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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SHOULDER INNOVATIONS, INC.,

Plaintiff,

vs.

CATALYST ORTHOSCIENCE, INC.,

Defendant.

NO. 24-CV-00266

TRANSCRIPT OF THE VIDEO MOTION CONFERENCE

BEFORE THE

HONORABLE JON P. MCCALLA

FRIDAY

NOVEMBER 22, 2024

TINA DuBOSE GIBSON, RPR, RCR
OFFICIAL REPORTER
FOURTH FLOOR FEDERAL BUILDING
MEMPHIS, TENNESSEE 38103

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3 1 FRIDAY 2 NOVEMBER 22, 2024 3 ----- 4 5 THE COURT: We're here to hear not only the 6 motion but also to go over the organization of the matter and 7 to try to make it more efficient. And I am very well aware 8 of the -- I don't want to be unfair, but the relatively 9 limited resources of the parties in the case. If that's 10 incorrect, you can stand up and tell me that's completely 11 wrong, but I think we've gone over this before. 12 So we have to be an efficient process that it's 13 not going to make the presentation of the matters to the 14 Court impractical because that's not the way it's supposed to 15 work, and there's considerable criticism that that is the way 16 that some cases proceed or have proceeded in the United 17 States, so we don't want to do that. So we'll check and see 18 what we need to do. 19 The question -- the first question probably is 20 that we may need to, as a practical matter, bifurcate 21 matters. I think everybody is aware that that's a distinct 22 possibility and that is a practice that in Delaware is 23 followed on occasion and would not be impractical in this 24 case. We also recognize that by bifurcating the case, we 25 might simplify the case in reality, but now let's hear what UNREDACTED TRANSCRIPT	4 1 the parties want to say about that. 2 Let's start with the defense on that question, 3 and I'm not sure who is going to be responding for the 4 defense. I assume it might -- well, Mr. Bennett? Or 5 Mr. Linden? 6 MR. LINDEN: Mr. Linden, Your Honor, yes. I'll 7 address the bifurcation issue. 8 THE COURT: That's fine. 9 MR. LINDEN: So -- 10 THE COURT: What I'm concerned about because, I 11 think -- I know people generally understand that's something 12 we need to be concerned about -- is having the parties be 13 able to proceed in an efficient way without you guys putting 14 them out of business. I'm not picking on you. I'm just 15 saying. If fees are so high that you can't present a matter 16 to the Court, that's a problem. 17 MR. LINDEN: No, I understand that, Your Honor, 18 and we're certainly cognizant of that for this case and all 19 cases that we represent parties in patent cases nationwide. 20 THE COURT: In patent cases fees don't matter, 21 but I might -- and my observation is in this case -- do I 22 have any non-lawyers on here? Well, too bad I don't. I was 23 kind of hoping. 24 If the client was there, they could either say, 25 oh, we don't care or we are concerned. But that's fine. You UNREDACTED TRANSCRIPT
5 1 see what I'm getting at. I mean, we recognize what we have 2 to do managerially. 3 MR. LINDEN: Your Honor -- 4 THE COURT: Yes, go ahead. 5 MR. LINDEN: It's our position on the bifurcation 6 issue, Your Honor, is that it makes sense to keep the claims 7 together and try this case and do discovery in this case all 8 in one shot. We note that all the cases that plaintiff has 9 relied on in briefing for this motion rely on cases where 10 there is an antitrust claim or counterclaim alleged in the 11 pleadings. 12 And by antitrust claim or counterclaim, I'm 13 talking about Section 1 or Section 2 of the Sherman Act 14 counterclaim where the discovery is noted in almost all of 15 those cases to be voluminous, burdensome, takes a lot longer 16 than discovery for the patent claims at issue. You know, 17 they rely on DSM, which is a Judge Bryson's decision sitting 18 by designation here in Delaware, who specifically calls out 19 that type of discovery for antitrust counterclaims. 20 We don't have that here. There is a sham 21 litigation counterclaim at issue, but it is not pertaining 22 directly to any type of Sherman Act antitrust counterclaim 23 such that it would implicate or relate to those types of 24 issues that are prevalent in Sherman Act claims like market 25 definition, market power, things along those lines. UNREDACTED TRANSCRIPT	6 1 The sham litigation counterclaim is designed to 2 strip the plaintiff of its <i>Noerr-Pennington</i> immunity for 3 other claims like the tortious interference claim that we've 4 also brought. And, ultimately, if we're able to show what we 5 need to show first-hand litigation claim, it could be used 6 for something later down the road for something like a 7 Section 285 request for attorney's fees. 8 So we don't see the counterclaims that are 9 subject to this motion are of the nature without an antitrust 10 claim going along with them to justify bifurcating not only 11 trial of the matter but discovery of the matter. 12 What plaintiff is envisioning by requesting not 13 only bifurcation of trial but bifurcation of discovery is 14 that we go through what the Court has set up for the patent 15 litigation schedule, which, you know, prior to our last 16 conference with Your Honor where you sort of pulled those 17 dates back so that you can reevaluate them after claim 18 construction. The date is set in March of 2026. 19 What plaintiff has in mind here is that we're 20 going to go through discovery regarding infringement and 21 invalidity not only of its patents but of Catalyst patents, 22 reach a decision, and then, if warranted, start the process 23 all over again where you're going to get some duplication on 24 discovery taken and definitely some inconvenience for the 25 parties if we have to start a case all over again. I mean, UNREDACTED TRANSCRIPT

7

1 we're talking about, if the plaintiff has its way, looking at
2 resolving Counterclaims 6, 7, and 8 sometime likely in 2028.
3 I mean, that's going to be prejudicial to defendant in
4 several respects.

5 One, memories fade. Witnesses are going to be
6 subject to deposition more than once, which isn't ideal and
7 isn't favored, I'm sure, by the Court and certainly not those
8 witnesses. And then you've got some -- you've got some
9 inefficiencies with just document retention, document
10 collection, and whatnot.

11 So defense position is that these claims, the
12 Counterclaims 6, 7, and 8, should be part and parcel of the
13 patent litigations that we're here to prosecute in the
14 original complaint. Again, every case that they cited
15 involves an antitrust counterclaim, which is well noted
16 across the judiciary as being burdensome in discovery and
17 fact intensive involving many experts and whatnot. That is
18 not the case here.

19 And aside from that, I mean, there's some --
20 there's some citation of cases. I would suggest that
21 plaintiff studiously avoided mentioning the antitrust claims
22 that were in those cases.

23 Again, we don't have that here, and without that
24 type of counterclaim at issue, the antitrust counterclaim, it
25 doesn't justify bifurcating the case.

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1 THE COURT: Okay. Let's hear from counsel
2 opposite on that. I wasn't -- okay. Let's see what -- I'm
3 not sure who is arguing that on this part.

4 It may be Mr. Gurka?

5 MR. GURKA: No, Your Honor. Mr. McElligott is
6 going to address the bifurcation issue.

7 THE COURT: Okay. Fine.

8 MR. MCELLIGOTT: Good morning, Your Honor. Drew
9 McElligott for Shoulder Innovations.

10 THE COURT: Right. Y'all --

11 MR. MCELLIGOTT: We -- sorry.

12 THE COURT: That's an interesting way to do your
13 screen there, but, okay.

14 MR. MCELLIGOTT: If it would benefit Your Honor,
15 we could try to zoom in.

16 THE COURT: That's okay. Go ahead.

17 MR. MCELLIGOTT: Your Honor, we see this case as
18 similar to an antitrust case because these counterclaims are
19 not tied to the underlying claims of the patent infringement
20 suits. The patent infringement suit can be decided
21 individually of this or independently of this, and then like
22 an antitrust claim, these additional claims can be brought
23 and addressed later.

24 Every single problem that Mr. Linden raised is
25 the same type of issue that's in an antitrust case. The

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9

1 potential risk that a witness might be deposed twice,
2 although there have been no witnesses identified that would
3 actually have to be deposed twice for these two different
4 claims or these two different sets of claims, there may be a
5 delay in getting to a result on these Counterclaims 6, 7, and
6 8, but there also exists the possibility that they're mooted.

7 Because if Shoulder Innovations succeeds on its
8 patent claims, there can be no sham litigation. And sham
9 litigation is a necessary prerequisite in order to vitiate
10 *Noerr-Pennington* immunity and get to these counterclaims. So
11 there's the possibility to just eliminate all of the work
12 involved in this.

13 In addition to that, and aside from that, if we
14 bifurcate and stay these claims, that issue of whether or not
15 our claims are objectively baseless, a necessary question
16 that must be addressed before you get to the counterclaims
17 gets further developed.

18 We have evidence being cited by Catalyst in this
19 matter that's invalidity arguments in their PGR. By the end
20 of this case on the patent infringement claims, the PGR will
21 be decided, and they have a claim construction dispute, which
22 will also be decided.

23 Now, if Shoulder prevails and prevents that PGR
24 from being instituted or prevails if it is instituted, and if
25 we prevail on the claim construction dispute, then there is

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10

1 no sham litigation here. It prevents the need to have what
2 we do see as copious amounts of discovery that we would
3 otherwise have to do simultaneously with addressing the
4 patent infringement claims.

5 Now, we would be diving into -- we presume
6 Catalyst would be diving into Shoulder's purported subjective
7 bad faith, serving discovery requests and doing depositions
8 targeting that specific issue. We, on our side, would be
9 serving discovery requests seeking more information about the
10 financials on the Catalyst side, digging into relationships
11 with investors that were or were not impacted, the timing of
12 those, the relationships and communications with customers,
13 things along those lines.

14 These are all additional categories of discovery
15 that involve third parties that we otherwise would not have
16 to dive into if these claims were bifurcated and stayed.

17 Now, that's different than an antitrust case. An
18 antitrust case, in those claims, typically you don't have to
19 depose third parties and serve subpoenas. That's just a
20 question of what is the market and what is the market share
21 and maybe you have some expert testimony, but you don't have
22 to burden third parties by investigating whether or not there
23 was a tortious interference with a business relationship.

24 So we disagree fundamentally that that's a stark
25 contrast between an antitrust type of claim and the sham

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11

1 litigation claims being asserted here.

2 THE COURT: Let's have the counter to that,
3 although, there's certainly some logic to what counsel just
4 said.

5 So let's -- Mr. Linden, I know you've told me
6 already. I think you've probably covered what you want to
7 cover, but anything you want to add?

8 MR. LINDEN: Well, sure. So we disagree from the
9 characterization from plaintiff's counsel that the
10 counterclaims at issue here are just like antitrust or very
11 similar.

12 THE COURT: Well, obviously, they're not just
13 like. I mean, I think that's a simplification. But,
14 obviously, if they -- we proceed on the patent claims in this
15 matter, certainly as to the Shoulder -- as to the -- as to
16 everything that Shoulder has and it turns out that Shoulder
17 prevails, that exposes a lot of things, right?

18 MR. LINDEN: It does, and that kind of emphasizes
19 the interconnectedness of the underlying patent claims with
20 the counterclaims that are at issue here and why they should
21 actually be tried together. A lot of the discovery that we
22 will do related to subjective bad faith, assertion of the
23 claims will be part and parcel of whether the claims are
24 objectively baseless or weak or, you know, just the strength
25 of those claims together.

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12

1 I don't see the discovery of subjective -- I'm
2 sorry, Shoulder Innovations' subjective bad faith in bringing
3 the claims as being anywhere akin to the antitrust claims
4 that the courts in the cases that Shoulder has cited, you
5 know, calling out the concerns about the breadth and the
6 complete separateness. All that market power, all that
7 market definition is completely separate from what the usual
8 proofs of a patent infringement claim are all about.

9 Here, we're talking about pretty much the same
10 stuff. I mean, if you're talking about Shoulder Innovations
11 telling consumers or customers or funders or advertising in
12 some way these claims and these claims are weak or
13 subjectively baseless, then those are all tied together and
14 they should be tried in the same manner.

15 THE COURT: Of course, it certainly helps the
16 plaintiff's side that the PTO has passed on these, has
17 indicated these. We've got patents. We've got a presumption
18 of validity. I'm just trying to think through it.

19 Okay. Well --

20 MR. LINDEN: Your Honor, may I respond to that
21 quickly?

22 THE COURT: Sure.

23 MR. LINDEN: So there's a presumption of
24 validity, and that's a procedural mechanism. What the
25 procedural mechanism is, is it puts a burden on the

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13

1 defendants to prove invalidity. It also puts on the standard
2 of proof of clear and convincing evidence.

3 Now, we have petitions at the PTAB, Patent Trial
4 and Appeal Board --

5 THE COURT: Right.

6 MR. LINDEN: -- which is a mechanism designed to
7 reexamine or take a look again at the patentability of the
8 claims that are at issue. We have petitions out for both
9 patents that are at issue in this case, the '561 and the
10 '254. Neither one of those petitions have been ruled on yet
11 as far as the institution, but there is a presumption of
12 validity, but the patentee can rely on that in bringing its
13 claims.

14 But once it's pointed out to the patentee that
15 there's significant issues with the validity or patentability
16 of those claims to the point where those claims -- asserting
17 those claims would be objectively baseless, then the patentee
18 can't really rely on the presumption anymore.

19 THE COURT: Well, correct. But when would we
20 expect to have a determination on institution?

21 MR. LINDEN: So for the petition for the '561
22 patent, the institution decision is expected sometime in
23 January, maybe even late December. For the '254, it would be
24 expected in April.

25 THE COURT: April, a little later. So if we

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1 continue to monitor the matter closely, and focus perhaps on
2 the patent claims only at this time, we should have a lot
3 more information in January, and at the latest, April,
4 hopefully, in terms of how this is going. Of course, we then
5 don't know if it's going to be -- find out what's going to
6 happen at least initially at the trial and appeal board.
7 Okay, and that's what I understood.

8 Okay. Well, that's helpful. I do think we --
9 it's interesting how everybody's responded.

10 Well, let's just ask this question then as to the
11 defense. The only detail that you seem to give about this
12 third party -- of course, you're talking about third party in
13 terms of someone who has said, I think, that we would have
14 done business with you, if you'll recall that, is that it was
15 going to invest with you, that is, invest with you, but
16 decided not to because of litigation.

17 First of all, I'm just going to make sure: Who
18 is the third party?

19 MR. BENNETT: Your Honor, good afternoon. Good
20 morning, rather. This is John Bennett for Catalyst.

21 Who is the third party, Your Honor?

22 THE COURT: There he is. There he is.

23 MR. BENNETT: Yes, hello. The counterclaims
24 don't identify the third party. The counterclaim identifies
25 that it is a third party who --

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15

1 THE COURT: I said: Who is the third party?
 2 I just didn't remember maybe. Maybe it's already
 3 there.
 4 MR. BENNETT: It's not in the counterclaim. It
 5 doesn't identify it by name.
 6 THE COURT: No, you're not understanding what I'm
 7 saying. Give me the name of the third party.
 8 MR. BENNETT: I don't know the name of the third
 9 party. It's not in the counterclaim.
 10 THE COURT: If you don't know the name, who --
 11 then if you don't know the name, how -- then who does know
 12 the name?
 13 MR. BENNETT: Oh, the client knows the name.
 14 Catalyst certainly knows the name.
 15 THE COURT: And have you asked the client the
 16 name of the third party?
 17 MR. BENNETT: Yes.
 18 THE COURT: Okay. And, well, then, what did they
 19 say?
 20 MR. BENNETT: This is outside the four corners of
 21 the pleading, but there was an e-mail or letter of some sort
 22 that was sent -- it's almost verbatim as pleaded in the
 23 counterclaim that because of the allegations, we are not
 24 providing -- I don't remember if it was fundraising or
 25 financing, but it was one of the two, and we're going to

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17

1 claim, right?
 2 MR. BENNETT: Yes, Your Honor.
 3 THE COURT: But you didn't disclose that name,
 4 right?
 5 MR. BENNETT: That's correct.
 6 THE COURT: Okay. Which means that you can never
 7 use that person's name in this case. You can never call
 8 them. You can -- if you don't disclose them.
 9 I want to be really clear on this point because
 10 this is designed to make the litigation cheaper for all of
 11 you, for every last one of you. Now, it applies to the other
 12 side too. You know, you play fencing with what you're going
 13 to do and you give a couple of names, and you say this is my
 14 26(a)(1) Disclosure, but it's not.
 15 And so failure to properly comply with the
 16 rule -- now, I realize not everybody is quite as clear on
 17 this point as I am, but failure to do that is a significant
 18 problem. And so I'm just pointing that out. You've got to
 19 do that.
 20 And I'm just saying I'm going to let you do it
 21 now because you weren't clear. You didn't know how the judge
 22 was going to approach this, although it's clear from Rule 16
 23 and Rule 26 and Rule 37 that that's how it's anticipated
 24 under the rules that it should be approached. And it's clear
 25 for lots of reasons, and you can read about that.

UNREDACTED TRANSCRIPT

16

1 elect to pass, good luck with your efforts, essentially.
 2 THE COURT: Okay. I'm just trying to make sure
 3 the other side has the name of the third party.
 4 You do, right?
 5 MR. MCELLIGOTT: We do not have the name of the
 6 third party.
 7 THE COURT: Well, why haven't you given it to
 8 them?
 9 MR. BENNETT: There hasn't been any discovery on
 10 this issue.
 11 THE COURT: There's been 26(a)(1) Disclosure; is
 12 that right?
 13 MR. BENNETT: There has been 26(a)(1)
 14 Disclosures.
 15 THE COURT: You're required to. You failed to do
 16 it, right? This is part of the issue in terms of making
 17 things more efficient. You know, and I understand, it's --
 18 things sometimes are applied differently in terms of what you
 19 need to do on your 26(a)(1) Disclosures.
 20 But, clearly, you would rely on this party and
 21 this correspondence to support your claim, right?
 22 MR. BENNETT: Absolutely, Your Honor. It's --
 23 THE COURT: Excuse me, and under Rule 26(a)(1),
 24 you're required to disclose the identity of persons, and/or
 25 entities, but persons that you may call to support your

UNREDACTED TRANSCRIPT

18

1 MR. BENNETT: So that's my mistake, Your Honor.
 2 We were acting under sort of an informal unstated detente
 3 with regard to those claims. I apologize for that, Your
 4 Honor.
 5 THE COURT: There is no informal avoidance of the
 6 requirements under 26(a)(1).
 7 MR. BENNETT: Understood.
 8 THE COURT: And I understand that both parties
 9 probably say, well, we're going to show a little bit of
 10 stuff, and we're not going to do very much. That happens all
 11 the time.
 12 But I really have to come back and say to both
 13 sides, because I think that both sides are probably equally
 14 culpable on this point, that that may be the way it's been
 15 perceived.
 16 So let me check with plaintiff's counsel on that
 17 and see what we're doing there.
 18 MR. MCELLIGOTT: Your Honor, we consider our
 19 26(a)(1) Disclosures to be current as of this date in terms
 20 of who we would be relying on.
 21 THE COURT: Okay. Now, no, that's not -- that's
 22 not the rule.
 23 MR. MCELLIGOTT: In terms of what we know who
 24 would have relevant information.
 25 THE COURT: The rule doesn't say who I will be

UNREDACTED TRANSCRIPT

19

1 relying on. The rule says "may." I'll read it to you, but
2 you've got all sorts of skilled people around you to go over
3 it if you want to.

4 The rule says "may," and so if you don't include
5 them, if you have failed to be diligent in terms of your
6 26(a)(1) Disclosures, then I have to say that you will not be
7 able to use them, and you can't patch that up between you.
8 You can't say, well, we're going to ignore what the judge
9 says. We're going to ignore what the Supreme Court says.
10 We're going to ignore the Federal Rules of Civil Procedure.
11 We're going to do it our own way. Now, if you file a
12 stipulation to that effect, maybe we'll work that out, but we
13 can't do that. We can't do that.

14 So you have to show the name and, if known, the
15 address -- that's a real address. That's not, contact
16 counsel, we'll tell you what it is if we feel like it -- the
17 address and phone number of each individual likely to have
18 discoverable information -- clearly, Mr. Bennett knows that
19 this person is someone who is likely to have discoverable
20 information -- along with the subject of the information that
21 the disclosing party may use.

22 That's pretty clear. In fact, they say they will
23 use, in all likelihood, use to support its claims or defenses
24 unless it would be solely for impeachment. This isn't solely
25 for impeachment on this. This is an essential part of that

UNREDACTED TRANSCRIPT

21

1 we're just trying to get reorganized on this a little bit.
2 What is reasonable for you to do that, Mr. Bennett? because
3 we're not here to beat you up. We're just trying to get
4 everybody moving in the same direction.

5 MR. BENNETT: With the upcoming holiday, we can
6 certainly provide one name, the one that's referenced in
7 paragraph 59 of our counterclaim, but to be fulsome and
8 thorough as the Court is -- as the rules require, I beg your
9 pardon, I would think another week after next week so --

10 THE COURT: Absolutely. That is no problem at
11 all. I mean, if you need more time than that. Then the
12 point for both of you is let's get this done right and cut
13 down on costs. So that's -- absolutely. I'm not going to
14 make you work over the holidays. Who would have to do this?
15 You wouldn't have to do it, but who on the -- a smile there.
16 I see somebody --

17 MR. LINDEN: It's Ms. Bowden. Ms. Bowden would
18 likely be the one having to do it. Ms. Bowden, she's off
19 camera, I think.

20 THE COURT: She's smiling out there. She says,
21 that's a real good idea, Judge.

22 MR. BENNETT: So we could have until December --
23 so with the Court's flexibility and with plaintiff's
24 flexibility, if we could have until December 13th, maybe
25 another extra week on top of that.

UNREDACTED TRANSCRIPT

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1 claim.

2 So I'm just pointing this out because you can't
3 do this, gentlemen. And if you do it -- well, if you try to
4 do it, then under Rule 37, looking at Rule 16 and, of course,
5 Rule 26, we would have to, on most circumstances, not allow
6 the use of that witness. So that is designed to save you and
7 your clients a lot of money.

8 Okay. Go back. I'm sorry, Mr. Bennett. Well,
9 I'm sorry to cut you off there. I was just trying to make
10 sure everybody understands. Y'all want a little time to
11 update your 26(a)(1) so you're actually able to call these
12 people, or are you just going to not call them, which is fine
13 with me? It doesn't make any difference to me.

14 I suspect it doesn't matter at all to the counsel
15 opposite on that. You don't care, right?

16 MR. MCELLIGOTT: If they don't want to update,
17 that's their choice, Your Honor.

18 THE COURT: It applies to both sides. Right.

19 MR. MCELLIGOTT: Understood, Your Honor, yes.

20 THE COURT: Okay. You want to update that one so
21 we've got a little more information, but also give
22 information to the other side and hopefully save money.
23 That's the idea.

24 MR. BENNETT: Yes, absolutely, Your Honor.

25 THE COURT: Okay. And I just want to -- I know

UNREDACTED TRANSCRIPT

22

1 THE COURT: Absolutely. That's the way to do it
2 because our job -- our task on this one for both sides, I
3 want to make it clear to both sides, is to make it more
4 economical and disclose more information so it's more useful.

5 Okay. I'm sorry. I just wanted to make sure we
6 made that point early and everybody understands.

7 You can also, if you wish, I think it's a good
8 idea, look at your 26(a)(1), look at your complete
9 disclosures in terms of documents, identification, and/or
10 sharing of documents. I think you've already exchanged all
11 your core documents.

12 Is that right, Mr. Bennett?

13 MR. BENNETT: I'll ask Ms. Bowden, if you don't
14 mind.

15 THE COURT: She's on the line.

16 MS. BOWDEN: Yes. We've disclosed the technical
17 documents and the sales information that was required.

18 THE COURT: And that's what -- yes, and,
19 Ms. Bowden, just so it's really clear, look at that "may"
20 provision, that one that says "may." Because, you know,
21 again, if you leave out something -- this happens,
22 unfortunately, in other cases around the country that I've
23 been in on -- then you end up not being able to use the
24 document. So if you want to update that, I suggest that you
25 go ahead and do that. I know that you've -- how much

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23

1 material did you end up disclosing?

2 MS. BOWDEN: For the technical documents and the

3 sales information?

4 THE COURT: Yes.

5 MS. BOWDEN: The technical documents, a few

6 hundred, and then the sales information, a spreadsheet.

7 THE COURT: Okay. Probably not enough. You're

8 probably going to run into a problem there. And, so, you

9 know, please go back, take a look, feel comfortable. I'm

10 never going to have to use this other, but not only that,

11 something -- I may not have told this group.

12 I had an architectural copyright case, totally

13 different, in which they actually made some serious mistakes

14 in terms of disclosures, and so when they got to trial, they

15 couldn't use a lot of material. So that doesn't sound like

16 enough data, but I'm not sure there. So just take a look.

17 Okay.

18 MS. BOWDEN: Understood, Your Honor. Thank you.

19 THE COURT: Yes, just to make sure that we've got

20 it all covered.

21 Now, let's go back to counsel opposite and make

22 sure that they're going to update a little bit of material

23 too; is that right?

24 MR. MCELLIGOTT: We will take a look and make

25 sure that we have everything current and all information

UNREDACTED TRANSCRIPT

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1 February the 12th. I think that's right. Is that correct?

2 And then we've got fact discovery deadlines as

3 March the 19th. And your point is that you're focusing on

4 right now not the counterclaims but on the initial patent

5 claims themselves that Shoulder is bringing; is that right?

6 MR. MCELLIGOTT: Correct. Yes.

7 THE COURT: Logically, that makes sense to me and

8 that's why I'm trying to figure out the defense thought on

9 what's going to be efficient, economical, and so forth. And

10 so you're saying that if we do the other, obviously, we'll

11 have to push it out. The more we combine and put into this

12 package, then you'll need more time.

13 MR. MCELLIGOTT: Correct, Your Honor, yes.

14 THE COURT: Okay. I think we've got that. Why

15 do you think we ought to stick with this? We only have four

16 claim terms to construe; is that right?

17 MR. MCELLIGOTT: I believe so, yes, Your Honor.

18 It's four claim terms all from the '063 patent, which is a

19 Catalyst patent.

20 THE COURT: They're not on the other patent.

21 That's right. And they seem pretty straightforward, and

22 you've given us some information in that regard. Is there a

23 way that we should move up claim construction to go ahead and

24 get that resolved quickly? Would that help?

25 MR. GURKA: Your Honor, this is Jon Gurka.

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24

1 produced, Your Honor.

2 THE COURT: Now, don't -- you're using the word

3 "current" and that's the wrong word, because if you didn't

4 use due diligence in going back and making your examinations

5 in individuals and/or documents and materials that were

6 available to the client and they were in the client's

7 possession, then you haven't hit that one. So just be sure.

8 Just warn them, you know, that we've got to get this done.

9 Okay. Well, let's keep going. I'm not going to

10 go too long today. We've got a pretty good idea of what we

11 maybe need to do.

12 MR. MCELLIGOTT: Your Honor, may I respond to one

13 point that Mr. Bennett made or just --

14 THE COURT: Sure.

15 MR. MCELLIGOTT: -- comment on it?

16 As Mr. Bennett said, the parties have not

17 conducted any discovery at this point on these counterclaims,

18 the 6 through 8. So with our close of fact discovery coming

19 up, the amount of discovery that we're contemplating that we

20 would have to squeeze into this window would potentially push

21 the deadlines further out and require us to take a longer

22 chunk of time for discovery in order to address these new

23 counterclaims.

24 THE COURT: Right. Right now, you've got

25 document production, which will be completely completed by

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26

1 We already have the *Markman* hearing set for

2 January 22nd. We are completing our final round of briefing.

3 Our surreply papers will be due next week. We'll serve those

4 on Catalyst's counsel. And then it's just a matter of

5 putting all of that together in our claim construction brief,

6 our consolidated brief to get to you. We certainly could be

7 in a position to have a *Markman* hearing a little bit sooner,

8 if the Court is inclined, but the 22nd is the date we're set

9 to meet.

10 THE COURT: And what I'm saying is -- I think the

11 deadline is going to be okay. I think we'll probably get

12 everything done. We've looked at the terms and, I don't

13 know, they didn't seem that complicated in this case. Would

14 you agree with that?

15 MR. GURKA: I'm sure Your Honor has had more

16 complex technology to deal with from a *Markman* hearing

17 standpoint. You know, these are mechanical devices and, you

18 know, you have the devices, I believe, so you've been able to

19 visualize.

20 THE COURT: Got them out and played with them

21 yesterday.

22 MR. GURKA: Yes. Yes, I think the claim

23 construction briefing will help sort of illuminate the key

24 issues between the parties. But, yes, I don't think -- for

25 example, I don't think this *Markman* hearing needs to go an

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27

1 entire day. I think --

2 THE COURT: That would be terrible.

3 MR. GURKA: Yes, yes. So, I -- you know, I think
4 we can probably, once we get the briefs in, we'll be ready
5 for the hearing. If there's a need to move it up, I think we
6 could accommodate that from our side. But, hopefully, the
7 briefs will help you.

8 THE COURT: Internally what we're thinking,
9 because having really sort of looking at this for a little
10 while, we're thinking that if everything comes in, we can
11 review that, and it seems pretty clear as to what we ought to
12 do, then the *Markman* hearing, I'm going to ask this question
13 just to see what all of you think, could be actually quite
14 abbreviated. We could rely on the briefings and the
15 materials submitted and submit an order fairly close in time
16 to the *Markman* hearing.

17 Now, that may change because I haven't seen
18 everything you're going to submit. But we've seen enough to
19 be thinking this might move much more quickly than some, than
20 some situations where we've got a really odd term and takes
21 us forever to figure it out or we're not quite sure. What do
22 you think?

23 MR. GURKA: I would want to take that under
24 advisement. If you're suggesting that we submit on the
25 briefs, it sounds like that --

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29

1 What does counsel opposite think on that?

2 MR. BENNETT: Thank you, Your Honor. John
3 Bennett.

4 Catalyst certainly would be amenable to moving it
5 up. The Catalyst concern, Your Honor, would be just to make
6 sure that the Court has an opportunity and the parties have
7 an opportunity to consider all the briefing and to answer
8 whatever questions the Court has. And as --

9 THE COURT: No problem. Do you think that
10 there's going to be any anticipated -- and I don't think
11 we're going to need it, but if you think we might -- any live
12 testimony, expert testimony, at the hearing?

13 MR. BENNETT: I don't anticipate live testimony,
14 Your Honor. There may be declarations that the parties have
15 submitted, but I don't anticipate live testimony.

16 THE COURT: That's kind of what I thought was
17 probably going to occur.

18 Let me go back to counsel opposite. Mr. Gurka,
19 what about that?

20 MR. GURKA: We agree, Your Honor. We don't see
21 the need for live testimony.

22 THE COURT: There is some reasons in terms of
23 travel schedule and everything else and other things I've got
24 to do that we may want to do that. So I'm not necessarily
25 going to -- well, why don't we just change the date now and

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28

1 THE COURT: I'm not really because I think I've
2 probably got to have a hearing. But I'm suggesting that I
3 think it won't be that much new material at the hearing.
4 What do you think?

5 MR. GURKA: Yes, I'm not sure there will be much
6 new material. I think the briefing will allow the Court to
7 understand, you know, the -- will frame the issues better for
8 the Court, and so I think the briefing will be helpful in
9 deciding the claim construction issues. But, again, you
10 know, we're set to meet on the 22nd. If we get the material
11 to you in early December, which I think is the timeline
12 here -- I just want to look.

13 THE COURT: I think so. Yes, you've got December
14 the 4th.

15 MR. GURKA: Right. Right. December 11th is when
16 we file our amended joint claim construction chart.

17 THE COURT: Right.

18 MR. GURKA: And all of the briefing will be in as
19 well. So, again, if we wanted to move up the hearing to try
20 and expedite a decision on the claim construction issues with
21 regard to the '063 patent, we would certainly be willing to
22 do that.

23 THE COURT: And I'm not trying -- I'm just trying
24 to look at my schedule, my overall schedule, and see what
25 would be most beneficial to us.

UNREDACTED TRANSCRIPT

30

1 just have it done.

2 I don't know if we've got a time to do it. I'm
3 looking to -- it would have to be up pretty early. I don't
4 know if I've got -- I always have to check and see exactly.
5 I don't want to mess my situation up.

6 But I had a trial on, my goodness, on which day?

7 CASE MANAGER: Jefferson.

8 THE COURT: I do have Jefferson. Jefferson is
9 going to trial?

10 CASE MANAGER: It's settled.

11 THE COURT: Right. Okay. And we had a -- we had
12 a case that was supposed to take four or five days that we
13 tried and the jury came back on the morning of the third day
14 because the verdict -- it was -- it went pretty fast.

15 Okay. What day are we saying?

16 CASE MANAGER: We could move it up a week.

17 THE COURT: I'm thinking we will do this one
18 because I can get it in -- I think --

19 CASE MANAGER: We can do Thursday, January 9.

20 THE COURT: Thursday, January 9. I don't want to
21 mess everybody up. If you need me to keep it on the 22nd, I
22 will. That's not a -- because I don't want to get in trouble
23 with Ms. Bowden over here. I see several of you there. I
24 want you to all check your calendars because if you've got
25 things that you cannot -- it will not work for you. We need

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31

1 to make sure this works for everybody. January 9?
2 CASE MANAGER: Yes, Your Honor. We can do that
3 at 9:30.

4 THE COURT: 9:30. Okay. I know you've got a lot
5 of people online, so I just don't know how you're going to be
6 sure that's okay.

7 But, Mr. Gurka, is that going to work for your
8 team?

9 MR. GURKA: I'm just checking right now just to
10 make sure, but I think that will. Yes, I think January 9th
11 is fine, Your Honor.

12 THE COURT: Right.

13 Mr. Bennett, what about your team?

14 MR. BENNETT: I'll defer to Ms. Bowden as usual,
15 Your Honor, but I believe that it would work for our team.

16 Ava, do you know?

17 THE COURT: Sure. Ms. Bowden, is that going to
18 work for your team?

19 MS. BOWDEN: Yes, it will.

20 THE COURT: Okay. We're going to do that. I
21 wish I had those executives on the line so they could hear
22 I'm trying to save them money.

23 Okay. We're going to do that. We're very
24 mindful of how it would simplify things if we could bring
25 these claims along and have them resolved relatively quickly.

UNREDACTED TRANSCRIPT

32

1 Are there other suggestions from plaintiff's
2 counsel about how to make that -- because I hear what
3 Mr. Bennett is saying and I hear what Mr. Linden is saying,
4 delay can result in also redoing things and redoing things
5 and redoing things and can become very expensive, so it has
6 to be an efficient process.

7 So, Mr. Gurka, is there anything else we need to
8 do that will bring this matter along if we bifurcate that
9 will make this work efficiently and not unfairly?

10 MR. GURKA: Well, Your Honor, I think one of the
11 things that you raised when we met in July was the
12 possibility of moving the trial date up or advancing the
13 trial date from March of 2026, and I think that might be
14 another avenue to help expedite getting the patent
15 infringement issues resolved possibly even in calendar year
16 2025.

17 We'd have to look at the dates and make sure that
18 we can fit that within the existing schedule. I think
19 there's some time, as you alluded, to in the back end of the
20 schedule, and I think a lot would depend on how much time you
21 think you need for summary judgment motions and *Daubert*
22 motions to resolve those prior to trial.

23 THE COURT: And that's a very fair question, and
24 I have to always look at my staffing and what we can do and
25 how fast we can do it. But we're thinking, now, that on this

UNREDACTED TRANSCRIPT

33

1 case -- we think we can move it faster. I'm never sure
2 because we have a lot of things that come up in between.

3 And so if we could move the trial -- you're
4 saying, look, move the trial to 2025, get this portion of the
5 case concluded, probably saves everybody money and keeps the
6 case together so that we don't have redo, redo, redo, which
7 I, you know, I was -- I had some interesting trial matters
8 when I was a trial lawyer and I just thought that the more we
9 put things off, the more we ended up sort of redoing some
10 things that we could have been more efficient about.

11 MR. GURKA: Right, Your Honor. And I also think
12 that, you know, to the extent that it resolves the patent
13 issues and whether there is a sham litigation or an
14 objectively baseless case, those issues would presumably be
15 resolved or that we would have a lot more clarity on those
16 issues if we were to get to trial and try the case.

17 THE COURT: We're worried about when we get
18 everything back from the appeals board, patent trial appeals
19 board. Are we going to be able to -- how much can you move
20 it, do you think, that's realistic in terms of what we can
21 expect from their turnaround? And I sometimes look at their
22 turnaround times, but I haven't looked at them recently.

23 MR. GURKA: You mean having parallel proceedings?

24 THE COURT: Yes. Well, I would like to see what
25 they're going to do, but, yes. What I'm talking about is if

UNREDACTED TRANSCRIPT

34

1 they're hitting their timelines in terms of -- which we won't
2 know some of the information until January or April -- then
3 that makes a difference. But how far can you move it is the
4 question and still be reasonably safe?

5 MR. GURKA: Well, I think there's a
6 possibility -- again, we don't really know what will happen
7 here, but we expect that there will be a decision, as
8 Mr. Linden pointed out, on the '561 PGR petition in early
9 January.

10 As far as the '254, that's April. If the
11 petitions are granted and they proceed, then those are going
12 to proceed in parallel with the litigation, and I think the
13 parties expect that to occur. I don't want to speak for
14 defendants because it's their petitions that they filed, but
15 we certainly have no issue if that's ultimately what happens,
16 you know, having to litigate the validity issues in the PTAB.
17 I don't think that should impact the underlying trial.

18 THE COURT: I think that -- I know we can do
19 that. And I always do -- things can change, so we can
20 readdress that if we have to at a later point in time. So
21 let's assume that.

22 Then when are you saying that -- to be as
23 efficient as possible if it's bifurcated and we're just
24 trying the initial issues, I think you're saying that we
25 could do that, I don't know, July/August of next year?

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35

1 MR. GURKA: I don't think we could move it up
2 quite that far, Your Honor. While I'd love to be able to sit
3 here and tell you that we could magically move everything and
4 get all the discovery done, I think there's still some
5 fundamental discovery that needs to take place, including
6 expert discovery because as you know in these cases, we have
7 to have experts, and that's scheduled to take place in the
8 summer time frame.

9 And so I think, you know, realistically, we could
10 probably, at a minimum, move the trial from March of 2026,
11 into January. That's a couple of months, and I think that's
12 significant. Whether we could then move it into 2025, again,
13 I think a lot would depend on whether Your Honor would be in
14 a position to rule on the summary judgment motions, which are
15 likely to be filed, and the *Daubert*, so that we have a
16 complete pretrial phase of the case leading into the trial.

17 So maybe that means we could do it in December.
18 And I'm just trying to be realistic in view of the existing
19 schedule and what I perceive to be the amount of work that
20 the parties have to go through, including the expert
21 discovery.

22 THE COURT: Okay. I think that's helpful. And
23 we're going to adjust that --

24 Let's go back to -- Mr. Linden, are you in
25 charge?

UNREDACTED TRANSCRIPT

37

1 that's been on my mind, and I've been worrying about it. Or
2 thinking about it is a better way to put that.

3 MR. LINDEN: Right. So just, you know, listening
4 to what you're saying today and reflecting back on what we
5 talked about in a similar vein back in July, you know, the
6 claim construction hearing is set now for January 9th. We
7 will get that first PGR decision on institution for the '561
8 before that. I think the deadline is January 3rd, but it
9 could come before that.

10 So that will give you -- I mean, back in July,
11 you talked about let's do the *Markman* and then revisit where
12 we're at. So if the PTAB, and I'm just suggesting,
13 institutes PGR, on the '561, just reading the tea leaves,
14 it's not a deadlock, but it's likely to say that they're
15 going to institute PGR on the '254 because they're related
16 patents. They've got the same --

17 THE COURT: Releasing information for both you
18 and me.

19 MR. LINDEN: Correct. And I think at the *Markman*
20 hearing, we'll have at least that first piece of information.
21 And then just keeping with Your Honor's theme of saving money
22 for the parties, I think it's worthwhile to at least consider
23 the idea that instead of concurrently proceeding cases, one
24 in the PTAB and one in this district court, is to stay the
25 '561 and the '254 so the PTAB can do its work with respect to

UNREDACTED TRANSCRIPT

36

1 MR. LINDEN: I wouldn't say I'm in charge, Judge,
2 because it really depends on what topic you want to talk
3 about as to whether I --

4 THE COURT: Mr. Bennett smiled, so I don't know.
5 I think that we need to make that effort. You see where I
6 think we're going to end up going on these issues, some of
7 these issues. I think it's the right management decision.

8 And so we're going to give you a December date.
9 I'm thinking about -- it's going to be a little complicated.

10 CASE MANAGER: Yes, sir. We certainly have space
11 in December.

12 THE COURT: We have lots of space in December.
13 What day do you want to just put it on? It doesn't matter.

14 CASE MANAGER: How about the second week? That
15 gives enough time for the Christmas holidays or maybe even
16 the first week, December 1.

17 THE COURT: First week. Is it December 1?
18 December 1. We're actually going to adjust that to
19 December 1 because this needs to be our expectation of how
20 we're trying to proceed. I've really listened to Mr. Linden
21 and Mr. Bennett. I think this is probably the most efficient
22 way in which to proceed.

23 MR. LINDEN: Judge, do you mind if I make a
24 comment before you --

25 THE COURT: Absolutely. There is something

UNREDACTED TRANSCRIPT

38

1 invalidity and then revisit it if those claims come back as
2 patentable. That's usually a course of action for defendants
3 in a case where you've got single patent or double patent
4 going one way.

5 But I think in light of Your Honor's comments
6 about really trying to save the money of the parties in this
7 case, we should consider that as a possibility for this case
8 even though there's cross claims of patent infringement.

9 THE COURT: And I'm -- I really want to get that
10 information in early January and see -- have a better idea of
11 exactly where we are. Our process is not set in stone. We
12 have to always maintain a level of flexibility, but we want
13 to set real dates, and they're not just aspirational, but
14 real dates on what we're looking at at the time.

15 And then you're right. I mean, what you're
16 saying is let's get that far. Let's go ahead and schedule
17 it. Let's see what we need to do. There's some criticism of
18 parallel proceedings, as you know, right? And we have
19 typically not done that. So I appreciate the comments.

20 Okay. I think we've got a new -- a little bit of
21 a schedule improvement here in terms of trying to move things
22 along. We'll continue to re-sort everything. Let me make
23 sure that I've got what I need here in terms of most of the
24 rest of it.

25 Those are two -- that's the big points that I

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39

1 wanted to cover. We have -- we had questions for both sides
2 about -- you know, about objective baselessness and so forth,
3 and we know that's a central issue in the case.

4 Mr. Bennett, did I get that right?

5 MR. BENNETT: Yes, Your Honor, it is a central
6 issue. Mr. Linden will be handling the objective
7 baselessness, but it is at least a key issue for tortious
8 interference, yes.

9 THE COURT: And I think that everybody agrees
10 with that, and I'm just going to reconfirm that because
11 that's part of the process.

12 And that's -- Mr. Gurka, you agree with that,
13 right?

14 MR. GURKA: Yes, Your Honor.

15 THE COURT: Okay. So we do understand that.
16 I think that we did talk about the fact that we
17 needed more disclosures. I've really covered that. I had it
18 done in a different way in the materials that we were going
19 to talk about. I think we're going to get that Rule 26(a)(1)
20 Disclosure, which is going to improve that.

21 There is going to always be under Rule 12 a
22 hesitancy to dismiss claims, if there's adequate information
23 provided to support that. I think we have a little bit of an
24 *Iqbal* question here. I'm going to encourage parties who want
25 to assert those claims, particularly perhaps the defendant,

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40

1 to consider whether or not you are going to amend in
2 connection with the counterclaims.

3 And is that something you would consider, you
4 would want to do under certain circumstances?

5 MR. BENNETT: Your Honor, certainly with the
6 Court's guidance, if there are any facts that are
7 inadequately pleaded in order to have enough factual to push
8 it into the plausible realm, by all means Catalyst would take
9 that criticism from the Court and amend, absolutely. We, of
10 course, feel there's more than enough, but, yes.

11 THE COURT: I think that there's a question
12 there, and sometimes I just say, hey, if you've got material
13 to put it in there and you want to put it in and what's going
14 to happen is I'm going to issue an order one way and then
15 we're going to come back and say I want to amend. Amendments
16 are liberally allowed.

17 So I'm going to suggest that will you take a look
18 at that. I'm not telling you to do it right now, but will
19 you go back and take a look at that, consider amending to add
20 some more specificity.

21 Mr. Linden, is that okay with you?

22 MR. LINDEN: That's perfectly fine with Catalyst,
23 Your Honor. And just so I'm clear, are you specifically
24 referencing the sham litigation counterclaim, or are you
25 talking globally with respect to 6, 7, and 8?

UNREDACTED TRANSCRIPT

41

1 THE COURT: Sham litigation counterclaim. But
2 also, while you're doing it, look at your other two claims
3 because you've got two additional claims that you certainly
4 don't want to leave hanging out there.

5 Okay. I've got a -- anything else that I need to
6 hear about? I know you want to tell me lots of things, but I
7 think everything is adequately presented at this point in
8 time. Anything else on the motion to dismiss from the
9 plaintiff? I don't want to cut you off, but I think we're
10 pretty good.

11 MR. GURKA: Well, Your Honor, the only thing that
12 we were thinking might be worth discussing, and we don't want
13 to belabor the hearing, but -- and Mr. McElligott was
14 prepared to address this, is we don't believe sham litigation
15 is a stand-alone counterclaim. But we've briefed that, and I
16 don't know that we would add much more to the briefs.

17 But we believe sham litigation in this
18 objectively baselessness test is really a test to determine
19 whether *Noerr-Pennington* privilege applies to the abuse of
20 process and to the tortious interference claims, but it is
21 not a stand-alone claim on its own.

22 And I know there were some case law cited by
23 defendants that we believe is really no longer good law. If
24 you would like to hear argument on that, we would be prepared
25 to deliver that. But if not, if you think you're prepared,

UNREDACTED TRANSCRIPT

42

1 then we could certainly move on and submit on the briefs.

2 THE COURT: I think you can submit on the briefs.
3 I think that's okay. I think we're -- well, I'll tell you
4 what. Three minutes on that if somebody is there ready to
5 pitch that. I think we better give you a couple of minutes
6 just to make sure that you've covered what you want to real
7 quickly, but I think it's briefed.

8 MR. MCELLIGOTT: Thank you, Your Honor. I will
9 be very brief with it.

10 As Mr. Gurka alluded to, sham litigation is not a
11 stand-alone claim. It's a means to an end. It's not an end
12 in and of itself. It requires that another claim be pled.

13 For example, Your Honor, this would be -- this
14 would result in an issue if Claims 7 and 8, due to
15 independent failures to plausibly allege facts were dismissed
16 and Count 6 were to remain in the case, Count 6 would have no
17 impact on any cause for relief or any claim within this case.
18 There is no statutory basis for sham litigation that that's
19 founded in. There's no damages for sham litigation.

20 It is tied to Counts 7 and 8 in terms of the
21 concept. It can't really exist by itself in its own claim.
22 And as Mr. Gurka was alluding to, the case that counsel
23 relies on is a case out of Delaware by Judge Sleet that was
24 later overruled or superseded by another decision from Judge
25 Sleet.

UNREDACTED TRANSCRIPT

43

1 In his original decision, Judge Sleet was really
2 just answering the question of: Could you raise sham
3 litigation in the context of a patent infringement suit? He
4 found that you could.

5 But in the later case, he found you can't raise
6 it by itself. It's not a stand-alone claim. You have to
7 plead the other elements of a claim.

8 And in other cases where sham litigation has been
9 accepted as a stand-alone claim and in that earlier case from
10 Judge Sleet where it was pleading specific facts about sham
11 litigation, it was implied by Judge Sleet that that was
12 referencing antitrust, that that was an antitrust
13 counterclaim and led to the antitrust elements. It was tied
14 to the antitrust claim so that it could survive. It couldn't
15 survive by itself.

16 THE COURT: I'm going to hear that very brief
17 response from counsel opposite.

18 I'm not sure which one, but yes, sir?

19 MR. LINDEN: That would be me, Your Honor,
20 Mr. Linden. So I don't think the parties are actually that
21 far apart on this issue. *Trueposition*, which is Judge
22 Sleet's decision from the District of Delaware referenced by
23 plaintiff's counsel says, and I quote: Plaintiff's urge that
24 sham litigation is not a cognizable cause of action, the
25 Court cannot agree.

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45

1 Your Honor.

2 Catalyst is willing to rest on its briefs unless
3 SI has something further to say about the tortious
4 interference or abuse of process claims.

5 THE COURT: Sure. I appreciate that. Hold just
6 one minute. I'm going to actually put you on mute for a
7 second, if we can get back to the mute button. It's hidden.
8 It should be right here. You know they change my computer
9 every now and then, it's frustrating. Okay.

10 We've been talking about this in chambers for a
11 while. I think we've covered what we need to. We've got the
12 papers. And I appreciate everybody's cooperation and sort of
13 continuing to fast track it. Please convey to your clients
14 that we're all working really hard to make it efficient,
15 which I think is a fair thing to say because we're concerned
16 about everybody being considered in this matter. Thank you
17 all very much.

18 MR. GURKA: Thank you, Your Honor.

19 MR. MCELLIGOTT: Thank you, Your Honor.

20 MR. LINDEN: Thank you, Your Honor.

21 MR. BENNETT: Thank you, Your Honor.

22 MS. BOWDEN: Thank you, Your Honor.

23 (Adjournment.)
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UNREDACTED TRANSCRIPT

44

1 It is a cause of action. It is a claim that can
2 be pled. What Judge Sleet's later decision said, and I think
3 it was *AstraZeneca* said, that doesn't relieve the claimant of
4 also proving the elements of other claims, for instance, in
5 that case, the antitrust claim that was at issue, you still
6 have to prove all those elements.

7 We still have to prove all of those elements
8 here. So we have a sham litigation that is a stand-alone
9 claim. The remedies provided for that stand-alone claim are
10 to strip the *Noerr-Pennington* immunity, and it can be applied
11 in various ways. And as Judge Sleet referenced in his
12 *Trueposition* case, courts have applied it in many cases.
13 It's not solely for antitrust liability anymore. It can be
14 used in the context of state tort law claims. It can be used
15 in the context of patent claims, but it doesn't mean that it
16 is not a stand-alone claim -- cannot be a stand-alone claim,
17 and I think that that's pretty clear from the *Trueposition's*
18 case that we've relied on.

19 THE COURT: Sure. And I've -- we've got that. I
20 mean, I appreciate the comments there.

21 Let's make sure, anything else, then, that the
22 defense wants to particularly point out, or simply rely on
23 the materials that have been submitted? I don't know which
24 one to look to because I'm looking to --

25 MR. BENNETT: I'll speak up. Sorry to interrupt,

UNREDACTED TRANSCRIPT

46

C E R T I F I C A T E

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4 I, TINA DuBOSE GIBSON, do hereby certify that the
5 foregoing 45 pages are, to the best of my knowledge, skill
6 and abilities, a true and accurate transcript from my
7 stenotype notes of the VIDEO MOTION CONFERENCE held on the
8 22nd day of November, 2024, in the matter of:

9
10 SHOULDER INNOVATIONS, INC.

11 vs.

12 CATALYST ORTHOSCIENCE, INC.
13
14

15 Dated this 27th day of November, 2024.
16
17
18

19 S/Tina DuBose G ibson

20 TINA DuBOSE GIBSON, RPR, RCR
21 Official Court Reporter
22 United States District Court
23 Western District of Tennessee
24
25

UNREDACTED TRANSCRIPT