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

STRATOSAUDIO INC., Plaintiff, v. HYUNDAI MOTOR AMERICA, Defendant.	Case No. 6:20-CV-01125-ADA **JURY TRIAL DEMANDED**
STRATOSAUDIO INC., Plaintiff, v. MAZDA MOTORS OF AMERICA, INC., Defendant.	Case No. 6:20-cv-1126-ADA **JURY TRIAL DEMANDED**
STRATOSAUDIO INC., Plaintiff, v. SUBARU OF AMERICA, INC. Defendant.	Case No. 6:20-cv-1128-ADA **JURY TRIAL DEMANDED**
STRATOSAUDIO INC., Plaintiff, v. VOLVO CARS USA, LLC, Defendant.	Case No. 6:20-cv-1129-ADA **JURY TRIAL DEMANDED**
STRATOSAUDIO INC., Plaintiff, v. VOLKSWAGEN GROUP OF AMERICA, INC., Defendant.	Case No. 6:20-CV-01131-ADA **JURY TRIAL DEMANDED**

JOINT MOTION FOR ENTRY OF DISPUTED SCHEDULING ORDERS

On May 4, 2021, the Court informed the parties that because there were no pre-*Markman* issues raised in the parties' Joint Case Readiness Status Report, the May 13, 2021 Rule 16 Case Management Conference ("CMC") was vacated and the CMC would be deemed to have been held for calendaring purposes only. The Court set the following case deadlines:

1. CMC: Deemed to have occurred on 5/13/2021 (Plaintiff shall also have until this date to serve its preliminary infringement contentions)
2. Markman: 10/4/2021 at 9:30 (1.5 hours)
3. Estimated trial date: 10/3/2022

After meeting and conferring, the parties reached agreement on all remaining case deadlines except for the deadline for Defendants to serve their preliminary invalidity contentions. Pursuant to the Court's Order Governing Proceedings in Patent Cases, the parties provide below their competing positions on this dispute, followed by the competing case schedules. The parties respectfully request that the Court resolve this dispute and enter an appropriate schedule for the remainder of the case.[1]

PLAINTIFF'S POSITION:

The dispute here is whether the Court should apply its standing Order and set Defendants' deadline for invalidity contentions seven weeks after the date the CMC was deemed

[1] Defendants Volkswagen Group of America, Inc. ("VW") and Hyundai Motor America ("HMA") believe a scheduling order should not be entered at this time, and this litigation should not go forward in this Court, unless and until the Court rules on their respective motions to dismiss for improper venue. VW and HMA join this motion only because they brought these concerns to the Court, and the Court stated on May 17, 2021 via email: "The Court will not stay the cases pending rulings on the motions to dismiss/transfer. Pursuant to the Court's Standing Order Regarding Motion(s) for Inter-District Transfer, the Court will rule on these motions before Markman hearing."

to have occurred, as Plaintiffs contend, or whether the Court should postpone invalidity contentions pending certain e-mail discovery, as Defendants contend. The Court should adopt Plaintiff's proposal.

Plaintiff's proposal is simple. It sets July 1, 2021 as the deadline for preliminary invalidity contentions. That date is seven (7) weeks after May 13, 2021, the date the CMC was deemed to have occurred, which is consistent with the Court's standard schedule for patent cases.

Defendants proposal is open-ended. Specifically, Defendants ask the Court to set the deadline for preliminary invalidity contentions to be "[e]ight weeks after Plaintiff 'identif[ies] the priority date (i.e. the earliest date of invention) for each asserted claim and produce[s]: (1) all documents evidencing conception and reduction to practice for each claimed invention,' to the extent that Plaintiff intends to rely on those documents in this case to prove conception or reduction to practice." This proposal suggests Plaintiffs have not yet given Defendants this information, but that is inaccurate: Plaintiff StratosAudio Inc. ("Stratos") has given Defendants all the information it is currently able to provide.

As for priority dates, Stratos gave Defendants the earliest effective filing date for each asserted patent with its infringement contentions. (*See* Ex. A, p.3). As for the earliest date of invention, Stratos told Defendants that, based on currently available evidence, Stratos believes that date to be November 19, 1999. (*See* Ex. B). Stratos has thus given Defendants the entire range of dates it could reasonably claim as its invention date, from the earliest possible date (the date of conception) to the latest (the effective filing date).[2]

As for documents evidencing conception and reduction to practice, Stratos gave Defendants all the documents it was able to locate after a reasonably diligent search. Indeed,

[2] At this time, Stratos does not claim a reduction to practice prior to its effective filing dates.

Stratos produced over 100,000 pages of documents with its initial contentions, including inventor notebooks evidencing conception.

Stratos has not yet produced one category of documents it is aware of that *may* support its conception date: archival e-mail records. But that is not because Stratos refuses to produce these records, it is because ***Stratos is currently unable to do so***. These email records are not recent emails managed by a modern email system. Rather, as Stratos disclosed to Defendants in its infringement contentions, Stratos is in possession of certain old, archival copies of e-mails that it believes date from around the year 2000. As Stratos explained to Defendants in a subsequent meet and confer, these e-mails records are stored on archival systems that are no longer in use, and that are difficult to access and process for production. As a result, and despite Stratos' diligent efforts to extract these email records, Plaintiff's counsel currently does not have a copy of these e-mail records in its possession. If Stratos is able to extract these records, counsel will run keyword searches and produce any non-privileged search results. Stratos asked Defendants to provide a list of the keywords they wanted Stratos to search, but Defendants refused. Stratos also asked Defendants to confirm they would similarly run keyword searches on their own e-mails, but Defendants refused. Despite Defendants' lack of cooperation, Stratos will take unilateral efforts to search and produce these e-mail records as soon as practically possible.

Stratos' continuing effort to search and produce its archival e-mail records should not delay Defendants' preparation of their *preliminary* invalidity contentions, for two reasons. First, Defendants have the full range of dates Stratos may claim for its invention date, and Defendants have evidence corroborating those dates in the form of inventor notebooks. This means Defendants have everything they need to evaluate the prior art and provide preliminary contentions. Notably, Defendants have not identified any piece of prior art they are unable to

evaluate based on the current record. Second, this Court's rules already contemplate that the parties may supplement their contentions without leave based on material produced after preliminary contentions are served, so there is no possible prejudice to Defendants. Indeed, these e-mail records are no different from any other routine discovery parties take relating to conception, such as depositions. Stratos does not read this Court's rules as requiring *all* conception-related discovery to take place prior to service of *preliminary* contentions.

Because Stratos has sufficiently disclosed its position to Defendants, Stratos respectfully requests that the Court set July 1, 2021 as the deadline for preliminary invalidity contentions.

DEFENDANT'S POSITION

The only disputed date is the deadline for Defendants' invalidity contentions, which Defendants contend should be eight weeks after Plaintiff properly complies with the deadline for Preliminary Infringement Contentions ("PICs"). Here, the Court's Order Governing Proceedings ("OGP") required Plaintiff's PICs (due May 13, 2021) to "identify the 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 . . . ." OGP, ¶ 2 (emphasis added). Plaintiff admittedly disregarded both requirements, which has caused significant prejudice to Defendants' ability to prepare invalidity contentions, as explained in further detail below.

Setting aside Plaintiff's disregard for the OGP, Plaintiff's proposed deadline of July 1 for invalidity contentions is unreasonable. The OGP contemplates that invalidity contentions are due eight weeks after the deadline for PICs, which would be July 8 (Plaintiff's calculation of seven weeks is based on a model order in which PICs are due a week before the CMC, which did not occur here). There is no cause to shorten the deadline, particularly because these cases

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.