

**United States District Court
Middle District of Florida
Tampa Division**

AMIT AGARWAL,

Plaintiff,

v.

Case No: 8:16-cv-2641-33JSS

TOPGOLF INTERNATIONAL, INC.,

Defendant.

_____ /

PATENT SCHEDULING ORDER

The Court supplements its Case Management and Scheduling Order with more detailed deadlines and procedures with respect to claims construction in this patent case. Importantly, **the Court limits the parties to 10 claims.** In that regard, the parties shall jointly identify the 10 terms likely to be most significant to resolving the parties' dispute, including those terms for which construction may be case or claim dispositive. Having considered the case management report prepared by the parties, see Fed. R. Civ. P. 26 (f) and Local Rule 3.05 (c), the Court enters this case management and scheduling order:

Mandatory Initial Disclosures (pursuant to Fed. R. Civ. P. 26(a)(1))	November 14, 2016
Certificate of Interested Persons and Corporate Disclosure Statement	November 25, 2016
Motions to Add Parties or Amend Pleadings	December 23, 2016
Plaintiff shall serve Disclosure of Asserted Claims and Preliminary Infringement Contentions and accompanying document production	COMPLETED
Defendants shall serve the Preliminary Invalidity Contentions and accompanying document production	February 3, 2017

Parties shall exchange Proposed Terms and Claim Elements for Construction	March 3, 2017
Parties shall exchange Preliminary Claim Constructions and Extrinsic Evidence	March 17, 2017
Parties shall file Joint Claim Construction and Prehearing Statement	March 31, 2017
Claim Construction Discovery shall be completed	April 14, 2017
First Mediation Conference:	TBD
Mediation Deadline:	May 1, 2017
Mediator:	TBD
Designated Lead Counsel	Attorney Name: Amit Agarwal
Pursuant to Local Rule 9.04(a)(3)	
Lead Counsel Telephone Number	Telephone Number: 310-351-6596
Plaintiff shall file Opening Claim Construction Brief	May 15, 2017
Defendants shall file Claim Construction Opposition Brief	June 1, 2017
Plaintiff shall file Claim Construction Reply Brief	June 12, 2017
Claim Construction Hearing	TBD
Second Case Management Hearing	TBD
Factual Discovery Closes	TBD
Parties shall serve Opening Expert Reports	TBD
Parties shall serve Rebuttal Expert Reports	TBD
Expert Discovery Closes	TBD
Second Mediation Conference	TBD
Last day to file summary judgment motions	TBD
Last day to file opposition to summary judgment motions	TBD
Last day to file replies to summary judgment motions	TBD

Parties shall file motions in limine and Daubert motions	TBD
Parties shall file pretrial statement and single set of jointly proposed jury instructions and verdict form	TBD
The Court will hold the pretrial conference	TBD
Trial Term Begins	TBD
Estimated Length of Trial	4-5 days
All Parties Consent to Proceed Before Assigned Magistrate Judge	No Likely to agree in the future : No

The purpose of this order is to discourage wasteful pretrial activities, and to secure the just, speedy, and inexpensive determination of the action. See Fed. R. Civ. P. 1; Local Rule 1.01(b). This order controls the subsequent course of this proceeding. Fed. R. Civ. P. 16(b), (e). Counsel and all parties (both represented and *pro se*) shall comply with this order, with the Federal Rules of Civil Procedure, with the Local Rules of the United States District Court for the Middle District of Florida, and with the Administrative Procedures for Case Management/Electronic Case Filing. A copy of the Local Rules and Administrative Procedures may be viewed at <http://www.flmd.uscourts.gov>. Counsel shall also comply with the *Ideals and Goals of Professionalism* adopted by the Board of Governors of the Florida Bar on May 16, 1990 available at www.floridabar.org (Professional Practice-Henry Latimer Center for Professionalism); Local Rule 2.04(g).

I. DISCOVERY

A. Certificate of Interested Persons and Corporate Disclosure Statement – This Court has previously ordered each party, governmental party, intervenor, non-party movant, and Rule 69 garnishee to file and serve a Certificate of Interested Persons and Corporate Disclosure Statement using a mandatory form. No party may seek discovery from any source before filing and serving a Certificate of Interested Persons and Corporate Disclosure Statement. A motion, memorandum, response, or other paper – including emergency motion – may be denied or stricken unless the filing party has previously filed and served a Certificate of Interested Persons and Corporate Disclosure Statement. Any party who has not already

filed and served the required certificate shall do so within the time required by this order, or sanctions will be imposed.

B. Discovery Not Filed – The parties shall not file discovery materials with the Clerk except as provided in Local Rule 3.03. The Court encourages the exchange of discovery requests on diskette or by email. See Local Rule 3.03(e).

C. Limits on Discovery – Absent leave of Court, the parties may take no more than ten depositions per side (not per party). Fed. R. Civ. P. 30(a)(2)(A); Fed. R. Civ. P. 31(a)(2)(A). Absent leave of Court, the parties may serve no more than twenty-five interrogatories, including sub-parts. Fed. R. Civ. P. 33(a). Absent leave of the Court or stipulation by the parties, each deposition is limited to one day of seven hours. Fed. R. Civ. P. 30(d)(2). The parties may agree by stipulation on other limits on discovery within the context of the limits and deadlines established by this Case Management and Scheduling Order, but the parties may not alter the terms of this Order without leave of Court. See, e.g., Fed. R. Civ. P. 29.

D. Discovery Deadline – Each party shall timely serve discovery requests so that the Rules allow for a response prior to the discovery deadline. The Court may deny as untimely all motions to compel filed after the discovery deadline.

E. Disclosure of Expert Testimony – On or before the date set forth in the above table for the disclosure of expert reports, the party shall fully comply with Fed. R. Civ. P. 26(a)(2) and 26(e). Expert testimony on direct examination at trial will be limited to the opinions, bases, reasons, data, and other information disclosed in the written expert report disclosed pursuant to this Order. Failure to disclose such information may result in the exclusion of all or part of the testimony of the expert witness.

F. Confidentiality Agreements – The parties may reach their own agreement regarding the designation of materials as “confidential.” There is no need for the Court to endorse the confidentiality agreement. The Court discourages unnecessary stipulated motions for a protective order. The Court will enforce stipulated and signed confidentiality agreements. See Local Rule 4.15. Each confidentiality agreement or order shall provide, or shall be deemed to provide, that “no party shall file a document under seal without first having obtained an order granting leave to file under seal on a showing of particularized need.” See *also* “Motions to File Under Seal” below.

II. MOTIONS

A. Certificate of Good Faith Conference – *Before filing any motion in a civil case, the moving party shall confer with the opposing party in a good faith effort to resolve the issues raised by the motion, and shall file with the motion a statement certifying that the moving party has conferred with the opposing party, and that the parties have been unable to agree on the resolution of the motion.* Local Rule 3.01(g); Fed. R. Civ. P. 26(c). A certification to the effect that opposing counsel was unavailable for a conference before filing a motion is insufficient to satisfy the parties' obligation to confer. See Local Rule 3.01(g). No certificate is required in

a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action. Local Rule 3.01(g). Nonetheless, the Court expects that a party alleging that a pleading fails to state a claim will confer with counsel for the opposing party before moving to dismiss and will agree to an order permitting the filing of a curative amended pleading. Fed. R. Civ. P. 15. The term "counsel" in Rule 3.01(g) includes *pro se* parties acting as their own counsel, thus requiring movants to confer with *pro se* parties and requiring *pro se* movants to file Rule 3.01(g) certificates. The term "confer" in Rule 3.01(g) requires a substantive conversation *in person or by telephone* in a good faith effort to resolve the motion without court action and does not envision an exchange of ultimatums by fax, letter or email. Counsel who merely "attempt" to confer have not "conferred." Counsel must respond promptly to inquiries and communications from opposing counsel. Board of Governors of the Florida Bar, *Ideals and Goals of Professionalism*, ¶ 6.10 and *Creed of Professionalism* ¶ 8 (adopted May 16, 1990), available at www.floridabar.org (Professional Practice-Henry Latimer Center for Professionalism.) The Court will deny motions that fail to include an appropriate, complete Rule 3.01(g) certificate.

B. Extension of Deadlines

The deadlines established in this Case Management and Scheduling Order are not advisory but must be complied with absent approval of the Court.

1. Dispositive Motions Deadline and Trial Not Extended – Motions to extend the dispositive motions deadline or to continue the trial are generally denied. See Local Rule 3.05(c)(2)(E). The Court will grant an exception only when necessary to prevent manifest injustice. A motion for a continuance of the trial is subject to denial if it fails to comply with Local Rule 3.09. The Court cannot extend a dispositive motion deadline to the eve of trial. In light of the district court's heavy trial calendar, a period of at least four months is required before trial to receive memoranda in opposition to a motion for summary judgment, and to research and resolve the dispositive motion.

2. Extensions of Other Deadlines Disfavored – Motions for an extension of other deadlines established in this order, including motions for an extension of the discovery period, are disfavored. The deadline will not be extended absent a showing of good cause. Fed. R. Civ. P. 16(b); Local Rule 3.09(a). Failure to complete discovery within the time established by this Order shall not constitute cause for continuance. A motion to extend an established deadline normally will be denied if the motion fails to recite that: 1) the motion is joint or unopposed; 2) the additional discovery is necessary for specified reasons; 3) all parties agree that the extension will not affect the dispositive motions deadline and trial date; 4) all parties agree that any discovery conducted after the dispositive motions date established in this Order will not be available for summary judgment purposes; and 5) no party will use the granting of the extension in support of a motion to extend another date or deadline. The filing of a motion for extension of time does not toll the time for compliance with deadlines established by Rule or Order.

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