IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

JAWBONE INNOVATIONS, LLC, **Plaintiff,** **v.** **APPLE INC.,** **Defendant.**	**Case No. 6:21-CV-00984-ADA** **PATENT CASE** **JURY TRIAL DEMANDED**

JOINT MOTION TO ENTER AMENDED SCHEDULING ORDER

Pursuant to the Court's Discovery and Scheduling Order (Dkt. 103), Plaintiff Jawbone Innovations, LLC ("Jawbone") and Defendant Apple Inc. ("Apple") hereby jointly submit this Motion to Enter Amended Scheduling Order for the above-captioned matter. The parties have met and conferred in good faith, but were unable to reach an agreement about the case schedule. A short exemplary statement from each party is included below.

Jawbone's Statement.

As Apple explained to the Court in its Motion to Supplement the Record, based on the Scheduling Order, "fact discovery will commence on July 28." Dkt. 78 at 6; *see also* Dkt. 99 at 6. Indeed, both parties commenced fact discovery prior to the Court's Discovery and Scheduling Order. Accordingly, Jawbone understands that the *Markman* date in Dkt. 103 is July 27, 2022, the date originally agreed-upon for the *Markman* before Apple's transfer motion caused it to be delayed. Jawbone's Proposed Schedule sets deadlines based on that date. By contrast, Apple arbitrarily proposes October 4, 2022, resulting in a December 2023 trial.

Utilizing July 27, 2022, as the basis for the Amended Schedule allows for the Parties to adhere as closely as possible to the original schedule in this case. In Dkt. 103, the Court noted its

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concerns with extending the schedule and stated "The Court will not allow a defendant to benefit from delaying the case schedule and extend venue discovery by using an incompetent witness." Dkt. 103 at 12. Apple's proposed schedule would allow it to benefit from delaying the case schedule.

Apple's only argument against Jawbone's schedule is that certain deadlines, such as serving final infringement and invalidity contentions, would already have passed under the original schedule. To obviate this concern, Jawbone's schedule agrees with Apple as to those deadlines. Apple does not identify any issues with meeting those deadlines in Jawbone's schedule.

Accordingly, the Court should enter Jawbone's proposed schedule.

Apple's Statement.

The Court's Discovery and Scheduling Order, issued on October 5, 2022, states that "[f]ull fact discovery is now open." Dkt. 103 at 13. Because the Court's Exemplary Schedule sets the opening of fact discovery and other deadlines immediately following the *Markman* hearing, Apple proposes to use October 4 as the constructive *Markman* hearing date. Dkt. 103, App'x A. Using this date will allow the parties to follow the post-*Markman* schedules and deadlines provided in the Court's Exemplary Schedule. The Court's Exemplary Schedule notes that "[a]ll deadlines hereafter follow the original *Markman* hearing date and do not change if the Court delays the *Markman* hearing." *Id.*, App'x A, fn. 4. Here, the original *Markman* hearing was scheduled for July 27, 2022 but was twice vacated. *See* Dkt. 23 (Scheduling Order). However, using this date, as Jawbone proposes, results in deadlines that have already passed. For instance, under the original schedule, Jawbone should have served its final infringement

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contentions by September 21, 2022. To date, Jawbone has not served its final infringement contentions. Nor has it filed a motion for leave to serve its final infringement contentions.

Apple's proposal does not cause this confusion, as it appropriately follows the Court's orders. In its Discovery and Scheduling Order (Dkt. 103), the Court ordered the parties to enter a schedule keyed off the *Markman* hearing, which at that point was scheduled for October 14, 2022 (Dkt. 96). The Order also stated that "full fact discovery is ***now*** open." Dkt. 103 at 13 (emphasis added). The Court's Exemplary Schedule sets fact discovery to open one day after the *Markman* hearing, so Apple's proposal contemplates a constructive *Markman* hearing date of October 4, which is consistent with the Court's Order given that the Court shortly afterward vacated the October 14 *Markman* hearing date. Jawbone agrees with Apple's proposal only with respect to deadlines that would have already passed, while attempting to maintain the rest of the schedule as set forth in the existing Scheduling Order. That approach is inconsistent with the Court's instructions and unreasonably compresses the remainder of the case schedule.

Apple's proposed schedule would not cause any delay, as it is consistent with the Court's instructions. Moreover, Jawbone's implication that Apple used "an incompetent witness" to delay the schedule of this case is wrong and contradicts the record. The supplemental declarations that Apple sought to introduce do not bring any new facts into the record. *See* Dkt. 78, 99. They merely confirm the correctness of Apple's initial declaration (Dkt. 38-1), and thus could not have caused any delays. Notably, Jawbone did not seek deposition from any corporate witness from Apple or any of Apple's declarants. Nor has Jawbone previously complained about the competency of any Apple witness, including those that submitted declarations and that Jawbone deposed during venue discovery.

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The Court should therefore adopt Apple's proposed schedule, which allows for full compliance with the Court's Exemplary Schedule.

Date: October 19, 2022

Respectfully submitted,
/s/ *Richard M. Cowell*

Raymond W. Mort, III
Texas State Bar No. 00791308
Email: raymort@austinlaw.com
THE MORT LAW FIRM, PLLC
100 Congress Avenue, Suite 2000
Austin, Texas 78701
Tel/Fax: 512-865-7950

OF COUNSEL:

Alfred R. Fabricant (Admitted *Pro Hac Vice*)
NY Bar No. 2219392
Email: ffabricant@fabricantllp.com
Peter Lambrianakos (Admitted *Pro Hac Vice*)
NY Bar No. 2894392
Email: plambrianakos@fabricantllp.com
Vincent J. Rubino, III (Admitted *Pro Hac Vice*)
NY Bar No. 4557435
Email: vrubino@fabricantllp.com
Richard M. Cowell (Admitted *Pro Hac Vice*)
NY Bar No. 4617759
Email: rcowell@fabricantllp.com
FABRICANT LLP
411 Theodore Fremd Avenue,
Suite 206 South
Rye, New York 10580
Telephone: (212) 257-5797
Facsimile: (212) 257-5796

ATTORNEYS FOR PLAINTIFF
JAWBONE INNOVATIONS, LLC

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/s/ Qiuyi Wu

J. Stephen Ravel
Texas State Bar No. 16584975
steve.ravel@kellyhart.com
KELLY HART & HALLMAN LLP
303 Colorado, Suite 2000
Austin, Texas 78701
Telephone: (512) 495-6429
Facsimile: (512) 495-6401

Ricardo J. Bonilla
Texas Bar No. 24082704
rbonilla@fr.com
FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, TX 75201
Telephone: (214) 747-5070
Facsimile: (214) 747-2091

Benjamin C. Elacqua
Texas Bar No. 24055443
elacqua@fr.com
FISH & RICHARDSON P.C.
1221 McKinney Street, Suite 2800
Houston, Texas 77010
Telephone: (713) 654-5300
Facsimile: (713) 652-0109

Betty H. Chen
Texas Bar No. 24056720
bchen@fr.com
Katherine D. Prescott
(admitted *pro hac vice*)
CA Bar No. 215496
prescott@fr.com
Jeanel Sunga
(admitted *pro hac vice*)
sunga@fr.com
FISH & RICHARDSON P.C.
500 Arguello Street, Suite 400
Redwood City, CA 94063
Telephone: (650) 839-5067
Facsimile: (650) 839-5071

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