

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

---

|                               |   |                            |
|-------------------------------|---|----------------------------|
| EVONIK OPERATIONS GMBH, and   | ) |                            |
| EVONIK CORPORATION,           | ) |                            |
|                               | ) |                            |
| Plaintiffs,                   | ) |                            |
|                               | ) | Case No. 1:22-cv-01543-JPM |
| v.                            | ) |                            |
|                               | ) |                            |
| AIR PRODUCTS AND CHEMICALS,   | ) |                            |
| INC., and GREENLANE BIOGAS US | ) |                            |
| CORP.,                        | ) |                            |
|                               | ) |                            |
| Defendants.                   | ) |                            |

---

**SCHEDULING ORDER**

---

This is an action for patent infringement under 35 U.S.C. § 1 *et seq.* Plaintiffs allege that Defendants have infringed U.S. Patent No. 8,999,038 (“the ‘038 Patent”) and U.S. Patent No. 10,471,389 (“the ‘389 Patent”) (collectively, “the Asserted Patents”) through their sale of certain components used for biogas purification/refinement systems and processes. (See ECF No. 1.) The ‘038 Patent and the ‘389 Patent relate generally to apparatuses and methods that employ a selective membrane to extract high-purity low-carbon fuel such as biomethane or renewable natural gas from crude biogas that includes at least two components (generally the fuel gas and carbon dioxide). (ECF No. 1-1 at PageID 32–54, 56–75.) Two Motions to Dismiss were filed on April 18, 2023 and April 24, 2023, and briefing is not yet complete on either Motion. (ECF Nos. 8, 12.) The Parties have jointly proposed to have deadlines in the schedule be based on the date that the Court rules on both pending Motions. (ECF No. 24.)

This Cause was before the Court on July 18, 2023, for a Video Scheduling Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure and the District of Delaware Local Rule 16.1. Counsel present for Plaintiffs Evonik Operations GMBH and Evonik Corporation were Alan Richard Silverstein and Philip Y. Braginsky. Counsel present for Defendant Air Products and Chemicals, Inc. were Brandon J. Pakkebier and John R. Lane. Counsel present for Defendant Greenlane Biogas US Corp. were Anne Shea Gaza, Johanna M Wilbert, and Michael W. Carwin. The transcript of the Rule 16(b) conference establishes a number of undisputed facts, as well as documents to be produced and witness identities.

At the Video Scheduling Conference, the following dates were established as the final deadlines for:

| <b>W.D. Tenn.<br/>Patent Rule</b> | <b>Item</b>                                                                                                            | <b>Date</b>                                                        |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| LPR 2.1(d)                        | <b>Patent Scheduling Conference (PSC)</b>                                                                              | July 18, 2023                                                      |
|                                   | <b>Video Hearing on Motions to Dismiss (ECF Nos. 8, 12) and/or Scheduling Conference</b>                               | September 7, 2023 at 10:00 a.m. CT / 11:00 a.m. ET                 |
| FRCP 26(a)(1); LR, App'x H        | <b>Rule 26(a)(1) Initial Disclosures</b>                                                                               | 21 days after Answer                                               |
| LPR 3.1-3.2                       | <b>Initial Infringement Contentions</b>                                                                                | 21 days after Answer                                               |
| LPR 3.3-3.4                       | <b>Initial Non-infringement Contentions</b>                                                                            | 28 days after Initial Infringement Contentions                     |
| LPR 3.5-3.6                       | <b>Initial Invalidity and Unenforceability Contentions</b>                                                             | 90 days after Answer                                               |
| LPR 3.7                           | <b>Initial Validity and Enforceability Contentions</b>                                                                 | 21 days after Invalidity Contentions                               |
| LPR 4.1(a)                        | <b>Preliminary Identification of Claim Terms to be Construed</b>                                                       | 95 days after Answer                                               |
| LPR 4.1(c)                        | <b>Final Identification of Claim Terms to be Construed</b>                                                             | 115 days after Answer                                              |
| LPR 4.2(a)-(b)                    | <b>Preliminary Claim Constructions and Supporting Material</b>                                                         | 14 days after Final Identification of Claim Terms to be Construed  |
| LPR 4.3(a)                        | <b>Initial Expert Claim Construction Reports</b>                                                                       | 14 days after preliminary claim constructions                      |
| LPR 4.3(b)                        | <b>Rebuttal Expert Claim Construction Reports</b>                                                                      | 14 days after initial expert claim construction reports            |
| LPR 4.3(c)                        | <b>Completion of Expert Claim Construction Discovery (e.g., Any Depositions of Claim Construction Experts, if Any)</b> | 14 days after rebuttal expert claim construction reports           |
| LPR 4.2(c)                        | <b>Final Claim Construction</b>                                                                                        | 7 days after the completion of expert claim construction discovery |
| LPR 4.4(a)                        | <b>Opening Claim Construction Briefs</b>                                                                               | 14 days after final claim construction                             |
| LPR 4.4(b)                        | <b>Responsive Claim Construction Briefs</b>                                                                            | 30 days after opening claim construction briefs                    |

|         |                                                          |                                                                                              |
|---------|----------------------------------------------------------|----------------------------------------------------------------------------------------------|
| LPR 4.5 | <b>Joint Claim Construction and Prehearing Statement</b> | 7 days after responsive claim construction briefs                                            |
| LPR 4.6 | <b>Video Claim Construction Hearing (CCR)</b>            | TBD, will be set by separate order following the Court's ruling on pending Motion to Dismiss |
| LPR 4.8 | <b>Production of Written Advice of Counsel</b>           | TBD                                                                                          |
|         | <b>Court's Claim Construction Ruling (CCCR)</b>          | TBD                                                                                          |

Additional deadlines will be established following the issuance of the Court's Claim Construction Ruling.

#### **OTHER RELEVANT MATTERS:**

The Local Patent Rules of the Western District of Tennessee shall govern issues related to patents. The Local Rules of the District of Delaware shall govern all other issues.

The parties have consented, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to the electronic exchange of pleadings, notices, discovery, and other mandated disclosures not otherwise served electronically via the Court's Electronic Case Filing system.

The parties have conferred as to whether they will seek discovery of electronically stored information ("e-discovery") and have not reached an agreement regarding e-discovery. The parties will comply with the District of Delaware's Default Standard for Discovery, Including Discovery of Electronically Stored Information ("ESI").

Pursuant to agreement of the parties, if privileged or protected information is inadvertently produced, the producing party may, by timely notice, assert the privilege or protection and obtain the return of the materials without waiver.

No depositions may be scheduled to occur after the discovery deadline. All discovery requests or other discovery-related filings that require a response must be filed sufficiently in advance of the discovery deadline to enable the opposing party to respond by the time permitted by the Rules prior to that date.

Motions to compel discovery are to be filed and served within 45 days of the default or service of the response, answer, or objection that is the subject of the motion. However, if such default or service occurs within 30 days before the discovery deadline, the motion to compel must be filed within 30 days after such default or service.

This case is set for a jury trial. The parties anticipate that the trial will last approximately 5 days.

The parties may engage in ADR at their discretion. If any party determines that mediation is unlikely to be successful, would not be cost effective, or is a procedure in which they do not wish to engage, they may file a Notice of Intent not to engage in mediation. Upon such notice, the mediation shall be cancelled. Pursuant to W.D. Tenn. Local Rule 16.2(d), if the parties choose to engage in mediation, within 7 days of completion of ADR, the parties shall file a notice confirming that the ADR was conducted and indicating whether it was successful or unsuccessful, without disclosing the parties' respective positions at the ADR.

All motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59, and 60, shall be accompanied by a proposed order in a word processing format sent to the ECF mailbox of the presiding judge.

The parties are required to consult prior to filing any motion (except motions filed pursuant to Fed. R. Civ. P. 12, 56, 59, and 60).

The opposing party must file a response to any opposed motion. A party's failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion.

As specified by D. Del. LR 7.1.2, all requests for relief shall be presented to the Court by motion. A moving party must clearly articulate within the body of the motion the relief requested and the grounds in support thereof, or must accompany the motion with either a supporting brief or a memorandum of points and authorities. Unless ordered otherwise, the non-moving party may file a response and the moving party may file a reply. Once a motion has been deemed served, the response thereto shall be filed within 14 days, as calculated consistent with Fed. R. Civ. P. 6(a) and CM/ECF Procedures. Once the responsive papers have been deemed served, the moving party may file a reply within 7 days, as calculated consistent with Fed. R. Civ. P. 6(a) and CM/ECF Procedures. Except for the citation of subsequent authorities, no additional papers shall be filed absent Court approval.

The parties do not consent to trial before the Magistrate Judge.

Unless expressly agreed otherwise by counsel in writing or by order of the Court, the filing/service deadlines remain 5 pm ET as indicated in the Delaware local rules.

This order has been entered after consultation with the parties. Absent good cause shown, the deadlines set by this order will not be modified or extended.

**SO ORDERED**, this 18th day of July, 2023.

s/ Jon P. McCalla  
\_\_\_\_\_  
JON P. McCALLA  
UNITED STATES DISTRICT JUDGE