

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

ASSA ABLOY FENESTRATION, LLC,

Plaintiff,

v.

VISION INDUSTRIES GROUP, INC.,

Defendant.

Civil No. 25-3706 (ESK/EAP)

DISCOVERY DISPUTE ORDER

This matter having come before the Court on the parties' June 12, 2026 joint status letter describing a discovery dispute, ECF No. 46 ("Joint Ltr."); and the Court having held a telephone conference with the parties on June 15, 2026; and the Court noting the following appearances: **Joseph Hynds, Esquire, Arnold B. Calmann, Esquire, and Sharon L. Davis, Esquire**, appearing on behalf of Plaintiff; and **Michael Cukor, Esquire**, appearing on behalf of Defendant; and the Court having construed the letter as Defendant's Motion to Compel Depositions; and the Court having heard oral argument on the Motion during the June 15, 2026 conference; and the Court having considered the parties' letter and the arguments of counsel; and for good cause shown, the Court finds as follows:

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. This is a patent case concerning Defendant Vision Industries Group, Inc.'s ("Vision's" or "Defendant's") alleged infringement of Plaintiff Assa Abloy Fenestration, LLC's ("Assa Abloy's" or "Plaintiff's") window hardware patent. *See* ECF No. 21 (Compl.).

2. On February 27, 2026, the Court entered an Amended Scheduling Order that required the parties to identify "all intrinsic and extrinsic evidence upon which each party intends

to oppose the other party's proposed [claim] construction" by May 5, 2026; submit their joint claim construction and prehearing statement ("JCCPS") by May 19, 2026; complete discovery relating to claim construction by June 19, 2026; and submit their opening *Markman* briefs and expert declarations by July 2, 2026. ECF No. 35 (Feb. 27, 2026 Order).

3. On May 15, 2026, at the parties' request, the Court entered an Order amending the deadline for substantial completion of document production to May 22, 2026, and the deadline to submit their JCCPS to May 27, 2026. ECF No. 44 (May 15, 2026 Order).¹

4. On May 27, 2026, the parties timely submitted the JCCPS. ECF No. 45 (JCCPS).

5. On June 12, 2026, the parties submitted a joint status letter describing the present discovery dispute. Joint Ltr. On June 5, 2026, after filing the JCCPS, Defendant requested that Plaintiff make available two witnesses for depositions during the claim construction discovery period, which was then set to close on June 19, 2026: the inventor and the prosecuting attorney for the patent-in-suit. *Id.* at 1.

6. Plaintiff objects to producing these witnesses at this stage of the litigation for three reasons: (1) Defendant violated Local Patent Rule 4.3(b) by failing to disclose the witnesses in the JCCPS; (2) neither witness could offer testimony relevant to claim construction; and (3) Plaintiff would be prejudiced by having to prepare these witnesses in such a condensed timeframe. *Id.* at 1-4. Importantly, Plaintiff does not object to producing these witnesses during the normal discovery period following the *Markman* briefing and hearing. *See* ECF No. 51, June 15, 2026

¹ On June 15, 2026, the parties jointly requested an additional amendment to the scheduling order, ECF No. 47, which the Court entered the same day, ECF No. 49. Pursuant to this operative Amended Scheduling Order, discovery relating to claim construction (other than experts) was due July 10, 2026, and opening *Markman* briefs and expert declarations are due July 23, 2026. ECF No. 49.

Hr’g Tr. at 4:1-6. (“Assa Abloy has no issue with making the inventor and the prosecuting attorney available for deposition during the normal discovery period . . .”).

7. Plaintiff emphasizes that “[w]hile [Defendant] made a vague reference to deposition testimony in its preliminary disclosures pursuant to Local Patent Rule 4.2 . . . Rule 4.3(b) mandates a specific identification of the witnesses in the Joint Claim Construction and Prehearing Statement” that Defendant failed to provide. Joint Ltr. at 3. While Plaintiff asserts this failure alone warrants denial of Defendant’s Motion, Plaintiff additionally argues that the testimony of the inventor and prosecution attorney is not relevant, nor can it be relied upon to alter the written prosecution history “because it is the public availability of the prosecution history that informs others of the scope of the claims.” *Id.* at 2 (citing *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)). Plaintiff also contends that the testimony Defendant seeks concerning the knowledge and understanding of the person of ordinary skill in the art “are more appropriately covered by the experts” previously identified by Defendant. As such, Plaintiff reasons that Defendant will not be prejudiced if these depositions do not proceed during claim construction discovery. *Id.* Finally, Plaintiff argues that permitting the Defendant to take these two depositions during the claim construction period—which, at the time the parties filed their joint letter, was set to close only a week later—would prejudice Plaintiff because it would force counsel to rush to prepare these witnesses in short order. *Id.* at 5-6.

8. In contrast, Defendant contends that it did not violate Local Patent Rule 4.3(b) because its May 5, 2026 Identification of Evidence in Opposition to Assa Abloy’s Proposed Constructions stated that “Vision may rely on discovery yet to be provided by [Plaintiff], including technical documents, design document[s], emails and inventor depositions.” *Id.* at 5 (emphasis in original); *see also* ECF No. 51, June 15, 2026 Hr’g Tr. at 17:23-24; 17:11-15 (where Plaintiff

argues that “there’s nothing in the joint . . . statement that provides the identification that is required under that rule.”). According to Defendant, “it could not identify testimony that had not yet been obtained” pursuant to Local Patent Rule 4.3(b) and thus, its May 5 disclosure was sufficient. *Id.* Defendant also clarifies—without additional support—that it seeks “factual testimony concerning the technology, industry terminology, and the level of ordinary skill in the art” and claims the proposed witnesses “have discoverable information” related to these topics. *Id.*² Defendant also argues—without explanation—that it would be prejudiced without this testimony in advance of its *Markman* briefing; that Defendant requires the testimony now because there is a risk the witnesses could change their testimony later; and that no prejudice would flow to Plaintiff because Defendant already offered to extend the schedule to accommodate these depositions. *Id.* at 4-5; *see also* ECF No. 51, June 15, 2026 Hr’g Tr. at 12-13. Defendant further insists it is “absolutely” entitled to depose these witnesses, and the Court may determine later what evidence it may consider in a *Markman* hearing and what it may not. *See* ECF No. 51, June 15, 2026 Hr’g Tr. at 13:18-24.

LEGAL STANDARD

9. The Local Patent Rules, together with the Federal Rules of Civil Procedure, “apply to all civil actions filed in or transferred to this Court which allege infringement of a patent in a complaint, counterclaim, cross-claim or third-party claim, or which seek a declaratory judgment that a patent is not infringed, is invalid or is unenforceable.” L. Pat. R. 1.2. ““The Local Patent Rules exist to further the goal of full, timely discovery and provide all parties with adequate notice and information with which to litigate their case.”” *Intra-Cellular Therapies, Inc. v. Aurobindo*

² The Court notes that, according to Plaintiff, Defendant raised different arguments in their meet and confer conference that it did not argue before this Court. *See* Joint Ltr. at 1-2. For purposes of deciding this Motion, the Court considers only those arguments raised before it in the Joint Letter and during oral argument.

Pharma Ltd., No. 24-4264, 2025 WL 2418867, at *3 (D.N.J. Aug. 21, 2025) (quoting *Razor USA LLC v. DGL Grp., Ltd.*, No. 19-12939, 2020 WL 3605296, at *2 (D.N.J. July 2, 2020)). “The Local Patent Rules encourage early disclosures and exchanges of information so that both sides are as informed as possible when filing the opening *Markman* briefs.” *Bristol-Myers Squibb Co. v. Dr. Reddy’s Lab’ys, Ltd.*, No. 19-18686, 2021 WL 1820486, at *2 (D.N.J. May 6, 2021) (finding that Defendants’ violation of Local Patent Rule 4 would unfairly prejudice Plaintiff) (quoting *Janssen Prods., L.P. v. Lupin Ltd.*, No. 10-5954, 2013 WL 3772655, at *5 (D.N.J. July 16, 2013)).

10. “Specifically, Local Patent Rule 4 establishes a reticulated, multi-step framework for the exchange of information leading to the Court’s construction of disputed claims.” *Intra-Cellular Therapies, Inc.*, 2025 WL 2418867, at *3. Local Patent Rule 4.2 provides that “[w]ith respect to all witnesses including experts, the identifying party shall also provide a description of the substance of that witness’[s] proposed testimony that includes a listing of any opinions to be rendered in connection with claim construction.” L. Pat. R. 4.2(b). Local Patent Rule 4.3 requires the JCCPS to then include the “identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction or to oppose any other party’s proposed construction, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of all witnesses including experts[.]” L. Pat. R. 4.3(b). It also requires that the party include “[w]hether any party proposes to call one or more witnesses at the Claim Construction Hearing, the identity of each such witness, and for each witness, a summary of his or her testimony including, for any expert, each opinion to be offered related to claim construction.” L. Pat. R. 4.3(e). “Any evidence that is not identified under L. Pat. R. 4.2(a) through 4.2(c) inclusive shall not be included in the Joint Claim Construction and Prehearing Statement” and thus, not considered during the subsequent claim construction hearing.

L. Pat. R. 4.3(f).

11. However, “the Local Patent Rules are silent on the remedy to be applied” when Rule 4 is violated. *Taro Pharm. Indus. Ltd. v. Novitium Pharma, LLC*, No. 19-01028, 2020 WL 1673045, at *10 (D.N.J. Apr. 6, 2020). “To be sure, Rule 4.3(f) expressly directs—and thus authorizes—courts to exclude inadequately disclosed evidence. But the rule does not limit the Court’s preexisting flexibility and discretion not to strike such evidence, and to craft appropriate remedies short of exclusion.” *Intra-Cellular Therapies, Inc.*, 2025 WL 2418867, at *5 (citing *Taro Pharm. Indus. Ltd.*, 2020 WL 1673045, at *10 n.4 (noting that the remedy for a violation of Local Patent Rules 4.2 and 4.3 was unclear and explaining that while the Court “[found] the [d]efendant’s conduct unacceptable,” plaintiff was not “prejudiced to such an extent that warrant[ed] exclusion of the [] evidence”)). Accordingly, courts in this District frequently exercise their discretion and consider whether the non-offending party would be prejudiced if the Court allowed the evidence to remain in the record. *See, e.g., Sightsound Techs., LLC v. Apple, Inc.*, No. 11-1292, 2012 WL 12896175, at *4 (W.D. Pa. Nov. 19, 2012) (finding that although Plaintiff violated Local Patent Rule 4.3(b) by failing to timely disclose all intrinsic evidence, “[Defendant] has not been prejudiced [by violation of Local Patent Rule 4.2] to such an extent that warrants exclusion of the intrinsic evidence”).

DISCUSSION

12. Although the foregoing standard focuses primarily on when a court should exclude certain evidence, the Court finds that it guides resolution of the issue here: whether to allow Defendant to supplement its evidence by compelling depositions during the claim construction period. For the following reasons, the Court denies Defendant’s Motion and will permit Defendant to depose the witnesses in question after the conclusion of the *Markman* hearing.

13. Defendant's violation of Local Patent Rule 4.3(b) likely provides a sufficient basis to deny its Motion under Local Patent Rule 4.3(f). Local Patent Rule 4.3(b) clearly mandates identification of all extrinsic evidence on which a party may rely, and for any witnesses, a summary of that witness's expected testimony in the JCCPS. L. Pat. R. 4.3. The Court finds that Defendant failed to properly disclose the witnesses in the JCCPS, and its May 5, 2026 disclosure is not an adequate substitute. Further, the Court does not credit Defendant's argument that it could not comply with the Rule without first taking the depositions; counsel routinely summarize a witness's expected testimony before that testimony is taken. *Id.* at 5. Indeed, accepting Defendant's argument would substantially undermine Local Patent Rule 4.3(b)'s disclosure requirement. Having violated the Local Patent Rules, the Court finds that Defendant is not "entitled" to take these depositions near the close of claim construction for consideration during the hearing.

14. In addition, the Court denies Defendant's Motion because Defendant fails to articulate how the proposed witnesses will offer relevant claim construction testimony. Defendant asserts that it seeks testimony regarding "how a person of ordinary skill in the art would understand the claim terms[]." Joint Ltr. at 4. But this is precisely the kind of opinion to be offered by an expert later in this case. *See Shire LLC v. Amneal Pharms., LLC*, No. 11-3781, 2013 WL 1932927, at *4 (D.N.J. May 7, 2013) ("The Federal Circuit has held generally 'that extrinsic evidence in the form of expert testimony can be useful to a court for a variety of purposes, such as to provide background on the technology at issue, to explain how an invention works, to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field.'" (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005))). Further, to the extent Defendant hears testimony on "factual matters" that would vary or

otherwise contradict the written prosecution history, “the Federal Circuit has cautioned that extrinsic evidence is generally less reliable than the intrinsic evidence in construing claim terms”; “[t]hus, a court should discount any extrinsic evidence that contradicts the claim construction supported by the intrinsic evidence (the claims themselves, the written description and the prosecution history).” *Sightsound Techs., LLC*, 2012 WL 12896175, at *5 (internal citations and quotations omitted); *see also Eisai R&D Mgmt. Co. v. Shilpa Medicare Ltd.*, No. 19-19998, 2023 WL 3303593, at *3 (D.N.J. May 8, 2023) (finding that extrinsic evidence is “less significant than the intrinsic record in determining ‘the legally operative meaning of claim language.’” (quoting *Phillips*, 415 F.3d at 1317 (further citations omitted))).

15. In addition, compelling these depositions at this stage of the litigation would likely prejudice Plaintiff by forcing it to prepare these witnesses on an expedited basis for what may be irrelevant testimony. Under these circumstances, the Court finds that resulting prejudice to Plaintiff outweighs any speculative benefit to Defendant.

16. Finally, the Court remains unpersuaded by Defendant’s argument that it will be prejudiced if it is forced to take these depositions after the *Markman* hearing. Defendant identifies no concrete prejudice it would suffer by delaying these depositions, and the Court sees none, especially because these witnesses are unlikely to possess testimony relevant to claim construction. And Defendant otherwise fails to offer any legal support for its arguments that it is “entitled” to “lock down” certain testimony. Absent any showing that these witnesses could provide relevant testimony to claim construction, and because Defendant will be able to take these two depositions during the course of normal discovery, the Court finds no prejudice would inure to Defendant by simply allowing these depositions to occur after the *Markman* hearing.

CONCLUSION

Therefore, for the foregoing reasons,

IT IS this **20th** day of **July 2026**,

ORDERED that Defendant's Motion to Compel Depositions prior to the *Markman* hearing is **DENIED**; and it is further

ORDERED that nothing in this Order shall preclude Defendant from deposing the inventor and prosecuting attorney during fact discovery following the *Markman* proceedings, subject to the Scheduling Order and the Federal Rules of Civil Procedure.

s/Elizabeth A. Pascal
ELIZABETH A. PASCAL
United States Magistrate Judge

cc: Hon. Edward S. Kiel, U.S.D.J.