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

SRAM, LLC, **Plaintiff,** **v.** **FOX FACTORY, INC.,** **Defendant.**	**CIVIL ACTION FILE** **No. 1:23-CV-00492-SCJ**

ORDER

This matter appears before the Court on the Parties' Joint Request for Confirmation of Case Schedule. Doc. No. [34].

Following Defendant Fox Factory, Inc.'s filing of its motion to transfer the case (Doc. No. [22]), the Parties filed a Joint Preliminary Report and Discovery Plan ("Joint Report"). Doc. No. [24]. Therein, Defendant requested that "fact discovery be stayed until the Court decides [Defendant's] pending motion to transfer this action[.]" Id. at 6. Defendant specified that it was "not requesting any stays on the parties' exchanges of contentions, etc., under the Patent Local Rules. Rather, [Defendant] [was] simply requesting a stay of fact discovery until

decision on the motion to transfer[.]" Id. Plaintiff opposed the request. Id. The Court entered a Scheduling Order assigning the matter to a 4-month discovery track and ordered discovery "and all related deadlines" to proceed in accordance with the Court's Local Rules and the Federal Rules of Civil Procedure following a ruling on the motion to transfer. Doc. No. [27].

Although Defendant had expressly exempted from its stay request the Parties' obligations under the Local Patent Rules, Defendant interpreted the Court's Scheduling Order to have stayed all deadlines—including ones under the Local Patent Rules that it had not sought to stay. Doc. No. [34], 11. Rather than seek clarification of the Court's Order, Defendant proceeded under its understanding of the Court's Order and did not engage in the claim construction process outlined in the Local Patent Rules while it awaited the Court's ruling on the motion to transfer because "claim construction . . . requires discovery under LPR 6.4 and all discovery was stayed per the Court's Order." Doc. No [34], 11 (emphasis omitted). For its part, Plaintiff—on whom rests the burden to prosecute this action—apparently also did not seek to engage Defendant in the claim construction process or, at the least, affirmatively inquire (as opposed to making assumptions based on

statements in *inter partes* review proceedings) about Defendant's position on the need for claim construction in this matter while the motion to transfer was pending. Id. at 12.

Plaintiff contends that, pursuant to Local Patent Rule 6, the Parties were due to exchange a list of any claim terms to be construed by the Court no later than July 17, 2023. It maintains that no terms need to be construed and asserts that, by the time the stay of discovery lifted with issuance of the Court's March 6, 2024 Order denying the motion to transfer, the deadline for the exchange of claim terms had long expired without action from Defendant. Doc. No. [34], 5. Plaintiff argues that Defendant, for the first time on June 4, 2024, alerted Plaintiff that claim construction was necessary and proposed that the Parties exchange claim terms. Plaintiff requests that the Court deny Defendant's belated claim construction demand.

Although, upon receipt of the Court's Scheduling Order, the prudent course for Defendant to take would have been to seek to clarify whether the Court was, in fact, granting relief that was more expansive than that requested by Defendant, rather than assuming so and failing to engage in even the initial phase of the claim construction process (e.g., exchange of claim terms for

construction) that did not necessitate discovery, Defendant's interpretation of the Scheduling Order was not wholly unreasonable. Accordingly, the Court concludes that the Parties' inaction regarding the claim construction process during the pendency of the motion to transfer was excusable, and the Court approves the following case schedule proposed by Defendant (Doc. No. 34-10), with modifications italicized. [1]

DATE	EVENT
06/11/2024	Last day for the Parties to simultaneously exchange proposed terms. The Parties must thereafter meet and confer. (Patent L.R. 6.1)
06/21/2024	Last day for the Parties to simultaneously exchange preliminary constructions and preliminarily identify extrinsic evidence, provide any proposed witness testimony. The Parties must thereafter meet and

[1] Plaintiff argues that even if Defendant correctly interpreted the Scheduling Order to include a stay of the claim construction deadlines, Defendant should nevertheless be foreclosed from engaging in claim construction because its request is untimely. According to Plaintiff, because 44 days had already passed between the time of the filing of the Joint Report and the Court's entry of the Scheduling Order, only 46 days (of the 90-day period from the filing the Joint Report allowed under Local Patent Rule 6) remained for the exchange of claim terms after the stay lifted. Because Defendant waited well past the remaining 46 days to begin the claim construction process, Plaintiff contends that Defendant's effort is untimely. Doc. No. [34], 7. Plaintiff's calculation of time is correct. However, in the interest of adjudicating claim construction on the merits, the Court *sua sponte* extends the deadline for the exchange of claim terms.

	confer. (Patent L.R. 6.2)
06/28/2024[2]	Last day for the Parties to file a joint claim construction statement. (Patent L.R. 6.3)
07/12/2024	Last day for each Party to file its opening claim construction brief. (Patent L.R. 6.5(a))
As the Court's calendar allows	Claim construction hearing (Patent LR 6.6)
45 days after the Court issues claim construction order	Discovery after claim construction Patent L.R. 6.7: If at the time the Court issues its claim construction ruling, there are fewer than 30 days left for discovery pursuant to the Local Rules, the parties shall have an additional 45 days in which to take discovery after the Court files and serves its claim construction ruling.
30 days after close of discovery after claim construction	Disclosure of experts and opening expert reports Patent L.R. 7.1(b): No later than thirty (30) days after (1) the normal close of discovery pursuant to the discovery track to which the case was assigned, or (2) the close of discovery after claim construction, whichever is later, each party shall make its initial expert

[2] Defendant filed a unilateral claim construction statement on June 28, 2024, while the Parties' Joint Request for Confirmation of Case Schedule was pending with the Court and has represented therein that it is Plaintiff's position that all terms should be construed according to their plain and ordinary meaning. Doc. No. [35]. To the extent Plaintiff wishes to include its own representation, the Parties shall file a joint claim construction statement by no later than July 8, 2024.

	witness disclosures required by Rule 26 on the issues on which each bears the burden of proof.
30 days after first round of disclosure	Disclosure of responsive expert reports Patent L.R. 7.1(c): No later than thirty (30) days after the first round of disclosures, each party shall make its initial expert witness disclosures required by Rule 26 on the issues on which the opposing party bears the burden of proof.
10 days after second round of disclosures	Disclosure of reply/rebuttal expert reports Patent L.R. 7.1(d): No later than ten (10) days after the second round of disclosures, each party shall make any rebuttal expert witness disclosures permitted by Rule 26.
7-30 days after service of reply / rebuttal expert reports	Deposition of experts Patent L.R. 7.2: Depositions of expert witnesses disclosed under this Rule shall commence within seven (7) days of the deadline service of rebuttal reports and shall be completed within thirty (30) days after commencement of the deposition period.
30 days after service of reply / rebuttal expert reports	*Last day of expert discovery*
30 days after close of expert discovery	*Dispositive and Daubert motions due. If no dispositive motion filed, the Consolidated Pretrial Order shall be due.*

IT IS SO ORDERED this 2nd day of July, 2024.

HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE