

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PPC BROADBAND, INC.,

Plaintiff,

-vs-

**CORNING OPTICAL
COMMUNICATIONS RF, LLC,**

Defendant.

**CIVIL CASE MANAGEMENT PLAN AND
PATENT SCHEDULE**

Civil Action No. 5:16-cv-00162-GLS-DEP

IT IS HEREBY ORDERED that, pursuant to Rule 16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable DAVID E. PEEBLES, United States Magistrate Judge on **May 17, 2016, at 11:00 AM**.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below, no later than **twenty-one (21) days** before the scheduled Rule 16 Conference. Following that Rule 26(f) meeting, a report of the results of the conference, in the format set forth below, must be filed with the clerk no later than **May 11, 2016**. Matters which the Court will discuss at the status conference will include the following: (insert a separate subparagraph as necessary if parties disagree):

1. **JOINDER OF PARTIES:** See Proposed Schedules in Section 12(C).
2. **AMENDMENT OF PLEADINGS:** See Proposed Schedules in Section 12(C).
3. **DISCOVERY:** See Proposed Schedules in Section 12(C). **(Discovery time table is to be based on the complexity of the action)**
4. **MOTIONS:** See Proposed Schedules in Section 12(C). **(Non-Dispositive motions including discovery motions may only be brought after the parties have complied with Section IX of General Order #25)**
5. **PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL:** The action will be ready to proceed to trial on **the latter of the completion of discovery or the issuance of the Court's decision on any pending motions**. It is anticipated that the trial will take approximately 10 days to complete. The plaintiff requests that the trial be held in Syracuse, N.Y. The defendant requests that the trial be held in Albany, N.Y. **(The**

proposed date for the commencement of trial must be within 18 months of the filing date).

6. **HAVE THE PARTIES FILED A JURY DEMAND: X (YES) / (NO).**
7. **DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?**

The Court has subject matter jurisdiction. All parties are subject to the Court's subject matter jurisdiction and have been served.

Defendant disputes that venue is proper in this district.

8. **WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS, IF APPLICABLE)?**

The plaintiff contends that the defendant willfully infringes U.S. Patent Nos. 8,075,338, 8,366,481, 8,469,740, 8,475,205, 8,480,431, and 8,485,845 (collectively, the "Patents-in-Suit") by making, using, importing, offering for sale, and/or selling certain coaxial cable compression connectors without authority or license from the plaintiff. The plaintiff also contends that the case is exceptional warranting relief to it under 35 USC § 285 and the defendant's counterclaims are improperly pled and otherwise without merit.

The defendant denies infringing the Patents-in-Suit. Defendant contends that the Patents-in-Suit are invalid and/or unenforceable and seeks a declaratory judgment to that effect. Defendant contends that the case is exceptional warranting relief to it under 35 USC § 285.

9. **WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?**

The parties dispute infringement of the Patents-in-Suit by the defendant, the validity of the Patents-in-Suit, the merits of the defendant's defenses and counterclaims, and the amount of damages, if any. Priority of invention is also disputed as to U.S. Patent Nos. 8,366,481 (the '481 patent); 8,469,740 (the '740 patent); 8,475,205 (the '205 patent); and 8,485,845 (the '845 patent).

10. **CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?**

At this time, the parties dispute all of the factual and legal bases for the parties' claims and defenses. At some later time, the parties may be in a position to narrow the issues by agreement or by motion, such as a motion for summary judgment.

11. WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?

The plaintiff seeks a permanent injunction, monetary damages, and an award of its attorney's fees and costs.

Defendant seeks a declaration that it has not infringed any valid and enforceable claim of the Patents-in Suit and an order that the case is exceptional under 35 U.S.C. § 285 and appropriate relief, including an award of reasonable attorneys' fees and costs.

12. DISCOVERY PLAN:

A. Mandatory Disclosures

See Proposed Schedules in Section 12(C).

B. Subjects of Disclosure

The parties jointly agree that discovery will be needed to address the following subjects:

- i. The scope of the claims of the Patents-in-Suit;
- ii. The alleged invalidity of the Patents-in-Suit;
- iii. Priority of invention as to the '481 patent, the '740 patent, the '205 patent, and the '845 patent;
- iv. The structure and operation of the Accused Products;
- v. Defendant's alleged willful infringement/non-infringement of the Patents-in-Suit;
- vi. Whether the case is exceptional; and
- vii. The appropriate award of alleged damages.

C. Discovery Sequence

Describe the parties' understanding regarding the timing of the discovery, and state whether it is anticipated that discovery will be phased to address different issues in stages.

The parties' proposed schedule for the future proceedings in this case is as follows:

	<i>Plaintiff Proposed Deadline</i>	<i>Defendant Proposed Deadline</i>
Service of mandatory disclosures required under Rule 26(a)(1)	May 11, 2016	May 11, 2016
Plaintiff's service of "Disclosure of Asserted Claims and Infringement Contentions", and accompanying document production	May 31, 2016	May 31, 2016
Defendant's service of "Disclosure of Non-Infringement, Invalidity, and Unenforceability Contentions", and accompanying document production	June 30, 2016	The later of July 27, 2016 or 15 Days after plaintiff provides substantive responses to Corning's First Set of Interrogatories and Requests for Production
Exchange of proposed terms for construction	July 8, 2016	August 15, 2016
Exchange of preliminary proposed claim constructions and identification of intrinsic and extrinsic support	July 29, 2016	August 29, 2016
File any application to join any party as a party to this action	August 12, 2016	August 12, 2016
File any application to amend the pleadings to this action	August 12, 2016	December 31, 2016¹

¹ Defendant requests time to take written and deposition discovery as to priority of invention on the '481 patent, the '740 patent, the '205 patent, and the '845 patent before the deadline for amendment of pleadings. Defendant intends to amend its pleading to assert a claim for interference under 35 USC § 291 (pre-America Invents Act version).

	<i>Plaintiff Proposed Deadline</i>	<i>Defendant Proposed Deadline</i>
File "Joint Claim Construction and Prehearing Statement"	August 19, 2016	September 12, 2016
Completion of claim construction discovery	September 19, 2016	October 10, 2016
Contemporaneous filing and service of opening <i>Markman</i> briefs and supporting evidence	September 30, 2016	November 14, 2016
Contemporaneous filing and service of responding <i>Markman</i> briefs and supporting evidence	October 31, 2016	December 12, 2016
Defendant's service of advice of counsel disclosure, if applicable	30 days following the issuance of the Court's claim construction decision	30 days following the issuance of the Court's claim construction decision
Service of initial expert reports on issues for which a party bears the burden of proof	45 days following the issuance of the Court's claim construction decision	45 days following the issuance of the Court's claim construction decision
Service of responsive expert reports	90 days following the issuance of the Court's claim construction decision	90 days following the issuance of the Court's claim construction decision
Completion of all discovery	120 days following the issuance of the Court's claim construction decision	150 days following the issuance of the Court's claim construction decision
Filing of motions	150 days following the issuance of the Court's claim construction decision	180 days following the issuance of the Court's claim construction decision

D. Written Discovery

Describe the written discovery demands which the parties contemplate serving under Rules 33, 34 and 36, including when they will be promulgated, the areas to be covered, and whether there is any need for any party to exceed the number of interrogatories permitted under Rule 33.

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