

United States District Court
For the Northern District of California

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E-FILED on 05/14/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ARISTOCRAT TECHNOLOGIES,
ARISTOCRAT PTY LIMITED and
ARISTOCRAT TECHNOLOGIES, INC.,

Plaintiffs,

v.

INTERNATIONAL GAME TECHNOLOGY
and IGT,

Defendants.

No. C-06-03717 RMW

ORDER REGARDING CASE SCHEDULE
AND ADDITIONAL CLAIM
CONSTRUCTION BRIEFING

[Re Docket No. 157, 163, 174]

At the claim construction hearing on March 18, 2009, the court requested that the parties file a proposed case schedule, along with a list of pre-appeal motions pending before this court. At the hearing and in its filing, IGT seeks a bench trial on inequitable conduct in June of 2009. IGT also moves for supplemental claim construction proceedings as to claims at issue in IGT's *Muniauction* summary judgment motion. For the reasons stated below, the court denies IGT's request for a separate inequitable-conduct bench trial, and grants IGT's administrative motion for additional claim-construction proceedings.

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I. INEQUITABLE CONDUCT BENCH TRIAL

On September 19, 2006, IGT moved in district court for a one-day bench trial on an inequitable conduct issue. Order Denying Defendants' Mot. for One-Day Bench Trial, Docket No. 33. On November 11, 2006, Judge Jenkins denied the motion because IGT had shown neither that the bifurcated proceeding would promote judicial economy, nor that Aristocrat would not be prejudiced. *Id.* at 4-5 (citing *Spectra-Physics Lasers, Inc. v. Uniphase Corp.*, 144 F.R.D. 99, 101 (N.D.Cal. 1992)). With respect to judicial economy, the court reasoned that "inequitable conduct, no matter how limited the issue," is a fact-intensive inquiry. This is particularly true when the issue involves intent to deceive." *Id.* at 4. Additionally, the court concluded that the inequitable-conduct trial might take more than the one day IGT proposed. As for prejudice, the court was "not convinced that it can order an early bench trial without the potential for evidentiary overlap with the underlying proceeding." *Id.* at 5.

IGT contends that its renewed request for an inequitable-conduct bench trial is based in part on the Federal Circuit's statement on appeal that prosecution irregularities could be redressible under the inequitable-conduct framework. *Aristocrat Technologies v. International Game Technology*, 543 F.3d 657, 663 (Fed. Cir. 2008). This court does not read the Federal Circuit to mean that IGT's motion for a separate trial should be revived; rather the court was emphasizing that, although the prosecution irregularities at issue in the appeal did not provide a basis for invalidity, as a general proposition an inequitable conduct claim could nevertheless provide relief if a procedural irregularity involved affirmative representations of material fact. Therefore, the court finds that similar concerns still militate against a separate inequitable-conduct trial. IGT's renewed request is denied.

II. SUPPLEMENTAL CLAIM CONSTRUCTION PROCEEDINGS

In Aristocrat's supplemental briefing in support of its motion for 56(f) discovery, Aristocrat argued that certain patent terms require acts that need not be performed by the player. Because these terms were not included in the original claim construction briefing, IGT now moves for additional claim construction. The court finds that additional construction is necessary.

1 The parties will incorporate their discussion of the new disputed terms into the as-yet unfiled
 2 motions for summary judgment. Aristocrat may include its claim construction arguments in its
 3 opposition to the *Muniauction* summary judgment motion, not to exceed thirty pages. IGT may
 4 respond in its reply, not to exceed 20 pages. And Aristocrat may have a sur-reply, not to exceed ten
 5 pages, limited to responding to the claim-construction arguments in IGT's reply. The schedule
 6 below takes into account the assigned magistrate's May 13, 2009 order granting in part and denying
 7 in part Aristocrat's motion to compel.

8 If claim construction briefing raises additional issues not covered by IGT's original summary
 9 judgment motion, they can be dealt with in later motions.

III. CASE SCHEDULE

The court adopts the following schedule:

Case Event	Date
Hearing on IGT's Motions to Compel (Dkt. 191 and 205)	To be determined by assigned magistrate.
Aristocrat's Opposition to IGT's <i>Muniauction</i> Summary Judgment Motion Due (includes supplemental claim construction briefing, not to exceed 30 pages)	May 29, 2009
IGT's Reply in support of <i>Muniauction</i> Summary Judgment (including supplemental claim construction briefing, not to exceed 20 pages)	June 6, 2009
Aristocrat's Sur-reply (limited to claim construction issues, not to exceed 10 pages)	June 12, 2009
Hearing on IGT's <i>Muniauction</i> Summary Judgment Motion, IGT's Prosecution Laches Summary Judgment Motion, and IGT's Motion for Sanctions (Dkt. 242).	June 26, 2009

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Fact Discovery Cut-off	July 27, 2009
Expert Reports Due	July 27, 2009
Last Day to Amend Pleadings	July 27, 2009
Rebuttal Expert Reports Due	August 10, 2009
Expert Discovery Cut-off	August 26, 2009
Daubert Motions Due	September 2, 2009
Dispositive Motions Due	September 2, 2009
Oppositions to Dispositive Motions Due	September 16, 2009
<i>Daubert</i> Oppositions Due	September 16, 2009
Daubert Replies Due	September 23, 2009
Replies ISO Dispositive Motions Due	September 23, 2009
Parties Meet and Confer	October 19, 2009
Trial Briefs (optional)	October 23, 2009
Motions In Limine	October 23, 2009
Deposition and Discovery Responses	October 23, 2009
Proposed Voir Dire Questions	October 23, 2009
Jury Instructions	October 23, 2009
Form of Verdict	October 23, 2009
Joint Pretrial Statement	October 23, 2009
Oppositions to Motion In Limine	November 3, 2009
Objections to Use of Deposition Excerpts or Other Discovery Responses	November 3, 2009
Deposition Counter-Designations	November 3, 2009
Objections to Voir Dire, Verdict Form, Authenticity or Admissibility of Trial Exhibits	November 3, 2009
Pretrial Conference	To be determined
Jury Trial	November 30, 2009

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DATED: 05/14/09

Ronald M. Whyte

RONALD M. WHYTE
United States District Judge

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18 **Dated:** 05/14/09

19 JAS
20 **Chambers of Judge Whyte**