

PARTON | SELL | RHOADES
A Professional Corporation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[Counsel listed on page 2]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AI-DAIWA, LTD.,

Plaintiff,

v.

APPARENT, INC., a Delaware Corporation;
APPARENT ENERGY, INC., a Delaware
Corporation; APPARENT SOLAR, INC., a
Delaware Corporation; APPARENT SOLAR
INVESTMENTS, LLC, a Hawaii limited
liability company; XSLENT, LLC, a Delaware
limited liability company; XSLENT ENERGY
TECHNOLOGIES, LLC, a Delaware limited
liability company; and DOES 1-10 inclusive,

Defendants

Case No.: CV13-4156 EDL

JOINT REPORT OF COUNSEL RE
STATUS OF COURT EXPERT'S
TESTING AND POTENTIAL IMPACT
ON SCHEDULING; JOINT
STIPULATION AND REQUEST TO
CONTINUE SETTLEMENT
CONFERENCE; AND ~~(PROPOSED)~~
ORDER

Case Filed: 9/9/13
Trial Date: 7/6/15

AND RELATED CROSS-ACTION

1 JAMES PARTON, ESQ. (SBN 77698)
FRANCIS CONWAY, ESQ. (SBN 186207)
2 PARTON | SELL | RHOADES
A Professional Corporation
3 900 Larkspur Landing Circle, Suite 150
Larkspur, CA 94939
4 Telephone: (415) 258-9700
Facsimile: (415) 258-9739
5 Email: jparton@partonsell.com

6 JACQUELINE DESOUZA, ESQ. (SBN 133686)
DESOUZA LAW OFFICES, PC
7 1615 Hopkins Street
Berkeley, CA 94707
8 T: (510) 550-0010
F: (510) 649-3420
9 Email: jdesouza@dlawcorp.com

10 Attorneys for Defendants, APPARENT, INC.;
APPARENT ENERGY, INC.; APPARENT
11 SOLAR, INC., XSLENT ENERGY
TECHNOLOGIES, LLC; and APPARENT SOLAR
12 INVESTMENTS (II), LLC (erroneously sued
herein as Apparent Solar Investments, LLC) and
13 Counter Claimants, APPARENT, INC. and
APPARENT ENERGY, INC

14 CHI-HUNG A. CHAN (SBN 104289)
15 LAEL D. ANDARA (SBN 215416)
MARIE E SOBIESKI (SBN 278008)
16 ROPERS, MAJESKI, KOHN & BENTLEY
1001 Marshall Street, Suite 500
17 Redwood City, CA 94063-2052
T: (650) 364-8200
18 F: (650) 780-1701
Email: cchan@rmkb.com
19 landara@rmkb.com
mkanach@rmkb.com

20 Attorneys for Plaintiff
21 AI-DAIWA, LTD.
22
23
24
25
26
27
28

1 **TO THE COURT:**

2 On October 1, 2014, counsel for all parties, Lael Andara and Marie E Sobieski for Plaintiff
3 and Jacqueline deSouza and James Parton III for Defendants, met in person with the Court Expert,
4 John C. McNulty, Ph.D., and Ray K. Huang, Ph.D. and Meredith C. K. Sellers, Ph.D., at Exponent
5 in Menlo Park to discuss the draft test protocol and Dr. McNulty’s projected time line for
6 completing the testing and preparing his report.

7 Dr. McNulty’s draft test protocol provides for two possible phases of testing. Phase I is
8 nondestructive testing of incident (i.e. failed) and exemplar units. Phase 2, if necessary, involves
9 destructive testing.

10 The Phase 1 testing involves: external/internal inspection and a variety of electrical testing
11 of all units; electrical testing over the rated temperature range for select incident and exemplar units;
12 and thermal imaging of select incident and exemplar units.

13 The draft test protocol further provides that Dr. McNulty will advise the parties regarding
14 the need for destructive testing by November 1. The need for destructive testing, and the number of
15 units that may need destructive testing, will be determined based on the results of the nondestructive
16 testing.

17 Dr. McNulty anticipates being able to provide a preliminary expert report for review by
18 November 20, pending verification that the settlement conference scheduled for November 7 can be
19 moved to the first week of December. He anticipates that he will need an additional 1 – 4 weeks to
20 supplement the expert report with destructive evaluation results (depending on the number of units
21 he needs for destructive testing. Thus, Dr. McNulty advises that he may not have his complete
22 expert report available for review until December 20.

23 The parties agree that they need a minimum of 7 days, and preferably 10 days, to evaluate
24 Dr. McNulty’s preliminary and final expert reports before they can have a productive settlement
25 conference.

26 Pursuant to the Minute Order [Docket 81] and the Notice Of Settlement Conference And
27 Settlement Conference Order [Docket 82], the following are the scheduled dates in this case:
28

1 November 7, 2014 Settlement Conference before Magistrate Judge
2 Kandis A. Westmore; Discovery stay until this date.
3 December 16, 2014 Case Management Conference
4 January 21, 2015 Discovery cut off; Expert disclosure
5 February 4, 2015 Expert rebuttal
6 February 28, 2015 Expert discovery cut off
7 May 28, 2015 Motion cut off
8 June 23, 2015 Pre-Trial Conference
9 July 6, 2015 Trial

10 The parties wish to maintain the current trial (and related) dates, if possible.

11 However, based on Dr. McNulty's time estimates, **the parties request the Court's**
12 **permission to reschedule the Settlement Conference to December 3, 2014, on which date the**
13 **availability of all parties, their counsel, and Magistrate Judge Westmore has been confirmed.**

14 Further, the parties wish to apprise the Court of the possibility that the Court Expert's report
15 will not be completed until December 20. In that case, the Settlement Conference, in order to have a
16 substantial chance of success, would need to be moved to early January, 2015.

17 Given the scheduling order, defendants request that the discovery stay not be extended
18 beyond November 7.

19 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

20 DATED: 10/3/2014 /Lael D. Andara/
21 Attorneys for AI-Daiwa

22 DATED: 10/3/2014 /Jacqueline deSouza/
23 Attorneys for Defendants and Counterclaimants

24 DATED: 10/3/2014 /James Parton III/
25 Attorneys for Defendants and Counterclaimants
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED.

The SETTLEMENT CONFERENCE before Magistrate Judge Kandis A. Westmore, currently scheduled on November 7, 2014 may be rescheduled to December 3, 2014. The discovery stay is lifted effective November 7, 2014.

Dated: October 8, 2014

JOINT REPORT RE STATUS OF COURT EXPERT'S WORK

