

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

CAMELBAK PRODUCTS, LLC

PLAINTIFF

V.

CASE NO. 5:21-CV-5109

ZAK DESIGNS, INC.

DEFENDANT

CASE MANAGEMENT ORDER

After a review of the parties' Rule 26(f) Joint Report and pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED:

1. TRIAL SET DURING THE COURT'S JUNE 26, 2023 TRIAL TERM

The trial of this matter is scheduled for a **JURY TRIAL** in **FAYETTEVILLE, ARKANSAS**, at the call of the Court during a **One Week Trial Term which begins on JUNE 26, 2023 at 9:00 a.m.** The case may be called up and tried at any point during the term; however, a more precise starting date will be set as the trial term approaches.

The case will be tried to an **eight (8)** person jury—unanimous verdict required. Counsel are directed to report to **the Fifth-floor Courtroom by no later than 8:30 a.m.** on the first day of trial unless otherwise notified.

2. FINAL PRE-TRIAL CONFERENCE

A Final Pre-Trial Conference shall be conducted pursuant to the provisions of Rule 16(e) on **JUNE 19, 2023, beginning at 9:00 a.m.**

3. CLAIM CONSTRUCTION HEARING

A claim construction hearing is scheduled for **December 2, 2022, beginning at 9:00 a.m.**

4. AMENDMENT OF PLEADINGS

Leave to amend pleadings and/or to add or substitute parties shall be sought no later than **SEPTEMBER 27, 2022**.

5. DISCOVERY

Discovery will be conducted in two phases, as set forth below. Pursuant to the Parties' agreement, the Court adopts the Northern District of California's Patent Local Rules ("P.L.R.") for purposes of this matter, with slight adjustments to the P.L.R. deadlines to accommodate the Court's schedule.

PHASE I - Claim Construction and Liability Facts

- Deadline to serve Disclosure of Asserted Claims and Infringement Contentions and production of documents in support: **JULY 13, 2022** (P.L.R. 3-1 & 3-2)
- Deadline to serve Invalidity Contentions and productions of documents in support: **AUGUST 12, 2022** (P.L.R. 3-3 & 3-4)
- Deadline for Parties to exchange proposed terms for construction: **AUGUST 26, 2022** (P.L.R. 4-1)
- Deadline for Parties to exchange preliminary proposed claim constructions: **SEPTEMBER 9, 2022** (P.L.R. 4-2)
- Deadline to serve opening damages contentions: **SEPTEMBER 29, 2022** (P.L.R. 3-8)
- Deadline for Parties to file Joint Claim Construction and Prehearing Statement: **OCTOBER 3, 2022** (P.L.R. 4-3)
- Deadline for claim construction expert witness disclosures: **OCTOBER 3, 2022** (P.L.R. 4-3)
- Deadline to complete all discovery relating to claim construction, including depositions and expert witness discovery: **OCTOBER 24, 2022** (P.L.R. 4-4)

- Deadline to serve responsive damages contentions: **OCTOBER 28, 2022** (P.L.R. 3-9)
- Deadline for Plaintiff to file opening claim construction brief and all supporting evidence: **OCTOBER 31, 2022** (P.L.R. 4-5(a))
- Deadline for Defendant to file responsive claim construction brief and all supporting evidence: **NOVEMBER 14, 2022** (P.L.R. 4-5(b))
- Deadline for Plaintiff to file reply brief in support of opening claim construction brief: **NOVEMBER 21, 2022** (P.L.R. 4-5(c))
- Claim Construction Hearing (if necessary): **DECEMBER 2, 2022, at 9:00 a.m.** (P.L.R. 4-6)
- Deadline to provide advice of counsel disclosures: **30 days after Claim Construction Ruling** (P.L.R. 3-7)

PHASE II - Residual Discovery

- Deadline for trial expert (initial) disclosures: **JANUARY 24, 2023**
- Deadline for trial expert (rebuttal) disclosures: **FEBRUARY 24, 2023**
- Final discovery deadline: **MARCH 17, 2023**

The parties may conduct discovery beyond the final discovery deadline if all parties are in agreement to do so. To avoid later misunderstandings, such agreements should be reduced to a writing which describes the type, scope, and length of the extended period of discovery. That said, the Court will not resolve any disputes which may arise in the course of extended discovery.

All discovery requests must be propounded sufficiently in advance of the discovery deadline to allow for a timely response. Witnesses and exhibits not identified and produced in response to Rule 26(a)(1) Initial Disclosures, and/or in response to subsequent discovery requests, may not be used at trial except in extraordinary circumstances. The

Court will not grant a continuance because a party does not have time in which to depose a lay or expert witness.

6. TRIAL EXPERT DISCLOSURES

The deadline to provide trial expert witness disclosures and written reports pursuant to Rule 26(a)(2) is **JANUARY 24, 2023**. The deadline to provide disclosures and reports of rebuttal experts (*i.e.* whose testimony will be offered solely to contradict or rebut the expert opinions offered by an opposing expert) is **FEBRUARY 24, 2023**.

7. MOTION DEADLINES

(a) **Summary Judgment.** The deadline to file dispositive motions is **MARCH 24, 2023**.

(b) **Daubert.** If applicable, *Daubert* and related expert disqualification motions should be filed no later than **MARCH 24, 2023**.

(c) **Discovery Motions.** Prior to filing a discovery motion the parties must (i) engage in a substantive good faith effort to amicably resolve the dispute without court intervention (to include at least one verbal discussion), and then, if necessary, (ii) the parties must schedule a conference call with the Court to discuss the dispute. In the event a discovery dispute cannot be informally resolved by the Court, then a formal motion must be filed sufficiently in advance of the discovery deadline to allow for a proper response time under the rules. The length of any such motions and supporting memorandum shall not exceed ten (10) pages in length (excluding exhibits). A response to a discovery motion, with the same page limitations, should be promptly filed.

(d) **Motions in Limine** must be filed on or before **JUNE 5, 2023**. Responses must be filed within seven (7) days thereafter. Motions submitted after the deadline may be denied solely on that ground. Briefs in Support of such motions and responses shall not exceed three (3) pages per ruling sought, except on leave of Court for good cause shown.

8. MEMORANDUM BRIEFS

Page limits for discovery motions and liminal motions are noted above. Memorandum briefs filed in support or in response to other types of motions must not exceed **twenty-five (25) pages** in length, without leave of court and for good cause shown. Over-length briefs filed without advance leave may be stricken *sua sponte*. Reply briefs require leave of Court, except with respect to motions for summary judgment. Reply briefs must not exceed **seven (7) pages** in length.

9. SETTLEMENT CONFERENCE

The parties are ordered to attend a Settlement Conference with Magistrate Judge Christy D. Comstock by no later than **MAY 22, 2023**. The exact date will be set by separate order.¹

¹By motion, for good cause shown, the parties may request to be excused from this requirement. "Good cause" will be established by a statement that the posture of the case is such that the parties believe settlement efforts would be futile and the parties intend to proceed to trial as scheduled.

10. PRETRIAL DISCLOSURE SHEET

Pursuant to the provisions of Rule 26(a)(3), the parties shall simultaneously file Pretrial Disclosures on **MAY 22, 2023**, in a form consistent with the outline contained in Local Rule 26.2.

11. DEPOSITIONS TO BE USED AT TRIAL PURSUANT TO RULE 32²

The proffering party must designate the pertinent portions of a deposition to be used as evidence at trial by **MAY 22, 2023**. The opposing party must then provide notice of objections and/or counter-designations by **MAY 29, 2023**. These designations and objections should not be filed with the Court, but rather exchanged by the parties. The parties shall then confer in good faith to resolve any objections to designations.

Any unresolved objections shall be made by a joint written motion filed no later than **JUNE 5, 2023**. Instructions for preparing the joint motion and the form to be used are posted on the Court's website at <http://www.arwd.uscourts.gov/judge-brooks-forms>. Objections will be resolved during the Final Pre-Trial Conference.

12. JURY INSTRUCTIONS

The parties must confer in advance regarding proposed jury instructions in an attempt to narrow areas of disagreement. The parties shall jointly submit a single agreed set of proposed instructions (clearly marked "AGREED") to Chambers on or before **JUNE 12, 2023**. Proposed verdict forms should be submitted as well. Counsel should use model instructions whenever possible from the Eighth Circuit, AMLI, or Federal Jury Practice and

²Depositions to be used solely for impeachment are not contemplated by the requirements of this paragraph.

Instructions (5th Edition), as applicable, and should note the source and/or basis of the instruction at the end of each instruction.

If the parties cannot agree to a particular instruction(s), the party requesting a disputed instruction must submit it to the Court and to opposing counsel by the same date Agreed Instructions are due. Such instructions should be clearly marked as “[Plaintiff’s/Defendant’s] DISPUTED Instruction No. ____.” The legal basis for the instruction and brief description of the parties’ disagreement shall be provided with the instruction (either in the space below the form of the instruction or attached on a separate page).

The parties should follow the same process to submit “agreed” and “disputed” proposed verdict forms. Agreed and disputed instructions/verdict forms should be submitted electronically in WordPerfect or Word format to tlbinfo@arwd.uscourts.gov.

13. STATEMENT OF THE CASE

Each party must submit via email by **JUNE 12, 2023** a concise non-argumentative statement/overview of the case, *no more than one double spaced page in length*, that it proposes the Court to read to the venire panel.

14. STIPULATIONS

The parties should stipulate in writing to the facts not in controversy and provide the same to the Court via email by no later than **JUNE 12, 2023**. Stipulations will be marked and received as a joint exhibit, and may be read/shown to the jury at an appropriate time(s) during the trial. The parties are encouraged to use stipulations as a means of establishing

the chronology of significant events, and to otherwise narrow and simplify fact issues submitted to the jury.

15. WITNESS AND EXHIBIT LISTS

Each party shall submit “final” witness and exhibit lists to the Court by no later than **JUNE 12, 2023**. The lists should be in the format as posted on the Court’s website at <http://www.arwd.uscourts.gov/judge-brooks-forms>. Witnesses shall be grouped together under headings indicating whether they “will be called” or merely “may be called” to testify.

Trial Exhibits must be identified, numbered, provided, and made available to opposing counsel in advance of the deadline. Counsel must then review and confer for the purpose of identifying any exhibits to which agreement or objections are contemplated. The final numbered exhibit list provided to the Court should therefore indicate—for each applicable exhibit—whether opposing counsel intends to “agree” (subject to proponent laying proper foundation) or “object” to its introduction. Prior to trial, the parties shall further confer and identify which, if any, of the agreed exhibits may be stipulated into evidence *in mass* at the beginning of the trial. Please promptly notify the Court via email as to which exhibits will be received in this manner.

Each party shall provide a notebook of its final proposed exhibits(numbered, indexed, and tabbed) to Chambers by no later than **JUNE 19, 2023**.

16. DEADLINES

The deadlines set forth above are firm. Extensions and/or continuances will not be considered absent very compelling circumstances.

17. SUMMARY TABLE AND FORMS

A table summarizing the deadlines is attached. In the event of a discrepancy between this Order and the summary table, the deadline set forth in the Order is controlling. The forms are available for download on the Court's public website - <http://www.arwd.uscourts.gov/judge-brooks-forms>.

18. COMMUNICATION WITH COURT REGARDING TRIAL OR SETTLEMENT

Settlements should be immediately reported to the Court.³ Please communicate any late developing settlement or problems/issues (*i.e.* over the weekend prior to trial) to the Courtroom Deputy, Sheri Craig, at (479) 695-4460 or tlbinfo@arwd.uscourts.gov. If notice of settlement is received after **1:00 p.m. on JUNE 23, 2023**, the parties will be assessed any costs associated with the Court's inability to timely recall the jury panel from reporting. The parties are further advised that the case will not be removed from the trial docket until an order of dismissal has been entered.

IT IS SO ORDERED this 29th day of June, 2022.



TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE

³This is especially true when there are ripe motions pending. Prompt notification is also of great help to the Court in the management of remaining cases set for a given trial term.

DATES AND DEADLINES
(not inclusive of all deadlines in Order)

HEARINGS AND TRIAL DATE	
CLAIM CONSTRUCTION HEARING (if necessary)	12/2/22
FINAL PRE-TRIAL CONFERENCE	6/19/23
TRIAL DATE (One Week Trial Term beginning on)	6/26/23
DISCOVERY	
AMEND PLEADINGS/ADD OR SUBSTITUTE PARTIES	9/27/22
CLAIM CONSTRUCTION DISCOVERY DEADLINE	10/24/22
TRIAL EXPERT WITNESS DISCLOSURES/REPORTS	1/24/23
REBUTTAL TRIAL EXPERT WITNESS DISCLOSURES/REPORTS	2/24/23
FINAL DISCOVERY DEADLINE	3/17/23
MOTIONS	
DISPOSITIVE MOTIONS	3/24/23
DAUBERT AND RELATED MOTIONS REGARDING EXPERT OPINION TESTIMONY (if applicable)	3/24/23
SETTLEMENT CONFERENCE	
SETTLEMENT CONFERENCE (to be separately scheduled no later than)	5/22/23
FINAL TRIAL PREPARATIONS	
PRETRIAL DISCLOSURES (per format of Local Rule 26.2)	5/22/23
MOTIONS IN LIMINE	6/5/23
DEPOSITION DESIGNATIONS (exchanged)	5/22/23
DEPOSITION COUNTER-DESIGNATIONS (exchanged)	5/29/23
JOINT MOTION TO EXCLUDE DEPOSITION TESTIMONY	6/5/23
JURY INSTRUCTIONS (submitted to the Court via email)	6/12/23
STATEMENT OF THE CASE (submitted to the Court via email)	6/12/23
STIPULATIONS (submitted to the Court via email)	6/12/23
WITNESS AND EXHIBIT LISTS (submitted to the Court via email)	6/12/23
EXHIBITS NOTEBOOK (INDEXED AND TABBED) TO CHAMBERS	6/19/23