

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PLASTIPAK PACKAGING, INC.,

Plaintiff,

v.

PREMIUM WATERS INC.,

Defendant.

PRELIMINARY PRETRIAL
CONFERENCE ORDER

20-cv-98-wmc

This court held a preliminary pretrial conference on April 23, 2020. All parties were represented by counsel. The court set the schedule for this case and advised the parties that their conduct throughout this case is governed by this pretrial conference order and the attachments to it. The parties should not expect to receive extensions of the deadlines set in this order. It is each party's responsibility to complete all necessary work within the time allotted. Federal Rule of Civil Procedure 6(d) shall not apply to documents served pursuant to Rules 5(b)(2)(E) & (F). Please note that this order imposes new requirements on the parties in patent lawsuits.

The parties and their attorneys must at all times treat everyone involved in this lawsuit with courtesy and consideration. The parties must attend diligently to their obligations in this lawsuit and must reasonably accommodate each other in all matters so as to secure the just, speedy, and inexpensive resolution of each proceeding in this matter, as required by Rule 1. Failure to do so shall have consequences.

1. Establish standing to assert the patent(s): May 8, 2020

By this date, plaintiff must submit to the court proof that it has standing to sue on the patents claimed, either by stipulation or by admissible evidence. If standing is disputed, then the parties should notify the court so that a briefing schedule can be set.

2. Amendments to the Pleadings: June 26, 2020

After this date, a party may not amend its pleadings without first receiving leave of court.

3. Preliminary Disclosure of Core Substantive Contentions in Patent Cases

The core substantive contentions identified in this paragraph will be treated as elements of pleading. Amendments to core substantive contentions will be freely allowed until the deadline for amendments to the pleadings. After the deadline, amendments will be allowed as provided for under Federal Rule of Civil Procedure 15. The court expects the parties to commit to their core substantive contentions early in the case, and the court will be increasingly reluctant to allow amendments as the deadline for expert disclosures approaches. The disclosures required by this paragraph are not intended to inhibit any party's ability to seek additional information by means of contention interrogatories.

A. Plaintiff's infringement contentions: June 5, 2020

By this date, plaintiff must identify each claim in each patent being asserted against each accused device. Plaintiff's disclosure must be in claim chart form.

B. Defendant's invalidity or unenforceability contentions: July 10, 2020

By this date, defendant must identify each piece of prior art on which it will rely to show the invalidity of each asserted patent, and the basis for any other allegation of invalidity

or unenforceability. Invalidity contentions based on prior art must be made in claim chart form. The court recognizes that defendant's prior art search may not be complete by this deadline, but defendant is strongly cautioned to conduct its prior art search with special diligence and to promptly amend its invalidity contentions as promptly as possible. The court will be increasingly reluctant to allow amendments as the deadline for expert disclosures approaches.

4. Exchange of Terms and Proposed Constructions: August 31, 2020

Responses: September 14, 2020

By the first date provided in this paragraph, each party should disclose to the opposing party all of the claim terms that it believes may be disputed, along with a proposed construction. By the second date, the opposing party should respond with either its consent to the proposed construction or its proposed alternatives. These disclosures need not be filed with the court, and the parties may supplement or amend these disclosures by agreement. The parties are, of course, encouraged to reach a stipulation on the meaning of as many claim terms as possible.

Twenty-one (21) days before the dispositive motion deadline, the parties must confer and jointly submit a table of terms requiring construction, with each side's proposed construction. The list must also include those terms upon which the parties have agreed on construction. Any claim term not on the joint list will be given its plain meaning on summary judgment and at trial. The court will provide necessary judicial constructions of claim terms in connection with motions for summary judgment. See paragraph 7 below for further detail.

5. Disclosure of Reliance on Advice of Counsel: August 31, 2020

6. Disclosure of Experts: Proponent: December 4, 2020

Respondent: January 25, 2021

All disclosures mandated by this paragraph must comply with the requirements of Rule 26(a)(2). Supplementation pursuant to Rule 26(e) is limited to matters raised in an expert's first report, must be in writing, and must be served no later than five calendar days before the expert's deposition, or before the general discovery cutoff if no one deposes the expert. Any employee of a party who will be offering expert opinions during any phase of this case must comply with all of these disclosure requirements.

Failure to comply with these deadlines and procedures could result in the court striking the testimony of a party's experts, pursuant to Rule 37. The parties may agree among themselves to modify deadlines and procedures relating to experts.

7. Deadline for Filing Dispositive Motions and for Seeking Judicial Construction of Claim Terms: February 26, 2021

Dispositive motions may be filed and served by any party on any date up to the deadline set above. All dispositive motions must be accompanied by supporting briefs. All responses to dispositive motions must be filed and served within 28 calendar days of service of the motion. Any reply by the movant must be filed and served within 21 calendar days of service of the response. The parties may not modify this schedule without leave of court.

If any party files a motion for summary judgment, then all parties must follow this court's procedure governing such motions, a copy of which is attached to this order. The court will not consider any document that does not comply with its summary judgment procedure.

A party may not file more than one motion for summary judgment in this case without leave of court.

Parties are to undertake discovery in a manner that allows them to make or respond to dispositive motions within the scheduled deadlines. The fact that the general discovery cutoff, set forth below, occurs after the deadlines for filing and briefing dispositive motions is not a ground for requesting an extension of the motion and briefing deadlines.

If a party seeks judicial construction of a claim term, it must: (1) do so by the dispositive motion deadline; and (2) show how that construction is material to a disputed issue of infringement or invalidity. If either side believes that a hearing on claim construction issues would be useful, it must file a succinct, written motion by (or before) the deadline for filing a summary judgment reply brief. Ideally, the motion will be jointly made, but even if not jointly made, it must state the opposing party's position on whether a hearing should be held. Unless the court is persuaded otherwise, it will generally not hold a hearing on the claim construction or summary judgment.

No later than one week after the reply brief is filed for a summary judgment motion, the parties must confer and jointly submit to the court a chart that identifies each claim and each allegedly infringing product or method at issue in the summary judgment motion, and the substantive contentions raised in the motion (*e.g.*, "Claim 1 is anticipated," or "Claim 1 does not lack written description"). This is not an opportunity for additional argument; it is simply an index to the issues raised on summary judgment. If there is more than one summary judgment motion, the parties should submit a single filing that includes a separate chart (or charts) for each motion.

8. Discovery Cutoff: July 2, 2021

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