

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

SHOULDER INNOVATIONS, INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 24-266-JPM
v.	)	
	)	
CATALYST ORTHOSCIENCE INC.,	)	
	)	
Defendant.	)	

[PROPOSED] AMENDED SCHEDULING ORDER

Plaintiff Shoulder Innovations, Inc. and Defendant Catalyst OrthoScience Inc. hereby stipulate to and propose, subject to the approval of the Court, the following amended case schedule:

EVENT	DEADLINE
Initial Invalidity Contentions for U.S. Patent No. 12,023,254	August 19, 2024 (new)
Parties exchange disputed terms	August 30, 2024
Parties file joint claim construction chart	September 11, 2024
Parties serve opening claim construction brief regarding terms in their respective asserted patent(s)	September 25, 2024
Parties serve answering claim construction briefs	October 23, 2024
Parties serve reply claim construction briefs	November 13, 2024
Parties serve sur-reply claim construction briefs	November 27, 2024
Parties file joint claim construction briefs	December 4, 2024
Parties file amended joint claim construction chart	December 11, 2024
Joinder of Parties and Amendment of Pleadings	January 6, 2025
Markman hearing	January 22, 2025 (per D.I. 40)
Substantial completion of document production	February 12, 2025
Supplementation of identification of accused products and invalidity references	February 12, 2025
Interim Status Report	February 19, 2025
Close of fact discovery	March 19, 2025
Final infringement contentions	April 16, 2025

Final invalidity contentions	May 16, 2025
Opening expert reports on issues for which the party bears the burden of proof	June 16, 2025
Rebuttal expert reports	July 16, 2025
Reply expert reports	August 15, 2025
Close of expert discovery	September 5, 2025
Dispositive/ <i>Daubert</i> Motions	September 26, 2025
Hearing on Dispositive/ <i>Daubert</i> Motions	November 21, 2025
Pretrial Conference	February 25, 2026
Trial	March 9, 2026

Shoulder Innovation's Position on An Earlier Trial Date

In view of the Court's request at the July 18 Status Conference for the parties to consider an earlier trial date, and in view of the extended length of time between the date for the Hearing on Dispositive/*Daubert* Motions and the current trial date, Shoulder Innovations supports an earlier trial date to be set by the Court.

Catalyst's Position on An Earlier Trial Date

Catalyst disagrees that there is an "extended length of time" between the dispositive motion hearing date and the trial date or that an earlier trial date would even be practical in this case. In Catalyst's view, Shoulder Innovations significantly underestimates the amount of work required to prepare for trial and the length of time required for the parties to collaborate to prepare for the pretrial conference, including efforts to prepare the joint proposed pretrial order.

Attached as Exhibit A is a revised scheduling order entered by Judge Bryson, sitting by designation as the presiding judge in *ESCO Group LLC v. Deere & Company*, C.A. No. 20-1679-WCB (D. Del) ("*Deere*"), a patent litigation for which Catalyst's current counsel of record represented defendant Deere & Company. Beginning on page three of the order is a schedule outlining the deadlines for the parties to exchange various disclosures in advance of submitting a

joint pretrial order prior to trial. The first date, February 1, 2024, was a full two full months before the first day of trial, April 8, 2024, and, significantly, the February 1 deadline was unquestionably preceded by a significant amount of work by ESCO Group's counsel to prepare a draft "Pretrial Order (with sections under L.R. 16.3(c)(1-13)), including any affirmative Deposition Designations for witnesses to be called by deposition and Plaintiff's Exhibit List" and drafts of "Voir Dire, Verdict Form, Preliminary Jury Instructions, [and] Final Jury Instruction." In other words, although the dates on the schedule of the attached Order span more than two months, the work required to prepare for trial likely approached, or even exceeded, three months. In the present case, there are barely more than three months between the dispositive motion hearing date and the trial date.

There are also significant differences between the current case and *Deere* that suggest pretrial preparation in the current case will be more complex and take longer than in *Deere*. For example, trial in *Deere* involved a single patent, Judge Bryson had already issued his dispositive motion and *Daubert* decisions well before the pretrial schedule being implemented, and there were no significant holidays during the months of February and March. The present case involves cross-claims for patent infringement involving three patents, the Court will likely need time to issue rulings after the November 21, 2025 dispositive motion hearing, and there are significant holidays in November and December.

Of course, the underlying (and unspoken) issue here is that Shoulder Innovations supports moving the trial date earlier, despite its impracticality, because an earlier trial date would help Shoulder Innovation's likely arguments against the Patent Trial and Appeal Board's ("PTAB") instituting Catalyst's pending petition for post-grant review. One issue the PTAB considers in determining whether to institute post-grant review proceedings is whether those proceedings will

conclude before the trial date in a concurrent federal litigation. As it stands now, those proceedings, if instituted, would conclude well before the current trial date. Shoulder Innovations would like to move the trial date earlier to turn that timing on its head or at least close the gap as much as possible.

In sum, moving the trial date forward is impracticable and Shoulder Innovation's position is designed to assist it with avoiding post-grant review by the PTAB.

Dated: August 9, 2024

/s/ Lindsey M. Geller

Karen E. Keller (No. 4489)
Nathan R. Hoeschen (No. 6232)
Emily S. DiBenedetto (No. 6779)
Lindsey M. Geller (No. 7202)
Shaw Keller LLP
I.M. Pei Building
1105 North Market Street, 12th Floor
Wilmington, DE 19801
(302) 298-0700
kkeller@shawkeller.com
nhoeschen@shawkeller.com
edibenedetto@shawkeller.com
lgellar@shawkeller.com

OF COUNSEL:

Jon W. Gurka
Crowell & Moring LLP
3 Park Plaza, Suite 20
Irvine, CA 92614
(949) 798-1331

Andrew McElligott
Ryan Fitzgerald
Crowell & Moring LLP
455 N. Cityfront Plaza Drive
Chicago, IL 60611
(312) 321-4200

*Attorneys for Plaintiff
Shoulder Innovations, Inc.*

/s/ Michelle C. Streifthau-Livizos

James D. Taylor, Jr. (#4009)
Michelle C. Streifthau-Livizos (#6584)
1201 N. Market Street, Suite 2300
Wilmington, DE 19801
(302) 421-6863
james.taylor@saul.com
michelle.streifthau-livizos@saul.com

OF COUNSEL:

John F. Bennett
Paul M. Ulrich
Paul J. Linden
Ava M. Abner
FROST BROWN TODD LLP
301 East Fourth Street, Suite 3300
Cincinnati, Ohio 45202
(513) 651-6423
jbennett@fbtlaw.com
pulrich@fbtlaw.com
plinden@fbtlaw.com
aabner@fbtlaw.com

*Attorneys for Defendant
Catalyst OrthoScience Inc.*

IT IS SO ORDERED, this ____ day of _____, 2024

UNITED STATES DISTRICT COURT JUDGE

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ESCO GROUP LLC,

Plaintiff,

v.

DEERE & COMPANY,

Defendant.

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Civil Action No. 20-1679-WCB

REVISED SCHEDULING ORDER

This order supplements the previous scheduling order in this case, Dkt. No. 24.

With respect to the exhibits the parties intend to offer at trial, the court will endeavor to resolve most, if not all, questions of admissibility in advance of the trial. The court notes that it is a common practice for parties in patent cases to include in the proposed joint pretrial order a huge number of exhibits and for each party to object to a large percentage of the opposing party's exhibits. That exercise is counterproductive. It offers very few benefits and tends to create significant additional work for the parties and for the court. It also results in requiring decisions regarding admissibility to be made during trial when such decisions must be made quickly and when arguments over admissibility consume valuable trial time. With these considerations in mind, the court directs the parties to comply with the following procedure.

1. In their proposals relating to the joint pretrial order and in the meet and confer on the joint pretrial order, each party is directed to include only those exhibits it believes it will actually offer at trial; each party is also directed to reduce the number of its objections to those it seriously intends to press at trial. The parties will also exchange deposition designations and be prepared to discuss any disputes over deposition designations at the conference with the court.

2. In the event that there are more than 25 remaining disputes over the admissibility of the trial exhibits and deposition designations after the parties meet and confer, I will conduct an off-the-record conference with counsel for both parties on March 11, 2024, in my chambers in Washington, D.C. Lead trial counsel for each party will be required to attend. Delaware counsel will not be required to attend. The purpose of the meeting will be to resolve the admissibility of the remaining disputed exhibits prior to trial so as not to consume either party's trial time with disputes over the admissibility of exhibits. The meeting will continue for as long as it takes to resolve those disputes. I will then enter an order indicating which exhibits have been pre-qualified for admission at trial. I expect both parties to act in good faith in making this process work. If I conclude that either party is uncooperative in submitting a realistic proposed exhibit list, I will impose a limit on the number of exhibits that party may admit at trial.

3. If there are 25 or fewer remaining disputes over the admissibility of the trial exhibits after the parties meet and confer on the admissibility of the exhibits, I will conduct the meeting on exhibits by telephone. By no later than March 4, 2024, at 5:00 p.m. Eastern Time, the parties should provide the court with a list of the exhibits that remain in dispute, a copy of digital versions of each of those exhibits, and the basis for any objection or objections to each of those exhibits.

If there are any remaining disputes about deposition designations after the parties meet and confer on their respective designations and counter designations, the disputes over the designations will be handled in the same manner as the disputes over exhibits. Any disputes over designations and counter-designations will be added to the disputes over exhibits and will be resolved either at the meeting on exhibits on March 11, 2024, or during the telephonic conference in the event that the total number of disputes over exhibits and deposition designations is less than 25.

With these procedures and dates in mind, the following schedule for pretrial exchanges is adopted:

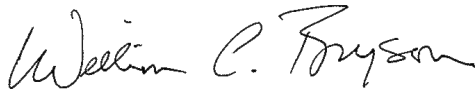
Pretrial Item	Date
Plaintiff provides draft of Pretrial Order (with sections under L.R. 16.3(c)(1-13)), including any affirmative Deposition Designations for witnesses to be called by deposition and Plaintiff's Exhibit List. Plaintiff also provides drafts of <i>Voir Dire</i> , Verdict Form, Preliminary Jury Instructions, Final Jury Instructions	February 1, 2024
Defendant provides affirmative Deposition Designations for witnesses to be called by deposition; any objections to Plaintiff's affirmative Deposition Designations; and any Deposition Counter-Designations	February 8, 2024
Parties Exchange Lists of Potential Motions <i>In Limine</i>	February 12, 2024
Parties Meet and Confer to Narrow Issues Regarding Motions <i>In Limine</i>	February 14, 2024

Defendant provides redlined drafts of Pretrial Order (with sections under L.R. 16.3(c)(1-13)), including any Objections to Plaintiff's Exhibit List, and Defendant's Exhibit List (including identification of Joint Exhibits) Defendant also provides redlined drafts of <i>Voir Dire</i>, Verdict Form, Preliminary Jury Instructions, Final Jury Instructions. Plaintiff provides Objections to Defendant's affirmative Deposition Designations, and provides any Counter-Counter Designations in response to Defendant's Counter-Designations	February 15, 2024
Parties exchange Motions <i>In Limine</i>. Defendant provides Objections to Plaintiff's Counter-Counter Designations and provides any Counter-Counter Designations in response to Plaintiff's Counter-Counter Designations	February 19, 2023
Plaintiff provides any Objections to Defendant's Exhibit List and to Defendant's Counter-Counter Designations	February 26, 2024
Parties meet and confer to reduce the number of disputes over exhibits as much as possible.	February 29, 2024

Parties provide court with list of exhibits and electronic copies of all exhibits each party intends to offer at trial that are still objected to at that time and exchange Motions <i>In Limine</i> Responses	March 4, 2024
Parties Meet and Confer Regarding Pretrial Order, Jury Instructions, Proposed <i>Voir Dire</i> , and Special Verdict Form	March 6, 2024
Court conducts an Off-the-record meeting (in chambers if there are more than 25 remaining disputes over admissibility of trial exhibits and deposition designations; otherwise by Zoom)	March 11, 2024
Parties exchange Motion <i>In Limine</i> Replies	March 12, 2024
File Final Pretrial Order	March 11, 2024 (fourth business day before Pretrial Conference)
File Preliminary and Proposed Jury Instructions, <i>Voir Dire</i> , and Verdict Form	March 11, 2024 (fourth business day before Pretrial Conference)

Parties exchange final stamped PDF copies of exhibits	March 13, 2024
Pretrial Conference	March 15, 2024, at 2:00 p.m. Eastern Time
Trial	April 8, 2024 – April 12, 2024

SIGNED this 10th day of January, 2024.


 WILLIAM C. BRYSON
 UNITED STATES CIRCUIT JUDGE