

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

ECOFACOR, INC.,

Plaintiff,

v.

ECOBEE, INC.,

Defendant.

Case No. 6:21-CV-00428-ADA

JURY TRIAL DEMANDED

SCHEDULING ORDER

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court ORDERS that the following schedule will govern deadlines up to and including the trial of this matter:

Deadline	Item
October 18, 2021	Plaintiff serves preliminary ¹ infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (i.e. the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
October 18, 2021	The Parties shall submit an agreed Scheduling Order. If the parties cannot agree, the parties shall submit a separate Joint Motion for entry of Scheduling Order briefly setting forth their respective positions on items where they cannot agree. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.

¹ The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served, and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

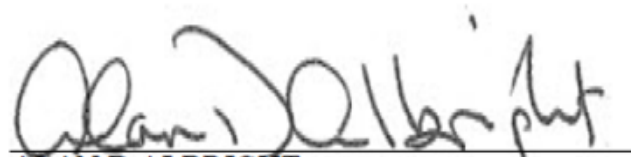
November 16, 2021	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions, and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s).
November 30, 2021	Parties exchange claim terms for construction.
December 14, 2021	Parties exchange proposed claim constructions.
December 21, 2021	Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall identify the scope of the topics for the witness's expected testimony. ² With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
January 4, 2022	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
January 11, 2022	Defendant files Opening claim construction brief, including any arguments that any claim terms are indefinite.
February 1, 2022	Plaintiff files Responsive claim construction brief.
February 15, 2022	Defendant files Reply claim construction brief.
March 1, 2022	Plaintiff files a Sur-Reply claim construction brief.
March 4, 2022	Parties submit Joint Claim Construction Statement. <i>See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).</i>
March 4, 2022	Parties submit optional technical tutorials to the Court and technical adviser (if appointed).
March 18, 2022	<i>Markman</i> Hearing at 10:30 a.m. This date is a placeholder and the Court may adjust this date as the <i>Markman</i> hearing approaches.
March 19, 2022	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
April 26, 2022	Deadline to add parties.
May 10, 2022	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any

² Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

	amendment to infringement or invalidity contentions. This deadline does not relieve the parties of their obligation to seasonably amend if new information is identified after initial contentions.
July 5, 2022	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.).
September 13, 2022	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's Law Clerk to arrange a teleconference with the Court to resolve the disputed issues.
October 11, 2022	Close of Fact Discovery.
October 18, 2022	Opening Expert Reports.
November 15, 2022	Rebuttal Expert Reports.
December 6 , 2022	Close of Expert Discovery.
December 13, 2022	Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
December 20, 2022	Dispositive motion deadline and <i>Daubert</i> motion deadline. See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).
January 10, 2023	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
January 24, 2023	Serve objections to pretrial disclosures/rebuttal disclosures.
January 31, 2023	Serve objections to rebuttal disclosures; file Motions <i>in limine</i> .
February 7, 2023	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i> .
February 14, 2023	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .

January 24, 2023	Parties email the Court's law clerk to confirm pretrial and trial dates.
February 23, 2023	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .
February 28, 2023	Final Pretrial Conference.
March 21, 2023 ³	Jury Selection/Trial.

SIGNED this 1st day of March, 2022.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

³ If the actual trial date materially differs from the Court's default schedule, the Court will consider reasonable amendments to the case schedule post-*Markman* that are consistent with the Court's default deadlines in light of the actual trial date.