

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

HL KLEMOVE CORP.,
Plaintiff,

v.

Civil Action No. 2:23-cv-647 (EWH)

FORAS TECHNOLOGIES, LTD.,
Defendant.

SCHEDULING AND PRETRIAL ORDER

The following shall govern the progress of this action in addition to the provisions of the Federal Rules of Civil Procedure as modified and/or enlarged upon by the Local Rules for this Court. This Order shall control if any conflict is perceived between it and either the Federal or Local Rules. This Order shall supersede all prior Scheduling and Pretrial Orders that have been entered in this matter.

Joinder

1. Any motions for joinder of additional parties shall be filed within fifteen (15) calendar days after entry of this Order.

Motions Challenging Pleadings

2. Any motion for judgment on the pleadings pursuant to Rule 12(h)(2)(B) shall be filed not later than thirty (30) days from the entry of this order.
3. Any motions to amend pleadings shall be filed in accordance with Fed. R. Civ. P. 15(a). Any such motions filed that do not comply with Rule 15(a) will be entertained only when justice so requires.

Rule 26 Disclosures

4. Not later than **April 30, 2024**, each party shall serve upon the other party initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1).

Patent Specific Deadlines

5. The parties shall serve infringement contentions not later than **May 16, 2024**.
6. The parties shall serve invalidity contentions not later than **June 17, 2024**.
7. The parties shall meet and confer regarding the total number of patent claims that may be asserted, but Defendant shall be limited to asserting no more than four (4) total claims. The parties shall meet and confer regarding the process and deadlines for narrowing such claims no later than **July 19, 2024**.
8. The parties shall exchange a list of proposed claim terms to be construed not later than **July 19, 2024**. The parties shall meet and confer regarding the proposed claim terms not later than **July 26, 2024**. The parties shall exchange preliminary proposed constructions for all proposed claim terms not later than **August 2, 2024**. The parties shall conduct a second meet and confer regarding the proposed claim terms and constructions not later than **August 9, 2024**. The parties shall submit no more than six (6) claim terms to the Court for consideration.
9. The parties shall exchange an identification of all references from the specification or prosecution history that support its construction and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed claim construction or to oppose any other party's proposed claim construction not later than **August 2, 2024**.

10. The parties shall file simultaneous opening *Markman* briefs on **August 30, 2024**. The parties shall file simultaneous response *Markman* briefs on **September 27, 2024**. The parties shall file a joint claim construction chart, noting each party's proposed construction of each term, and a prehearing statement on **October 4, 2024**. The claim construction chart shall include specific pin citations to supporting evidence, and the parties shall file such supporting evidence for the Court's review. The parties shall list the claims in the same order in their briefs and claim construction chart.
11. The parties shall meet and confer regarding the deadline and format in which technology tutorials shall be submitted to the Court.
12. A *Markman* hearing will be held on **October 16, 2024, at 10:00 a.m.**, at the Walter E. Hoffman United States Courthouse, 600 Granby St., Norfolk, VA 23510.

Trial & Other Pretrial Matters

13. The parties shall be prepared to discuss trial dates and any further pretrial deadlines at the *Markman* hearing on October 16, 2024. The Court shall thereafter issue a supplemental scheduling order setting the remaining dates.

Discovery

14. All fact discovery, including the required time period for response to any discovery demand(s), must be concluded not later than **November 27, 2024**, except by order of the Court.
15. Counsel are expected to resolve discovery disputes without filing motions or involving the Court. Should a dispute arise, consistent with Local Rule 37(E), counsel must confer in good faith to resolve the dispute. "Good faith" means that the parties have spoken, preferably in person, and engaged in one-on-one discussions, not that the parties have

merely exchanged correspondence. If, after good faith effort, counsel are unable to resolve a dispute and need the Court to intervene, the Court prefers that the parties file a joint motion not exceeding twenty (20) pages in length setting forth (1) the posture of the case, (2) the nature of the discovery dispute, (3) the efforts made by the parties to resolve the dispute, (4) the position of each party regarding the dispute, (5) whether a hearing is necessary to address the issue, and (6) a certification under Local Rule 37(E) signed by counsel for each party that they have met and conferred in good faith to resolve the dispute before involving the Court. The Court prefers that the parties file a joint motion, so that the dispute can be addressed in an expedited manner. If, however, the parties believe that a joint pleading is not feasible, the parties may file separate pleadings under the following terms: the motion to compel (or motion for protective order) with a memorandum incorporated therein and any response with a memorandum incorporated therein may not exceed seven (7) pages in length and any reply may not exceed three (3) pages. Moreover, unless resolution of the dispute under the deadlines set forth in Local Rule 7(F)(1) can occur before the deadline for the completion of discovery, the pleadings must be filed pursuant to an agreed briefing schedule that provides sufficient time for the Court to rule on the motion before the deadline for the completion of discovery as set forth in Paragraph 16.

16. Counsel are reminded that discovery disputes requiring judicial intervention are strongly disfavored and that the Court will consider imposing sanctions pursuant to Fed. R. Civ. P. 37 and Local Rule 37 against any party not acting in good faith to resolve a dispute before involving the Court.

17. If any party anticipates difficulty meeting the deadline for asserting discovery objections, the Court instructs the party to move for an extension of time at the earliest reasonable opportunity, preferably before objections become due. Such motion will be granted for good cause shown. If any party is shown to have unnecessarily delayed in seeking such an extension of time, the Court will strictly enforce the deadlines established by the Local Rules.
18. No discovery materials shall be filed with the Clerk except by order of the Court.
19. Claims of Privilege:
 - a. There is no duty to disclose privileged documents or information. Upon agreement of the parties, the parties will not produce privilege logs nor exchange information regarding claims of privilege and/or work-product protection. Should a party believe that a privilege log is needed, it should request such from the other party in writing. If requested and produced, privilege logs must provide the requesting party with an inventory list of the documents to which objection is made, together with a brief description of the document, including the date, the author, identity of each recipient including their job titles at the pertinent time, and the claimed basis for its protection, all of which shall be sufficient to permit the opposing party to assess the claim of privilege or protection.
 - b. If a discovery dispute arises concerning a raised privilege or the adequacy of the privilege log, any party may file a motion to compel with the Court. If such a motion is made, the objecting party shall provide a copy of the privilege log to the Court, and the party asserting privilege shall respond to the motion within the time period provided by Local Civil Rule 7. The party asserting privilege shall also file with the Court any proof

in the form of declarations or affidavits to support their assertions of privilege, along with the documents over which privilege is asserted for in camera inspection.

20. Subjects for Discovery: The parties anticipate that discovery will be needed on Plaintiff's claims of non-infringement, on Defendant's defenses and counterclaims, and on Plaintiff's defenses and counterclaims.
- a. Contentions: The parties have agreed to the deadlines for the exchange of infringement and validity contentions as outlined in paragraphs 5 and 6 of this Order.
 - b. Expert Reports: Based upon the parties' agreement, the party bearing the burden of proof on an issue will provide its expert report on that issue first. For example, on the issue of infringement, Defendant bears the burden and would provide its expert report first, after which Plaintiff would provide its rebuttal expert report. On the issue of invalidity, Plaintiff bears the burden and would provide its expert report first, after which Defendant would provide its rebuttal expert report.
 - c. Based upon the parties' agreement the Court will phase fact and expert discovery such that expert discovery occurs after the completion of fact discovery. Expert discovery shall commence after the Court issues a *Markman* order, and expert discovery deadlines shall be set in a future order following the *Markman* hearing.
21. Electronically Stored Information ("ESI"): The parties anticipate that extensive ESI discovery will not be required, but agree that the parties are not relieved of their obligations to search for and produce ESI as appropriate based on the discovery requested and any objections and responses thereto. The parties further agree that e-mail discovery shall be presumptively excluded. In the event email discovery is needed, the parties agree to meet

and confer regarding a limited email discovery protocol. The parties shall propose a separate order providing stipulations regarding production of ESI generally.

22. Limitations on Discovery: Based upon the parties' agreement, the discovery in this case shall be limited as follows.

- a. Interrogatories: Each party may serve up to twenty-five (25) interrogatories on an opposing party.
- b. Requests for Admission: Each party may serve up to twenty-five (25) requests for admission on an opposing party, except that there is no limit on the number of requests for admission the parties may serve to establish the authenticity of documents. Requests for admission directed to document authentication shall be clearly denoted as such and shall be served separately from any requests for admission subject to the numerical limitations above. The parties shall work together in good faith to agree on a stipulation as to the authenticity of their own documents to avoid the service of large numbers of requests for admission relating to authenticity.
- c. Experts: The parties are advised that they may rely upon the testimony of only one expert per discipline, except by order of the Court. Accordingly, each party is entitled to no more than three (3) testifying expert witnesses.
- d. Depositions (Non-Expert):
 - i. Each party shall be allowed up to seventy-five (75) hours of fact discovery deposition time, including Rule 30(b)(6) witnesses, and a total of up to ten (10) depositions of Rule 30(b)(1) witnesses. Any depositions taken with the need for translation will only count for half the time expended. For example,

a deposition taken in Korean for ten (10) hours would count for five (5) hours of deposition time against the limit.

- ii. Any given witness may only be deposed for a maximum of seven (7) hours, irrespective of whether the witness testifies pursuant to Rule 30(b)(1) and/or Rule 30(b)(6) except as noted above with regard to translation. A translated deposition may not exceed seven (7) hours in one day, absent agreement of the parties.
- iii. These hour limits shall not include expert deposition time.
- iv. Depositions on written questions do not count toward the above limits.
- v. The parties shall act reasonably and in good faith to schedule depositions expeditiously, while accommodating the schedules of counsel and witnesses.
- vi. The parties further agree to discuss in good faith reasonable expansions of these limits to the extent a party believes additional fact witness deposition time becomes necessary.

e. Expert Depositions:

- i. Each expert can be deposed for up to seven (7) hours for each substantive issue (e.g., infringement, invalidity, or damages) on which the expert has offered an opinion. For example, a single expert providing reports regarding both infringement and validity for a party may be deposed for up to fourteen (14) hours. After expert reports are served, the parties will work together to streamline the expert depositions.

- ii. Experts, however, shall not be deposed for more than seven (7) hours in one day as set forth in Rule 30(d)(1) unless otherwise agreed to by the parties.
- 23. Third-Party Discovery: Any party who receives documents from a third party in response to a subpoena agrees to produce such documents to all other parties within seven (7) days of receipt of the documents from the third party. In addition, the parties agree to work with each other in scheduling third-party depositions.
- 24. Representative Products: The parties shall discuss in good faith the feasibility of a stipulation as to representative products in order to streamline the case for discovery and trial. No party shall argue that this provision constitutes an agreement or finding that a stipulation regarding representative products is necessarily appropriate or feasible in this particular case.
- 25. Any party may later move to modify these limitations for good cause.

Oral Argument

- 26. Consistent with Local Rule 7(J), the Court will decide all motions on the papers unless the Court orders oral argument on its own initiative or on written request by the parties. Any request for oral argument should be included as a separate section in the memorandum, response or reply and should address why oral argument will materially aid in the decisional process.
- 27. The Court will not enforce the provisions of Local Rule 7(E) to the extent that it requires a movant to schedule a hearing within thirty (30) days after filing a motion.

Deadlines

28. Unless otherwise specified, any deadline established herein shall be governed by Rule 6. For purposes of Fed. R. Civ. P. 6(d), all electronically filed documents shall be deemed electronically served regardless of additional service by any other means.

Settlement

29. The parties shall notify the Court of any settlement, either in whole or in part, as soon as practicable but not later than 12:00 p.m. on the nearest business day following the date of settlement. Counsel shall submit a stipulation of dismissal not later than eleven (11) calendar days after filing the notice of settlement, unless otherwise ordered by the Court. If such stipulation is not timely filed, the Court will dismiss this action with prejudice as to all parties involved in the settlement.

Courtroom Technology

30. All exhibits will be presented by available electronic means during the *Markman* hearing. The courtroom is equipped with a document viewer that displays evidence on monitors located on counsel tables, on the bench and in the jury box. The parties may also use personal laptop computers to aid in the presentation of evidence. The Court does not provide laptops. The Court advises the parties to visit the following webpage for more information on the Court's technological capabilities: <https://www.vaed.uscourts.gov/evidence-presentation-system>.
31. Any party wishing to use courtroom technology during a proceeding should submit a Request to Use the Court's Evidence Presentation System form and confer with the undersigned's courtroom deputy **at least ten (10) days before the proceeding**. The Court expects all parties using courtroom technology to conduct a test run before any proceeding.

32. Any party wishing to bring personal electronic devices, including laptops and cell phones, to a proceeding should submit a Request for Authorization form to the undersigned's law clerks **at least three (3) days before the proceeding**. While in the courthouse, all devices should be turned off (not in silent or vibrate modes) unless in use for court-related matters.

Courtesy Copies

33. Counsel must submit courtesy copies to Chambers for any filing in which the filing and exhibits together exceed seventy-five (75) pages in length. In those circumstances, counsel should submit one (1) copy of the motion and memorandum in support and one (1) copy of all exhibits. The courtesy copies shall be submitted in a binder, with tabs separating each exhibit and marked with the exhibit number, and should be printed double-sided. If counsel has moved to seal portions of the motion or exhibits, the courtesy copy shall be submitted to chambers in an unredacted form. Counsel is directed to highlight any redacted portion, such that the redacted portion remains visible and readable. Counsel shall not submit courtesy copies of motions to seal.

Communications with Chambers

34. *Ex parte* communications with chambers are strongly discouraged and should be limited to scheduling questions and other clerical matters. All other requests and communications should be made via filings on the public docket.

The Clerk is directed to send a copy of this Order to all counsel of record.

It is SO ORDERED.



Elizabeth W. Hanes
United States District Judge

Date: April 19, 2024