

THE HONORABLE THOMAS S. ZILLY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARRIVALSTAR S.A. AND MELVINO
TECHNOLOGIES LIMITED,

Plaintiffs,

v.

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY,

Defendant.

No. 2:12-cv-00977-TSZ

JOINT STATUS REPORT AND
DISCOVERY PLAN

This Joint Status Report and Discovery Plan is filed by Plaintiffs, ArrivalStar S.A. and Melvino Technologies Limited (collectively "ArrivalStar") and Defendant, Central Puget Sound Regional Transit Authority ("Sound Transit"), by and through their respective counsel, in response to this Court's Order.

1. STATEMENT OF THE NATURE AND COMPLEXITY OF THE CASE

This is a complex patent infringement case involving a patent owned by Melvino Technologies and exclusively licensed to ArrivalStar for monitoring and reporting vehicle status information and Sound Transit's accused infringing system. ArrivalStar has alleged claims for injunctive relief and monetary damages arising out of Sound Transit's alleged infringement of U.S. Patent No. 7,030,781 (the "781 patent"). Sound Transit denies infringement and has filed counterclaims for declaratory judgment of non-infringement, of patent invalidity, of patent

JOINT STATUS REPORT AND DISCOVERY PLAN - 1

1 unenforceability, and for violation of Washington's Unfair Business Practices and Consumer
2 Protection Act. ArrivalStar has answered Sound Transit's Counterclaims.

3 **2. PREFERRED ADR METHOD**

4 The parties believe that mediation is the preferred ADR method.

5 **3. TIMING OF ADR PROCEEDING**

6 The parties believe that ADR in the form of mediation would be most beneficial before
7 the parties expend considerable resources in the litigation. ArrivalStar believes that a settlement
8 conference would be beneficial after the parties exchange Infringement and Invalidity
9 Contentions. Sound Transit believes mediation would be most beneficial after the parties have
10 had an opportunity to conduct discovery on the merits of their contentions.

11 **4. DEADLINE FOR JOINING ADDITIONAL PARTIES**

12 The parties propose that additional parties be joined by December 1, 2012.

13 **5. PROPOSED DISCOVERY PLAN**

14 The parties suggest the following discovery plan:

15 **A. FRCP 26(f) Conference and FRCP 26(a) Initial Disclosures**

16 The parties held a telephonic FRCP 26(f) Conference on July 23, 2012. Initial
17 Disclosures were exchanged on July 30, 2012.

18 **B. Subject Matter and Phases of Discovery**

19 Without waiving any objections to the relevance or admissibility of information and
20 documents implicated by the description of topics, the parties believe that the subject matter of
21 their discovery may include the following:

- 22 • The invention of the subject matter of the patent-in-suit
- 23 • The practice of the subject matter of the patent-in-suit by ArrivalStar and others
- 24 • Prosecution history related to the patent-in-suit and related patent applications.
- 25 • Prior art related to the patent-in-suit and related patent applications.

26

JOINT STATUS REPORT AND DISCOVERY PLAN - 2

- 1 • Evidence related to claim construction of the patent-in-suit and related patent applications.
- 2
- 3 • Sound Transit's accused infringing technology and ArrivalStar's pre-filing investigation.
- 4
- 5 • Marketing, sales and income information related to Sound Transit's accused infringing technology.
- 6
- 7 • Damages to the parties related to their respective causes of action.
- 8
- 9 • ArrivalStar's patent licensing program and grants of rights to third parties
- 10 • Third party vehicle notification and tracking systems, including those disclosed in other ArrivalStar licensing agreements and discussions and litigations
- 11 • Pleadings, discovery, motions, and orders in other litigations involving the patent-in-suit
- 12 • Secondary considerations of non-obviousness
- 13 • Claims and counterclaims asserted and defenses raised by the parties.

14 The parties do not believe that discovery should be conducted in phases or be limited to or
15 focused upon particular issues, other than by agreeing to conduct document discovery of the
16 primary issues in the case (including but not limited to those described above) before engaging in
17 expensive and burdensome electronic discovery. While the parties do not formally adopt the
18 model order on e-discovery from the U.S. Court of Appeals for the Federal Circuit, they agree to
19 use it as a guide and cost-saving measure.

20 ***C. Limitations on Discovery***

21 The parties do not believe that any changes should be made to the limitations on
22 discovery imposed under the Federal and Local Civil Rules, or that any other limitations should
23 be imposed.

24 ***D. Discovery Management***

25 The parties will work together to minimize discovery disputes. In addition, the parties
26 have agreed to service of all pleadings, discovery, and other documents required to be served via

1 email with a hard copy duplicate mailed via U.S. Mail or similar courier (with the exception of
2 actual document productions, for which only the cover letter and certificate of service need be
3 mailed). The agreement on email service provides an alternative acceptable form of service in
4 addition to the other traditional forms of service (e.g., mail, hand delivery) that are provided for
5 under the Rules. Should any email with attachments exceed 5 MB in size, the parties have
6 agreed to either (a) divide the attachments into separate emails of no more than 5 MB each, or
7 (b) serve using one of the other traditional forms of service.

8 ***E. Other Discovery Orders***

9 The parties believe that a Protective Order under FRCP 26(c) may be required to limit the
10 disclosure of confidential commercial or other information and documents that would similarly
11 be exempt from public disclosure consistent with the Washington Public Records Act (RCW
12 42.56, et. seq.) and applicable case law, and anticipate presenting a Stipulated Protective Order
13 to the Court. Prior to submission of a proposed protective order to the Court, the parties will
14 meet and confer to narrow the scope of such order by identifying specific documents that will be
15 subject to the protective order.

16 The parties are not presently aware of any other orders that should be entered by the
17 Court under FRCP 26(c) or under Local Rule CR 16(b) and (c).

18 **6. DATE FOR COMPLETION OF DISCOVERY**

19 The parties believe that fact discovery can be completed nine (9) months after the Court's
20 Markman claim construction order and expert discovery three (3) months after the close of fact
21 discovery.

22 **7. REFERRAL TO MAGISTRATE JUDGE**

23 The parties do not consent to referral of this matter to a United States Magistrate Judge at
24 this time.

25 **8. BIFURCATION**

26 The parties believe that this case should not be bifurcated.

1 **9. PRE-TRIAL STATEMENTS AND PRE-TRIAL ORDER**

2 The parties do not believe that the pretrial statements and pretrial order called for by
3 LR 16(e), (h), (i), and (l) and 16.1 should be dispensed with either in whole or in part.

4 **10. SUGGESTIONS FOR SHORTENING OR SIMPLIFYING THE CASE**

5 The parties suggest that the case may be shortened or simplified through early claim
6 construction of the '781 patent. To that end, the parties suggest that the Court conduct a
7 Markman Hearing after a reasonable period for discovery, exchange of expert witness reports
8 and related depositions.

9 The parties propose the following claim construction schedule:

- 10 A. Plaintiffs shall serve the Disclosure of Asserted Claims and Infringement
11 Contentions on Defendant on or before August 17, 2012;
- 12 B. Defendant shall serve the Non-Infringement and Invalidity Contentions on
13 Plaintiffs on or before September 14, 2012;
- 14 C. The parties shall exchange Proposed Claim Terms and Elements for Construction
15 on or before October 19, 2012;
- 16 D. The parties shall exchange Preliminary Claim Constructions and Extrinsic
17 Evidence on or before November 16, 2012;
- 18 E. The parties shall exchange their Joint Claim Construction and Markman Pre-
19 Hearing Statement on or before December 14, 2012;
- 20 F. The parties shall complete claim construction discovery on or before February 15,
21 2013;
- 22 G. The Opening Claim Construction Briefs on all disputed claim terms shall be due
23 on or before February 22, 2013;
- 24 H. The parties' Responsive Claim Construction Briefs on all disputed claim terms
25 shall be due on or before March 8, 2013;
- 26 I. The Court Markman Claim Construction Hearing will be scheduled at the Court's
discretion subject to the convenience of the Court's calendar; and

1 J. Any opinion of counsel relied on by party to establish good faith in filing a claim
2 or to rebut a charge of willfulness shall be due not later than 30 days after the
Court issues its claim construction order.

3 **11. DATE READY FOR TRIAL**

4 The parties believe that this matter should be ready for trial by June 2014.

5 **12. TRIAL BY JURY**

6 A jury trial has been requested.

7 **13. NUMBER OF TRIAL DAYS REQUIRED**

8 The parties anticipate that trial of this matter will require approximately 8 court days.

9 **14. NAMES, ADDRESSES AND TELEPHONE NUMBERS OF TRIAL COUNSEL**

10 **Plaintiffs:**

11 Anthony E. Dowell
12 aedowell@dowellbaker.com
13 Geoffrey D. Smith
14 gsmith@dowellbaker.com
15 DOWELL BAKER, P.C.
16 201 Main St., Suite 710
Lafayette, IN 47901
(765) 429-4004
(765) 429-4114 (fax)

17 David A. Lowe
18 lowe@blacklaw.com
19 Black Lowe & Graham^{PLLC}
20 701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
Telephone: 206.381.3300
Facsimile: 206.381.3301

21 **Defendant:**

22 Brian C. Park, WSBA No. 25584
23 STOEL RIVES LLP
24 600 University Street, Suite 3600
Seattle, WA 98101
25 Tel.: (206) 386-7542
Fax: (206) 386-7542
26 BCPark@stoel.com

JOINT STATUS REPORT AND DISCOVERY PLAN - 6

Nathan C. Brunette (*pro hac vice*)
STOEL RIVES LLP
900 S.W. Fifth Avenue, Suite 2600
Portland, OR 97204
Tel.: (503) 224-3380
Fax: (503) 220-2480
NCBrunette@stoel.com

15. SERVICE OF ALL PARTIES

All parties have been served.

16. SCHEDULING CONFERENCE

The parties do not believe that a scheduling conference is required prior to the entry of a scheduling order.

RESPECTFULLY SUBMITTED this 6th day of August, 2012.

| | |
|--|---|
| <p><u>/s/ Anthony E. Dowell (w/ e-mail authorization)</u> Anthony E. Dowell DOWELL BAKER, P.C. 201 Main St., Suite 710 Lafayette, IN 47901 (765) 429-4004 (765) 429-4114 (fax) Anthony E. Dowell aedowell@dowellbaker.com Geoffrey D. Smith gsmith@dowellbaker.com</p> <p>David A. Lowe, WSBA No. 24,453 lowe@blacklaw.com Black Lowe & Graham^{PLLC} 701 Fifth Avenue, Suite 4800 Seattle, Washington 98104 Telephone: 206.381.3300 Facsimile: 206.381.3301</p> <p>Attorneys for Plaintiffs</p> <p>ARRIVALSTAR S.A. and MELVINO TECHNOLOGIES LIMITED</p> | <p><u>/s/ Brian C. Park</u> Brian C. Park, WSBA No. 25584 STOEL RIVES LLP 600 University Street, Suite 3600 Seattle, WA 98101 Tel.: (206) 386-7542 Fax: (206) 386-7542 BCPark@stoel.com</p> <p>Nathan C. Brunette (<i>pro hac vice</i>) STOEL RIVES LLP 900 S.W. Fifth Avenue, Suite 2600 Portland, OR 97204 Tel.: (503) 224-3380 Fax: (503) 220-2480 NCBrunette@stoel.com</p> <p>Attorneys for Defendant</p> <p>CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY</p> |
|--|---|

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties of record in the above case.

DATED at Seattle, Washington this 6th day of August, 2012.

STOEL RIVES LLP

By: Melissa Wood
Melissa Wood
Practice Assistant to Brian C. Park