



Cynthia S. Betz
Partner
T. 973-848-5377
F. 973-297-6636
cbetz@mccarter.com

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4056
www.mccarter.com

January 19, 2024

VIA ECF

Hon. Douglas E. Arpert, U.S.M.J.
U.S. District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

**Re: *OANDA Corporation v. GAIN Capital Holdings, Inc., et al.*
No. 3:20-cv-05784-ZNQ-DEA**

Dear Judge Arpert:

We, along with our co-counsel from Koning Zollar LLP, represent Plaintiff OANDA Corporation in this matter. Pursuant to the Court's Order (D.E. 204), Plaintiff and Defendant GAIN Capital Holdings, Inc. submit this joint letter regarding the Court's request for a status report, including a proposed scheduling order.

Joint Status Report & Scheduling:

The parties are engaged in discovery and are awaiting issuance of a claim construction ruling, after Judge Quraishi held a *Markman* hearing on August 4, 2022. This Court previously approved a case schedule on February 1, 2023 (Dkt. 166), which sets dates based upon the date of issuance of the *Markman* order. The parties are in agreement that this schedule is appropriate and should remain unchanged.

Separate Statements Re Other Issues:

Defendant GAIN's Statement:

Mindful that this Court prefers to be apprised of anticipated docketing events, GAIN wishes to apprise the Court of the following anticipated events:

First, GAIN anticipates bringing a motion to amend its non-infringement contentions under Local Patent Rule 3.2A and to amend its invalidity contentions under Local Patent Rule 3.3 in January in direct response to OANDA's amended infringement contentions which this Court permitted by Order dated December 29, 2023 (Dkt. 202). Whether OANDA should be permitted to amend had been a disputed issue until this Court's December 29th ruling. In light of the Court having granted OANDA's application, such amendments have necessarily compelled GAIN to evaluate OANDA's submission and consider appropriate responses in light of those amendments.

Second, GAIN has also identified certain issues regarding the sufficiency of OANDA's contention disclosures by letter to OANDA. GAIN anticipates meeting and conferring regarding such issues with OANDA, but if such issues cannot be resolved between the parties, further motion

Hon. Douglas E. Arpert, U.S.M.J.
Page 2

practice may be required to resolve remaining disputes. We shall keep Your Honor informed of any developments or the need for judicial assistance.

Third, GAIN may bring a motion to compel to address OANDA's failure to substantively respond to GAIN's interrogatories seeking damages-related information.

Plaintiff OANDA's Statement:

While OANDA has not yet been apprised of the substance of GAIN's anticipated motion to amend its non-infringement contentions under Local Patent Rule 3.2A and to amend its invalidity contentions under Local Patent Rule 3.3, OANDA is willing to meet and confer with GAIN in good faith about any such motion. The parties already have a meet and confer scheduled for Friday, January 26, 2024, to discuss GAIN's letter raising purported deficiencies in OANDA's infringement contentions.

OANDA also anticipates bringing a motion to compel to address deficiencies in some of GAIN's interrogatory responses related to damages.

The parties thank the Court for its continued assistance in this matter.

Respectfully submitted,

/s/ Cynthia S. Betz

Cynthia S. Betz

cc: All Counsel of Record (via ECF)