

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCRAMOGE TECHNOLOGY,

Plaintiff,

v.

Case No.: 2:22-cv-10730
Hon. Gershwin A. Drain

VOLKSWAGEN GROUP OF
AMERICAS, INC.,

Defendant,

SCHEDULING ORDER

This is a patent case. Involved are United States Patent Nos. 10,546,685 (the “685 Patent”), 10, 193,392 (the “392 Patent”), 7,825,537 (the “537 Patent”), and 10,243,400 (the “400 Patent”). On September 6, 2022, the parties submitted their Rule 26(f) report. ECF No. 37. The parties appeared for a Scheduling Conference on September 12, 2022. At the conference, the Court set the following dates in this matter:

| YOU WILL RECEIVE NO FURTHER NOTICE OF THESE DATES | |
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| Rule 26(a)(i) disclosures due: | September 26, 2022 |
| Stipulated Protective Order: | September 26, 2022 |
| Defendant’s Motion to Stay due: | October 3, 2022 |
| Plaintiff serves preliminary infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the | October 11, 2022 |

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| 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. | |
| Parties shall meet and confer regarding the number of claim terms to be construed no later than: | October 18, 2022 |
| Plaintiff's Response to Defendant's Motion to Stay due: | October 18, 2022 |
| Defendant's Reply in support of Motion to Stay due: | October 26, 2022 |
| Defendant serves 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, and (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112. 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). | December 6, 2022 |
| Amendment of pleadings and joinder of additional parties: | December 20, 2022 |
| Exchange proposed claim terms to be construed: | December 20, 2022 |
| Exchange preliminary claim constructions and extrinsic evidence: ¹ | January 10, 2023 |

¹ 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

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| Deadline for first meet and confer to narrow terms in dispute and exchange revised list of terms/constructions: | January 17, 2023 |
| Defendant's Opening claim construction brief due, including any arguments that any claim terms are indefinite: | January 24, 2023 |
| Plaintiff's Responsive claim construction brief due: | February 14, 2023 |
| Defendant's Reply claim construction brief due: | February 28, 2023 |
| Plaintiff's Sur-Reply claim construction brief: | March 14, 2023 |
| <i>Markman</i> hearing: | TBD |
| Facilitation ² : | No later than April 8, 2024 |
| Fact Discovery Cutoff: | October 24, 2023 |
| Initial Expert Disclosures and Expert Reports due: | November 7, 2023 |
| Expert Rebuttal Reports due: | December 5, 2023 |
| Cutoff for Expert Discovery: | December 21, 2023 |
| Dispositive Motion Cutoff (including motions for summary judgment, <i>Daubert</i> motions, and motions to strike expert reports): | January 9, 2024 |
| Responses to Dispositive Motions due: | January 30, 2024 |
| Replies in support of dispositive motions due: | February 6, 2024 |
| Settlement Conference with Magistrate Judge Anthony P. Patti: | July of 2024 |
| Pretrial filings, including those | May 27, 2024 |

scope of the topics for the witness's expected testimony. Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party. 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.

² The parties shall submit a proposed order submitting the case to facilitation no later than November 1, 2023. The proposed order shall identify the name of the facilitator and the date set for the facilitation.

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| required pursuant to Rule 26(a)(3)(A): Witness lists Exhibit lists Deposition designations Proposed voir dire questions Proposed jury instructions Proposed verdict forms | |
| Objections, oppositions, and rebuttals to pretrial filings | June 10, 2024 |
| Objections to rebuttal pretrial filings Pre-trial motions, including in limine | June 17, 2024 |
| Oppositions to pre-trial motions, including in limine | June 24, 2024 |
| Final Pretrial Order due: | July 1, 2024 |
| Final Pretrial Conference: | July 15, 2024 at 2:00 p.m. |
| Jury Trial: | August 13, 2024 at 9:00 a.m. |
| Estimated Length of Trial: | 5-6 days |

- I. TIME.** Computation of time under this order and under any notice of any scheduling order or notice in this case shall be in conformity and accordance with Federal Rule of Civil Procedure 6(a).
- II. FILING OF PAPERS.** The Court requires strict compliance with Local Rule 5.1(a)(3). Therefore, any filings that fail to comply with the font requirements described in the rule will be immediately stricken. *See* E.D. Mich. L.R. 5.1(a)(3) (requiring filings to contain type size for all text and footnotes to “be no smaller than 10 and ½ characters per inch (non-proportional) or 14 point (proportional)).
- III. DISCOVERY.** Discovery shall be completed on or before the date set forth in the scheduling order. The court will not order discovery to take place subsequent to the discovery cutoff date. The discovery deadline may only be extended by filing a timely written motion with the court. Extensions or adjournments of all other dates will also only be considered upon the filing of a timely written motion for good cause shown. Local Rule 26.2 generally prohibits filing discovery materials with the Clerk. Violation of this rule may result in sanctions. The parties shall propose a separate order providing

stipulations regarding production of ESI, which is not to include email. The parties reserve the right, however, to later make a particularized request to the Court for email discovery if a unique need for such discovery arises. The parties shall work cooperatively on drafting a Stipulated Protective Order, which they shall submit pursuant to the schedule above.

IV. OTHER DISCOVERY ISSUES

Apart from the limits imposed by the Federal Rules of Civil Procedure, the limits discussed in Sections C and D, and the deadlines listed above, no other limits are imposed on discovery at this time.

(a) Expert Discovery:

A. The parties agree that testifying experts' drafts reports, notes, and outlines of draft reports shall not be subject to discovery in this case, nor shall any such drafts, notes, or outlines of draft reports that the testifying expert prepared in other cases be subject to discovery in this case.

Discovery of materials provided to testifying experts shall be limited to those materials, facts, consulting expert opinions, and other matters actually relied upon by the testifying expert in forming his or her final report, trial or deposition testimony, or any opinion in this case. No conversations or communications between counsel and any testifying will be subject to discovery unless the conversations or communications are relied upon by such experts in formulating opinions that are presented in reports, trial or deposition testimony in this case. Materials, communications, and other information exempt from discovery under this paragraph shall be treated as attorney-work product for the purposes of this litigation. This provision does not change the existing protections for expert discovery and exceptions thereto set forth in Fed. R. Civ. P. 26(b)(4).

(b) Authenticity:

For purposes of this case only, the parties agree that documents and source code produced by third-parties pursuant to a subpoena are presumptively authentic; to the extent that any party has a good faith basis to believe that a document produced by a third party is not authentic, it will give written notice to the other side and the parties will promptly meet and confer in an attempt to resolve the objection.

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