IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BRAIN CORPORATION, a California Corporation, Plaintiff, v. AVIDBOTS CORP., a Canadian Corporation; and AVIDBOTS USA CORP., a Delaware Corporation Defendants.	Case No. 1:24-cv-12569 Honorable Jeremy C. Daniel

REPORT OF THE PARTIES' PLANNING MEETING

1. The following persons participated in a Rule 26(f) conference on March 25, 2025, by videoconference:

   - Sheila Swaroop, Daniel Hughes, Adam Powell, Kevin Tottis, representing the Plaintiff, Brain Corporation ("Brain")
   - Neema Jalali, Jim Lischeske, Lillian Mao, Daniel Konieczny, representing the Defendants Avidbots Corp. and Avidbots USA Corp. (collectively "Avidbots")

   a. The parties discussed the topics identified in Fed. R. Civ. P. 26 and confirmed the following:

      i. The parties agree that both named defendants have either been served or have waived service. Dkt. 8 (service on Avidbots USA Corp.); Dkt. 14 (confirmation of waiver of service for Avidbots Corp.).

ii. The parties do not propose any phasing of discovery beyond what is contemplated by the Local Patent Rules.

iii. Discovery is presently directed to the allegations in Brain's complaint and defenses thereto, including Avidbots's products accused of infringement and the relief sought by Brain. Discovery may include additional topics, such as Avidbots's affirmative defenses and any additional claims to be pled later.

iv. Counsel for both parties confirmed that instructions for preservation of relevant materials are in place.

v. Counsel began discussion of ESI protocols under the Local Patent Rules and conducted a follow-up discussion on March 26, 2025.

2. Initial Disclosures. The parties exchanged Initial Disclosures pursuant to Rule 26(a)(1) and LPR 2.1 on March 17, 2025.

a. *Brain's Position*: Brain contends that Avidbots did not satisfy its Initial Disclosure obligations, including because Avidbots has not produced technical documents sufficient to show the accused features. Brain will notify the Court if the parties are unable to resolve their dispute. Brain disagrees with Avidbots's arguments below.

b. *Avidbots's Position*: Avidbots's LPR 2.1 disclosures referenced source code that Avidbots's counsel had collected and was ready for Brain's inspection once an appropriate protective order governing the inspection of source code was entered. Brain initially indicated that its counsel intended to review the Avidbots source code starting March 24, 2025. The parties agreed to and submitted the terms of a

modified protective order on March 21, 2025, and the Court entered the modified protective order on March 24, 2025. Brain began inspection of source code on March 25, 2025. With respect to LPR 2.1(b)(3), whose purpose is to "enable the parties to estimate potential damages and engage in meaningful settlement negotiations," Avidbots informed Brain that "[r]evenue information prior to 2020 is not readily available in Avidbots's present accounting systems" and that Avidbots was "available to meet and confer concerning this information." Avidbots contends that its Initial Disclosures were proper and is diligently continuing to investigate the collection of revenue information for the remaining period of December 2018 to December 2019.

3. Disclosures and Discovery Pursuant to Local Patent Rules. The parties acknowledge and agree that the requirements of the Local Patent Rules apply to this case.

4. Additional Discovery Plan. The parties propose the following in addition to the discovery plan addressed in the Local Patent Rules. The parties also agree that, to the extent any party believes that additional discovery is necessary, it may seek permission from the Court to pursue such discovery upon a showing of good cause.

   a. Interrogatories:

      i. The parties agree to a limit of twenty-five (25) interrogatories per side.

      ii. Brain served a First Set of Interrogatories on March 17, 2025 with Avidbots' objections and responses due April 16, 2025.

      iii. Avidbots served a First Set of Interrogatories on March 24, 2025 with Brain's objections and responses due April 23, 2025.

   b. Request for admission:

i. The parties agree to limit the number of requests for admission to no more than one hundred (100) per side, plus a reasonable number of requests to authenticate documents.

c. Maximum number of factual depositions by each party.

i. In lieu of the limit of 10 depositions per side under Fed. R. Civ. P. 30(a)(2)(A)(i), the parties agree that it would be appropriate in this case to limit fact witness depositions to a total number of hours per side.

ii. The parties expect that this case will involve depositions of witnesses based in Canada and agree that such depositions can take place in Canada.

d. Limits on the length of depositions, in hours.

i. The parties agree to an overall fact witness deposition limit of seventy (70) hours per side. If the deposition of a party fact witness who is not designated by that party under Federal Rule of Civil Procedure 30(b)(6) runs for less than 3.5 hours, the deposition shall be deemed to have consumed 3.5 hours of that overall limit. Unless stated otherwise herein or otherwise agreed by the parties or ordered by the Court, all other limits on deposition time under the Federal Rules of Civil Procedure remain in force.

ii. The parties agree that any expert who submits an opening or rebuttal report shall be made available for a deposition of at least seven (7) hours. The parties will meet and confer later on whether expert depositions should be longer than 7 hours and return to the Court if they have a dispute.

e. Discovery is permitted with respect to claims of willful infringement and defenses of patent invalidity or unenforceability not pleaded by a party, where the evidence

needed to support these claims or defenses is in whole or part in the hands of another party.

5. Alternative Discovery Plan.

a. *Brain's Position:* Brain proposes a schedule that complies with the timing and sequence of the Local Patent Rules through claim construction. In contrast, Avidbots seeks a dramatic departure from the Local Patent Rules that will unreasonably delay the case. Brain has set forth its proposal in **Exhibit 1**, along with an explanation as to why the circumstances of this case do not warrant Avidbots's departure from the Local Patent Rules. Absent a Court order modifying those rules, the deadlines set forth in the Local Patent Rules apply in this case. Pursuant to the Local Patent Rules, Brain served its Initial Infringement contentions on March 31, 2025, and Avidbots is required to serve its Initial Invalidity/Unenforceability Contentions by April 14, 2025. Brain also explains why Avidbots is wrong to suggest Brain is seeking to depart from the Local Patent Rules merely by suggesting dates for post-claim construction events included in the Local Patent Rules.

b. *Avidbots's Position:* Avidbots proposes a discovery plan that maintains the sequence set forth in the Local Patent Rules, but extends certain deadlines leading up to claim construction. Avidbots's proposal is set forth in **Exhibit 1**, along with an explanation of why these modifications to the dates are appropriate. Avidbots also explains why the Court should deny Brain's attempt to establish dates certain for events occurring *after* claim construction, including expert reports and other dates up to and including trial.

6. Other Dates:

a. Dates for supplementations under Rule 26(e).

i. The parties acknowledge their duty to supplement under Rule 26(e). To the extent reasonably necessary to account for information learned from or otherwise disclosed by the opposing party near the end of fact discovery, a party may supplement its written discovery responses within no later than one week after the close of fact discovery or as the Court otherwise orders.

b. The parties are currently scheduled for a status conference with the Court on May 13, 2025. Dkt. 21. In view of the parties' dispute about an appropriate schedule, the parties believe an additional meeting with the Court would be helpful prior to entry of a scheduling order.

c. Requested dates for pretrial conferences. The parties request that a pretrial conference be conducted shortly before trial, but disagree on whether the date of such conference should be set at this time.

i. *Brain's position:* While the Local Patent Rules do not establish a pretrial conference or trial date, the planning report requires the parties to identify dates for pretrial conferences and "final dates" for the Rule 26(a)(3) disclosures and objections leading up to the final pretrial conference (e.g., witness lists deposition designations, and exhibit lists). LPR, Appendix A at ¶¶ 6(c), (f), and (g). Brain requests a pretrial conference in early September 2026 based on a schedule that tracks the Local Patent Rules. Such a date would be helpful to prevent unreasonable delay. As explained below and in Exhibit 1, Avidbots may be trying to obtain an unfair tactical

advantage by seeking a lengthy extension and trying to leave the case schedule as open-ended as possible.

ii. *Avidbots's position:* Neither the Local Patent Rules nor the planning report calls for identifying a date for the Final Pretrial Conference or trial at this time. This makes sense and has nothing to do with gaining an "unfair tactical advantage" as Brain contends, because it is not yet known when the claim construction order will issue and the subsequent deadlines will fall. As such, Avidbots respectfully requests that the date of the Final Pretrial Conference not be set until after the claim construction has issued and a trial setting has been established. The planning report at ¶ 6(c) refers only to "*requested* dates for pretrial conferences," which Avidbots understands to refer to *interim* pretrial conferences over the course of the lawsuit. As to such interim pretrial conferences, Avidbots will accommodate any date(s) preferred by the Court.

d. Final date for the parties to amend pleadings or to join parties.

i. The parties propose that a deadline for the parties to amend pleadings or join parties without a showing of good cause be set for seven (7) days after the exchange of "Final Infringement Contentions" (pursuant to LPR 3.1(a)(2)) and "Final Unenforceability and Invalidity Contentions" (pursuant to LPR 3.1(b)).

e. Final dates for submitting Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, and exhibit lists.

i. The parties propose to exchange Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, and exhibit lists no later than twenty-eight (28) days prior to the Final Pretrial Conference.

f. Final dates to file Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, and exhibit lists, and objections thereto, under Rule 26(a)(3).

i. The parties propose that the deadline to file objections under Rule 26(a)(3) shall occur no later than seven (7) days prior to the Final Pretrial Conference.

7. Other items:

a. State the prospects for settlement.

i. The parties are amenable to participating in settlement discussions after they have exchanged sufficient information to make such discussions productive, such as after the parties have exchanged final infringement and invalidity contentions or otherwise as the parties deem appropriate.

b. Identify any alternative dispute resolution procedure that may enhance settlement prospects.

i. The parties are considering various dispute resolution procedures, including the possible use of a private mediator at the appropriate time.

c. Communications between a party's attorney and a testifying expert relating to the issues on which he/she opines, or to the basis or grounds in support of or countering the opinion, are subject to discovery by the opposing party only to the extent provided in Rule 26(b)(4)(B) and (C). Testifying experts shall not be subject to

discovery of any draft of their reports in this case, and such draft reports, notes, outlines, or any other writings leading up to an issued report(s) in this litigation are exempt from discovery. All materials generated by a testifying expert with respect to that person's work are also exempt from discovery unless they identify facts, data or assumptions relied upon by the expert in forming any opinions in this litigation and such information is not already disclosed in the expert's report.

d. In responding to discovery requests, each party shall construe broadly terms of art used in the patent field (e.g., "prior art", "best mode", "on sale"), and read them as requesting discovery relating to the issue as opposed to a particular definition of the term used. Compliance with this provision is not satisfied by the respondent including a specific definition of the term in its response, and limiting the response to that definition.

e. The parties have not yet reached an agreement regarding whether or not the video "The Patent Process: An Overview for Jurors" or any subsequent version of same distributed by the Federal Judicial Center, should be shown to the jurors in connection with its preliminary jury instructions. The parties will revisit this issue at a later time.

f. The parties agree that the provisions of Sections 3A, B and C of the America Invents Act concerning the revisions to 35 U.S.C. §§102, 103 apply to all patents-in-suit presently in this case.

g. Per Local Patent Rule 3.5(b), with respect to the patents-in-suit presently in this case:

    i. The patents-in-suit are eligible to be challenged by Avidbots at the USPTO.

ii. The challenges may take the form of *inter partes* review ("IPR") and *ex parte* reexamination.

iii. The 1-year deadline for Avidbots to petition for IPR is December 16, 2025.

iv. The patents-in-suit have not been the subject of prior USPTO reviews.

v. The patents-in-suit have not been asserted in prior litigation.

h. [This subsection is not applicable to this case.]

i. Other matters

i. Email Service:

1. The parties consent to email service and agree that a document sent by email before 10 p.m. PT/midnight CT on a given day shall be considered served on that day.

2. Service to Brain should include the following email addresses:

a. Brain.avidbots@knobbe.com

b. ktottis@tottislaw.com

c. kstolte@tottislaw.com

3. Service to Avidbots should include the following email addresses:

a. Gdc-avidbots@gibsondunn.com

b. dkonieczny@tdrlaw.com

ii. ESI Protocol:

1. The parties agree that the Local Patent Rules for Electronically Stored Information apply with certain modifications. **Exhibit 2** includes a list of agreed-upon and disputed modifications.

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Dated: April 1, 2025

Respectfully submitted,

By: */s/ Adam B. Powell*

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By: */s/ Kieran Kieckhefer*

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EXHIBIT 1

Exhibit 1

Proposed Schedule and Parties' Explanation for Their Positions

Event	**Brain's Proposed Date**	**Avidbots's Proposed Date**
Initial Disclosures *LPR 2.1*	March 17, 2025	March 17, 2025
Brain's "Initial Infringement Contentions" *LPR 2.2* *14 days after Initial Disclosures*	March 31, 2025	May 28, 2025
Avidbots's "Initial Non-Infringement, Unenforceability and Invalidity Contentions" and Document Production *LPR 2.3, 2.4* *14 days after LPR 2.2*	April 14, 2025	July 9, 2025
Brain's "Initial Response to Non-Infringement and Invalidity Contentions" *LPR 2.5* *14 days after LPR 2.3*	April 28, 2025	August 20, 2025
Brain's LPR 3.1(a)(1) list of asserted claims *LPR 3.1(a)(1)* *19 weeks after LPR 2.2*	August 11, 2025	November 5, 2025
Brain's "Final Infringement Contentions" *LPR 3.1(a)(2)* *21 weeks after LPR 2.2*	August 25, 2025	November 19, 2025
Avidbots's "Final Unenforceability and Invalidity Contentions" *LPR 3.1(b), 3.3* *21 weeks after LPR 2.2*	August 25, 2025	November 19, 2025
Avidbots's "Final Non-Infringement Contentions" *LPR 3.2(a)* *28 days after Final Infringement Contentions*	September 22, 2025	January 14, 2026
Brain's "Final Enforceability and Validity Contentions" *LPR 3.2(b)*	September 22, 2025	January 14, 2026

Event	**Brain's Proposed Date**	**Avidbots's Proposed Date**
28 days after Final Infringement Contentions		
Exchange list of terms and proposed constructions *LPR 4.1(a)* *14 days after LPR 3.2 Contentions*	October 6, 2025	February 11, 2026
Narrow to 10 terms *LPR 4.1(b)* *7 days after claim term exchange*	October 13, 2025	February 25, 2026
Close of Fact Discovery *LPR 1.3* *28 days after exchange of claim terms and phrases*	October 27, 2025	March 11, 2026
Avidbots's Opening Claim Construction Brief and Joint Appendix *LPR 4.2(a), 4.2(b)* *35 days after exchange of 4.1(a) terms*	November 10, 2025	March 25, 2026
Brain's Responsive Claim Construction Brief *LPR 4.2(c)* *28 days after Opening brief*	December 8, 2025	April 29, 2026
Avidbots's Reply Claim Construction Brief *LPR 4.2(d)* *14 days after Responsive brief*	December 22, 2025	May 20, 2026
Joint Claim Construction Chart *LPR 4.2(f)* *7 days after Reply brief*	December 29, 2025	May 27, 2026
Claim Construction Hearing *Within 28 days after Joint Claim Construction Chart*	On or before Jan 30, 2026	To be set at the Court's discretion
Advice of counsel discovery (if applicable) *LPR 3.6* *Begins 7 days after claim construction ruling and ends 42 days after*	Feb-March 2026	As established by LPR 3.6 based on when the Court issues the claim construction ruling

Event	**Brain's Proposed Date**	**Avidbots's Proposed Date**
Opening Expert Reports *LPR 5.1(b)*	March 23, 2026	As established by LPR 5.1(b) based on when the Court issues the claim construction ruling
Rebuttal Expert Reports *LPR 5.1(c)* *28 days after opening report*	April 20, 2026	As established by LPR 5.1(c) based on when the Court issues the claim construction ruling
Close of Expert Discovery *LPR 5.2* *28 days after rebuttal reports*	May 18, 2026	As established by LPR 5.2 based on when the Court issues the claim construction ruling
Dispositive Motion Deadline *LPR 6.1* *28 days after close of expert discovery*	June 15, 2026	As established by LPR 6.1 based on when the Court issues the claim construction ruling
Pre-Trial	September 14, 2026	To be determined after the Court determines the trial setting
First Day of Trial	September 28, 2026	To be determined at a later time based on post-claim construction deadlines and which claims and

Event	Brain's Proposed Date	Avidbots's Proposed Date
		issues remain for trial

Brain's Explanation of Schedule:

Brain proposes a schedule that follows the timing and sequence of the Local Patent Rules, which contemplates a lengthy process from March 2025-September 2025 for the parties to exchange contentions on infringement, validity, and enforceability. Avidbots argues the parties need more time to prepare contentions because the case purportedly involves "100+ claims" and complex technology. But the Local Patent Rules are designed for such cases. Avidbots has not shown anything about this case in particular that justifies the extreme delay it seeks.

First, Brain has already served its initial infringement contentions and narrowed to 50 claims total as required by the Local Patent Rules. Brain did so just ***six days*** after Avidbots made its source code available for inspection and ***before*** Avidbots produced all core technical documents. Thus, Brain has already narrowed the case to include no more claims than any other patent case. Avidbots argues it needs more time for validity contentions because Brain did not narrow its claims until "last night." But last night was the deadline for Brain to narrow its claims. Brain complied with the Local Patent Rules and simply asks that Avidbots do the same for its contentions. Avidbots argues it needs time because Brain's initial infringement contentions are insufficiently detailed. Brain's contentions were

extremely detailed. Regardless, the Local Patent Rules do not allow Avidbots to delay its initial contentions by asserting that Brain's initial contentions are not sufficient. To the contrary, the Local Patent Rules refer to "initial" contentions, acknowledge that discovery is needed to "flesh out the basis" for those contentions, and contemplate revisions throughout discovery. LPR, preamble.

Second, Avidbots has not shown the technology here is any more complex than the sort of technology contemplated by the Local Patent Rules. To the contrary, this case involves only three patent families that all generally relates to autonomous robotic floor cleaners. Brain accuses Avidbots's four models of robotic floor cleaners of infringing all asserted patents.

Third, Brain already extended Avidbots a courtesy extension until March 2025 to answer or otherwise respond to Brain's complaint that was filed December 6, 2024. Dkt. 14, Dkt. 16. Under the Local Patent Rules and Brain's proposal, Avidbots has more than ***four months*** from the filing of the Complaint that included detailed infringement claim charts. Avidbots has not shown why it needs another ***three months*** after Brain's infringement contentions to provide initial invalidity contentions. This is especially true because Brain provided its infringement contentions just ***six days*** after receiving access to Avidbots's source code.

Avidbots also argues the Court should not adopt dates after claim construction. Brain complied with the Local Patent Rules, which instruct the parties

to identify actual "final dates" for pretrial submissions (witness lists, deposition designations, and exhibit lists) and objections leading up to the pretrial conference. LPR, Appendix A at ¶¶ 6(c), (f), and (g). Those dates cannot be selected without setting other surrounding interim dates. Avidbots purports to be concerned about the schedule being "thrown into disarray" if the claim construction order issues later than anticipated, but the Court can easily adjust the schedule later if necessary. Avidbots simply has no principled reason for leaving the schedule open-ended. Avidbots may be asking this Court to delay the Local Patent Rule exchanges and avoid trial setting so that Avidbots can later argue that this case is in early stage. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) at p. 6 (identifying district court schedule and trial date as one reason to discretionarily deny institution).

Avidbots argues the Court should "favor a defendant's ability to bring IPR proceedings and ultimately stay the case" to "streamline" the case or "avoid trial altogether." If Avidbots were truly interested in efficiency, it would petition for IPR promptly. Instead, Avidbots apparently seeks to delay this case as long as possible and then petition for IPR and seek a stay at the last minute. This case has already been pending for nearly four months. Avidbots now seeks to delay claim construction until ***seventeen months*** after filing and seeks an indefinite delay for expert reports, summary judgment, and trial. Brain respectfully suggests it is

appropriate at this stage to set forth a comprehensive schedule for the case to provide certainty to the parties and to ensure that the case moves forward efficiently.

Avidbots's Explanation of Schedule:

For all Local Patent Rule events starting from Brain's Initial Infringement Contentions under LPR 2.2 through the claim construction process under LPR 4.2, Avidbots respectfully requests that the Court follow the same sequence of events in the Local Patent Rules, but extend their deadlines as set forth in the chart above (adding up to about a total extension of about five months by the time of LPR 4.2(f) Joint Claim Construction Chart).

A longer schedule than the patent rule default is appropriate in view of the complexity of the technology at issue in this lawsuit. Brain asserts five patents (containing 100+ claims, 50 of which were chosen last night for assertion in Brain's March 31 Initial Infringement Contentions) across three distinct patent families allegedly involving Brain's "innovation in the fields of autonomous robots and artificial intelligence." (Dkt. 1 at ¶ 18.) Brain alleges that the asserted patents are directed to several different technologies, including "dynamic route planning for robots capable of autonomous navigation, including floor scrubber robots" ('780 patent); "using scan matching for identifying the location of a robot in an environment" ('325 patent); "generating a map for use in autonomous navigation for robots" ('576 patent); and "analyzing images to detect objects" ('436 patent). (Dkt.

1 at ¶¶ 30, 63, 79, 93.) As such, Avidbots's invalidity defenses can be expected to require several entirely different prior art theories. Although Avidbots was aware of which patents were being asserted after the case was filed, Avidbots did not know which *claims* Brain would assert until last night, when Brain served its Initial Infringement Contentions. Avidbots will not be in a position to fully develop its prior art theories and references in view of Brain's allegations until after Avidbots has a fair opportunity to review and analyze Brain's list of 50 asserted claims and Initial Infringement Contentions served last night.

Moreover, with respect to alleged infringement, Brain's Complaint accuses several different Avidbots functionalities across four Avidbots products (the Neo, Neo 2, Neo 2W, and Kas), which run on complex source code that must be analyzed in view of the claims that Brain will choose to assert. (*See id.* ¶ 20.) Brain, however, only just began reviewing Avidbots's source code on March 25, 2025 (only one day after it first requested to review the code) and has not yet printed any Avidbots source code under the Protective Order. Based on Avidbots's initial review, Brain's Initial Infringement Contentions served last night are deficient, even though Avidbots produced hundreds of technical documents along with its relevant source code. Brain focuses on the additional time for Avidbots's invalidity contentions, but it fails to mention that Avidbots was proposing that *Brain* get more than 8 extra weeks for

its Initial Infringement Contentions, precisely so that this very situation could be avoided and Brain could have provided more meaningful initial contentions.

As such, a longer schedule will allow time to meaningfully analyze the patents and the accused products, benefitting both sides and promoting the efficient resolution of this case.

Additionally, Avidbots disagrees with the departures from the Local Patent Rules being proposed by Brain. First, Brain seeks to assign dates certain to all events occurring after claim construction. The Local Patent Rules, however, key these pre-trial deadlines off the issuance of the claim construction order. *See* LPR 3.6, LPR 5.1 *et seq.* This is for good reason, as it cannot be known at this early stage when the claim construction order will issue. Brain's proposed post-claim construction schedule is based entirely on a guess as to when the claim construction order will issue. If the claim construction order were to issue later than Brain's guess, the entire schedule would be thrown into disarray and in need of modification. Nor is there any benefit to setting dates certain for these events now, since, under the Local Patent Rules, the dates will fall into place automatically once the claim construction order issues.

Avidbots also disagrees with Brain's proposal that a trial date be established at this time. Rather, Avidbots proposes that the trial setting be determined later, based on what ends up becoming the post-claim construction schedule and what

issues remain active for trial at a later stage. Indeed, the Local Patent Rules do not impose any particular timing for trial, again for good reason. Brain's proposed trial date could end up being unduly early in view of when the claim construction order issues and how this case unfolds. For example, the case could end up getting stayed pending IPR, or, given that Avidbots has not yet answered the Complaint, there could be more or fewer claims and defenses at issue down the road.

Brain does not articulate any reason why setting a trial date at this early stage is necessary or helpful, other than that a trial date allegedly would provide "certainty to the parties and to ensure that the case moves forward efficiently." But there would actually be no added certainty, given that this District has designed the patent rule schedule to key off the issuance of the claim construction order, meaning that any trial date chosen now could end up being unduly early as explained.

Brain asserts that Avidbots may be avoiding the setting of a trial date because of the heightened possibility that a known trial date will cause the PTAB to deny any IPR petitions filed by Avidbots under *Fintiv*, but it is actually *Brain* that may be trying to shoehorn in a trial date to help *reduce* the probability that the PTAB institutes IPRs against its patents. (*See* USPTO 2/28/25 news release titled "USPTO rescinds memorandum addressing discretionary denial procedures," *available at* https://www.uspto.gov/about-us/news-updates/uspto-rescinds-memorandum-addressing-discretionary-denial-procedures.) If anything, this Court should favor a

defendant's ability to bring IPR proceedings and ultimately stay the case as an opportunity to streamline the litigation and potentially avoid trial altogether. Brain's suggestion that Avidbots should have already filed for IPR is puzzling, given that Avidbots only just received Brain's list of asserted claims and Initial Infringement Contentions last night. And there is no merit or basis for Brain's allegation that "Avidbots apparently seeks to delay this case as long as possible and then petition for IPR and seek a stay at the last minute." Indeed, Brain agrees that Avidbots has until December 16 to petition for IPR. As such, Brain's request to insert a trial date where the patent rules would not impose one should be rejected.

EXHIBIT 2

Exhibit 2

CHANGES TO ESI ORDER

LPR ESI 2.5 (Production Format)

File Types And Natives

TIFF images for each produced record shall be provided as Group IV, 300-dpi single page TIFF files named "<PageID>.TIF (e.g., "ABC00000001.TIF") with no spaces in the file name. TIFF images will be provided in a folder called "IMAGES" on the production media. All TIFF images for a single document will be in one subfolder within the IMAGES folder, and the number of image files in any one subfolder will not exceed 1000.

File types that do not render in a usable manner when converted to image with extracted text (e.g., spreadsheets and multimedia files) shall be produced as natives with a TIFF slipsheet indicating this. Documents produced natively shall follow the same naming format as TIFF images but also contain the confidentiality designation (e.g., "(Confidential) ABC00000001.xls"). Native files will be provided in a folder called "NATIVES" on the production media.

If available, extracted text will be produced for ESI records in a document-level, multi-page text file format, with a corresponding path reference appearing in the TEXTLINK field of the load file. The filename of each text file will equal the production BEGDOC number of the corresponding page and have a .txt file extension. The text files will be provided in a folder called "TEXT" on the production media.

Data Files

Associated metadata for each produced record will be produced in a Concordance load file format (.dat) and include the following fields:

- BEGDOC
- ENDDOC
- PAGECOUNT
- BEGATTACH

- ENDATTACH
- ATTACHCOUNT
- CUSTODIAN(S)
- FILENAME
- FILEEXT
- FOLDER
- FILESIZE
- MD5HASH
- AUTHOR
- TITLE
- LASTMODDATE
- LASTMODTIME
- CREATEDDATE
- CREATEDTIME
- EMAIL_FROM
- EMAIL_TO
- EMAIL_CC
- EMAIL_BCC
- EMAIL_SUBJECT
- EMAIL_DATERCVD
- EMAIL_TIMERCVD
- EMAIL_DATESENT
- EMAIL_TIMESENT
- DESIGNATION (i.e. level of confidentiality if any (e.g. "Confidential" or "Attorneys' Eyes Only")

- TEXTLINK
- NATIVELINK

All of the above metadata field information that is available from the native ESI source files will be extracted therefrom and will not be altered or modified from the original. The parties are not obligated to include or create metadata for any document that does not contain such metadata in the original or where it is otherwise not readily available.

In addition to the attachment metadata listed above, the parties shall produce email attachments sequentially after the parent email.

Time zone

Where technically feasible, each side shall normalize the time stamp shown in the TIFF rendering of the top-level email header to a single time zone. Brain shall normalize to Pacific Time. Avidbots shall normalize to Eastern Time. The parties need not adjust for Daylight Saving Time. For clarity, this provision does not apply to the existing body text of an email, such as for email timestamps already set forth within an email (e.g., in an email chain).

Hidden Content and Tracked Changes

MSWord and other word processing files will be rendered to TIFF so as to show tracked changes, hidden text, comments, headers, and field codes. PowerPoint and other presentation slides will be rendered to TIFF with full page slides, with all hidden slides and comments visible, and with any notes summaries appended at the end.

Foreign Language Documents.

All documents shall be produced in their original language. Where a requested document exists in a foreign language and the producing party also is aware of or has identified after a reasonable search an English language version of that document, the producing party shall produce both the original document and all English-language versions, including certified translations.

<u>LPR ESI 2.6 (Email Production Requests)</u>

The parties agree that "email production requests" under LPR ESI 2.6 apply to emails and company "chat" programs, such as Slack, Google Chat, Teams Chat, Zoom Chat, etc. There shall be no obligation to search voicemails or text messages. A disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word (e.g., "pat." or "patent", "infringe" or "infringement"), variants of a party's name, or are a combination of the patents at issue in this case (e.g., "Patent A" or "Patent B" or "Patent C" or "Patent D"). The parties disagree on the matters set forth below.

Brain's position: Brain proposes the Court modify LPR ESI 2.6(d) and (e) to allow Brain to seek discovery from up to ten custodians and to identify up to ten search terms per custodian. Expanding from five to ten custodians is appropriate because Avidbots' initial production of documents and source code with its Initial Disclosures demonstrates that numerous individuals were involved with development of the Accused Products. Brain has already identified more than 10 individuals from source code and technical documents, in addition to the two other individuals that Avidbots identified in its initial disclosures. Brain believes that many of these individuals have relevant ESI, including on issues that Avidbots placed in dispute, such as willfulness and indirect infringement. Ten search terms per custodian is less critical, but would actually ***reduce*** the burden on the producing party by allowing the requesting party to propose multiple narrow search terms instead of a single broad search term. Such a search strategy generally results in fewer (but more relevant) documents to review.

Avidbots has not justified its attempt to shift to the requesting party ***all*** costs of discovery for email and other electronic communications. The Local Patent Rules for Electronically Stored Information already provide for cost shifting in narrow circumstances and need not be expanded. *See, e.g.*, LPR ESI 2.6 (cost shifting for exceeding 5-10 custodians/search terms). Nor has Avidbots justified its attempt to limit discovery to just two custodians. The Local Patent Rules provide a default of five custodians with a provision allowing parties to seek up to ten custodians. *Id.* They include no provision allowing parties to ***reduce*** custodians to fewer than five.

Avidbots is also incorrect to suggest Brain is taking inconsistent positions. This case is no more complex than a typical patent case, which is why Brain proposes the default schedule and ESI custodian/search terms within the default range provided by the Local Patent Rules. In contrast, Avidbots inconsistently argues both (a) this case is so complex that the Court should dramatically ***expand*** the schedule

and (b) the case is so simple that the Court should dramatically ***shrink*** ESI limits. Avidbots's positions are irreconcilably inconsistent.

Avidbots's position: Avidbots is amenable to the parties' conducting "email production request" discovery as set forth in LPR ESI 2.6, but respectfully submits that the requesting party should be ordered to bear all reasonable costs for such discovery.

As LPR ESI 2.6 recognizes, this type of ESI discovery can be unduly onerous and costly to the producing party. Email and chat software can generate large quantities of information in the ordinary course of business, and the search terms applied could create a very large corpus of data that must be reviewed by the producing party for privilege and relevance before the information is produced. It is for this very reason that LPR ESI 2.6(d) and (e) mandate cost-shifting when a party seeks more than the preset number of custodians or search terms.

Should the Court decline to order cost-shifting on all "email production request" discovery as Avidbots seeks here, then Avidbots respectfully submits that, in the alternative, the parties be limited to two custodians under LPR ESI 2.6(d) and five reasonable search terms per custodian under LPR ESI 2.6(e) without cost-shifting, with cost-shifting imposed on any additional custodians or search terms over those limits.

Brain's proposal goes in the wrong direction from LPR ESI 2.6, as it asks the Court to *double* the default limits to 10 custodians and 10 search terms without any cost-shifting at all. This is unduly onerous on the producing party, and far beyond what LPR ESI 2.6 contemplates. In addition, Brain has not articulated any good reason why 10 custodians are necessary under the facts of this case. It is not enough that Brain has identified more than 10 names in Avidbots's productions. The entire point of LPR ESI 2.6 is that a party should *not* be allowed to seek email discovery on whoever it wants from the opposing side, but rather should be judicious and select what it believes are the most necessary custodians and search terms.

Indeed, Brain's assertion that extra ESI discovery is needed here contradicts its own argument above. Brain asserts that there is nothing particularly complex about this lawsuit to oppose any extension of the pre-claim construction schedule, yet it believes the number of custodians and search terms should be *doubled* from the LPR ESI 2.6 default without imposing any cost-shifting at all.

Brain is wrong that Avidbots is trying to "dramatically shrink ESI limits." Again, Avidbots is not opposed to the parties conducting ESI discovery. Avidbots's position is simply that if Brain believes this ESI discovery is necessary to proving its claims, Brain should be required to bear the costs of it. (Brain is wrong above that Avidbots placed willfulness and indirect infringement in dispute. It was Brain that put them in dispute by alleging them in its Complaint.)

Finally, Brain's assertion that increasing the number of search terms could reduce the burden on the producing party is speculative at best, since Brain does not purport to place any additional restrictions on those terms.