

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

VARTA MICROBATTERY GMBH, Plaintiff,  v.	
COSTCO WHOLESALE CORPORATION	Civil Action No. 2:20-cv-00051-JRG <b>LEAD CASE</b>
AMAZON.COM, INC.	Civil Action No. 2:20-cv-00052-JRG
BEST BUY CO., INC., ET AL	Civil Action No. 2:20-cv-00054-JRG
PEAG, LLC	Civil Action No. 2:20-cv-00071-JRG
AUDIO PARTNERSHIP LLC, ET AL	Civil Action No. 2:20-cv-00138-JRG
SAMSUNG ELECTRONICS AMERICA, INC.  Defendants.	Civil Action No. 2:20-cv-00029-JRG

**DOCKET CONTROL ORDER**

In accordance with the scheduling conference held in this case, it is hereby ORDERED that the following schedule of deadlines is in effect until further order of this Court:

Date	Amended Date	Deadline / Event
June 7, 2021		*Jury Selection – 9:00 a.m. in <b>Marshall, Texas.</b>
May 10, 2021		* If a juror questionnaire is to be used, an editable (in Microsoft Word format) questionnaire shall be jointly submitted to the Deputy Clerk in Charge by this date. <sup>1</sup>

<sup>1</sup> The Parties are referred to the Court's Standing Order Regarding Use of Juror Questionnaires in Advance of *Voir Dire*.

May 3, 2021		Pretrial Conference – 9 a.m. in <b>Marshall, Texas</b> before Judge Rodney Gilstrap
April 26, 2021		*Notify Court of Agreements Reached During Meet and Confer  The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i> . The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.
April 26, 2021		*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, Responses to Motions <i>in Limine</i> , Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations
April 19, 2021		*File Notice of Request for Daily Transcript or Real Time Reporting.  If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at shelly_holmes@txed.uscourts.gov.
April 12, 2021	April 19, 2021	File Motions <i>in Limine</i>  The parties shall limit their motions <i>in limine</i> to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.
April 12, 2021	April 19, 2021	Serve Objections to Rebuttal Pretrial Disclosures
April 5, 2021	April 14, 2021	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
March 22, 2021	April 5, 2021	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof

March 15, 2021	March 29, 2021	*Response to Dispositive Motions (including <i>Daubert</i> Motions). Responses to dispositive motions that were filed <u>prior</u> to the dispositive motion deadline, including <i>Daubert</i> Motions, shall be due in accordance with Local Rule CV-7(e), not to exceed the deadline as set forth in this Docket Control Order. <sup>2</sup> Motions for Summary Judgment shall comply with Local Rule CV-56.
March 1, 2021	March 15, 2021	*File Motions to Strike Expert Testimony (including <i>Daubert</i> Motions)  No motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.
March 1, 2021	March 15, 2021	*File Dispositive Motions  No dispositive motion may be filed after this date without leave of the Court.  <u>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</u>
February 22, 2021	March 12, 2021	Deadline to Complete Expert Discovery
February 8, 2021	February 26, 2021	Serve Disclosures for Rebuttal Expert Witnesses
January 19, 2021	February 12, 2021	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
February 5, 2021		Comply with P.R. 3-7 (Opinion of Counsel Defenses)
January 19, 2021	January 29, 2021	Deadline to Complete Fact Discovery and File Motions to Compel Discovery

<sup>2</sup> 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.” If the deadline under Local Rule CV 7(e) exceeds the deadline for Response to Dispositive Motions, the deadline for Response to Dispositive Motions controls.

January 15, 2021		*Claim Construction Hearing – 9 a.m. in Marshall, Texas before Judge Rodney Gilstrap.
January 4, 2021		*Comply with P.R. 4-5(d) (Joint Claim Construction Chart)
December 28, 2020		*Comply with P.R. 4-5(c) (Reply Claim Construction Brief)
December 18, 2020		Comply with P.R. 4-5(b) (Responsive Claim Construction Brief)
December 4, 2020		Comply with P.R. 4-5(a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any)  Good cause must be shown to submit technical tutorials after the deadline to comply with P.R. 4-5(a).
December 4, 2020		Deadline to Substantially Complete Document Production and Exchange Privilege Logs  Counsel are expected to make good faith efforts to produce all required documents as soon as they are available and not wait until the substantial completion deadline.
November 20, 2020		Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery)
November 13, 2020		File Response to Amended Pleadings
October 30, 2020		*File Amended Pleadings  It is not necessary to seek leave of Court to amend pleadings prior to this deadline unless the amendment seeks to assert additional patents.
October 23, 2020		Comply with P.R. 4-3 (Joint Claim Construction Statement)
October 2, 2020		Comply with P.R. 4-2 (Exchange Preliminary Claim Constructions)

September 11, 2020		Comply with P.R. 4-1 (Exchange Proposed Claim Terms)
June 29, 2020		Comply with Standing Order Regarding Subject-Matter Eligibility Contentions <sup>3</sup>
June 29, 2020	July 10, 2020	Comply with P.R. 3-3 & 3-4 (Invalidity Contentions)
June 8, 2020		*File Proposed Protective Order and Comply with Paragraphs 1 & 3 of the Discovery Order (Initial and Additional Disclosures)  The Proposed Protective Order shall be filed as a separate motion with the caption indicating whether or not the proposed order is opposed in any part.
June 1, 2020		*File Proposed Docket Control Order and Proposed Discovery Order  The Proposed Docket Control Order and Proposed Discovery Order shall be filed as separate motions with the caption indicating whether or not the proposed order is opposed in any part.
May 26, 2020		Join Additional Parties
May 4, 2020		Comply with P.R. 3-1 & 3-2 (Infringement Contentions)

**Mediation:** While certain cases may benefit from mediation, such may not be appropriate for every case. The Court finds that the Parties are best suited to evaluate whether mediation will benefit the case after the issuance of the Court's claim construction order. Accordingly, the Court **ORDERS** the Parties to file a Joint Notice indicating whether the case should be referred for mediation **within fourteen days of the issuance of the Court's claim construction order**. As a part of such Joint Notice, the Parties should indicate whether they have a mutually agreeable mediator for the Court to consider. If the Parties disagree about whether mediation is appropriate, the Parties should set forth a brief statement of their competing positions in the Joint Notice.

**Summary Judgment Motions, Motion to Strike Expert Testimony, and Daubert Motions:** For each motion, the moving party shall provide the Court with two (2) hard copies of the

<sup>3</sup> <http://www.txed.uscourts.gov/sites/default/files/judgeFiles/EDTX%20Standing%20Order%20Re%20Subject%20Matter%20Eligibility%20Contentions%20.pdf> [<https://perma.cc/RQN2-YU5P>]

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