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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION – SANTA ANA

COLIBRI HEART VALVE LLC,

Plaintiff,

v.

MEDTRONIC COREVAVLE LLC,

Defendant.

Case No.: 8:20-cv-00847-DOC-JDE

JOINT RULE 26(f) REPORT

Hon. David O. Carter

Scheduling Conference: Sept. 14, 2020
Time: 8:30 A.M.
Courtroom: 9D

Plaintiff Colibri Heart Valve LLC ("Colibri") and Defendant Medtronic CoreValve LLC ("Medtronic") (collectively, "the parties") respectfully submit the following joint report in advance of the Court's scheduling conference in the above-referenced matter. The Parties conducted a Rule 26(f) conference on both July 27, 2020 and August 28, 2020.

I. SUMMARY OF THE CASE, CLAIMS, AND DEFENSES

On May 4, 2020, Colibri filed a complaint against Medtronic alleging infringement of U.S. Patent Nos. 9,125,739 ("the '739 patent") and 8,900,294 ("the '294 patent") (Dkt. 1). The '294 patent and the '739 patent relate to artificial heart valves and the methods for using them. The accused products consist of Medtronic's CoreValve™ product line, which are artificial heart valves and delivery systems that are guided through a patient's artery to the heart, where the artificial valves are implanted to replace diseased or damaged valves. On June 12, 2020, Colibri filed a first amended complaint ("FAC") (Dkt. 30). Plaintiff seeks relief in the form of damages for infringement of the '739 and '294 patents.

Medtronic has not yet answered the FAC. Medtronic filed a Motion to Dismiss the FAC that has been briefed and is set for hearing on September 14, 2020, the same day as the scheduling conference.

II. SHORT SYNOPSIS OF THE PRINCIPAL ISSUES IN THIS CASE

Medtronic's Motion to Dismiss alleges that Colibri has failed to adequately plead indirect and willful infringement of the '739 patent, and direct, indirect, and willful infringement of the '294 patent. Colibri has opposed some, but not all of the grounds for dismissal during the course of briefing.

Subject to and without waiving their respective positions and arguments, the parties assert that some of the disputed issues may include, but are not limited to, the following: (i) whether Medtronic has infringed the '739 and '294 patents; (ii) whether the patents-in-suit are valid; (iii) whether Medtronic willfully infringes the patents-in-suit; (iv) the proper construction to be given to disputed claim terms; and (v) whether

Colibri is entitled to damages and, if so, the amount of those damages.

The foregoing synopsis is based on the parties' current information, additional issues may arise in the course of discovery.

III. STATEMENT OF WHETHER PARTIES ARE LIKELY TO BE ADDED AND WHETHER PLEADINGS ARE LIKELY TO BE AMENDED

Colibri does not at this time anticipate adding any additional parties. Whether the pleadings are likely to be amended is dependent on the Court's decision with respect to Medtronic's Motion to Dismiss.

Medtronic does not at this time anticipate adding any additional parties.

To the extent either Colibri or Medtronic desires to add additional claims or parties, the Court has ordered that motions for leave to join other parties or to amend pleadings be filed no later than 60 days after the Scheduling Order, and noticed for hearing no later than 90 days after the Scheduling Order.

IV. ISSUES WHICH MAY BE DETERMINED BY MOTION AND LIST OF CURRENTLY CONTEMPLATED MOTIONS

As discussed above, Medtronic filed a Motion to Dismiss the FAC that is still pending. The Motion addresses the issues of direct, indirect, and willful infringement of the '296 patent, as well as indirect and willful infringement of the '739 patent, and Medtronic has requested that Colibri's claims be dismissed with prejudice. Depending on the Court's decision with respect to the Motion to Dismiss, the remaining issues in this case could be narrowed substantially.

Medtronic also intends to file petitions for *Inter Partes* Review of the asserted patents in early September. Upon submitting the IPRs to the Patent Trial and Appeal Board, Medtronic will then file a Motion to Stay this case pending the outcome of the IPRs. Colibri intends to oppose the Motion to Stay.

The parties believe that resolution of the case likely will be materially advanced by a claim construction order. The parties therefore request that the Court schedule a claim construction hearing and have proposed dates for the hearing as well as dates for

claim construction briefings below.

For one or both of the patents-in-suit, and depending on the outcome of Medtronic's pending Motion to Dismiss and the IPRs, the parties expect that they may file motions for summary judgment on the key issues of infringement, validity, willful infringement, and/or various damages issues. The parties also anticipate filing motions *in limine* and *Daubert* motions. The parties each respectively anticipate filing these motions after the case has substantially progressed, and most likely not until after the Court's claim construction decision.

V. SUMMARY OF SETTLEMENT DISCUSSIONS TO DATE, AND THE PARTIES' RECOMMENDED SETTLEMENT PROCEDURE

The parties had certain settlement discussions prior to the filing of the Complaint. The parties and their representatives are each sophisticated, with extensive experience negotiating resolutions to complex matters and expect that they will engage in settlement discussions as appropriate.

The parties also propose to engage in further settlement discussions pursuant to the local rules. At the discretion of the Court, and referring to the available settlement procedures identified in the Court's July 17th Order Setting Scheduling Conference (Dkt. 43 at 3), the parties agree to settlement procedure 3 using a private mediator.

The parties believe that to the extent a settlement procedure is ordered by this Court, a mediation would be more productive and likely to succeed if conducted, subject to the schedule of the mediator, following claim construction and prior to any hearing on summary judgment.

VI. DISCOVERY PLAN[1]

A. Proposed Discovery Plan

1. No changes need to be made to the form for disclosures under Fed. R.

[1] Medtronic believes a discovery plan is not required at this time in light of its expected IPR filings and Motion to Stay pending resolution of the IPRs. Medtronic

Civ. P. 26(a). Initial disclosures will be exchanged by the parties ten days after the Court's decision on Medtronic's Motion to Dismiss.

2. While the parties agree that discovery should take place pursuant to the Federal Rules of Civil Procedure and the Local Rules, the parties also contemplate and agree to the following: (i) expert discovery will follow the conclusion of fact discovery, as set forth below; (ii) infringement and invalidity contentions are contemplated to occur, along with claim construction, per a proposed schedule set forth below; and (iii) the parties will meet and confer in good faith on a stipulation that would avoid or minimize the need for Requests for Admission ("RFAs") for the sole purpose of authenticating or stipulating to the admissibility of documents.

3. The parties will prepare a stipulated protective order and order on electronically stored information ("ESI") to be presented to the Court in due course.

4. The parties agree that privileged and attorney work product material drafted, created, and/or generated on or after December 5, 2019 need not be identified in a privilege log.

VII. MANUAL FOR COMPLEX LITIGATION

This case does not constitute complex litigation and there is no need to utilize the Manual for Complex Litigation.

VIII. TRIAL ESTIMATE

Colibri has demanded a jury trial on all issues so triable. The parties estimate four days for such a jury trial.

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therefore agrees to the discovery plan below only to the extent that the Court considers a discovery plan to be necessary at this time.

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