

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

FRAUNHOFER-GESELLSCHAFT ZUR )  
FÖRDERUNG DER ANGEWANDTEN )  
FORSCHUNG E.V., )

Plaintiff, )

v. )

SIRUS XM RADIO INC., )

Defendant. )

Civil Action No. 17-184-JFB-SRF

**MEMORANDUM ORDER**

At Wilmington this **27th** day of **April, 2022**, the court having considered the parties' joint letter submission regarding proposals for the completion of foreign inventor depositions and the balance of the case schedule (D.I. 546), IT IS HEREBY ORDERED THAT process for the foreign inventor depositions and the balance of the case schedule shall proceed in the following manner for the reasons set forth below:

**1. Foreign inventor depositions.** The issue of the completion of foreign inventor depositions has come before the court on multiple occasions. (*See, e.g.*, D.I. 330; D.I. 332; D.I. 335; D.I. 342; 11/23/2020 Oral Order; D.I. 357; D.I. 361; D.I. 362; D.I. 474; 1/27/2022 Oral Order; D.I. 537) The court's favored approach was obtaining the voluntary U.S.-style depositions pursuant to the respective patent assignment agreements which contractually obligated the foreign inventors to cooperate in litigation over the patents-in-suit.

**2.** However, notwithstanding the patent assignment agreements, the court finds the inventors will not appear for depositions voluntarily. Therefore, the court finds the only workable solution is to proceed with depositions under the Hague Convention consistent with the

court's original intent to have a parallel track available for obtaining foreign inventor depositions in the event of the situation which now presents itself.

3. The parties are therefore directed to proceed with process under the Hague Convention as follows:

- On or before **May 6, 2022**, Defendant shall (a) provide draft revised Letters of Request for Sabah Badri, Stephan Buchholz, Heinz Gerhäuser, and Jan Stoessel; and (b) file a written request with the Ulm Court in Germany requesting the timely setting of a new date for examination of Robert Fischer.
- On or before **May 10, 2022**, Plaintiff shall provide any comments or proposed revisions to the draft revised Letters of Request.
- On or before **May 13, 2022**, the parties shall meet and confer regarding any disputes pertaining to the draft revised Letters of Request.
- On or before **May 17, 2022**, the parties shall submit the revised Letters of Request to the court, along with a joint letter limited to no more than four (4) pages addressing any remaining disputes.

4. There shall be no time constraints on depositions taken under the Hague Convention.

5. This ruling is not intended to prevent the parties from cooperatively pursuing any alternative means of obtaining the testimony of the foreign inventors. For example, the parties have discussed a proposal in which the foreign inventors would undergo remote, U.S.-style deposition questioning without submitting to an oath or otherwise violating German law. (D.I. 546 at 3) Any foreign inventor depositions taken in this or another agreed-upon manner outside

of the Hague Convention shall be subject to Defendant's remaining balance of twenty (20) hours of deposition time. (D.I. 546 at 2)

6. **Case schedule.** Having reviewed the parties' competing proposals for scheduling order deadlines to govern the balance of the case, the court adopts the following deadlines, which are generally consistent with the amount of time provided under the previous scheduling order:

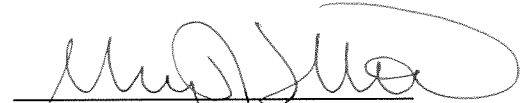
<b>EVENT</b>	<b>PREVIOUS DEADLINE</b>	<b>NEW DEADLINE</b>
Opening expert reports	March 4, 2021	September 1, 2022
Responsive expert reports	April 15, 2021	October 27, 2022
Reply expert reports	April 29, 2021	November 17, 2022
Expert discovery cutoff	May 27, 2021	January 12, 2023
Opening MSJs/Daubert	June 15, 2021	January 31, 2023
Answering MSJs/Daubert	July 15, 2021	March 7, 2023
Reply MSJs/Daubert	July 27, 2021	March 23, 2023
Submit proposed final PTO	November 1, 2021	TBD
Pretrial conference	November 15, 2021	TBD
8-day jury trial	December 6, 2021	TBD

7. On or before **May 2, 2022**, the parties shall file the form of an amended case scheduling order consistent with this Memorandum Order.

8. This Memorandum Order is filed pursuant to 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72(a), and D. Del. LR 72.1(a)(2). The parties may serve and file specific written objections within fourteen (14) days after being served with a copy of this Memorandum Order.

Fed. R. Civ. P. 72(a). The objections and responses to the objections are limited to four (4) pages each.

9. The parties are directed to the court's Standing Order For Objections Filed Under Fed. R. Civ. P. 72, dated March 7, 2022, a copy of which is available on the court's website, [www.ded.uscourts.gov](http://www.ded.uscourts.gov).



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Sherry R. Fallon  
United States Magistrate Judge