

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DAEDALUS BLUE, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 6:20-cv-1152-ADA

ORDER GOVERNING PROCEEDINGS

The Court will not hold a Rule 16 Case Management Conference (“CMC”) in this case. For scheduling purposes, the CMC is deemed to have occurred on May 13, 2021. This Order shall govern proceedings in this case.

SCHEDULE

The following deadlines are set:

Deadline	Item
May 20, 2021	Plaintiff serves preliminary ¹ infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (<i>i.e.</i> the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.

¹ The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave

Deadlines		Item
May 27, 2021		<p>The Parties shall submit an agreed Scheduling Order. If the parties cannot agree, the parties shall submit a separate Joint Motion for entry of each Order briefly setting forth their respective positions on items where they cannot agree.</p> <p>Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.</p>
July 8, 2021		<p>Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions, (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s), and (3) summary, annual sales information for the accused product(s) for the two years preceding the filing of the Complaint, unless the parties agree to some other timeframe.</p>
July 15, 2021		<p>Parties exchange claim terms for construction.</p>
July 27, 2021		<p>Parties exchange proposed claim constructions.</p>
August 3, 2021		<p>Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall identify the scope of the topics for the witness's expected testimony.² With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.</p>

of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served, and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

² Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

Deadlines		Item
August 10, 2021		Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
August 17, 2021		Plaintiff files Opening claim construction brief, including any arguments that any claim terms are not indefinite.
September 7, 2021		Defendant files Responsive claim construction brief.
September 21, 2021		Plaintiff files Reply claim construction brief.
October 5, 2021		Defendant files a Sur-Reply claim construction brief.
October 8, 2021		Parties submit Joint Claim Construction Statement. <i>See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).</i>
October 8, 2021		Parties submit optional technical tutorials to the Court and technical adviser (if appointed). ³
October 18, 2021		<i>Markman</i> Hearing at 9:30 a.m.
October 19, 2021		Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
November 30, 2021		Deadline to add parties.
December 14, 2021		Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions. This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.

³ The parties should contact the law clerk to request a Box link so that the party can directly upload the file to the Court's Box account.

Deadline	Item
February 8, 2022	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
April 19, 2022	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's Law Clerk to arrange a teleconference with the Court to resolve the disputed issues.
May 17, 2022	Close of Fact Discovery.
May 24, 2022	Opening Expert Reports.
June 21, 2022	Rebuttal Expert Reports.
July 12, 2022	Close of Expert Discovery.
July 19, 2022	Deadline for the second of two meet and confer to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
August 9, 2022	Dispositive motion deadline and Daubert motion deadline. <i>See</i> General Issues Note #9 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).

Deadline		Item
August 23, 2022		Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
September 6, 2022		Serve objections to pretrial disclosures/rebuttal disclosures.
September 13, 2022		Serve objections to rebuttal disclosures and file motions <i>in limine</i> .
September 27, 2022		File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i>
October 4, 2022		File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to meet and confer regarding remaining objections and disputes on motions in limine.
October 19, 2022		File joint notice identifying remaining objections to pretrial disclosures and disputes on motions in limine.
October 24, 2022		Final Pretrial Conference. The Court expects to set this date at the conclusion of the <i>Markman</i> Hearing.
November 14, 2022		Jury Selection/Trial. The Court expects to set these dates at the conclusion of the <i>Markman</i> Hearing.

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