

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILEDUNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

2024 APR 15 PM 3:02

BY EM CLERK
DEPUTY CLERKVERMONT SAFETY DEVELOPMENTS
LLC,

Plaintiff

v.

HEAD SPORT GmbH,

Defendant.

Case No. 2:23-cv-00089-GWC

REVISED STIPULATED DISCOVERY SCHEDULE/ORDER

Plaintiff Vermont Safety Developments LLC and Defendant Head Sport GmbH submit the following Revised Discovery Schedule pursuant to Local Rule 26(a)(2). Due to the nature and complexity of this case as a patent infringement action and the likely need for a claim construction process that impacts expert discovery, the parties respectfully request a slightly longer discovery schedule than the default requirement under the Local Rules.

INTRODUCTION

1. In this case, discovery may be needed on the following subjects: facts and opinions bearing upon alleged infringement and non-infringement of the patent in suit, such as research, development, manufacturing, marketing, offering for sale, and sale of the accused bindings; facts and opinions bearing upon the validity and enforceability of the patent in suit; facts and opinions bearing upon alleged willfulness of infringement; facts and opinions bearing upon damages from alleged infringement; and facts and opinions bearing upon any other claims or defenses raised by either party. Unless noted here to the contrary and in more detail, discovery in this matter shall not be conducted in phases or limited to particular, enumerated issues.

2. The parties have conferred about disclosure, discovery, and preservation of electronically stored information (“ESI”). Unless noted otherwise, ESI shall be produced in the following format(s): searchable PDFs and, where searchable PDF format is not reasonably feasible, native format.

3. The parties have conferred about claims of privilege and claims of protection as trial-preparation materials. For purposes of asserting these claims (including after production), the parties have agreed to follow the procedures set forth in Fed. R. Civ. P. 26(b)(5)(A)-(B) and in a stipulated protective/confidentiality order to be agreed upon and submitted by the parties. Unless specifically requested in a filing with this Court, the parties agreed procedures will not be the subject of a Court order under Federal Rule of Evidence 502.

4. Any changes in the limitations on discovery imposed under the Federal Rules of Civil Procedure or the Local Rules for this District shall be specifically described below.

DEADLINES

Initial Disclosures

5. The parties shall serve initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) on or before **December 15, 2023**.

Initial Contentions

6. Plaintiff shall serve initial infringement contentions no later than **December 22, 2023**. Plaintiff’s initial infringement contentions shall contain the following information:

- a. Each claim of each patent in suit that is allegedly infringed by Defendant;
- b. Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality (Accused Instrumentality) of Defendant’s of which Plaintiff is aware. This identification shall be as specific

as possible. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

- c. A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality; and
- d. Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality.

7. Defendant shall serve initial non-infringement and invalidity contentions no later than **February 2, 2024**. Defendant's initial invalidity contentions shall contain the following information:

- a. The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Other prior art shall be identified by specifying the item offered for sale or publicly used or otherwise available;
- b. Whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination of items of prior art makes a claim obvious, each such combination, and the motivation to combine such items, must be identified;
- c. A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found; and

- d. Any grounds of invalidity based on 35 U.S.C. § 112 of any of the asserted claims.

Claim Construction

8. The parties shall exchange disclosures of any claim terms, up to a maximum of fifteen, that they contend require construction by the Court on or before **April 2, 2024**.

9. The parties shall exchange their proposed constructions for the disputed claim terms with supporting intrinsic and extrinsic evidence and identification of expert being relied upon for claim construction opinions, on or before **April 23, 2024**.

10. The parties shall meet and confer by phone or in person regarding the proposed terms to be construed and their proposed constructions for the purpose of identifying and narrowing the number of terms that the parties contend require construction, and shall prepare and file a joint claim construction statement on or before **May 7, 2024**.

11. To the extent necessary, the parties shall exchange expert opinions for their proposed constructions on or before **May 21, 2024**.

12. The parties shall complete any claim construction discovery by **June 19, 2024**.

13. The parties shall contemporaneously file their opening claim construction briefs on or before **July 19, 2024**.

14. The parties shall contemporaneously file their responsive claim construction briefs on or before **August 16, 2024**.

15. The Court shall hold a claim construction hearing at an available time on or near **September 3, 2024**.

Early Neutral Evaluation

16. The Early Neutral Evaluation session shall be conducted on **February 26, 2024** at 10:00 a.m. The parties have agreed that Andrew Manitsky will serve as the early neutral evaluator.

Discovery

17. Motions for joinder of parties and amendments to the pleadings shall be filed on or before **March 18, 2024**.

18. The parties shall serve all interrogatories and requests for production within 3 weeks after the Court issues its opinion concerning disputed claim language.

19. The parties shall serve all requests for admission within 3 weeks after the Court issues its opinion concerning disputed claim language.

20. The parties shall substantially complete document production within 3 weeks after the Court issues its opinion concerning disputed claim language.

21. Depositions of all non-expert witnesses shall be completed within 9 weeks after the Court issues its opinion concerning disputed claim language.

Final Contentions

22. Plaintiff's final infringement contentions shall be served within 5 weeks after the Court issues its opinion construing disputed claim language. Defendant's final non-infringement and invalidity contentions shall be served within 7 weeks after the Court issues its opinion construing disputed claim language.

Expert Discovery

23. The parties shall submit expert witness reports on issues for which they bear the burden of proof within 14 weeks after the Court issues its opinion construing disputed claim language.

24. The parties shall submit rebuttal expert witness reports within 18 weeks after the Court issues its opinion construing disputed claim language.

25. Depositions of all expert witnesses shall be completed within 22 weeks after the Court issues its opinion construing disputed claim language. Because of the anticipated complexities of this patent infringement lawsuit, expert discovery shall be completed within 22 weeks after the Court issues its opinion construing disputed claim language.

Dispositive Motions

26. Motions, including summary judgment motions but excluding motions relating to the conduct of the trial, shall be filed within 26 weeks after the Court issues its opinion construing disputed claim language.

Trial

27. Subject to the timing of the Court's orders regarding claim construction and summary judgment, if any, this case shall be ready for trial by **August 2025**.

March 25, 2024

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March 25, 2004

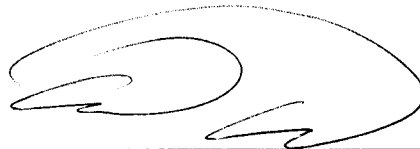
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SO ORDERED this 15th day of April, 2024.



CHIEF JUDGE, U.S. DISTRICT COURT