IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUI GLOBAL PRODUCTS, LTD. D/B/A GWEE	§	CIVIL ACTION NO. 4:20-cv-2624 (CONSOLIDATED)
vs.	§	HON. ALFRED H. BENETT
SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG ELECTRONICS AMERICA, INC.	§	
GUI GLOBAL PRODUCTS, LTD. D/B/A GWEE	§	CIVIL ACTION NO. 4:20-cv-02652 (CONSOLIDATED)
vs.	§	HON. ALFRED H. BENETT
APPLE INC.	§	

JOINT SUBMISSION REGARDING AGREED AND NON-AGREED SCHEDULING DATES

Pursuant to the Court's instructions and minute entry of November 20, 2020 for "Counsel to confer by December 11th and submit jointly agreed upon dates by December 16th," Plaintiff GUI Global Products, Ltd. d/b/a Gwee ("Gwee" or "Plaintiff"), Defendants Samsung Electronics Co. Ltd.; and Samsung Electronics America, Inc. (together, "Samsung"), and Defendant Apple, Inc. ("Apple") have conferred, and they have agreed on some dates for these consolidated cases and not agreed on others. Each party's position, including points of agreement and disagreement, is set forth below.

I. PLAINTIFF GWEE'S POSITION

In accordance with the Court's instructions, Gwee respectfully submits the proposed scheduling orders for these consolidated cases at Exhibit 1, which has proposed dates through the trial of each case. The touchstone for Gwee's proposed schedule is the Court' Sample Patent Scheduling Order, with dates commencing after giving the Court time to decide the pending motion to transfer venue The dates for the *Samsung* case, which was filed first and has the lower civil action, largely

track those in the Court's Sample Patent Scheduling Order. Consistent with the Court's intent in consolidating these cases - both cases have a common *Markman* hearing date for claim construction. The *Markman* briefing dates for the *Apple* case are spaced two weeks after those in the *Samsung* case, and the post-*Markman* dates are generally spaced four weeks after those in the *Samsung* case. The foregoing is subject to some minor adjustments, mostly around holidays and between the start of the two trials.

Gwee's purpose in modestly spacing some of the dates for the two cases is to avoid overburdening Gwee with deadlines in both of these substantial cases falling on the same day, and to avoid overburdening the Court with filings by multiple parties on the same date on the same or similar issues, for example with expect to non-consolidated claim construction briefing, discovery disputes potentially clustered around expert and discovery deadlines, pretrial motion deadlines, expected rulings on pretrial motions, and pretrial filings.

Consistent with the Court' Sample Patent Scheduling Order and what Gwee understands to be the Court's intent and instructions for the parties to submit case schedules, *Gwee has submitted proposed case schedules* – namely, full schedules for both consolidated cases with thirty-four (34) separate scheduling items. In contrast, Samsung and Apple are proposing only the first four of these thirty-four total scheduling items. Aside from this not being in accord with Gwee's understanding of the Court's intent and instructions, Gwee disagrees with Samsung and Apple's approach of avoidance and delay. Gwee's proposed schedule, which is at least essentially agreed upon for the first four items, presents a full schedule with set dates, and it accords adequate time for the Court to decide whether to grant the Defendants' requested venue transfers. Gwee submits that the Court should enter a schedule with set dates, including so that the Court, the parties' and their witnesses, including experts, can plan accordingly.

Further, Defendants' opposition to scheduling claim construction disclosures is misplaced. Gwee's already extended schedule anticipates that venue will have been ruled upon prior to claim construction disclosures being made. In any event, the parties' would need to make initial claim construction disclosures under both the SDTX and NDCA patent rules.

If the Court grants the requested transfers, the Court in NDCA can decide if it wishes to adopt this Court's schedule or modify it in any respect. If the Court's consideration of the motion to transfer venue takes longer than anticipated, then the parties can confer and submit any appropriate modifications to the schedule. If the Court does not grant the requested transfers, then these cases should proceed accordingly towards reasonably prompt trials in accordance with this Court's normal scheduling practices.

Gwee best understands Samsung's fallback position as essentially concurring with Gwee's proposed the schedule for the *Apple* case and for both cases to have the same deadlines through pre-trial. As noted above, Gwee submits that it unfairly burdens both Gwee and the Court, with no corresponding benefit, by making all filings and submissions in both cases fall on the same day.

Samsung suggests below that Gwee's proposed staggering of claim construction briefs results in six briefs instead of three. It is more correct to state that Samsung has indicated a willingness to submit a common brief with Apple if unspecified additional page limits are afforded, and Apple has left the issue to the Court's discretion. Gwee also leaves it to the Court's discretion whether Apple and Samsung should submit common claim construction brief. If that is the Court's preference, then only one set of claim construction briefing deadlines would be needed. Irrespective, the sensible approach to the post-*Markman* and pretrial dates is stagger them modestly, which is Gwee's position, which Apple appears either to agree with or at least not oppose.

Apple's submission below responsive to the Court's directive for the parties to submit schedules (much like Samsung's submission), seems directed primarily to arguing that the parties

should not submit schedules, and to re-arguing Apple's motion to stay. Samsung made similar stay arguments prior to the Court directing the parties to submit case schedules. Gwee has already responded to Apple's Motion to Stay at Doc 38 in Case 4:20-cv-02652 (now consolidated into this case). Without belaboring all the points already briefed, Gwee would respectfully point out, as set out more fully in its Response, that (1) Apple's selective case citations do not establish grounds favoring a stay, Doc 38, pp. 2-6; (2) Apple must show, but has failed to show, good cause for a stay, *Id.*, pp. 7-9; and (3) Apple fails to show good cause for a stay because a stay would merely delay work – including patent disclosures required by both districts -- that that the parties must perform, *Id.*, pp. 9-12. Further, Apple's citation of cases regarding priority to be afforded venue motions makes an unjustified leap from priority to stay, and they miss the point that this Court is already addressing venue in a prompt fashion, and that the Court has prudently directed the parties to submit proposed schedules to govern in the event that the venue motions are denied.

Gwee best understands Apple's fallback position as basically concurring with, or at least not opposing, Gwee's proposed schedules for both cases, including Gwee's proposed relatively modest staggering of deadlines for the two cases. Gwee submits that Gwee's position and Apple's fallback position is the more fair and orderly arrangement for both cases to proceed.

Samsung and Apple's basic response to the Court's direction to submit case schedules is to seek to avoid meaningful compliance with the Court's directive, despite the fact that Gwee's proposal provides sufficient time for venue to be decided before the cases proceed beyond early steps that would be necessary in either district. Gwee thus respectfully requests that the Court enter the proposed schedule at Exhibit 1, which is responsive to the Court's instructions, and which addresses all scheduling items for both cases in a fair, definite and reasonable fashion.

II. DEFENDANT SAMSUNG'S POSITION

Samsung believes its proposal (submitted at Exhibit 2) best accounts for two key issues. First, as discussed with the Court during the November 20, 2020 hearing, the exchange of disclosures under the patent rules would proceed. Second, in light of the pending Motions to Transfer, the schedule accounts for the determinations of the Motions before any submission to the Court (i.e., Samsung believes that the Court did not intend that it take on substantive claim construction issues prior to the determination of transfer).

Accordingly, Samsung's proposal allows the case to proceed where there would be minimal waste in effort if the case were transferred (i.e., allows the Patent Rule exchanges among the parties as the transferee district of NDCA has similar rules), but at the same time spends no resources on fashioning a speculative downstream schedule that would need to be reevaluated after the Motions to Transfers are determined.[1]

In addition, as to the full schedule proposal submitted by Gwee, beyond it being inefficient for the reasons noted immediately above, its proposed staggering of the schedule between Samsung and Apple unnecessarily burdens the Court. For example, for claim construction, Gwee proposes six briefs by the parties (i.e., rather than three) at different times. Moreover, the staggering prejudices Samsung as Gwee proposes Samsung be first defendant to provide its positions. Gwee states that the reason for the staggering is case management (i.e., so that it has time to address each party separately) — but this can be managed by providing more time in between the events, not by prejudicing one defendant over another (and to note, it was Gwee's choice to file suit against two defendants at the same time).[2]

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[1] Gwee and Samsung agree to the dates up to the P.R. 4-2 exchange.

[2] Gwee's statement of Samsung's position (what Gwee calls Samsung "fallback" position) is incomplete. Stated simply, Samsung's position is that if a full schedule were to be adopted, both

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