UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CARDIONET, LLC and BRAEMAR MANUFACTURING, LLC, Plaintiffs, vs. INFOBIONIC, INC., Defendant.	Civil Action No. 1:17-cv-10445-IT

SCHEDULING ORDER

TALWANI, D.J.

This Scheduling Order is intended primarily to provide a reasonable timetable for discovery and motion practice in order to help ensure a fair and just resolution of this matter without undue expense or delay.

I. Timetable for Discovery and Motion Practice

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rules 16.1(f) and 16.6, it is hereby ORDERED that:

1. **Preliminary Disclosures.**

   a. **Initial Disclosures.** Initial disclosures required by Fed. R. Civ. P. 26(a)(1) and by this court's Notice of Scheduling Conference were served on **May 18, 2017**.

   b. **Preliminary Infringement Disclosure.** The patentee shall serve and file preliminary disclosure of the claims infringed. The patentee shall specify which claims are allegedly infringed and identify the accused product(s) or method(s) that allegedly infringe those claims. The patentee shall also specify whether the alleged infringement is literal or falls under the doctrine of equivalents. If the patentee has not already done so, the patentee shall produce all documents supporting its contentions and/or identify any such supporting documents produced by the accused infringer. Such disclosures may be amended and supplemented up to 30 days before the date of the Markman Hearing. After that time, such disclosures may be amended or supplemented only by leave of court, for good cause shown. The patentee served preliminary infringement disclosures on May 30, 2017.

c. **Preliminary Invalidity and Non-Infringement Disclosures**. No later than **September 21, 2020**, the accused infringer shall serve and file Preliminary Invalidity and Non-Infringement Contentions. The accused infringer shall identify prior art that anticipates or renders obvious the identified patent claims in question and, for each such prior art reference, shall specify whether it anticipates or is relevant to the obviousness inquiry. If applicable, the accused infringer shall also specify any other grounds for invalidity, such as indefiniteness, best mode, enablement, or written description. If the accused infringer has not already done so, the accused infringer shall produce documents relevant to the invalidity defenses and/or identify any such supporting documents produced by the patentee. Further, if the accused infringer has not already done so, the accused infringer shall produce documents sufficient to show operation of the accused product(s) or method(s) that the patentee identified in its preliminary infringement disclosures. Such disclosures may be amended and supplemented up to 30 days before the date of the Markman Hearing. After that time, such disclosures may be amended or supplemented only by leave of court, for good cause shown, except that, if the patentee amends or supplements its preliminary infringement disclosures, the accused infringer may likewise amend or supplement its disclosures within 30 days of service of the amended or supplemented infringement disclosures.

2. **InfoBionic's Answer to Complaint.** No later than **August 25, 2020**, InfoBionic shall file and serve an answer and any counterclaims to CardioNet's operative complaint.

3. **Claim Construction Proceedings**.

a. No later than **October 13, 2020**, the parties shall simultaneously exchange a list of claim terms to be construed.

b. No later than **October 27, 2020**, the parties shall simultaneously exchange proposed constructions for the terms exchanged in paragraph 3(a) of this section.

c. No later than **November 10, 2020**, the parties shall simultaneously exchange and file preliminary claim construction briefs. Each brief shall contain a list of terms construed, the party's proposed construction of each term, and evidence and argument supporting each construction. Absent leave of court, preliminary claim construction briefs shall be limited to 25 pages.

d. No later than **November 24, 2020**, parties shall simultaneously exchange reply briefs. Absent leave of court, reply briefs shall be limited to 15 pages.

e. No later than **December 1, 2020**, the parties shall finalize the list of disputed terms for the court to construe. The parties shall prepare and file a joint claim construction and prehearing statement (hereafter the "joint statement") that identifies both agreed and disputed terms.

i. The joint statement shall note the anticipated length of time necessary for the claim construction hearing and whether any party proposes to call witnesses, including a statement that such extrinsic evidence does not conflict with intrinsic evidence.

ii. The joint statement shall also indicate whether the parties will present tutorials on the relevant technology, the form of such tutorials, and the timing for such tutorials in relation to the claim construction hearing. If the parties plan to provide tutorials in the form of briefs, declarations, computer animations, slide presentations, or other media, the parties shall exchange such materials seven (7) days before the claim construction hearing. In the alternative, the parties may present tutorials through presentations by the attorneys or experts at the claim construction hearing.

iii. The joint statement shall include a proposed order in which parties will present their arguments at the claim construction hearing, which may be term-by-term or party-by-party, depending on the issues in the case.

iv. The joint statement shall limit the number of claim terms to be construed and shall prioritize the disputed terms in order of importance. The Court suggests that, ordinarily, no more than ten (10) terms per patent be identified as requiring construction.

v. The joint statement shall include a joint claim construction chart, noting each party's proposed construction of each term, and supporting evidence.

4. **The Claim Construction Hearing (a.k.a. "*Markman* Hearing").** The claim construction hearing will be held on **December 17, 2020** at **2:30 p.m**.

5. **Fact Discovery**.

Fact Discovery. Fact discovery must be completed by **December 23, 2020**.

6. **Status Conference**. A status conference will be held shortly after the close of fact discovery on **January 7, 2021** at **2:15 p.m**.

7. **Expert Discovery.**

a. The Parties' trial experts must be designated, and information contemplated by Federal Rule of Civil Procedure 26(a)(2) must be

disclosed as follows:

Opening Expert Reports for party bearing the burden of proof:

February 18, 2021.

Rebuttal Expert Reports:

March 19, 2021.

b. Expert discovery must be completed by **April 20, 2021**.

c. *Daubert* motions must be filed by **June 1, 2021**.

8. **Dispositive Motions.** Dispositive motions, such as motions for summary judgment or partial summary judgment on the pleadings must be filed by **June 1, 2021**.

9. **Initial Pretrial Conference**. An initial pretrial conference will be held on **a date convenient for the Court**. The parties shall prepare and submit a pretrial memorandum in accordance with Local Rule 16.5(d) **five (5)** business days prior to the date of the conference.

II. Provisions Related to the Conduct of, and Limitations on, Discovery

The parties agree to adhere to the limitations on discovery set forth in the Federal Rules of Civil Procedure and the Local Rules, except as set forth below or as further ordered by the Court:

1. **Fact Depositions.** All deposition testimony obtained in *CardioNet, LLC v. InfoBionic, Inc.*, Civil Action No. 15-cv-11803 ("Related Action")may be used in this action.

Each party may take up to three (3) individual 30(b)(1) fact depositions of witnesses of the other party or any third party who were previously deposed in the Related Action. Because deposition testimony from the Related Action is usable in this case, any deposition of any individual previously deposed in the Related Action shall be limited to new subject matter relating to this case. The limitation of three (3) depositions per side shall not apply to depositions of third parties who were not deposed in the Related Action, but each side shall be limited to no more than five (5) total individual 30(b)(1) fact depositions. All depositions shall be subject to the time limits set forth in Federal Rule of Civil Procedure 26.

All topics set forth in deposition notices served in the Related Action pursuant to Federal Rule of Civil Procedure 30(b)(6) and objections and responses thereto shall be deemed served in this action. Each party shall be entitled to serve a single 30(b)(6) notice identifying those topics for which it requests additional 30(b)(6) testimony in this action. Because deposition testimony from the Related Action is

usable in this case, the parties' 30(b)(6) depositions shall be limited to new subject matter relating to this case.

2. **Expert Depositions.** The parties agree that each side may take one deposition of no more than seven (7) hours on the record for each expert report submitted by an expert. Depositions related to supplemental reports will be negotiated on a case-by-case basis.

3. **Depositions Generally.** The parties agree that depositions shall be scheduled by agreement at a mutually convenient time and location.

4. **Written Discovery Generally**. All materials produced in the Related Action may be used in this action. The parties will update all written discovery responses to interrogatories, requests for production, and requests for admission and their document productions temporally (to make them all current) and to address the '207 patent, to the extent such requests seek information which is properly the subject of discovery in this action based on interpreting the requests to include the '207 patent as a patent-in-suit (the parties need not provide any further responses regarding subject matter that is not at issue in this action, e.g., positions regarding the patents asserted in the Related Action, or regarding subject matter that is not currently at issue in either action, such as CardioNet's state law claims filed in the Related Action).

5. **Requests for Admission.** The parties may serve up to five (5) substantive requests for admission.

6. **Interrogatories.** The parties may serve up to five (5) interrogatories.

7. **Requests for Production.** The parties may serve one set of ten (10) document requests.

    a. **ESI Discovery.** Within fifteen (15) days after a party serves its document requests, the parties shall meet and confer regarding whether and, if so, to what extent email should be produced in response. The parties' meet and confer shall include discussion of proposed search terms to identify responsive email discovery. The party seeking email discovery shall initially identify its proposed search terms. To the extent the parties cannot agree on whether email discovery is warranted and/or its scope, the parties may contact the Court's Courtroom Clerk to schedule a hearing with the Court on disputed issues.

8. **Third Party Discovery.** The parties may serve document and deposition subpoenas on third parties, including third parties who were previously subpoenaed in the Related Action. Any subpoenas on third parties who were previously subpoenaed in the Related Action shall be limited to the new subject matter of this case.

9. **Service via Email**. The parties consent to accept service by email of all documents to be exchanged or served in this litigation. For the purposes of calculating time under

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