IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ST. CLAIR INTELLECTUAL PROPERTY CONSULTANTS, INC., *Plaintiff,* v. **APPLE INC.,** *Defendant.*	Civil Action No. 09-804-LPS

AMENDED RULE 16 SCHEDULING ORDER

This __ day of _____, 2011, the Court having conducted a Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(a) and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard. The Parties previously made their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1). The Parties have previously agreed to the following procedures regarding discovery of electronic documents:

(a) Electronic File Search. Each party may use reasonable keyword searching to identify electronic documents reasonably like to have discoverable information regarding the subject matter of this lawsuit. The requesting party may provide ESI search terms to the producing party to use in the keyword searching by the producing party. Should a producing party object to a keyword provided by the requesting party the parties shall meet and confer concerning the objection.

(b) Form of Production of Electronic Documents. The parties anticipate producing most documents in an electronic format such as PDF or TIFF files with a load file – specifically a form that preserves the page breaks between documents and otherwise allows separate documents to be identified. The parties further agree that the parties do not need to perform optical character recognition (OCR) on the electronically produced files prior to their production. The parties also reserve the right to produce certain documents in their native format and will meet and confer regarding such production as necessary and appropriate.

(c) The Parties recognize that the use of routine file copy procedures may alter certain metadata, but the Parties agree that each will take reasonable steps to preserve the metadata for ESI that is produced in native format but that extraordinary steps (e.g., forensic imaging) are not required. The parties agree that neither will seek the discovery of voicemail without showing good cause.

(d) The Parties agree that as long as responsive documents are available and accessible via other means, neither will seek discovery of materials retained in tape, floppy disk, optical disk, or similar formats primarily for back-up or disaster recovery purposes. The Parties further agree that as long as responsive documents are available and accessible via other means, neither will seek the discovery of archives stored on computer servers, external hard drives, notebooks, or personal computer hard drives that are created for disaster recovery purposes and not used as reference materials in the normal course of a Party's business operations. The Parties further agree that neither Party need deviate from the practices it normally exercises with regard to preservation of such tape, floppy disk, optical disk, or similar formats primarily for back-up or disaster recovery purposes when not in anticipation of litigation (e.g., recycling of back-up tapes is permitted).

(e) The Parties agree that if responsive documents are located on a centralized server or network, the producing Party shall not be required to search for additional substantially the same copies of such responsive documents (where differences are not in the content of the documents) that may be located on the personal computer, or otherwise in the possession, of individual employees absent a showing of good cause that the production of such additional substantially the same copies is necessary. The Parties will meet and confer to discuss the parameters of the search and production of any such documents. The Parties further agree in this regard, however, that neither Party need deviate from the practices it normally exercises with regard to the preservation of such additional copies when no in anticipation of litigation (e.g., recycling of back-up tapes is permitted).

(f) The Parties agree to meet and confer on the protocol for the search and production of e-mail in response to discovery requests. If the parties cannot reach an agreement within sixty (60) days of this order, the parties will seek the Court's assistance.

2. Joinder of Other Parties and Amendment to Pleadings. All motions to join other parties , and to amend or supplement the pleadings, shall be filed on or before October 31, 2011.

3. Discovery. Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

a. Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before October 8, 2012.

b. Document Production. Production of technical documents concerning the operation and functionality of the accused products shall, to the extent reasonably possible, be substantially complete by October 1, 2011. Production of all documents shall be substantially complete by November 30, 2011.

c. Requests for Admission. A maximum of 25 requests for admission are permitted for each side. Notwithstanding the foregoing, there is no limitation on the number of requests for admission that a document is (i) authentic; (ii) is a business record; or (iii) otherwise meets a condition for admissibility in evidence.

d. Interrogatories.

i. A maximum of 25 interrogatories, including contention interrogatories, are permitted for each side.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers shall be judged by the level of detail each party provides; i.e., the more detail a party provides, the more detail a party shall receive.

e. Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of 50 hours of taking testimony by deposition upon oral examination, including fact, third-party and Rule 30(b)(6) witnesses (but excluding expert witness depositions). All depositions shall be limited to seven (7) hours, with the exception of 30(b)(6) depositions which will be limited to seven (7) hours per witness.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a mutually convenient place. Exceptions to this general rule may be made by order of the Court. A defendant who becomes a

counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

f. Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before forty-five (45) days after the issuance of the Court's Markman decision. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due forty-five (45) days after receipt of the opening expert reports . Reply expert reports from the party with the initial burden of proof are due on or before thirty (30) days after receipt of the supplemental disclosure to contradict or rebut evidence on the same matter identified by another party. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

ii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

g. Discovery Matters and Disputes Relating to Protective Orders. Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact chambers at (302) 573-4571 to schedule a telephone conference. On a date to be set by separate order, but not less than forty-eight (48) hours prior to the conference, the party seeking relief shall file with the

Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but not less than twenty-four (24) hours prior to the conference, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition. Should any document(s) be filed under seal, a courtesy copy of the sealed document(s) must be provided to the Court within one (1) hour of e-filing the document(s). Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the conference.

If a discovery related motion is filed without leave of the Court, it will be denied without prejudice to the moving party's right to bring the dispute to the Court through the discovery matters procedures set forth in this Order.

BIFURCATION IS DISPUTED:

h. Bifurcation of Discovery and Trial.

DEFENDANT'S PROPOSAL:

Damages, willfulness, and inequitable conduct shall be bifurcated for purposes of discovery, amendment of the pleadings, and trial until after trial of all the liability issues, at which time an appropriate schedule will be addressed by the Court.

DEFENDANT'S POSITION: Defendant seeks to keep this provision previously agreed to by the Parties and entered by the Court in the Rule 16 Scheduling Order governing this litigation on March 2, 2010 (D.I. 12, at ¶ 14).

PLAINTIFF'S POSITION:

Plaintiff opposes any bifurcation in this case.

4. Application to Court for Protective Order. On May 13, 2010 (D.I. 32), the Court entered Defendant's proposed Protective Order Regarding The Disclosure And Use Of Discovery Materials (D.I. 28, Ex.2.).

5. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and one (1) copy of the papers. In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

6. Courtesy Copies. The parties shall provide to the Court two (2) courtesy copies of all briefs and one (1) courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

7. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

8. Interim Status Report. On October 10, 2011, counsel shall submit a joint letter to the Court with an interim report on the nature of the matters in issue and the progress of discovery to date. Thereafter, if the Court deems it necessary, it will schedule a status conference.

9. Tutorial Describing the Technology and Matters in Issue. The parties shall each present a technology tutorial to the Court on _____, 201_, which shall be recorded for the Court.

10. Claim Construction Issue Identification. If the Court does not find that a limited earlier claim construction would be helpful in resolving the case, on March 6, 2012, the parties

shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted on March 20, 2012. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

11. Claim Construction Briefing. The parties shall contemporaneously submit initial briefs on claim construction issues on April 6, 2012. The parties' answering/responsive briefs shall be contemporaneously submitted on May 8, 2012. No reply briefs or supplemental papers on claim construction shall be submitted without leave of the Court. Local Rule 7.1.3(4) shall control the page limitation for initial (opening) and responsive (answering) briefs.

12. Hearing on Claim Construction. Beginning at _____ _.m. on _____, 201_, the Court will hear argument on claim construction. The parties shall notify the Court, by joint letter submission, no later than the date on which their answering claim construction briefs are due: (i) whether they request leave to present testimony at the hearing; and (ii) the amount of time they are requesting be allocated to them for the hearing.

13. Reliance On Advice of Counsel. Defendant shall disclose to Plaintiff any advice of counsel that it may rely upon as a defense to willful infringement no later than fifty (50) days after the Court issues its claim construction ruling.

14. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before _____, 201_ [a date approximately four months prior to the pretrial conference]. Briefing will be presented pursuant to the Court's Local Rules. No case dispositive motion under Rule 56 may be filed more than ten (10) days before the above date without leave of the Court.

15. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion filed with the Clerk. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

16. Pretrial Conference. On _____, 201_, the Court will hold a pretrial conference in Court with counsel beginning at _____ _.m. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the joint proposed final pretrial order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on or before _____, 201_. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d)(1)-(3) for the preparation of the joint proposed final pretrial order. The Court will advise the parties at or before the above-scheduled pretrial conference whether an additional pretrial conference will be necessary.

17. Motions *in Limine*. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three (3) *in limine* requests, unless otherwise permitted by the Court. The *in Limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three (3) pages of argument and may be opposed by a maximum of

three (3) pages of argument, and the party making the *in limine* request may add a maximum of one (1) additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three (3) page submission (and, if the moving party, a single one (1) page reply), unless otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

18. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47 and 51 the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms three (3) full business days before the final pretrial conference. This submission shall be accompanied by a computer diskette containing each of the foregoing four (4) documents in WordPerfect format.

19. Trial. This matter is scheduled for a __ day ____ trial beginning at 9:30 a.m. on _____, 201_, with the subsequent trial days beginning at 9:00 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

_____
UNITED STATES DISTRICT JUDGE