

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARMON FOODSERVICE	)	
TECHNOLOGIES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:25-cv-01491-ZMB
	)	
DUKE MANUFACTURING CO.,	)	
	)	
Defendant.	)	

JOINT PROPOSED SCHEDULING PLAN

Plaintiff Marmon Foodservice Technologies, Inc. (“Marmon”), by and through its counsel of record, and Defendant Duke Manufacturing Co. (“Duke”), through its counsel of record, having met and conferred pursuant to Fed. R. Civ. P. 26(f) and the Court’s Orders Setting Rule 16 Scheduling Conference (Docs. 39, 41), hereby submit the following Joint Proposed Scheduling Plan.

Plaintiff’s Preliminary Statement: Plaintiff proposes the Court adopt the schedule contemplated under the applicable local patent rules. This is an action for patent infringement. The Court’s written interpretation or construction of the claims of a patent are particularly important in utility patent cases because the words of the claims themselves define the invention. *See, e.g., Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed., Cir. 2005); *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979-81 (Fed. Cir. 1995) (en banc), *aff’d*, 517 U.S. 370 (1996). The Court adopted Local Patent Rules to guide the parties through the claim construction process that apply to cases filed before December 15, 2025, including this case (“Applicable LPRs”). The Court adopted Amended Local Patent Rules (“Amended LPRs”) applicable to cases filed after

December 15, 2025. Amended LPRs 1-3. Plaintiff proposes the parties follow the Applicable LPRs.

Neither the Applicable IPRs nor the Amended IPRs specifically apply to design patent infringement claims. Applicable LPRs 1-2(b); Amended LPRs 1-2(b). For design patent infringement, the Federal Circuit “has not required that the trial court attempt to provide a detailed verbal description of the claimed design, as is done in the case of utility patents.” *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008). Consistent with the Applicable LPRs, Plaintiff’s plan does not address the design patent claims under the LPR procedures and deadlines, as ordinary discovery vehicles should be used to discover the parties’ positions on the design patent claims.

Defendant’s Preliminary Statement: Defendant anticipates that Plaintiff will assert more than 200 claims across 7 utility patents and 2 design patents. Some of the claims are nearly 100 lines long and contain more than 25 limitations. Consistent with how other jurisdictions manage cases with numerous patents with more than 100 claims, there should be an iterative process for narrowing the number of asserted claims (and corresponding invalidity challenges) to make the case more manageable for the parties and the Court. The LPRs, nor the timing of disclosures in the LPRs, were drafted to account for a patentee asserting 200 claims across 9 total patents. Defendant’s approach proposes a schedule that is reasonable from a timing and substantive perspective.

- a. The Parties agree that Track 3 (Complex) is appropriate for this case. This is a patent infringement action involving nine asserted patents (seven utility and two design patents) with allegations of direct, induced, and contributory infringement, as well as willfulness. The Plaintiff filed the Complaint (Dkt. 1) on October 2, 2025. (Dkt. 1) The

Defendant filed a motion to partially dismiss the complaint (Dkt. 24) on November 28, 2025, which is pending. The Court set the Rule 16 Conference in an Order (Dkt. 39) issued June 24, 2026, upon Plaintiff's motion (Dkt. 33). The complexity and number of asserted patents warrants the Track 3 designation. The Parties have built this Joint Proposed Scheduling Plan based on the setting of the Rule 16 Conference, rather than the filing of the Complaint, and they further propose that the parties submit an Amended Joint Proposed Scheduling Plan following the Court's issuance of a claim construction order in this matter.

- b. The deadline for joinder or amended pleadings without leave is September 4, 2026 (14 days after initial disclosures). After this date, the parties may seek leave of Court to join parties or amend pleadings.
- c. The Parties propose the following discovery plan:
 - i. The parties agree to follow Rule 26(b)(5)(B) for asserting claims of privilege or of protection as trial-preparation material after production;
 - ii. The parties agree to follow Rule 26(b)(5)(B) for asserting claims of privilege or of protection as trial-preparation material after production (this duplicate item is maintained to be consistent with the numbering in the Court's Order setting the Conference);
 - iii. The Parties shall make all disclosures required by Rule 26(a)(1) no later than **August 21, 2026.**

iv. The Parties disagree about the timing of the application of the Applicable Local Patent Rules. The Parties' respective proposals for timelines and due dates under the Applicable Local Patent Rules are as follows:

1. [Joint Proposal]: Disclosure of Asserted Claims and Preliminary Infringement Contentions (Local Patent R. 3-1) and Document Production Accompanying Disclosure of Asserted Claims and Preliminary Infringement Contentions (Local Patent R. 3-2) shall be served by Plaintiff on all parties no later than **September 24, 2026**, or 21 days after the initial Rule 16 Scheduling Conference.
2. [Plaintiff's Proposal]: Preliminary Counter-Infringement Contentions (Local Patent R. 3-3) shall be served by Defendant on all parties by **October 22, 2026**, or 28 days after service of the Disclosure of Asserted Claims and Preliminary Infringement Contentions pursuant to Local Patent R. 3-1.
3. [Defendant's Proposal]: Preliminary Counter-Infringement Contentions (Local Patent R. 3-3) shall be served by Defendant on all parties by **October 22, 2026 or 28 days after** service of the Disclosure of Asserted Claims and Preliminary Infringement Contentions pursuant to Local Patent R. 3-1. Should the number of Asserted Claims in Plaintiff's Local Patent R. 3-1 disclosure exceed 50 claims, Defendant shall serve its Counter-Infringement Contentions on or before December 4, 2026.
4. [Plaintiff's Proposal]: Preliminary Invalidity Contentions (Local Patent R. 3-4) and Document Production Accompanying Preliminary Invalidity

Contentions (Local Patent R. 3-5) shall be served by Defendant on all parties no later than **November 12, 2026**, or 49 days after service of the Disclosure of Asserted Claims and Preliminary Infringement Contentions pursuant to Local Patent R. 3-1.

5. [Defendant's Proposal]: Preliminary Invalidity Contentions (Local Patent R. 3-4) and Document Production Accompanying Preliminary Invalidity Contentions (Local Patent R. 3-5) shall be served by Defendant on all parties no later than **November 12, 2026** or 49 days after service of the Disclosure of Asserted Claims and Preliminary Infringement Contentions pursuant to Local Patent R. 3-1. Should the number of Asserted Claims in Plaintiff's Local Patent R. 3-1 disclosure exceed 50 claims, Defendant shall serve its Preliminary Invalidity Contentions on or before December 21, 2026.
6. [Plaintiff's Proposal]: The Exchange of Proposed Terms and Claim Elements for Construction (Local Patent R. 4-1) shall occur no later than **January 7, 2027**. Claim construction under the LPR is not needed for the design patents.
7. [Defendant's Proposal]: The Exchange of Proposed Terms and Claim Elements for Construction (Local Patent R. 4-1) shall occur no later than **January 7, 2027**. Design patent claim construction shall also commence at this time and such constructions shall be disclosed and briefed along with any utility patent constructions.

8. [Joint Proposal]: The Exchange of Preliminary Claim Constructions and Extrinsic Evidence (Local Patent R. 4-2) shall occur no later than **January 28, 2027** or 21 days after the Exchange of Proposed Terms and Claim Elements for Construction (Local Patent R. 4-1).
9. [Joint Proposal]: Joint Claim Construction Chart and Joint Prehearing Statement (Local Patent R. 4-3): No later than **February 25, 2027**, or 49 days after the Exchange of Proposed Terms and Claim Elements for Construction (Local Patent R. 4-1), the Parties shall complete and file a Joint Claim Construction Chart and Joint Prehearing Statement.
10. [Joint Proposal]: Completion of Claim Construction Discovery (Local Patent R. 4-4): No later than **March 25, 2027**, or 28 days after service and filing of the Joint Claim Construction Chart and Joint Prehearing Statement, the Parties shall complete all discovery relating to claim construction, including depositions of any witnesses identified in the Joint Claim Construction Chart and Joint Prehearing Statement.
11. [Joint Proposal]: Claim Construction Opening Briefs (Local Patent R. 4-5(a)): No later than **April 15, 2027**, or 49 days after service and filing of the Joint Claim Construction Chart and Joint Prehearing Statement, each Party shall serve and file a motion for claim construction, a memorandum in support, and any evidence supporting its proposed claim construction.
12. [Joint Proposal]: Claim Construction Responsive Briefs (Local Patent R. 4-5(b)): No later than **April 29, 2027**, or 14 days after service of a motion for

claim construction, each Party shall serve and file its responsive memorandum and supporting evidence.

13. [Plaintiff's Proposal]: Claim Construction Hearing: The Parties anticipate that a claim construction hearing (Markman hearing) will be necessary for the utility patents, but not for the design patents. The Parties propose that the Claim Construction Hearing be held in **June, 2027**, at the Court's convenience, following completion of claim construction briefing. The Parties do not anticipate the need for live testimony at the claim construction hearing but reserve the right to request deposition testimony or declarations in support of claim construction positions.
14. [Defendant's Proposal]: Claim Construction Hearing: The Parties anticipate that a claim construction hearing (Markman hearing) will be necessary for the utility patents and design patents. The Parties propose that the Claim Construction Hearing be held in **June 2027**, at the Court's convenience, following completion of claim construction briefing. The Parties do not anticipate the need for live testimony at the claim construction hearing but reserve the right to request deposition testimony or declarations in support of claim construction positions.
15. Claim Construction Prehearing Conference: The Parties request that the Court schedule a claim construction prehearing conference, if needed, after the Parties file the Joint Claim Construction Chart and Joint Prehearing Statement.

16. Defendant's Proposed Claim Narrowing:

[Plaintiff's Proposal]: Plaintiff's identification of asserted claims will follow the Applicable Local Patent Rules and no further "preliminary election" or "final election" as proposed by Defendant is required at this time.

[Defendant's Proposal]: By the date set for completion of claim construction discovery (March 25, 2027), the Plaintiff (patent claimant) shall serve a preliminary election of asserted claims, which shall assert no more than ten claims from each patent and not more than a total of 32 claims across all patents. No later than 14 days after receiving the preliminary election of asserted claims (April 8, 2027), Defendant shall serve a preliminary election of asserted prior art, which shall assert no more than twelve prior art references¹ against each patent and not more than a total of 40 references. No later than 28 days before the service of expert reports by the party with the burden of proof on an issue, the patent claimant shall serve a Final Election of Asserted Claims, which shall identify no more than five asserted claims per patent from among the ten previously identified claims and no more than a total of 16 claims. By the date set for the service of expert reports by the party with the burden of proof on an issue, the patent defendant shall serve a Final Election of Asserted Prior Art, which shall

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¹ For Clarity, a prior art instrumentality (such as a device or process) and associated references that describe that instrumentality shall count as one reference (e.g. a device that was on sale before the critical date coupled with any associated sales records and manuals count as one reference), as shall the closely related work of a single prior artist.

identify no more than six asserted prior art references per patent from among the twelve prior art references previously identified for that particular patent and no more than a total of 20 references. For purposes of this Final Election of Asserted Prior Art, each obviousness combination counts as a separate prior art reference ²

17. Whether Discovery Should Be Staged:

- i. Plaintiff's Position: Full merits discovery (including fact depositions beyond claim construction witnesses) shall proceed before and following the claim construction hearing
- ii. Defendant's Position: Full merits discovery (including fact depositions beyond claim construction witnesses), except on subjects in Defendant's Motion to Dismiss, shall proceed before and following the claim construction hearing. Discovery on subjects in Defendant's Motion to Dismiss shall not take place unless and until the Court denies the Motion.

18. **Technology Tutorial:** The Parties do not believe a technology tutorial is necessary at this time, as the patents-in-suit relate to food holding bin technology that can be adequately explained through the patents themselves

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² Defendants' claim narrowing proposal is based upon the Model Order Focusing Patent Claims and Prior Art to Reduce Costs of the U.S. District Court for the Eastern District of Texas. Defendants are prepared to provide further briefing on the significance of claim narrowing at the Court's request.

and claim construction briefing. The Parties reserve the right to request a technology tutorial in connection with claim construction briefing.

- v. **Amended Joint Proposed Scheduling Plan:** The Parties shall submit an amended joint proposed schedule within 30 days after the Court issues its Claim Construction Order. The amended schedule shall set forth proposed deadlines for: (i) final contentions under Local Patent R. 3-7; (ii) expert disclosures and depositions; (iii) completion of discovery; (iv) mediation; (v) dispositive motions and Daubert motions; and (vi) trial readiness. The parties' Amended Joint Proposed Scheduling Plan may also include a timetable for further narrowing the number of asserted claims prior to the disclosure of expert reports and dispositive motion briefing.
- vi. The presumptive limits of ten (10) depositions per side as set forth in Rule 30(a)(2)(A), Fed. R. Civ. P., and twenty-five (25) interrogatories per party as set forth in Rule 33(a), Fed. R. Civ. P., should apply. Given the complexity of this case and the number of patents asserted, the Parties reserve the right to seek leave of Court to conduct additional depositions if necessary.
- vii. It is not anticipated that a physical and/or mental examination will be requested pursuant to Fed. R. Civ. P. 35. An inspection of the Accused Instrumentalities in this action may be conducted pursuant to Fed. R. Civ. P. 34.
- viii. Any other matters pertinent to the competition of discovery:
 - 1. The Parties agree that electronically stored information will be produced to the requesting party with searchable text, in a format to be decided between

the parties. Acceptable formats include, but are not limited to, native files, single-page TIFFs (only with load files for e-discovery software that includes metadata fields identifying natural document breaks and also includes companion OCR and/or extracted multi-page text files), and searchable PDF documents separated by natural document breaks. Unless otherwise agreed to by the parties, files that are not easily converted to image format, such as spreadsheet, database, and drawing files, will be produced in native format. The Parties do not anticipate issues relating to the disclosure or discovery of electronically stored information, but intend to cooperate if they arise.

2. The Parties will negotiate and submit a proposed protective order based on the Court's Form Protective Order (Local Patent R. Appendix A) for the Court's approval.
 3. The Parties agree to electronic—including, but not limited to, email—service, receipt, and production of discovery requests, responses, and documents.
- d. The Parties believe this case is suitable for mediation and that the same will be most productive once claim construction has been resolved and the Parties have had an opportunity to engage in merits discovery. The Parties propose that mediation be conducted after the Court issues its claim construction order.
- e. Deadlines for motions for summary judgment, motions under Federal Rules of Evidence 702 and 703 or other dispositive motions, motions for judgment on the

pleadings, or any motion to exclude testimony pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) or *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137 (1999) will be set forth in the Parties' Amended Joint Proposed Schedule to be submitted following the Claim Construction Ruling.

- f. The earliest date by which this case should be reasonably expected to be ready for trial will be set forth in the Parties' Amended Joint Proposed Schedule to be submitted following the Claim Construction Ruling.
- g. The estimated length of time expected to try the case to verdict is **ten to fifteen (10–15) days**. This is a complex patent case involving seven utility patents and two design patents directed to multi-zone food holding bin technology, with claims of direct, induced, and contributory infringement.

Respectfully submitted, this 25th day of August, 2026.

/s/ Alex D. Weidner

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