D. The Parties’ Proposed Deadlines

Item	Court’s Scheduled Date	GCE’s Proposed Date	3B’s Proposed Date
Initial Joint Status Report	December 19, 2022	No change is requested	
Discovery Opens	December 19, 2022	No change is requested	
Motions to amend the pleadings or for joinder of additional parties	January 9, 2023	June 9, 2023	June 9, 2023 (subject to 3B’s position regarding extending beyond this date provided above)

Item	Court's Scheduled Date	GCE's Proposed Date	3B's Proposed Date
Defendant (3B)'s Initial Disclosures of Infringement Contentions <i>See Local Rule 804.1(a), (b) and the Court's Scheduling Order (Dkt. 26), Part VI.B, C</i>	January 9, 2023	The Parties previously jointly proposed January 17, 2023 and 3B served initial disclosures of infringement contentions on this date by agreement of the Parties.	
Plaintiff (GCE)'s Initial Disclosure of Invalidity Contentions <i>See Local Rule 804.1(c), (d) and the Court's Scheduling Order (Dkt. 26), Part VI.D, E</i>	February 6, 2023	The Parties jointly propose February 15, 2023	
Parties jointly exchange proposed claim terms for construction; Defendant (3B)'s Claim Chart <i>See Local Rule 805.1(a), (b) and the Court's Scheduling Order (Dkt. 26), Part VI.F, G</i>	March 23, 2023	April 5, 2023	No modification to the date – this deadline would remain March 23, 2023

Item	Court's Scheduled Date	GCE's Proposed Date	3B's Proposed Date
Parties exchange Claim Construction Statements regarding jointly exchanged claim terms; Plaintiff (GCE)'s Responsive Claim Chart. <i>See</i> Local Rule 805.1(c), (d) and Court's Scheduling Order (Dkt. 26), Part VI.H, I	April 24, 2023	May 10, 2023	No modification to the date – this deadline would remain April 24, 2023
Joint Claim Construction Statement and Opening Claim Construction Briefs	May 22, 2023	June 21, 2023	No modification to the date – this deadline would remain May 22, 2023
Responsive Claim Construction Briefs	June 21, 2023	July 21, 2023	No modification to the date – this deadline would remain June 21, 2023
Claim Construction Hearing	TBD	To be scheduled later in time	3B proposes scheduling the Claim Construction Hearing in July/August 2023 subject to the Court's availability.
Post-Claim Construction Hearing Status Conference *Added by GCE	TBD	August 15, 2023	Within two weeks of a Claim Construction Ruling from the Court
Disclosure of advice of counsel	30 days after the Court's Claim Construction Ruling	No change is requested.	

Item	Court's Scheduled Date	GCE's Proposed Date	3B's Proposed Date
The Parties' Rule 26(a)(2) initial expert disclosures (for which they have the burden of proof) *The Parties have agreed to simultaneous sequential exchange of Rule 26(a)(2) expert disclosures.	July 21, 2023	To be determined based on August Status Conference; no earlier than 60 days after the Court's Claim Construction Ruling	60 days after issuance of the Court's Claim Construction Ruling
The Parties' Rule 26(a)(2) responsive expert disclosures *Agreed by the Parties	August 21, 2023	To be determined based on August Status Conference; no earlier than 90 days after the Court's Claim Construction Ruling	30 days after the Parties Rule 26(a)(2) initial expert disclosures
~~Plaintiff's rebuttal Rule 26(a)(2) expert disclosures~~	~~September 5, 2023~~	N/A (<i>see above</i>) (the Parties have agreed to simultaneous exchanges)	
Rule 26(e)(2) supplementation of disclosures and responses	September 11, 2023	To be determined based on August Status Conference; no earlier than 45 days after responsive expert disclosures	45 days after responsive expert disclosures
Completion of Discovery; submission of Post-Discovery Joint Status Report	October 3, 2023	To be determined based on August Status Conference; no earlier than 90 days after responsive expert disclosures	60 days after responsive expert disclosures

Item	Court's Scheduled Date	GCE's Proposed Date	3B's Proposed Date
Requests for admission	October 10, 2023	To be determined based on August Status Conference; no earlier than 100 days after responsive expert disclosures	67 days after responsive expert disclosures
Dispositive pretrial motions	November 2, 2023	To be determined based on August Status Conference; no earlier than 30 days after the completion of discovery and submission of Post-Discovery Joint Status Report.	30 days after the completion of discovery and submission of Post-Discovery Joint Status Report.

Dated: January 31, 2023

Respectfully submitted,

By: /s/ Robert M. Masters

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CERTIFICATE OF SERVICE

I hereby certify that, on January 31, 2023 I caused the foregoing to be filed on this Court's CM/ECF record for service on all record counsel.

/s/ Robert M. Masters

Robert M. Masters

Item	GCE's Proposed Deadline	3B's Proposed Deadline	Court's Amended Deadline
Defendant (3B)'s Initial Disclosures of Infringement Contentions <i>See Local Rule 804.1(a), (b) and the Court's Scheduling Order (Dkt. 26), Part VI.B, C</i>	The Parties previously jointly proposed January 17, 2023 and 3B served initial disclosures of infringement contentions on this date by agreement of the Parties.		
Plaintiff (GCE)'s Initial Disclosure of Invalidity Contentions <i>See Local Rule 804.1(c), (d) and the Court's Scheduling Order (Dkt. 26), Part VI.D, E</i>	The Parties jointly propose February 15, 2023		
Parties jointly exchange proposed claim terms for construction; Defendant (3B)'s Claim Chart <i>See Local Rule 805.1(a), (b) and the Court's Scheduling Order (Dkt. 26), Part VI.F, G</i>	April 5, 2023	No modification to the date – this deadline would remain March 23, 2023	

Item	GCE's Proposed Deadline	3B's Proposed Deadline	Court's Amended Deadline
Parties exchange Claim Construction Statements regarding jointly exchanged claim terms; Plaintiff (GCE)'s Responsive Claim Chart. <i>See</i> Local Rule 805.1(c), (d) and Court's Scheduling Order (Dkt. 26), Part VI.H, I	May 10, 2023	No modification to the date – this deadline would remain April 24, 2023	
Joint Claim Construction Statement and Opening Claim Construction Briefs	June 21, 2023	No modification to the date – this deadline would remain May 22, 2023	
Responsive Claim Construction Briefs	July 21, 2023	No modification to the date – this deadline would remain June 21, 2023	
Claim Construction Hearing	To be scheduled later in time	3B proposes scheduling the Claim Construction Hearing in July/August 2023 subject to the Court's availability.	
Post-Claim Construction Hearing Status Conference *Added by GCE	August 15, 2023	Within two weeks of a Claim Construction Ruling from the Court	
Disclosure of advice of counsel	No change is requested.		30 days after the Court's Claim Construction Ruling

Item	GCE's Proposed Deadline	3B's Proposed Deadline	Court's Amended Deadline
The Parties' Rule 26(a)(2) initial expert disclosures (for which they have the burden of proof) *The Parties have agreed to simultaneous sequential exchange of Rule 26(a)(2) expert disclosures.	To be determined based on August Status Conference; no earlier than 60 days after the Court's Claim Construction Ruling	60 days after issuance of the Court's Claim Construction Ruling	
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Item	GCE's Proposed Deadline	3B's Proposed Deadline	Court's Amended Deadline
Requests for admission	To be determined based on August Status Conference; no earlier than 100 days after responsive expert disclosures	67 days after responsive expert disclosures	
Dispositive pretrial motions	To be determined based on August Status Conference; no earlier than 30 days after the completion of discovery and submission of Post-Discovery Joint Status Report.	30 days after the completion of discovery and submission of Post-Discovery Joint Status Report.	

Date: _____

 THEODORE D. CHUANG
 United States District Judge