

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

Civil Action No. 21-cv-01751-~~RBJ~~~~JRN~~

ALTAIR LOGIX LLC,

Plaintiff,

v.

Sparkfun Electronics Inc., a Colorado Entity

Defendant.

SCHEDULING ORDER IN A PATENT CASE

**1. DATE OF CONFERENCE AND APPEARANCES
OF COUNSEL AND *PRO SE* PARTIES**

[Although pandemic restrictions have been lifted to some extent, this Court is not yet holding in-person Scheduling Conferences. The Court has reviewed the proposed order and issues this Scheduling Order with its modifications and comments noted in Track Changes for easier reference.](#)

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The following persons participated in a Rule 26(f) conference on September 9, 2021 by telephone:

David R. Bennett, representing the plaintiff Altair Logix LLC

Rachael D. Lamkin, representing the defendant Sparkfun Electronics Inc.

Plaintiff Altair Logix LLC is represented by:

David R. Bennett
Direction IP Law
P.O. Box 14184
Chicago, IL 60614
(312) 291-1667
dbennett@directionip.com

Defendant Sparkfun Electronics Inc. is represented by:

Rachael D. Lamkin
Lamkin IP Defense
One Harbor Drive, Suite 300
Sausalito, CA 94965
RDL@LamkinIPDefense.com
916.747.6091

2. STATEMENT OF JURISDICTION

This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). The parties do not dispute jurisdiction.

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3. STATEMENT OF CLAIMS AND DEFENSES

This is a patent infringement action involving U.S. Patent No. 6,289,434 (“patent-in-suit”) titled “Apparatus and Method of Implementing Systems on Silicon Using Dynamic-Adaptive Run-Time Reconfigurable Circuits for Processing Multiple, Independent Data and Control Streams of Varying Rates.” The invention in the patent-in-suit relates to the field of runtime reconfigurable dynamic-adaptive digital circuits which can implement a myriad of digital processing functions related to systems control, digital signal processing, communications, image processing, speech and voice recognition or synthesis, three-dimensional graphics rendering, and video processing.

Commented [A2]: Whoever wrote this sentence might be the same person who writes patents. It would be helpful in the future to write and speak in plain English. You are dealing with an ordinary court, not a patent examiner.

a. **Plaintiff:** Altair Logix contends that Defendant has been directly infringing claim 1 of the ‘434 patent in Colorado, and elsewhere in the United States, by making, using, selling, and/or offering for sale an apparatus for processing data for media processing that satisfies each and every limitation of claim 1 of the ‘434 patent. Altair Logix seeks damages for Defendant’s infringement in an amount that adequately compensates Altair Logix for such Defendant’s infringement of the ‘434 patent, i.e., in an amount that by law cannot be less than would constitute a reasonable royalty for the use of the patented technology, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

b. **Defendant:** SparkFun denies infringement and has asserted counterclaims of invalidity under 35 U.S.C. §§102 and 103, Patent Ineligibility under 35 U.S.C. §101, and Failure to Mark under 35 U.S.C. §287(a).

4. UNDISPUTED FACTS The following facts are undisputed:

- Altair Logic is a Texas limited liability company and is a licensing entity with a place of business in Frisco, Texas;
- Sparkfun is a Colorado corporation with a place of business in Niwot, Colorado. Sparkfun is subject to this Court's specific and general personal jurisdiction.

5. COMPUTATION OF DAMAGES

Altair Logix seeks damages for Defendant's infringement in an amount that adequately compensates Altair Logix for such Defendant's infringement of the '434 patent, i.e., in an amount that by law cannot be less than would constitute a reasonable royalty for the use of the patented technology, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

Commented [A3]: Please bear in mind that Rule 26(a)(1)(A)(iii) and (C) require the claiming party to provide a computation of each category of damages claimed within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

a. Date of Rule 26(f) meeting.

The Rule 26(f) meeting occurred on September 9, 2021.

b. Names of each participant and party he/she represented.

The following persons participated in a Rule 26(f) conference by telephone:

David R. Bennett, representing the plaintiff Altair Logix LLC

Rachael D. Lamkin, representing the defendant Sparkfun Electronics Inc.

c. Statement as to when Rule 26(a)(1) disclosures were made or will be made.

The parties' Rule 26(a)(1) disclosures will be made by September 23, 2021.

d. Statement concerning any agreements to conduct informal discovery:

The parties have not agreed to conduct informal discovery at this time.

e. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system:

The parties will cooperate to reduce the costs of litigation and expedite the just disposition of the case.

SparkFun suggests the Parties comply with the Federal Circuit's Model ESI Order for production of email.

f. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

Altair Logic believes that substantially all information or records relevant to discovery in this case are maintained in electronic form.

To contain costs: (1) SparkFun believes that most discovery will be comprised of searchable pdf documents. As for ESI, SparkFun suggests the Parties comply with the Federal Circuit's Model ESI Order for production of email; (2) SparkFun believes documents other than email should be produced in searchable pdf format to reduce costs. Where any document contains material metadata, the parties will agree to produce those documents in Tiff format with load files.

(i) Steps taken to preserve electronically stored information

The parties have litigation holds to preserve electronically stored information.

(ii) Steps taken to facilitate discovery of electronically stored information; and (iii) to limit the associated discovery costs and delay;

~~Altair Logic proposes that each electronic document shall be produced in pdf format or single page Tagged Image File Format ("TIFF") or PDF format. TIFF files shall be single page and shall be named with a unique production number followed by the appropriate file extension. Load files shall be provided to indicate the location and unitization of the TIFF files. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.~~

~~No party has an obligation to make its production text searchable; however, if a party's documents already exist in text searchable format independent of this litigation, or are converted to text searchable format for use in this litigation, including for use by the producing party's counsel, then such documents shall be produced in the same text searchable format at no cost to the receiving party.~~

~~Absent a showing of good cause, no party need restore any form of media upon which backup data is maintained in a party's normal or allowed processes, including but not limited to backup tapes, disks, SAN, and other forms of media, to comply with its discovery obligations in the present case.~~

~~Absent a showing of good cause, voicemails, PDAs and mobile phones are deemed not reasonably accessible and need not be collected and preserved.~~

~~Absent a showing of good cause, general Electronically Stored Information ("ESI") production requests under Federal Rules of Civil Procedure 34 and 45 shall not include metadata. However, fields showing the date and time that the document was sent and received, as well as the complete distribution list, shall generally be included in~~

~~the production if such fields exist. To the extent that a party believes, in good faith, that metadata is required for a produced document or set of documents, the parties will meet and confer regarding the production of such metadata.~~

To contain costs: (1) SparkFun believes that most discovery will be comprised of searchable pdf documents. As for ESI, SparkFun suggests the Parties comply with the Federal Circuit's Model ESI Order for production of email; (2) SparkFun believes documents other than email should be produced in searchable pdf format to reduce costs. Where any document contains material metadata, the parties will agree to produce those documents in Tiff format with load files.

Commented [A4]: The Court agrees with this approach. If disputes arise that cannot be resolved by conferral, you can bring them to the Court's attention.

(iv) Steps taken to avoid discovery disputes relating to electronic discovery

The parties will meet and confer in good faith to discuss the scope of electronic discovery and have agreed to the above limitations on electronic discovery to help to avoid discovery disputes relating to electronic discovery.

(v) Steps taken to address claims of privilege or of protection as trial-preparation materials after production of computer-generated records.

The production of privileged or work-product protected documents, electronically stored information ("ESI") or information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

The Parties are not required to prepare privilege logs or otherwise schedule documents withheld from production to the extent that they (1) relate to activities undertaken in compliance with the duty to preserve information under Fed. R. Civ. P. 26(b)(3)(A) and (B), or (2) are withheld from production on the basis of privilege and/or other exemption or immunity from production and are generated during the course of litigation. No party shall be required to identify on their respective privilege log any document or communication dated on or after the filing of the lawsuit, which absent this provision, the Party would have been obligated to so identify on said privilege log. The Parties shall exchange their respective privilege document logs at a time to be agreed upon by the Parties following the production of documents. Plaintiff need not log communications with counsel of record from earlier lawsuits or concurrently pending lawsuits involving the patent-in-suit or related patent to the extent such communications related solely to the earlier or co-pending lawsuit and do not concern or relate to Plaintiff's allegations against Defendant or Defendant's products; however, if such communications were logged on privilege logs and those logs were produced in the earlier lawsuits, those logs should be produced in the instant cases.

g. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.

The parties have held preliminary settlement discussions

7. CONSENT

The parties have filed their consent/nonconsent form. (Doc. 13).

8. CASE PLAN AND SCHEDULE

a. Deadline to join parties.

With the exception of Rule 19 joinder for Section 285 fees, Joinder of parties will occur by October 28, 2021.

Infringement Contentions

b. Deadline to serve Infringement Contentions, Claim Chart(s), and produce accompanying documents: October 29, 2021

c. Deadline to serve Response to Infringement Contentions and produce accompanying documents: December 10, 2021

Invalidity Contentions

d. Deadline to serve Invalidity Contentions and Claim Chart(s) and produce accompanying items of prior art: December 10, 2021

e. Deadline to serve Response to Invalidity Contentions and Claim Chart(s) and produce accompanying documents: January 21, 2022

Opinion of Counsel

f. Deadline to make opinion(s) of counsel available for inspection and copying: October 7, 2022

Claim Construction

g. Deadline for parties to exchange list of claim terms to be construed and proposed construction, specifically identifying up to ten (10) of the most critical terms to be construed: February 18, 2022

Commented [A5]: The Court prefers that the parties reduce the terms to be construed to five or fewer if possible.

- h. Deadline to file Joint Disputed Claim Terms Chart: March 18, 2022
- i. Proposed month for technology tutorial with District Judge and Magistrate Judge: N/A.
- j. Deadline to file opening Claim Construction brief and all supporting evidence: April 15, 2022
- k. Deadline to file Response to opening Claim Construction brief and all supporting evidence: May 6, 2022
- l. Deadline to file reply brief in support of opening Claim Construction brief: May 13, 2022

Commented [A6]: The briefs are not likely to be of substantial benefit to the Court. The Court is familiar with the legal standards generally governing claim construction. Briefs laden with evidence are not usually helpful. The Markman hearing and the evidence presented there are of much more interest. The Court suggests that in lieu of putting your brief writers to work, at great expense to your clients, you focus your time and resources on preparation for the hearing.

The parties shall file, contemporaneously with the completion of claim construction briefing, a "Joint Motion for Determination." which will serve as notice to the court that briefing has been completed.

- m. Proposed month for claim construction hearing and estimated time necessary for the hearing: June 2022, estimated time: 3 hours

Commented [A7]: See below for date options.

Final Patent Disclosures

- n. Deadline to file Final Infringement Contentions: September 16, 2022
- o. Deadline to file Final Invalidity Contentions: October 7, 2022

Fact Discovery, Expert Disclosures, and Dispositive Motions Deadlines

- p. Fact discovery deadline: December 9, 2022
- q. Expert Witness Disclosure.

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1. The parties shall identify anticipated fields of expert testimony, if any. Experts are expected to testify on the infringement, validity, and damages. The parties anticipate that the field of knowledge for experts on the issues of infringement and validity would be transmission techniques in wireless communication systems. Experts on damages would be anticipated to have knowledge in the fields of licensing, finance, economics, and/or accounting.

2. Limitations which the parties propose on the use or number of expert witnesses.

The parties currently anticipate no more than three expert witnesses per side.

3. The parties shall designate all affirmative experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before January 13, 2023.
4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before February 10, 2023.

- r. Expert Discovery Deadline: March 3, 2023
- s. Dispositive motions deadline: May 31, 2023

9. DISCOVERY LIMITATIONS

- a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

The Parties do not propose any modification to the number of depositions or interrogatories contained in the Federal Rules.

- b. Limitations which any party proposes on the length of depositions.

Unless otherwise stipulated or ordered by the court, a deposition is limited to one (1) day of seven (7) hours. The parties acknowledge that certain individuals who have information relevant to several issues in the case may require more hours for deposition than that provided herein. For such individuals, the parties will work in good faith to agree on a time limit in advance, and if the parties cannot reach agreement, may apply to the Court for additional time by showing good cause to deviate from the above. For any deposition that will exceed seven (7) hours, the parties will work in good faith to conduct the deposition on consecutive days where practical and reasonable in light of the subject matter, witness availability, and attorney availability. The number of deposition hours and length of depositions may be modified by agreement of the parties or further order of the Court. If any party requests more than the allotted time for a particular deposition, or if any party per opposing party seeks more than the number of designated hours set forth herein, the parties agree to meet and confer in good faith to attempt to resolve the issue without the need for intervention by the Court. Notwithstanding these limitations, the parties will not be permitted redundant, cumulative or abusive questioning.

- c. Limitations which any party proposes on the number of requests for production and/or requests for admission.

A maximum of 25 requests for admission ("RFA") are permitted for each side; provided however, that there is no limit on the number of RFAs that the parties may serve solely for the purpose of authenticating documents. Such RFAs shall be clearly

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denoted and shall be served separately from any RFAs that are subject to the numerical limits above. Prior to serving RFAs relating to authenticity, the parties agree to meet and confer telephonically to determine whether agreement may be reached before serving such requests.

d. Other Planning or Discovery Orders

1. Deadline for filing proposed protective order(s): October 28, 2021

Commented [A10]: No protective order will be granted that does not comply, and certify compliance, with the Court's practice standards.

2. Other issues: N/A. The parties will not file motions or responses concerning discovery disputes. Rather, after counsel have conferred by telephone or in person, they will contact Chambers and set a telephonic hearing. If the dispute concerns responses to paper discovery (interrogatories, etc.), please provide the Court with the disputed question and responses before the hearing.

10. DATES FOR FURTHER CONFERENCES

a. Status conferences will be held in this case at the following dates and times: _____ at ____ o'clock _ m

b. A final pretrial conference will be held in this case on _____ at _____ o'clock _ m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five (5) days before the final pretrial conference. A final pretrial order is not required. The Court will conduct a Trial Preparation Conference and resolve any remaining disputes concerning trial witnesses, trial exhibits, in limine issues, and jury instructions. Proposed jury instructions should be emailed to Chambers one week before the TPC, with disputed versions of instructions paired. Please jointly contact Chambers at jackson_chambers@cod.uscourts.gov within 14 days to select TPC and Trial dates from the following options:

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Proposed 1/2-~~1~~ day Claim Construction Hearing: 6/1/2022 at 9:00; 6/2/2022 at 9:00
or 1:30; or 6/3/2022 at 9:00.

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Proposed 5-day Jury Trial dates: 10/16/2023; 10/23/2023; 10/30/2023.

Proposed Trial Preparation Conference dates: 9/22/2023 at 9:00; 9/29/2023 at 9:00;
10/6/2023 at 9:00.

11. OTHER SCHEDULING MATTERS

- a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement.

The Parties do not have any discovery or scheduling issues on which counsel were unable to reach an agreement.

- b. Anticipated length of trial and whether trial is to the court or jury.

Altair Logic expects 5 days will be required for trial; SparkFun believes 4 days will be required at maximum.

- c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facility at 212 N. Wahsatch Street, Colorado Springs, Colorado; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado; or the U.S. Courthouse/Federal Building, 103 Sheppard Drive, Durango, Colorado,

The Parties do not believe that any pretrial proceedings may be more efficiently or economically conducted at the other District Court's facilities in Colorado.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

Motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1, by containing proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

13. AMENDMENTS TO SCHEDULING ORDER

The scheduling order may be altered or amended only upon a showing of good cause.

DATED this 27th day of September, 2021, 27th day of September, 2021.

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BY THE COURT:



R. Brooke Jackson
United States District Judge

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APPROVED:

Dated: September 27, 2021

Respectfully submitted,

/s/ David R. Bennett

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Respectfully submitted,

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