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BY ECF

Honorable Justin Quinn, U.S.M.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Federal Courthouse
402 East State Street
Trenton, NJ 08608

Re: ***Oanda Corporation v. Gain Capital Holdings, Inc., et al.***
Civil Action No. 20-05784-ZNQ-DEA

Dear Magistrate Judge Quinn:

We, along with our co-counsel from Wilson Sonsini Goodrich & Rosati PC, represent Defendants GAIN Capital Holdings, Inc. and GAIN Capital Group, LLC (collectively, "GAIN"). Following the Court's claim construction order (Dkt. No. 213) and pursuant to the Joint Case Management order (Dkt. No. 166), and to assist the Court as Your Honor transitions to this case, Plaintiff OANDA Corp. ("OANDA") and GAIN submit this joint status letter regarding the status of the instant case and the case schedule.

GAIN's Position

Background

This is a patent case involving electronic trading of foreign currencies. OANDA filed a complaint against GAIN on May 11, 2020 alleging that GAIN infringes two patents, U.S. Patent No. 7,146,336 (the "'336 patent") and U.S. Patent No. 8,392,311 (the "'311 patent") (collectively, the "Asserted Patents"). (ECF No. 1.) The Asserted Patents are related (the '311 patent is a child of the '336 patent) and share the same specification. The patent claims are directed generally to using computer networks to trade currencies, and more specifically by aggregating rates from financial institutions, determining a market exchange rate, and executing a trade if the rate falls within a trader's acceptable parameters. The '336 patent contains "system" claims that recite various "servers" and "engines" that purportedly take part in executing a trade. (*See* ECF No. 1-1 at 18:35-52[1] ('336 patent, claim 2).) The '311 patent contains method claims reciting steps performed by a "trading system server" and a "trading client system" to effect a trade. *See, e.g.*, ECF No. 1-2 at 17:54-18:24 ('311 patent, claim 1).

[1] References to "[X]:[Y-Z]" refers to a patent's column number X and line numbers Y-Z.

GAIN's Defenses

GAIN has fulsome prior art invalidity defenses under 35 U.S.C. § 103, an unenforceability equitable defense (that the patent is unenforceable due to inequitable conduct), and non-infringement defenses.

GAIN also previously filed a Rule 12(c) motion for judgment on the pleadings that the Asserted Patents fail to meet 35 U.S.C. § 101's patentable subject matter requirement. (ECF No. 69). Judge Quraishi applied the *Alice* two-step legal framework for § 101, which asks (1) whether the patent claims are directed to an abstract idea, and if so, then (2) whether the claims include an inventive concept such that the claims could be nonetheless eligible for patentability. (ECF No. 194.) The Court found the claims were directed to an abstract idea at step (1), but at step (2), OANDA adequately *alleged in its complaint* that the claims included an inventive concept sufficient to meet its initial pleading requirements.[2] (*Id.* at 9-17.) The Court left the ultimate issue of inventiveness under step 2 to be determined. (*Id.* at 13, 17.) GAIN intends to raise the § 101 issue again, during summary judgment or at such other time as the Court deems appropriate.

With respect to damages (to the extent OANDA's patents are not found to be valid or unenforceable and are found to be infringed), OANDA has represented that it intends to only seek a reasonable royalty in this case, not any lost profits. In addition, OANDA has admitted that it did not comply with the marking requirements of 35 U.S.C. § 287 and did not mark products produced under the asserted system patent and thus is limited in any damages it may attempt to seek.

Discovery

Thus far, some significant discovery has taken place. Document production is largely complete. The Court has ruled on multiple discovery motions, including allowing OANDA and GAIN to supplement their infringement and invalidity contentions, respectively, and denying an OANDA motion to compel certain burdensome discovery from GAIN. (*See* ECF Nos. 202, 203, 210.) Some depositions have occurred, but the bulk of depositions have yet to take place. Discovery does not close for approximately seven months. There is no outstanding discovery to date, and OANDA has not raised any discovery issues with GAIN. Thus, there are no ripe discovery disputes at this time.

[2] This same argument (that the facts pled in the complaint must be taken as true for a Rule 12 motion) was rejected by another court on different but similar patents asserted against GAIN's parent, StoneX Group, Inc. ("StoneX"). *OANDA Corp. v. StoneX Group, Inc.*, No. 20-cv-07785 (N.D. Ill.). There, the Northern District of Illinois Court rejected the argument that OANDA's facts pled in the complaint must be taken as true and found that the asserted patents related to currency trading were invalid under § 101 and dismissed OANDA's claims with prejudice. (*OANDA v. StoneX*, ECF No. 52.) That judgment is now final.

Future Deadlines

Most of the remaining significant deadlines are keyed off the issuance date of the claim construction order, which the court issued in late June. (ECF Nos. 166, 213.) The parties agree that the schedule does not need modification. Neither the date for pre-trial submissions after dispositive briefing nor the trial date have been set.

Settlement Efforts

While the parties have engaged in private settlement discussions, such discussions have been short and unfruitful.

OANDA's Position

OANDA disagrees with GAIN's characterizations of the merits, as well as the motion practice and discovery disputes to date, but does not wish to burden the Court with unnecessary argument. It will therefore address any relevant disagreements in briefing as the issues arise, or upon the Court's request. For purposes of this Status Report, OANDA adds only that while it is correct that the parties have engaged in significant document and written discovery to date, additional such discovery remains to be done, including on damages issues, with deposition testimony from GAIN's witness showing that its damages production was incomplete.

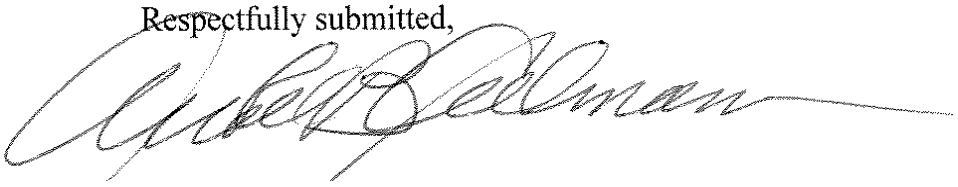
Joint Position and Proposed Schedule

The parties agree to the following schedule as determined by the Joint Scheduling Order (Dkt. No. 166). The parties, however, have agreed to explore the availability of private mediation in lieu of a settlement conference, and will let the court know if and when they have agreed to mediation.

Event	Deadline	Date calculated
Parties to meet and confer re case schedule in light of issued orders	Within 7 days after *Markman* Order	July 3, 2024
Settlement Conference	Within 30 days after *Markman* Order	July 26, 2024
Status Conference with Magistrate Judge Quinn	Approximately 30 days after *Markman* Order, at the convenience of the Court	July 26, 2024

Event	Deadline	Date calculated
Disclosure of advice of counsel (LPR 3.8)	45 days after *Markman* Order	August 12, 2024
Substantial completion of document production and certification of substantial completion (LPR 2.1(a)(6))	150 days after *Markman* Order	November 25, 2024
Close of Fact Discovery	240 days after *Markman* Order	February 21, 2025
Expert Report: Opening (by burden of proof)	60 days after close of fact discovery	April 22, 2025
Expert Report: Rebuttal	60 days after opening reports	June 23, 2025
Expert Report: Reply	45 days after rebuttal	August 7, 2025
Expert Report: Plaintiff's Reply on 2d Considerations	45 days after Reply	September 22, 2025
Close of expert discovery, including depositions	45 days after last reply report	November 6, 2025
Settlement conference	30 days after close of expert discovery	December 8, 2025
Status Conference with Magistrate Judge	TBD	TBD
Deadline to file dispositive motions	45 days after close of expert discovery; subsequent briefing schedule TBD	December 22, 2026
Deadline to file motions in limine	TBD	TBD
Deadline to file pre-trial order	TBD	TBD
Pre-trial conference	TBD	TBD
Trial Date	TBD	TBD

Respectfully submitted,



Arnold B. Calmann

ABC/kae
cc: All Counsel of Record (by ECF & email)