



May 3, 2021

The Honorable Hildy Bowbeer
Magistrate Judge, District of Minnesota
United States District Court
632 Federal Building
316 N. Robert Street
St. Paul, MN 55101

Via ECF

Re: *Oxygenator Water Technologies v. Tennant*, Case No. 20-cv-00358 (ECT/HB)
IDR Request - Hearing sought on or after May 7, 2021

Dear Magistrate Judge Bowbeer:

This informal dispute resolution request is submitted on behalf of Defendant Tennant Company. Plaintiff Oxygenator Water Technologies, Inc. ("OWT") has agreed to use the Court's IDR process.

The dispute concerns the Pretrial Case Management Order, ECF No. 43. Tennant seeks a modest extension of the deadlines for expert and fact discovery, with the remaining deadlines in the schedule adjusted accordingly. Good cause exists to modify the schedule for the reasons set forth below.

Sequence of Expert Discovery and Claim Construction

First, Tennant requests that the Court modify the pretrial schedule so that expert discovery commences after the Court construes seventeen disputed claim terms. Judge Tostrud recently scheduled the claim construction hearing and issued a briefing schedule. Opening claim construction briefs are due in June. The claim construction hearing is on August 5.

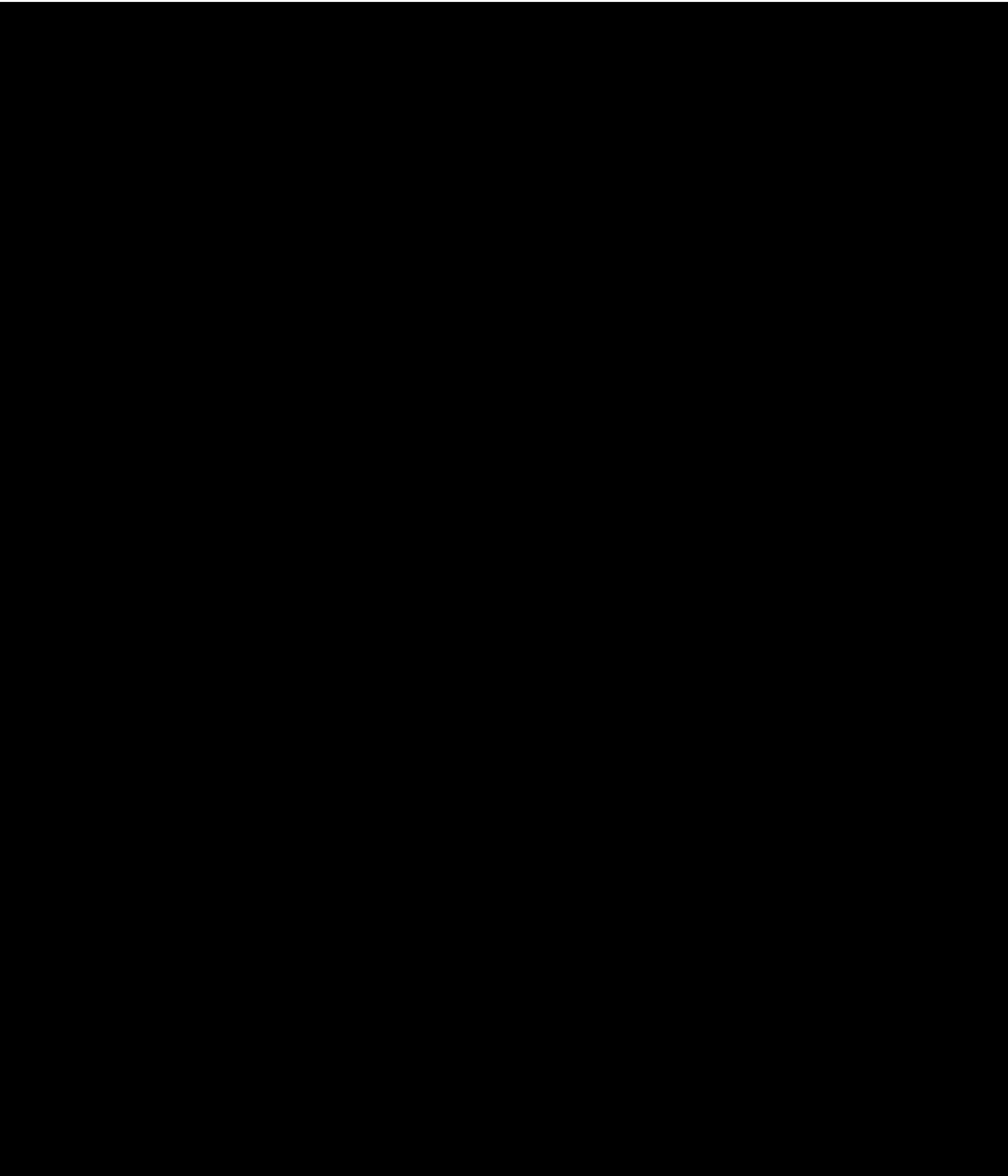
Under the present schedule, initial expert reports are due July 16. Tennant requests that the Court modify the schedule so that initial expert reports are due 30 days after the Court issues its claim construction order.

As the Court knows, expert witnesses analyze infringement and validity using the Court's construction of disputed claim terms. If experts must offer opinions before the Court issues its claim construction order, their opinions may need to be changed after the claim construction order is issued, resulting in unnecessary work and expense. It is more efficient for all involved to exchange expert reports after the Court construes the disputed claim terms. Tennant therefore requests that the Court modify the schedule to require that the parties exchange initial expert

Attorneys & Advisors
Main 612.492.7000
Fax 612.492.7077

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402-1425

USA / China / Mexico
Minnesota, Iowa, North Dakota
fredlaw.com



May 3, 2021
Page 3

and requested that OWT remedy the deficiencies no later than May 7. OWT has not yet responded.

5. Following an exchange of letters and a meet and confer, OWT agreed to supplement its answer to Interrogatory No. 14 concerning the identity of email custodians with potentially relevant email and the time periods for which email is available. OWT initially indicated that the supplemental answer would be provided by April 30. OWT later indicated that the answer would be provided early next week.
6. Tennant sent a deficiency letter to OWT on April 9, 2021 regarding several other outstanding discovery requests and requested a meet and confer. OWT has not yet responded.
7. Tennant has proposed a compromise to resolve a dispute concerning Requests for Production 30 and 34. OWT is considering the proposal.

Tennant has acted diligently. OWT zealously fought many of Tennant's discovery requests, requiring nearly daily correspondence and numerous meet and confers. Although the parties have resolved most disputes without the need for motion practice, Tennant has not yet obtained relevant documents and information from OWT. Once the few remaining disputes are resolved and Tennant obtains the documents it has requested, Tennant intends to take the ten depositions allotted in the scheduling order.

Although Tennant's production is largely complete, Tennant only recently learned that a computer used by a former employee was retained and had not been wiped and put back into circulation, as is Tennant's typical practice. Tennant collected documents from the computer and will produce responsive documents as soon as it is able. Tennant has also objected to several search terms in OWT's second set of email production requests. The parties have not resolved those objections. OWT served a third set of email production requests this past weekend.

Given the current state of discovery, Tennant requests that the Court extend the deadline for fact discovery by two months, to August 18, 2021. The modified schedule Tennant proposes is below.

Event	Current Deadline	Proposed Deadline
Claim construction hearing	August 5, 2021	August 5, 2021
Close of fact discovery	June 18, 2021	August 18, 2021
Non-dispositive motions (except expert discovery)	July 6, 2021	September 1, 2021

May 3, 2021
Page 4

Event	Current Deadline	Proposed Deadline
Identification/reports of experts on issues as to which party has burden of proof	July 16, 2021	30 days after claim construction order
Identification/reports of experts on issues as to which the party does not have the burden of proof	August 16, 2021	60 days after claim construction order
Rebuttal expert reports	September 10, 2021	85 days after claim construction order
Close of expert discovery	October 8, 2021	113 days after claim construction order
Second reduction of asserted claims by Plaintiff	October 15, 2021 or one week after last expert deposition, whichever is earlier	120 days after claim construction order or one week after last expert deposition, whichever is earlier
Non-dispositive motions concerning expert discovery	October 22, 2021	127 days after claim construction order
Dispositive motions	November 19, 2021	155 days after claim construction order
Ready for trial	March 21, 2022	275 days after claim construction order

Respectfully submitted,

/s/Lora M. Friedemann

Lora M. Friedemann
Direct Dial: 612.492.7185
Email: lfriedemann@fredlaw.com

72785074