

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PAICE LLC and THE ABELL FOUNDATION,
INC.,

Plaintiffs,

v.

BAYERISCHE MOTOREN WERKE, A.G.
BMW OF NORTH AMERICA, LLC

Defendants.

C.A. No. 19-CV-3348-SAG

JURY TRIAL DEMANDED

SCHEDULING ORDER

Plaintiff Counter-Defendants Paice LLC (“Paice”) and the Abell Foundation, Inc. (“Abell”) (collectively referred to as the “Plaintiffs”), and Defendant Counter-claimant, BMW of North America, LLC (“BMWNA”), by their undersigned attorneys, hereby submit the following Joint Proposed Scheduling Order:

A. **General Matters**

1. **Requests for Modifications:** Any requests to modify the scheduling order must be accompanied by proposed new deadlines, or other amendments; a comparison of the proposed deadlines, or other amendments to the original terms; and an explanation of why the modification is needed.
2. **Dates:** Dates herein for filing or service are deadlines for actual delivery to the adverse party or Clerk or filing using the CM/ECF system. The parties agree that service by email is acceptable.
3. The parties do not consent to proceed before a United States Magistrate Judge.
4. The parties are willing to discuss settlement including ADR.

5. Joinder and Amendment of Pleadings

a. Deadline: Any motion for leave to join additional parties or to otherwise amend the pleadings shall be filed by July 20, 2020.

6. Confidentiality Order: In accordance with L.R. 104.13, the parties will prepare a Confidentiality Order.

a. Deadline: By March 16, 2020, the parties shall submit a Stipulated Confidentiality Order, modeled after the Confidentiality Order attached as part of Appendix D to the Local Rules of this Court.

7. Non-Waiver Order: In accordance with L.R. 104.14, the parties will include a Stipulated Order Regarding Non-Waiver of Attorney Client Privilege and Work Product Information as part of its proposed Confidentiality Order.

B. Discovery

1. Initial Disclosures

a. Deadline: The parties agree that they will exchange the information required by Fed. R. Civ. P. 26(a)(1) by March 16, 2020.

2. Applicability of Local Rules to Discovery: Subject to Local Rule 803.2, all of the provisions of Local Rule 104 apply, including the following:

- a. All written discovery requests must be served in time to assure that they are answered before the discovery deadline. An extension of the deadline will not be granted because of unanswered discovery requests.
- b. The existence of a discovery dispute as to one matter does not justify delay in taking any other discovery. The filing of a motion to compel or a motion for a protective order will not result in a general extension of the discovery deadline.
- c. No discovery materials, including Rule 26(a)(2) disclosures, should be filed with the Court, unless being used to support a motion or other submission to the Court.
- d. Any motion to compel shall be filed only after counsel have conferred and filed a certificate as required by Local Rule 104.7 and shall be filed in accordance with Local Rule 104.8 and applicable CM/ECF procedures.

3. **Scope of Discovery:**

- a. Each party shall be permitted to serve on each other party 45 interrogatories.
- b. Each party shall be permitted to serve on each other party 75 requests for production.
- c. Each party shall be permitted to serve on each other party 75 requests for admission, excluding those propounded for the purposes of establishing the authenticity of documents or the fact that documents constitute business records pursuant to Local Rule 104.1.
- d. Each party shall be permitted ten (10) non-expert depositions (7 hours each), but upon a showing of good cause, either party may seek additional depositions pursuant to Fed. R. Civ. P. 30(a)(2).

4. **Close of Fact Discovery**

- a. Deadline: All discovery (other than expert discovery) shall be completed by January 22, 2021, or 30 days after the entry of the Court's Claim Construction Order, whichever is later.

5. **Expert Discovery:** Expert Discovery shall proceed as follows:

- a. Deadline: By February 22, 2021, or 60 days after the entry of the Court's Claim Construction Order, whichever is later, each party shall:
 - (1) Advise each adverse party of the identity of all proposed expert witnesses as to matters which the proposing party bears the burden of proof; and
 - (2) Provide Opening Rule 26(a)(2) information (expert reports).
- b. Deadline: By March 24, 2021, or 90 days after the entry of the Court's Claim Construction Order, whichever is later, each party shall:
 - (1) Advise each adverse party of any proposed expert witnesses not identified in the previous submission; and
 - (2) Provide Rule 26(a)(2) information in Rebuttal to the Opening Rule 26(a)(2) information (expert rebuttal reports).
- c. Deadline: By April 23, 2021, or 120 days after the entry of the Court's Claim Construction Order, whichever is later, each party shall:
 - (1) Advise each adverse party of any proposed expert witnesses that will reply to previous expert disclosures;

- (2) Provide Rule 26(a)(2) information in Reply to the Rebuttal 26(a)(2) information (reply expert reports); and
 - (3) Advise each adverse party of dates within 30 days on which each expert shall be available for deposition so that depositions can be taken.
- d. Deadline: Expert discovery shall be completed by May 24, 2021, or 150 days after the entry of the Court's Claim Construction Order, whichever is later. The parties shall submit a Post-Discovery Joint Status Report on this date. *See* Section E of this Order.
6. **Electronically-Stored Information (ESI)**: The Parties shall meet and confer and submit a proposed ESI Protocol by March 16, 2020.

C. **Patent Matters**

1. **Objections**: Unless otherwise ordered, it shall not be a ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, Section VIII of the Local Rules. A party may object, however, to responding to the following categories of discovery requests on the ground that they are premature in light of the timetable provided in Section VIII of the Local Rules:
- a. Requests seeking to elicit a party's claim construction position;
 - b. Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;
 - c. Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and
 - d. Requests seeking to elicit from an accused infringer the identification of any advice of counsel, and related documents.

Where a party properly objects to a discovery request as set forth above, that party shall provide the requested information on the date on which it is required to be provided to an opposing party, unless there are other legitimate grounds for objection.

2. Disclosure Deadlines and Requirements

a. Initial Disclosure of Infringement Contentions

- (1) Deadline: By March 25, 2020, any party claiming patent infringement shall serve on all parties an Initial Disclosure of Infringement Contentions as required by Local Rule 804.1(a).

b. Document Production Accompanying Initial Disclosure of Infringement Contentions

- (1) Deadline: By March 25, 2020, any party claiming patent infringement shall produce to each allegedly infringing party or make available for inspection and copying all required documents accompanying the Initial Disclosure of Infringement Contentions as required by Local Rule 804.1(b).

c. Initial Disclosure of False Marking Contentions

- (1) Deadline: By March 25, 2020, any party asserting a claim of false marking pursuant to 35 U.S.C. § 292 shall serve on all parties an Initial Disclosure of False Marking Contentions as required by Local Rule 804.5(a).

d. Initial Disclosure of Invalidity Contentions in Defense of Infringement Claims

- (1) Deadline: By April 24, 2020, each party opposing a claim of patent infringement, shall serve on all parties its Initial Disclosure of Invalidity Contentions as required by Local Rule 804.1(c).

e. Document Production Accompanying Initial Disclosure of Invalidity Contentions

- (1) Deadline: By April 24, 2020, the party opposing a claim of patent infringement shall produce or make available for inspection and copying any prior art identified in the Initial Disclosure of Invalidity Contentions that does not appear in the file history of the patent(s) at issue as required by Local Rule 804.1(d). To the extent any such item is not in English, an English translation of the portion(s) relied upon shall be produced.

f. Response to Initial Disclosure of False Marking Contentions

- (1) Deadline: By April 24, 2020, the party defending against a claim of false marking shall serve on all parties a Response to

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