

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

H2 INTELLECT LLC,

Plaintiff,

v.

THE HOME DEPOT, INC.,
HOME DEPOT U.S.A., INC., AND
HOME DEPOT PRODUCT AUTHORITY,
LLC,

Defendants.

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Civil Action No. 2:25-cv-00123



PLAINTIFF'S RESPONSE TO MOTION TO CONSOLIDATE

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Although Home Depot characterizes its request as a motion to consolidate based on purported “efficiency gains,” its conduct indicates that its true objective is to secure a continuance of the trial in the 694 Matter in order to bolster its strategic position with respect to its pending petitions before the Patent Trial and Appeal Board (“PTAB”) instead. In substance, Home Depot is asking the Court to postpone the 694 trial by three months. Notably, more than four months before Home Depot filed this motion, H2 approached Home Depot to propose consolidating the two cases according to the schedule set in the 694 Matter, but Home Depot declined. Had Home Depot agreed to consolidation at that time, it would have had more time to prepare for trial in the 123 Matter than it would under its current proposal.

H2 respectfully submits that Home Depot should not be rewarded for its delay in seeking consolidation. Therefore, if the Court determines that consolidation is appropriate, H2 respectfully requests that the consolidated cases (the 694 and 123 Matters) be consolidated with a single trial that is set on the current trial date of the 694 Matter in April 2026. If, as Home Depot contends, the issues in both cases are as similar as it claims, there should be no difficulty in preparing the 123 Matter for trial on the same schedule as the 694 Matter.

Nevertheless, because Home Depot delayed four months seeking consolidation, the relevant factors no longer support consolidation at this stage. Instead of promoting efficiencies, it seems that Home Depot’s true motivation for seeking a continuance in the 694 Matter is to manifestly delay the trial to improve its chances of having its recently filed *inter partes* review (“IPR”) instituted on the patent in the 694 Matter. Home Depot thus apparently hopes to have the validity of the patent decided by the PTAB, rather than by a jury or this Court. As both the Court and Home Depot are aware, the PTAB has discretion to institute an IPR based on the *Fintiv* factors, one of which is the proximity of the district court’s trial date to the PTAB’s projected deadline for

a final written decision. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5-6 (PTAB Mar. 20, 2020). Home Depot filed its IPR on April 4, 2025, and now seeks a continuance in an apparent effort to position itself more favorably when the PTAB considers the *Fintiv* factors. The Court should not permit such tactics to influence the schedule. The trial dates should remain unchanged, or, if the cases are consolidated, the consolidated trial should proceed on the early April 2026 date.

Home Depot's pattern of litigation conduct appears inconsistent with its stated goal of achieving economy and efficiency. For example, Home Depot has sought post-grant review of a patent that H2 ***has not asserted against Home Depot*** and that H2 has indicated that it does not believe Home Depot is infringing. Such conduct by Home Depot does not align with a focus on efficiency as it introduces additional proceedings that may not be necessary. Further, Home Depot has indicated an intention to file post-grant reviews on ***every future patent obtained by H2***, regardless of whether those patents are ever asserted against Home Depot, or whether Home Depot has even seen the claims. This approach suggests a strategy that could increase the complexity and cost of the litigation, rather than streamline it. These actions, taken together, suggest that the requested continuance is not truly motivated by a desire for efficiency, but rather by other purposes that could delay resolution of H2's claims.

Discovery is already well underway in the 694 Matter, and the parties have begun working toward claim construction deadlines. Indeed, the *Markman* hearing in the 694 case is set for October 17, 2025, whereas in the 123 Matter, it is set for March 19, 2026—over five months later. Although Home Depot is a party to both cases, the 123 case also includes Amazon as a separate defendant. Home Depot ignores the efficiencies it gains by having the 123 Matter proceed on a consolidated pretrial schedule with Amazon, which is the current procedural posture. While Home Depot asserts that Amazon would be willing to participate in a joint *Markman* hearing with the

two Home Depot cases in October, Amazon has not agreed to accelerate any other deadlines. As a result, this compressed schedule would prejudice H2 by reducing the time available to conduct discovery on Amazon before the *Markman* hearing by five months. Finally, H2 has asserted a willful infringement claim in the 123 Matter that may, in part, depend upon the outcome of the 694 Matter.

In sum, therefore, the Court should either (1) deny Home Depot's motion to consolidate in its entirety, or (2) grant in part Home Depot's motion to consolidate and set both cases for trial on the current trial date for the 694 Matter in April 2026. Delaying the trial setting for the 694 Matter would prejudice H2 and effectively reward Home Depot for its delay in seeking consolidation.

I. BACKGROUND

A. H2 Files the First-Filed Case—the 694 Matter

On August 22, 2024, H2 filed suit against Home Depot asserting that Home Depot infringes U.S. Patent Nos. 8,433,296 (the "'296 Patent") and 11,948,171 (the "'171 Patent"), styled as Case No. 2:24-CV-694 (the "694 Matter") (Dkt. 1). In addition to asserting claims related to these patents, H2 provided notice of its intellectual property rights, including its ownership of U.S. Patent Nos. 8,977,247 (the "'247 Patent") and 9,286,625 (the "'625 Patent"). The Court held a scheduling conference on November 7, 2024 (694 Matter, Dkt. 12) and subsequently entered the scheduling order on November 22, 2024—setting the *Markman* hearing for October 17, 2025, and trial for April 20, 2026 (*id.*, Dkt. 19).

B. H2 Files the Second-Filed Case—the 123 Matter—and Home Depot Rejects H2's Offer to Consolidate

On February 3, 2025, H2 filed the instant case against Home Depot, asserting that it *willfully* infringes the '247 Patent and the '625 Patent, given that Home Depot has prior notice of these patents and was not conducting a diligent investigation or inquiry into its alleged

infringement. *See, generally* Dkt. 1. H2 also filed suit in the Eastern District of Texas against Amazon on February 4, 2025. *See* Case No. 2:25-cv-00127 (the “Amazon Matter”). Shortly thereafter in early February 2025, H2 proposed consolidation between the instant matter and the 694 Matter, given that only a limited amount of discovery had occurred by the time H2 filed the second case. R. Mann Decl. ¶ 3. Home Depot rejected H2’s offer. *Id.* At that point, H2 decided to proceed with the two separate lawsuits.

However, if Home Depot had agreed to consolidate in February 2025, the parties would have had fourteen months to prepare the 123 Matter for trial. As demonstrated in the table below, with Home Depot now requesting that trial be set for July 2026, the parties would have thirteen months from the date it filed its motion (June 2025) to prepare for the proposed July 2026 trial.

	Date Consolidation Requested or Motion Filed	Proposed Trial Date	Time to Trial in Months
H2 request to Home Depot to consolidate	February 2025	April 2026	14 months
Home Depot’s motion to consolidate	June 2025	July 2026	13 months

As such, if Home Depot had not delayed, the parties would have actually had more time to prepare for trial under H2’s proposal in February 2025.

C. Home Depot Requests Consolidation Four Months Later, After Discovery Progressed in the 694 Matter, and After the Court Consolidated All Pretrial Matters for the 123 Matter and the Amazon Matter

On April 3, 2025, the Court set a scheduling conference for the second case to be heard on May 28, 2025. Dkt. 12. Three days later, the Court entered an order consolidating the 123 Matter with the Amazon Matter for all pretrial issues. Dkt. 11. On May 21, 2025, despite its previous rejection of the proposal to consolidate, Home Depot raised the possibility of consolidating the two currently pending cases against Home Depot. R. Mann Decl. ¶ 4. In response, H2 indicated

it no longer believed that consolidation is appropriate due to Home Depot's recent litigation strategies and delays in discovery. *Id.* ¶ 5, Exhibit A. Thus, H2 stated that the first case should proceed independently to ensure timely resolution. *Id.* Additionally, H2 provided that follow-up discovery in the second case would likely be necessary after the first case concludes. *Id.* The presence of different patents and potential differences in damages models between the cases also support H2's position that consolidation would result in inefficiencies. *Id.* H2 informed Home Depot that it would be willing to consolidate the second case into the first case, such that trial would proceed on both matters in April 2026, but Home Depot rejected that proposal. *Id.* ¶ 6, Exhibit B.

On June 6, 2025, the Court entered a Docket Control Order setting a *Markman* hearing for March 19, 2026, and trial for September 14, 2026. Although Home Depot asserts that Amazon would be willing to conduct claim construction on an earlier schedule, Amazon refuses to move up any other dates after the *Markman* hearing, including trial. *Id.* ¶ 7, Exhibit C. Additionally, although H2 has conducted some discovery on Home Depot's accused products, H2 has conducted no discovery to date on Amazon's accused products. Such an accelerated schedule in the Amazon Matter would prejudice H2's ability to litigate its case against Amazon.

D. Home Depot Files Petitions for IPR and PGR

During this period, Home Depot filed a petition for IPR on the '296 Patent on April 4, 2025. Additionally, Home Depot filed a petition for post-grant review ("PGR") on U.S. Patent No. 12,056,736, *a patent that H2 has not asserted against Home Depot*. Home Depot also informed H2 that it intended to file a PGR on every patent H2 gets in the future. *Id.* ¶ 8. H2 currently has pending patent applications that have not been issued, and Home Depot does not have knowledge of the claims in those applications. Therefore, Home Depot's stated intention to

file PGRs does not appear to be based on the merits of the claims, but rather for other strategic reasons.

II. ARGUMENTS AND AUTHORITIES

Analyzing all the factors, the Court should deny Home Depot's request to consolidate the current matter with the 694 Matter, or if it does consolidate, it should consolidate the matters with the trial occurring in April 2026—the present trial date of the 694 Matter.

The Court has discretion to consolidate two actions that “involve a common question of law or fact.” Fed. R. Civ. P. 42(a). Courts consider the following five factors in determining whether consolidation is appropriate: “(1) whether the actions are pending in the same court; (2) whether there are common parties; (3) whether there are common questions of law or fact; (4) whether there is risk of prejudice or confusion versus a risk of inconsistent adjudications if the cases are tried separately; and (5) whether consolidation will promote judicial economy.” *Entropic Commc'ns, LLC v. Charter Commc'ns, Inc.*, 2023 WL 5612452, at *1 (Gilstrap, J.). Although H2 does not dispute that the actions are before the same court, it maintains that the remaining factors weigh against consolidation. H2 analyzes the factors in order of importance.

A. Factor 4: Consolidation Would Significantly Prejudice H2

Home Depot understates the prejudice that consolidation would cause H2. First, consolidation would delay the resolution of the 694 Matter—the earlier-filed case—which is already further along in the litigation process. As Home Depot admits, the parties have already begun claim construction in the 694 Matter, with briefing deadlines set and approaching. Home Depot has also delayed providing relevant documents in the 694 Matter; for example, it took Home Depot over *four months* to produce emails after H2 first requested them. Consolidating the 694 Matter to align with the deadlines of the present case would unfairly disadvantage H2 for timely

filing and diligently prosecuting the 694 Matter and could incentivize Home Depot to continue its delay tactics in both litigations.

In *Smartflash LLC v. Google, Inc.*, Google, the defendant, moved to consolidate its case with an earlier-filed lawsuit against Samsung. 2014 WL 11071872, at *1 (E.D. Tex. July 7, 2014) (Mitchell, J.). Specifically, the plaintiff filed suit against Samsung, and it subpoenaed Google for information close to a year after filing suit against Samsung. *Id.* Shortly after sending the subpoena, the plaintiff filed a new lawsuit against Google. *Id.* The court denied Google's request, finding that "Google ha[d] taken actions that make consolidation unfeasible. Google could have entered the Samsung case long before its motion to consolidate." *Id.* at *3. The same is true here—Home Depot waited four months to seek consolidation, which has made consolidation much less feasible. The court in *Smartflash* refused to delay the schedule in the first-filed case, even by five months, because Google could have moved acted sooner. *Id.* For these same reasons, the Court should deny Home Depot's request to consolidate the two cases as it could have sought consolidation earlier without prejudicing H2.

Home Depot relies on *Hillman*, which is distinguishable. In *Hillman Group, Inc. v. Keyme, LLC*, the defendant proposed consolidating two cases, one set for trial in December 2020, and one set for trial in June 2021, proposing a new consolidated trial date of April 2021. 2020 WL 6938441, at *3 (E.D. Tex. Oct. 23, 2020). The Court granted the consolidation motion, in part, because the second-filed case's trial date was expedited. *Id.* Unlike *Hillman*, H2 previously raised the possibility of consolidating the two cases earlier, but Home Depot declined. Only four months later did Home Depot raise the idea—at a time that was no longer convenient. Further, H2 is pursuing a willfulness case against Home Depot in the current matter that may depend upon, in part, the resolution of the 694 Matter. The Court did not consider differing issues among the two

cases in *Hillman*. Finally, in the *Hillman* case, the parties did not raise any arguments regarding a potential strategy by the defendant to delay trial in order to obtain a favorable institution decision before the PTAB. Thus, *Hillman* is unpersuasive.

Home Depot's reliance on *Entropic* is also misplaced. In *Entropic*, the plaintiff filed two complaints on the same day. 2023 WL 5612452, at *2. Although it served the defendant with the first complaint on the same day, it delayed service of the second complaint in order to avoid consolidation. *Id.* Here, Home Depot has made no such allegation of gamesmanship (nor could it do so successfully). And again, the defendant in *Entropic* did not reject an initial request to consolidate the matters. Further, in *Entropic*, both cases sought to be consolidated were still in their early stages. *Id.*

Second, consolidating the two actions would deprive H2 of its ability to control its case strategy. Specifically, H2 has asserted a willfulness claim against Home Depot in the current matter that may depend upon, in part, the outcome of the 694 Matter. Contrary to Home Depot's arguments that H2 is "claim splitting" to get a "second bite at discovery, damages, and trial," that is not the case. H2 has already agreed to limited discovery in the 123 Matter with Home Depot, and its discovery in the 123 Matter will primarily focus on willfulness. H2's decision to file two cases is not inherently improper, and as Home Depot acknowledges, H2 intends to pursue distinct damages theories in each case.

Third, consolidating the *Markman* proceedings with Amazon would prejudice H2 by moving up the *Markman* proceeding for Amazon that is much earlier than standard for this Court. H2 has obtained little discovery in the Amazon Matter to date, nor has it been able to take any depositions of Amazon. Condensing the schedule such that H2 and Amazon brief claim

construction issues before H2 has obtained fulsome discovery is prejudicial to H2 in its case against Amazon.

In short, Home Depot's proposed consolidated schedule would reward it for delaying in requesting consolidation, and the Court should find this factor weighs against consolidation because Home Depot suggested consolidation at a time that would prejudice H2.

B. Factor 5: Home Depot's Conduct Indicates Its Motive Is Not to Avoid Unnecessary Costs or Conserve Judicial Resources, but Rather to Gain a Strategic Advantage Before the PTAB

Home Depot's pattern of conduct in this matter contradicts its stated goal of avoiding costs and conserving judicial resources. First, H2 proposed consolidation of the two cases shortly after it filed the instant case in February 2025, requesting that that instant case be on the same schedule as the 694 Matter. R. Mann Decl. ¶ 3. At that point, discovery was still in its infancy in the 694 Matter, and depositions had not begun. H2 was hopeful that the consolidation of the two matters would conserve judicial resources, but Home Depot rejected that proposal. H2 proceeded to pursue discovery in the 694 Matter, to take depositions, and to begin the claim construction process. The parties had an informal agreement that general discovery could be shared among both matters to preserve efficiencies. *Id.*

Then, on May 21, 2025, Home Depot raised for the first time consolidating the two cases to preserve judicial resources. *Id.* ¶ 4. Home Depot's actions belie its efficiency arguments—not only has it filed an IPR on the asserted patent, but it has also filed a post-grant review on a patent that H2 is not asserting against Home Depot and that H2 said it would not assert. *Id.* ¶ 8.

Second, Home Depot's suggestion that Amazon is willing to consolidate the *Markman* hearing between the three cases ignores that Amazon refuses to agree to accelerate any other deadlines after *Markman*. R. Mann Decl. ¶ 7, Exhibit C. In other words, Home Depot's position has shifted from proposing consolidated pretrial proceedings between the 123 Matter and the

Amazon Matter to now seeking consolidation of pretrial matters only between the 694 and 123 Matters, while placing the Amazon Matter on a separate schedule—except with respect to deadlines related to claim construction. Aside from condensing the *Markman* date to an earlier date for Amazon (that prejudices H2 as discussed above), Home Depot’s suggestion preserves little in terms of resources. To avoid prejudicing H2, the Court should keep the deadlines the same between the 123 Matter and the Amazon Matter, or require the 123 Matter and the 694 Matter to be consolidated on the 694 Matter’s schedule, without changing any deadlines in the Amazon Matter. That is the only consolidation schedule that would save judicial resources without prejudicing H2.

Finally, Home Depot has threatened to file a request for a post-grant review on every patent that is issued to H2, even without knowing the substance of the patents that have yet to be issued. Such litigation tactics demonstrate no genuine intent to preserve judicial resources, particularly when H2 does not even plan to assert these patents against Home Depot. Indeed, it is difficult to see how Home Depot’s threat could be about the merits, given that it is threatening to file PGRs on patents that have not even issued, and thus Home Depot could not know how meritorious a challenge could be. Actions like this are the opposite of efficiency.

C. Factor 3: Any Overlapping Questions of Law or Fact Do Not Outweigh the Different Issues That Will Be Presented to a Jury

Plaintiffs are incorrect in asserting that the mere involvement of related patents and accused products in both actions warrants consolidation of the cases. The instant case presents distinct legal issues that may depend on the determination of whether Home Depot has infringed H2’s patents in the 694 Matter. Specifically, H2 alleges in this case that Home Depot willfully infringes the ’247 Patent and the ’625 Patent, asserting that Home Depot had prior notice of these patents in the 694 Matter and willfully ignored its obligation to properly investigate potential infringement.

The resolution of this willfulness issue may, in part, depend on whether the court or a jury finds that Home Depot's actions constitute patent infringement in the 694 Matter . The outcome of this determination will significantly impact the legal strategies and potential remedies available in the 123 Matter, highlighting the importance of a detailed and nuanced analysis of the patent infringement claims.

Further, the damages models in the two cases differ due to the nature of the alleged infringements. In the 694 Matter, the damages model is based on standard patent infringement, which typically involves calculating the monetary compensation for unauthorized use of the patented technology. This model focuses on the actual harm suffered by the patent holder and aims to restore them to the position they would have occupied had the infringement not occurred. In contrast, the current case involves allegations of willful infringement, and H2 believes there will be a different damages model. For willful infringement, damages may include not only compensation for the unauthorized use, but also enhanced or punitive damages intended to deter intentional violations. This model reflects the egregious nature of willful infringement and seeks to impose a higher financial penalty on the infringer to discourage future misconduct.

Thus, this factor also weighs against consolidation.

D. Factors 1 and 2: The Actions Are Pending in the Same Court But Do Not Involve the Same Exact Parties

Finally, as to the first and second factors, although H2 does not dispute that the actions are currently pending before this Court, it is important to note that the actions in their current procedural posture involve different parties. Specifically, the second-filed case against Home Depot is actually consolidated with the case against Amazon. As discussed above, Home Depot's proposed "simple solution" to consolidate the *Markman* deadlines for all three cases is prejudicial and does not actually conserve judicial resources. Therefore, although the first factor may weigh

in favor of consolidation, the second factor is not so clear because the cases do not involve the same parties. Accordingly, the Court should find that consolidation is not appropriate under these circumstances.

III. CONCLUSION

In light of the foregoing, consolidation of the two cases would neither serve the interests of judicial efficiency nor serve the interests of fairness. The presence of distinct legal issues, differing damages models, and Home Depot's unique litigation strategies all underscore the need for separate proceedings to ensure a thorough and just examination of each matter. Therefore, H2 respectfully requests that the Court deny Home Depot's motion to consolidate the cases, thereby permitting each matter to proceed independently and ensuring that the specific complexities and nuances of each case are adequately addressed. In the alternative, should the Court determine that consolidation is appropriate, H2 respectfully requests that any consolidation occur on the trial schedule of the 694 matter.

Dated: July 8, 2025

Respectfully submitted,

/s/ Rex A. Mann

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on counsel of record, via email, on July 8, 2025.

/s/ Rex A. Mann
Rex A. Mann

[REDACTED]

[REDACTED]

UNITED STATES DISTRICT COURT
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MARSHALL DIVISION

H2 INTELLECT LLC,

Plaintiff,

v.

THE HOME DEPOT, INC.,
HOME DEPOT U.S.A., INC., AND
HOME DEPOT PRODUCT AUTHORITY,
LLC,

Defendants.

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Civil Action No. 2:25-cv-00123



**DECLARATION OF REX MANN IN SUPPORT OF PLAINTIFF’S RESPONSE TO
MOTION TO CONSOLIDATE**

I, Rex Mann, declare as follows:

1. I am a citizen of the United States over 18 years of age. I am a partner Winston & Strawn LLP, counsel for Plaintiff H2 Intellect LLC (“H2”). I submit this declaration on behalf of H2, in support of its Response to Defendants’ Motion to Consolidate. I have personal knowledge of the facts set forth in this declaration, and, if called upon as a witness, I could and would testify to such facts under oath.

2. H2 began sending notices for depositions and set them for early February 2025 in Case No. 2:24-CV-694 (the “694 Matter”).

3. On February 3, 2025, H2 filed a second lawsuit against Home Depot for patent infringement in the above-referenced matter. Shortly after filing the second lawsuit, on behalf of H2, I asked counsel for Home Depot if they would be willing to consolidate the above-referenced matter with the 694 Matter, but Home Depot rejected H2’s offer of consolidation. The parties generally agreed that discovery could be shared among both matters to preserve efficiencies.

4. On May 21, 2025, Home Depot raised the possibility of consolidating the two currently pending cases against Home Depot.

5. I responded on behalf of H2, stating that “H2 is not inclined to agree to [Home Depot’s] proposed schedule consolidation.” A true and correct copy of an excerpt of the email is attached as **Exhibit A**.

6. On June 10, 2025, H2 proposed having the cases consolidated into the 694 Matter. Home Depot rejected this offer. A true and correct copy of an excerpt of the email exchange related to this is attached as **Exhibit B**.

7. On June 25, 2025, counsel for Amazon confirmed that it would be opposed to moving its trial date, and any post-*Markman* deadlines that tee off the trial date. A true and correct copy of an excerpt of the email is attached as **Exhibit C**.

8. On a meet and confer on April 23, 2025, lead counsel for Home Depot told me that Home Depot was going to file a petition for post grant review on U.S. Patent No. 12,056,736, which H2 has not asserted against Home Depot. Home Depot then filed that PGR in early May. On the same meet and confer on April 23, 2025, lead counsel for Home Depot told me that Home Depot would also be filing a request for post-grant review on every new patent issued to H2. H2 has explained to Home Depot on multiple occasions that due to a particular element in the 736 patent, H2 does not believe Home Depot is infringing, but Home Depot is still currently proceeding with the PGR.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on Executed on July 8, 2025.



Rex Mann

EXHIBIT A

From: [Mann, Rex](#)
To: [Papastavros, Nick](#); [Boyce, Tyler](#)
Cc: [Winston-H2](#); [DLA-HD-H2](#); efindlay@findlaycraft.com
Subject: RE: H2 Intellect v. Home Depot (-123 case) Infringement Contentions
Date: Wednesday, May 21, 2025 7:55:35 PM
Attachments: [image004.png](#)

Nick,

H2 is not inclined to agree to your proposed schedule consolidation. H2 does not believe Home Depot is taking this case very seriously, and in light of Home Depot's recent positions and litigation tactics, the first case should proceed on schedule so this matter may be resolved as soon as possible. Moreover, although H2 previously proposed a consolidation several months ago and might have considered something at that time, given the passage of time and positions Home Depot has taken, H2 does not any longer believe it makes sense to consolidate. In addition, given the delays in discovery by Home Depot and the apparent misrepresentations Home Depot has made so far—which we will be raising with you separately soon—H2 believes that follow-up discovery in the second case, after discovery in the first case is closed, will likely be useful and necessary. There are also differences in the patents between the two cases, and H2 is also investigating potentially different damages models between the cases—so H2 believes that consolidation would lead to some significant inefficiencies.

H2 also questions whether Home Depot's request is truly motivated by efficiency, rather than strategic considerations in light of the parallel proceedings Home Depot has initiated. If efficiency was of primary importance to Home Depot, we think it would have worked against this goal to file the recent PGR on a patent H2 has said it does not intend to assert and that it does not believe Home Depot is infringing due to the time elements in the independent claims. Moreover, given the PTAB's recent interest in efficient use of its resources, H2 does not believe the PTAB is going to look favorably on Home Depot's tactics. To be clear, H2 plans to point out to the PTAB (with declaration support) that Home Depot is filing the PGR on a patent that H2 has told Home Depot it does not believe Home Depot is infringing. We also plan to state in the declaration that Home Depot has told H2 that it intends to file a PGR on every patent H2 gets in the future, which suggests Home Depot is not making these decisions based on the merits and is instead doing it for an ulterior motive that H2 believes the PTAB will not appreciate. H2 also believes that the PTAB will likely give this evidence considerable weight in its assessment of Home Depot's credibility in general at the PTAB.

Rex

Rex Mann

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winston.com



From: Papastavros, Nick <Nick.Papastavros@us.dlapiper.com>

Sent: Wednesday, May 21, 2025 8:47 AM

To: Mann, Rex <RMann@winston.com>; Boyce, Tyler <tboyce@winston.com>

Cc: Winston-H2 <Winston-H2@winston.com>; DLA-HD-H2 <DLA-HD-H2@us.dlapiper.com>; efindlay@findlaycraft.com

Subject: RE: H2 Intellect v. Home Depot (-123 case) Infringement Contentions

Rex,

Given the substantial overlap and efficiencies to be gained, we are interested in consolidating the two currently pending cases against Home Depot in their entirety on a track that is roughly in the middle of what the case 1 track is and what the anticipated case 2 track will be. Please let me know if H2 is open to this conceptually, and if so we can circulate a draft of a proposal.

Thanks

Nick

From: Mann, Rex <RMann@winston.com>

Sent: Monday, May 12, 2025 3:39 PM

To: Papastavros, Nick <Nick.Papastavros@us.dlapiper.com>; Boyce, Tyler <tboyce@winston.com>

Cc: Winston-H2 <Winston-H2@winston.com>; DLA-HD-H2 <DLA-HD-H2@us.dlapiper.com>

Subject: RE: H2 Intellect v. Home Depot (-123 case) Infringement Contentions

 EXTERNAL MESSAGE

Nick,

The same protective order is fine.

On cross-use, I think it would be fine that any discovery in the first case can be used in the second. But that wouldn't mean we don't get additional discovery in the second case (e.g., additional rogs, RFAs, email requests, and depositions). For example, just because someone was deposed in the first case would not necessarily mean they can't be deposed again—although it would be a factor to consider.

Rex

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EXHIBIT B

From: [Papastavros, Nick](#)
To: [Mann, Rex](#); [Nall, Jennifer](#); [Boyce, Tyler](#)
Cc: [Winston-H2](#); [DLA-HD-H2](#); efindlay@findlaycraft.com
Subject: RE: H2 Intellect v. Home Depot (-123 case) Infringement Contentions
Date: Thursday, June 12, 2025 3:23:32 PM
Attachments: [image003.png](#)



Thanks Rex. Home Depot wouldn't be interested in that type of proposal.

From: Mann, Rex <RMann@winston.com>
Sent: Wednesday, June 11, 2025 4:15 PM
To: Papastavros, Nick <Nick.Papastavros@us.dlapiper.com>; Nall, Jennifer <Jennifer.Nall@us.dlapiper.com>; Boyce, Tyler <tboyce@winston.com>
Cc: Winston-H2 <Winston-H2@winston.com>; DLA-HD-H2 <DLA-HD-H2@us.dlapiper.com>; efindlay@findlaycraft.com
Subject: RE: H2 Intellect v. Home Depot (-123 case) Infringement Contentions

 EXTERNAL MESSAGE

Hi Nick,

Did Home Depot have a chance to think about the proposal below? What is Home Depot's thought?

Regards,

Rex

Rex Mann

Partner

Winston & Strawn LLP

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From: Mann, Rex
Sent: Tuesday, June 10, 2025 4:25 PM
To: Papastavros, Nick <Nick.Papastavros@us.dlapiper.com>; Nall, Jennifer <Jennifer.Nall@us.dlapiper.com>; Boyce, Tyler <tboyce@winston.com>
Cc: Winston-H2 <Winston-H2@winston.com>; DLA-HD-H2 <DLA-HD-H2@us.dlapiper.com>; efindlay@findlaycraft.com

Subject: RE: H2 Intellect v. Home Depot (-123 case) Infringement Contentions

Hi Nick,

I just had the call with Catherine—I thought you were going to be on but no worries. I raised this with her and she can discuss with you, but in an effort to really try to figure out some way or resolving this and being more efficient, I wanted to see whether Home Depot was open to some type of agreement where we consolidate case 1 into case 2, and proceed with the case 2 trial date and schedule for all patents, in exchange for the IPR on the '296 patent going away. That would be the most efficient use of resources because it would be turning three proceedings into one proceeding. Let me know if Home Depot might be interested in something like that and I'm happy to discuss further.

Rex

Rex Mann

Partner

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From: Papastavros, Nick <Nick.Papastavros@us.dlapiper.com>

Sent: Tuesday, June 10, 2025 1:36 PM

To: Mann, Rex <RMann@winston.com>; Nall, Jennifer <Jennifer.Nall@us.dlapiper.com>; Boyce, Tyler <tboyce@winston.com>

Cc: Winston-H2 <Winston-H2@winston.com>; DLA-HD-H2 <DLA-HD-H2@us.dlapiper.com>; efindlay@findlaycraft.com

Subject: RE: H2 Intellect v. Home Depot (-123 case) Infringement Contentions

Rex:

We are not considering nor do we need to file two motions – just one, a motion to consolidate in case 2 as Jen stated below, like we discussed Friday and like I have been emailing you about since receiving infringement contentions in the two cases last month. While Judge Gilstrap may or may not choose the attached proposed schedule, if he doesn't pick exactly that track he may set a new scheduling conference or ask the parties to submit a new DCO. In multiple emails and in our Friday meet and confer with lead and local, you have never expressed willingness to consider a track midway between the two cases like the attached which would move the case 1 trial date accordingly. See, e.g. your June 3 email: "H2 is open to consolidation if we consolidate the second case into the first case (such that the trial date would be the current trial date of the first case)." This is the same position H2 has held since

EXHIBIT C

From: [Robert Green](#)
To: [Mann, Rex](#); [John Keville](#)
Cc: [LegalTm-Amazon-H2](#); [Winston-H2](#)
Subject: RE: Potential Amended Schedule - H2 Intellect LLC. v. Amazon.com, et al. No. 2:25-cv-00127
Date: Wednesday, June 25, 2025 1:36:13 PM



Rex,

That is right. Amazon is opposed to moving its trial date, as that would accelerate all the post-*Markman* deadlines that tee off the trial date.

Thanks,
Rob

From: Mann, Rex <RMann@winston.com>
Sent: Wednesday, June 25, 2025 1:31 PM
To: Robert Green <RGreen@sheppardmullin.com>; John Keville <JKeville@sheppardmullin.com>
Cc: LegalTm-Amazon-H2 <LegalTm-Amazon-H2@sheppardmullin.com>; Winston-H2 <Winston-H2@winston.com>
Subject: RE: Potential Amended Schedule - H2 Intellect LLC. v. Amazon.com, et al. No. 2:25-cv-00127

Rob,

Yes, both parties would obviously have separate trials. But right now Amazon and Home Depot are set for trial on the same date. So what I was asking was, since Home Depot is asking for a proposed trial date of July 15, 2026, would Amazon agree to a proposed trial date at the same time, recognizing of course that practically the trials may be a week or two apart, for example? I take it from your email that Amazon will not agree to that, but let me know if I'm wrong about that.

Rex

Rex Mann

Partner

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From: Robert Green <RGreen@sheppardmullin.com>
Sent: Wednesday, June 25, 2025 1:16 PM

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

H2 INTELLECT LLC,

Plaintiff,

v.

THE HOME DEPOT, INC.,
HOME DEPOT U.S.A., INC., AND
HOME DEPOT PRODUCT AUTHORITY,
LLC,

Defendants.

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Civil Action No. 2:25-cv-00123

PROPOSED ORDER

Before the Court is Defendants The Home Depot, Inc., Home Depot U.S.A., Inc., and Home Depot Product Authority, LLC's Opposed Motion to Consolidate this Case with Case No. 2:24-cv-00694 (E.D. Tex.). Having considered the Motion and the parties' briefing, IT IS HEREBY ORDERED that this Motion to Consolidate is DENIED.