

FILED



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Margaret Botkins  
Clerk of Court

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF WYOMING

ABC IP, LLC, a Delaware limited liability  
company, and RARE BREED  
TRIGGERS, INC., a Texas corporation,

Plaintiffs,

vs.

PEAK TACTICAL, LLC d/b/a  
PARTISAN TRIGGERS, a Wyoming  
limited liability company, and  
NICHOLAS NORTON, an individual,

Defendants.

Case No. 26-CV-18-R

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**ORDER DENYING PLAINTIFFS' MOTION FOR EXPEDITED DISCOVERY**  
**[41]**

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ABC IP, LLC, together with Rare Breed Triggers, Inc. (“Plaintiffs”) and Peak Tactical, LLC d/b/a Partisan Triggers, and its owner Nicholas Norton (“Defendants”) are in the firearms triggers market. [ECF No. 1, at 1, 13]. In January 2026, Plaintiffs sued Defendants asserting patent infringement and false marking and advertising. *Id.* at 3–4. The next day Plaintiffs filed a Motion for Temporary Restraining Order (“TRO”) and Preliminary Injunction (“PI”). [ECF Nos. 6, 7]. The Court denied the Motion. [ECF No. 39]. Plaintiffs now motion the Court for expedited discovery intending to gather relevant evidence to renew their PI request. [ECF Nos. 41, 42]. Defendants oppose the Motion. They claim Plaintiffs have shown neither good cause for expedited discovery nor proper

grounds for reconsideration. [ECF No. 43]. After careful consideration of the briefing and being otherwise fully informed on the matter, the Court denies Plaintiffs' request.

## BACKGROUND

### *I. General Background*

Plaintiffs sued Defendants for patent infringement, false patent marking, and false advertising under the Lanham Act. [ECF No. 1]. Plaintiffs' claims are based on patents they hold related to forced reset triggers ("FRTs"). *Id.* at 3. An FRT is an aftermarket firearms trigger that operates by mechanically resetting the trigger after each shot, allowing the user to make faster follow-up shots without manually releasing pressure on the trigger. ABC owns four patents generally related to FRTs which can be retrofitted into existing semi-automatic rifles. *Id.* The asserted U.S. Patent numbers are: 10,514,223 ("223 Patent"); 11,724,003 ("003 Patent"); 12,036,336 ("336 Patent"); and 12,274,807 ("807 Patent") (collectively, "Asserted Patents"). ABC exclusively licenses the Asserted Patents to Rare Breed Triggers, who designs, manufactures, and sells aftermarket triggers, including the RBT FRT-15L3 trigger. *Id.* at 4. Plaintiffs allege Defendants have committed willful acts of direct, contributory, and induced patent infringement in violation of 35 U.S.C. § 271.

Defendants manufacture and distribute the Partisan Disrupter, an aftermarket FRT trigger. *Id.* at 6. Except for minor inconsequential cosmetic features in the outer housing Plaintiffs allege, "the Partisan Disrupter is a direct copy of RBT's FRT-15L3 that one of their distributors, Firearm Systems, sells for \$299—***\$150 (or 33%) cheaper*** than RBT's FRT-15L3." [ECF No. 7, at 13] (emphasis in original). Plaintiffs assert Defendants have

falsely advertised their Disruptor by incorrectly describing it as an “assisted reset trigger.” [ECF No. 1, at 71–73]. Plaintiffs maintain Defendants have also falsely advertised their product by telling the public the Disruptor implements and is covered by U.S. Patent No. 9,146,067 (“’067”). *Id.* Patent ’067 relates to an assisted reset trigger and was issued to Partisan’s employee Michael Stakes before the Asserted Patents were filed.

## ***II. Plaintiffs’ Motion for TRO and PI [6 & 7]***

In January 2026, Plaintiffs requested a TRO and PI enjoining Defendants’ business operations and marketing. [ECF Nos. 6, 7]; FED. R. CIV. P. 65. They asked the Court to enjoin Defendants from: “1. making, using, offering to sell, selling, or importing the accused Partisan Disruptor product, or any substantially identical product; 2. stating publicly . . . the Partisan Disruptor is an assisted reset trigger” and “3. stating publicly . . . the Partisan Disruptor product practices U.S. Patent No. 9,146,067.” [ECF No. 6-1, at 2]. Plaintiffs argued all four TRO and PI factors were satisfied.

On February 4, 2026, the Court conducted a hearing on the Motion. Plaintiffs called three witnesses: their corporate representative Lawrence DeMonico, their technical expert Brian Luettker, and their economist Samir Warty. [ECF No. 33, at 4]. Defendants called their employee Michael Stakes, Partisan’s spokesperson Ben Woods, and advised at the outset of the hearing their technical expert John Nixon was not present. *Id.* at 5, 12.

After the hearing, the Court denied Plaintiffs’ Motion. [ECF No. 39]. In its Order, the Court found all four factors weighed against granting the requested relief. For irreparable harm, the Court found Plaintiffs presented insufficient evidence of price erosion, loss of market share, and reputational damage. *Id.* at 10–17. Specifically, the Court

noted Plaintiffs did not present evidence of their prices before and after Defendants entered the market, existence of their established dealer networks, or losses demonstrating reputational harm. *Id.* at 12–13, 15, 17.

Second, the Court addressed Plaintiffs’ likelihood of success for (1) patent infringement and (2) false advertising. First, for patent infringement, the Court began with claim construction. It found material disputes existed about the meaning of claim terms—“substantially in-battery position”—central to the infringement analysis. *Id.* at 23. The Court noted neither Plaintiffs nor their expert attempted to provide a direct interpretation of the disputed terms and mechanics. *Id.* at 25. The Court also found Defendants raised a substantial question rebutting the statutory presumption of validity. *Id.* at 27–28. Plaintiffs failed to demonstrate this challenge lacked substantial merit. *Id.* at 28–29. As to false advertising, the Court established Plaintiffs presented no evidence of the advertisements’ consumer impact. Thus, they failed to show facial falsity under the Lanham Act. *Id.* at 30.

Third, the Court found the balance of hardships weighed in Defendants’ favor because the requested remedy is extreme and Plaintiffs did not show irreparable harm. *Id.* at 31–32. Fourth, the Court acknowledged public interests favoring protecting patent rights, but again noted Plaintiffs failed to demonstrate irreparable harm or a likelihood of success on the merits. *Id.* at 34.

### ***III. Plaintiffs’ Motion for Expedited Discovery [41 & 42]***

Plaintiffs now motion the Court for expedited discovery to renew their PI request. [ECF No. 42, at 3]. They argue, “[t]argetted discovery would allow a renewed preliminary injunction motion to be decided on a complete record.” *Id.* at 9. Plaintiffs claim they had

insufficient time to respond to Defendants' arguments, neither of Defendants' experts attended the hearing, and Defendants' technical expert never produced the charts he relied on. *Id.* at 4–5, 9–10. They argue granting their request for expedited discovery and allowing reconsideration is consistent with Tenth Circuit precedent. *Id.* at 2, 5–6.

#### ***IV. Defendants' Opposition to Expedited Discovery [43]***

Defendants contend, "Plaintiffs['] motion for expedited discovery is best understood for what it is: an attempted reconsideration-by-discovery." [ECF No. 43, at 3, 5–8]. They maintain courts treat attempts to renew interlocutory injunctive rulings with caution. *Id.* (citing *Schmeisser GmbH v. AC-Unity d.o.o.*, 2021 U.S. Dist. LEXIS 255447, at \*8–9 (D. Wyo. Aug. 23, 2021)). And they routinely deny such requests when there is no evidence of a meaningful change in circumstances, evidence, or law. *Id.* at 4 (citing *SEC v. Young*, 121 F.4th 70, 78 (10th Cir. 2024)). They claim even if expedited discovery is permitted "[t]he Court's order was not driven by a lack of information uniquely in Defendants' possession; it was driven by Plaintiffs' failure to carry their burden with their own evidence and arguments." *Id.* at 4, 8–11.

### **RELEVANT LAW**

#### ***I. Expedited Discovery***

Federal Rule of Civil Procedure 26(d) mandates the typical timing and sequence of discovery. But the court has broad discretion to "alter the timing, sequence and volume of discovery." *Qwest Commc'ns Int'l, Inc. v. WorldQuest Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003) (citing FED. R. CIV. P. 26(b)(2) and 26(d)); *Washington v. Correia*, 546 F. App'x 786, 787 (10th Cir. 2013) ("It was well within the court's discretion to decline

to authorize expedited discovery.”). “However, a party seeking expedited discovery in advance of a Rule 26(f) conference has the burden of showing good cause for the requested departure from usual discovery procedures.” *Qwest Commc’ns Int’l, Inc.*, 213 F.R.D. at 419 (citing *Pod-Ners, LLC v. N. Feed & Bean of Lucerne, Ltd. Liability Co.*, 204 F.R.D. 675, 676 (D. Colo. 2002), and *Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202 F.R.D. 612, 614 (D. Ariz. 2001)).

In some cases, “good cause” may be shown where a PI is sought, “or where the moving party has asserted claims of infringement and unfair competition.” *Id.* (citations omitted). Still, “early discovery in preliminary injunction circumstances is often limited to jurisdictional issues.” *PPEX, LLC v. Buttonwood, Inc.*, No. 21-CV-53-F, 2021 WL 7210184, at \*2 (D. Wyo. July 28, 2021) (citing *Biomin Am., Inc. v. Lesaffre Yeast Corp.*, No. 20-2109-HLT, 2020 WL 1659858, at \*1 (D. Kan. Apr. 3, 2020)).

## ***II. Reconsideration***

“In reviewing an interlocutory motion to reconsider, ‘the court may look to the standard used to review a motion made pursuant to Federal Rule of Civil Procedure 59(e).’” *Schmeisser GmbH*, 2021 U.S. Dist. LEXIS 255447, at \*3 (quoting *Ankeney v. Zavaras*, 524 Fed. App’x 454, 458 (10th Cir. 2013)). “Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.” *Servante of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (citing *Brumark Corp. v. Samson Res. Corp.*, 57 F.3d 941, 948 (10th Cir. 1995)).

## RULING OF THE COURT

### *I. Expedited Discovery*

The Court denies Plaintiffs' request for expedited discovery. When ruling on a motion for expedited discovery, courts generally consider "(1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with the requests; and (5) how far in advance of the typical discovery process the request was made." *Smagin v. Yegiazaryan*, No. CV 14-9764-R, 2015 WL 12762270, at \*2 (C.D. Cal. Sept. 18, 2015) (citing *Qwest Commc 'ns Int'l, Inc.*, 213 F.R.D. at 419).

#### **A. Factor Test**

The Court finds each factor weighs against granting expedited discovery and the appropriateness of reconsideration is on a similar, downward slant. The Court finds (1) no PI is pending; (2) Plaintiffs' purpose underlying expedited discovery is to renew their PI motion; (3) the breadth of discovery and burden on Defendants is weighty given the context; and (4) the comparison of expedited and typical discovery timelines favors denial. The Court will address each finding in detail.

#### ***1. Whether a Preliminary Injunction is Pending***

A pending PI may support granting an expedited discovery request. *Qwest Commc 'ns Int'l, Inc.*, 213 F.R.D. at 419. But the Court typically considers whether a PI is pending—not whether one has been ruled on or may be reconsidered. *See id.*; *Am. Equip. Sys., LLC v. Chester*, No. 223CV00680DBBDBP, 2023 WL 8261427, at \*3 (D. Utah Nov. 29, 2023). Plaintiffs concede no PI motion is pending but state their intent to renew the

request following expedited discovery. [ECF Nos. 42, 44]. They contend “[t]he absence of a currently pending PI motion is not dispositive []—the inquiry is whether a PI is ‘at issue.’” [ECF No. 44, at 6] (citation omitted). Defendants argue there is no PI pending and the request for expedited discovery should have been made before the hearing, if at all. [ECF No. 43, at 11]. The Court finds this factor weighs against granting expedited discovery.

Plaintiffs cite *Am. Equip. Sys.* to suggest a PI need only be “at issue.” [ECF No. 44, at 6] (citing *Am. Equip. Sys., LLC*, 2023 WL 8261427, at \*3). While the court used the words “at issue” when discussing a PI, it also referred to this factor as “whether a preliminary injunction *is pending*.” *Am. Equip. Sys., LLC*, 2023 WL 8261427, at \*2–3 (emphasis added). More directly, the court found this factor weighed in favor of expedited discovery where the issuance of a PI had been briefed but no hearing had been set, and no order had been issued. *Id.*

Because a PI motion is not currently pending, the Court finds this factor weighs against granting expedited discovery. *See Qwest Commc’ns Int’l, Inc.*, 213 F.R.D. at 419. As reconsideration is central to Plaintiffs’ request, the Court will next address whether Plaintiffs’ intent to renew their motion is proper.

## ***2. Purpose for Requesting Expedited Discovery***

Plaintiffs primarily bring this Motion to renew their PI request. Yet they ask the Court to consider this Motion solely as one requesting expedited discovery. [ECF No. 44, at 2–3]. They simply hope the expedited discovery will uncover relevant grounds to renew their motion. *Id.* at 4 (“[T]he discovery Rare Breed requests focuses on information the

Court identified as in dispute and could change the Court’s analysis, *depending on what the discovery reveals.*”) (emphasis added). This circular reasoning is not proper justification for expedited discovery.

As stated, “[g]rounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.” *Servante of Paraclete*, 204 F.3d at 1012 (citing *Brumark Corp.*, 57 F.3d at 948). Plaintiffs do not allege any recognized basis for bringing the renewed motion. The Court will address Plaintiffs’ (1) lack of basis, (2) lack of due diligence, and (3) lack of supporting law.

First, because Plaintiffs presented no evidence of an intervening change in controlling law or the need to correct clear error or prevent manifest injustice, their future reconsideration hinges on new, previously unavailable evidence. *See id.* Plaintiffs hope expedited discovery will uncover evidence supporting a compelling PI request. Even so, despite the urgency, Plaintiffs had other procedural options for timing their initial motion. So simply because Plaintiffs did not request expedited discovery earlier does not mean the evidence was “previously unavailable” in the relevant meaning of the phrase. *See United States v. Huff*, 782 F.3d 1221, 1224 (10th Cir. 2015) (stating a motion to reconsider should not be used to “advance arguments that could have been raised earlier”) (quoting *United States v. Christy*, 739 F.3d 534, 539 (10th Cir. 2014)).

Second, Plaintiffs did not act with due diligence in bringing their original motion. Plaintiffs contend:

Defendants filed their opposition five days before the hearing, supported by four declarations, including two from retained experts—totaling 325 pages. Plaintiffs had no reply brief, no depositions, no document discovery, and not even an opportunity to cross-examine Partisan’s technical and damages experts whose opinions the Court considered. Neither expert appeared at the hearing.

[ECF No. 42, at 3].

Plaintiffs do not acknowledge they initiated the escalated timeline, and Defendants were under a similar resulting burden. Plaintiffs’ Complaint, filed January 15, 2026, contained 1,217 pages of attachments. [ECF No. 1]. Their TRO and PI Motion filed the next day included 263 pages of attachments. [ECF Nos. 6, 7]; *see* [ECF No. 42, at 11 n.2]. Altogether, Defendants reviewed 1,480 pages of attachments before filing their response two weeks later. *See* [ECF Nos. 1, 6, 7, 27] (comparing rate-of-review ratios, Plaintiffs proportionately reviewed 65 pages daily for five days while Defendants reviewed around 105 pages daily for two weeks). Regardless, Plaintiffs did not request Defendants’ expert witnesses attend the hearing. *See* [ECF No. 43, at 2]. They also did not request a continuance when the witnesses were not present at the hearing. *Id.*; [ECF No. 33, at 5]. Plaintiffs also do not acknowledge the omissions in their evidence and arguments as asserted by the Court and Defendants. Their briefing failures carry greater weight than any discovery issues cited, and increasingly bare on their due diligence omissions. *PPEX, LLC*, 2021 WL 7210184, at \*2 (“If Plaintiff needed this discovery to support their Motion for Preliminary Injunction, it should have waited to file that motion until after discovery opened.”).

Third, Plaintiffs fail to provide relevant law supporting their renewal. The cases they cite are distinguishable from the current facts. *See* [ECF No. 42, at 8–9] (citing *CLEAR Clinic v. Noem*, No. 25-cv-01906, 2025 WL 3033800, at \*2 (D. Or. Oct. 29, 2025); *Equity Bank v. McGregor*, No. 22-1081-DDC-GEB, 2022 WL 1102640, at \*8 (D. Kan. Apr. 13, 2022); *Phibro Biodigester v. Murphy-Brown, LLC*, No. 4:22-CV-00050-RJS-PK, 2022 WL 17243727, at \*3 (D. Utah Nov. 23, 2022), *aff'd sub nom. Phibro Biodigester* No. 22-4117, 2024 WL 4541530 (10th Cir. Oct. 22, 2024)).

Plaintiffs claim, “[w]hen the evidentiary record at the TRO or early PI stage is in dispute on key elements, the court has discretion to allow the movant to develop ‘a more robust record to litigate the preliminary injunction.’” [ECF No. 42, at 8]. Plaintiffs cite *CLEAR Clinic v. Noem*, stating the court allowed the parties two weeks to brief additional arguments raised at the hearing, and allowed submission of a renewed PI motion. *Id.* (citing *CLEAR Clinic*, 2025 WL 3033800, at \*2). There the court noted the plaintiff moved for a mandatory injunction (requiring a party to act) and the parties presented competing evidence. *CLEAR Clinic*, 2025 WL 3033800, at \*2. The court explained mandatory injunctions are particularly disfavored, require a clear showing of favorable facts and law, and “are not granted unless extreme or very serious damage will result and are not issued in doubtful cases.” *Id.* (citations omitted).

Here, Plaintiffs moved for a prohibitory injunction (maintaining the status quo) which requires a less concrete showing than a mandatory injunction. *Id.* (“A mandatory injunction “goes well beyond simply maintaining the status quo pendente lite [and] is particularly disfavored.”) (quoting *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir.

1994)). Yet they failed to carry their initial burden, and rebuttal, as to each of the four TRO and PI factors. [ECF No. 39].

Plaintiffs also cite two cases to support the notion “[c]ourts in this Circuit have also denied TROs, but then granted expedited discovery to develop the record before a preliminary injunction.” [ECF No. 42, at 8] (citing *Equity Bank*, 2022 WL 1102640, at \*8, and *Phibro Biodigester, LLC*, 2022 WL 17243727, at \*3).

Both cases cited differ from the current facts. In *Equity Bank*, the plaintiffs filed a single motion in which they requested (1) a TRO, (2) a PI, and (3) expedited discovery to aid their PI request. *Equity Bank*, 2022 WL 1102640, at \*8. The court denied the TRO request, “[b]ut, given that plaintiffs [] indicated their desire to proceed with their request for a preliminary injunction” the court allowed expedited discovery related to the PI. *Id.* Like *CLEAR Clinic*, the parties in *Phibro Biodigester* requested a mandatory injunction. *Phibro Biodigester, LLC*, 2022 WL 17243727, at \*4. After a hearing and an oral ruling specific to the TRO, the court allowed expedited discovery related to the PI. *Id.* at \*3. Presently, Plaintiffs failed to demonstrate any TRO or PI factors weighed in their favor under the lesser standard required for a prohibitory injunction and did not request expedited discovery before this ruling. [ECF No. 39].

Overall Plaintiffs ignore the recognized bases supporting reconsideration. They underscore the urgency of renewal by focusing on hypothetical irreparable harm the Court found unpersuasive. [ECF No. 42, at 6–8]. Plaintiffs again fail to acknowledge their briefing deficiencies independent of the requested discovery. This omission indicates—even if it were permitted—any reconsideration may be futile. *See Schmeisser GmbH*, 2021

U.S. Dist. LEXIS 255447, at \*3 (stating reconsideration “is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.”) (quotations omitted) (quoting *Servante of Paraclete*, 204 F.3d at 1012).

### ***3. Breadth of Discovery Requests and Burden on Defendants***

The Court will jointly consider the breadth of discovery requests and the burden on Defendants to comply. Plaintiffs contend the expedited discovery does not pose an undue burden because the requested scope is limited, Defendants had notice of the underlying claims, and this information would be produced in the normal course of litigation. [ECF No. 42, at 10]. Defendants claim if granted, the request would impose an undue burden because they will undergo another round of front-loaded expedited proceedings and argue the same issues could have been addressed earlier. [ECF No. 43, at 11].

Plaintiffs request “six interrogatories, six requests for production, and five depositions—each targeting issues Partisan itself placed before the Court.” [ECF No. 42, at 3]; *see* [ECF Nos. 42-1, 42-2] (detailing proposed discovery requests). Defendants claim the requested discovery is overly broad and Plaintiffs “do not and cannot show [expedited discovery] will alter the multiple independent grounds for denial that the Court identified in its order.” [ECF No. 43, at 11] (alteration added). The Court finds the breadth and burden of Plaintiffs’ discovery requests favors denial.

The issue with Plaintiffs’ proposal is contextual. It seems part of the burden anticipated by Defendants stems from the reconsideration trailing behind Plaintiffs’ expedited discovery. [ECF No. 43, at 11]. Reconsideration would necessarily be followed by additional briefing, proceedings, and argument. There would be additional cost in the

preparation and attendance of all parties—including the preparation and attendance of expert and fact witnesses. Plaintiffs chose the timing of their emergency motion on an exceptionally incomplete record. *See* [ECF Nos. 6, 7]. Many issues raised by Plaintiffs could have been addressed before, or during the hearing if proper arrangements were made.

Purportedly related to irreparable harm, Plaintiffs propose taking three depositions. [ECF No. 42-1, at 2] (proposing to depose Ben Woods, Scott Cragun, and Rule 30(b)(6) Designee). Plaintiffs plan to depose Mr. Woods related to Partisan’s sales projections, insurance coverage, dealer networks, and pricing strategies. Similarly, they seek to question Defendants’ damages expert Mr. Cragun about “[p]rice erosion methodology and calculations; compensability of damages; lost profits analysis; [and] opinions on irreparable harm.” *Id.* (alteration added). And they intend to question the Rule 30(b)(6) Designee about insurance coverage, Partisan’s financial condition, overall corporate structure, and ability to satisfy a damages judgment. *Id.* Nine of the twelve discovery requests relate to irreparable harm. [ECF No. 42-2, at 2–3]. Five of their discovery requests relate to Defendants’ ability to pay a hypothetical judgment. *Id.* at 2.

Defendants argue Plaintiffs’ emphasis on collectability “puts the cart before the horse.” [ECF No. 43, at 8]; *see* [ECF No. 44, at 4]. Yet Plaintiffs argue Defendants’ financial condition must be assessed before money damages may be considered in place of injunctive relief. [ECF No. 44, at 4] (citing *Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1155–56 (Fed. Cir. 2011)).

While this may be true, Plaintiffs do not acknowledge the crux of the analysis—they must first show irreparable harm requiring compensation. *See Robert Bosch LLC*, 659

F.3d at 1156 (“While competitive harms theoretically can be offset by monetary payments in certain circumstances, the likely availability of those monetary payments helps define the circumstances in which this is so.”). Plaintiffs failed to provide specific information about how their business operations and reputation have been impacted after Defendants entered the market. [ECF No. 39, at 10–17]. Their current request contains similar flaws. For example, within their collectability argument they present purely hypothetical damages based on Defendants’ sales projections for Partisan. [ECF No. 44, at 4 n.2] (stating at their \$350 price point, Plaintiffs would yield approximately \$86 million more than Defendants “on those same units” projected for Partisan).

Related to likelihood of success, Plaintiffs intend to focus their deposition of John Nixon, Defendant’s technical expert, on his “[i]nfringement analysis; claim construction of ‘substantially in-battery position’; obviousness theory and prior art analysis; missing claim charts . . . ; [and] opinions on ’067 Patent and Asserted Patents.” [ECF No. 42-1, at 2] (alteration added). Four of their discovery requests relate to the likelihood of success factor. [ECF No. 42-2, at 2]. They argue they should not be required to demonstrate Defendants’ validity challenge “lacked substantial merit” “without seeing the charts and questioning the expert who created them.” [ECF No. 44, at 6].

At this stage, determining likelihood of success based on an incomplete record poses a predictable challenge. *See, e.g., Gillette Co. v. Energizer Holdings, Inc.*, 405 F.3d 1367, 1375 (Fed. Cir. 2005) (“[T]his court recognizes the difficulty imposed on a trial court to construe claim terms based upon a preliminary ‘likelihood’ record.”); *Jack Guttman, Inc. v. Kopykake Enters., Inc.*, 302 F.3d 1352, 1361 (Fed. Cir. 2002) (recognizing the need for

“rolling claim construction . . . particularly [] where issues involved are complex, either due to the nature of the technology or because the meaning of the claims is unclear. . . . These difficulties may be even more acute in the preliminary injunction context[.]” (citations omitted).

The Court finds because Plaintiffs selected the timing for filing their suit and emergency motion, granting their request for expedited discovery in support of reconsideration—with no support for the forthcoming reconsideration—would unduly burden Defendants. The Court will now compare the timelines between typical and expedited discovery.

#### ***4. Comparison Between Typical and Expedited Discovery Timeframes***

Plaintiffs argue this factor is neutral. [ECF No. 42, at 10–11]. They contend, “the need for the requested discovery crystallized only after the Response . . . and hearing revealed what Defendants would rely on and what the Court found unresolved.” [ECF No. 44, at 6]. Defendants do not specifically address this point but argue, as stated above, the requested discovery is front-loaded and would present an undue burden because it could have been addressed earlier. [ECF No. 43, at 11]. The Court finds because Plaintiffs have ultimately chosen the timeline of the emergency motions to this point—and because the discovery is only requested in aid of an unsupported reconsideration—this factor weighs against granting expedited discovery.

#### **B. Factor Test Conclusion**

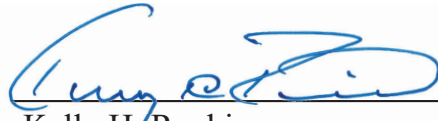
The listed factors, while non-exhaustive, each weigh against the existence of good cause for Plaintiffs’ expedited discovery request. Importantly, Plaintiffs request the

expedited discovery to renew their PI motion. They have no recognized basis for this reconsideration. Thus, the Court finds there is no good cause supporting the request and denies the same.

**CONCLUSION**

**NOW, THEREFORE, IT IS ORDERED** Plaintiffs' Motion for Expedited Discovery [ECF No. 41] is **DENIED**.

Dated this 11th day of March, 2026.



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Kelly H. Rankin  
United States District Judge