

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Omni MedSci, Inc.,

Plaintiff/Counter-Defendant,

v.

Apple Inc.,

Defendant/Counter-Claimant.

Case No. 2:18-cv-134-RWS

JURY TRIAL DEMANDED

AMEND DOCKET CONTROL ORDER

It is ORDERED that the following schedule of deadlines is in effect until further order of this Court:

Deadline	Event
3 DAYS after conclusion of Trial	Parties to file Motion to Seal Trial Exhibits , if they wish to seal any highly confidential exhibits. EXHIBITS: See Order Regarding Exhibits below.
February 18, 2020	9:00 a.m. JURY TRIAL before Judge Robert W. Schroeder III, Marshall, Texas. For planning purposes, parties shall be prepared to start the evidentiary phase of trial immediately following jury selection.
February 18, 2020	9:00 a.m. JURY SELECTION before Judge Robert W. Schroeder III, Marshall, Texas.
February 4, 2020	10:00 a.m. PRETRIAL CONFERENCE before Judge Robert W. Schroeder III, Texarkana, Texas. Discuss trial logistics and <i>voir dire</i> procedure. Resolve any pending motions or objections. Lead trial counsel must attend the pretrial conference.

Deadline	Event
January 28, 2020	File a Notice of Time Requested for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.
January 28, 2020	File Responses to Motions <i>in Limine</i>.
January 21, 2020	File Motions <i>in Limine</i> and pretrial objections. The parties are ORDERED to meet and confer to resolve any disputes before filing any motion <i>in limine</i> or objection to pretrial disclosures.
January 21, 2020	File Joint Final Pretrial Order, Joint Proposed Jury Instructions with citation to authority and Form of the Verdict for jury trials. Parties shall use the pretrial order form on Judge Schroeder's website. Proposed Findings of Fact and Conclusions of Law with citation to authority for issues tried to the bench.
January 14, 2020	Exchange Objections to Rebuttal Deposition Testimony.
January 7, 2020	Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due. If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court.
January 7, 2020	Exchange Rebuttal Designations and Objections to Deposition Testimony. For rebuttal designations, cross examination line and page numbers to be included. In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.
December 19, 2019	Exchange Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof. Video and Stenographic Deposition Designation due. Each party who proposes to offer deposition testimony shall serve a disclosure identifying the line and page numbers to be offered.
October 15, 2019	10:00 a.m. HEARING ON ANY REMAINING DISPOSITIVE MOTIONS (INCLUDING DAUBERT MOTIONS) before Judge Robert W. Schroeder III, Texarkana, Texas.

Deadline	Event
July 26, 2019	<p>Any Remaining Dispositive Motions due from all parties and any other motions that may require a hearing (including <i>Daubert</i> motions).</p> <p>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. <u>Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</u></p> <p>For each motion filed, the moving party SHALL provide the Court with one (1) copy of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in a three-ring binder appropriately tabbed. All documents shall be double-sided and must include the CM/ECF header. These copies shall be delivered to Judge Schroeder's chambers in Texarkana as soon as briefing has completed.</p> <p>Respond to Amended Pleadings.</p>
July 19, 2019	Parties to Identify Rebuttal Trial Witnesses.
July 12, 2019	<p>Parties to Identify Trial Witnesses; Amend Pleadings (after <i>Markman</i> Hearing).</p> <p>It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. However, except as provided in Patent Rule 3-6, if the amendment would affect infringement contentions or invalidity contentions, a motion must be made pursuant to Patent Rule 3-6 irrespective of whether the amendment is made prior to this deadline.</p>
July 5, 2019	Expert Discovery Deadline.
June 18, 2019	<p>Parties designate rebuttal expert witnesses (non-construction issues), rebuttal expert witness reports due. Refer to Local Rules for required information.</p> <p>If, without agreement, a party serves a supplemental expert report after the rebuttal expert report deadline has passed, the serving party must file notice with the Court stating service has occurred and the reason why a supplemental report is necessary under the circumstances.</p>
May 21, 2019	Final Election of Asserted Prior Art.
May 21, 2019	Parties with burden of proof designate expert witnesses (non-construction issues). Expert witness reports due. Refer to Local Rules for required information.
May 14, 2019	Fact discovery deadline.

Deadline	Event
April 16, 2019	Final Election of Asserted Claims.
<i>Parties' estimated number of trial days</i>	8-10 days

In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that “[a] party’s failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.”

A party may request an oral hearing on a motion filed with the Court. Any such request shall be included in the text or in a footnote on the first page of the motion or any responsive pleading thereto. The Court does not hold telephonic hearings absent unusual circumstances.

Other Limitations

- (a) The following excuses will not warrant a continuance or justify a failure to comply with the discovery deadline:
- (i) The fact that there are motions for summary judgment or motions to dismiss pending;
 - (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
 - (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

- (b) Amendments to the Docket Control Order (“DCO”): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion shall include a chart in the format of the DCO that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). The motion to amend the DCO shall also include a proposed DCO in traditional two-column format that incorporates the requested changes and that also lists all remaining dates. In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines rather than needing to also refer to an earlier version of the DCO.
- (c) Indefiniteness: In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules’ normal page limits.
- (d) Motions in Limine: Each side is limited to one (1) motion *in limine* addressing no more than ten (10) disputed issues. In addition, the parties may file a joint motion *in limine* addressing any agreed issues. The Court views motions *in limine* as appropriate for those things that will create the proverbial “skunk in the jury box,” e.g., that, if mentioned in front of the jury before an evidentiary ruling can be made, would be so prejudicial that the Court could not alleviate the prejudice with an appropriate instruction. Rulings on motions *in limine* do not exclude evidence, but prohibit the party from offering the disputed testimony prior to obtaining an evidentiary ruling during trial.

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