

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
PHOENIX DIVISION**

CASE NO.: CV-20-02185-PHX-DJH

VPR BRANDS, LP,

Plaintiff,

v.

JUPITER RESEARCH, LLC,

Defendant.

JOINT CASE MANAGEMENT REPORT

Plaintiff, VPR Brands, LP, and Defendant, Jupiter Research, LLC (collectively, the “Parties”), pursuant to the Court’s December 21, 2020 Order Setting Rule 16 Scheduling Conference, hereby submit this Joint Case Management Report.

1. A list of the parties in the case, including any parent corporations or entities (for recusal purposes).

The parties in this case are VPR Brands, LP (Plaintiff) and Jupiter Research, LLC (Defendant).

2. A short statement of the nature of the case (3 pages or less), including a description of each claim and each affirmative defense, and identifying the factual and legal issues genuinely in dispute.

Plaintiff’s Claims

This is a patent infringement case. VPR claims patent infringement of United States Patent Number 8,205,622 (the ‘622 Patent) entitled “Electronic Cigarette” by defendant Jupiter. Electronic cigarettes consist of an atomizer, a power source such as a battery, and a

container such as a cartridge or tank. Instead of smoke, the user inhales vapor. E-cigarettes create an aerosol, commonly called vapor, made of particulate matter. As such, using an e-cigarette is often called "vaping."

Defendant Jupiter admits in its answer to the complaint that it “makes, uses, imports, offers for sale, and sells one or more vape products” including the brand “LIQUID 6.” Otherwise, defendant Jupiter denied infringement and counterclaimed for invalidity and non-infringement.

Defendant’s Claims and Defenses

Defendant alleges as follows: Plaintiff’s Complaint asserts two counts alleging patent infringement against Defendant. Plaintiff alleges in Counts I and II that Defendant’s product infringes the one Asserted Patent.

Plaintiff’s Counts I and II fail because Defendant’s accused product does not infringe any claims of any of the Asserted Patent directly, indirectly, literally, or under the doctrine of equivalents. Further, the Asserted Patent is invalid because it claims non-novel and/or obvious subject matter under 35 U.S.C. §§ 102 and/or 103, and/or fails to satisfy one or more conditions of patentability set forth in 35 U.S.C. § 112 including the written description, enablement, and definiteness requirements. The Asserted Patent is also directed to patent ineligible subject matter under 35 U.S.C. § 101.

Defendant has asserted the following affirmative defenses: 1. failure to state a claim upon which relief can be granted; 2. Non-infringement of the Asserted Patent; 3. Invalidity of the Asserted Patent; 4. Prosecution history estoppel; 5. Waiver, laches, acquiescence, consent and/or estoppel; 6. Statutory damage limitations; and 7. Unclean hands.

Defendant has asserted two counter claims: Count 1 seeking a declaration of invalidity of the Asserted Patent, and Count 2 seeking a declaration of non-infringement of the Asserted Patent.

Matters in Dispute

The parties dispute the following legal and factual issues:

- **The parties dispute the validity of the Asserted Patent.**
- **The parties dispute whether Defendant's products infringe any of the Asserted Patent.**
- **The parties dispute whether Plaintiff incurred any damages as a result of Defendant's actions and, if so, the amount of the damages.**
- **The parties dispute whether either party should be awarded costs or attorneys' fees at the conclusion of this case and, if so, the amount thereof.**

The parties do not believe that the above disputed issues can be narrowed by stipulation. These issues, however, may be narrowed by motion practice.

3. The jurisdictional basis for the case, describing the basis for jurisdiction and citing specific statutes, if any.

This Court has original and exclusive subject matter jurisdiction pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1338; and 35 U.S.C. § 271.

4. Parties which have not been served and an explanation of why they have not been served; and any parties which have been served but have not answered or otherwise appeared, including fictitious parties. Unless any party can otherwise show cause, an order shall accompany the Joint Case Management Report dismissing any party which has not been served, naming fictitious or unnamed parties, or seeking default judgment on any non-appearing party.

Not applicable.

5. A statement of whether any party expects to add additional parties to the case or otherwise to amend pleadings (the Court will set a deadline of not later than 60 days from the issuance of the Rule 16 Scheduling Order).

No additional parties expected.

6. A list of contemplated motions and a statement of the issues to be decided by these motions.

The parties contemplate briefing on claim construction. Plaintiff contemplates filing a motion for summary judgment of infringement.

Defendant contemplates filing future motions for summary judgment of invalidity of the Asserted Patent and non-infringement of the Asserted Patent.

7. Whether the parties will consent to the assignment of this action to a United States Magistrate Judge in accordance with 28 U.S.C. § 636(c).

The parties do not consent to the assignment of this action to a United States Magistrate Judge at this time.

8. The status of related cases pending before other courts or other judges of this Court.

None.

9. A statement of when the parties exchanged or will exchange Fed.R.Civ.P. 26(a) Initial Disclosures.

March 22, 2021.

10. A discussion of any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it will be produced (*see* Fed.R.Civ.P. 16(b)(3)(B)(iii); Fed.R.Civ.P. 26(f)(3) (C)).

The parties will meet and confer on issues related to Electronically Stored Information (“ESI”) and will submit a proposed ESI Order to govern any ESI discovery.

11. A discussion of any issues relating to claims of privilege or work product (*see* Fed.R.Civ.P. 16(b)(3)(B)(iv); Fed.R.Civ.P. 26(f)(3)(D)).

The parties will meet and confer on issues related to claims of privilege or work product. The parties anticipate agreeing that communications between the parties and their attorneys after the filing of this litigation do not need to be logged for privilege. The parties will submit a proposed Clawback Order under FRE 502(d). The parties anticipate agreeing to a Protective Order to govern any confidential discovery.

12. A discussion of necessary discovery, including:

a. The extent, nature, and location of discovery anticipated by the parties;

The parties anticipate exchanging discovery electronically. The parties do not contemplate voluminous discovery.

b. The scope of discovery and whether discovery should be conducted in phases or should be limited to focus on particular issues.

The parties anticipate seeking written, document, and deposition discovery on at least the following subject matters:

(i) **The factual bases for Plaintiff’s patent infringement assertions;**

(ii) **Information related to the conception and reduction to practice of the inventions claimed in the Asserted Patent;**

(iii) **Information related to the validity and/or invalidity of the Asserted Patent;**

(iv) **Information related to Plaintiff's alleged damages; and**

(v) **Information related to Plaintiff's proposed claim constructions.**

The parties expect to engage in expert discovery on the issues of infringement, non-infringement, validity/invalidity, and damages. The parties propose that this expert discovery should occur after the Court has construed any disputed claims.

c. Suggested changes, if any, to the discovery limitations imposed by the Federal Rules of Civil Procedure;

The parties do not have any suggested changes.

d. The number of hours permitted for each deposition, unless modified by agreement of the parties. *See* Fed.R.Civ.P. 30(d)(1).

The parties do not believe that any adjustments are necessary regarding the number of hours permitted by Fed.R.Civ.P. 30(d)(1) for each deposition.

13. Proposed specific dates for each of the following:

a. A deadline for the completion of fact discovery;

b. Dates for complete expert disclosures under Federal Rule of Civil Procedure 26(a)(2)(A)-(E), including separate dates for plaintiff's expert disclosure, defendant's expert disclosure, and for rebuttal expert disclosure;

c. A deadline for completion of all expert depositions;

d. A deadline for filing dispositive motions;

e. A date by which the parties shall have engaged in face-to-face good faith settlement talks.

The parties propose deadlines for the matters above and other deadlines in this case as follows:

Event	Proposed Date
Initial Disclosures	3/22/2021
Deadline for joining parties and amending pleadings	3/10/2021
Disclosure of Asserted Claims and Infringement Contentions	3/15/2021
Invalidity Contentions	5/3/2021
Identification of Claims to be Construed.	5/17/2021
Deadline for Filing Claim Constructions	6/7/2021
Joint Claim Construction Statement	8/9/2021
Completion of Claim Construction Discovery	9/13/2021
Opening Claim Construction Brief	11/1/2021
Responsive Claim Construction Brief	11/15/2021
Reply Claim Construction Brief	11/22/2021
Claim Construction Hearing	At the Court's convenience
Opening Expert Reports by the party bearing the burden of proof	3/7/2022
Rebuttal Expert reports by the party not bearing the burden of proof	4/7/2022
Completion of Fact and Expert Discovery	6/2/2022
Dispositive and <i>Daubert</i> Motions	7/6/2022
Parties to engage in face-to-face good faith settlement talks	7/29/2022
Pretrial Conference	At the Court's convenience
Trial	At the Court's convenience

14. Whether a jury trial has been requested and whether the request for a jury trial is contested and, if so, the reasons why the request is contested.

Yes. Not Contested.

15. The estimated length of trial.

The parties estimate the length of trial to be 3-5 days.

16. The prospects for settlement, including any request of the Court for assistance in settlement efforts, including referral to a United States Magistrate Judge for the limited purposes of settlement.

The parties believe that there is opportunity for settling this matter and is open to referral to a United States Magistrate Judge for the limited purpose of settlement.

Dated: February 22, 2021

Respectfully submitted,

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