

B. MIM's Preliminary Statement

MIM, which was founded in 2003, markets software for storing, accessing, analyzing, and displaying different types of medical images. MIM's products include software designed to assist radiologists and oncologists to diagnose and treat cancer. Indeed, the MIM products accused of infringement originated from technology that MIM first introduced to its customers in the 2000s and has continued to improve upon over the years.

After Progenics approached MIM about a potential collaboration, the companies engaged in discussions but never reached an agreement on how to proceed. In January 2024, MIM announced that it was being acquired by GE Healthcare. Shortly thereafter, Progenics filed this lawsuit accusing MIM of patent infringement and of incorporating Progenics' technology into its software. MIM denies that it has incorporated Progenics technology in its products. MIM has and continues to independently improve upon its own innovative software and products.

II. AGENDA OF MATTERS TO BE DISCUSSED

A. Discovery Plan and Proposed Schedule

On January 29, 2025, the parties conducted a conference by telephone regarding the discovery plan and proposed schedule. Attached as **Exhibit A** is an agreed-upon proposed case schedule. To the extent the Court wishes to hold a scheduling conference, the parties propose the following agenda.

1. If the Court desires to hear it, a brief overview of the dispute; and
2. The proposed scheduling order as set forth in **Exhibit A**.

B. Discovery

1. Limitations

The limits outlined by Local Rule 26.1(c) and Fed. R. Civ. P. 26(b) shall apply to party discovery in this case, but are not applicable to expert discovery, nonparty discovery, and not more

than 10 hours of Rule 30(b)(6) deposition testimony per party, which may be extended for good cause shown. The parties do not suggest any changes in the form or requirements for disclosure under Fed. R. Civ. P. 26(b).

Pursuant to Fed. R. Civ. P. 26(f)(3)(B), the parties anticipate taking discovery on the subjects relevant to Progenics' claims, and, when raised, MIM's defenses, as asserted in the pleadings (including as amended in the future). The parties do not propose conducting phased discovery as discussed in L.R. 16.1.

2. Protective Order

Pursuant to Fed. R. Civ. P. 26(c), the parties believe that there is good cause for a protective order to protect the parties' confidential information and/or trade secrets from public disclosure. The parties are in the process of negotiating a proposed Protective Order, which they expect to submit to the Court for its consideration by February 28, 2025.

3. Electronically Stored Information

Pursuant to Fed. R. Civ. P. 26(c), the parties believe that an ESI Order to set forth clear guidelines for production of electronically stored information ("ESI") would be advantageous. The parties shall be entitled to discovery of relevant, responsive, non-privileged electronically stored information ("ESI") and shall make best efforts to agree upon the preservation and discovery of the ESI. The parties shall make their best efforts to agree upon the format in which ESI shall be made available and will submit a proposed ESI Protocol for the Court's review and entry by February 28, 2025. The parties agree that no party will be obliged to search ESI contained on on-site or off-site backup media or contained in sources that are not reasonably accessible unless both parties agree to the scope of the search or the Court orders otherwise for good cause. If either party believes such an order is necessary, the parties will meet and confer in an attempt to resolve

the issue, including as to the cost of production, before engaging in motion practice relating to such search of backup media and production.

The parties will comply with the provisions of Fed. R. Civ. P. 26(b)(5) with regard to issues relating to claims of privilege or protection as to trial-preparation material. The parties agree that the inadvertent production of privileged information will not waive any privilege.

Each party reserves the right to object to and seek a protective order for any discovery sought that it believes is not proportional to the needs of the case, unreasonable, unjustified, or otherwise unduly burdensome.

The parties agree and respectfully request that, upon appropriate motion, the Court authorizes the filing under seal of any documents that contain confidential information provided the filing party complies with Local Rule 7.2.

C. Settlement Discussion

Progenics lacks information necessary to make a settlement demand, including information sufficient to quantify damages suffered. Progenics, therefore, has not made a settlement demand to MIM nor received a settlement offer from MIM.

D. Proposed Schedule

The parties' proposed schedule appears in a Scheduling Order in the form attached as **Exhibit A**.

In addition to the deadlines set forth therein, the parties agree that all discovery requests, responses and Rule 26 disclosures, including expert reports, shall be served by email as attached PDF files. Service by email to counsel of record shall be treated as identical to service by hand. Three extra days shall not be added for purposes of determining the due date for a response. Mailing or hand service of paper copies of such documents shall not be required to effectuate service.

E. Other

1. Amendments to Pleadings and Joinder of Parties

Except for good cause shown, no motions seeking leave to add new parties or to amend the pleadings to assert new claims or defenses may be filed after the exchange of claim terms and proposed constructions under Local Rule 16.6(e)(1)(A).

2. Live Testimony at Claim Construction (“Markman”) Hearing

The parties have not yet determined whether live testimony may be required or helpful at the claim construction hearing. Within 7 days of the close of claim construction briefing, the parties will meet and confer under Local Rule 16.6(e)(1)(B) to identify any potential live witness testimony.

3. Pending/Anticipated Motions

MIM may seek a stay of the litigation if petitions for *inter partes* review are filed. Progenics reserves the right to oppose any such motion.

4. Service

The parties agree that service of all pleadings and other papers identified in Fed. R. Civ. P. 5(a) shall be served by email delivery, except in unusual circumstances that preclude email delivery.

5. Reassignment to Magistrate Judge

Pursuant to Local Rule 16.1(b)(3), the parties do not consent to trial before a Magistrate Judge.

6. Technology Tutorial

Per the Court’s comments at the October 8, 2024 hearing on MIM’s motion to dismiss, the parties understand that the Court may benefit from technology tutorials in advance of the claim

construction hearing. The parties shall indicate as part of their joint claim construction statement the proposed form and timing for such tutorials in relation to the claim construction hearing.

7. Trial

A jury trial has been requested, with a probable length of 10-15 days.

8. Certification Pursuant to Local Rule 16.1(d)(3)

Each party is separately filing the certification required by Local Rule 16.1(d)(3) within the next business day.

Respectfully submitted,

/s/ Anita M. C. Spieth

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: January 31, 2025

/s/ Anita M. C. Spieth
Anita M. C. Spieth

B. Claim Construction Proceedings

- a. Exchange Proposed Claim Terms to be Construed: By June 5, 2025, the parties shall simultaneously exchange a list of claim terms to be construed and their proposed constructions pursuant to Local Rule 16.6(e)(1)(A).
- b. Conference on Proposed Claim Terms: By June 12, 2025, the parties shall confer to see if agreement can be reached on the construction of claim terms and the number of claims to be considered pursuant to Local Rule 16.6(e)(1)(B).
- c. Joint Statement: By June 18, 2025, the parties shall file a joint statement of the number of claims and terms to be construed pursuant to Local Rule 16.6(e)(1)(D).
- d. Opening Claim Construction Briefs: By July 11, 2025, the patentee shall file its opening claim construction brief.¹
- e. Patentee's Expert Claim Construction Testimony: By August 1, 2025, any expert whose testimony upon which patentee relies to support claim construction must be made available for deposition pursuant to Local Rule 16.6(e)(3).
- f. Answering Claim Construction Brief: By August 8, 2025, the accused infringer shall file its answering claim construction brief.
- g. Accused Infringer's Expert Claim Construction Testimony: By August 29, 2025, any expert whose testimony upon which the accused infringer relies to support claim construction must be made available for deposition pursuant to Local Rule 16.6(e)(3).
- h. Reply Claim Construction Brief: By September 5, 2025, the patentee shall file its reply claim construction brief.
- i. Sur-Reply Claim Construction Brief: By September 19, 2025, the accused infringer shall file its sur-reply claim construction brief.
- j. Page Limits for Claim Construction Briefs: The parties stipulate that each side's claim construction briefs (two per side) shall be no longer than 40 pages in length combined, which differs from the page limits set forth in Local Rule 16.6(e). The additional pages are necessary in view of the number of patents (currently six) at issue in this case.
- k. Claim Construction Hearing: The Court shall conduct a Claim Construction Hearing on or around November 14, 2025, or as soon as is practical thereafter subject to the convenience of the Court's calendar and pursuant to Local Rule 16.6(c)(2).

¹ The parties' proposal for sequential opening, answering, reply, and sur-reply briefing differs from the simultaneous exchange schedule stated in Local Rule 16.6(e)(2)-(4). The parties believe that this different suggested format would help streamline and clarify any claim construction disputes, without unduly delaying completion of claim construction briefing.

C. Discovery Deadlines (Subject to Change Per Local Rule 16.6(c)(4))

- a. Substantial Completion of Document Production: By May 20, 2026, discovery of paper and electronic documents and things shall be substantially completed.
- b. Final Fact Discovery Deadline: By June 18, 2026, fact discovery must be complete, pursuant to Local Rule 16.6(c)(4).
- c. Designation of Trial Experts: By July 24, 2026, the party with the burden of proof of disclosing the information contemplated by Fed. R. Civ. P. 26(a)(2) must designate its trial experts and serve the required reports.
- d. Designation of Rebuttal Trial Experts: By August 21, 2026, the party without the burden of proof of disclosing the information contemplated by Fed. R. Civ. P. 26(a)(2) must designate its rebuttal trial experts and serve the required reports.
- e. Reply Expert Reports: By September 18, 2026, the party with the burden of proof of disclosing the information contemplated by Fed. R. Civ. P. 26(a)(2) may serve a reply report responding to any expert report served on July 24, 2026.
- f. Expert Discovery Deadline: By October 13, 2026, expert discovery must be complete, pursuant to Local Rule 16.6(c)(5).

D. *Daubert* and Dispositive Motions

- a. *Daubert* and Dispositive Motions: By October 23, 2026, the parties must file any *Daubert* and dispositive motions intended.
- b. Opposition Briefs: Oppositions to the motions must be filed by November 13, 2026.
- c. Reply Briefs: Reply briefs must be filed by December 4, 2026.

E. Final Pretrial and Trial Proceedings

- a. Meet and Confer to Prepare Pretrial Memorandum: The parties shall meet and confer 14 days before the final pretrial conference to prepare a pretrial memorandum for submission to the court.
- b. Joint Pretrial Memorandum: The parties shall file a pretrial memorandum 7 days before the final pretrial conference.

- c. Final Pretrial Conference: The pretrial conference date shall be set by the Court.
- d. Trial: The trial date shall be set by the Court.

It is SO ORDERED.

Dated:

The Honorable Patti B. Saris
U.S. District Judge, District of Massachusetts