IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SOUNDCLEAR TECHNOLOGIES LLC, Plaintiff, v. AMAZON.COM, INC.; AMAZON.COM SERVICES LLC; and AMAZON WEB SERVICES, INC., Defendants.	Case No. 1:24-cv-01283-AJT-WBP

[PROPOSED] JOINT DISCOVERY PLAN

Pursuant to the Court's Initial Scheduling Order (Dkt. 34), Plaintiff SoundClear Technologies LLC. ("SoundClear") and Defendants Amazon.com, Inc., Amazon.com Services LLC, and Amazon Web Services, Inc., (collectively, "Amazon"), hereafter referred to as "the Parties," submit this proposed Joint Discovery Plan.

I. Rule 26(f) Certifications

A. Rule 26(f) Conference. Pursuant to the requirements of Rule of Civil Procedure 26(f) and D.I. No. 34, counsel for the parties met and conferred via teleconference on October 4, 2024, and via phone and e-mail between October 7 and 9.

B. Possibilities for Promptly Settling or Resolving the Case. The parties believe settlement discussions would be premature at this point.

II. Discovery Plan

A. Case Schedule

1. Dates. The following contains a table of dates that are either agreed upon, set by the court, or disputed. Dates or deadlines set by the Court are preceded by **. Disputed dates are shaded.

Event	SoundClear Proposed Deadline	Amazon Proposed Deadline
**File Joint Discovery Plan	October 9, 2024	

SoundClear Exhibit 2007
Amazon et al. v. SoundClear - IPR2025-00673

Event	SoundClear Proposed Deadline	Amazon Proposed Deadline
File/serve FRCP 26(a)(1) initial disclosures	October 10, 2024	Agreed
**Initial Pretrial Conference	October 17, 2024	
Pl: Disclosure of Asserted Claims and Infringement Contentions; Document Production Accompanying Disclosure.]	**October 18, 2024**	**n/a**
Exchange List of Proposed Claim Terms for Construction	October 24, 2024	Agreed
Exchange Proposed Constructions and Identify Evidence in Support (includes expert identification but does not include expert declaration)	October 31, 2024	Agreed
Defendants' Answer to Complaint	10 days after ruling on motion to dismiss	Agreed
Meet and confer regarding claim constructions	November 5, 2024	Agreed
File Joint Claim Construction Chart and Exchange **[Pl: Opening]** Expert Reports on Claim Construction	November 7, 2024	Agreed
Depositions of **[Pl: Opening]** Claim Construction Experts	November 15, 2024	Agreed
[Pl: Exchange Rebuttal Expert Reports on Claim Construction]	**November 15, 2024**	**n/a (no rebuttal reports on claim construction). If adopted, then the date is agreed.**
Simultaneous Opening Claim Construction Briefs	**November 19, 2024**	**November 22, 2024**

Event	SoundClear Proposed Deadline	Amazon Proposed Deadline
[Pl: Invalidity and Unenforceability Contentions; Document Production Accompanying Invalidity Contentions. Subject to FRCP 26(e)]	**November 22, 2024**	**n/a**
Deadline to Amend Pleadings	November 22, 2024	Agreed
[Pl: Depositions of Rebuttal Claim Construction Experts]	**November 26, 2024**	**n/a (no rebuttal reports on claim construction). If adopted, then the date is agreed.**
Substantial Completion of Document Production	November 27, 2024	Agreed
Simultaneous Responsive Claim Construction Briefs	December 9, 2024	Agreed
Exchange of Privilege Logs	December 10, 2024	December 10, 2024
Close of Fact Discovery	**December 20, 2024**	**December 10, 2024**
[Pl: Last Day to Amend Infringement Contentions; **Plaintiff's Reduction of Asserted Claims]**	**December 20, 2024**	**If adopted: December 10, 2024**
[Pl: Last Day to Amend Invalidity Contentions; **Defendant's Reduction of Prior Art References]**	**December 20, 2024**	**If adopted: December 13, 2024**
Markman Hearing	TBD	Propose week of December 9-13, 2024
Opening Expert Disclosures. The initial Federal Rule 26(a)(2) disclosure of expert testimony is due on any issue for which	**January 16, 2025**	**December 20, 2024**

Event	SoundClear Proposed Deadline	Amazon Proposed Deadline
the party has the burden of proof. Such issues include, for example, infringement, damages, and secondary considerations (if any) for Plaintiff and invalidity, unenforceability, and non-infringing alternatives for Defendants		
Rebuttal Expert Disclosures. Rebuttal expert reports will be limited to responding to issues raised in Opening Expert Disclosures.	**February 6, 2025** **(If Def.'s Opening Date is accepted, Pl. proposes January 24, 2025)**	**January 31, 2025** **(If Pls.'s Opening Date is accepted, then Def. proposes February 10, 2025)**
**Conclude Expert Depositions (per court order, all discovery must conclude by 2/14/2025)	February 14, 2025	Agreed
**Rule 26(a)(3) disclosures and a list of the exhibits to be used at trial, a list of the witnesses to be called at trial and a written stipulation of uncontested facts	February 19, 2025	Agreed
**Final Pretrial Conference	February 20, 2025	
**Deadline for filing objections to exhibits	March 3, 2025	Agreed
File Dispositive, *Daubert*, and *in Limine* Motions ("Motions")	March 6, 2025	Agreed
Oppositions to Motions	March 20, 2025	Agreed

Event	SoundClear Proposed Deadline	Amazon Proposed Deadline
Replies to Motions	March 28, 2025	Agreed
The parties will meet and confer regarding pretrial disclosures following the filing of dispositive and *Daubert* motions.	TBD	Agreed

2. Party Positions on Claim Construction Briefing and Expert Reports

a) Plaintiff

In terms of the schedule, the parties disagree as to whether to allow responsive expert declarations in support of claim construction (SoundClear's position) as opposed to submitting expert declarations simultaneously (Amazon's position). SoundClear's position is that it is not possible to anticipate an affirmative argument for the purpose of having an expert prepare a response. For instance, even if Amazon identifies a certain claim term it alleges to be indefinite, SoundClear would need some indication of the basis for that assertion. It would be difficult, in that example, to have an expert explain why a term has a reasonably determinable scope, without knowing the basis upon which another expert contends it is ambiguous. SoundClear also believes it would be less helpful to the Court to have two experts talking past one another as opposed to responding to one another.

In terms of expert disclosures: Requiring opening expert reports 10 days after the day (1) fact discovery closes and (2) final contentions are served (or otherwise provided in response to written discovery) is not workable. Such timing would unfairly prejudice SoundClear; its positions will be heavily reliant on written and deposition discovery from Amazon. By contrast, Amazon will be able to rely primarily upon its own discovery (e.g., prior art) for its opening report. Amazon's proposal also provides less time for the Court to issue a claim construction ruling before expert reports are due. Having claim constructions in hand saves substantial time and effort when preparing expert reports.

b) Defendant

Claim Construction Briefing. Amazon's proposal requires the parties to simultaneously serve claim construction expert declarations (Nov. 7) and requires both experts to sit for deposition the following week (by Nov. 15). Then, the parties simultaneously file their opening claim construction briefs (Nov. 22) and then simultaneously file their responsive briefs (Dec. 9). This balanced procedure is commonly used by courts in patent cases across the country. Plaintiff's proposal would unfairly prejudice Amazon by allowing Plaintiff (but not Amazon) the opportunity to depose the opposing expert before opening claim construction briefs, by requiring Amazon to serve its opening brief just two business days after receiving Plaintiff's expert report, and by giving

Plaintiff's expert an opportunity to respond to Amazon's expert without providing Amazon's expert with the same opportunity.

Close of Fact Discovery and Expert Reports. Plaintiff seeks to delay the close of fact discovery (Plaintiff: Dec. 20, 2024; Amazon: Dec. 10, 2024) and delay the deadline to serve opening expert reports (Plaintiffs: January 16, 2025; Amazon: Dec. 20, 2024). There is no room in the schedule for such delays. Document production will be substantially complete on November 27, 2024. Discovery should close shortly thereafter (on Dec. 10) and Plaintiff should be able to serve its opening expert reports (e.g., on infringement) soon thereafter (on Dec. 20).

3. Party Positions on Infringement and Invalidity Contentions

a) Plaintiff

Many courts have found that early contentions in patent cases are helpful to narrow issues and move the case along. SoundClear does not wish to forego contentions—even though SoundClear will be required to serve its contentions first.

Amazon's primary dispute on contentions is that it is unwilling to ever commit to a specific set of invalidity grounds. In other words, it prefers to have the ability to identify multiple primary prior art references and multiple secondary references (to use in any combination). Under Amazon's latest proposal, then, it could disclose more than 504 combinations, and not pick any one before trial. Further, a prima facie requirement of obviousness is demonstrating a reason or motivation to combine references. It is a highly technical, fact-specific inquiry. If SoundClear is never given notice of which specific sets of combinations Amazon intends to bring to trial, it will be heavily prejudiced in its ability to prepare a response to either the combinations or the alleged reasons to combine. In other words, Amazon's invalidity case would be almost exclusively trial-by-ambush.

The other dispute was more semantic. Amazon re-raised, in the context of this Rule 26(f) Report, one of the arguments in its motion to dismiss. That is, how SoundClear identified the accused products in the Complaint. As SoundClear stated in the applicable briefing, that will be resolved in discovery. SoundClear will identify the Accused Products to the best of its ability—not having access to source code or internal documents—in its infringement contentions. SoundClear has also issued simple, targeted discovery to further refine the list of accused products that meets SoundClear's theory of infringement for each asserted patent.

The parties also dispute each side's negotiating tactics in connection with preparing this Report. SoundClear proposed attaching the parties' e-mail record to this Report to have a clear record. Amazon objected, stating that it believes the e-mail record does not accurately represent the parties' first telephonic meet/confer. SoundClear will, however, be prepared to address the process by which negotiations as to contentions broke down, if the Court sees fit.

b) Defendant

The local rules in this District do not require parties to serve patent infringement or invalidity contentions, and Amazon does not agree with incorporating modified local rules from another District. Plaintiff has unilaterally selected portions of another court's rules and then modified those rules, resulting in a proposal that is both prejudicial to Amazon and impractical to implement within the case timeline set by the Court. The Court should reject Plaintiff's proposals for both the contents of contentions and the schedule for serving those contentions.

[Pl. Proposal Begins]

B. Contents of Contentions

1. Plaintiff

a) Plaintiff's Initial Infringement Contentions must contain the following, to the extent known or reasonably accessibly to Plaintiff (e.g., not contained within compiled computer code):

(1) Separately for each asserted claim, an identification of each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of the opposing party of which the party claiming infringement is aware. Each Accused Instrumentality must be identified by representative category or name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(2) a chart identifying specifically, on a limitation-by-limitation basis, where each element of each asserted claim is found within the Accused Instrumentality, including for each element Plaintiff asserts to be governed by pre-AIA 35 U.S.C. § 112(6) (means-plus-function) or post-AIA 35 U.S.C. § 112(f), a description of the claimed function of that element and the identity of the structures, acts, or materials in the accused products that perform the claimed function;

(3) identification of whether each element of each asserted claim is claimed to be present in the Accused Instrumentality literally or under the doctrine of equivalents. For any claim under the doctrine of equivalents, the Initial Infringement Contentions must include an initial explanation of each function, way, and result that is equivalent or why any differences are not substantial;

(4) for each claim that is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. If alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

(5) for any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

(6) identification of the basis for any allegation of willful infringement; and

(7) if a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own or its licensee's apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted patent, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim, including whether it is marked (actually or virtually) with the patent number.

b) Plaintiff may amend or supplement its Initial Infringement Contentions, by providing written notice to Defendants, based upon information learned in discovery, including, but not limited to, based upon review of source code or other proprietary information produced by another party. Any amendment or supplementation must be made reasonably promptly upon learning of the information. Absent a stipulation between the parties, no amendments may be made after the deadline for serving Final Infringement Contentions without leave of court based on a showing of good cause and absence of prejudice to opposing parties; *provided, however*, that Final Infringement Contentions may be amended in response to any claim construction ruling by the Court following the deadline for serving Final Infringement Contentions

c) The Final Infringement Contentions shall limit the number of asserted claims, for all accused instrumentalities collectively, to no more than **7** claims from each patent and no more than that a total of **15** claims from all asserted patents, selected from the claims identified in Plaintiff's Initial Infringement Contentions.

2. Defendants

a) Defendants' Initial Invalidity contentions must include:

(1) For each primary prior art reference, a statement of the grounds of invalidity (e.g., anticipation or obviousness) and a chart identifying representative portions of prior art corresponding to each claim limitation; and a statement of any grounds of invalidity based upon indefiniteness. Each ground (e.g., combination of references) must be separately identified with specificity, including the motivation to combine specific to each reference in combination.

(2) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious and any other information or document that supports a ground of invalidity or unenforceability under pre- or post- AIA 35 U.S.C. § 102. Prior art items that merely demonstrate the state of the art at the time of the invention need not be identified. Each prior art patent shall

be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art sales or public disclosures under pre-AIA 35 U.S.C. § 102(b) / post-AIA 35 U.S.C. § 102(a)(1) shall be identified by specifying the item offered for sale or publicly used or the information known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. All prior art under pre-AIA 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under pre-AIA 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s). Prior art references under post-AIA 35 U.S.C. § 102(a)(1) showing that the claimed invention was otherwise available to the public shall be identified by specifying the form and nature of the reference, the manner in which the reference was made public, and the date on which the reference was made public;

(3) whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination of items of prior art makes a claim obvious, each such combination, and the motivation to combine such items, must be identified;

(4) A detailed statement of any grounds of invalidity based on indefiniteness, lack of enablement, lack of written description under of any of the asserted claims, or that a claim is invalid as non-statutory/patent ineligible under 35 U.S.C. § 101 or is unenforceable; and

(5) A production of each item of prior art identified that does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon must also be produced.

(6) Defendants may amend or supplement their Initial Invalidity Contentions, by providing written notice to Plaintiff, based upon information learned in discovery, including, but not limited to, based upon proprietary information produced by another party. Any amendment or supplementation must be made reasonably promptly upon learning of the information. Absent a stipulation between the parties, no amendments may be made after the deadline for serving Final Invalidity Contentions without leave of court based on a showing of good cause and absence of prejudice to opposing parties; *provided, however*, that Final Invalidity Contentions may be amended in response to any claim construction ruling by the Court following the deadline for serving Final Invalidity Contentions.

b) The Final Invalidity Contentions shall limit the number of prior art references to no more than **7** primary prior art references per patent and no more than **20** prior art references in total. For each claim alleged to be invalid, the Final Invalidity Contentions are limited to 2 prior art grounds per claim and 2 non-prior art grounds. Each of the following shall constitute separate grounds: indefiniteness, lack of written description, lack of enablement, unenforceability, and non-statutory subject matter under 35 U.S.C. § 101. Each assertion of anticipation and each combination of references shall constitute separate grounds. A prior art instrumentality (such as a system, device, or process) and any associated references that describe that instrumentality shall count as one reference, as shall the closely related work of a single prior artist. This limitation applies only to the number of references relied on in Defendants' grounds for invalidity, and does not limit the number of prior art references upon which Defendants (or their experts) may rely for background information, e.g., to show the state of the art at the time of the alleged invention.

[Pl. Proposal Ends]

C. Discovery Limitations

1. The following discovery limitations are based upon reasonable estimates at the outset of the Action. The parties will meet and confer in good faith to adjust the limits as needed.

2. Interrogatories and Non-Party Depositions. The parties incorporate the limitations on discovery contained in this Court's September 23, 2024 Order (D.I. 34), regarding the number of interrogatories (**30**) and non-party, non-expert witness depositions (**5**). For clarity, all discovery limits are per side, such that one side may not serve more than 30 interrogatories on the other side (regardless of the number of parties on the other side) without leave of court.

3. Requests for Admission. A maximum of **30** requests for admission may be served by each side to the other side.

4. Depositions

a) Absent agreement among the parties or court order, no side may take more than **10** fact depositions of the other side, including 30(b)(6) depositions. Each 30(b)(6) Notice counts as a single deposition.

b) Any single deposition of a FRCP 30(b)(1) or 45 witness shall last no longer than 7 hours of time-on-record. For witnesses being deposed under FRCP 30(b)(6), the parties shall use reasonable efforts to maintain the limit of **7** hours of time-on-record per witness; provided, however, that if a single witness is designated on more topics than can reasonably be covered within the **7**-hour limit, such deposition may carry over to another day. The total time-on-record for each side for FRCP 30(b)(6) depositions will be limited to **14** hours.

c) Depositions may be conducted in-person or by remote means (e.g. Zoom or Teams) at the discretion of the questioning counsel, subject to any reasonable objection of the witness. Should a questioning counsel elect to conduct a deposition by remote means, counsel for other parties or the deponent retain the ability to appear in person and accommodations must be made for such attendance.

d) Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this District. Exceptions to this general rule may be made by order of the Court. A Defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

e) In lieu of Local Rule 30, the parties have agreed to, and will, each bear their own costs in connection with depositions.

5. Experts

a) **Expert Depositions**. Each side may designate up to **5** testifying experts. Each side must provide notice of the identity of any testifying expert on any issue unrelated to infringement, validity, or damages no later than the close of fact discovery and shall also provide a summary of the topics of such expected testimony. Each testifying expert may be deposed for up to **7** hours for each report. To the extent supplemental reports are served, any additional deposition time shall be addressed either by agreement or order of the Court.

b) **Supplemental Expert Reports**. Neither party may supplement its expert report(s), absent leave of court based on a showing of good cause or stipulation of the parties. If a party supplements its expert report(s), the opposing party may serve a supplemental responsive report within **7** business days, addressing the supplemental material.

6. Subpoenas. The parties agree to exchange with each other within **5** business days of receipt all discovery material obtained from a subpoena to a third-party (including any objections/response by such third parties). The production of this discovery material shall be in the same format as it was received from the third party.

7. Privilege

a) The parties agree that privilege logs need not include privileged communications and work product dated on or after the date the original complaint was filed against Amazon **[Pl: (May 1, 2024) / Def: in this Action] [Pl: or that was sent between outside counsel of record and any party in anticipation of the filing of this Action]**.

b) Pursuant to FRCP 26(f)(3)(D), the parties agree to abide by FRCP 26(b)(5) and the law when asserting and responding to a claim of privilege. Other categories of documents or information withheld from production on the basis of privilege or protection shall be identified on a Privilege Log by document type (e.g., e-mail, text message), subject matter with reasonable specificity to each individual document, participants, and applicable dates.

8. Expert Materials

a) The parties agree that notes, drafts, or other types of preliminary written work by or for an expert (testifying or consulting) concerning the subject matter of this action shall not be subject of discovery and not subject to inquiry at trial. No communications, whether oral or written, only between or among any expert and only counsel for the party retaining the expert concerning the subject matter of this action shall be the subject of discovery or inquiry at trial. The foregoing shall not apply to any facts, data, or assumptions upon which the expert relied in forming his or her opinion as expressed in an affidavit, report, or testimony. Materials, communications, and other information exempt from discovery under this paragraph shall be treated as attorney work product and need not be identified on a privilege log.

D. Party Positions on Discovery Plan

a) Plaintiff

SoundClear believes that correspondence between itself and its outside litigation counsel would be unquestionably privileged and thus proposes that it need not log such e-mails.

b) Defendant

Contentions. For the reasons set forth above, Amazon objects to Plaintiff's proposal (and schedule) for serving initial and final contentions.

Privilege Log. The parties agree that a privilege log is required and that the logs need not include privileged communications dated after the filing of the complaint in this case. However, Plaintiff proposes withholding from discovery but not identifying on its privilege log "communications and work product" from the three months before the filing of the complaint, i.e., between May 1, 2024 and July 25, 2024. Plaintiff further proposes excluding all prior communications between Plaintiff and its outside counsel of record. Plaintiff should not be permitted to withhold from discovery, but not include on a privilege log, such pre-suit communications, as they are exactly the type of communications that should be logged. See Fed. R. Civ. P. 26(b)(5)(A).

III. Other Provisions

A. Service of Discovery. The parties consent to service of discovery by electronic means such as e-mail and file transfer protocol. Requests for discovery (e.g., interrogatories, requests for documents, requests for admission, and notices of deposition) served by e-mail on or before 6:00 p.m. Eastern Time on a business day will be considered as having been served by hand-delivery on that day. Any requests for discovery served by e-mail after 6:00 p.m. Eastern Time or not served on a business day (i.e., weekends or holidays) shall be considered as having been served by hand-delivery on the next business day. Discovery responses can be served electronically at any time of day (up to 11:59pm Eastern Time) and be considered served on that day.

B. No Waiver. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a privileged or work product protected documents (including ESI) is not a waiver in the pending case or in any other federal or state proceeding. The mere production of ESI in a litigation as part of a mass production shall not itself constitute a waiver for any purpose.

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

D. Trial before a Magistrate Judge. The Parties do not request nor consent to trial by a magistrate judge.

Dated: October 9, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 9, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

By: */s/ Chandran B. Iyer*

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