

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

MULLEN INDUSTRIES LLC,

*Plaintiff,*

v.

APPLE INC.,

*Defendant.*

Case No. 6:22-cv-00145-ADA

**JURY TRIAL DEMANDED**

**AGREED SCHEDULING ORDER**

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court ORDERS that the following schedule will govern deadlines up to and including the trial of this matter:

| <b>Deadline</b> | <b>Item</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 6, 2022     | Plaintiff serves preliminary <sup>1</sup> infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date ( <i>i.e.</i> 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.                                                                                                                                                                   |
| May 27, 2022    | The Parties shall submit an agreed Scheduling Order. If the parties cannot agree, the parties shall submit a separate Joint Motion for entry of Scheduling Order briefly setting forth their respective positions on items where they cannot agree. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.                                                                                                                                                                                                                                                                               |
| July 12, 2022   | Defendant serves preliminary 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, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. 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). |
| July 19, 2022   | Parties exchange claim terms for construction.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| August 2, 2022  | Parties exchange proposed claim constructions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| August 9, 2022  | Parties disclose extrinsic evidence. 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 scope of the topics for the witness's expected                                                                                                                                                                                                                                                                                                                               |

<sup>1</sup> The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

| Deadline                      | Item                                                                                                                                                                                                                                                                                                                     |
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|                               | testimony. <sup>2</sup> 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.                                                                                                                       |
| August 12, 2022               | Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.                                                                                                                                                                                                                 |
| August 19, 2022               | Defendant files Opening claim construction brief, including any arguments that any claim terms are indefinite.                                                                                                                                                                                                           |
| September 9, 2022             | Plaintiff files Responsive claim construction brief.                                                                                                                                                                                                                                                                     |
| September 23, 2022            | Defendant files Reply claim construction brief.                                                                                                                                                                                                                                                                          |
| September 23, 2022            | Parties to jointly email the law clerks ( <a href="mailto:txwdml_lawclerks_wa_judgealbright@txwd.uscourts.gov">txwdml_lawclerks_wa_judgealbright@txwd.uscourts.gov</a> ) to confirm their <i>Markman</i> date.                                                                                                           |
| October 7, 2022               | Plaintiff files a Sur-Reply claim construction brief.                                                                                                                                                                                                                                                                    |
| October 11, 2022              | Parties submit optional technical tutorials to the Court and technical advisor (if appointed).                                                                                                                                                                                                                           |
| October 12, 2022              | Parties submit Joint Claim Construction Statement and email the law clerks an editable copy.<br><br><i>See General Issues Note #7 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).</i>                                                                                  |
| October 28, 2022 <sup>3</sup> | <i>Markman</i> Hearing at 11:00 a.m. This date is a placeholder and the Court may adjust this date as the <i>Markman</i> hearing approaches.                                                                                                                                                                             |
| October 31, 2022              | Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).                                                                                                                                                                                                                                              |
| December 15, 2022             | Deadline to add parties.                                                                                                                                                                                                                                                                                                 |
| January 31, 2023              | Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to infringement or invalidity contentions. This deadline does not relieve the parties of their obligation to seasonably amend if new information is identified after initial contentions. |

<sup>2</sup> Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

<sup>3</sup> All deadlines hereafter follow the original *Markman* hearing date and do not change if the Court delays the *Markman* hearing.

| Deadline           | Item                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| February 23, 2023  | Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)                                                                                                                                                                                                                                                                        |
| May 4, 2023        | Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's law clerk to arrange a teleconference with the Court to resolve the disputed issues.                                                                                                                       |
| May 25, 2023       | Close of Fact Discovery.                                                                                                                                                                                                                                                                                                                                                                                                                         |
| June 1, 2023       | Opening Expert Reports.                                                                                                                                                                                                                                                                                                                                                                                                                          |
| June 29, 2023      | Rebuttal Expert Reports.                                                                                                                                                                                                                                                                                                                                                                                                                         |
| July 20, 2023      | Close of Expert Discovery.                                                                                                                                                                                                                                                                                                                                                                                                                       |
| July 27, 2023      | Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. If it helps the parties determine these limits, the parties are encouraged to contact the Court's law clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer. |
| August 10, 2023    | Dispositive motion deadline and <i>Daubert</i> motion deadline.<br>See General Issues Note #7 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).                                                                                                                                                                                                                                                  |
| August 24, 2023    | Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).                                                                                                                                                                                                                                                                                                                            |
| September 7, 2023  | Serve objections to pretrial disclosures/rebuttal disclosures.                                                                                                                                                                                                                                                                                                                                                                                   |
| September 7, 2023  | Parties to jointly email the Court's law clerk ( <a href="mailto:txwdml_lawclerks_wa_judgealbright@txwd.uscourts.gov">txwdml_lawclerks_wa_judgealbright@txwd.uscourts.gov</a> ) to confirm their pretrial conference and trial dates.                                                                                                                                                                                                            |
| September 14, 2023 | Serve objections to rebuttal disclosures; file Motions <i>in limine</i> .                                                                                                                                                                                                                                                                                                                                                                        |
| September 21, 2023 | File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i>                                                                                                                                                                                                                                                       |
| September 28, 2023 | File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Kristie Davis at <a href="mailto:kmdaviscsr@yahoo.com">kmdaviscsr@yahoo.com</a>                                                                                          |

| Deadline                      | Item                                                                                                                  |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------|
|                               | Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .                 |
| October 7, 2023               | File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> . |
| October 12, 2023              | Final Pretrial Conference. Held in person unless otherwise requested.                                                 |
| November 2, 2023 <sup>4</sup> | Jury Selection/Trial.                                                                                                 |

SIGNED this 28th day of May, 2022.

  
ALAN D. ALBRIGHT  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup> If the actual trial date materially differs from the Court's default schedule, the Court will consider reasonable amendments to the case schedule *post-Markman* that are consistent with the Court's default deadlines in light of the actual trial date.