

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

Civil Action No.: 23-cv-00407-STV

THE RIDGE WALLET, LLC,

Plaintiff,

v.

MOUNTAIN VOYAGE COMPANY, LLC,

Defendant.

SCHEDULING ORDER IN A PATENT CASE

1. DATE OF CONFERENCE AND APPEARANCES OF COUNSEL

Date of Conference: April 6, 2023 at 9:00 AM

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2. STATEMENT OF JURISDICTION

This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the claims arise under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff The Ridge Wallet, LLC (“Ridge” or “Plaintiff”):

1. Defendant directly infringes at least Claims 1 and 14 of Plaintiff’s U.S. Patent No. 10,791,808 (the “’808 Patent”) by making, having made, using, importing, supplying, distributing, selling, and/or offering for sale a Matte Slim Wallet offered in various colors, a Natural Walnut Slim Wooden Wallet, and a Matte Slim Carbon Fiber Wallet and any similar product offerings (collectively, the “Slim Wallets” or “Accused Products”).
2. Defendant actively induces infringement of at least Claims 1 and 14 of the ’808

Patent by selling the Accused Products in such a way that users are instructed to make and/or use a wallet that infringes the '808 Patent.

3. Defendant contributorily infringes at least Claims 1 and 14 of the '808 Patent by providing, and by having knowingly provided, a material part of the instrumentalities, namely the Accused Products, used to infringe Claims 1 and 14 of the '808 Patent; and the Accused Products have no substantial non-infringing uses.
 4. Defendant willfully infringed and continues to willfully infringe the '808 Patent.
 5. Ridge seeks an injunction, damages (in the form of lost profits or in the alternative and at a minimum a reasonable royalty) as well as punitive damages for the willful infringement, and any other costs and sees as the Court sees fit.
- b. Defendant Mountain Voyage Company LLC ("Mountain Voyage" or "Defendant"):
1. Mountain Voyage does not infringe, directly or indirectly, any valid or enforceable claim of the '808 Patent.
 2. There are material questions whether the claims of the '808 patent are valid and/or enforceable. The validity and enforceability of claims of the '808 patent is presently at issue in *Mosaic Brands, Inc. v. The Ridge Wallet LLC*, Case No. 2:20-cv-04556-AB-JC, U.S. District Court, C.D Cal., filed on May 20, 2020.
- c. Other Parties: None

4. UNDISPUTED FACTS

The following facts are undisputed:

1. Ridge owns, by assignment, all right, title, and interest in the '808 Patent.
2. The '808 Patent is titled "Compact Wallet," issued on October 6, 2020, and names Daniel Kane as the single inventor.
3. The '808 Patent was issued from U.S. Patent Application No. 15/421,596, filed on February 1, 2017.
4. Mountain Voyage offers for sale on its website several products, including a Matte Slim Wallet offered in various colors, a Natural Walnut Slim Wooden Wallet, and a Matte Slim Carbon Fiber Wallet.
5. Mountain Voyage also offers for sale or has previously offered for sale its Slim

Wallets on third party websites, including, but not limited to Amazon.com.

6. Mountain Voyage has made, used, offered for sale, and sold, and continues to make, use, offer for sale, and sell Slim Wallets, including those identified above.
7. On December 22, 2022, Ridge filed an Amazon takedown request, asserting that Mountain Voyage's Slim Wallets infringed the '808 Patent.
8. On January 17, 2023, Mountain Voyage sent a letter to Ridge in response to Ridge's Amazon takedown request, taking the position that Mountain Voyage does not infringe the '808 Patent.
9. After Mountain Voyage provided an explanation to Amazon why it believed its Slim Wallets do not infringe the '808 patent, Amazon reinstated those wallets on Amazon.com as communicated to Mountain Voyage by Amazon via emails on February 18 and 19, 2023.
10. On January 20, 2023, Ridge sent a cease and desist letter to Mountain Voyage, specifically charging Mountain Voyage's Slim Wallets with infringement of at least the '808 Patent and addressing the points in Mountain Voyage's January 17, 2023, letter.
11. Ridge's cease and desist letter explicitly included a reservation of rights putting Mountain Voyage on notice of Ridge's pending patent applications.
12. Ridge's cease and desist letter further demanded that Mountain Voyage cease and desist from selling its products that Ridge accuses of infringing the '808 patent in the United States by no later than January 30, 2023.
13. On January 30, 2023, Mountain Voyage responded to Ridge's cease and desist letter asserting that it does not infringe the '808 Patent.
14. Mountain Voyage has not been offered or taken a license to the '808 Patent.

5. COMPUTATION OF DAMAGES

Ridge currently lacks sufficient information regarding the extent of Mountain Voyage's infringement to accurately assess the full nature and extent of the injuries that Ridge has suffered and will suffer. Ridge's initial damages model, therefore, is based on the limited information and evidence available to it at this time, without the benefit of full discovery or the production

of Mountain Voyage's financial documents related to Mountain Voyage's Slim Wallets.

With respect to sales of Slim Wallets already made or made during the pendency of this case, and, without prejudice to Ridge's claim that it will never be fully compensated by way of monetary damages as a result of Mountain Voyage's infringing acts, Ridge states the following:

Ridge intends to seek compensatory damages for the harms caused by Mountain Voyage's infringement of the '808 Patent, including lost profits in an amount to be proven at trial and reflecting the extent to which Ridge could have increased its market share, charged higher prices, and/or made additional sales of its own competing products but for Mountain Voyage's infringement. At a minimum, Ridge will seek a reasonable royalty for Mountain Voyage's infringement of the '808 Patent.

Ridge additionally intends to seek (1) treble damages pursuant to 35 U.S.C. § 284; (2) a declaration that this case is "exceptional" pursuant to 35 U.S.C. § 285, entitling Ridge to an award of its reasonable attorneys' fees, expenses, and costs for this action; and (3) pre-judgment and post-judgment interest. Ridge will also seek an ongoing royalty for any continuing sales or use of the infringing products by Mountain Voyage if Mountain Voyage's infringing products are not permanently enjoined.

With respect to the potential counterclaims, Ridge reserves its right to seek damages as allowed by law and statute, including, but not limited to, costs of suit, reasonable attorneys' fees, and disbursements (including expert fees) under 35 U.S.C. § 285.

Mountain Voyage believes that in the unlikely event that Ridge prevails on its infringement claims it will only be entitled to a reasonable royalty because it will not be able to prove, *inter alia*, that Ridge would have made sales but for Mountain Voyage's alleged infringement.

Mountain Voyage believes that in the unlikely event that Ridge prevails on its infringement claims it would not be entitled to an exceptional case finding because Mountain Voyage has, at a minimum, substantial, credible non-infringement defenses.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

a. Date of Rule 26(f) meeting: March 15, 2023

b. Names of each participant and party he/she represented.

For Plaintiff, The Ridge Wallet, LLC, Benjamin E. Weed and Gina A. Johnson;
For Defendant, Mountain Voyage Company, LLC, Michael J. Garvin and Jacob Busch.

c. Statement as to when Rule 26(a)(1) disclosures were made or will be made: March 29, 2023

d. Statement concerning any agreements to conduct informal discovery:

The parties do not have agreements to conduct informal discovery.

e. Statement concerning any other agreement or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system:

Regarding any agreements or procedures to reduce discovery at this time, the parties state: 1) The parties reserve the right to take in-person depositions. 2) The parties do not have a joint repository for discovery documents and 3) there are no other cases from which to use discovery to reduce the costs of litigation. To the best of the parties' ability, they will use extensive use of expert affidavits to support judicial notice and will use a unified exhibit numbering system.

f. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

Preservation of electronically stored information ("ESI"):

The parties will or have provided all company employees with a letter directing them to preserve ESI.

Facilitation of discovery of electronically stored information; limitation of the associated

discovery costs and delay:

The parties anticipate that claims and defenses will involve extensive electronically stored information or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form. The following text outlines rules and guidelines by which the parties agree to abide:

Absent a showing of good cause, general ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with any mandatory disclosure requirement of this Court, shall include the following metadata fields, if reasonably available:

Field Name	Description/Comments	Fields for ESI and/or Hard Copy
Prod Beg Bates	Bates number associated with the first page of a document	ESI and Hard Copy
Prod End Bates	Bates number associated with the last page of a document	ESI and Hard Copy
Prod Beg Bates Attach	Beginning bates of a family group	ESI (e-mail)
Prod End Bates Attach	Ending bates of the family group	ESI (e-mail)
Custodian	Specific description of who provided the document. The parties agree that global e-mail searches are acceptable in which designated custodians' e-mails are searched using certain terms. In the case of global e-mail searches, the custodian field will be populated with "e-mail search," "enterprise vault," or other generic language while the to/from/cc will remain as it was in the native format	ESI and Hard Copy (excluding global e-mail searches)
DeDuplicated Custodians	Custodians associated with the de-duplicated records of this document.	ESI (excluding global e-mail searches)
SUBJECT	Information from the Subject line of the e-mail message	ESI (e-mail)
FROM	Author of e-mail message	ESI (e-mail)
TO	Recipients of the e-mail message	ESI (e-mail)
CC	Recipient of carbon copies of the e-mail message	ESI (e-mail)
BCC	Recipient of blind carbon copies of	ESI (e-mail)

	the e-mail message	
Date and Time Sent	Date and time that the e-mail message was sent	ESI (e-mail)
Date and Time Received	Date and time that the e-mail message was received	ESI (e-mail)
Author	Author of document	ESI
Confidentiality	Confidentiality designation of document	ESI and Hard Copy
File Type	Type of file (word, excel, powerpoint, PDF) as kept in the ordinary course	ESI

Absent agreement of the parties or further order of this Court, the following parameters shall apply to ESI production:

1. General Document Image Format. Each electronic document shall be produced in single-page Tagged Image File Format (“TIFF”) format. TIFF files shall be single page and shall be named with a unique production number followed by the appropriate file extension. Load files shall be provided to indicate the location and unitization of the TIFF files. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.
2. Text-Searchable Documents. No party has an obligation to make its production text-searchable; however, if a party’s documents already exist in text-searchable format independent of this litigation, or are converted to text-searchable format for use in this litigation, including for use by the producing party’s counsel, then such documents shall be produced in the same text-searchable format at no cost to the receiving party.
3. Footer. Each document image shall contain a footer with a sequentially ascending production number.
4. Native Files. A party that receives a document produced in a format specified above may make a reasonable request to receive the document in its native format, and upon receipt of such a request, the producing party shall produce the document in its native format.
5. No Backup Restoration Required. Absent a showing of good cause, no party need restore any form of media upon which backup data is maintained in a party’s normal or allowed processes, including but not limited to backup tapes, disks, SAN, and other forms of media, to comply with its discovery obligations in the present case.

6. Voicemail and Mobile Devices. Absent a showing of good cause, voicemails, PDAs and mobile phones are deemed not reasonably accessible and need not be collected and preserved.

General ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with any mandatory disclosure order of this Court, shall not include e-mail or other forms of electronic correspondence (collectively “e-mail”). To obtain e-mail parties must propound specific e-mail production requests.

E-mail production requests shall be phased to occur timely after the parties have exchanged initial disclosures, a specific listing of likely e-mail custodians, a specific identification of the three most significant listed e-mail custodians in view of the pleaded claims and defenses, infringement contentions and accompanying documents, invalidity contentions and accompanying documents, and preliminary information relevant to damages. The exchange of this information shall occur at the time required under the Federal Rules of Civil Procedure, Local Rules, or by order of the court. Each requesting party may also propound up to five written discovery requests and take one deposition per producing party to identify the proper custodians, proper search terms, and proper time frame for e-mail production requests. The court may allow additional discovery upon a showing of good cause.

E-mail production requests shall identify the custodian, search terms, and time frame. The parties shall cooperate to identify the proper custodians, proper search terms, and proper time frame. Each “specific identification” requires a short description of why the custodian is believed to be significant. The requesting party shall limit its e-mail production requests to a total of three custodians per producing party for all such requests. The parties may jointly agree to modify this limit without the court’s leave. The court shall consider contested requests for additional or fewer custodians per producing party, upon showing a distinct need based on the size, complexity, and issues of this specific case.

Each requesting party shall limit its e-mail production requests to a total of five search terms per custodian per party. The parties may jointly agree to modify this limit without the court’s leave. The court shall consider contested requests for additional or fewer search terms per custodian, upon showing a distinct need based on the size, complexity, and issues of this specific case. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company’s name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g., “computer” and “system”) narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g., “computer” or “system”) broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word. Use of narrowing search criteria (e.g., “and,” “but not,” “w/x”) is encouraged to limit the production and shall be

considered when determining whether to shift costs for disproportionate discovery.

The mere production of ESI or e-mails in particular in a litigation as part of a mass production shall not itself constitute a waiver for any purpose.

Except as expressly stated, nothing in this order affects the parties' discovery obligations under the Federal or Local Rules.

Privilege or protection as trial-preparation materials after production of computer-generated records:

Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a privileged or work product protected ESI is not a waiver in the pending case or in any other federal or state proceeding. Any Party that inadvertently or unintentionally produces documents, information or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information or other material. The recipient(s) shall gather and return all copies of such documents, information or other material to the producing Party, except for any pages containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be destroyed and certified as such to the producing Party.

- g. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case. The parties are considering a meeting between principals of the company to discuss a potential resolution of the case.

7. CONSENT

The Parties do not consent to the exercise of jurisdiction of a magistrate judge.

8. CASE PLAN AND SCHEDULE

- a. Deadline to join parties: 6 weeks after the *Markman* hearing, to be set after receipt of *Markman* hearing date.

Infringement Contentions

- b. Deadline to serve Infringement Contentions, Claim Chart(s), and produce accompanying documents: May 4, 2023.
- c. Deadline to serve Response to Infringement Contentions and produce accompanying

documents: June 15, 2023.

Invalidity Contentions

- d. Deadline to serve Invalidity Contentions and Claim Charts and produce accompanying items of prior art: June 15, 2023.
- e. Deadline to serve Response to Invalidity Contentions and Claim Charts and produce accompanying documents: July 27, 2023.

Opinion of Counsel

- f. Deadline to make opinion(s) of counsel available for inspection and copying: 60 days before the close of discovery.

Claim Construction

- g. Deadline for parties to exchange list of claim terms to be construed and proposed construction, specifically identifying up to ten (10) of the most critical terms to be construed: August 24, 2023.
- h. Deadline to file Joint Disputed Claim Terms Chart: September 21, 2023.
- i. Proposed month for technology tutorial with District Judge and Magistrate Judge (optional): The parties do not elect to have a technology tutorial.
- j. Deadline for Defendant to file opening Claim Construction brief and all supporting evidence: October 19, 2023.
- k. Deadline for Plaintiff to file response to opening Claim Construction brief and all supporting evidence: November 9, 2023.
- l. Deadline for Defendant to file reply brief in support of opening Claim Construction brief: November 16, 2023.
- m. Proposed month for claim construction hearing and estimated time necessary for the hearing: February 16, 2024. The parties estimate that two hours will be sufficient for the hearing.

Final Patent Disclosures

- n. Deadline to file Final Infringement Contentions: 28 days after Court's Claim Construction Order

- o. Deadline to file Final Invalidity Contentions: 21 days after receiving Final Infringement Contentions

Fact Discovery, Expert Disclosures, and Dispositive Motions Deadlines

- p. Fact discovery deadline: 16 weeks after the *Markman* hearing.

- q. Expert Witness Disclosure.

- 1. The parties shall identify anticipated fields of expert testimony, if any.

The parties anticipate that expert testimony will be required on the issues of infringement, validity, and damages.

- 2. Limitations which the parties propose on the use or number of expert witnesses.

The parties do not see a need to set any limitations outside of the Federal Rules of Civil Procedure.

- 3. The parties shall designate all affirmative experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) within 16 weeks after the *Markman* hearing.

- 4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) within 20 4 weeks after the *Markman* hearing.

- r. Expert Discovery Deadline: Expert discovery shall close 24 weeks after the *Markman* hearing.

- s. Dispositive motions deadline: 26 weeks after the *Markman* hearing.

9. DISCOVERY LIMITATIONS

- a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules: None
- b. Limitations which any party proposes on the length of depositions: None
- c. Limitations which any party proposes on the number of requests for production and/or requests for admission: None
- d. Other Planning or Discovery Orders

1. Deadline for filing proposed protective order(s): March 27, 2023
2. Other Issues: None

10. DATES FOR FURTHER CONFERENCES

- a. Status conferences will be held in this case at the following dates and times:
- b. A final pretrial conference will be held in this case on _____ at _____ o'clock __.m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five (5) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

- a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement.
- b. Anticipated length of trial and whether trial is to the court or jury.

The parties anticipate the need for a 5 day trial to a jury.

- c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facility at 212 N. Wahstach Street, Colorado Springs, Colorado; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado; or the U.S. District Court, LaPlata County Courthouse, Suite 150, 1060 E. 2nd Avenue, Durango, CO 81301.

12. NOTICE TO COUNSEL

Motions for extension of time or continuances must comply with D.C.Colo. L. Civ. R. 6.1, by containing proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.Colo. L. Civ. R. 7.1(a).

In addition to filing an appropriate notice with the clerk's office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case. In addition to filing an appropriate notice with the clerk's

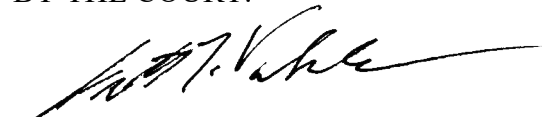
office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

13. AMENDMENTS TO SCHEDULING ORDER

This Scheduling order may be altered or amended only upon a showing of good cause.

DATED this 6th day of April, 2023.

BY THE COURT:



United States Magistrate Judge

APPROVED:

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2023, a true and correct copy of the foregoing **SCHEDULING ORDER IN A PATENT CASE** was electronically filed using the CM/ECF system and served on counsel of all parties. Parties may access this filing through the CM/ECF system.

/s/ Aurora Temple Barnes
Aurora Temple Barnes, Esq.