

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INSTITUTE FOR ENVIRONMENTAL
HEALTH, INC.,

Plaintiff,

v.

NATIONAL BEEF PACKING COMPANY,
LLC,

Defendant.

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C.A. No. 23-826-JHS

PROPOSED SCHEDULING ORDER

AND NOW, this ____ day of _____, 2024, pursuant to Federal Rule of Civil Procedure 16 and District of Delaware Local Rule of Civil Procedure 16.1(b), IT IS ORDERED as follows.

1. Rule 26(a)(1) Initial Disclosures and the E-Discovery Default Standards. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within 10 days of the date of this Order. The parties agree to use the Default Standard for Discovery for the District of Delaware.

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before September 26, 2024.

3. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within 30 days from the date of this

Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel shall contact the Court to request a teleconference to resolve the dispute.

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" [the parties should list any other level of designation, such as "highly confidential," which may be provided for in the protective order] pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

4. Papers Filed Under Seal. In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

Should any party intend to request to seal or redact all or any portion of a transcript of a court proceeding (including a teleconference), such party should expressly note that intent at the start of the court proceeding. Should the party subsequently choose to make a request for sealing or redaction, it must, promptly after the completion of the transcript, file with the Court a motion for sealing/redaction, and include as attachments (1) a copy of the complete transcript highlighted so the Court can easily identify and read the text proposed to be sealed/redacted, and (2) a copy of the proposed redacted/sealed transcript. With their request, the party seeking redactions must demonstrate why there is good cause for the redactions and why disclosure of the redacted material would work a clearly defined and serious injury to the party seeking redaction.

5. Mediation. The parties shall engage in formal mediation by November 8, 2024.

6. Disclosures. Absent agreement among the parties, and approval of the Court:

a. By May 29, 2024, Plaintiff shall identify the accused product(s), including accused methods and systems, and its damages model, as well as the asserted patent(s) that the accused product(s) allegedly infringe(s). Plaintiff shall also produce the file history for each asserted patent.

b. By July 19, 2024, Defendant shall produce core technical documents related to the accused product(s), sufficient to show how the accused product(s) work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications. Defendant shall also produce sales figures for the accused product(s).

c. By August 16, 2024, Plaintiff shall produce a claim chart relating each known accused product to the asserted claims each such product allegedly infringes.

d. By October 3, 2024, Defendant shall produce its invalidity contentions for each asserted claim, as well as the known related invalidating references.

7. Discovery. Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed. Counsel for all Parties shall refer to Judge Slomsky's Policies and Procedures regarding communications with Chambers.

a. Fact Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed within 45 days after entry of the Court's Claim Construction Order.

b. Discovery Limits. The parties shall follow the discovery limits, if any, set out in the Federal Rules of Civil Procedure.¹

8. Disclosure of Expert Testimony.

¹ Depositions of experts do not count towards the deposition limit set forth in the Federal Rules of Civil Procedure.

a. Expert Reports. The initial Federal Rule 26(a)(2) disclosure of expert testimony is due within 30 days after the close of fact discovery. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due within 30 days after the disclosure of opening expert reports. Except for claim construction, no other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

b. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court. Briefing on such motions is subject to the page limits set out in connection with briefing of case dispositive motions.

c. Expert Discovery Cut-Off. The parties shall complete expert discovery within 30 days after the disclosure of expert rebuttal reports.

9. Tutorial Describing the Technology and Matters in Issue. Unless otherwise ordered by the Court, the parties may provide the Court, no later than the date on which their opening claim construction briefs are due, a tutorial on the technology at issue. The tutorial should focus on the technology at issue and should not be used for argument. The parties may choose to file their tutorial(s) under seal, subject to any protective order in effect. Each party may comment, in writing (in no more than two (2) pages) on the opposing party's tutorial. Any such comment shall be filed no later than the date on which the answering claim construction briefs are due.

10. Claim Construction Issue Identification. On November 15, 2024, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to narrow the list of claim term(s)/phrase(s) to be construed to no more than the 10 most significant terms. The parties shall thereafter prepare a Joint Claim Construction Chart to be submitted by December 13, 2024. The parties shall file the Joint Claim Construction Chart and e-mail a Word version of the Joint Claim Construction Chart to

[Chambers of Judge Joel H Slowsky@paed.uscourts.gov](mailto:Chambers_of_Judge_Joel_H_Slowsky@paed.uscourts.gov). The Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

11. Claim Construction Discovery. The parties shall exchange any expert reports regarding claim construction issues by December 13, 2024. Any expert witness depositions regarding claim construction issues shall be completed on or by January 17, 2024.

12. Claim Construction Briefing. The parties shall contemporaneously submit initial briefs on claim construction issues on January 24, 2025. The parties' answering/responsive briefs shall be contemporaneously submitted on February 19, 2025. No reply briefs or supplemental papers on claim construction shall be submitted without leave of the Court. Local Rule 7.1.3(a)(4) shall control the page limitations for initial (opening) and responsive (answering) briefs.

13. Hearing on Claim Construction. The Court will hear argument on claim construction on a date to be set after the close of briefing. The parties shall notify the Court, by joint letter submission, no later than the date on which their answering claim construction briefs are due: (i) whether they request leave to present testimony at the hearing; and (ii) the amount of time they are requesting be allocated to them for the hearing.

Provided that the parties comply with all portions of this Scheduling Order, and any other orders of the Court, the parties should anticipate that the Court will issue its claim construction order within sixty (60) days of the conclusion of the claim construction hearing. If the Court is unable to meet this goal, it will advise the parties no later than sixty (60) days after the conclusion of the claim construction hearing.

14. Case Dispositive Motions. All case dispositive motions shall be served and filed within 30 days after the close of expert discovery. No case dispositive motion under Rule 56 may be filed more than ten (10) days before the above date without leave of the Court. Absent leave of court for good cause shown, no party may file more than one case dispositive motion. Motions for summary judgment and responses shall be filed in the form prescribed in Judge Slomsky's Policies and Procedures and in accordance with the District of Delaware's Local Rules of Civil Procedure.

15. Pretrial Conference. The Court will schedule a telephone status conference after the Court enters its ruling on all summary judgment motions to schedule the pretrial conference, other pretrial deadlines, and trial date.

U.S.D.J.

Exhibit A – Chart of Events

Event	Date
Deadline to serve Rule 26(a)(1) Initial Disclosures	Within 10 days of entry of the Scheduling Order
Deadline to submit a proposed protective order	Within 30 days of entry of the Scheduling Order
Deadline for Plaintiff to identify accused product(s) and produce the file history for each patent	May 29, 2024
Deadline for Defendant to produce core technical documents related to the accused product(s) and sales figures for the accused product(s)	July 19, 2024
Deadline for Plaintiff to serve infringement contentions	August 16, 2024
Deadline for Defendant to serve invalidity contentions	October 3, 2024
Deadline for motion to join other Parties, and to amend or supplement the pleadings	September 26, 2024
Deadline for mediation	November 8, 2024
Deadline for Parties to exchange claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s)	November 15, 2024
Deadline to meet and confer regarding claim terms, file Joint Claim Construction Chart, and exchange any expert reports on claim construction issues	December 13, 2024
Deadline for expert depositions regarding claim construction issues	January 17, 2025

Event	Date
Deadline for Parties to simultaneously file opening claim construction briefs	January 24, 2025
Deadline for Parties to simultaneously file answering claim construction briefs	February 19, 2025
Hearing on claim construction	To be set by the Court
Fact discovery cut-off	45 days after entry of Claim Construction Order
Deadline to serve opening expert reports	30 days after close of fact discovery
Deadline to serve rebuttal expert reports	30 days after opening expert reports
Expert discovery cut-off	30 days after reply expert reports
Deadline to file case dispositive motions and <i>Daubert</i> motions	30 days after close of expert discovery
Deadline to file opposition to case dispositive motions and <i>Daubert</i> motions	30 days after filing of opening briefs
Deadline to file reply in support of case dispositive motions and <i>Daubert</i> motions	20 days after filing of opposition briefs
Deadline to file joint proposed final pretrial order	To be set after the Court's summary judgment ruling(s)
Pretrial conference	To be set after the Court's summary judgment ruling(s)
Trial	To be set after the Court's summary judgment ruling(s)

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