IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SRAM, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:23-CV-00492-SCJ
	)	
FOX FACTORY, INC.,	)	**JURY TRIAL DEMANDED**
	)	
Defendant.	)	

Joint Preliminary Report and Discovery Plan

1. Description of Case:

(a) Describe briefly the nature of this action.

In this action, Plaintiff SRAM, LLC's Complaint alleges that Defendant Fox Factory, Inc. willfully infringes United States Patent No. 7,147,207 B2 ("the '207 patent") and United States Patent No. 10,328,993 B2 ("the '993 patent") (together the "Patents-in-Suit"). SRAM's Complaint seeks damages and injunctive relief to stop Fox's infringement. Fox's Answer denies SRAM's allegations of willful infringement, denies that the Patents-in-Suit are valid, and denies that SRAM is entitled to any of the relief requested in the Complaint. Fox's answer also alleges that the '993 patent was procured through inequitable conduct.

(b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.

The United States Patent and Trademark Office ("USPTO") issued the '207 patent on December 12, 2006, with the title "ACTUATOR APPARATUS FOR CONTROLLING A VALVE MECHANISM OF A SUSPENSION SYSTEM". SRAM alleges it is the owner of the '207 patent and has exclusive right to bring suit and enforce the '207 patent and to collect damages for infringement. SRAM alleges

that the ’207 patent discloses the invention of an actuator apparatus for advantageously adjusting the damping of a suspension system that allows the rider to customize the damping characteristics of the system to suit the terrain or the rider’s particular riding style, and as further claimed in columns 8 through 10 of the ’207 patent. SRAM’s complaint alleges that Fox’s Float DPS and DPX2 Shocks (“Accused Shocks”) infringe the ’207 patent.

The USPTO issued the ’993 patent on June 25, 2019, with the title “BICYCLE STEERER TUBE WITH VARIANT STIFFNESS”. SRAM alleges that it is the owner of the ’993 patent and has exclusive right to bring suit and enforce the ’993 patent and to collect damages for infringement. SRAM alleges that the ’993 patent discloses the invention of a bicycle steerer tube with advantageous oval or elliptical characteristics, and as further claimed in columns 8 through 12 of the ’993 patent. SRAM’s complaint alleges that Fox’s 38 forks (including but not limited to Fox 38 Performance Elite, Fox 38 Performance, Fox 38 Factory Etuned, Fox 38 Factory forks) (“Accused Forks”) infringe the ’993 patent.

Fox alleges that any asserted claims in the ’207 and ’993 patents are invalid and not infringed, and that that the ’993 patent was procured through inequitable conduct.

(c) The legal issues to be tried are as follows:

Whether the Accused Shocks and Accused Forks infringe the ’207 patent and ’993 patent; whether the Patents-in-Suit are valid; the extent of damage to SRAM if the patents are valid and infringed; and whether the ’993 patent is unenforceable due to inequitable conduct.

(d) The cases listed below (include both style and action number) are:

(1) Pending Related Cases:

There are no other cases pending relating to the Patents-in-Suit.

(2) Previously Adjudicated Related Cases:

There have been no other cases relating to the Patents-in-Suit.

2. This case is complex because it possesses one or more of the features listed below (please check):

_____ (1) Unusually large number of parties
_____ (2) Unusually large number of claims or defenses
_____ (3) Factual issues are exceptionally complex
_____ (4) Greater than normal volume of evidence
_____ (5) Extended discovery period is needed
_____ (6) Problems locating or preserving evidence
_____ (7) Pending parallel investigations or action by government
X (8) Multiple use of experts
_____ (9) Need for discovery outside United States boundaries
_____ (10) Existence of highly technical issues and proof
_____ (11) Unusually complex discovery of electronically stored information

3. Counsel:

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiff:
Richard B. Walsh, Jr.
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Defendant:

Robert F. McCauley
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4. Jurisdiction:

Is there any question regarding this Court's jurisdiction?

____Yes **X**__No

If "yes," please attach a statement, not to exceed one page, explaining the jurisdictional objection. When there are multiple claims, identify and discuss separately the claim(s) on which the objection is based. Each objection should be supported by authority.

5. Parties to This Action:

(a) The following persons are necessary parties who have not been joined:

None.

(b) The following persons are improperly joined as parties:

None.

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

Not applicable.

(d) The parties shall have a continuing duty to inform the Court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

6. Amendments to the Pleadings:

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Fed. R. Civ. P. 15. Further instructions regarding amendments are contained in LR 15.

(a) List separately any amendments to the pleadings that the parties anticipate will be necessary:

None.

(b) Amendments to the pleadings submitted LATER THAN THIRTY DAYS after the Joint Preliminary Report and Discovery Plan is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.

7. Filing Times For Motions:

All motions should be filed as soon as possible. The local rules set specific filing limits for some motions. These times are restated below.

All other motions must be filed WITHIN THIRTY DAYS after the beginning of discovery, unless the filing party has obtained prior permission of the court to file later. Local Rule 7.1A(2).

(a) *Motions to Compel*: before the close of discovery or within the extension period allowed in some instances. Local Rule 37.1.

(b) *Summary Judgment Motions:* within thirty days after the close of discovery, unless otherwise permitted by court order. Local Rule 56.1.

(c) *Other Limited Motions*: Refer to Local Rules 7.2A; 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

(d) *Motions Objecting to Expert Testimony:* Daubert motions with regard to expert testimony no later than the date that the proposed pretrial order is submitted. Refer to Local Rule 7.2F.

8. Initial Disclosures:

The parties are required to serve initial disclosures in accordance with Fed. R. Civ. P. 26. If any party objects that initial disclosures are not appropriate, state the party and basis for the party's objection. NOTE: Your initial disclosures should include electronically stored information. Refer to Fed. R. Civ. P. 26(a)(1)(B).

9. Request for Scheduling Conference:

Does any party request a scheduling conference with the Court? Yes. If so, please state the issues which could be addressed and the position of each party.

Defendant FOX requests that fact discovery be stayed until the Court decides FOX's pending motion to transfer this action to the NDCA, which is Defendant FOX's principal place of business. FOX disagrees with SRAM's statements below; the motion to the transfer to the NDCA is meritorious and should be granted. Regardless, FOX is not requesting any stays on the parties' exchanges of contentions, etc., under the Patent Local Rules. Rather, FOX is simply requesting a stay of fact discovery until decision on the motion to transfer because the timeline/schedule for fact discovery in the NDCA is different from that of this District. FOX requests that the Court enter such an order pending decision on the transfer motion or for an opportunity to discuss its request at a scheduling conference.

SRAM, LLC opposes Fox's request for a stay pending a ruling on the motion to transfer from its principal place of business in this District. In addition to the fact that SRAM believes that Fox's motion to transfer is meritless, as set forth in SRAM's Opposition thereto, Fox's motion is not dispositive and this case will proceed regardless. As discovery will occur here or in the Northern District of California, and the Federal Rules of Civil Procedure will govern that procedure in either case, there is simply no basis justifying a stay.

10. Discovery Period:

The discovery period commences thirty days after the appearance of the first defendant by answer to the complaint. As stated in LR 26.2A, responses to initiated discovery must be completed before expiration of the assigned discovery period.

Cases in this Court are assigned to one of the following three discovery tracks: (a) zero month discovery period, (b) four months discovery period, and (c) eight months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F. The track to which a particular case is assigned is also stamped on the complaint and service copies of the complaint at the time of filing.

Please state below the subjects on which discovery may be needed:

(1) documents sufficient to show the design of the accused products;
(2) documents relating to Fox's alleged direct and indirect infringement of the Patents-in-Suit;
(3) documents relating to any damages to SRAM due to Fox's alleged infringement of the Patents-in-Suit;
(4) documents concerning advertising of the accused products;
(5) the prosecution histories of the Patents-in-Suit;
(6) asserted prior art to the Patents-in-Suit;
(7) Fox's allegations of SRAM's procurement of the '993 patent through inequitable conduct.

If the parties anticipate that additional time beyond that allowed by the assigned discovery track will be needed to complete discovery or that discovery should be conducted in phases or be limited to or focused upon particular issues, please state those reasons in detail below:

The parties do not anticipate that additional time will be needed and intend to comply with the dates set forth in the Local Rules of this Court.

11. Discovery Limitation and Discovery of Electronically Stored Information:

(a) What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or Local Rules of this Court, and what other limitations should be imposed?

None.

(b) Is any party seeking discovery of electronically stored information?

x_____ Yes _____No

If "yes,"

(1) The parties have discussed the sources and scope of the production of electronically stored information and have agreed to limit the scope of production (e.g., accessibility, search terms, date limitations, or key witnesses) as follows:

Counsel for the parties agree that ESI described in Exhibit A to the Electronic Discovery Default Standard (https://www.ded.uscourts.gov/default-standard-discovery) need not be collected during discovery of this action. Counsel agree to cooperate and attempt to negotiate ESI discovery of reasonable and proportional scope given the needs of this action.

(2) The parties have discussed the format for the production of electronically stored information (e.g., Tagged Image File Format (TIFF or .TIF files), Portable Document Format (PDF), or native), method of production (e.g., paper or disk), and the inclusion or exclusion and use of metadata, and have agreed as follows:

See Exhibit A.

In the absence of agreement on issues regarding discovery of electronically stored information, the parties shall request a scheduling conference in paragraph 9 hereof.

12. Other Orders:

What other orders do the parties think that the Court should enter under Rule 26(c) or under Rule 16(b) and (c)?

The parties have attached hereto a proposed protective order for entry in this case.

13. Settlement Potential:

(a) Lead counsel for the parties certify by their signatures below that they

conducted a Rule 26(f) conference that was held on April 3, 2023, and that they participated in settlement discussions. Other persons who participated in the settlement discussions are listed according to party.

For plaintiff: Lead counsel (signature):/s/ Richard B. Walsh, Jr.

Other participants:

The Parties' in-house legal counsel have had direct settlement discussions on multiple occasions, for SRAM, Brian T. Gause.

For defendant: Lead counsel (signature): /s/ Robert McCauley

Other participants:

The Parties' in-house legal counsel have had direct settlement discussions on multiple occasions, for Fox Factory, Toby D. Merchant.

(b) All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

(_____) A possibility of settlement before discovery.
(**X**) A possibility of settlement after discovery.
(_____) A possibility of settlement, but a conference with the judge is needed.
(_____) No possibility of settlement.

(c) Counsel(**X**) do or (_____) do not intend to hold additional settlement conferences among themselves prior to the close of discovery. The proposed date of the next settlement conference is _____, 2023.

(d) The following specific problems have created a hindrance to settlement of this case.

Not applicable.

14. Trial by Magistrate Judge:

Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(a) The parties (_____) do consent to having this case tried before a magistrate judge of this Court. A completed Consent to Jurisdiction by a United States Magistrate Judge form has been submitted to the clerk of court this _day _____, of 20___.

(b) The parties (**X**) do not consent to having this case tried before a magistrate judge of this Court.

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Counsel for Defendant

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SCHEDULING ORDER

Upon review of the information contained in the Joint Preliminary Report and Discovery Plan form completed and filed by the parties, the Court orders that the time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement are as set out in the Federal Rules of Civil Procedure and the Local Rules of this Court, except as herein modified:

IT IS SO ORDERED, this _____ day of _____, 2023.

_____
UNITED STATES DISTRICT JUDGE