

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

BANDSPEED, LLC,

Plaintiff,

v.

REALTEK SEMICONDUCTOR
CORPORATION,

Defendant.

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CASE NO. 1:20-cv-00765-DAE

[PROPOSED] AGREED AMENDED SCHEDULING ORDER

The parties recommend that the following deadlines be entered in the scheduling order to control the course of this case:

1. The parties must mediate this case by November 15, 2023, and file a report in accordance with Rule 88 after the mediation is completed.
2. The parties asserting non-declaratory claims for relief shall submit a written offer of settlement to opposing parties by October 6, 2023, and each opposing party shall respond, in writing, by October 27, 2023. All offers of settlement are to be private, not filed.
3. The parties shall file all motions to join additional parties by March 28, 2024.
4. By September 5, 2024, Plaintiff will identify a narrowed set of asserted claims (no more than a total of 28 claims) from the claims asserted in Plaintiff’s Infringement Contentions.
5. By September 26, 2024, Defendant will identify a narrowed set of prior art grounds including no more than five (5) prior art grounds per asserted claim (from the prior art grounds asserted in Defendant’s Invalidity Contentions).¹

¹ Each allegedly anticipatory reference or obviousness combination of references shall count as a

6. With service of Pretrial Disclosures, Plaintiff will identify a final set of asserted claims (no more than twelve (12) asserted claims from the previously narrowed set of asserted claims).
7. Fourteen (14) days after the service of Pretrial Disclosures, Defendant will identify a final set of prior art grounds including no more than four (4) prior art grounds per asserted claim from the previously narrowed prior art grounds for the respective claim, each prior art ground asserted per claim counts toward the total asserted prior art grounds which shall not exceed 30.
8. In the contentions of the Parties included in the Joint Pretrial Order, the Plaintiff shall specify all allegedly infringed claims that will be asserted at trial. The Plaintiff shall also specify the nature of each theory of infringement, including under which subsections of 35 U.S.C. § 271 it alleges infringement, and whether the Plaintiff alleges divided infringement or infringement under the doctrine of equivalents. Each Defendant shall indicate the nature of each theory of invalidity applicable to each claim, including invalidity for anticipation, obviousness, subject-matter eligibility, written description, enablement, or any other basis for invalidity. The Defendant shall also specify each prior art ground(s) for each asserted claim upon which the Defendant shall rely at trial, with respect to each theory of invalidity. Other than as set forth in the above deadlines, the contentions of the Parties may not be amended, supplemented, or dropped without leave of the Court based upon a showing of good cause.

separate prior art “ground” for the purposes of this Order. For example, if Defendant selects reference A as an anticipating reference, references A+ B as an obviousness combination, and references A + B + D as an obviousness combination, this selection would constitute three (3) prior art “grounds” for the purposes of this Order. For the purposes of this Order, a single prior art system shall count as a “reference.” For the purpose of clarity, a single anticipatory reference and an assertion of obviousness based on the same single reference (both directed to the same claim) will be considered a single ground.

9. The parties shall complete all discovery on or before August 26, 2024. Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.
10. All parties with the initial burden of proof shall exchange opening expert reports (all materials required by Fed. R. Civ. P. 26(a)(2)(B)) by September 26, 2024. Parties will exchange rebuttal expert reports (all materials required by Fed. R. Civ. P. 26(a)(2)(B)) by November 7, 2024. All designations of rebuttal experts shall be designated within 28 days of receipt of the report of the opposing expert.
11. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within 30 days of receipt of the written report of the expert's proposed testimony, or within 30 days of the expert's deposition, if a deposition is taken, whichever is later.
12. The parties shall complete all expert discovery on or before December 13, 2024.
13. All dispositive motions shall be filed no later than January 31, 2025. Dispositive motions as defined in Local Rule CV-7(c) and responses to dispositive motions as defined in Local Rule CV-7(d) shall be limited to twenty (20) pages in length. Replies, if any, shall be limited to ten (10) pages in length in accordance with Local Rule CV-7(e). **If the parties elect not to file dispositive motions, they must contact the courtroom deputy on or before this deadline in order to set a trial date.**
14. If required, a hearing on dispositive motions will be set by the Court after all responses and replies have been filed.

15. The Court will set this case for trial by separate order. The order will establish trial type deadlines to include pretrial matters pursuant to Local Rule CV-16(e)-(g).
16. All of the parties who have appeared in the action conferred concerning the contents of the proposed scheduling order on October 20, 2023, and the parties have agreed as to its contents.

SIGNED this _____, day of _____, 2023.

THE HONORABLE DAVID A. EZRA
UNITED STATES DISTRICT JUDGE

Dated: October 20, 2023

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Dated: October 20, 2023

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