

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEERPOINT GROUP, INC.,

Case No. 1:18-cv-00536-AWI-BAM

Plaintiff,

**AMENDED SCHEDULING ORDER AND
VACATING PRETRIAL AND TRIAL DATES**

V.

AGRIGENIX, LLC, et al.,

Defendants.

This Court conducted a further scheduling conference on June 11, 2020, following amendment of the operative complaint to add a defendant and a claim for patent infringement. Counsel Benjamin Kleinman, Jon Michaelson, Mansi Shah and Adam Wiley appeared by telephone on behalf of Plaintiff Deerpoint Group, Inc. Counsel Mark Miller and William Nelson appeared by telephone on behalf of Defendants Agrigenix, LLC, Sean Mahoney, and Custom AG Formulators, Inc.

A. Claim Construction

After discussion with counsel and based upon the procedures proposed in the parties' Third Updated Joint Scheduling Report (Doc. No. 107), the Court **SETS** the following deadlines related to claim construction only:

1. Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions (including associated document production): Completed.
2. Defendant's Preliminary Invalidity Contentions (including associated document production): July 7, 2020
3. Parties Exchange Identification of Claim Terms for Construction and Preliminary Claim Constructors (including citation to and production of associated

1	extrinsic evidence):	July 21, 2020
2	4. Parties Exchange Responsive Claim Constructions (including citation to and production of associated extrinsic evidence):	August 11, 2020
3		
4	5. Parties File Joint Claim Construction Statement:	September 1, 2020
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6	6. Claim Construction Discovery Deadline:	September 29, 2020
7		
8	7. Parties File Opening Claim Construction Briefs:	October 13, 2020
9		
10	8. Parties File Responsive Claim Construction Briefs:	October 27, 2020
11		
12	9. Parties File Reply Claim Construction Briefs:	November 3, 2020
13		
14	10. Claim Construction Hearing:	November 23, 2020
15		Time: 1:30 p.m.
16		Dept: 2 (AWI)
17		

13 The parties are advised that compliance with the claim construction discovery deadline set
 14 forth above requires motions to compel be filed and heard sufficiently in advance of the cutoff so that
 15 the Court may grant effective relief within the allotted discovery time. A parties' failure to have a
 16 discovery dispute heard sufficiently in advance of the discovery cutoff may result in denial of the
 17 motion as untimely.

18 Within **three (3) weeks** after the Court's claim construction ruling, the parties are directed to
 19 contact to the Court to set a date for further scheduling regarding the patent infringement claim.

20 **B. Non-Dispositive Motions**

21 It is anticipated that the parties may conduct discovery during the pendency of claim
 22 construction and the scope of discovery shall be as set forth in Federal Rule of Civil Procedure
 23 26(b)(1). Non-dispositive motions, including motions to compel, are heard on Fridays at 9:00 a.m.
 24 before the Honorable Barbara A. McAuliffe, United States Magistrate Judge, in Courtroom 8. Before
 25 scheduling such motions, the parties shall comply with Local Rule 230 or Local Rule 251. Counsel
 26 must comply with Local Rule 251 with respect to discovery disputes or the motion will be denied
 27 without prejudice and dropped from calendar. In addition to filing a joint statement electronically, a
 28

1 copy of the joint statement shall also be sent Judge McAuliffe's chambers by email to
2 bamorders@caed.uscourts.gov. Counsel for the parties are additionally required to conduct at least
3 one **telephonic (or in person) conference** as part of their obligations to meet and confer in good faith
4 to resolve their discovery dispute prior to seeking judicial intervention. The parties are further
5 cautioned that boilerplate objections to written discovery will be summarily denied.

6 Upon stipulation of the parties, Judge McAuliffe will resolve discovery disputes by informal
7 telephonic conference outside the formal procedures of the Local Rules and Federal Rules of Civil
8 Procedure governing noticed motions to compel. The procedures for requesting an informal
9 telephonic conference are set forth in Judge McAuliffe's Case Management Procedures located on the
10 Court's website, <http://www.caed.uscourts.gov>. If the parties stipulate to an informal ruling on a
11 discovery dispute that arises during a deposition, they may request an informal ruling during the
12 deposition by contacting Judge McAuliffe's Courtroom Deputy, Esther Valdez, by telephone at (559)
13 499-5788.

14 The parties are advised that unless prior leave of the Court is obtained, all moving and
15 opposition briefs or legal memorandum in civil cases before Judge McAuliffe shall not exceed twenty-
16 five (25) pages. Reply briefs by the moving party shall not exceed ten (10) pages. These page
17 limitations do not include exhibits. Briefs that exceed this page limitation, or are sought to be filed
18 without leave, may not be considered by the Court.

19 Counsel or pro se parties may appear and argue non-dispositive motions before Judge
20 McAuliffe by telephone by dialing the court's teleconference line at (877) 411-9748 and entering
21 Access Code 3219139, provided they indicate their intent to appear telephonically on their pleadings
22 or by email to evaldez@caed.uscourts.gov at least one week prior to the hearing.

23 **C. Settlement Conference**

24 A Settlement Conference has not been scheduled. The parties are advised to contact the Court
25 if they determine that a settlement conference would be beneficial. If a settlement conference is set,
26 the parties are advised that unless otherwise permitted in advance by the Court, the attorneys who will
27 try the case shall appear at the settlement conference with the parties and the person or persons having
28 full authority to negotiate and settle the case, on any terms, at the conference.

D. Modification of Scheduling Conference Order – Non-Patent Infringement Claims

The parties are proceeding on parallel pre-trial tracks for the patent infringement and non-patent infringement claims. Pursuant to the parties' Third Updated Joint Scheduling Report, and good cause appearing, the deadlines set forth in the Court's Scheduling Order issued on August 16, 2019, are modified as follows:

6 Non-Expert Discovery Deadline: December 15, 2020
7 Expert Disclosure: January 26, 2021
8 Supplemental Expert Disclosure: February 23, 2021
9 Expert Discovery Deadline: March 23, 2021
10 Dispositive Motion Filing Deadline: April 20, 2021

Additionally, to the extent not already addressed, the pretrial conference currently set for April 21, 2021, at 10:00 AM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii and the trial currently set for June 22, 2021, at 8:30 AM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii are HEREBY VACATED. As necessary and appropriate, a further scheduling conference will be set following the dispositive motion filing deadline. The parties are directed to contact the Court to set up a further scheduling conference following the rulings on dispositive issues.

E. Effect of this Order

The foregoing order represents the best estimate of the Court and the parties as to the agenda most suitable for this case. Requests to alter the deadlines contained herein will not be considered unless they are accompanied by affidavits or declarations, and where appropriate attached exhibits, which establish good cause for granting the relief requested.

Failure to comply with this order may result in the imposition of sanctions, including but not limited to, dismissal of this action.

IT IS SO ORDERED.

Dated: **June 11, 2020**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE