IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MOXCHANGE LLC, Plaintiff, v. **ALE USA INC.,** Defendant.	C.A. No. 20-1123-LPS
MOXCHANGE LLC, Plaintiff**,** **v.** **AVIGILON USA CORPORATION,** Defendant**.**	C.A. No. 20-1440-LPS

[PROPOSED] SCHEDULING ORDER

I. Proposals Regarding Expedited *Markman* and Section 101 Proceedings

Plaintiff's Statement

In its March 12, 2021, order denying Defendants' Motions to Dismiss, the Court requested that the parties submit a proposed schedule and to meet and confer regarding the possibility of early claim construction on the three terms raised by Moxchange: "regenerating," "synchronously regenerating," and "logic operation." Moxchange does not believe that early claim construction is appropriate in this case because, regardless of the claim constructions, there will still be fact issues regarding what claimed features alone and in combination were well-understood, routine, and conventional. For example, Moxchange acknowledged that certain claim limitations were known in the prior art but not that they were well-understood, routine, and conventional, nor that the claims as a whole were well-understood, routine, and conventional. Even though other techniques are disclosed in other patents, there is no evidence of any

commercialization. In other words, there is no evidence that they were ever used conventionally, routinely, or at all. As explained in the patents-in-suit, the well-understood, routine, and conventional techniques at the time used long encryption keys, complex encryption functions, static or semi-static keys, or static public keys. (*E.g.*, -1123, D.I. 12 at 3-4). These techniques had the design flaws that were approved upon by the patented inventions. (*E.g.*, -1123, D.I. 12 at 4-8). Fact discovery will therefore be required as to what were well-understood, routine, and conventional techniques regardless of the claim constructions. The case should therefore proceed according to the proposed schedule.

If the Court finds that early claim construction is appropriate, Moxchange contends that is should occur in parallel with the proposed case schedule and begin after Defendants' Paragraph 4(d) disclosures (invalidity contentions) are served on July 23, 2021. Defendants' Paragraph 4(d) disclosures are useful evidence in weighing their argument as to what were well-understood, routine, and conventional techniques. In addition, proceeding with early claim construction after Defendants' Paragraph 4(d) disclosures will allow time to ensure that all claims to be asserted have been identified (by May 15, 2021, according to the proposed schedule) and that Defendants are taking claim construction positions on patent ineligibility that are consistent with their positions on invalidity. Moxchange proposes cross-briefing to shorten the time of the early claim construction process:

- July 30, 2021 – parties exchange proposed constructions for the three terms;
- August 13, 2021 – cross-opening early claim construction briefs limited to 15 pages are filed;
- September 3, 2021 – cross-responsive early claim construction briefs limited to 15 pages are filed; and

- September ___, 2021 – claim construction hearing.

This proposal would result in a claim construction hearing approximate five months before a full claim construction hearing. Moxchange agrees to Defendants' proposed timing of within 7 days of receiving the Court's *Markman* Order, Defendants will inform Plaintiff regarding whether they desire expedited proceedings related to Section 101 in light of the Court's *Markman* Order; and within 14 days of receiving the Court's *Markman* Order, the parties will jointly submit to the Court, after meeting and conferring, a joint proposal for further proceedings, if any, towards early resolution of the Section 101 issues

Defendants' Statement

In its March 12, 2021 Order on Defendants' Motion to Dismiss Based on Invalidity Under Section 101, the Court found a factual dispute as to whether, under Plaintiff's proposed constructions, the asserted claims were well understood, routine, or conventional at the time of the asserted patents. C.A. No. 20-cv-1123, D.I. 24 at 12; C.A. No. 20-cv-1440, D.I. 26 at 12. Although the Court noted that "Defendants point to what appears to be an impressive amount of evidence to support their position," it determined that at the Rule 12 stage, it was "bound to draw all reasonable inferences in Plaintiff's favor" and on that basis declined to complete the *Alice* Step 1 and Step 2 analysis until after claim construction. *Id*. at 10-11; *see also id*. at 10 ("I also believe claim construction is necessary before the 101 decision can be made on these patents."). The Court stated that it would reconsider the § 101 issue, if asked to do so, after claim construction. *Id. at* 11. The Court also invited the parties "to consider whether to propose a schedule that would get us to claim construction early, perhaps even before much or any discovery, and to further consider whether we might efficiently benefit from another round of motions practice after claim construction." *Id.* at 12.

In accordance with the Court's Order and in the interest of judicial economy, Defendants propose expedited proceedings narrowly tailored to determine the appropriate constructions of the three terms belatedly proposed by Plaintiff ("regenerating," "synchronously regenerating," and "logic operation" (*see* C.A. 20-cv-1123, D.I. 18, C.A. 20-cv-1440, D.I. 20)) and to allow for additional briefing regarding the patent ineligibility of the asserted claims under the Court's construction.

Defendants submit that addressing these issues now on an expedited schedule will streamline, if not resolve, these cases. Specifically, Defendants believe that early claim construction will show as a matter of law that the claims cover nothing more than practicing the abstract idea of "generating new keys based on previous keys and data and using a logic operation," as Moxchange's Complaint alleges. *E.g.*, C.A. 20-cv-1440, D.I. 1 ¶ 18. Further, as the Court acknowledged, there is extensive evidence already in the record, including Moxchange's own statements in these cases and in the intrinsic record for the asserted patents, that the claims are well understood, routine, and conventional such that there would be no genuine dispute of material fact regarding patent ineligibility.

Moxchange opposes these expedited proceedings. It proposes that Defendants provide full invalidity contentions on all issues, including §§ 102, 103, and 112, before any expedited claim construction proceeds. That would undermine the interest of judicial economy. Moreover, §§ 102, 103, and 112 present distinctly different factual and legal inquiries necessitating extensive discovery that would be unnecessary to resolve the limited claim construction and § 101 issues here. Moxchange's concern that Defendants' provision of invalidity contentions is necessary to prevent later inconsistent claim construction positions is unfounded, as the Court's constructions in the proposed expedited proceeding would apply to all issues in these matters to

the extent the cases move forward past the § 101 issues. Finally, the rationale for Moxchange's contention that ***Defendants*** need to provide invalidity contentions to "ensure that all claims to be asserted have been identified" is not clear, as Moxchange already identified specific claims of each asserted patent as representative for purposes of the § 101 analysis. C.A. 20-cv-1440, D.I. 20 at 1.

Accordingly, Defendants respectfully submit that the Court grant Defendants' request to consider Moxchange's claim construction proposals at an early stage, so that the § 101 patent-eligibility analysis can proceed before the Court and the parties expend significant resources on other discovery. Defendants specifically propose an expedited proceeding according to the following deadlines:

a. Expedited and Limited *Markman* Proceedings

   i. April 16, 2021 – Parties shall exchange proposed claim constructions for the three terms identified by Moxchange.

   ii. April 30, 2021 - Plaintiff shall serve, but not file, its opening brief, not to exceed 10 pages.

   iii. May 14, 2021 – Defendants ALE and Avigilon shall serve, but not file, their answering brief, not to exceed 10 pages.

   iv. May 21, 2021 - Plaintiff shall serve, but not file, its reply brief, not to exceed 5 pages

   v. May 27, 2021 - Defendants ALE and Avigilon shall serve, but not file, their sur-reply brief, not to exceed 5 pages**.**

vi. June 2, 2021 - The parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their unfiled briefs into one brief, with their positions on each claim term in sequential order.

vii. June __, 2021 - The Court will hear argument on claim construction.

b. Within 7 days of receiving the Court's *Markman* Order, Defendants will inform Plaintiff whether they desire expedited proceedings related to Section 101 in light of the Court's *Markman* Order, and

c. If so, within 14 days of receiving the Court's *Markman* Order, the parties will jointly submit to the Court, after meeting and conferring, a joint proposal for further proceedings, if any, towards early resolution of the Section 101 issues.

Defendants propose that, during these expedited proceedings, all other deadlines set forth in the joint proposed scheduling order below will be stayed. In the alternative, Defendants propose that each of the below deadlines be extended by 6 months to allow for completion of the expedited *Markman* and patent ineligibility proceedings.

II. Parties' Joint Proposed Scheduling Order

This _____ day of _____, 2021, the Court having conducted a Case Management Conference/Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(a) and Judge Stark's Revised Procedures for Managing Patent Cases (which is posted at http://www.ded.uscourts.gov, see Chambers, Judge Leonard P. Stark, Patent Cases), 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 HEREBY ORDERED that:

1. Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within **twenty-one (21) days** of the date of this Order. If they have not already done so, the parties are to review the Court's Default Standard for Discovery, Including Discovery of Electronically Stored Information ("ESI") (which is posted at http://www.ded.uscourts.gov: see Other Resources, Default Standards for Discovery, and is incorporated herein by reference). The parties shall make their Paragraph 3 Initial Disclosures (Default Standard for Discovery) within **thirty (30) days** of the date of this Order.

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before **June 18, 2021,** except any motion to add an inequitable conduct defense or other equitable defenses shall be filed on or before **August 12, 2022**.

3. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within **thirty (30) days** from the date of this Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 8(g) below.

Any proposed protective order must include the following paragraph:

> Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" [the parties should list

> any other level of designation, such as "highly confidential," which may be provided for in the protective order] pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

4. Papers Filed Under Seal. 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.

Should any party intend to request to seal or redact all or any portion of a transcript of a court proceeding (including a teleconference), such party should expressly note that intent at the start of the court proceeding. Should the party subsequently choose to make a request for sealing or redaction, it must, promptly after the completion of the transcript, file with the Court a motion for sealing/redaction, and include as attachments (l) a copy of the complete transcript highlighted so the Court can easily identify and read the text proposed to be sealed/redacted, and (2) a copy of the proposed redacted/sealed transcript. With their request, the party seeking redactions must demonstrate why there is good cause for the redactions and why disclosure of the redacted material would work a clearly defined and serious injury to the party seeking redaction.

5. Courtesy Copies. Other than with respect to "discovery matters," which are governed by paragraph 8(g), and the final pretrial order, which is governed by paragraph 20, the parties shall provide to the Court two (2) courtesy copies of all briefs and one (l) 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.

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

7. Disclosures. Absent agreement among the parties, and approval of the Court:

a. By **April 9, 2021**, Plaintiff shall identify the accused product(s), including accused methods and systems, and its damages model, as well as the asserted patent(s) that the accused product(s) allegedly infringe(s). Plaintiff shall also produce the file history for each asserted patent.

b. By **May 14, 2021**, Defendant shall produce core technical documents related to the accused product(s), sufficient to show how the accused product(s) work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications. Defendant shall also produce sales figures for the accused product(s).

c. By **May 14, 2021**, Moxchange will disclose the claims that will be asserted in each patent.

d. By **June 18, 2021**, Plaintiff shall produce an initial claim chart relating each known accused product to the asserted claims each such product allegedly infringes.

e. By **July 23, 2021**, Defendant shall produce its initial invalidity contentions for each asserted claim, as well as the known related invalidating references.

f. By **July 1, 2022**, Plaintiff shall provide final infringement contentions.

g. By **August 5, 2022**, Defendant shall provide final invalidity contentions.

8. 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 **September 30, 2022**.

b. Document Production. Document production shall be substantially complete by **June 3, 2022**.

c. Requests for Admission. A maximum of **25** requests for admission are permitted for each side in each case, not counting requests for admission solely for the authentication or admissibility of documents.

d. Interrogatories.

i [*Plaintiff's Proposal* – Plaintiff has a maximum of 25 interrogatories per defendant. Defendants collectively have a maximum of 25 interrogatories for service on Plaintiff (any interrogatories served individually by Defendants would be substantially overlapping); *Defendants' Proposal* – The ALE and Avigilon cases are not consolidated. Each case involves different parties, products, and issues. For each case, ALE and Avigilon get 25 interrogatories].

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. [*Plaintiff's Proposal* – Plaintiff has a maximum of 56 hours of fact deposition per defendant. Defendant collectively have a maximum of 56 hours of fact deposition (any fact depositions taken by defendants of Plaintiff or third parties would be substantially overlapping); *Defendants' Proposal* – The ALE and Avigilon cases are not consolidated. Each case involves different parties, products, and issues. For each case, ALE and Avigilon get 56 hours of deposition]

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 place designated within this district.

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 **October 28, 2022**. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before

December 2, 2022. Reply expert reports from the party with the initial burden of proof are due on or before **January 7, 2023**. 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. Expert discovery shall close on **January 28, 2023**.

ii Expert Report Supplementation. The parties agree they **will** permit expert declarations to be filed in connection with motions briefing (including case-dispositive motions).

iii 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. Briefing on such motions is subject to the page limits set out in connection with briefing of case dispositive motions.

g. Discovery Matters and Disputes Relating to Protective Orders.

i Any discovery motion filed without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures.

ii Should counsel find, after good faith efforts—including verbal communication among Delaware and Lead Counsel for all parties

to the dispute—that 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 submit a joint letter in substantially the following form:

Dear Judge Stark:

The parties in the above referenced matter write to request the scheduling of a discovery teleconference.

The following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party, participated in a verbal meet-and-confer (in person and/or by telephone) on the following date(s):

_____

Delaware Counsel: _____

Lead Counsel: _____

The disputes requiring judicial attention are listed below:

[provide here a non-argumentative list of disputes requiring judicial attention]

iii On a date to be set by separate order, generally 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 generally 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.

iv Each party shall submit two (2) courtesy copies of its discovery letter and any attachments.

v 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.

9. Motions to Amend.

a. Any motion to amend (including a motion for leave to amend) a pleading shall NOT be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the proposed amended pleading as well as a "blackline" comparison to the prior pleading.

b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to amend.

10. Motions to Strike.

a. Any motion to strike any pleading or other document shall NOT be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the document to be stricken.

b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to strike.

11. Tutorial Describing the Technology and Matters in Issue. Unless otherwise ordered by the Court, the parties shall provide the Court, no later than the date on which their opening claim construction briefs are due, a tutorial on the technology at issue. In that regard, the parties may separately or jointly submit a DVD of not more than thirty (30) minutes. The tutorial should focus on the technology in issue and should not be used for argument. The parties may choose to file their tutorial(s) under seal, subject to any protective order in effect. Each party may comment, in writing (in no more than five (5) pages) on the opposing party's tutorial. Any such comment shall be filed no later than the date on which the answering claim construction briefs are due. As to the format selected, the parties should confirm the Court's technical abilities to access the information contained in the tutorial (currently best are "mpeg" or "quicktime").

12. Claim Construction Issue Identification. For the purposes of claim construction issue identification, defendants in *Moxchange LLC v. ALE USA Inc.*, C.A. No. 1:20-cv-1123-LPS and in *Moxchange LLC v. Avigilon USA Corp.*, C.A. No. 1:20-cv-01440-LPS shall be treated as a single "Defendant" such that for each claim construction disclosure ALE USA Inc. and Avigilon USA Corp. shall jointly make a single disclosure. On **September 10, 2021**, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need

construction. On **October 1, 2021**, the parties will exchange 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 **October 15, 2021**. 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.

13. Claim Construction Briefing. For the purposes of claim construction issue identification, defendants in *Moxchange LLC v. ALE USA Inc.*, C.A. No. 1:20-cv-1123-LPS and in *Moxchange LLC v. Avigilon USA Corp.*, C.A. No. 1:20-cv-01440-LPS shall be treated as a single "Defendant" such that for each required claim construction brief ALE USA Inc. and Avigilon USA Corp. shall submit a single brief complying with the page limitations.

[*Plaintiff's Proposal:* The Plaintiff shall serve, but not file, its opening brief, not to exceed 20 pages, on **November 5, 2021**. The Defendants shall serve, but not file, their answering brief, not to exceed **20** pages, on **December 3, 2021**. The Plaintiff shall serve, but not file, its reply brief, not to exceed **10** pages, on **December 22, 2021**. The Defendants shall serve, but not file, their sur-reply brief, not to exceed 10 pages, on **January 14, 2022.** No later than **January 21, 2022**, the parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their unfiled briefs into one brief,

with their positions on each claim term in sequential order, in substantially the form below.]

[*Defendant's Proposal*: If the Court grants Defendants' request for expedited claim construction briefing, and the asserted patents are not found invalid under § 101 as directed to unpatentable subject matter, Defendants agree with Plaintiff's claim construction proposal.

If the Court is inclined not to grant Defendants' request for early claim construction to address the unsettled § 101 invalidity issue, Defendants propose that the Court adopt its standard claim construction procedure, as follows: The Plaintiff shall serve, but not file, its opening brief, not to exceed **20** pages, on **November 5, 2021**. The Defendants shall serve, but not file, their answering brief, not to exceed **30** pages, on **December 3, 2021**. The Plaintiff shall serve, but not file, its reply brief, not to exceed **20** pages, on **December 22, 2021**. The Defendants shall serve, but not file, their sur-reply brief, not to exceed **10** pages, on **January 14, 2022.** No later than **January 21, 2022**, the parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their unfiled briefs into one brief, with their positions on each claim term in sequential order, in substantially the form below.]

JOINT CLAIM CONSTRUCTION BRIEF

I. Agreed-Upon Constructions

II. Disputed Constructions

[TERM 1]

1. Plaintiff's Opening Position
2. Defendants' Answering Position
3. Plaintiff's Reply Position

4. Defendants' Sur-Reply Position

[TERM 2]

1. Plaintiff's Opening Position

2. Defendants' Answering Position

3. Plaintiff's Reply Position

4. Defendants' Sur-Reply Position

The parties need not include any general summaries of the law relating to claim construction. If there are any materials that would be submitted in an index, the parties shall submit them in a Joint Appendix.

14. Hearing on Claim Construction. Beginning at **_____.m.** on **February __, 2022** 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. Provided that the parties comply with all portions of this Scheduling Order, and any other orders of the Court, the parties should anticipate that the Court will issue its claim construction order within sixty (60) days of the conclusion of the claim construction hearing. If the Court is unable to meet this goal, it will advise the parties no later than sixty (60) days after the conclusion of the claim construction hearing.

15. Interim Status Report. On **December 17, 2021**, 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.

16. Supplementation. Absent agreement among the parties, and approval of the Court, no later than **thirty (30) days after the Court enters the claim construction ruling**, the parties must finally supplement, inter alia, the identification of all accused products and of all invalidity references.

17. 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 **February 24, 2023**. Briefing will be presented pursuant to the Court's Local Rules, as modified by this Order.

a. No early motions without leave. No case dispositive motion under Rule 56 may be filed more than ten (10) days before the above date without leave of the Court.

b. Page limits combined with *Daubert* motion page limits. Each party is permitted to file as many case dispositive motions as desired; provided, however, that each SIDE[1] will be limited to a combined total of 40 pages for all opening briefs, a combined total of 40 pages for all answering briefs, and a combined total of 20 pages for all reply briefs regardless of the number of case dispositive motions that are filed. In the event that a party files, in addition to a case dispositive motion, a *Daubert* motion to exclude or preclude all or any portion of an expert's testimony, the total amount of pages permitted for all case dispositive and *Daubert* motions shall be increased to 50 pages for all opening briefs, 50 pages for all answering briefs, and 25 pages for all reply briefs for each SIDE.[2]

[1] To the extent there are issues relevant to a Defendant in one case but not the other, Defendants may seek leave to file separate motions specific to their respective case.

[2] The parties must work together to ensure that the Court receives no more than a **total** of **250 pages** (i.e., 50 + 50 + 25 regarding one side's motions, and 50 + 50 + 25 regarding the other side's motions) of briefing on all case dispositive motions and Daubert motions that are covered

c. Hearing. The Court will hear argument on all pending case dispositive and *Daubert* motions on beginning at **9:00 a.m.** on **April 11, 2023**. Subject to further order of the Court, each side will be allocated a total of forty-five (45) minutes to present its argument on all pending motions.

18. 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.l.

19. Trial Scheduling Conference. On **May , 2023 at .m.**, the Court will hold a conference to discuss the order and scheduling of trials. The parties shall submit a joint status letter setting forth their respective positions on trial scheduling no less than seven (7) days in advance of the trial scheduling conference.

20. Pretrial Conference. On **June , 2023**, the Court will hold a pretrial conference for the first trial 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 in the first trial shall file with the Court the joint proposed final pretrial order with the information required by the form of Revised Final Pretrial Order — Patent, which can be found on the Court's website (www.ded.uscourts.gov), on or before **June , 2023**. 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.

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by this scheduling order and any other scheduling order entered in any related case that is proceeding on a consolidated or coordinated pretrial schedule.

The parties shall provide the Court two (2) courtesy copies of the joint proposed final pretrial order and all attachments.

As noted in the Revised Final Pretrial Order - Patent, the parties shall include in their joint proposed final pretrial order, among other things:

a. a request for a specific number of ***hours*** for their trial presentations, as well as a requested number of days, based on the assumption that in a typical jury trial day (in which there is not jury selection, jury instruction, or deliberations), there will be 5 h to 6 h hours of trial time, and in a typical bench trial day there will be 6 to 7 hours of trial time;

b. their position as to whether the Court should allow objections to efforts to impeach a witness with prior testimony, including objections based on lack of completeness and/or lack of inconsistency;

c. their position as to whether the Court should rule at trial on objections to expert testimony as beyond the scope of prior expert disclosures, taking time from the parties' trial presentation to argue and decide such objections, or defer ruling on all such objections unless renewed in writing following trial, subject to the proviso that a party prevailing on such a post-trial objection will be entitled to have all of its costs associated with a new trial paid for by the party that elicited the improper expert testimony at the earlier trial; and

d. their position as to how to make motions for judgment as a matter of law, whether it be immediately at the appropriate point during trial or at a subsequent break, whether the jury should be in or out of the courtroom, and whether such motions may be supplemented in writing.

21. 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 in each case.

Each SIDE 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 side making the *in limine* request may add a maximum o one (1) additional page in reply in support of its request. If more than one party is supporting o 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 (l) page reply), unless otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

22. 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) business days before the final pretrial conference. This submission shall be accompanied by a courtesy copy containing electronic files of these documents, in WordPerfect or Microsoft Word format, which may be submitted by e-mail to Judge Stark's staff.

23. Trial. The first trial in these matters is scheduled for a **5**-day **jury** trial beginning at **9:30 a.m.** on **July , 2023**, 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.

24. Judgment on Verdict and Post-Trial Status Report. Within seven (7) days after a jury returns a verdict in any portion of a jury trial, the parties shall jointly submit a form of

order to enter judgment on the verdict. At the same time, the parties shall submit a joint status report, indicating among other things how the case should proceed and listing any post-trial motions each party intends to file.

22. Post-Trial Motions. Unless otherwise ordered by the Court, all ***SIDES*** are limited to a maximum of 20 pages of opening briefs, 20 pages of answering briefs, and 10 pages of reply briefs relating to any post-trial motions filed by that side, no matter how many such motions are filed.

UNITED STATES DISTRICT JUDGE