

**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
	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.  <i>See</i> General Issues Note #7 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).
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. 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

<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.