

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION**

In Re: Neo Wireless, LLC,
Patent Litigation

Case No. 2:22-md-03034-TGB

Hon. Terrence G. Berg

JOINT RULE 26 REPORT AND PROPOSED SCHEDULING ORDER

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, the parties to this case, by and through their respective counsel, jointly submit this Rule 26(f) Report and Proposed Scheduling Order:

	The Parties' Joint Proposal
Initial Disclosures	Wednesday, September 14, 2022
Fact Discovery Commences	Wednesday, August 10, 2022
Infringement Contentions ¹	Wednesday, September 28, 2022
Invalidity Contentions	Wednesday Nov. 16, 2022
Deadline to Amend Pleadings	Friday, December 16, 2022

¹ The Parties agree to address all non-burden contentions (e.g., non-infringement contentions) through traditional discovery requests. The parties further agree that they may jointly modify the schedule upon agreement of all parties to the extent such modifications do not impact the timing for filing of claim construction briefs; claim construction hearing; or dispositive motion deadlines. Modification to the timing for filing of claim construction briefs; claim construction hearing; or dispositive motion deadlines shall require an order of the Court.

	The Parties' Joint Proposal
Deadline to Add Parties	Plaintiff's Proposal: December 16, 2022 ² Defendants' Proposal: September 30, 2022 ³
Contact Technical Advisor to Schedule Settlement Conference (Court)	TBD
Initial Identification of Disputed Claim Terms	Thursday, December 1, 2022
Exchange Proposed Interpretations of Disputed Claim Terms	Wednesday, December 15, 2022
Final Identification of Disputed Claim Terms	Wednesday, January 18, 2023
Informal Technology Tutorial (Court)	TBD
Plaintiff's Opening Claim Construction Briefs	Thursday, February 16, 2023
Defendant's Responsive Claim Construction Brief	Thursday, March 16, 2023
Plaintiff's Reply Claim Construction Brief	Thursday, March 30, 2023
Claim Construction Hearing (Court) (2-3 months from deadline of Plaintiff's Reply Claim Construction Brief)	TBD
Deadline for Parties to Amend Contentions	1 Month after <i>Markman</i> Order
Fact Discovery Closes	10 Weeks after <i>Markman</i> Order
Expert Reports on Infringement (Plaintiff), Invalidity (Defendant), and Damages (Plaintiff)	14 Weeks after <i>Markman</i> Order
Rebuttal Expert Reports	18 Weeks After <i>Markman</i> Order
Expert Discovery Deadline	22 Weeks after <i>Markman</i> Order
Dispositive Motion Deadline	26 Weeks after <i>Markman</i> Order
Oppositions to dispositive motions	21 days from filing
Replies to dispositive motions	14 days from oppositions

² Plaintiff's argument: Neo contends that the deadline to add parties and the deadline to amend pleadings should go hand in hand, and occur after at least some early discovery has taken place. Neo does not currently expect to add any additional unaffiliated defendants to the case, but may need to ensure that all proper parties affiliated with the existing defendants have been sued.

³ Defendants' argument: Defendants contend that the deadline to add parties should be the end of September. This case already has numerous Defendants and parties, and waiting until December to add additional parties is almost certain to disrupt the case schedule and potentially require the parties to revisit contentions and/or claim construction disclosures.

I. RULE 26(f) CONFERENCE

Pursuant to Rule 26(f), the parties held an initial meeting on August 10, 2022, which was attended by attorneys from all parties as set forth in the signature blocks below.

II. DISCOVERY PLAN

The discovery in this case is limited to the disclosures described in the following paragraphs. Where a limit is defined by Defendant that limit shall apply to a group of legally affiliated Defendants.

- a. **Interrogatories.** Plaintiff may serve up to 25 interrogatories on each Defendant. Defendants may serve 15 joint interrogatories on Plaintiff, and each party Defendant may serve 10 individualized interrogatories on Plaintiff. Individualized interrogatories may not be used by Defendants to indirectly increase the number of joint interrogatories. [Plaintiff's Proposal:⁴ To that end, Neo's response to an individualized interrogatory may only be used in the case involving the Defendant that served it.]⁵

⁴ Plaintiff's Argument: Defendants agree that, in principle, individual interrogatories cannot be used to indirectly multiply Defendants' joint interrogatories. But the only clear way to enforce this normative rule is to prevent one defendant from using another's individual interrogatories in its own case. Otherwise, even without explicit collusion in the subject matter of individual interrogatories, defendants could stagger the service of their individual interrogatories, review the first set, and subsequently serve completely distinct requests, effectively achieving what they have agreed should not be done. Plaintiff's proposal mitigates this potential abuse of process.

⁵ Defendants' Argument: As set forth in the agreed-upon text, Defendants have committed that "[i]ndividualized interrogatories may not be used to . . . indirectly increase the number of joint interrogatories." Plaintiff's additional request that interrogatories can only be used in a single case conflicts with the Federal Rules (requiring the production of relevant information, including party admissions) as well as being unworkable for purposes of joint expert reports and joint briefing on dispositive issues. For example, FRCP 5(a)(1) requires "each of the following papers

- b. **Requests for Admission.** Plaintiff may serve up to 40 requests for admission on each party Defendant. Defendants shall serve 20 joint requests for admission on Plaintiff, and each party Defendant may serve 20 individualized requests for admission on Plaintiff. This limit does not apply to requests for admission that seek an admission as to the authenticity of a document or thing. Such requests for admission as to authenticity will be unlimited, clearly denoted as such, and served separately from other requests for admission. Individualized requests for admission may not be used by Defendants to indirectly increase the number of joint requests. [Plaintiff's Proposal:⁶ To that end, Neo's response to an individualized request for admission may only be used in the case involving the Defendant that served it.]⁷
- c. **Depositions.**
- i. **Party Witnesses:** Plaintiff may take up to [Plaintiff's Proposal:⁸

must be served *on every party*: ... a discovery paper required by served on a party, unless the court orders otherwise," and all Defendants are parties to the MDL case. To the extent that Plaintiff believes Defendants' requests violate the spirit of the parties agreements down the line, it can raise the issue with the Court at that time.

⁶ Plaintiff's Argument: Neo proposes this limitation for the same reasons as set forth regarding interrogatories.

⁷ Defendants' Argument: Defendants oppose the limitation for the same reasons as set forth regarding interrogatories.

⁸ Plaintiff's Argument: Under Federal Rule of Civil Procedure 30, the default rule is that a party is entitled to at least ten 7-hour depositions (70 hours) in an individual case. While Neo will be as efficient as possible with its depositions, Plaintiff's 100-hour proposal reflects the size and complexity of this six-patent case. Moreover, Defendants' proposal to significantly reduce the number of hours Plaintiff is legally entitled to is illogical and improper where Plaintiff must bear the burden of proving its case against each individual Defendant. There will not be any overlap

100/Defendant's Proposal: 35⁹] hours of 30(b)(1) or 30(b)(6) depositions from each party Defendant. Defendants may collectively take 100 hours of 30(b)(1) or 30(b)(6) depositions from Plaintiff. Defendants must take all reasonable efforts to avoid duplicative questioning against Plaintiff's witnesses. Notwithstanding the foregoing, the deposition of any single fact witness will be limited to 7 hours unless that witness is cross-noticed in multiple cases, then the deposition will be limited to 7 hours plus an additional 2 hours per additional case for which the witness was cross-noticed up to a maximum of 14 hours. If either side believes that additional time with a particular witness is necessary, the parties shall meet and confer in good faith in order to reach an agreement.

ii. **Third Party Witnesses:** The deposition of any single third-party

in the subject matter of plaintiff's depositions of separate defendants that would justify such a reduction. Defendants' reference to the cumulative number of 900 deposition hours is a red herring—each individual defendant will only bear the burden of its own depositions.

⁹ Defendants' Argument: As the MDL Panel stated in its centralization order, these cases "can be expected to share factual questions concerning such matters as the technology underlying the patents, prior art, claim construction, and/or issues or infringement involving the patents." Plaintiff seeks to undercut much of this discovery benefit by demanding nearly 50% more deposition hours than the Federal Rules allow. The Court should not permit this. Rather, the Court should adopt a more efficient approach to deposition discovery for at least two reasons. First, as set forth in Plaintiff's complaints, this case concerns allegations against certain LTE and 5G standards. Plaintiff's claims do not appear to be based on any specific implementation by any Defendant, and instead read against the standard itself. As such, there is no reason to burden Defendants with 100 hours of depositions per party-Defendant, as 35 hours should be more than sufficient for Neo to establish its claim. Notably, Plaintiff's proposal would result in 900 hours of deposition, resulting in 128.6 total deponents at a 7-hour per deponent rate, which is unduly burdensome. And second, much of the technical implementation details relating to Plaintiff's claims are likely to be in the hands of third-party suppliers, rather than Defendants, which also weighs in favor of a more streamlined approach to party depositions.

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