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U.S. District Court

Southern District of Iowa

Notice of Electronic Filing

The following transaction was entered by Nemunaitis, Justin on 2/25/2025 at 8:26 PM CST and filed on 2/25/2025

Case Name: In Re: Midwest Energy Emissions Corp. Patent Litigation
Case Number: 4:24−md−03132−SHL−WPK
Filer:
Document Number: 56
Docket Text:
PROPOSED SCHEDULING ORDER AND DISCOVERY PLAN . (Attachments: # (1) Exhibit A − Proposed Scheduling Order, # (2) Exhibit B − Proposed Protective Order, # (3) Exhibit C − Proposed ESI Order)(Nemunaitis, Justin)

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4:24−md−03132−SHL−WPK Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IN RE: MIDWEST ENERGY EMISSIONS CORP. PATENT LITIGATION	MDL Case No. 4:24-md-03132-SHL-WPK

[PROPOSED] SCHEDULING ORDER

I. GENERAL CASE DEADLINES

1. Initial disclosure deadline:

   March 11, 2025.[1]

2. Deadline for motions to add parties:

   March 11, 2025.

3. Deadline for motions to amend pleadings:

   May 30, 2025.[2]

4. Dispositive and *Daubert* motions deadline (*at least 150 days before Trial Ready Date*):

   Plaintiff's Proposal: February 13, 2026.

   Defendants'[3]*Proposal*: 90 days after the Completion of Expert Discovery.

[1] Because Evergy, Inc., Evergy Metro, Inc., Evergy Missouri West, Inc., and Evergy Kansas Central, Inc. (collectively, the "Evergy Defendants") were sued in January 2025, months after the other Defendants, both Plaintiff and the Evergy Defendants agree that the proposals for the Evergy Defendants only should be later than for others. Specifically, the Evergy Defendants propose April 25, 2025 for the initial disclosures deadline.

[2] Because the "Evergy Defendants" were sued in January 2025, months after the other Defendants, both Plaintiff and the Evergy Defendants agree that the proposals for the Evergy Defendants only should be later than for others. Specifically, the Evergy Defendants propose July 16, 2025 for the deadline for motions to amend pleadings.

[3] "Defendants" means those Defendants that have filed a notice of appearance at the time that this Proposed Scheduling Order was submitted to the Court.

5. Trial Ready Date[4] (*at least 150 days after Dispositive Motions Date*):

Plaintiff's Proposal: July 13, 2026.

Defendants' Proposal: at least 150 days after the Dispositive Motions Date.

II. PATENT-SPECIFIC DEADLINES[5]

6. Plaintiff's Disclosure of Asserted Claims and Initial Infringement Contentions, and Accompanying Document Production. By March 18, 2025, Plaintiff must serve on the defendants a "Plaintiff's Initial Infringement Claim Chart," identifying (A) the patent claims the plaintiff

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[4] This is the ready date for the first trial following dispositive and *Daubert* motions. Plaintiff respectfully submits that the first trial take place in this Court.

[5] Plaintiff's Position: In its January 28, 2025 Case Management Order (Dkt. No. 27), the Court requested "proposed patent-specific deadlines like those set forth in the standard case management order for patent cases used in the United States District Court for the Northern District of California." ME2C's proposed deadlines up to opening claim construction briefs are exactly consistent with the deadlines contemplated by the local patent rules in the Northern District of California.

ME2C also proposes that the Court enter set dates for the deadlines following claim construction, rather than setting the remaining deadlines based on the entry of a *Markman* order. This is consistent with the practice of a number of courts that handle a high volume of patent infringement cases. *See, e.g.*, *Chief District Judge Rodney Gilstrap*, U.S. District Court for the Eastern District of Texas, https://www.txed.uscourts.gov/?q=judge/chief-district-judge-rodney-gilstrap (select "Patent Documents" tab, then select "Docket Control Order – Patent" to open model order); *see also Chambers*, U.S. District Court for the District of Delaware, https://www.ded.uscourts.gov/judges-info (select a judge, navigate to "Forms" tab, then select model scheduling order for particular judge). The parties can request extensions as necessary, but dates certain for key case milestones will keep this case moving and maintain efficiency for the parties and the Court. To the extent the Court opts to set the post-*Markman* deadlines based on the entry of a *Markman* order, ME2C asks that the Court enter deadlines consistent with ME2C's proposed spacing between events. *See also Midwest Energy Emissions Corp. v. Ameren Corp.*, 4:24-cv-00980, Dkt. No. 31 at 7–8 (E.D. Mo.) (ME2C's and Ameren's proposed scheduling order, agreeing on more tightly spaced post-*Markman* deadlines than Defendants propose here).

Defendants' Position: Plaintiff sought (and received) consolidation into an MDL. This necessarily requires additional time as all Defendants must coordinate with each other to address the issues that arise in this matter. Moreover, it is not uncommon to hinge expert discovery on receipt of a *Markman* ruling. *See Intirion Corp. v. College Prods*., No. 5:23-cv-04023-CJW-KEM, ECF 75 (Aug. 15, 2023) ("A supplemental scheduling order will be filed after issuance of the *Markman* ruling and conferral with the parties."); *Local Patent Rules Timeline, W.D. Tenn.*, available at https://www.tnwd.uscourts.gov/sites/tnwd/files/LocalPatentRules.pdf (pages 27-28) (linking expert deadlines to the claim construction ruling).

alleges are being and/or have been infringed; (B) the defendant's specific products/processes which the plaintiff alleges infringe each patent claim described in (A) and each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process; (C) a complete and detailed explanation on a claim-by-claim and element-by-element basis showing how each such product/process identified in (B) infringes the asserted claims; (D) whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents; and (E) for any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled.

At that time, Plaintiff must also serve on and produce to each opposing party or make available for inspection and copying: (A) Documents sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102; (B) All documents evidencing the conception, reduction to practice, design, testing, and development of each claimed invention, which were created on or before the date of application for the patent in suit or identified priority dates, whichever is earlier; and (C) A copy of the file history for each patent in suit.

7. Defendants' Initial Invalidity Contentions and Accompanying Document Production. By [***Plaintiff's Proposal:*** May 2, 2025; ***Defendants' Proposal***: May 19, 2025], each Defendant must explain in detail in a "Defendant's Initial Invalidity Claim Chart" any grounds for asserting invalidity for any of the asserted claims of the patent in suit, including a list of all of the prior art on which the defendant relies, and a complete and detailed explanation of what the

defendant alleges the prior art to show and, on a claim-by-claim and element-by-element basis, how that prior art is asserted to invalidate the asserted claims of the patent in suit, specifying the particular portions of the prior art which are asserted to contain the invalidating disclosure. Defendants shall also explain in detail any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112 ¶ 2 or enablement or written description under 35 U.S.C. § 112 ¶ 1 of any of the asserted claims. With their initial invalidity claim charts, defendants shall serve copies of all asserted prior art on which the defendant relies, as well as documents (*e.g.* specifications, schematics, flow charts, artwork, or other documentation) sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant.

8. Exchange of Claims Terms and Proposed Constructions. On [***Plaintiff's Proposal:*** May 16, 2025; ***Defendants' Proposal:*** June 18, 2025], the parties simultaneously shall exchange lists of claim terms, phrases, and clauses, which the parties contend should be construed by the Court. On [***Plaintiff's Proposal:*** June 6, 2025; ***Defendants' Proposal:*** July 18, 2025], the parties shall exchange proposed constructions with references from the specification or prosecution history that support its proposed construction and any extrinsic evidence, including the identification of whether expert testimony will be used to support claim constructions for any term identified as requiring construction.

9. Joint Claim Construction Statement. The parties shall confer for the purpose of narrowing and resolving their differences to facilitate the preparation of a joint claim construction statement, which must be filed with the Court by [***Plaintiff's Proposal:*** July 7, 2025; ***Defendants' Proposal:*** September 2, 2025]. The joint claim construction statement must contain (A) the construction of those claim terms, phrases and clauses on which the parties agree; and (B) each party's proposed construction of each disputed claim term, phrase, and clause. If a party asserts a

disputed claim term, phrase, or clause needs no construction, the party must so state and concisely explain why no construction is necessary.

10. Close of Claim Construction Discovery:

Plaintiff's Proposal: July 11, 2025.

Defendants' Proposal: December 17, 2025.

11. Claim Construction Briefing. On [***Plaintiff's Proposal**:* July 25, 2025; ***Defendants' Proposal:*** November 3, 2025] Defendants[6] shall serve, but not file, their opening brief, not to exceed 30 pages. On [***Plaintiff's Proposal**:* August 15, 2025; ***Defendants' Proposal**:* December 3, 2025], Plaintiff shall serve, but not file, their answering brief, not to exceed 30 pages. On [***Plaintiff's Proposal**:* August 29, 2025; ***Defendants' Proposal**:* December 17, 2025], Defendants shall serve, but not file, their reply brief, not to exceed 10 pages. On [***Plaintiff's Proposal**:* September 12, 2025; ***Defendants' Proposal**:* January 7, 2026], Plaintiff shall serve, but not file, its sur-reply brief, not to exceed 10 pages. On [***Plaintiff's Proposal**:* September 19, 2025; ***Defendants' Proposal**:* January 15, 2026], the parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their unfiled briefs into one brief, with their positions on each claim term in sequential order. The parties shall work together to create a Joint Appendix to the Joint Claim Construction Brief.

12. *Markman* Hearing. Subject to the convenience of the Court, a *Markman* hearing

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[6] Defendants' Position: To the extent any Defendant has a unique claim construction position, the parties will meet and confer to determine an appropriate number of pages to address that Defendant's unique position in addition to the Defendants' joint brief.

Plaintiffs' Position: Defendants should not be entitled to any additional pages, regardless of whether a single Defendant believes it has a "unique" argument to advance. The agreed page limits above are more than adequate to account for any such arguments. *See, e.g.*, *In Re: Neo Wireless, LLC, Patent Litigation*, No. 2:22-md-03034, Dkt. No. 84 (E.D.M.I.) (in a nine-case MDL, requiring Defendants to file collective response brief not exceed 25 pages, 14-point font).

will be held in the United States Courthouse in Des Moines, Iowa [***Plaintiff's Proposal:*** during the week of October 6, 2025, or at the Court's convenience; ***Defendants' Proposal:*** at a time to be determined by the Court following the filing of the Joint Claim Construction Brief.

13. Plaintiff's Final Infringement Contentions: Plaintiff shall produce final infringement contentions by 30 days after the Court's Markman order.

14. Defendant's Final Invalidity Contentions: Defendants shall serve final invalidity contentions within [***Plaintiff's Proposal:*** 45 days; ***Defendants Proposal:*** 60 days] after the Court's *Markman* order.[7]

15. Election Regarding the Advice of Counsel Defense: [***Plaintiff's Proposal:*** By October 27, 2025; ***Defendants' Proposal:*** Twelve weeks after the Court's *Markman* order], each Defendant shall notify the Plaintiff whether it will rely on an opinion of counsel as part of a defense to a claim of willful or indirect infringement. If a Defendant elects to rely on the advice-of-counsel defense, that Defendant shall also produce a copy of the written opinion on which it relies, along with any other written communications from counsel relating to the opinion or records reflecting oral communications with counsel.

16. Completion of Fact Discovery: [***Plaintiff's Proposal:*** By October 27, 2025 (per this District's "Proposed Scheduling Order and Discovery Plan,"[8] 8 months from the filing of this

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[7] Plaintiff's Position: *See supra* note 5 for Plaintiff's position with respect to the post-*Markman* schedule.

Defendants' Position: Defendants' proposal accounts for the Court's *Markman* order and sets up the subsequent deadlines based on the date the Court will issue its order. This approach is preferable so that parties are not engaging in final contentions, drafting expert reports and engaging in expert discovery without the benefit of the Court's claim construction order. Plaintiff's proposal will likely require parties to conduct these case milestones without the benefit of the Court's order, which will be a waste of party resources in the event these deadlines occur before the Court's *Markman* order is issued.

[8] Available at https://www.iasd.uscourts.gov/civil-forms.

proposed scheduling order and discovery plan); ***Defendants' Proposal:*** Sixteen weeks after the Court's *Markman* order], all fact discovery is to be completed. Written discovery shall be propounded so that the time for response is not later than this date.

17. Opening Expert Witness Disclosures: For the party who has the initial burden of proof on the subject matter, the initial Federal Rule of Civil Procedure 26(a)(2) disclosure of expert testimony is due on or before [***Plaintiff's Proposal:*** November 21, 2025; ***Defendants' Proposal:*** 60 days after the Completion of Fact Discovery].

18. Rebuttal Expert Witness Disclosures: The supplemental disclosures of expert testimony to contradict or rebut the expert testimony identified by another party is due on or before [***Plaintiff's Proposal:*** December 19, 2025; ***Defendants' Proposal:*** 60 days after the Opening Expert Witness Disclosures].

19. Completion of Expert Discovery: All expert discovery in this case shall be initiated so that it will be completed on or before [***Plaintiff's Proposal:*** January 23, 2026; ***Defendants' Proposal:*** 30 days after the Rebuttal Expert Witness Disclosures].

20. Dispositive Motions and Motions to Strike Expert Opinions (including *Daubert*): [***Plaintiff's Proposal:*** By February 13, 2026; ***Defendant's Proposal:*** Ninety days after the Completion of Expert Discovery], the parties may file dispositive motions and any motions to strike/exclude expert opinions. Responses to such motions are due 21 days after the filing of any dispositive motion or motion to strike expert opinion, including *Daubert*, and replies in support of such motions are due 14 days later.

21. Trial Ready Date: [***Plaintiff's Proposal:*** July 13, 2026; ***Defendants' Proposal:*** No less than 150 days after the Dispositive Motion Deadline].

CHRONOLOGICAL DEADLINE CHART

Event	Paragraph	Date
Initial Disclosures	¶ 1	March 11, 2025[9]
Motion to Add Parties	¶ 2	March 11, 2025
Motion to Amend Pleadings	¶ 3	May 30, 2025[10]
Initial Infringement Contentions and Accompanying Disclosure	¶ 6	March 18, 2025
Initial Invalidity Contentions and Accompanying Disclosure	¶ 7	Plaintiff's Proposal: May 2, 2025 Defendants' Proposal: May 19, 2025
Exchange of Claims Terms	¶ 8	Plaintiff's Proposal: May 16, 2025 Defendants' Proposal: June 18, 2025
Exchange of Proposed Constructions	¶ 8	Plaintiff's Proposal: June 6, 2025 Defendants' Proposal: July 18, 2025
Joint Claim Construction Statement	¶ 9	Plaintiff's Proposal: July 7, 2025 Defendants' Proposal: September 2, 2025
Close of Claim Construction Discovery	¶ 10	Plaintiff's Proposal: July 11, 2025 Defendants' Proposal: December 17, 2025
Opening Claim Construction Briefing	¶ 11	Plaintiff's Proposal: By July 25, 2025, Defendants shall serve, but not file, their joint opening brief. Defendants' Proposal: By November 3, 2025, each Defendant shall serve, but not file, their

[9] For the Evergy Defendants only, the proposed deadline is April 25, 2025 for the reasons described above.
[10] For the Evergy Defendants only, the proposed deadline is July 16, 2025 for the reasons described above.

Event	Paragraph	Date
		opening brief.
Responsive Claim Construction Briefing	¶ 11	Plaintiff's Proposal: By August 15, 2025, Plaintiff shall serve, but not file, its answering brief. Defendants' Proposal: By December 3, 2025, Plaintiff shall serve, but not file, its answering brief.
Reply Claim Construction Briefing	¶ 11	Plaintiff's Proposal: By August 29, 2025, Defendants shall serve, but not file, their joint reply brief. Defendants' Proposal: By December 17, 2025, each party shall serve, but not file, their reply brief.
Surreply Claim Construction Briefing	¶ 11	Plaintiff's Proposal: By September 12, 2025, Plaintiff shall serve, but not file, its surreply brief. Defendants' Proposal: By January 7, 2026, Plaintiff shall serve, but not file, its surreply brief.
Joint Claim Construction Brief	¶11	Plaintiff's Proposal: By September 19, 2025, the parties shall file a Joint Claim Construction Brief. Defendants' Proposal: By January 15, 2026, the parties shall file a Joint Claim Construction Brief.
***Markman* Hearing**	¶ 12	Plaintiff's Proposal: Week of October 6, 2025, at the Court's convenience Defendants' Proposal: At a time to be determined by the Court following the filing of the Joint Claim Construction Brief.
Plaintiff's Final Infringement Contentions	¶ 13	Plaintiff's Proposal: 30 days after the Court's *Markman* order Defendants' Proposal: 30 days after the Court's *Markman* order.

Event	Paragraph	Date
Defendants' Final Invalidity Contentions	¶ 14	Plaintiff's Proposal: 45 days after the Court's *Markman* order Defendants' Proposal: 60 days after the Court's *Markman* order.
Election regarding the Advice of Counsel Defense	¶ 15	Plaintiff's Proposal: October 27, 2025 Defendants' Proposal: 12 weeks after the Court's *Markman* order.
Completion of Fact Discovery	¶ 16	Plaintiff's Proposal: October 27, 2025 (per this District's "Proposed Scheduling Order and Discovery Plan," 8 months from the filing of this proposed scheduling order and discovery plan). Defendants' Proposal: 16 weeks after the Court's *Markman* order.
Opening Expert Witness Disclosures	¶ 17	Plaintiff's Proposal: November 21, 2025 Defendants' Proposal: 60 days after the Completion of Fact Discovery.
Rebuttal Expert Witness Disclosures	¶ 18	Plaintiff's Proposal: December 19, 2025 (28 days after the Opening Expert Witness Disclosures) Defendants' Proposal: 60 days after the Opening Expert Witness Disclosures.
Completion of Expert Discovery	¶ 19	Plaintiff's Proposal: January 23, 2026 (2 weeks after Rebuttal Expert Witness Disclosures) Defendants' Proposal: 30 days after the Rebuttal Expert Witness Disclosures.
Dispositive Motions and Motions to Strike Expert Opinions (including *Daubert*)	¶ 20	Plaintiff's Proposal: February 13, 2026 (3 weeks after the Completion of Expert Discovery) Defendants' Proposal: 90 days after the Completion of Expert Discovery.

Event	Paragraph	Date
Responses to Dispositive Motions and Motions to Strike Expert Opinions (including *Daubert*)	¶ 20	21 days after the filing of any dispositive motion or motion to strike expert opinion (including *Daubert*).
Replies to Dispositive Motions and Motions to Strike Expert Opinions (including *Daubert*)	¶ 20	14 days after the filing of any response to a dispositive motion or motion to strike expert opinion (including *Daubert*).
Trial Ready Date	¶ 21	Plaintiff's Proposal: June 22, 2026 (150 days after dispositive motions date) Defendants' Proposal: No less than 150 days after the Dispositive Motion Deadline.[i]

It is SO ORDERED, this ___ day of _____, 2025.

_____
United States [District/Magistrate] Judge

[i] The Trial Ready Date is applicable to cases originally pending in the Southern District of Iowa. Defendants do not take a position on the Trial Ready Date for cases pending in jurisdictions other than the Southern District of Iowa.