

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: 4/22/2021

MOLO DESIGN, LTD.,

Plaintiff,

v.

CHANEL, INC.,

Defendant.

21-CV-01578 (VEC)

~~[PROPOSED]~~ CIVIL CASE
MANAGEMENT PLAN AND
SCHEDULING ORDER

This Civil Case Management Plan is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).

1. All parties do not consent to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c).

2. Except for amendments permitted by Fed. R. Civ. P. 15(a)(1) and this Court's Individual Practices in Civil Cases ("Individual Practices"), amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. Except by further Order of the Court for good cause shown, any motion to amend or to join additional parties shall be filed within 30 days from the date of this Order.

3. Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be completed no later than 14 days from the date of this Order.

4. Discovery

- a. All fact discovery shall be completed no later than March 11, 2022, or 60 days after the Court's Claim Construction Order, whichever is later.¹
- b. All expert discovery, including reports, production of underlying documents, and depositions shall be completed no later than June 10, 2022, or 150 days after the Court's Claim Construction Order, whichever is later.
- c. Within two weeks of the date of entry of this Scheduling Order, the parties shall meet and confer by teleconference to agree upon a joint plan for meeting the discovery deadlines.
- d. In the case of discovery disputes, the parties should follow Local Civil Rule 37.2 with the following modifications: Any party wishing to raise a discovery dispute with the Court **must first meet and confer in good faith** with the opposing party, in person, or by telephone, in an effort to resolve the dispute. If this process fails and the Court's intervention is required, the parties must jointly call Chambers to schedule a joint teleconference with the Court for prompt resolution of the dispute. The Court will determine during the teleconference whether additional submissions will be required.

5. Counsel for the parties believe the following alternative dispute resolution mechanisms may be helpful in resolving this case:

- a. _____ Immediate referral to the District's Mediation Program
- b. _____ Immediate referral to a Magistrate Judge

¹ The Parties respectfully propose that the close of fact and expert discovery should be after the Court issues its claim construction order, as is common practice in patent cases. The Parties' proposed schedule in Paragraph 9 below includes dates for claim construction briefing as required under Local Patent Rule 12.

- c. _____ Referral to the District’s Mediation Program after the close of fact discovery
 - d. _____ Referral to a Magistrate Judge after the close of fact discovery
 - e. X Other
6. This case is to be tried to a jury.
7. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in Fed. R. Civ. P. 26(f)(3), are set forth below.
 - a. The Parties do not propose any changes to the disclosures required under Fed. R. Civ. P. 26(a).
 - b. The Parties anticipate submitting a joint proposed protective order to the Court, which would govern the production and disclosure of highly sensitive and confidential information.
 - c. Plaintiff’s Disclosure of Asserted Claims and Infringement Contentions required under Local Patent Rule 6 shall be served no later than June 14, 2021, and shall contain the following information:
 - i. Each claim of each asserted patent that is allegedly infringed by Defendant, including for each claim the applicable statutory subsections of 35 U.S.C. §271 asserted;
 - ii. Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”) of Defendant of which Plaintiff is aware. This identification shall be as specific as possible. Each product, device, and apparatus shall be identified by name or model number, if known. Each method or process shall be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;
 - iii. A chart identifying specifically where and how each limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that Plaintiff contends is governed by 35 U.S.C. § 112(f), the identity of the structure(s), act(s), or

material(s) in the Accused Instrumentality that performs the claimed function;

- iv. For each claim alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;
 - v. Whether each limitation of each asserted claim is alleged to be present literally or under the doctrine of equivalents in the Accused Instrumentality;
 - vi. For any patent that claims priority to an earlier application, the priority date to which each asserted claim is alleged to be entitled;
 - vii. If Plaintiff wishes to preserve the right to rely, for any purpose, on the assertion that its own or its licensee's apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, Plaintiff shall identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and
 - viii. If Plaintiff alleges willful infringement, the basis for such allegation.
- d. Defendant's Invalidity Contentions required under Local Patent Rule 7 shall be served no later than July 29, 2021, and shall contain the following information:
- i. The identity of each item of prior art that Defendant alleges anticipates each asserted claim or renders the claim obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication, and, where feasible, author and publisher. Each alleged sale or public use shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. For pre-AIA claims, prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. For pre-AIA claims, prior art

under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

- ii. Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;
 - iii. A chart identifying specifically where and how in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that Defendant contends is governed by 35 U.S.C. § 112(f), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and
 - iv. Any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(b), or lack of enablement or insufficient written description under 35 U.S.C. § 112(a) of any of the asserted claims.
- e. Amendment of the Infringement Contentions or the Invalidity Contentions may be made only by order of the Court upon a timely showing of good cause. Non-exhausting examples of circumstances that may, absent undue prejudice to the non-moving party, support a finding of good cause include:
- i. A claim construction by the Court different from that proposed by the party seeking amendment;
 - ii. Recent discovery of material, prior art despite earlier diligent search; and
 - iii. Recent discovery of nonpublic information about the Accused Instrumentality which was not discovered, despite diligent efforts, before the service of the Infringement Contentions.

8. This Order may not be modified or the dates herein extended except by further Order of the Court for good cause shown. Unless the Court orders otherwise, parties engaged in

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