

### Multiple Documents

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

BIG BEINGS USA PTY LTD AND LB  
ONLINE & EXPORT PTY LTD d/b/a  
LOVE TO DREAM ONLINE AND  
EXPORTS,

Plaintiffs,

v.

NESTED BEAN, INC.,

Defendant.

No. 1:20-cv-10101-IT

**JOINT MOTION TO AMEND SCHEDULING ORDER [ECF NO. 41] TO PRIORITIZE  
CLAIM CONSTRUCTION, EXPEDITE HEARING AND STAY DISCOVERY**

Pursuant to the July 7, 2020 telephone conference with the Court [ECF No. 44], Plaintiffs Big Beings USA PTY LTD and LB Online & Export PTY LTD d/b/a Love to Dream Online and Exports, (“BB”) and Defendant Nested Bean, Inc. (“Nested Bean”) (sometimes together the “Parties”) have conferred and jointly move the Court to amend the Amended Scheduling Order [ECF No. 41] as follows:

1. Prioritized Claim Construction. The Parties, on July 17, 2020, according to the current scheduling order, filed a Joint Statement Regarding Claim Construction (“Joint Statement”) [ECF No. 45] that identifies three “prioritized” disputed claim terms. The Parties submit that early resolution of these “prioritized” terms has a strong likelihood of resolving this case either through settlement discussions or focused summary judgment motions. Accordingly, pursuant to the proposed amended scheduling order filed herewith, the Parties request that Claim Construction initially be limited to the three “prioritized” terms, with Opening Briefs due Friday August 7, 2020 and Response Briefs to be due Friday August 21, 2020. Opening Briefs shall be limited to no more than 25-pages, with Responsive Briefs being no more than 20-pages.

2. Expedited Claim Construction Hearing. The current scheduling order sets the claim construction hearing for December 16, 2020 [ECF No. 41]. Pursuant to the Court's suggestion that it might be able to hold the hearing at an earlier time, the Parties respectfully suggest that the hearing be reset for September or October, 2020, or earlier if convenient for the Court.

Regarding the Claim Construction hearing, the Joint Statement suggests that a total of ninety (90) minutes of argument should suffice, with each side having a total of forty-five (45) minutes, proceeding on a term by term basis with BB arguing first. The Joint Statement also states that there will be no live witnesses. The Parties hereby stipulate and agree that the hearing may proceed via video-conference (absent material change in the health safety concerns raised by Covid).

Upon the Court's issuance of its claim construction ruling, the Parties will meet and confer within thirty (30) days to determine whether settlement is possible and, if not, to develop and propose to the Court a schedule for focused summary judgment motions.

3. Stay of Discovery Pending Claim Construction on Prioritized Terms. The Parties further request that fact discovery be stayed and all other deadlines set forth in the current Amended Scheduling Order [ECF No. 41] be suspended pending the above-mentioned proceedings. The Parties believe that this would facilitate the just, efficient and inexpensive resolution of this case. Fed.R.Civ.P. 1. Such stay will not prejudice either Party regarding any outstanding issues, including discovery issues and potential amendments to pleadings, should the stay be lifted.

[Signatures on next page.]

Respectfully submitted on this 23rd day of July, 2020 by:

s/John L North

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John L. North (*pro hac vice*)

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### CERTIFICATE OF SERVICE

I certify that on July 23, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which automatically sends email notification of such filing to registered participants.

/s/ John L. North

John L. North

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

BIG BEINGS USA PTY LTD AND LB  
ONLINE & EXPORT PTY LTD (D/B/A  
LOVE TO DREAM ONLINE AND  
EXPORTS),

Plaintiffs,

v.

NESTED BEAN, INC.

Defendant.

Civil Action No. 1:20-cv-10101

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**[PROPOSED] CONSENT ORDER AMENDING SCHEDULING ORDER [ECF NO. 41]  
TO PRIORITIZE CLAIM CONSTRUCTION, EXPEDITE HEARING AND STAY  
DISCOVERY**

Before the Court is the Parties' Joint Motion to Amend Scheduling Order (ECF No. 44) to Prioritize Claim Construction, Expedite Hearing, and Stay Discovery. For good cause shown, the Joint Motion is GRANTED. IT IS THEREFORE ORDERED that Claim Construction is initially limited to the three "prioritized" terms, with Opening Briefs due Friday August 7, 2020 and Response Briefs to be due Friday August 21, 2020. Opening Briefs shall be limited to no more than 25-pages, with Responsive Briefs being no more than 20-pages.

The current scheduling order sets the Claim Construction hearing for December 16, 2020 [ECF No. 41]. The claim construction hearing is scheduled for \_\_\_\_\_, 2020.

The Claim Construction hearing will be a total of ninety (90) minutes of argument, with each side having a total of forty-five (45) minutes, proceeding on a term by term basis with Plaintiffs. No live witnesses will present testimony at the Claim Construction hearing. Upon stipulation and agreement of the Parties, absent material change in the health safety concerns raised by Covid, the hearing will proceed via video-conference.

Upon the Court's issuance of its claim construction ruling, the Parties will meet and confer within thirty (30) days to determine whether settlement is possible and, if not, to develop and propose to the Court a schedule for focused summary judgment motions.

Fact discovery is hereby stayed and all other deadlines set forth in the current Amended Scheduling Order [ECF No. 41] are suspended pending the above-mentioned proceedings. Such stay will not prejudice either Party regarding any outstanding issues, including discovery issues and potential amendments to pleadings, should the stay be lifted.

IT IS SO ORDERED.

Date: \_\_\_\_\_

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Indira Talwani  
United States District Judge

## Notes

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