IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

QUANTUM IMAGING LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CASE NO.: 1:23-CV-01212-ADA-DTG**
	§	
SONY GROUP CORPORATION; SONY CORPORATION OF AMERICA; SONY INTERACTIVE ENTERTAINMENT INC.; SONY INTERACTIVE ENTERTAINMENT LLC; AND BLUEPOINT GAMES, INC.,	§	**JURY TRIAL DEMANDED**
	§	
Defendants.	§	

MOTION FOR AMENDED SCHEDULING ORDER WITH COMPETING PROPOSALS

Pursuant to the Court's November 13, 2023, order, Plaintiff Quantum Imaging, LLC, and Defendants Sony Interactive Entertainment LLC, Sony Interactive Entertainment Inc., and Bluepoint Games, Inc. (hereinafter "the Parties') met and conferred on November 20, 2023, regarding amending the case schedule. The parties were unable to reach agreement on an amended schedule, and thus submit their competing proposals as follows.

Plaintiff's argument for its proposal [500 words]:

The Court granted Quantum's Motion for Extension (Dkt.147). Therein, Quantum requested an extension of all deadlines ***beginning with the deadline to serve Final Contentions***. Quantum specifically argued that the extension was "for the parties to (1) finalize their infringement and invalidity contentions [and] narrow the asserted claims and prior art references." Given that the Court granted Quantum's Motion which *explicitly requested an extension of the deadline to serve final contentions and narrow claims/references*, these dates should be extended.

Quantum needed the *Markman* order to finalize its Infringement Contentions. Defendants simultaneously call Quantum's Contentions incomprehensible and say they cannot be supplemented. Neither party will be prejudiced if these deadlines are extended, but Quantum will be if the deadlines are not moved to at least live dates.

For dates post-close of Fact Discovery, Quantum provides dates based on a simple calculation. If the event is set by the OGP **relative to the trial date**, that calculation is used. For example, the OGP requires the parties "jointly email the Court's law clerk to confirm pretrial" at 8-weeks pre-trial. This is June 10, 2024. Defendants move this date back 19-days to May 22.

If the event is set by the OGP **relative to the *Markman* date**, the calculation is not as simple because dates based on the October 10 hearing would often be past the August 5 trial. For example, the OGP closes Fact Discovery 30-weeks post-*Markman*. This would be May 7 – only three months pre-trial. Therefore, Quantum works backward using dates relative to August 5. Because the OGP sets trial 52-weeks post-*Markman* and sets Fact Discovery Close at 30-weeks post-*Markman*, the correct date should be 22 weeks before trial (52 minus 30), or March 4, 2024, as Quantum proposes. Defendants push this back 35-days earlier.

For dates close to the October 10 *Markman*, the *Markman* date is more important than trial. For example, the OGP sets the Final Contentions deadline for 8-weeks post-*Markman*. Using the calculation, trial is 52-weeks after *Markman* and Final Contentions are 8-weeks post-*Markman*, so this should be 44-weeks before trial, or October 2, 2023 – ***before the Markman hearing took place***. Because *Markman* is essential to Final Contentions, Quantum has used the OGP date of 8 weeks post-*Markman* (December 5). Similarly, the Deadline to Amend Pleadings per the OGP is 16-weeks after *Markman*, which would be January 30, 2024. Defendants cling to the date from the old schedule even though the Court's *Markman* decision was issued only one month ago.

Similarly, Defendants appear to remove the first required meet/confer to streamline the case completely and insist that the parties somehow meet/confer in the past.

Lastly, Quantum's Motion (Dkt.147) proposed a June 2024 trial date. Given that the Court later set trial for August 2024, the additional two months should be used in the schedule, rather than create needless gaps – as Defendants propose – closer to trial at the expense of concluding discovery earlier than the OGP prescribes. This is neither efficient, nor reasonable.

Defendants' argument for their proposal [500 words]:

Fact discovery in this case opened for all purposes more than one year ago on October 14, 2022. Dkt. 52. On October 13, 2023, the Plaintiff filed a motion to extend all deadlines in the case schedule by two months.

At a November 13, 2023 hearing, the Court ordered an extension of "the current schedule for both fact discovery and everything that falls thereafter." Dkt. 173, Hearing Tr. a 42:13–18; 47:12–48:8. After the Court considered the parties' briefing and their arguments at the hearing, it ordered an extension of "the current schedule for both fact discovery and everything that falls thereafter." Hearing Tr. at 42:13–18; 47:12–48:8. The Court gave a new trial date of August 5, 2024, and ordered the parties to "work backwards" from that date to come up with a new schedule. *See* Hearing Tr. at 43:9–16.

Defendants' proposal follows the Court's orders. First, Defendants' proposal provides new dates for "fact discovery and everything that falls thereafter." Second, Defendants' proposal "work[s] backwards" from the trial date of August 5, 2024, and restores the periods between the various deadlines as set forth in the original scheduling order, before they were compressed by multiple extensions. *See* Dkt. 64; Dkt. 87; Hearing Tr. at 43:13–16. Furthermore, Defendants' proposal largely adopts the deadlines originally proposed by Plaintiff. *See* Dkt. 147-1.

Plaintiff's proposal fails to comply with the Court's orders. The Court's order did not contemplate reviving any deadlines that fell before the original close of fact discovery on November 29, 2023. These deadlines which have already passed include specifically:

- Deadline to amend pleadings (7/28/2023);
- Deadline to serve Final Infringement and Invalidity Contentions (10/20/2023); and
- Deadline for the first of two meet and confers to significantly narrow claims and defenses (11/1/2023).

See Dkt. 87. Plaintiff intentionally ignored these deadlines and purposefully did not amend its pleadings, serve Final Infringement Contentions, or meet and confer to narrow the claims. The most significant of these is the deadline to serve Final Infringement Contentions that already passed. *See* Dkt. 87. Plaintiff's proposal is contrary to the Court's order and prejudicial to Defendants, which timely submitted their Final Invalidity Contentions on the deadline as originally ordered by the Court. In particular, Defendants would be prejudiced if Plaintiff gets to decide for itself which deadlines of the Court are binding upon it, and are prejudiced by the lack of reciprocal exchange of final contentions if Plaintiff is allowed a do-over for the contentions that it failed to timely serve. Plaintiff's proposal effectively grants itself the power to amend its Final Contentions without showing good cause and without seeking leave of the Court.

Plaintiff's proposal also grants itself a significant extension of fact discovery, adding more than a month to the two months that it initially asked for, *see* Dkt. 147-1, while at the same time needlessly compressing the deadlines in the lead-up to trial.

For the above reasons, the Court should reject Plaintiff's proposal and adopt Defendants' proposed Amended Scheduling Order.

Plaintiff's Proposed Deadline	**Deadlines in Dkt. 87**	**Item**
October 10, 2023		*Markman* Hearing
December 5, 2023	October 20, 2023	Deadline to serve Final Infringement and Invalidity Contentions. After this deadline, leave of Court is required for any amendment to infringement or invalidity contentions. This deadline does not relieve the parties of their obligation to seasonably amend if new information is identified after initial contentions.
January 30, 2024	July 28, 2023	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
February 5, 2024	November 1, 2023	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's law clerk to arrange a teleconference with the Court to resolve the disputed issues.
Plaintiff's Proposed Deadline	**Defendants' Proposed Deadline**	**Item**
March 4, 2024	January 29, 2024	Close of Fact Discovery.
March 11, 2024	February 6, 2024	Opening Expert Reports.
April 8, 2024	March 11, 2024	Rebuttal Expert Reports.
April 29, 2024	April 5, 2024	Close of Expert Discovery.
May 6, 2024	April 12, 2024	Deadline for the second of two meet and confer to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated
May 13, 2024	April 19, 2024	Dispositive motion deadline and Daubert motion deadline. See General Issues Note #7

		regarding providing copies of the briefing to the Court and the technical advisor (if appointed).
May 27, 2024	May 3, 2026	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
June 10, 2024	May 17, 2024	Serve objections to pretrial disclosures/rebuttal disclosures.
June 10, 2024	May 22, 2024	Parties to jointly email the Court's law clerk (See OGP at 1) to confirm their pretrial conference and trial dates.
June 17, 2024	May 29, 2024	Serve objections to rebuttal disclosures; file Motions *in limine*.
June 17, 2024	June 5, 2024	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions in limine.
July 1, 2024	June 12, 2024	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com. Deadline to meet and confer regarding remaining objections and disputes on motions *in limine*.
July 10, 2024	June 21, 2024	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions *in limine*.
July 8, 2024	June 12, 2024	Deadline to meet and confer regarding remaining objections and disputes on motions *in limine*.
July 15, 2024	July 10, 2024	Final Pretrial Conference. Held in person unless otherwise requested.
August 5, 2024		Jury Selection/Trial.

November 20, 2023

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ORDER REGARDING THE PARTIES' COMPETING PROPOSALS
FOR A SECOND AMENDED SCHEDULING ORDER

Pursuant to the Court's November 13, 2023 order, Plaintiff Quantum Imaging, LLC, and Defendants Sony Interactive Entertainment LLC, Sony Interactive Entertainment Inc., and Bluepoint Games, Inc. (hereinafter "the Parties') met and conferred regarding amending the case schedule and submitted competing schedules.

The Court adopts _____'s Proposed Deadlines and it is ORDERED that these deadlines shall govern the schedule in this case.

SIGNED on November __, 2023.

_____

DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE