

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CORTEVA AGRISCIENCE LLC,
PIONEER HI-BRED INTERNATIONAL,
INC., and AGRIGENETICS, INC.,

Plaintiff,

v.

INARI AGRICULTURE, INC. and INARI
AGRICULTURE NV,

Defendant.

C.A. No. 23-1059-JFM

JURY TRIAL DEMANDED

JOINT RULE 26(f) REPORT

Pursuant to Rule 26(f) and Judge Murphy's policies and procedures, the parties have thoroughly discussed a discovery plan and provide the following report:

I. Counsel

- A. Lead counsel for Plaintiffs: Peter Bicks
Delaware counsel for Plaintiffs: Chad S.C. Stover
- B. Lead counsel for Defendants: Dimitrios T. Drivas
Delaware counsel for Defendants: Jack Blumenfeld, Megan Dellinger
- C. All counsel who participated in Rule 26(f) conference on behalf of Plaintiffs:
 - Peter Bicks, David Gindler, Gary Frischling, Carly Romanowicz, Todd Vare, and Chad S.C. Stover
- D. All counsel who participated in Rule 26(f) conference on behalf of Defendants:
 - Dimitrios T. Drivas, Raj Gandesha, Robert Isackson, Henry Gabathuler, and Megan Dellinger

NOTE: Per Judge Murphy's policies and procedures, lead counsel for a case **must** participate in the Rule 26(f) conference.

II. Description of claims and defenses

The parties may assume that Judge Murphy has read the complaint and other pleadings and is familiar with the claims and defenses. With that in mind, counsel should go a layer deeper and summarize the key facts and threshold legal issues that underlie the claims and defenses. In addition, the parties should attach critical documents to this report, if not attached to the pleadings already (*e.g.*, in a contract case, the document(s) comprising the contract; in a personal injury case, photographs of the scene, etc.).

Plaintiffs' Statement: Plaintiffs Corteva Agriscience LLC, Pioneer Hi-Bred International, Inc., and Agrigenetics Inc. (collectively, "Corteva" or "Plaintiffs") bring this action against Defendants Inari Agriculture, Inc. ("Inari USA") and Inari Agriculture NV ("Inari Belgium," and collectively with Inari USA, "Inari" or "Defendants") in connection with Inari's conduct of exporting, misusing, and modifying seed deposits at ATCC for their own commercial purposes. Inari's actions are prohibited by the Plant Variety Protection Act ("PVPA"), the Patent Act, and by the Material Transfer Agreement ("MTA") that Inari Belgium signed to access the seeds from ATCC. As part of Corteva's ongoing investment in developing innovative plant varieties, Corteva seeks and obtains Plant Variety Certificates ("PVP Certificates"). Corteva owns the PVP Certificates set forth in Exhibit A of the First Amended Complaint. (D.I. 19.) Corteva also sought patent protection on its novel seeds. Corteva asserts that Inari directly, and indirectly, infringed, and continues to infringe, one or more claims of Corteva's United States Patent No. 8,575,434 ("the '434 patent"), which is directed to the field of plant molecular biology, and more specifically, to DNA constructs for conferring insect resistance to a plant.¹

Corteva learned in December 2022 that Inari had obtained Corteva's protected seeds for hundreds of varieties from ATCC and illegally exported them for commercial purposes in

¹ Discovery may show that Inari infringed additional patents and/or PVP Certificates.

violation of Corteva's PVP Certificates and the '434 patent. In addition, Infinite-Eversole Specialty Crop Services LLC ("IE-SCS"), an agent of Inari Belgium, used Corteva's patented seeds in the United States to conduct, or have conducted, testing to obtain a U.S. Department of Agriculture ("USDA") phytosanitary certificate in violation of 35 U.S.C. § 271(a). Corteva also alleges that Inari infringed the '434 patent under 35 U.S.C. § 271(f) because Inari intended to, and did, combine the exported seeds or cells or tissue therefrom with, inter alia, sufficient water, nutrients, light, air, and physical support to obtain a plant. Further, Corteva alleges that Inari violated 35 U.S.C. § 271(b) because Inari induced ATCC to sell Corteva's patented seeds deposited at ATCC to Inari for commercial purposes with knowledge of the '434 patent and knowledge that no commercial use of the patented seeds was permitted.

Each provision of Corteva's protected seeds by ATCC to Inari is subject to either a 2019 MTA or a 2022 MTA. These agreements prohibit Inari Belgium from exporting, transferring, or otherwise distributing the seeds for commercial purposes. The 2019 and 2022 MTA also prohibit Inari Belgium from transferring Corteva's protected seeds to any other entity that might violate the use restrictions contained in these agreements. Corteva alleges that Inari Belgium breached the 2019 and 2022 MTAs. Corteva also alleges that Inari USA, which maintains its principal place of business in Massachusetts, participated in unfair and deceptive acts that violate Chapter 93A of Massachusetts' General Laws and that Inari USA knowingly violated its own contractual obligations under the MTA in an effort to obtain an unauthorized commercial benefit from the use of Corteva's patent-protected and PVP-protected seeds. Also, Corteva alleges that Inari is liable for conversion because it retained ownership and possessory interests in its protected seeds and that Inari, by acquiring the seeds and using them for impermissible and unauthorized commercial uses, wrongfully exerted dominion and control over Corteva's valuable

property. As such, Corteva asserts that Inari converted Corteva's property willfully and with full knowledge that its actions violate Corteva's property rights under the MTA.

Corteva does not seek to impose any restriction on the accessibility of seed deposits at ATCC. Instead, Corteva's claims arise from Inari's inappropriate use of Corteva's seeds *after* Inari obtained access to them. The key issues likely to be litigated include the infringement of the '434 patent, the infringement of the PVP Certificates, the scope of 37 C.F.R. § 1.808, and the applicability of the PVPA research and breeding exception.

Defendants' Statement: Corteva deposited with ATCC seeds of the transgenic event DP-004114-3 claimed in the '434 patent and made an additional 230 patent deposits with the ATCC listed in the First Amended Complaint ("FAC") Exhibit A to support other Corteva patents all in furtherance of compliance with the enablement and written description requirements of 35 U.S.C. § 112. After all the Corteva patents were granted, Inari Belgium requested samples of the patent deposit seeds through ATCC's exclusive distributor, LGC Standards and entered a 2019 MTA with the ATCC. The 2019 MTA was the only agreement in effect between Inari Belgium and ATCC at the time the patent deposits itemized in the FAC were purchased from the ATCC by Inari Belgium. The 2022 MTA does not retroactively apply to the patent deposits listed in the FAC. The 2019 MTA provides that Budapest Treaty patent deposits distributed by ATCC are made pursuant to and in compliance with the Treaty and related applicable 37 C.F.R. provisions and that the terms of the Treaty and applicable laws and regulations govern. Inari Belgium paid LGC Standards for each of the patent deposit samples requested.

Under 37 C.F.R. § 1.808(a)(2), deposits made with the ATCC for patent purposes to comply with 35 U.S.C. § 112 must be made available to the public, including members of the public outside the U.S., without restriction by the depositor upon the issuance of the patent.

Under Section 112, assurance of access to the deposit by the public is required in exchange for the patent grant. Corteva may not use PVP certificates to restrict members of the public outside the U.S. from accessing patent deposits. Inari Belgium did not violate any of Corteva's patent or PVPA rights or breach any agreement with the ATCC by purchasing patent deposit seeds from the ATCC. Inari Belgium's activities with the seeds it purchased were in research and development and those activities in Belgium are not subject to United States intellectual property laws.

ATCC was authorized by Corteva and was required to supply seeds to members of the public who requested them once the associated patents were granted. By making the patent deposits with ATCC, Corteva irrevocably consented to ATCC selling samples of seeds to members of the public after the patents were granted. The export of seeds sold by the ATCC with Corteva's consent is not an act of infringement under the PVPA.

ATCC delivered the patent deposit seeds to IE-SCS as directed by LGC Standards in order to ship the seeds to Inari Belgium. IE-SCS applied to the U.S. Department of Agriculture ("USDA") for the necessary phytosanitary certificate required by Belgium for the importation of seeds. The USDA obtained samples of the seeds and sent them to an independent USDA qualified laboratory for phytosanitary tests. IE-SCS did not conduct any testing on the seeds. After the phytosanitary certificates were issued by the USDA, IE-SCS shipped the seeds to Inari Belgium in 2020 and 2021.

Corteva had at minimum constructive knowledge, if not actual knowledge, no later than July 2022, that IE-SCS had shipped seeds allegedly covered by PVP certificates to Inari more than one year prior to filing its Complaint and cannot recover damages for any alleged PVPA infringement under 7 U.S.C. § 2566.

Inari Belgium used the patent deposited seeds purchased from ATCC in research and development in Belgium. Inari Belgium's activities with the seeds listed in the FAC Exhibit A fall under the research exemption of the Plant Variety Protection Act set out at 7 U.S.C. § 2544. Inari Belgium did not ship any of the seeds, plants or plant parts derived from the seeds to Inari US. Inari US never possessed or used the patent deposit seeds in the United States.

The claimed invention of the '434 patent was never used in the U.S. by Inari or IE-SCS and there is no basis for any infringement under 35 U.S.C. § 271. Supplying a sample of seed to Inari Belgium, from the patent deposit made to comply with 35 U.S.C. § 112 to obtain allowance of the '434 patent, is not an infringement under 35 U.S.C. § 271(f)(2). The '434 patent is invalid at least for lack of enablement and written description under 35 U.S.C. § 112 in view of Corteva's efforts to restrict access to the claimed invention by members of the public.

The FAC alleges infringement of numerous PVP certificates claiming the same corn variety as claimed in expired Corteva utility patents. Once a patent expires, the formerly protected invention must be available to all free of charge and restrictions. The seeds and plant variety claimed in a utility patent are available for the public to use for free once the patent expires. Corteva's contention that the export of ATCC patent deposit seeds to Belgium is an infringement of a PVP certificate claiming the same seeds and variety claimed in an expired utility patent deprives the public of use of the invention of the expired patent and is patent misuse and unfairly harms competition and innovation.

By seeking both PVP certificates and utility patents claiming the same corn variety, Corteva has under 7 U.S.C. § 2483(a)(3) waived the right to assert infringement of the PVP certificate after the patent claiming the same variety as the certificate expires.

Corteva's infringement allegations under the PVPA that export of the patent deposits after patent grant during the term of the patents render the patents claiming the same varieties as

the PVP certificates invalid under 35 U.S.C. § 112. Restricting access to the public of the patent deposits negates the *quid pro quo* made to obtain allowance of the patent so that it meets the enablement and written description requirements of Section 112. Without access by the public to the patent deposit seeds, the patents are not enabled and lack a written description and are therefore invalid.

Inari US did not enter an MTA with ATCC and did not engage in unfair and deceptive acts. Inari Belgium did not breach the 2019 MTA and legally obtained each of the patent deposits itemized in the FAC. Chapter 93A of the Massachusetts General Laws was not violated by Inari US. There was no conversion of the patent deposited seeds since they were legally purchased from the ATCC in compliance with the applicable laws and regulations as authorized by Corteva.

III. Stipulated facts and insurance coverage and deductibles

The parties must stipulate as to facts not in dispute. We require stipulations to avoid duplicative and unnecessary discovery, wasted time in depositions asking questions about names, addresses and background or otherwise on dates which are undisputed, employment histories, etc. While we do not expect you to stipulate to disputed facts at this early stage, we do expect a thorough recitation of undisputed facts. The parties must also disclose insurance coverage, including retainer or deductible, consistent with Rule 26(a)(1)(A).

The parties exchanged proposed undisputed facts, and, given the preliminary status of the case, were able to agree on the following:

- Inari Belgium is a wholly-owned subsidiary of Inari US.
- Inari Belgium entered an MTA with the ATCC on July 14, 2019.
- Inari Belgium opened an account with LGC Standards in 2019 and LGC Standards placed orders with the ATCC on behalf of Inari Belgium in 2020.

- LGC Standards is ATCC's agent in Europe.
- Inari Belgium acquired seeds of the varieties listed in Exhibit A to the First Amended Complaint from the ATCC through LGC.

As indicated in Plaintiffs' initial disclosures made pursuant to Rule 26(a)(1)(A)(iv), Plaintiffs are not aware of any specific indemnity or insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

Defendants are not aware of any specific indemnity or insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

IV. Anticipated scope of discovery

This information is critical to having a meaningful conference, and Judge Murphy's understanding of the scope and nature of discovery will largely determine the schedule. The parties should consider the discovery that they will need and provide thoughtful answers. Generic statements like "discovery about all claims and defenses" is unacceptable. Judge Murphy invites the parties to vary from the default limits in the Federal Rules and provide thoughtful answers based on their actual assessment of the case.

- A. Summarize with specificity those issues on which the parties will need to conduct discovery. Identify categories of information each party needs in discovery and why.

Plaintiffs: Plaintiff anticipates discovery on the following topics:

- Documents and testimony relating to the direct and indirect infringement of the '434 patent, including (without limitation) the details of testing, modification, commercialization and any other acts performed on Corteva's protected seeds, including Inari's exportation of the protected seeds, and Inari's communications with ATCC;

- Documents and testimony regarding Inari's infringement of Corteva's PVP Certificates, including (without limitation) Inari's intent upon exportation of the protected seeds, Inari's knowledge of the PVP Certificates, and information relating to the seed's exportation and use;
- Documents and testimony regarding Inari's plans for commercialization, including (without limitation) the details of all commercial activity, and the communications and relationships with other seed companies;
- Documents and testimony regarding the 2019 MTA and 2022 MTA;
- Documents and testimony regarding Inari's activities in Massachusetts;
- Expert testimony regarding direct and indirect infringement of the '434 patent and the PVP Certificates;
- Issues related to claim construction of the '434 patent;
- Documents and testimony, including expert testimony, regarding damages; and
- Documents and testimony, including expert testimony, regarding the industry's custom and practice.

Defendants: Defendants object to any discovery concerning any commercial activity, plans for commercialization, communications and relationships with other seed companies that are not relevant to the ATCC seed deposits listed in Exhibit A to the First Amended Complaint or the '434 patent.

Defendants anticipate discovery on the following topics:

- Documents and testimony relating to the application for the '434 patent, and the infringement and validity of the '434 patent;
- Documents and testimony regarding Corteva's relationship and communications with ATCC, including without limitation, submissions for patent deposits, contracts with the ATCC governing deposits, MTAs with ATCC, Corteva requests to purchase patent deposit seeds of other persons, maintaining and replenishing such deposits, and any communications with ATCC concerning Inari or IE-SCS;

- Documents and testimony regarding Corteva's applications for PVP certificates including without limitation the making, maintaining and replenishing of deposits with the USDA and communications with the USDA relating to the applications, deposits and related applications and granted utility patents for the same varieties;
- Documents and testimony regarding IE-SCS activities relating to the shipping of seeds from ATCC to Inari Belgium;
- Documents and testimony regarding Corteva's knowledge of, communications with and monitoring of Inari and its activities;
- Expert testimony regarding infringement and invalidity of the '434 patent and the PVP certificates;
- Issues related to claim construction of the '434 patent and the applicability of 35 U.S.C. § 271(f)(2);
- Documents and testimony, including expert testimony, regarding damages; and
- Documents and testimony, including expert testimony, regarding the industry's custom and practice.
- Documents and testimony concerning Corteva's practices of obtaining competitor's patented corn inbred and hybrid varieties during the unexpired terms of patents claiming the varieties.
- Documents and fact and expert testimony on the requirement of a biological material/seed deposit to enable and meet the written description requirements under 35 U.S.C. § 112 for patents claiming a corn variety and its seed.

B. Anticipated number of interrogatories per party:

Plaintiffs: 25

Defendants: 25

C. Anticipated number of depositions per party:

Plaintiffs: Each side is limited to a total of 70 hours of taking testimony of another party, its officers, directors, or employees (including former employees to the extent represented by the same counsel as represents the party) by deposition upon oral examination, exclusive of experts' testimony. Each side is limited to a total of no more than 30 additional hours for third-party depositions. The parties may exceed the ten deposition limit of Rule 30(a)(2)(A)(i) subject to the foregoing limitations

on total hours of examination. Absent a showing of good cause, the parties cannot exceed the 7-hours per day limit. However, these limits may be expanded for good cause by either agreement of the parties or by Court order. In the event that a deposition requires a translator, every two hours shall count as one.

Defendants: Defendants agree that each side should be limited to a total of 70 hours to take the testimony by deposition upon oral examination of another party, its officers, directors, or employees (including former employees to the extent represented by the same counsel as represents the party) and a total of no more than 30 additional hours for third-party depositions.

- D. Do the parties anticipate the need for any agreements on remote deposition protocols?

Not at this time. However, if the parties agree that one or more deposition may proceed remotely, they will negotiate an agreement on remote deposition protocols.

- E. To the extent either party proposes to exceed the presumptive limits in the Federal Rules for discovery, explain the basis for that proposal.

Except as provided above with respect to depositions, the parties are not proposing to exceed the presumptive limits from the Federal Rules.

- F. Do the parties anticipate the need for a Fed. R. Evid. 502(d) order?

The parties anticipate including Fed. R. Evid. 502(d) as part of the protective order.

- G. Do the parties anticipate the need for any third-party discovery? If so, identify the likely third parties and the discovery to be sought.

Plaintiffs: Plaintiffs anticipate seeking discovery from Infinite-Eversole Specialty Crop Services (“IE-SCS”) at least as to IE-SCS’s testing of Plaintiffs’ seeds. Plaintiffs also anticipate seeking discovery from ATCC and one or more of Defendants’ investors at least as to its relationship with Inari, Inari’s products, and any discussions regarding the facts underlying this case. The need for additional third-party discovery may arise as Plaintiffs learn more about Defendants’ conduct and the facts of this case.

Defendants: Defendants object to discovery of Defendants’ investors and their relationship with Inari, Inari’s products, and any discussions regarding the facts underlying this case.

Defendants anticipate seeking discovery from ATCC on its practices, policies, procedures, agreements and obligations related to maintaining and administering patent deposits, its agreements and communications

with Corteva on Corteva patent deposits, its communications with Corteva on requests made as to Corteva patent deposits, inquiries made by Corteva relating to Inari, and ATCC's relationship with LGC standards.

Defendants anticipate discovery of IE-SCS on its activities relating to the shipping of seeds received from ATCC to Inari Belgium.

Defendants anticipate discovery of the USDA on its policies regarding the application and issuance of PVP certificates for varieties also covered by utility patents and the maintenance and replenishment of deposits made for such PVP certificates.

- H. Do the parties anticipate the need for experts? If so, identify the subjects on which the expert(s) may opine. Be sure to point out whether defendant(s) will be advancing experts on affirmative issues, or only in response to plaintiff(s) experts. State whether expert depositions will be taken, and if so, an agreement or positions on how many will be required.

The parties anticipate the need for expert testimony at least on issues of infringement, invalidity, and damages. The parties agree that each expert proffering a report may be deposed for up to seven (7) hours per report.

- I. Does either party expect to request attorneys' fees as a prevailing party, either pursuant to a contract or a statute? If so, state the basis for the expected request.

Plaintiffs intend to seek attorney fees pursuant to 35 U.S.C. § 285 and 7 U.S.C. § 2565.

Defendants intend to seek attorney fees pursuant to 35 U.S.C. § 285 and 7 U.S.C. § 2565.

- J. Has each party provided written notice to the client of the obligation to preserve all relevant material, including electronic records?

Plaintiffs: Yes

Defendants: Yes

V. Status of discovery

The parties must summarize the status of discovery so far. If discovery has not progressed, the parties should explain why. In general, Judge Murphy expects the parties to begin discovery prior to the Rule 16 conference.

On March 27, 2024, the parties exchanged initial disclosures, initial document requests, and initial interrogatories. Additionally, Plaintiffs served disclosures under Paragraph 3 of the

Default Standard for Discovery in the District of Delaware, noticed the deposition of Inari US and Inari Belgium under Fed. R. Civ. P. 30(b)(6) for May 10, 2024, and served a subpoena for the production of documents on IE-SCS. On April 3, 2024, Defendants filed a notice of subpoena for the production of documents by ATCC.

VI. Proposed case management deadlines

The parties' proposed case management deadlines are listed in the proposed Scheduling Order attached at Exhibit A. As set forth in the parties proposed Scheduling Order, the parties agree that expert discovery should be sequenced after fact discovery in order to have a complete factual record prior to the rendering of expert opinions. The parties have requested more than 120 days for discovery due to the number and nature of claims at issue in the case as well as international discovery.

- A. Rule 26(a)(1) initial disclosures were exchanged: **March 27, 2024**
- B. Deadline to amend pleadings to add claims or parties (must be as early as practicable to avoid prejudice or unnecessary delays): **September 30, 2024**
- C. Deadline for affirmative expert reports (if any) and disclosure of lay witness opinion testimony with related information and documents (if any):
 - i. Opening expert reports (by the party with the burden of proof):

Plaintiffs' Proposal:	May 30, 2025
Defendants' Proposal:	February 28, 2025
 - ii. Lay witness opinion testimony: NA
- D. Deadline for responsive expert reports (if any):

Plaintiffs' Proposal:	June 30, 2025
Defendants' Proposal:	March 28, 2025
- E. Deadline for reply expert reports:

Plaintiffs' Proposal:	July 21, 2025
Defendants' Proposal:	April 30, 2025
- F. Deadline(s) to complete fact/expert discovery:

i. Close of Fact Discovery:

Plaintiffs' Proposal: **April 30, 2025**
 Defendants' Proposal: **December 20, 2024**

Defendants propose that fact discovery relating to activities occurring in Belgium implicated by Plaintiffs' First Amended Complaint commence and be completed as early as possible, concurrently with fact discovery on all other issues to be completed by December 20, 2024. The discovery of the Inari Defendants is focused on a limited number of issues and Inari is prepared to move quickly to provide Corteva with relevant discovery. Assuming Corteva is also cooperative and forthcoming on the discovery Inari seeks, Defendants believe that fact discovery can be concluded by the end of December 20, 2024.

Plaintiffs do not object to fact discovery relating to activities occurring in Belgium implicated by Plaintiffs' First Amended Complaint commencing and being completed as early as possible, so long as this does not cause a delay in other categories of discovery. However, Plaintiffs do not believe a fact discovery cutoff of December 20, 2024 provides sufficient time for the extensive discovery likely to be necessary in this case. The case currently involves allegations of patent infringement, infringement of over 200 PVP Certificates, and three state law claims. In addition, the parties' initial disclosures suggest there are at least 20 witnesses with potentially relevant knowledge. Foreign discovery is also likely given that significant amounts of potentially relevant materials are located abroad. Further, discovery will be necessary from numerous third parties, some of whom may be located abroad, and Defendants also intend to seek discovery from the USDA. Also, there will likely be certain discovery disputes that may need the Court's assistance. A fact discovery period of thirteen (13) months is reasonable to accomplish this work. *See* Scheduling Order at 1, *Duesenfeld GMBH v. Ascend Elements, Inc.*, No. 23-cv-01194-JFM (D. Del. Jan. 26, 2024) (fact discovery period of fourteen months for allegations of patent infringement under 35 U.S.C. § 271(a) for one asserted patent); Scheduling Order at 1, *Monolithic Power Sys. Inc. v. Reed Semiconductor Corp.*, No. 23-1155-JFM (D. Del. Jan. 29, 2024) (fact discovery period of eleven months for allegations of patent infringement under 35 U.S.C. § 271(a), (b), (c) for one asserted patent).

ii. Close of Expert Discovery:

Plaintiffs' Proposal: **August 20, 2025**
 Defendants' Proposal: **June 30, 2025**

- G. Provide an explanation for the position of the parties on whether expert discovery will run concurrently with fact discovery or be sequenced after fact discovery.

As discussed above, the parties agree that expert discovery should be sequenced after fact discovery in order to have a complete factual record prior to the rendering of expert opinions.

H. If any party seeks more than 120 days for discovery, explain why.

As discussed above, the parties have requested more than 120 days for discovery due to the number and nature of claims at issue in the case as well as international discovery.

I. Deadline to file motion for summary judgment:

Plaintiffs' Proposal: **September 19, 2025**

Defendants' Proposal: **August 1, 2025**

VII. Electronic discovery

The parties' Rule 26(f) discussions must include a thorough discussion about electronic discovery, including but not limited to: (1) the need for electronically stored information ("ESI"); (2) sources of ESI; (3) the anticipated scope of electronic discovery; (4) the identity of potential custodians; (5) whether search terms will be necessary and, if so, any limitations thereto; (6) the respective burdens of collecting, reviewing, and producing ESI, including any claims for cost-shifting under the Federal Rules of Civil Procedure; and (7) any anticipated problems with electronic discovery. The parties should summarize their discussion on these issues here. Counsel who attends the Rule 16 conference should be familiar with and able to discuss any ESI-related issues that might arise.

In addition, the Parties should state whether they have agreed to an ESI stipulation. If so, the parties should submit the stipulation to the Court in advance of the Rule 16 conference. If not, the parties should identify what issues need to be resolved to finalize the stipulation.

The Default Standard for Discovery, including Discovery of Electronically Stored Information ("ESI"), which is posted at <http://www.ded.uscourts.gov> (see Clerk's Office, Rules Policies, & Standing Orders, Default Standard for Discovery) is incorporated herein by reference. To the extent the parties agree on any provisions that conflict the Default Standard for

Discovery, such as in a stipulated ESI Order or Protective Order, those agreed-to provisions shall control.

VIII. Protective orders and confidentiality agreements

The parties should indicate whether they anticipate the need for a protective order in this case. If so, the parties must explain what type of information needs protection from disclosure and why such protection is warranted under governing standards. In addition, the parties are directed to Judge Murphy's policies and procedures concerning protective orders and confidentiality agreements.

The parties anticipate that a stipulated protective order will be necessary to protect the parties' confidential business information or other proprietary or competitively sensitive information. In order to preserve the legitimate privacy and business interests of the parties and non-parties, such information may require protection from disclosure through a stipulated protective order, consistent with the standard practice in the District of Delaware. Any stipulated protective order shall include the required language indicated in Judge Murphy's Policies and Procedures at No. 8 stating: "The Court retains the right to allow disclosure of any subject covered by this order or to modify this order at any time in the interest of justice." Any stipulated protective order shall also include the language typically required of protective orders in patent cases in the District of Delaware, as indicated in the Proposed Scheduling Order at ¶ 4.

IX. Alternative dispute resolution

- A. Have the parties engaged in any settlement discussions? If so, set forth the status of those negotiations. If not, explain why not.

The parties engaged in limited business discussions in 2021. The parties also discussed settlement during the March 20, 2024 Rule 26(f) conference. However, given the nature of the claims and need for discovery, settlement is not viable at this time. The parties are willing to discuss settlement at a later date after discovery has progressed.

- B. Have the parties explored or considered other forms of alternative dispute resolution? If so, summarize those efforts. If not, state the parties' positions with respect to ADR, as required under Local Rule 53.3.
- C. Given the nature of the claims and need for discovery, ADR is not viable at this time. The parties are willing to discuss ADR at a later date after discovery has progressed. Identify the individual who will attend the Rule 16 conference who will have authority to discuss settlement.

Plaintiffs: Peter Bicks

Defendants: Dimitrios T. Drivas

X. Consent to send case to a Magistrate Judge

If all parties consent to have a United States Magistrate Judge conduct any or all proceedings in this case, pursuant to 28 U.S.C. § 636(c), the parties should indicate as such and complete and return to the Court a Consent and Reference Of A Civil Action To A Magistrate Judge, (available at this [link](#)).

The parties do not consent to trial by a Magistrate Judge.

XI. Service by electronic means

Confirm that the parties consent to service of pleadings and discovery via email pursuant to Fed. R. Civ. P. 5(b)(2)(E). Any party that does not consent must explain its reasons.

The parties confirm consent to service of pleadings and discovery via email pursuant to Fed. R. Civ. P. 5(b)(2)(E).

XII. Policies and procedures

Judge Murphy's policies and procedures are available for the parties to review on the Court's website. By signing below, counsel for each party and/or each *pro se* party represents that he or she has reviewed the Judge's policies and procedures and acknowledges the requirements contained therein. The parties and their counsel further acknowledge by signing below that Judge Murphy may strike pleadings and other submissions that do not comply with his policies and procedures.

The parties propose that certain changes be made for this case to Judge Murphy's standard procedures to conform to Delaware practices and procedures:

A. Pro Hac Vice Motions

In lieu of using the Eastern District of Pennsylvania's form pursuant to the Court's Policies and Procedures at ¶ 4, the parties respectfully request to use the District of Delaware's procedure for making motions for *pro hac vice* admission, as described in Local Rule 83.5.

B. Filings Under Seal

Pursuant to standard practice in the District of Delaware and the attached Proposed Scheduling Order at ¶ 5, the parties request that all parties be permitted to file documents under seal absent prior leave of the Court, and that a redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document. The District of Delaware standard practice is contrary to the Court's Policies and Procedures at ¶ 8, which does not permit parties to file documents under seal absent leave, unless it is an emergency.

XIII. Other matters

The Parties should identify any other issues that have not been addressed above but may require the Court's attention (*e.g.*, anticipated motions, bifurcation, privilege issues, etc.).

BARNES & THORNBURG LLP

/s/ Chad S.C. Stover

Chad S.C. Stover (No. 4919)
222 Delaware Avenue, Suite 1200
Wilmington, DE 19801
(302) 300-3474
chad.stover@btlaw.com

OF COUNSEL:

Peter Bicks
Brian Raphael
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019-6142
Tel: +1 212 506 5000
Fax: +1 212 506 5151
pbicks@orrick.com
braphel@orrick.com

David Gindler
Lauren Drake
ORRICK, HERRINGTON & SUTCLIFFE LLP
355 South Grand Avenue
Suite 2700
Los Angeles, CA 90071-1596
Tel: +1 213 629 2020
Fax: +1 213 612 2499
dgindler@orrick.com
ldrake@orrick.com

Gary Frischling
ORRICK, HERRINGTON & SUTCLIFFE LLP
631 Wilshire Blvd.
Suite 2-C
Santa Monica, CA 90401
Tel: +1 310 633 2800
Fax: +1 310 633 2849
gfrischling@orrick.com

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Megan Dellinger

Jack B. Blumenfeld (#1014)
Megan E. Dellinger (#5739)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisnichols.com
mdellinger@morrisnichols.com

OF COUNSEL:

Dimitrios T. Drivas
Raj S. Gandesha
John P. Scheibeler
Jongtae Jason Lee
WHITE & CASE LLP
1221 Avenue of the Americas
New York, NY 10010
(212) 819-8200

Robert M. Isackson
Henry A. Gabathuler
Emily A. Rice
LEASON ELLIS LLP
One Barker Avenue
White Plains, NY 10601
(914) 288-0022

Attorneys for Defendant

Carly Romanowicz
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkeley Street
Suite 2000
Boston, MA 02116
T: +1 617 880 1800
F: +1 617 880 1801
cromanowicz@orrick.com

Todd Vare
BARNES & THORNBURG LLP
11 S. Meridian St.
Indianapolis, IN 46204
Tel: (317) 231-7735
Todd.Vare@btlaw.com

Ronald Cahill
BARNES & THORNBURG LLP
One Marina Park Drive, Suite 1530
Boston, MA 02210
Tel: (617) 316-5312
Ronald.Cahill@btlaw.com

Attorneys for Plaintiffs

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