

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Eumi K. Lee, Judge

NUMBER 14 B.V.,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 5:24-CV-02435-EKL
	)	
ANALOG DEVICES, INC., et al.,	)	
	)	
Defendants.	)	
_____	)	

San Jose, California
Wednesday, October 23, 2024

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

GREENFIELD, LLP
55 South Market Street, Suite 1500
San Jose, CA 95113

BY: RACHEL THOMAS, ATTORNEY AT LAW

MEUNIER, CARLIN & CURFMAN, LLC
999 Peachtree Street, Northeast, Suite 1300
Atlanta, GA 30309

**BY: JOHN W. HARBIN, ATTORNEY AT LAW
WARREN THOMAS, ATTORNEY AT LAW**

For Defendants:

ROPERS MAJESKI, PC
801 South Figueroa Street, Suite 2100
Los Angeles, CA 90017

**BY: KEVIN W. ISAACSON, ATTORNEY AT LAW
MICHAEL J. IOANNOU, ATTORNEY AT LAW**

REPORTED REMOTELY BY: Stephen W. Franklin, RMR, CRR, CPE
Official United States Reporter

Stephen W. Franklin, RMR, CRR, CPE
United States Court Reporter
SFranklinUSDC@aol.com - (561)313-8439

Wednesday - October 23, 2024

11:08 a.m.

P R O C E E D I N G S

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THE COURTROOM DEPUTY: So we're calling next
5:24-CV-2435-EKL, Number 14 B.V. versus Analog Devices, Inc.,
et al. Counsel, please come forward to state your appearances
on the record starting with counsel for plaintiff.

MS. THOMAS: Good morning, Your Honor, and to the
Court staff. Rachel Thomas, I'm appearing on behalf of
plaintiff Number 14 B.V. I'm also appearing specially on
behalf of counterdefendants Rudy Eschauzier and Nico van Rijn.
And I assume that Mr. Court Reporter has a copy of the caption,
so I won't spell their names.

MR. ISAACSON: Good morning, Your Honor. Kevin
Isaacson on behalf of the defendants and counterclaimants
Analog Devices, Inc., and Maxim Integrated Products, Inc.

MR. HARBIN: Are you finished?

MR. ISAACSON: Sorry. I jumped the gun there.

MR. HARBIN: That's all right.

Also, Your Honor, John Harbin with Meunier, Carlin &
Curfman here also on behalf of the plaintiff, Number 14, Inc.
and the two -- specially appearing on behalf of the two
individual counterdefendants. With me also is my colleague/
partner Warren Thomas with Meunier Carlin & Curfman.

THE COURT: All right. Good morning to everybody.

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1 **MR. HARBIN:** Good morning.

2 **MR. ISAACSON:** And, Your Honor, with me is Michael
3 Ioannou from Ropers & Majeski, as well.

4 **THE COURT:** Okay. All right. Before we head into
5 the substantive motion, the Court did circulate its tentative
6 in terms of the -- let me just double-check -- regarding the
7 sealing orders. So are there any concerns regarding that
8 tentative? I just want to make sure we're all on the same
9 page.

10 **MR. HARBIN:** No issue for the plaintiff, Your Honor.
11 We may ask to revisit some of it later on if it gets to be
12 burdensome, but they're pretty narrow restrictions, so no
13 issues with us right now.

14 **THE COURT:**

15 **MR. ISAACSON:** And no objection from our side, Your
16 Honor.

17 **THE COURT:** Wonderful.

18 All right. So with that, let me begin with the moving
19 party.

20 **MR. HARBIN:** So, Your Honor, John Harbin again for
21 the plaintiff/movant. I would like to reserve a few minutes
22 for rebuttal, if I may.

23 **THE COURT:** Absolutely.

24 **MR. HARBIN:** I'm going to focus my argument on the
25 12(b)(6) issues. Unless you have any specific questions, we

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1 are going to rest on the pleadings on our 12(b)(2) issues and
2 arguments.

3 We move to dismiss all of the counterclaims except the
4 three seeking declaratory judgment. I'll take them one by one.
5 Some of them will be grouped a bit on issues because there are
6 common issues between them.

7 The first is the first counterclaim for breach of
8 contract.

9 **THE COURT:** Uh-huh.

10 **MR. HARBIN:** The defendants -- I'll refer to them as
11 defendants instead of counterclaimants because it's shorter --
12 have properly attached the license as an exhibit, and that
13 contract controls over any inconsistent allegations in the
14 pleading. Because the license contradicts the allegations of
15 the breach the first counterclaim should be dismissed.

16 The defendants allege the inventors and counterdefendants,
17 the two individuals, breached their contract, their
18 obligations, by not producing patents that enable products to
19 meet the technical parameters in the license, and then they
20 requested royalties. And that's from page 15 of the opposition
21 brief in the pleadings. But the license does not require the
22 inventors to produce any useable technology or any patents or
23 to determine if royalties are payable. The license recognizes
24 the inventors may not produce anything.

25 Recital B says they may use their experience, et cetera,

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1 to develop knowhow. And their Recital C says in the event
2 knowhow leads to a potential patentable technology, Maxim,
3 defendant Maxim, may wish to license the technology. So the
4 only obligation on the inventors is that if they develop
5 patentable technology, that they offer Maxim a first
6 opportunity to license that technology. And they did that, and
7 then Maxim took the license.

8 My clients had no obligation to produce products under the
9 license; that was Maxim's job. And if Maxim developed products
10 using the patented technology, the contract put the
11 responsibility on Maxim to determine if royalties are payable.
12 Section 3-2 of the license specifically says Maxim -- and this
13 was done each time a new product that was covered by the patent
14 came out. In Section 3.2 of the license states that Maxim
15 shall evaluate each amplifier product launch and goes on to
16 say, to paraphrase, that the royalty payments, if any, shall be
17 conditioned on patents providing sufficient value based on the
18 technical parameters, specifications in the license.

19 Two asides, Your Honor. I say royalty payments, if any --

20 **THE COURT:** Uh-huh.

21 **MR. HARBIN:** -- because this is really -- this
22 initial determination is really a royalty eligibility
23 determination.

24 **THE COURT:** Right.

25 **MR. HARBIN:** The profits on actual sales had to

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1 surpass the minimum profitability threshold.

2 **THE COURT:** The [REDACTED].

3 **MR. HARBIN:** We'll keep the number out of the record.

4 **THE COURT:** Oh, I am sorry. Can you -- we'll strike
5 that. I'm reminding myself of my own tentative. My apologies,
6 Counsel. Thank you.

7 **MR. HARBIN:** And another aside. I refer to technical
8 parameters because -- this is a bit of a collateral issue, but
9 just so we're talking about the background, the defendant/
10 counterclaimants have taken the position these are absolute
11 technical specifications in the license the products had to
12 meet. That's not what the contract says. In fact, it says
13 having performance similar to those technical specifications
14 will show that the product has value.

15 And, of course, achieving the higher margin rate such that
16 a royalty is owed such that our clients would get their profit
17 share is another way to show the value, but that's for another
18 day.

19 If the Maxim decided royalties are paid, their decision,
20 their responsibility, the inventors or their assignee, the
21 plaintiff, Number 14, they assigned certain rights under the
22 license to Number 14, are entitled to accept the royalties and
23 the request -- there's no bar on requesting royalties. So the
24 defendants' claim of breach of the contract is based on alleged
25 obligations that do not exist and are, in fact, contrary to the

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1 terms of the actual contract, and for that reason count 1
2 should be dismissed.

3 Unless Your Honor has any question, I'm going to move on
4 to the next count.

5 **THE COURT:** No.

6 The Court was inclined -- at first was inclined to agree
7 in terms of that -- well, I'm going to save that question in
8 terms of a counterclaim --

9 **MR. HARBIN:** Okay.

10 **THE COURT:** -- in terms of ... I'm having --

11 **MR. ISAACSON:** The nonmoving party.

12 **THE COURT:** Nonmoving party.

13 Continue, Mr. Harbin.

14 **MR. HARBIN:** For the second counterclaim, it's the
15 breach of the implied covenant of good faith and fair dealing.
16 It is based on the same erroneous interpretation of the
17 contract obligations, and black letter law states one cannot
18 use that cause of action to impose duties on the contracting
19 parties that are beyond the specific terms of the contract.
20 And that is exactly what the defendant/counterclaimants are
21 trying to do. So for that reason, the same reason the breach
22 of contract claim should be dismissed, the breach of implied
23 covenant of good faith claim should be dismissed.

24 There's another reason that will be explained more when I
25 get to the next claims about alleged misrepresentations and

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1 fraud, but it's another reason why count 2 should be dismissed
2 is because --

3 **THE COURT:** The pleading requirement?

4 **MR. HARBIN:** -- it is based on the same fraud and
5 misrepresentation allegations. You can look, for example, at
6 paragraphs 66 to 69 of the counterclaim. And those allegations
7 are insufficient for the reason we'll talk about about the next
8 group of claims, and for that reason, as well, count 2 should
9 be dismissed. I call them counts, counterclaim 2. I like
10 shorter words.

11 **THE COURT:** I'm following you. I'll just say moving
12 and nonmoving party from now on, so ...

13 **MR. HARBIN:** So let's talk, then, about counts 4
14 to 7, which allege intentional misrepresentation -- that's 4;
15 negligent misrepresentation is 5; fraud by omission or
16 concealment is 6; and detrimental reliance is number 7. I'll
17 first talk about the first three and then the seventh.

18 There are some issues particular to specific ones, but
19 they all suffer from a few fatal flaws:

20 First, counts 4 and 6 are required to be pled with
21 particularity under Rule 9. The who, the what, the when, the
22 why and the how needs to be provided. The counterclaims fail
23 to do that, and they fail the lower threshold of Rule 8 and
24 *Twombly*.

25 Let's talk first about the what. Count 4 requires an

1 intentional misrepresentation of fact. Count 5 requires a
2 negligent misrepresentation of fact. There is no
3 misrepresentation of fact alleged. Defendants rely on only two
4 communications, two short e-mails. One asks simply what is the
5 status of this year's royalty payments. Now, there's no name
6 given with that, there's no date provided in the allegation.
7 So as to that portion of the claim, that grounds, they fail the
8 who and the when. But more fundamentally, there's no assertion
9 of fact. There's no assertion at all. It's a question.

10 As an aside, that question implies that Maxim has already
11 decided to pay a royalty, and they're asking, okay, what is --
12 you know, what's the status of the royalty payment. But that's
13 a second-level issue. These are not -- that is not an
14 actionable statement. It's not even a statement, it's a
15 question.

16 The second communication they rely on, and they express
17 really only two, they allege, you know, without support,
18 without any who, what, when, where, that there are
19 misrepresentations from 2010 to the present, but they have
20 clearly not provided, have not met the requirements of either
21 Rule 8 or particularly Rule 9 as to those general allegations.
22 There's no facts to support them. And they're explicit in
23 their counterclaim they're relying on these two communications.
24 The what, or what is the status of the royalty payment, and the
25 second one, which is a July 23 e-mail from Mr. Eschauzier I

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1 believe that says: We have put two products under royalties,
2 the only fact asserted that they -- in that statement that they
3 put products on the royalty list is true.

4 There's no allegation of what that means, what the effect
5 is of putting it on the royalty list. There's no statement
6 alleged or certainly not made in that brief e-mail about
7 technical capabilities. There's no representation, there's no
8 allegation that the inventors represented that they've done
9 their own evaluation of whether the products are royalty
10 bearing. That's, again, Maxim's responsibility. It is not a
11 misrepresentation.

12 And these snippets do not show that the inventors, the
13 individual counterdefendants, or Number 14 intended to
14 initialize or that they knew the products did not meet some
15 unspecified technical standard. Intent and scienter are
16 required elements, and the allegations fail for that reason, as
17 well, because those elements were not there, are not adequately
18 alleged.

19 Next, the allegations fail because they don't contain any
20 allegations about the why or the how. How did the products
21 fail to meet technical requirements? Conclusory allegations
22 are insufficient. Defendants suggest we should wait for expert
23 discovery to find out what they are talking about. That is
24 improper and unfair. They had to have a good-faith basis for
25 alleging that these products did not meet the technical

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1 specifications of the license.

2 As the Ninth Circuit noted in the *Simigan* (phonetic) case
3 we cited, Rule 9 is designed to prohibit a claimant from
4 putting the parties and the Court to enormous costs without
5 some factual basis. So they failed on that element, as well,
6 the how and the why.

7 And I should point out, Your Honor, just a reminder, and,
8 again, background, this is a good-faith basis for making this
9 allegation after Maxim and ADI, the other defendant, acquired
10 Maxim in 2021, this is after Maxim -- which is the entity that
11 made these products. Our clients did not -- did not license
12 them a product. Did not have a product to turn over to them.
13 They licensed to potentially, if we develop a patentable
14 technology, we'll license and Maxim will make the products. So
15 after 14 years of paying -- of making these products,
16 evaluating them for royalty eligibility, paying royalties, the
17 defendants now say these products don't meet the technical
18 specification. They must have some basis. They should be able
19 to specify what that is.

20 There's this specific -- let's talk about an issue that's
21 specific to the sixth counterclaim, which is fraud by omission
22 and concealment. That requires, among other things, a
23 suppression of a material fact by a party with a duty to
24 disclose. The allegations fail on both elements. There is no
25 adequate allegation of a suppression of a material fact.

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1 Again, the -- my clients are not responsible for
2 evaluating the technical capabilities of the products and
3 whether they're royalty eligible; that was Maxim. And there's
4 no sufficient allegation of a duty to disclose.

5 We cited the *LiMandri* case for discussing the four
6 situations where such a duty may arise. None of them apply
7 here. Defendant cited the employment relationship, but that
8 ended in May of 2015, eight years before this alleged
9 misrepresentation.

10 The final flaw, and one of the most significant ones, is
11 that all the counts 4 to 6, as well as count 7, which we'll
12 talk more in detail about in a minute, require a showing of
13 actual and reasonable reliance on these alleged
14 misrepresentations. Justifiable or reasonable reliance has not
15 been adequately pled and cannot really be.

16 Maxim and ADI are sophisticated businesses, world leaders
17 in the field. And again, we are talking about alleged
18 representations about the products that the defendants develop,
19 our clients helped develop them for a time while they were
20 employed. Defendants manufactured, defendants sold for more
21 than a decade.

22 As the *Hoffman* case we cited says: Experience and
23 sophistication are relevant in determining whether an alleged
24 reliance is justifiable. Here it is implausible to contend
25 that these companies, Maxim and its parent, would decide to pay

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1 royalties based on a question where in the royalty statements
2 are -- we put these on a list. It's particularly true when,
3 under the license, it is again Maxim's responsibility to
4 evaluate the products, their technical capabilities and
5 determine whether they're royalty eligible. It is
6 preposterous, frankly, to allege that Maxim decided to skip
7 that review based on either of those short e-mails or both of
8 them. And if the defendants did that, then that reliance is
9 clearly not reasonable. There can only be one conclusion
10 reached. We recognize that as a general matter the question of
11 the reasonableness of reliance is a question of fact that is
12 not always the case, as we've cited cases, and here there can
13 be only one conclusion, one reasonable conclusion, this alleged
14 reliance was not reasonable.

15 We cited the *Woods* case for the principle that a
16 sophisticated party cannot reasonably rely on statements that
17 contradict the clear language of the operative contract, and
18 that --

19 **THE COURT:** How much should the Court weigh or
20 consider that in terms of making those evaluates of
21 sophistication and so forth at the motion to dismiss phase?
22 Because that sounds very factual to me.

23 **MR. HARBIN:** It is factual, and I don't think it's an
24 issue that gets the most heaviest consideration.

25 **THE COURT:** I don't think so either.

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1 **MR. HARBIN:** I do think it's -- I do think it's worth
2 more consideration that these are the defendants' own products
3 that they've been making and paying royalties on for more than
4 a decade, but I do think it's a factor. And where it
5 particularly becomes a factor is when a sophisticated party --
6 in *Woods* it was a lawyer. I think that's the case where the
7 lawyer said, I didn't -- they told me the release didn't really
8 matter. I think it's such a case. And the Court said, wait a
9 minute, you're a lawyer, you signed a release, you don't read
10 it. You say they told you that the contract doesn't matter.

11 Here you have a billion-dollar company, large,
12 sophisticated company, with a license that puts the obligation
13 on it to evaluate its own products and determine if they're
14 going to pay a royalty. And it only makes sense, because under
15 their proposal the people -- under their theory, which is not
16 supported by the allegations, really, or the evidence, the
17 beneficiaries, the people that are going to get the royalty
18 payment, are the ones who are evaluated the products for
19 royalty eligibility. That's not way the contract was
20 structured, and the way it's structured that Maxim makes the
21 determination, it has to be a good-faith determination, if that
22 makes sense.

23 And by the way, Wood -- so *Woods* held, Your Honor, a
24 sophisticated party cannot reasonably rely on statements that
25 contradict the clear language of the operative contract, and

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1 that was a state -- that was a holding in the process of
2 granting a motion to dismiss on the pleadings.

3 **THE COURT:** Okay. Thank you.

4 So I will inform you that we're already at 17 minutes.
5 That's okay. You all have been very patient this morning. The
6 Court will extend some additional time, so please continue.

7 I will say with the Open Book, frankly speaking, I don't
8 see a basis for that claim, having seen many collections cases
9 back in the day. So just in terms of focusing ...

10 **MR. HARBIN:** Your Honor, I also -- I got a few more
11 minutes on these fraud claims and the detrimental reliance
12 claim, and then I'll just spend a couple minutes on the last
13 three, which are the sort of ancillary claims.

14 **THE COURT:** Okay.

15 **MR. HARBIN:** Including that one.

16 And a final note about this alleged -- this issue of
17 whether they've adequately pled reliance. The counterclaim
18 actually undercuts their argument that there was any reliance,
19 much less reasonable reliance. And you can look at at least
20 paragraphs 38, 69 and 77. As they admitted in the
21 counterclaim, when this e-mail was sent, we are putting the --
22 we've put these two products on the royalty list. The response
23 from Maxim was why, why did you add those, asking the question,
24 exercising their responsibility as being the ones who are
25 evaluating whether royalties are actually owed. So they didn't

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1 say, okay, we'll pay a royalty, further undercutting their
2 theory.

3 So counts 4 to 6 should be dismissed for each of these
4 reasons. And for the same reasons, the 5th and 7th affirmative
5 defenses should be stricken.

6 Briefly on counterclaim 7, detrimental reliance. It
7 requires two things, a clear unambiguous promise by the
8 promisor and reasonable and foreseeable reliance. These two
9 communications, the question about where the royalty payment is
10 and this statement where we've put two products on the royalty
11 list, those are not promises, much less unambiguous promises.
12 So the first element is not adequately pled. And for the same
13 reasons we've talked about, defendants have not adequately
14 alleged reasonable or really even actual reliance on these
15 e-mails. So the seventh counterclaim should also be dismissed.

16 Briefly on the other three. I agree it's not an Open Book
17 count, and we cited the -- and that's count 11. We cited the
18 *Eloquence* case, a general rule is express contract is not an
19 Open Book account.

20 There's a general reason why all three of these also fail,
21 and that is they all are based on and in fact incorporate the
22 allegations of misrepresentation and fraud, and for the same
23 reason counts 1 through 7 should be dismissed, these should be
24 dismissed on that grounds.

25 The open account, Open Book account claim should be

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1 dismissed for the reason you said. I think the case we cited,
2 *Eloquence*, said a general rule is that express contract -- an
3 express contract is not an Open Book account.

4 The 11th count -- or, excuse me. The 12th count for money
5 it hadn't received, we've cited a case that held one cannot
6 pursue that claim when the relationship is governed by a
7 contract at least absent a showing of total failure of
8 consideration, which the defendants have not alleged and really
9 cannot allege.

10 Finally, the unfair competition count, counterclaim 13.

11 **THE COURT:** Unjust enrichment?

12 **MR. HARBIN:** I'm sorry, unjust enrichment, right.

13 We submit the majority of that rule, as we briefed, is
14 that unjust enrichment is not a viable standalone cause of
15 action in California --

16 **THE COURT:** I'm smiling, because there is a split in
17 authority about this in California, which I've run into more
18 than once, so ...

19 **MR. HARBIN:** Right.

20 We think it's properly limited to that narrow exception of
21 the insurer requesting reimbursement from its attorney.

22 But separately, and in addition to the failure of the
23 underlying allegation, we cited the *Limner* (phonetic) case
24 which holds you cannot claim unjust enrichment where the
25 parties' relationship is governed by a contract, as it

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1 indisputably is here.

2 So for these reasons, we think counterclaims 11 through 13
3 should also be dismissed. Unless Your Honor has anything else,
4 that's all I have.

5 **THE COURT:** No, thank you.

6 **MR. HARBIN:** Thank you.

7 **MR. ISAACSON:** All right. I would like to first
8 address the breach of contract claim.

9 So we have a contract here, and in this contract the
10 inventors and Maxim agreed on specifications that would be used
11 to decide whether they would ever be entitled to royalties. In
12 Section 2.5 to 2.7, it very clearly lays out that the parties
13 agreed that these specifications would be used to determine if
14 royalties would be made. And that was not a burden on Maxim,
15 nor was it on the inventors. It was a joint agreement that the
16 parties reached that they would abide by these specifications
17 if it -- as a condition for any royalties to be paid in the
18 first place.

19 So when the original patents were issued to these
20 inventors, who were employees at the time that these patents
21 were issued, the obligation was jointly held by these inventors
22 to ask for royalties only if their patents could enable
23 products that would meet the specifications listed. And they
24 asked for royalties, and they were -- Maxim relied on them.
25 These inventors were running the divisions. They're

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1 controlling. They're high-level engineers.

2 **THE COURT:** Back when they were employees.

3 **MR. ISAACSON:** Back when they were employees.

4 **THE COURT:** And they left.

5 **MR. ISAACSON:** And they left.

6 But this is the background. The way these royalties
7 started was these inventors, as employees developing patents
8 and informing their own company that they met the requirements
9 to receive royalties, that they would enable products that
10 would meet the specifications that they agreed to in the
11 license agreement. And there's nothing that says that an
12 employer cannot rely on the statements that their employees
13 make. And this whole process, this whole action of paying
14 royalties, started with that initial misrepresentation that
15 their patents were sufficient to enable products that would
16 meet the specification.

17 **THE COURT:** So are counterdefendants saying because
18 they never -- saying that these products -- I'm going to mess
19 up my wording here products versus this, but that this
20 technology never worked nine or 10 years ago and that we should
21 be going back to that point in terms of this lawsuit?

22 **MR. ISAACSON:** At this point we have not alleged
23 going back to that date and time, no. We have alleged claims
24 that fall within the statute of limitations of the statements
25 that were made in -- that were cited in the counterclaim.

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1 **THE COURT:** And that -- and the allegation is
2 basically that this was going on for 10 years, and -- or
3 however many years, and that --

4 **MR. ISAACSON:** These individuals as employees of the
5 company were able to say, our products meet specifications, so
6 pay royalties. And now they're saying that it was Maxim's
7 obligation to make that determine, when they're the ones
8 advising Maxim as employees of the company itself. They're
9 running the department. They're running --

10 **THE COURT:** When did they leave?

11 **MR. ISAACSON:** 2015, I believe, Your Honor.

12 **THE COURT:** Okay. So that for years that this was
13 happening, nine years this was happening, and that only within
14 the last couple of years that Maxim realized it?

15 **MR. ISAACSON:** Yes, Your Honor. Because this process
16 was already started, there is a royalty list that was generated
17 while they were still employed, and that royalty -- products
18 were added to that royalty list on an ongoing basis.

19 **THE COURT:** Okay. So you're alleging -- so I just
20 want to make sure I understand counterclaimant's theory. So is
21 the theory that counterclaimant, Maxim -- well, Analog -- I'm
22 going to say counterclaimant -- just discovered the alleged
23 fraud in the last couple years?

24 **MR. ISAACSON:** Yes, Your Honor.

25 **THE COURT:** Was that alleged in the complaint,

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1 counterclaims?

2 **MR. HARBIN:** I don't know if I have a cite for Your
3 Honor at this moment.

4 **THE COURT:** I'm just going to pull up your -- the
5 answer. I just, I don't recall this sort of discovered,
6 alleged discovered fraud, but it's been --

7 **MR. ISAACSON:** I believe there is a statement that it
8 was recently discovered. And if not, that could be added with
9 the detail needed on an amendment.

10 **THE COURT:** So let me -- can you just play out --
11 with this in mind, can you just play out your theory somewhat?
12 Because I'm ...

13 **MR. ISAACSON:** Sure.

14 **THE COURT:** I don't recall that, so I want to make
15 sure I understand.

16 **MR. ISAACSON:** Apologize.

17 **THE COURT:** So I think it will shape the rest of the
18 discussion.

19 **MR. ISAACSON:** Sure.

20 So the inventors, they come to Maxim. Part of their
21 initial employment is signing a license agreement. Their whole
22 position and purpose in the company is to develop these
23 products for which they will receive royalties later on if
24 they're successful in developing and if they're commercially --
25 if they have -- if the patents they design and acquire have --

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United States Court Reporter
SFranklinUSDC@aol.com - (561)313-8439

1 contribute enough value to the products.

2 While still employed, patents are issued to the inventors.
3 They demand a -- they offer the right of first refusal. Maxim
4 accepts that right or licenses the patents. They demand their
5 one-time payment because their patents should enable products
6 that meet the specifications. That one-time payment is made.
7 Products are developed with the inventors as employees. And as
8 they're developed, the inventors demand royalties on all
9 products while they're there to approve the royalties as
10 meeting the specifications. And after the term -- their
11 employment ends, they continue overseeing products that are
12 developed -- or not overseeing, but watching and consulting on
13 products that are developed by Maxim, and continue demanding
14 royalties with this --

15 **THE COURT:** How do they oversee the products?

16 **MR. ISAACSON:** I should not say "oversee," but
17 they -- they're obviously looking at what products are coming
18 out in the market. They are the ones that are adding products
19 to the royalty list, as their statement said. So that was them
20 looking and being aware of what products are coming out and
21 demanding royalties for them. And after their employment
22 ended, my understanding is that they, the inventors, continued
23 to consult for Maxim on the same business, on the same
24 products.

25 **THE COURT:** On the same products, or the same ...

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United States Court Reporter
SFranklinUSDC@aol.com - (561) 313-8439

1 **MR. ISAACSON:** Same products and developing
2 additional products.

3 **THE COURT:** Okay.

4 **MR. ISAACSON:** So end employment and become
5 consultants.

6 With that relationship, they're in a position where Maxim
7 still relies on their expertise, their knowledge, their
8 familiarity with the products, their firsthand knowledge of the
9 contract and the specifications that they negotiated.

10 **THE COURT:** I don't fully understand the technology
11 yet. I will at some point, I'm sure. But could -- because
12 we're talking about overseeing products or -- but then there's
13 a step back from overseeing. Is it counterclaimant's
14 allegation that somehow the inventors should have known whether
15 or not these were working or not, like the -- whether or not
16 the technology was sufficient or not?

17 **MR. ISAACSON:** Yes. Our position is that the
18 inventors should have known for every product that they ever
19 suggested should be on the royalty list, or insisted or
20 misrepresented should be on the royalty list, that they knew
21 the specifications and whether or not they would meet the
22 standards they agreed to in the license agreement.

23 **THE COURT:** I'm not seeing this allegation of
24 discovery of fraud, but it's something to consider. And you're
25 saying that counterclaimants could amend to address that.

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United States Court Reporter
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1 **MR. ISAACSON:** And I just want to -- I would add that
2 since we are not asking for damages outside of the statute of
3 limitations period, the delayed discovery on that
4 misrepresentation is maybe not an essential allegation.

5 **THE COURT:** I would need to think that through,
6 because the theory which you just gave me actually relied on
7 that.

8 **MR. ISAACSON:** If I may clarify, the background
9 story -- we're not alleging damages from that time period.

10 **THE COURT:** Okay.

11 **MR. ISAACSON:** The e-mail that Mr. Harbin cited to,
12 it says: We have added products to the royalty list. And it
13 has two numbers. That statement was made in I believe 2023.

14 **THE COURT:** Uh-huh.

15 **MR. HARBIN:** And that is new products being added.
16 And this is an actual representation.

17 **THE COURT:** Uh-huh.

18 **MR. HARBIN:** This is the inventor, the patentee,
19 telling the company: We've added these to the royalty list.

20 **THE COURT:** And so is this lawsuit just about those
21 two?

22 **MR. ISAACSON:** As it's been alleged, it is --

23 **THE COURT:** Because I wasn't sure with the
24 counterclaims.

25 **MR. ISAACSON:** As we've alleged, it is about those

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1 two and potentially others, yeah.

2 **THE COURT:** Well, it's the "and potentially others".
3 Like, so is it just about those two, or is it about others?

4 **MR. ISAACSON:** I believe at this time we've alleged
5 it on those two, Your Honor.

6 **THE COURT:** Okay.

7 **MR. ISAACSON:** And so as far as this statement
8 being -- whether it can be a misrepresentation, whether Maxim
9 can reasonably rely, we've cited cases, *OCM* and others, where
10 in order to decide as a matter of law on a motion to dismiss so
11 there's no way to reasonably rely, it has to be absolutely
12 ridiculous or preposterous, or you would have to stick your
13 head in the sand in order to not be aware of the falsity of the
14 statement that's being made.

15 In *Woods*, *Woods* wasn't even decided solely on this issue
16 of a sophisticated party can't rely. The case said that
17 Mr. Woods was a sophisticated attorney, but it's not the
18 general holding that a sophisticated party can't rely on
19 statements outside of a contract.

20 **THE COURT:** And so now we're at the counterclaims 4
21 through 9 in terms of our discussion. Or 4 through 7.

22 **MR. HARBIN:** I guess we kinda went that way, starting
23 on breach of contract. Yes, I'm talking about the --

24 **THE COURT:** Okay.

25 (Simultaneous crosstalk.)

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1 **MR. ISAACSON:** And so I think Maxim has the right to
2 rely on statements the contracting party makes with it.
3 Otherwise, contracting parties would have a blank check to lie,
4 and if the other contracting party doesn't discover the falsity
5 of their statement, they get away with it. I just don't see
6 how that works. If someone is told, hey, products are on the
7 royalty list, it suggests that -- two things, at least: That
8 the inventors have the right to add products unilaterally to
9 the royalty list such that they would already be royalty
10 bearing, or that the evaluation had already been made such that
11 royalties should be paid by Maxim, leading Maxim to make the
12 payments, make royalty payments on those products, even though
13 they did not meet the specifications for the royalties we paid.

14 If I may go back to -- on the breach of contract, so our
15 position remains on the breach of contract issue, the inventors
16 never developed patents sufficient to enable products that meet
17 specification. And they've asked for royalties on products
18 that don't meet specification for years, and that does not
19 comply with their obligation to only receive royalties if they
20 provide those patents, deliver the patents and the technology
21 to enable products that meet specification.

22 As far as the breach of good faith and fair dealing, we
23 are not suggesting that there is an obligation beyond those in
24 the contract, but rather this is kind of an alternative to the
25 breach of contract where, if it's not an obligation of the

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1 inventors to only ask for a product -- for royalties on a
2 product that meet specification, it certainly is not in good
3 faith for them to do so. Parties are not allowed to --
4 parties -- licensing parties in particular -- we cited a case,
5 *Wolf versus Walt Disney*, that licensing parties will use their
6 best efforts in good faith to further the contract's purpose.

7 It's hard to see how the inventors here furthered the
8 purpose of the contract in good faith when they did not deliver
9 patented technology sufficient to produce products to meet the
10 specifications they agreed to, when they're demanding royalties
11 on products that don't reach that threshold, that a good
12 faith -- if the inventors are using their best efforts in good
13 faith to fulfill that purpose of the contract, they would not
14 be asking royalties or they would disclose our products don't
15 meet the specification, but we think we should get royalties
16 anyway. They're good enough, even though they don't pass the
17 thresholds.

18 **THE COURT:** So does counsel agree with the Open Book,
19 the money hadn't received -- those seem like questions of
20 straight, looking at the elements of *Casey*, and they either
21 apply or don't apply -- I'm struggling to see how they apply
22 here at all just on their case, and should those are dismissed
23 without leave to amend?

24 **MR. ISAACSON:** We would have no objection to them
25 being dismissed without leave to amend at this stage.

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1 **THE COURT:** Okay. So I do want to make sure you go
2 back to the 12(b)(2) arguments, as well, even though they
3 weren't raised directly in terms of -- because -- and the
4 Court -- I was struck. It's been a long time since I've looked
5 at forum non conveniens, walking down memorandum lane, and I
6 was struck by the standard, the extraordinary circumstances and
7 how limited arguably those circumstances can be under at least
8 some of the Ninth Circuit case law, including the *Sun* case.
9 And so the Court didn't issue a tentative on the substance, but
10 frankly it seems like given that we only have one provision
11 here, which is at issue, unlike some of the other cases that
12 were cited, that it may be appropriate.

13 **MR. ISAACSON:** If I may clarify one provision, which
14 provision are you talking about, Your Honor?

15 **THE COURT:** Well, in some of the other cases that
16 were cited by counsel, there were two competing provisions in
17 terms of forum selection.

18 **MR. ISAACSON:** Forum selection.

19 **THE COURT:** So, but here we have one forum selection
20 provision, and I'm struggling to see how it doesn't apply. I
21 know there's an argument that -- well, let me just open it up
22 to you.

23 **MR. ISAACSON:** Sure.

24 **THE WITNESS:** In the reply the moving party, for
25 convenience, the moving party cited to I believe it's

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1 *PoleMaster*.

2 **THE COURT:** Uh-huh.

3 **MR. HARBIN:** And that case has a different clause.
4 You look at the language of the clause, you gotta look at what
5 the parties intended by it. The language of that clause says
6 claims will be arbitrated in the defendants' site. It's
7 focused on where parties are going to defend claims.

8 If we look at the language in the license agreement, the
9 license agreement does not entitle parties to defend at a
10 certain location. It's actually the opposite. The language
11 reads that: Any dispute, controversy or claim arising out of
12 or in connection with the agreement which the parties fail to
13 settle amicably shall be governed by the following provisions.
14 And then it says: If Maxim is the party that files, initiates
15 or asserts a claim in the capacity of a plaintiff, then such
16 claim shall be submitted to a court of law in the Netherlands.

17 And similarly, if any or both of inventors is the party
18 that files, initiates or asserts a claim in the capacity of a
19 plaintiff, then such claim shall be submitted to the state or
20 federal courts in Santa Clara County, California.

21 **THE COURT:** Uh-huh.

22 **MR. ISAACSON:** The difference here being in
23 *PoleMaster* it focused on the arbitration that the defendants
24 cite, where it would be defended. Here it says if parties have
25 a dispute, whoever fires the first shot will have to start the

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1 case as the plaintiff, and you'll start it in one location or
2 another location. It doesn't talk about counterclaims. It
3 doesn't talk about resolving all disputes in the same.

4 So I believe it creates the same chaos and inefficiency to
5 suggest that this clause says we're gonna do claims all around
6 the world, that if the counterclaimants or if the moving
7 parties, the inventors want to bring a claim against Maxim,
8 they have to file it in Santa Clara County here, and that if
9 Maxim wants to bring a counterclaim, they have to go to the
10 Netherlands and file that. And if the counterclaim -- if the
11 inventors then have a responsive claim, they gotta come back
12 here and bring it back here. I just don't see how that is what
13 comes from this.

14 **THE COURT:** I gotta say it was a little bit
15 counterintuitive to me as well, but the -- but in terms of
16 looking at the factors and the definition of extraordinary
17 circumstances and when a provision would not be followed, can
18 you apply the law for me?

19 **MR. ISAACSON:** I think this is one of those
20 extraordinary circumstances, Your Honor.

21 **THE COURT:** Okay. How so?

22 **MR. ISAACSON:** We have -- in the motion to dismiss,
23 the inventors accuse Maxim of trying to sidestep its
24 obligation, and we actually have kind of the flip here. And a
25 lot of the argument they claimed both that we should be

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1 fighting this out in many different forums, which is -- it's
2 hard to read that from this limited provision. If it was more
3 explicit, then perhaps, but this is not that.

4 Additionally, here the inventors have assigned -- have
5 alleged that they've assigned their rights to a company, which
6 we believe is a simple pass-through company. It has no
7 operations. Its only duty is to receive royalties and deliver
8 those royalties to the inventors. Under their explanation
9 they're not even in this lawsuit, so they shouldn't have claims
10 against them here, it allows a party in a contract to
11 unilaterally assign it to a shell company and avoid facing
12 claims as part of that. If they were here we wouldn't be
13 talking about personal jurisdiction, and it would make it much
14 more difficult, I believe, to send the counterclaims to the
15 Netherlands to be resolved.

16 Additionally, as the inventors argue, only two owners of
17 this company and the only two financially interested persons,
18 there are not a lot of factors weighing against having them
19 litigate all the claims here. They are already going to be
20 litigating their claims and defenses here. They're going to be
21 litigating a lot of issues. They're going to be here for
22 depositions, we're going to do discovery, there are going to be
23 trials here. They're going to be here.

24 And so the thought of having that all proceed here and
25 have related claims in the Netherlands is a rather

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1 extraordinary circumstance that doesn't seem to -- that weighs
2 against enforcing even a forum selection clause that is valid
3 and applicable.

4 **THE COURT:** Let me just double-check one thing. I've
5 pulled your briefs back up.

6 All right. Anything further, Counsel?

7 **MR. ISAACSON:** Just that I would add as we have
8 stated, there is plenty of places where we can amend, where we
9 can add additional details that explains how reliance happened
10 on those causes of action, add detail to our position that the
11 company is an alterego of the defendant individual inventors,
12 and additional factors, and we request leave to amend on all
13 counts except for the Open Book and the open account, 13 and
14 14.

15 **THE COURT:** Across the board I'll be frank. I have
16 concerns even from -- almost from a Rule 8 standpoint that
17 these are very barebones allegations. And so I appreciate you
18 raising that point of the request for leave to amend and what
19 you could add.

20 All right. Well, thank you.

21 **MR. ISAACSON:** May I get some water?

22 **THE COURT:** Absolutely. Please.

23 **MR. HARBIN:** You want me to wait 'til he's back?

24 **THE COURT:** He can walk around. It's all good.

25 We're approaching the lunch hour. We'll get more informal.

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1 All right. Mr. Harbin.

2 **MR. HARBIN:** Your Honor, a few points.

3 To your comment, the allegations of intentional
4 misrepresentation, negligent misrepresentation and fraud by
5 omission are governed by Rule 9. They have to show who, what,
6 when, where.

7 **THE COURT:** Oh, yes, I realize, that, but ...

8 **MR. HARBIN:** Go ahead, I'm sorry.

9 **THE COURT:** No, I realize that.

10 **MR. HARBIN:** And I heard defendants' counsel make
11 statements like going back to their employment, they did the
12 analysis, Maxim relied on them to do the analysis. They don't
13 dispute that it's Maxim's responsibility to do the analysis.
14 They didn't dispute it in the briefing; they don't dispute it
15 now. It was Maxim's duty under the contract to analyze the
16 products once a new product came out to determine if it meets
17 the technical specification and there's royalty owed.

18 He now claims from the beginning, I believe he said that
19 actually Maxim was relying on the investors, Mr. Eschauzier and
20 Mr. van Rijn, to do this evaluation. That is nowhere alleged.
21 That is certainly not alleged with the particularity required
22 by Rule 9. It is pure attorney argument.

23 Here is what they allege, Your Honor. In paragraph 75 of
24 the counterclaim, counterclaim defendants falsely represented
25 to ADI and Maxim on multiple occasions from 2010 to the

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1 present. That doesn't even say what they allegedly
2 misrepresented, it said they falsely represented something. It
3 doesn't say -- and even today it doesn't say to whom, it
4 doesn't say when, it doesn't say exactly what was said, it
5 doesn't say what their response was. It has none of the
6 required elements to file a claim against these two individual
7 inventors -- these are two individuals -- for fraud and
8 intentional misrepresentation.

9 They then say that specifically counterclaimants bring
10 this cause of action specifically on those representations with
11 any applicable statute of limitations period, including
12 statements in 2023 and 2024. Those are the two statements I
13 talk about. That is what they themselves said their cause of
14 action was based on. They cannot now come in and say, oh,
15 well, there was all these other unknown, unspecified
16 representations. It is -- it is -- it doesn't say the
17 counterclaim is unfair to the defendant, the counterclaim
18 defendants. And there is no basis to allow them to amend. The
19 flaws are too fundamental. There's no way they can allege
20 reasonable reliance. So they should not be granted leave to
21 amend.

22 A few other things.

23 Just a couple things about the license I wanted to go over
24 to show how much care there is. The first step, he mentioned
25 something about the counterclaim defendants, Mr. Eschauzier and

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1 Mr. van Rijn demanded payment of a one-time royalty, which is
2 the [REDACTED] is payable at -- if Maxim elects to license the
3 first patent. That's covered by 2.3, Your Honor. And it says:
4 In case Maxim wishes to exercise its rights to first refusal
5 under Clause 2.1 above, Maxim should be obligated to do so
6 within 200 days from the date of issuance of the first -- of
7 the amplifier design patents. They had over six months, Your
8 Honor, to decide if they were even going to pay the first
9 \$100,000.

10 They, by the way, under the license -- and I can point you
11 to provisions. My clients are the inventors. My clients own
12 the patents. Maxim called the strategy under the license.
13 They were entitled to decide on the strategy for prosecuting
14 the patents. They hired the counsel. They paid the cost.
15 Then after they've done all that, they've involved -- been
16 involved in the entire patent prosecution process, they have
17 another six months to decide whether they're going to pay the
18 first \$100,000. And that's, again, Section 2.3 of the license,
19 which is Exhibit E to their opposition brief.

20 And they had -- well, that's not in evidence.

21 **THE COURT:** I hear your point, Mr. Harbin.

22 **MR. HARBIN:** They point out the -- they cited the *OCM*
23 case. The *OCM* case says -- deals with whether -- this is a
24 quote -- conduct is manifestly unreasonable in light of his own
25 intelligence and information, or information. And here, that's

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1 where the sophistication comes back. Again, that is a question
2 to consider. Here you have a sophisticated company, fully
3 knowledgeable about these products, responsible for evaluation
4 the technical features, and knowing the terms of the license
5 they agreed to, which puts the responsibility on them.

6 So under the *OCM* case, the -- there is no reasonable
7 reliance. The claims for misrepresentations and fraud should
8 be dismissed.

9 Briefly regarding the -- oh, I did want to ... the -- this
10 issue came up, Your Honor. The initial issue here and a
11 fundamental issue in the case we haven't talked about is a
12 change in the royalty payment, which doesn't have anything to
13 do with this issue of whether the products have -- meet the
14 technical specifications in the license. And the ADI, after
15 paying royalties for two years, for the royalty payment for
16 2023, early this year they changed how they calculated it.
17 They said that the royalty, again, is you take the sales, you
18 deduct standard costs, you look at -- you deduct your costs.
19 They had an example in the annex contract. And you take the
20 revenue, deduct the costs.

21 If the margin exceeds that threshold, you, the inventors,
22 get that share of the profits. You get it above that
23 percentage. So that profit goes to you. After 12 or 13 years,
24 ADI came in and said, well, the license says costs are
25 determined according to GAP. And then in GAP, royalty payments

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1 are a cost. So we are going to deduct the royalty payments to
2 you in determining what your royalty is, when it's totally
3 contrary to the entire structure of the agreement. The
4 structure you is look at these other costs. It lays out the
5 costs. You determine the margin. If we received it, you the
6 inventors get all the excess profit. Now, they're trying to
7 call it a cost.

8 If you literally did that, every year you would say, well,
9 for every product that -- every sale that exceeded that
10 percentage, okay, we're going to pay that royalty. Oh, but
11 that royalty is a cost, so you're not getting it. It's
12 nonsensical. It's nonsensical.

13 So what they did, what they do --

14 **THE COURT:** But Mr. Harbin, what are you tying this
15 back to at this point in terms of --

16 **MR. HARBIN:** I'm sorry. I'll move away from --

17 **THE COURT:** Because I feel like we're getting well
18 into the merits. I want to make sure we get to case management
19 today, as well.

20 **MR. HARBIN:** When we raise this and -- when we raised
21 this, that's when they then said, oh, and the technical
22 specifications are not met, so you're not entitled to
23 royalty --

24 **THE COURT:** Right. You're talking about the general
25 circumstances.

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1 **MR. HARBIN:** Right.

2 And in the counterclaim they allege, I think it's
3 paragraph 108, that -- I've got it here somewhere.
4 Paragraph 109, that, quote: It has now come to light the
5 inventors were not entitled to royalty payments since 2010. So
6 that's what's alleged in the counterclaim.

7 Briefly on the 12(b)(2) issues, Your Honor. We think that
8 clause is exactly what you said it is. It's where you're going
9 to defend it. It's going to be brought in the area where the
10 person defending the claim is going to be. And when they're
11 bringing it against someone in the Netherlands, it's going to
12 be in the Netherlands. If it's brought against the defendants
13 in California, it's going to be in California. So it is
14 exactly what you said. It is the venue selection is where the
15 defendant is based.

16 **THE COURT:** Okay.

17 **MR. HARBIN:** And there is no allegation of alterego.
18 There's no basis to allege alterego in this case, Your Honor.
19 So I just want to point that out.

20 That's all I have. Thank you.

21 **THE COURT:** All right. Thank you.

22 Submitted?

23 **MR. ISAACSON:** Yes.

24 **THE COURT:** One quick thing for the record which was
25 just pointed out to me. The -- there was reference in

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1 Mr. Harbin's statement to the amount of the one-time licensing
2 fee.

3 **MR. HARBIN:** Oh I apologize.

4 **THE COURT:** So I'm also going to ask Stephen to seal
5 that reference to the one-time licensing fee. It should have a
6 dollar figure attached to it.

7 **MR. ISAACSON:** Thank you, Your Honor.

8 **THE COURT:** And I would just encourage counsel to
9 actually order a copy of the transcript just to make sure. I
10 think we were clean otherwise, but just to make sure nothing
11 else and making sure it complies with the sealing order of the
12 Court.

13 All right. Can we move on to case management?

14 **MR. HARBIN:** Yes, Your Honor.

15 **MR. ISAACSON:** Certainly.

16 **THE COURT:** All right. So plaintiffs had proposed a
17 shorter schedule and defendants had proposed a longer one.
18 There's reference by the defendants to the need to have
19 discovery of third parties outside of the United States, and I
20 just wanted some information regarding what you all had in
21 mind.

22 **MR. ISAACSON:** Certainly, Your Honor.

23 The inventors are -- still have a consulting company. In
24 our Rule 26 discussions, the -- they have indicated that they
25 will produce records that they have access to personally. But

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1 their companies may have additional records, so we want to see
2 what I received firsthand.

3 Also, we had asked for discovery regarding the alterego
4 issue. I think that's going to be something we're going to
5 have to resolve through a meet and confer and possibly through
6 an amendment of the pleading. And if needed, we may need
7 discovery from third parties in the Netherlands regarding the
8 financial relationship and how they operate.

9 **THE COURT:** Big picture-wise in terms of schedule --
10 and I appreciate the joint case management statement --
11 plaintiffs have proposed longer -- I mean, shorter; defendants
12 had proposed longer. Given where we're at, I'm more inclined
13 to go a little bit on the longer side. Just we'll still be
14 within two years.

15 **MR. ISAACSON:** If I may add, Your Honor. Our clients
16 are also still evaluating and considering an amendment
17 regarding the validity of the patents themselves, and so that
18 is ...

19 **THE COURT:** I'm going to sit with that for a minute.
20 Mr. Harbin, you look like you were about to say something
21 a minute ago.

22 **MR. HARBIN:** Yes, Your Honor.

23 What I was going to say is I -- we would ask that it not
24 be eight months of discovery, but we are fine with -- we were
25 going to actually modify our proposal and propose six months of

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1 discovery. We have had some issues with discovery, had a very
2 productive meet and confer two days ago, but we've still got a
3 ways to go. We thought we'd have the protective order and ESI
4 order done by now. We're still working that out, so this is
5 taking longer.

6 **THE COURT:** You read my mind. I was going to ask
7 what's the status.

8 **MR. HARBIN:** So if we don't have that resolved in the
9 near future, we're going to be proposing to the defense counsel
10 that we just present competing proposals.

11 I hope we'll be able to work things out, but we need to
12 move that along. Anyway, we were already going to propose six
13 months. I would prefer that than eight months, but in the big
14 scheme of things, if you -- there's not a whole lot of
15 differences between six months and eight months.

16 **THE COURT:** No, there's not.

17 **MR. HARBIN:** We don't -- just as a detail, I mean,
18 it's mainly for the period, but they haven't identified any
19 need for third-party discovery in the Netherlands. We don't
20 think there will be any, but that's a relatively collateral
21 issue I think to your overall consideration.

22 **THE COURT:** Okay. You got to one of the questions I
23 had, which was what was the status of the ESI order, so I
24 appreciate the update about that. Anything further about the
25 ESI order?

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1 **MR. ISAACSON:** No. There was some delays on, I'll
2 say on my part, with some illness and some things. And so I
3 have a redline my clients will review and get back to them
4 shortly.

5 I actually think we had a very -- almost a four-hour call
6 on Monday on a lot of issues, and so we're making progress.

7 **THE COURT:** Wonderful.

8 **MR. ISAACSON:** Yeah.

9 **THE COURT:** I'm happy to hear that.

10 So let's talk about advisory, and then I'll walk through
11 the schedule. In terms of parties I believe had requested the
12 Court ADR unit; is that correct?

13 **MR. ISAACSON:** Yes, court-appointed. Or court panel,
14 sorry.

15 **THE COURT:** The court program?

16 **MR. ISAACSON:** Yeah.

17 **THE COURT:** We just added some more folks, as well.
18 The list is great, so I think it's a wise choice.

19 I'm intending to order that you complete the initial
20 session by February 20th, so I mean, does that feel about
21 right? I know that there are differing opinions on that, but I
22 wanted check in.

23 **MR. HARBIN:** Yes, Your Honor.

24 **THE COURT:** Okay.

25 **MR. ISAACSON:** Yes, yes.

Stephen W. Franklin, RMR, CRR, CPE
United States Court Reporter
SFranklinUSDC@aol.com - (561) 313-8439

1 **THE COURT:** All right. So the Court will order a
2 referral to the Court's ADR program today. We can get that
3 going. I'm going to ask that you file an update, a status
4 report within seven days after the session. So whenever it's
5 held just update the Court. Let me know how things went and
6 name the mediator and date of completion, so ...

7 And let me just walk through the schedule now.

8 So ADR completion, as I mentioned, the February 20th,
9 2025, date. That gives you 120 days.

10 Deadline to amend the pleadings or add. So split the baby
11 on this one, December 23rd, 2024.

12 Mid-discovery case management statement. This is just,
13 you know, I take a look at them just making sure everyone's
14 doing all right. But you're just going to be filing it, so
15 it's February 27th, 2025.

16 We'll have our final CMC on May 2nd, 2025, which is
17 adopting the defendants' proposal.

18 **MR. HARBIN:** What was the date? I'm sorry, Your
19 Honor.

20 **THE COURT:** May 2nd, 2025.

21 **MR. HARBIN:** Okay. May 2nd?

22 **THE COURT:** And that will be at 1:30.

23 Actually, I just mixed up your case management statement
24 and the actual conference date. So the conference date was
25 May 16th, 2025, at 1:30. That is truly adopting the

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United States Court Reporter
SFranklinUSDC@aol.com - (561)313-8439

1 defendants' proposal now. And the CMC statement is due two
2 weeks beforehand.

3 Fact discovery cutoff. I am going to adopt the June date
4 just because you all are getting things rolling, it sounds
5 like. So the June 28, 2025.

6 And then adopting the dates on the defendants' proposal
7 for the experts. So both the disclosure date, the July 3rd,
8 the rebuttal date August 4th, and then the September 19th,
9 2025, date for the expert discovery cutoff.

10 One thing I'll note with the fact discovery cutoff is that
11 I just realized that this is different from our local rules.
12 One of the reasons that I set it a little bit further out is my
13 expectation -- and I'll state this in the Rule 16 order -- is
14 that all your discovery disputes are done. So, you know, the
15 local rule I believe allows motions to be filed sometime after
16 the cutoff. My goal is that it's all heard and done. So I aim
17 to get your discovery done earlier, probably closer to the date
18 which I was just proposed, keeping in mind that any other
19 things you're duking out are going to happen during that last
20 couple months, so ...

21 **MR. HARBIN:** Right.

22 **MR. ISAACSON:** Okay, Your Honor.

23 **THE COURT:** Deadline for filing discovery motions I
24 just discussed.

25 Deadline to file dispositive and *Daubert* motions I'm

Stephen W. Franklin, RMR, CRR, CPE
United States Court Reporter
SFranklinUSDC@aol.com - (561) 313-8439

1 putting October 22nd, 2025, date. The hearing date, you all
2 had requested a firm hearing date, so I'll go ahead and set
3 December 17th, 2025, the defendants' date. I'm also just happy
4 to say that that's the last date, and if you all end up wanting
5 to have that heard earlier, that's fine with me, as well.

6 **MR. ISAACSON:** Okay.

7 **THE COURT:** So hearing no reaction, maybe we'll make
8 that the last day to hear.

9 **MR. ISAACSON:** The last day? Okay.

10 **THE COURT:** So pretrial conference. I'm moving that
11 up a little bit from defendants' proposed date, March 23rd,
12 2026.

13 And then the trial date of April 20th, 2026. But we'll
14 have to check in with plaintiff about whether or not that date
15 was doable.

16 **MR. HARBIN:** April 20?

17 **THE COURT:** April 20.

18 **MR. HARBIN:** Yes, Your Honor.

19 **THE COURT:** All right. So any reactions or
20 questions?

21 **MR. ISAACSON:** Just if I could, I thought I heard the
22 Court say move up, but then the pre-conference trial statement
23 would be March 23rd, or did I -- oh, the conference.

24 **THE COURT:** The conference it is.

25 **MR. ISAACSON:** Okay.

Stephen W. Franklin, RMR, CRR, CPE
United States Court Reporter
SFranklinUSDC@aol.com - (561)313-8439

1 **THE COURT:** And when we meet each other at that
2 further case management, you know, I'm relatively new. I'm
3 still -- so I'm setting out my trial orders still. So when we
4 meet then, you'll get all my trial orders regarding all of the
5 trial documents and expectations.

6 **MR. ISAACSON:** Okay.

7 **THE COURT:** So, all right. Any other questions or
8 anything else the Court can do?

9 **MR. HARBIN:** No, Your Honor. Thank you.

10 **MR. ISAACSON:** No, Your Honor. Thank you.

11 **THE COURT:** All right. Everyone have a good lunch
12 and a good holiday, since I won't see you before then.

13 (Proceedings concluded at 12:14 p.m.)

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15 **CERTIFICATE OF REPORTER**

16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled matter.

18 DATE: Tuesday, January 14, 2025

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22 Stephen W. Franklin, RMR, CRR, CPE
23 Official Reporter, U.S. District Court

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Stephen W. Franklin, RMR, CRR, CPE
United States Court Reporter
SFranklinUSDC@aol.com - (561) 313-8439