

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GEIGTECH EAST BAY LLC,

Plaintiff,

-against-

18 Civ. 5290 (CM)

LUTRON ELECTRONICS CO., INC.,

Defendant.

x

**DECISION AND ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION
AND MOTION FOR EXPEDITED DISCOVERY**

McMahon, C.J.:

This is a garden variety patent and trade dress infringement suit. Plaintiff alleges that Defendant has copied and is selling a “high-end exposed roller shade” that incorporates a “concept” that was patented by GeigTech. (Pl.’s Mem. L. Supp. Mot. Prelim. Inj. (“Pl.’s Prelim. Inj. Br.”) at 2-3, ECF No. 15.) Waiting nine months from the time that Lutron first publicly displayed its allegedly infringing product – during which period Lutron claims to have expended millions of dollars bringing its new “Palladiom” shades to market – GeigTech has brought suit alleging patent infringement, seeking a preliminary injunction and requesting expedited discovery. It also seeks redress for the purported copying of its unregistered trade dress in the exposed roller shade product.

The motion for a preliminary injunction is denied. Plaintiff fails to convince this Court that it is likely to succeed on the merits of its patent infringement claim; Defendant has raised

substantial unrebuted questions about both the validity and enforceability of Plaintiff's patent and whether Lutron's product infringes the claims asserted in that patent.

Adding a cause of action for common law trade dress infringement does not change the equation – at least, not today. Plaintiff's assertion that its trade dress is being infringed is not supported by the kinds of evidence traditionally used to make such a case; and Lutron's showing that there are multiple shade brackets in the market that look “clean” and “modern” like GeigTech's has not been successfully controverted at this preliminary stage.

FACTS

Plaintiff in this case is GeigTech, a company founded by James Geiger. (Decl. of James Geiger in Supp. Pl.'s Mot. Prelim. Inj. (“Geiger Decl.”) ¶ 2, ECF 16.) Geiger claims to be a pioneer in the field of “home integration.” (*Id.* ¶ 3.) He first installed window shades as an integrator in 1999. (*Id.* ¶ 4.) He started his own audio visual integration company called HeAVi LLC in 2003, selling and installing home theatres, lighting and audio systems and motorized window shades. (*Id.* ¶¶ 3.)

In or about 2011, Geiger conceived and developed what Plaintiff describes as an “elegant and distinct” shading system that “also allowed for screws and wires to be concealed from view.” (*Id.* ¶ 7.) Prior to that time, shade mounting brackets were screwed directly into the wall or ceiling around a window. (*Id.* ¶ 8.) They were hidden from view by use of a ceiling pocket, valance, or fascia. (*Id.*)

GeigTech claims a “pioneering signature look” represented by two types of brackets – a circular bracket and a U-shaped bracket – with “floating” couplers that connect two shades together. In the GeigTech design, all of the “ugly parts” – the mechanical devices that secure the shades to the wall or ceiling – are hidden. (*Id.* ¶ 11.) According to Plaintiff, high end customers

appreciate this sleeker “look,” and, as a result, GeigTech’s sales of such shades increased year-over-year 286% from 2014-15, 412% from 2015-16, and 50% from 2016-17. (*Id.* ¶ 13.)

GeigTech applied for a patent for its bracket. (Geiger Decl., Ex. 3 at 1, ECF 16-3.) Its provisional application was filed on May 15, 2012. (*Id.*) GeigTech received a patent for his new bracketing system – U.S. Patent No. 9,237,821 (the “‘821 patent”) – on January 19, 2016. (*Id.*) The patent covers “a system of fastening devices, e.g., mounts, brackets, and assemblies for installing roller window shades” that “provide for improved means for mounting window shades (roller shades), including motorized shades, in which the portion of the mounting means (i.e., the ‘mount,’ ‘mounting plate’, or ‘mounting bracket’) affixed to the supporting structure (e.g., the window casing, walls, columns, etc.) are hidden from view by the structure of the bracket or mounting bracket.” (*Id.* at 1, 21.)

In September 2017, Defendant Lutron, a well-known provider of electronic shades (indeed, an “industry leader,” according to Plaintiff, (Pl.’s Prelim. Inj. Br. at 6)), first began offering a product known as the “Palladiom Shading System.” (Geiger Decl. ¶ 26; Decl. of Vladislav Pejic in Opp’n. Pl.’s Mot. Expedited Disc. (“Pejic Decl.”) ¶ 5, ECF 35.) The system was characterized by “sleek and modern aesthetic options for keypads, thermostats and other components.” (Def.’s Mem. L. Opp’n. Mot. Prelim. Inj. (“Def.’s Prelim. Inj. Br.”) at 2, ECF No. 44.) Lutron introduced its Palladiom Shading System at the CEDIA Expo trade show in San Diego. (Pejic Decl. ¶ 5.) The shading system – including a jamb bracket, a center bracket and an end bracket – was prominently featured at Lutron’s booth, both fully assembled and in loose parts. (*Id.* ¶¶ 5, 7-9.) Geiger personally visited Lutron’s booth during the CEDIA show and took note of Lutron’s Palladiom brackets. (*Id.* ¶ 10.) And technical information about the Palladiom shades has been publicly available on Lutron’s website since October 2017. (*Id.* ¶ 6.) But GeigTech took no action against

Lutron's marketing of the modified Palladiom until this lawsuit was filed on June 12, 2018. In the intervening nine months, Lutron expended significant resources to promote the new system, both to its dealers and to potential customers – though the product was not actually available for purchase until the spring of 2018. (Decl. of Edward J. Blair in Opp'n. Pl.'s. Mot. Prelim. Inj. ("Blair Decl.") ¶ 12-13, ECF 42.)

Plaintiff commenced this lawsuit by filing a complaint, a motion for a preliminary injunction, and a request for expedited discovery. Defendant opposes both motions.

DISCUSSION

I. The Motion for a Preliminary Injunction Is Denied

The standards for granting a preliminary injunction were settled by the United States Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). In that decision the Court announced that a preliminary injunction is “an extraordinary remedy” that was available only where the movant could demonstrate four things: “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20. The failure to demonstrate any one of these elements dooms the quest for a preliminary injunction.¹

Plaintiff's complaint asserts two theories of liability: patent infringement and trade dress infringement. They will be analyzed separately.

A. Plaintiff has not shown a likelihood of success on the merits of its patent claim

A plaintiff seeking a preliminary injunction in a patent case “must show that, in light of the presumptions and burdens applicable at trial, it will likely prove” infringement and “that the patent

¹ As I have indicated in previous opinions, this Court reads *Winter* as precluding reliance on any other, lesser standard for issuance of a preliminary injunction and believes itself bound to follow the dictate of the United States Supreme Court.

will likely withstand” a validity challenge. *Tate Access Floors, Inc., v. Interface Architectural Resources, Inc.*, 279 F.3d 1357, 1365 (Fed. Cir. 2002). Where an accused infringer raises a “substantial question” concerning validity, enforceability, or infringement, and the patentee does not demonstrate that the defense “lacks substantial merit,” the preliminary injunction should not issue. *Genentech, Inc., v. Novo Nordisk A/S*, 108 F.3d 1361, 1364 (Fed. Cir. 1997) (internal quotation marks omitted). Contrary to GeigTech’s assertion, the standard for preliminary injunction relief is not “*some probability* of success on the merits” – a standard erroneously employed in a case decided in this district in 1982, *Notaro v. Koch*, 95 F.R.D. 403, 405 (S.D.N.Y. 1982) – but “likelihood” of success. *Winter*, 555 U.S. at 32 (quoting *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n.12 (1987)). It is not a low bar.

GeigTech argues that one element of Lutron’s Palladiom shading system – the Palladiom jamb bracket – infringes claims 9 and 15 of the ‘821 patent. (Compl. ¶¶ 31-34; Decl. of Gary R. Sorden in Supp. Pl.’s Mot. Prelim. Inj. (“Sorden Decl.”), Ex. 1, ECF 17-1.). The asserted claim elements read as follows:

Claim 9 – final element – “wherein the projection of at least one of the mounting brackets is configured as a key to engage a tube shade clutch or a tube shade motor.” (Sorden Decl., Ex. 1 at 6, ECF 17-1.)

Claim 15 – final element – “wherein the projection of at least one of the mounting brackets is configured to receive a tube shade pin or a motorized tube shade idler pin. (Sorden Decl., Ex. 1 at 12, ECF 17-1.)

Lutron asserts at least four “glaring deficiencies” in Plaintiff’s infringement claim:

1. The claims were narrowed during prosecution and were limited by the addition of the “key” and “pin” requirements.

2. The court has not yet construed the claim elements that recite the “key” and “pin” requirements.
3. Plaintiff offers insufficient evidence (in the form of attorney argument, without any expert opinion from one skilled in the art) to demonstrate infringement.
4. The evidence that is offered fails to address the “key” and “pin” structures, which Lutron claims do not exist in its product.

(Def.’s Prelim. Inj. Br. at 9; Def.’s Mem. L. Opp’n. Mot. Expedited Disc. (“Def.’s Expedited Disc. Br.”) at 8, ECF No. 37.)

With respect to the first “glaring deficiency” in particular, Lutron observes that these final elements were added by GeigTech during prosecution in order to get around the Bohlen Patent, which was specifically identified by the Patent Examiner as prior art. The examiner explained his initial rejection of Plaintiff’s application over Bohlen as follows:

In regards to claim 7 [subsequently asserted as claim 9], Bohlen discloses a fastening device system (20) for mounting a roller window shade, comprising: two disk-shaped brackets (26a, 26b), each having one side configured to bear against a flat surface and one side having a projection (48) configured hold an end of a tube shade, wherein each of the mounting brackets have two recessed apertures (Fig. 2b) therethrough constructed and arranged to receive fastening means (36) to secure the mounting bracket to the flat surface.

(Decl. of Scott W. Breedlove in Opp’n. Pl.’s. Mot. Expedited Disc. (“Breedlove Decl.”), Ex. 2 (“5/28/2015 Non-Final Rejection”) at 5-6, ECF 36-2.) GeigTech allegedly responded to the Examiner’s citation of Bohlen by amending pending claim 7 (eventually claim 9) to add the “key” element recited above, and to amend pending claim 22 (now claim 15) to add the “pin” element.

Lutron asserts that nothing resembling a “key” project from the Palladiom bracket, as required by claim 9. It further contends that its jamb bracket shows nothing like a ‘bracket’ receiving a tube shade “pin.” Pictures submitted with the opposition to the motion appear to support this argument. Lutron points to language in the patent specifications suggesting that the

“key” cannot be the same element as the “pin” – which would have to be the case for Lutron’s product to infringe. It insists that any dispute over this would require the Court to engage in claim construction, a process that has yet to begin.

Finally, it notes that GeigTech has not offered any expert testimony from one skilled in the art to establish that its new Palladiom bracket infringes on either the “key” or the “pin” elements.

In short, Lutron has raised a “substantial question” concerning infringement.

Plaintiff counters by arguing, in conclusory fashion, that the two products are both exposed roller shades with a sleek, modern look - ergo there must be infringement. Since the “concept” of a sleek, modern-looking exposed roller bracket cannot be patented, GeigTech needed to engage Lutron’s argument that the Palladiom shade does not achieve its “sleek modern look” by aping GeigTech’s “key-pin” features – whatever those words may mean. The failure by Plaintiff to offer any testimony from one skilled in the art to rebut Lutron’s argument means that GeigTech has not shown that Lutron’s defense to a claim of infringement “lacks substantial merit.” *See Genentech*, 108 F.3d at 1364. Therefore, GeigTech has not demonstrated a *likelihood* of success on the merits of its patent claim.

Moreover, as Lutron correctly notes, before a claim of patent infringement can be evaluated, a court must determine the scope and meaning of any disputed terms and limiting expression in the claims. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999); *see also Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (internal citation omitted). The parties have not yet engaged in claim construction, and Lutron asserts that the definitions of the terms “key” and “pin” are likely to be contested – especially if GeigTech asserts that the “key” and the “pin” can be one and the same element of the bracket. GeigTech has not yet proposed a claim construction that Lutron could formally dispute; therefore, the Court cannot

either engage in claim construction at this juncture or conclude that construction will be unnecessary.

While it is true that there is a heavy presumption that terms are to be given their ordinary and customary meaning during claim construction, it is the ordinary and customary meaning to one skilled in the art that matters. *Phillips*, 415 F.3d at 1312-13. On the record before this Court, there seems to be some disagreement between Mr. Geiger and the folks at Lutron – all of whom are skilled in the art –about the meaning of these terms. GeigTech cannot demonstrate a likelihood of success on the merits as long as there is a very real possibility that the claim terms will be construed in a manner that precludes a finding of infringement. See *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1351 (Fed. Cir. 2001); *Minerals Techs. Inc. v. Omya AG*, 339 F. Supp. 2d 528, 532 (S.D.N.Y. 2004) (“serious doubts regarding [patent’s] asserted scope” test plaintiff’s theory of infringement, precluding preliminary injunction); *Millipore Corp. v. W.L. Gore & Assoc., Inc.*, 2011 WL 5513193, at *8-11 (D.N.J. Nov. 9, 2011); *Fair Isaac Corp. v. Int’l Bus. Machines Corp.*, 2006 WL 1283852, at *6-7 (D. Minn. 2006).

GeigTech asserts that it needs expedited discovery in order to make its case on these issues. It does not. Lutron’s product literature and product specifications have been available to GeigTech for eight months; Lutron submits them to the Court as evidence in support of its claim of infringement. Geiger, as the inventor of the GeigTech brackets, is presumably “one skilled in the art;” he could have evaluated this literature – or given it to a disinterested outside expert to evaluate – last fall. Apparently Lutron did not make the product commercially available until a few months ago, but as GeigTech’s showing on this motion is drawn almost entirely from the product literature, the lag time between the date when Plaintiff became aware that the product was coming to market and the date when the allegedly infringing product actually became available appears to the Court

irrelevant. And of course GeigTech needs no discovery whatsoever in order to tell this Court how it – the patentee – defines the critical terms bearing on infringement that it used in its own patent.

Finally, Lutron asserts that the validity and enforceability of the patent – which is, of course, presumed – is actually in serious question, because GeigTech failed to disclose to the PTO that the brackets for which it obtained a patent were designed to fit into a pre-existing product – the Somfy shade motor – or that Somfy’s own brackets, which were used with Somfy motors for many years, anticipate the “key” element. Were this to be true, it would invalidate both claim 9 and claim 15 of the ‘821 patent. This Court does not presume to be a person skilled in this particular art, but Lutron’s preliminary showing on this point is sufficiently persuasive that I must conclude that it has raised a substantial questions on both validity and enforceability. Since GeigTech has used the Somfy motor for many years with its products, it needs no discovery, expedited or otherwise, to respond to this argument. Yet it really does not engage the argument in its papers.

Because GeigTech has failed to carry its burden to demonstrate likelihood of success on the merits of its patent claim, there is no need to analyze any other element of the *Winter* formulation: the motion for a preliminary injunction fails on that ground alone.

The parties are scheduled to appear for a preliminary conference on September 7, 2018. At that time we will go over this Court’s rules for handling patent cases, which I trust the parties will read prior to that conference. As is my custom, we will deal with claim construction before we proceed to the merits. Claim construction can proceed simultaneously with any pre-answer motion that Lutron intends to direct to the trade dress claims (see below). I am happy to move this case along as quickly as the parties can get it done.

B. GeigTech has failed to show a likelihood of success on the merits of its trade dress claim

Trade dress is the “total image of a product and may include features such as size, shape, color or color combinations, texture, or graphics.” *Le Sportsac, Inc., v. K Mart Corp.*, 754 F.2d 71, 75 (2d Cir. 1985) (internal quotation marks and alterations omitted) (quoting *John H. Harland Co. v. Clarke Checks, Inc.*, 711 F.2d 966, 980 (11th Cir. 1983)); *see also Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 765 n.1 (1992) (quoting above formulation with approval). A plaintiff seeking to protect an unregistered product design trade dress under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), must demonstrate all of the following:

1. The design is either inherently distinctive or has achieved secondary meaning
2. The design is non-functional
3. There is a likelihood of confusion between the plaintiff’s product and the defendant’s competing product.

Yurman Design, Inc. v. PAJ, Inc., 262 F.3d 101, 114-16 (2d Cir. 2001).

Lutron advises that it plans to move to dismiss GeigTech’s trade dress claim for legal insufficiency. In connection with the present motion, it is sufficient to note that GeigTech has utterly failed to demonstrate either that its trade dress has achieved secondary meaning in the marketplace – that in the minds of the public, “the primary significance of [the dress] is to identify the source of the product rather than the product itself,” *id.* at 115 (quoting *Wal-Mart Stores, Inc. v. Samara Bros.*, 529 U.S. 205, 211 (2000)) – or any likelihood of consumer confusion between Plaintiff’s products and Defendant’s.

With respect to secondary meaning, GeigTech’s moving papers do not offer any evidence of its actual sales (as opposed to the percentage by which its sales have allegedly increased year over year for the past three years – percentages that could have been derived from a very small

number of sales), consumer surveys, testimony from disinterested third parties, evidence of unsolicited media coverage for its brackets, or any evidence of prior attempts to plagiarize its design. A couple of postings to a web site that remark on the similar look of the two products is not sufficient proof of secondary meaning to support the issuance of a preliminary injunction.

GeigTech has not identified any advertisement in which Lutron tried to market its product as “the same as” GeigTech’s, or that Lutron – itself a well-known provider of electronic shades for almost three decades – has done anything to capitalize on GeigTech’s name or reputation. GeigTech’s offer to present the Court with “further evidence of these things during expedited discovery,” (Pl.’s Reply Mem. L. Supp. Mot. Expedited Disc. at 8, ECF No. 41), misses the point. A party seeking the extraordinary remedy of a preliminary injunction must present the court with such evidence in support of its motion when it makes the motion – not after an injunction is granted. Plaintiff’s argument simply proves that its motion is, at best, premature.

As for likelihood of confusion, GeigTech presents not a scintilla of evidence demonstrating that a single consumer has purchased Lutron’s products while under the mistaken impression that they are GeigTech’s brackets. Both sides agree that their products are sold to so called “high end” customers. This lessens the possibility that purchasers – who, as GeigTech admits, are likely to be professional architects, interior designers, and owners of high end homes – would be confused as to the source of the shades they were purchasing. *See* J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 23:100 (5th ed. 2017) (“Professional buyers are expected to be more discriminating and knowledgeable in making purchases and they may not be confused by the same similar marks as would likely confuse the ordinary, casual consumer.”).

The record is barren of evidence, other than Geiger’s own conclusory assertions, that the purchasing public, or even the high end purchasing public, identifies GeigTech as the sole source

of blinds with the clean, modernist look of a GeigTech shade. As Lutron’s witnesses point out, there are several other shade brackets on the market that look clean and modern, including some (Hunter-Douglas and Crestron) whose products would be familiar to readers of high end design magazines such as Architectural Digest. *See* Pejic Decl. ¶ 12; Blair Decl. ¶¶ 25-26. These items may not be put together in exactly the same way that GeigTech’s brackets are assembled, but the claimed trade dress relates to how the products look – that is, to the outward appearance of the brackets – not to the unseen elements inside the brackets. To the Court’s eye, all of these brackets look “clean” and “modern,” even if they are not all identical in appearance to GeigTech’s brackets (for example, The Shade Store’s product, *see* Pejic Decl. ¶ 12).

GeigTech does not even attempt to demonstrate that these products are not “clean, modern” exposed roller shades. Instead, it asserts that Lutron’s pictorial evidence is somehow “deceptive” and insists that it does not consider those products to be competitive with its high end product. This response begs the question of whether those products are similar in appearance to GeigTech’s, since trade dress is a function of appearance.

GeigTech has also not established that its design is non-functional. The functionality doctrine “prevents trademark law, which seeks to promote competition by protecting a firm’s reputation, from instead inhibiting legitimate competition by allowing a producer to control a useful product feature.” *Qualitex Co. v. Jacobson Prod. Co.*, 514 U.S. 159, 164 (1995). In this Circuit, “a mark is aesthetically functional, and therefore ineligible for protection under the Lanham Act, where protection of the mark significantly undermines competitors’ ability to compete in the relevant market.” *Christian Louboutin S.A. v. Yves Saint Laurent Am. Holdings, Inc.*, 696 F.3d 206, 222 (2d Cir. 2012) (emphasis omitted). GeigTech’s description of its trade dress is a combination of a jamb bracket with a clean circulate element that is integral and seamless

with both wall and shade, coupled to a U-shaped bracket that fits seamlessly between two shade ends, and a U-shaped end brackets that stands alone in its ornamental connection of the end of the shade to the wall. Put more simply, GeigTech's trade dress is a combination of "clean," modern-looking circular and U-shaped brackets – which seems no more than "a generalized type of appearance," something that is not protected by the trade dress doctrine. *Yurman Design, supra.*, 262 F.3d at 115 (internal quotation marks omitted) (quoting *Landscape Forms, Inc. v. Columbia Cascade Co.*, 113 F.3d 373, 380 (2d Cir. 1997)). Nothing in Plaintiff's description of its trade dress suggests how the features it claims are distinctive are such – a fatal flaw when seeking to state a trade dress claim. See *Sara Designs, Inc. v. A Classic Time Watch Co.*, 234 F. Supp. 3d 548, 555 (S.D.N.Y. 2017) (citation omitted). And as discussed above, there are other shade brackets out in the market that look similar to GeigTech's.

The so-called *Polaroid* factors, which have long been used in this circuit to evaluate the likelihood of confusion, are far from helpful to GeigTech's argument. *Polaroid Corp. v. Polarada Electronics Corp.*, 287 F.2d 492, 495 (2d Cir. 1961). Plaintiff's trade dress cannot be deemed strong when there other products that serve the same function and have a similar appearance. As noted above, there is no evidence in the record of actual confusion between Plaintiff's product and GeigTech's; and given the sophistication of the target consumer group, confusion seems unlikely. The quality of Defendant's product is admittedly high – indeed, Plaintiff argues that Lutron is its only competitor in the high end market for electronic window shades – so GeigTech's goodwill is not being compromised by shoddy Lutron-created knock-offs. While there are *Polaroid* factors, such as proximity in the marketplace, that augur in favor of a trade dress injunction, those factors are not outweighed by the inherent functionality of the product and by the fact that there are other

products available in the marketplace that can serve the same purpose and that look very much like GeigTech's product. On the contrary, those elements outweigh any other *Polaroid* factor.²

Because GeigTech has not demonstrated likelihood of success on the merits of its Lanham Act claim, and in light of the fact that unjust enrichment is itself "available only in unusual situations," *Mahoney v. Endo Health Sols., Inc.*, 2016 WL 3951185, at *11 (S.D.N.Y. July 20, 2016), it has similarly failed to prove likelihood of success on its identical claim under New York's common law of unjust enrichment. See *Gottlieb Dev. LLC v. Paramount Pictures Corp.*, 590 F. Supp. 2d 625, 637 (S.D.N.Y. 2008); *Cicle Francesco Moser, S.R.L. v. Cannondale USA, Inc.*, 12 F. Supp. 2d 320, 324 (S.D.N.Y. 1998); cf. *Ascentive, LLC v. Opinion Corp.*, 842 F. Supp. 2d 450, 471 (E.D.N.Y. 2011).

Lutron should make any motion it intends to make addressed to the trade dress claims no later than September 28. Should the claim survive after that motion is decided, there will be time enough to consider, on a more fulsome record, whether Plaintiff's trade dress is worthy of protection, either preliminarily or after trial.

II. The Motion for Expedited Discovery Is Denied

The fact that the preliminary injunction motion is not being granted is not determinative of Plaintiff's motion for expedited discovery. It does seem to this Court that this case should be put on an expedited schedule, for both claim construction and for trade dress discovery. If, as GeigTech contends, it and Lutron are the only competitors in the marketplace for high end electronic shades, then GeigTech is in danger of losing market share if its claims have any merit but this lawsuit drags on endlessly.

² While it is interesting that there was a great deal of Google traffic from Coopersburg, Pennsylvania – where Lutron's headquarters is located – directed toward GeigTech's web site in the months prior to the launch of the modified Palladiom product in September 2017, considerably more would be needed to support a claim of bad faith by Defendant, which is a *Polaroid* factor.

I see no reason why discovery should not begin immediately after the parties have submitted their claim construction briefs to the court. I have on occasion entertained an accelerated claim construction process, and I am prepared to do so here.

The Court is not prepared to allow discovery on the trade dress claims to begin until after the motion to dismiss is decided – assuming it is made by September 28. However, if I am asked to adjourn that date, I will allow discovery to begin on those claims.

I am, in short, prepared to put this case on a “rocket docket” and move it along very quickly. I will prioritize the decision on the anticipated motion to dismiss, and I will set a tight schedule for claim construction.

CONCLUSION

The motion for a preliminary injunction is DENIED; the motion for expedited discovery is GRANTED in part and DENIED in part.

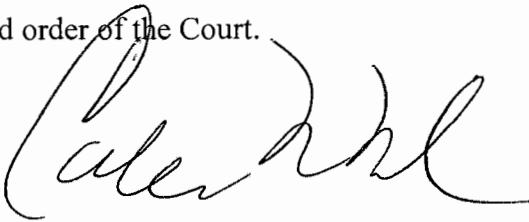
I will see the parties on September 7, 2018.

In preparation for the Rule 16 conference, the parties should be prepared to discuss the scope of claim construction and offer the court a brief oral precis of their respective arguments. We will set a claim construction briefing schedule at that conference.

The Clerk of Court is respectfully directed to remove the motions at docket numbers 11 and 14 from the Court’s list of active motions.

This constitutes the decision and order of the Court.

Dated: September 5, 2018



Chief Judge

BY ECF TO ALL COUNSEL