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

PROVISUR TECHNOLOGIES, INC., Plaintiff, v. WEBER, INC., WEBER MASCHINENBAU GMBH BREIDENBACH, and WEBER MASCHINENBAU GMBH NEUBRANDENBURG, Defendants.	Civil Action No. 5:21-CV-06113 Hon. Judge Bough

SUPPLEMENTAL SCHEDULING ORDER

Before the Court is the parties' Joint Proposed Supplemental Scheduling Order. (Doc. #210.) Upon review, and mindful of the Patent Local Rules for this District, the Court hereby enters the following Supplemental Scheduling Order. As proposed by Defendants, this Supplemental Scheduling Order governs all claims and counterclaims currently asserted in this case. The following deadlines are hereby established in this case:

Scheduling Conference	September 5, 2023
Service of Infringement Contentions	September 12, 2023
Updated Rule 26(a)(1) Disclosures	September 15, 2023
Completion of Supplemental Agreement between parties for e-discovery search terms and search terms for non-custodial sources	September 29, 2023
Substantial completion of custodial documents and emails	October 30, 2023
Privilege log deadline	November 30, 2023

Service of Invalidity Contentions	November 1, 2023
List identifying no more than 10 claims per patent and 20 claims overall	November 8, 2023
List identifying no more than 25 prior art references, 4 prior art grounds per claim, and 4 non-prior art grounds per claim	November 10, 2023
Claim Construction Opening Brief	November 17, 2023
Claim Construction Responsive Brief	December 8, 2023
Deadline for Notification of Reliance on Advice of Counsel	December 8, 2023
Final Supplementation of disclosures under Rule 26(e)	February 6, 2024
Close of Fact Discovery	March 6, 2024
Service of Opening Expert Reports for the Party Bearing Burden of Proof	April 3, 2024
Service of Rebuttal Expert Reports	May 1, 2024
Close of Expert Discovery	May 29, 2024
Dispositive Motions and *Daubert* Motions Deadline	June 14, 2024
Dispositive Motions and *Daubert* Motions Response Deadline	July 3, 2024
Dispositive Motions and *Daubert* Motions Reply Deadline	July 17, 2024

Dispositive Motions and *Daubert* Motions Hearing (if needed)	TBD
Plaintiff serves list identifying no more than 5 claims per patent and 10 claims overall	August 14, 2024
Defendants serve list identifying no more than 12 prior art references, 2 prior art grounds per claim, and 2 non-prior art grounds per claim	August 21, 2024
Deadline to Designate Deposition Testimony	October 2, 2024
Deadline to Object to Designated Deposition Testimony and Submit Counter Designations	October 9, 2024
Witness List Deadline	October 9, 2024
Motion in Limine Deadline	October 9, 2024
Deadline to submit Jury Instructions	October 9, 2024
Deadline to submit Objections to Counter Designations	October 16, 2024
Deadline to submit Deposition Designations to the Court	October 16, 2024
Deadline to file Exhibit Index	October 16, 2024
Deadline to file Responses to Motions in Limine	October 21, 2024
Deadline to File Stipulation of Uncontroverted Facts (optional)	October 21, 2024
Deadline to Stipulate as to the Admissibility of Evidence	October 21, 2024
Submit Pretrial Order	October 23, 2024

Pre-Trial Conference	November 8, 2024, at 10:00 a.m.
Jury Statement	October 30, 2024
Trial Date	November 18, 2024

1. EXPERT DESIGNATION DEADLINES.

   Expert designation deadlines apply to all witnesses from whom expert opinions will be elicited at trial, regardless of whether the witness was specially retained to provide trial testimony. Each party shall ensure compliance with Fed. R. Civ. P. 26(a)(2)(B) at the time of the party's expert witness designations. Expert witnesses may testify only as to matters contained in the report required by Rule 26(a)(2)(B), unless leave of Court is granted upon good cause shown.

   With respect to treating physicians, coroners and like professionals not retained to testify for a party, the report requirements of this Order may be satisfied by providing a copy of all the treating physician's files, records and notes relating to the treating physician's patient to the opposing party. For the purpose of this paragraph, a "treating physician" is a doctor (including psychiatrist, dentist or other practitioner of the healing arts) retained by a party prior to retaining counsel in this matter. A treating physician will not be allowed to give expert testimony beyond the treatment provided by said physician unless designated as an expert. A treating physician who will provide expert testimony beyond the treatment provided by said physician must further comply with the requirements of this Order.

2. DISPOSITIVE MOTION DEADLINE. All dispositive motions shall have a separate section wherein each statement of fact is individually numbered so that any party opposing such motion may refer specifically to a genuine issue of material fact. Suggestions in opposition to a dispositive motion shall begin with a concise listing of material facts as to which the party contends a genuine dispute exists. All motions for summary judgment shall comply with Local Rules 7.0 and 56.1.

3. *DAUBERT* MOTION DEADLINE. The failure to file a *Daubert* motion prior to the deadline set forth above will constitute waiver of any arguments based on *Daubert*.

4. PRETRIAL CONFERENCE DOCUMENT DEADLINES.

   a. Motions in Limine. In order to ensure efficient use of trial time, the parties are encouraged to file motions in limine relating to key evidentiary issues.

   b. Witness List. If a witness is not listed by a party, that witness will not be permitted to testify absent leave of Court and then only for the purpose of unanticipated rebuttal or impeachment.

   c. Exhibit Index. If an exhibit is not listed by a party, that exhibit will not be admitted absent leave of Court. The exhibit index should be prepared on a form provided by the Clerk's office that can be found at

http://www.mow.uscourts.gov/forms.html#district. Each exhibit will be designated as either "Plaintiff's" or "Defendant's," numbered with an Arabic numeral, and described following the enumeration. If an exhibit consists of more than one (1) page or part, the number of pages or parts shall be included in the description. The exhibit number must be marked on each exhibit at the time of listing. It is not necessary to include exhibits to be used only for impeachment or rebuttal purposes. After the time for filing the exhibit index has expired, no supplemental or amended index will be filed without leave of Court for good cause shown.

d. Submission of Deposition Designations. The Court should receive deposition designations in the following manner:

   i. The parties are to jointly submit one mini-script copy of each designated deposition.

   ii. Each party is to highlight the portion of the deposition they want to designate, including counter-designations.

   iii. Each party should use a different highlight color to indicate their designations (for example, plaintiff uses yellow; defendant uses blue).

   iv. Each party should also indicate their objections on the actual deposition by bracketing those portions in the margin of the deposition, again using a different color to indicate the portion to which each party objects.

   v. Each party should submit to the Court a Word version document of the Objections to Deposition Designations that the party filed in CM/ECF. Send that via email to the Court's Courtroom Deputy.

e. Jury Instructions.

   i. The parties shall jointly file an original (without sources) set and an annotated (with sources) set of proposed jury instructions. Proposed instructions shall reflect the authorities upon which the instruction is based and should be taken from or drawn in the manner of *Model Civil Jury Instructions for the District of Courts of the Eighth Circuit* and/or other authority where available and appropriate. All instructions shall be designated as Instruction No. ___.

   ii. The Court prefers to receive joint instructions from the parties. Separate instructions are appropriate only when the parties cannot agree upon a specific instruction. In that instance, the parties shall jointly submit the instructions upon which they agree. Each party shall submit its proposed

version of the instructions upon which the parties do not agree, along with a written objection to the other party's version.

iii. The instructions should also be submitted to the Court electronically, in Word format. Instructions should be sent via email to the Courtroom Deputy.

5. TRIAL DOCUMENT DEADLINES AND TRIAL PROCEDURE.

a. Trial Brief. The trial brief should address any important evidentiary issues.

b. Jury Statement. Counsel for each party shall agree upon a statement to be read to the jury setting forth the background of the case and the claims to be asserted. This statement will be read to the jury panel prior to voir dire. The jury statement shall be emailed in Word format to the Courtroom Deputy.

c. The Court may place time limits on opening statements, and direct and cross-examination of all witnesses. Counsel should be prepared to support their representations as to the length of trial.

6. MISCELLANEOUS.

a. All motions for extension of time pursuant to Fed. R. Civ. P. 6(b), 31, 33, 34, or 36 should be filed at least seven (7) days before the date of the original deadline and must state:

1. The date when the pleading, response, or other action is/was first due;

2. The number of previous extensions and the date the last extension expires;

3. The cause for the requested extension, including a statement as to why the action due has not been completed in the allotted time; and

4. Whether the requested extension is approved or opposed by opposing counsel (agreement by counsel of a requested extension is not binding on the Court).

b. All motions requesting leave to depart from Local Rule 7.0(f) page limitation must state:

(a) The number of previous requests for leave;

(b) The particular reason for the request for leave, including a specific statement as to why the action due cannot be completed within the allotted page limit; and

(c) Whether the request for leave is approved or opposed by opposing counsel (agreement by counsel of a request for leave is not binding on the Court).

c. The parties should not submit proposed orders in conjunction with routine motions, *e.g.* motions for extension of time and motions to modify the scheduling order. The parties shall submit proposed orders in conjunction with all motions, other than dispositive motions, in which a specific, substantive ruling is sought by the Court, *e.g.* motions for entry of consent judgment, motions for temporary restraining order, motions for entry of a preliminary injunction, and motions for entry of a protective order. Such proposed orders shall be emailed in Word format to the Courtroom Deputy.

d. The dispositive motion date, final pretrial conference date, and trial date shall be changed only by leave of Court.

e. Any questions about this scheduling order or the procedures to be followed when practicing in this division should be directed to the Courtroom Deputy.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: September 5, 2023