

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MASIMO CORPORATION,
Plaintiff,
v.
SOTERA WIRELESS; HON HAI
PRECISION INDUSTRY CO., LTD.,
Defendants.

Case No.: 19cv1100-BAS (NLS)

**CASE MANAGEMENT ORDER
REGULATING DISCOVERY AND
OTHER PRETRIAL PROCEEDINGS
IN A PATENT CASE**

On December 4, 2019, the Court held an Early Neutral Evaluation Conference. The case did not settle. Immediately after, the Court held a Case Management Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure and the Patent Local Rules. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, **IT IS ORDERED:**

1. Initial disclosures pursuant to Rule 26(a)(1)(A-D) must occur by **December 18, 2019**.
2. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed by **February 3, 2020**.
3. By **January 24, 2020**, each party claiming patent infringement must separately serve on all parties a Disclosure of Asserted Claims and Preliminary

1 Infringement pursuant to Patent L.R. 3.1 and produce documents as required by Patent
2 L.R. 3.2.

3 4. By **March 20, 2020**, each party opposing a claim of infringement must serve
4 Invalidity Contentions pursuant to Patent L.R. 3.3 and produce documents as required by
5 Patent L.R. 3.4.

6 5. By **April 3, 2020**, the parties must exchange Preliminary Claim
7 Constructions pursuant to Patent L.R. 4.1(a) and identify extrinsic evidence as required
8 by Patent L.R. 4.1(b).

9 6. By **April 17, 2020**, the parties must exchange Responsive Claim
10 Constructions pursuant to Patent L.R. 4.1(c) and identify extrinsic evidence as required
11 by Patent L.R. 4.1(d).

12 7. By **May 1, 2020**, parties must complete and file a Joint Claim Construction
13 Chart, Joint Claim Construction Worksheet, and Joint Hearing Statement pursuant to
14 Patent L.R. 4.2.

15 8. The deadline for filing, as of right, Amended Infringement Contentions by a
16 party claiming infringement is **May 1, 2020**. See Patent L.R. 3.6(a).

17 9. All discovery intended for use in the Claim Construction Hearing must be
18 completed by **May 29, 2020**. See Patent L.R. 4.3.

19 10. The deadline for filing, as of right, Amended Invalidity Contentions by the
20 party opposing infringement is **May 29, 2020**. See Patent L.R. 3.6(b).

21 11. By **June 12, 2020**, the parties must file simultaneously their Opening Claim
22 Construction Briefs. See Patent L.R. 4.4(a).

23 12. By **June 26, 2020**, the parties must file simultaneously their Responsive
24 Claim Construction Briefs. See Patent L.R. 4.4(b).

25 13. The Claim Construction and tutorial hearing will be held **July 28, 2020**, at
26 **10:00 a.m.** before Judge Cynthia Bashant. See Patent L.R. 4.5.

27 14. Not later than **thirty (30) days** after the filing of the Claim Construction
28 Order, any party relying upon advice of counsel as part of a patent-related claim or

1 defense for any reason must make the disclosures required by Patent L.R. 3.7.

2 15. A party asserting infringement must serve final amended infringement
3 contentions, within the meaning of Patent L.R. 3.6(a)(1), not later than **thirty (30) days**
4 after service of the Court's Claim Construction Ruling.

5 16. A party opposing a claim of infringement must serve final amended
6 invalidity contentions, within the meaning of Patent L.R. 3.6(b)(2), not later than **fifty**
7 **(50) days** after service of the Court's Claim Construction ruling.

8 17. The initial date for the substantial completion of document discovery
9 including electronically stored information ("ESI") is **October 16, 2020**. See Patent L.R.
10 2.1(a)(1).

11 18. All fact discovery must be completed by all parties by **December 17, 2020**.
12 Please refer to Paragraph 20 for rules regarding discovery.

13 19. All expert disclosures required by Fed. R. Civ. P. 26(a)(2) must be served on
14 all parties by **January 19, 2021**. Any contradictory or rebuttal disclosures within the
15 meaning of Rule 26(a)(2)(D)(ii) must be disclosed by **February 16, 2021**.

16 20. Unless otherwise stipulated by the parties, the required expert disclosures
17 must include an expert report as required by Rule 26(a)(2)(B), by **January 19, 2021**.
18 Any party must supplement its disclosure regarding contradictory or rebuttal evidence
19 under Rule 26(a)(2)(C), by **February 15, 2021**.

20 21. All expert discovery must be completed by all parties by **March 9, 2021**.
21 "Completed" means that interrogatories, requests for production, and other discovery
22 requests must be served at least thirty (30) days prior to the established cutoff date so that
23 response thereto will be due by the cutoff date. All subpoenas issued for discovery must
24 be returnable by the discovery cutoff date. All disputes concerning discovery must be
25 brought the attention of the Magistrate Judge no later than forty-five (45) days following
26 the date upon which the event giving rise to the dispute occurred. Counsel are required to
27 meet and confer regarding all discovery disputes pursuant to the requirements of Local
28 Rule 26.1(a). Counsel are to comply with the chambers rules of the Magistrate Judge in

1 bringing discovery disputes before the court.

2 22. All other dispositive motions, other than motions to amend or join parties, or
3 motions *in limine*, must be FILED by **April 6, 2021**. Please be advised that counsel for
4 the moving party must obtain a motion hearing date from the law clerk of the judge who
5 will hear the motion. **Be advised that the period of time between the date you request**
6 **a motion date and the hearing date may be up to sixty (60) days. Please plan**
7 **accordingly.** Failure of counsel to timely request a motion date may result in the motion

8 not being heard. Motions in Limine are to be filed as directed by Judge Cynthia Bashant.

9 Any Daubert motions shall be filed along with motions for summary judgment
10 unless no motions for summary judgment will be filed, in which case the parties may file
11 Daubert motions along with motions in limine.

12 23. Briefs or memoranda in support of or in opposition to any pending motion
13 must not exceed twenty-five (25) pages in length without permission of the judge or
14 magistrate judge who will hear the motion. No reply memorandum must exceed ten (10)
15 pages without leave of the judge or magistrate judge who will hear the motion.

16 24. Pursuant to Local Rule 7.1.f.3.c, **if an opposing party fails to file**
17 **opposition papers in the time and manner required by Local Rule 7.1.e.2, that**
18 **failure may constitute a consent to the granting of a motion or other request for**
19 **ruling by the Court.** Accordingly, all parties are ordered to abide by the terms of Local
20 Rule 7.1.e.2 or otherwise face the prospect of any pretrial motion being granted as an
21 unopposed motion pursuant to Local Rule 7.1.f.3.c.

22 25. A Mandatory Settlement Conference will be conducted on **June 23, 2021**, at
23 **9:30 a.m.** Counsel or any party representing himself or herself shall submit confidential
24 settlement briefs directly to chambers no later than **June 16, 2021**. The court may
25 schedule additional settlement conference(s) at the parties' request.

26 26. All parties are ordered to read and fully comply with the assigned magistrate
27 judge's Chambers Rules regarding settlement conference submissions and attendance.
28 Please also refer to Patent Local Rule 2.1.c for other pertinent rules and deadlines

1 associated with the settlement conference.

2 27. In order to identify the claims to be tried and eliminate delay and surprise at
3 trial, the Court enters the following pretrial order pursuant to Fed. R. Civ. P. 16.

4 28. Parties are excused from the requirement of Local Rule 16.1(f)(2)(a); no
5 Memoranda of Law or Contentions of Fact are to be filed.

6 1. All parties or their counsel must fully comply with the Pretrial Disclosure
7 requirements of Fed. R. Civ. P. 26(a)(3) by **May 24, 2021**. **Please be advised that**
8 **failure to comply with this section or any other discovery order of the Court may**
9 **result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on**
10 **the introduction of experts or other designated matters in evidence.**

11 29. Pursuant to Local Civil Rule 16.1(f)(4), by **June 14, 2021**, the parties must
12 meet and confer to comply with the provisions of that section and prepare a proposed
13 pretrial order in accordance with Local Rule 16.1(f)(6)(c), and containing the following:

14 a. A joint neutral statement to be read to the jury, not in excess of one
15 page, of the nature of the case and the claims and defenses.

16 b. A list of the causes of action to be tried, referenced to the Complaint
17 [and Counterclaim if applicable]. For each cause of action, the order must succinctly list
18 the elements of the claim, damages and any defenses. A cause of action in the Complaint
19 [and/or Counterclaim] which is not listed must be dismissed with prejudice.

20 c. A list, in alphabetical order, of:

21 i. Each witness counsel actually expect to call at trial with a brief
22 statement, not exceeding four sentences, of the substance of the
23 witnesses' testimony.

24 ii. Each expert witness counsel actually expect to call at trial with
25 a brief statement, not exceeding four sentences, of the substance
26 of the expert witnesses' testimony.

27 iii. Additional witnesses, including experts, counsel do not expect
28 to call at this time but reserve the right to call at trial along with

1 a brief statement, not exceeding four sentences, of the substance
2 of the witnesses' testimony.

3 d. A list of:

- 4 i. All exhibits that counsel actually expect to offer at trial with a
5 one-sentence description of the exhibit. All exhibits are to be
6 identified numerically, plaintiff starting with "1" and defendant
7 beginning with an agreed upon numerical designation.
8 ii. All other exhibits that counsel do not expect to offer at this time
9 but reserve the right to offer if necessary at trial with a one-
10 sentence description of the exhibit.

11 e. A statement of all facts to which the parties stipulate. This statement
12 must be on a separate page and will be read to and provided to the jury.

13 f. A list of all deposition transcripts by page and line, or videotape
14 depositions by section, that will be offered at trial.

15 g. Counsel will note any objections they have to any other parties' Fed.
16 R. Civ. P. 26 (a)(3) Pretrial Disclosures.

17 The Court encourages the parties to consult with the assigned magistrate judge to
18 work out any problems in preparation of the proposed pretrial order. Judge Cynthia
19 Bashant will entertain any questions concerning the conduct of the trial at the pretrial
20 conference.

21 30. Counsel for plaintiff will be responsible for preparing the pretrial order and
22 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f)(6)(a). By **June**
23 **28, 2021**, plaintiff's counsel must provide opposing counsel with the proposed pretrial
24 order for review and approval. Opposing counsel must communicate promptly with
25 plaintiff's attorney concerning any objections to form or content of the pretrial order, and
26 both parties should attempt promptly to resolve their differences, if any, concerning the
27 order.

28 31. The proposed final pretrial conference order, including objections counsel

1 have to any other party's Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures must be prepared,
2 served and lodged with Judge Cynthia Bashant chambers by **July 12, 2021**, and must be
3 in the form prescribed in and in compliance with Local Rule 16.1(f)(6)(c). Counsel must
4 also bring a court copy of the pretrial order to the pretrial conference.

5 32. The final pretrial conference will be held before the Honorable Cynthia
6 Bashant, United States District Court Judge, on **July 26, 2021** at **11:00 a.m.**

7 33. All motions *in limine* are due no later than **August 9, 2021**.

8 34. All responses to the motions *in limine* are due no later than **August 23,**
9 **2021.**

10 35. The parties shall submit the following no later than **August 23, 2021**: (1)
11 joint proposed jury instructions; (2) proposed verdict form; (3) *voir dire* questions; and
12 (4) statement of the case.

13 36. The parties shall exchange final exhibit and witness lists no later than
14 **September 14, 2021.**

15 37. A hearing for motions *in limine* is scheduled for Monday, **September 13,**
16 **2021** at **10:30 am.**

17 38. The trial in this matter shall commence on Tuesday, **September 21, 2021** at
18 **9:00 am.**

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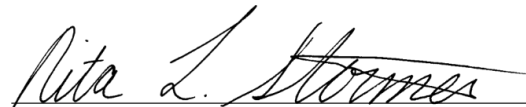
1 39. The court directs the parties to review the chambers' rules for the assigned
2 district judge and magistrate judge.

3 40. The dates and times set forth here will not be modified except for good
4 cause shown.

5 41. Plaintiff's counsel must serve a copy of this order on all parties that enter
6 this case hereafter.

7 **IT IS SO ORDERED.**

8 Dated: December 9, 2019



Hon. Nita L. Stormes
United States Magistrate Judge