IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

PROVISUR TECHNOLOGIES, INC.,	)	
	)	
Plaintiff,	)	
vs.	)	Case No.
	)	21-cv-6113-SRB
WEBER, INC., et al.,	)	
	)	September 5, 2023
Defendants.	)	

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TRANSCRIPT OF SCHEDULING HEARING
BEFORE THE HONORABLE STEPHEN R. BOUGH
UNITED STATES DISTRICT COURT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

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TUESDAY, SEPTEMBER 5, 2023

THE COURT: We are here on the case of Provisur v. Weber, Case No. 21-6113. May I have appearances by the parties, please?

MR. BABBITT: Good morning, Your Honor. Michael Babbitt for the plaintiff Provisur with Taylor Concannon Hausmann, and Mr. Jeff Simon.

MR. SEITZ: Morning, Your Honor. Adam Seitz on behalf of defendant Weber. Joining me today is my partner Megan Redmond and Carrie Bader, and I believe you know Mr. Leiker from the prior litigation.

THE COURT: I do know Mr. Leiker, and we like him.

Mr. Seitz, you're in trouble. You should just at least know that we like Mr. Leiker and Ms. Concannon Hausmann more than anybody else so far that have appeared in this litigation.

MR. SEITZ: I understand that.

THE COURT: Just go ahead and run with that. We like them all.

So as we were discussing just briefly before we were on the record, I'm well-aware of the motion to sever that has been filed by Provisur, and as I mentioned to the parties before we were on the record, my plan is to let due process work its way out and that Weber have a chance to respond and Provisur has a chance to reply. And then we'll get a very

prompt ruling on that.

But as we are moving ahead here, it's part of the case, and so we're going to schedule it as part of the case. And we're going to schedule it in a way that puts the foot on the gas pedal because, as mentioned in Weber's submission on the scheduling order, it would be nice to be done with all this. So the only way to be done is to put a big, fat scheduling order together that's in compliance with our local rules, patent local rules.

We've also traded some emails on this topic. I know everybody in this courtroom right now pretty well. Mr. Simon was the one that envisioned us having local patent rules, poked me about it maybe for this case, maybe not for this case. I don't know why he wanted patent local rules that much, but Judge Teeter did most of the work over in DKan. We stole most of that work with her blessing over here.

And as we've also mentioned, my son went to school with Mr. Buresh's son, and Mr. Seitz and I watched numerous basketball games and baseball games together. So just putting all that out on the record in case anybody needs to bring that up at a later time.

What do you think about a trial for November 18th of 2024?

MR. SEITZ: That's fine with me, Your Honor.

MR. BABBITT: We look forward to it, Your Honor.

THE COURT: Well, I'm struggling saying I'm going to look forward to it as well, but we are going to look forward to it.

And then a final pretrial conference we could run out on November 8th, 2024, at 10 a.m.

MR. SEITZ: That's fine as well, Your Honor. Thank you.

MR. BABBITT: Yes, Your Honor.

THE COURT: You have a host of submissions that gave me a Weber option and a Provisur option. And if I'm to summarize them, it seems like Provisur's -- most of their opposition is that we don't think the patent counterclaims should be included, and that's the main opposition. Is that fair?

MR. BABBITT: Yes, Your Honor.

THE COURT: I'm going to, as I mentioned, run out the schedule that envisions the patent counterclaims being there because they're there and just pick dates, mostly Weber's, to come up with those, and then get you a supplemental scheduling order.

How do we envision this playing out with Markman hearings, Adam? I apologize if I end up calling people by their first name. Mr. Seitz. Hopefully I didn't offend you.

MR. SEITZ: If that's my offense for the day, I'm doing all right.

THE COURT: I do like your socks.

MR. SEITZ: Thank you. They're flamingos.

THE COURT: Yeah.

MR. SEITZ: I think Markman is going to be relatively narrow. From our standpoint for the claims, the patent claims from Provisur, I don't see a lot of, if any, additional Markman. I want to look through that one last time once we see their infringement contentions, once they serve those on the two new patents.

Looking through the record from the prior case and understanding that plain and ordinary is a pretty good position for most folks to be in, I think that most of our patent claims are plain and ordinary. They're not difficult or complex claims or claim terms. I don't envision burdening the court with much Markman at all. If that's a concern, I would be open to even talking about limiting the number of claims -- claim terms that we could construe.

But from my standpoint, I'm not going to be presenting you with a bunch of Markman terms for construction.

THE COURT: What I have discovered is that we can often have disputes about what plain and ordinary mean, even if one side doesn't think that.

What do you think about it over here, Mr. Babbitt?

MR. BABBITT: Yes, Your Honor. And, you know, I'd say I agree with Mr. Seitz in as far as it goes with respect

to the patents that are already in the case, the Provisur patents. When we talk about the Weber patents, I got these claims a week ago. I'm still reading --

THE COURT: You sound just like Weber did a couple months ago.

MR. BABBITT: Point taken, Your Honor.

So to go from a complaint where we haven't even answered to a Markman brief in November, that is unprecedented. That's not in line with the local patent rules. So the dates in there are, you know, same thing with invalidity claims, it's too fast for us. We've got four new products, all new stuff.

So I don't have a position on claim construction right now. I'm looking at it. We would need a little bit more time on that.

THE COURT: Sounds fair.

I will tell you, though, we need to get this thing done and everybody -- last time I was griping at Weber, you know, put your saddle on, put it on tight, we're going to ride hard. Put your saddle on.

MR. BABBITT: We're ready to do that, Your Honor.

THE COURT: And as we mentioned limiting the number of claims, Mr. Simon may have been the godfather of our patent local rules, but he's the one that introduced me to the Northern District of Illinois local patent rules that I now

keep with my patent rules because they seem and the parties seem to agree that making up arbitrary limitations on the number of things that can be argued is apparently okay in patent law. So feel free to cite to the Northern District of Illinois local patent rules quite a bit because I'm carrying them around and we seem to be dragging those over into these cases as well.

So my plan is to get you a big, fat scheduling order today. I would imagine, Mr. Seitz, you are ready to argue the motion to sever. So don't dillydally around. Just get it on file, your response.

MR. SEITZ: Yes.

THE COURT: If you can. You've got other cases, I'm sure.

MR. SEITZ: Other than the holiday weekend, we're going to get to it right when we get back to the office. We'll get it on file as soon as we can.

THE COURT: Feel free to -- I know your firm spends a lot of time trying cases in Texas, and I haven't figured out how the fine folks in Texas get all the patent cases. I don't want to interfere in that. They seem to have processes there that work out for them, but I am interested in learning from the folks on how quickly they do things down there. And that might mean I actually have to have a better understanding of what the heck Markman is, because they seem to rule on those

orally and move them really, really quick. And I'm not capable of doing that.

But I am interested in learning how those folks in Texas move their cases because we've got one here that needs to be moved.

We scheduled some -- or appointed a mediator in this case. How's that going? Do we have a mediation set up?

MR. SEITZ: We do, Your Honor. September 21st. It will be an in-person mediation. We have some individuals coming over from Germany, and their folks are able to come. It will be in person at Mr. Kohn's office. He asked for mediation briefs two weeks before; so that would be this Thursday or Friday if I'm doing my math right. We're moving along. Not there yet, but it's moving.

THE COURT: That's great. Hopefully -- I mean, everything can be resolved sometime. Maybe this is the time. I'd just encourage you to stay in contact with Mr. Kohn, and I'll tell you that my thought process of moving away from your former law partner at Shook over to Mr. Kohn, and I told this to him. So I want to tell it to you.

I was maybe foolishly thinking this was all about patent claims, and then I at some point during this long process determined it was about money. Mr. Kohn has done more enormous, big-dollar deals than just about anybody else here in town and is pretty calm and thoughtful.

You were at Bryan Cave at one point, Mr. Simon.

MR. SIMON: Yes, I was.

THE COURT: You probably worked with Mr. Kohn on some of those wonderful things.

So that's my thought that maybe just an approach from a different perspective. I believe Mr. Kohn is like I that doesn't have a whole lot of intelligence when it comes to patents, but maybe he has some ability to talk about money.

Mr. Seitz, what else should we do today?

MR. SEITZ: That was it on our end, Your Honor. No other active disputes needing to address with you today.

MR. BABBITT: Same here, Your Honor.

THE COURT: Do I get to call you Taylor since I asked Taylor to respond and you jumped up?

MR. BABBITT: If that works with you, Your Honor.

THE COURT: Yeah. I'm not sure the goodwill will move over as easily.

All right. Well, we'll be in recess.

REPORTER'S CERTIFICATE

I certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

_____ _____
Date /s/Gayle M. Wambolt
GAYLE M. WAMBOLT, CRR, RMR
United States Court Reporter