
From: Jun Zheng <Jun_Zheng@txwd.uscourts.gov>
Sent: Friday, August 20, 2021 9:04 AM
To: Luke Nelson; Daniel Hipskind
Cc: Dorian Berger; Erin McCracken; Elizabeth DeRieux; Heidi Peterson; Emerson, Russ; Sivinski, Stephanie; Fox, Caroline; Anthony Garza; John Heuton; Steven Callahan; Chris Bovenkamp
Subject: RE: Sable Networks, Inc., et al. v. Riverbed Technology, Inc., No. 6:21-cv-00175-ADA and Sable Networks, Inc., et al. v. Cloudflare, Inc., No. 6:21-cv-00261-ADA - Request for Telephone Conference

Counsel,

In the Court's previous email, the Court intended the 1-week extension for Markman hearing to be added to the 4-week extension for preliminary invalidity contentions – that is, a total 5 weeks of extension for the Markman hearing. Thus, the Markman hearing will be scheduled for January 12, 2022.

-Jun

Jun Zheng

Law Clerk to the Honorable Alan D Albright
United States District Court, Western District of Texas

From: Luke Nelson <lnelson@ccrglaw.com>
Sent: Friday, August 20, 2021 8:38 AM
To: Jun Zheng <Jun_Zheng@txwd.uscourts.gov>; Daniel Hipskind <dph@bergerhipskind.com>
Cc: Dorian Berger <dsb@bergerhipskind.com>; Erin McCracken <eem@bergerhipskind.com>; Elizabeth DeRieux <ederieux@capshawlaw.com>; Heidi Peterson <hpeterson@capshawlaw.com>; Emerson, Russ <Russ.Emerson@haynesboone.com>; Sivinski, Stephanie <Stephanie.Sivinski@haynesboone.com>; Fox, Caroline <Caroline.Fox@haynesboone.com>; agarza_ccrglaw.com <agarza@ccrglaw.com>; John Heuton <jheuton@ccrglaw.com>; Steven Callahan <scallahan@ccrglaw.com>; Chris Bovenkamp <cbovenkamp@ccrglaw.com>
Subject: RE: Sable Networks, Inc., et al. v. Riverbed Technology, Inc., No. 6:21-cv-00175-ADA and Sable Networks, Inc., et al. v. Cloudflare, Inc., No. 6:21-cv-00261-ADA - Request for Telephone Conference

CAUTION - EXTERNAL:

Mr. Zheng,

Thank you for your email. The parties have begun to meet and confer to submit a proposed scheduling order, but have not yet reached agreement as each side is reading the Court's email differently regarding the *Markman* timeline. The parties respectfully request clarification as to whether the Court instructs the proposed schedule be based on a *Markman* hearing date of December 15, 2021 or January 12, 2022. Once this date is decided, the parties believe they will be able to reach agreement on the remaining proposed schedule. The parties' respective positions on the *Markman* hearing date are set forth briefly below.

Summary of Issue	Plaintiffs' Requested Relief	Defendants' Requested Relief
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Whether the Court instructs the proposed schedule be based on a *Markman* hearing date of December 15, 2021 or January 12, 2022.

Plaintiffs' Statement: Defendants' suggestion that there is a misunderstanding of the Court's August 16 Email Order is a transparent request for reconsideration without a change in any facts or law. Defendants requested two departures from the Court's Default Schedule: (1) an eight-week extension on their invalidity contention deadlines, and (2) a 12-week extension of the *Markman* Hearing date. Plaintiffs opposed both requests. The Court granted a four-week extension on Defendants' invalidity contentions and a one-week extension of the *Markman* Hearing date. The Default Schedule provided for a *Markman* Hearing date of December 8, 2021; therefore, incorporating the Court's one-week extension from the August 16 Email Order, the *Markman* Hearing date for this case should be December 15, 2021.

Consistent with the Court's FAQs, Plaintiffs' have already agreed with Defendants to limit the number of asserted claims to 45 claims per case one week after Defendants provide invalidity contentions. As mentioned earlier, Plaintiffs are concerned that Defendants' repeated posturing with respect to the case schedule is motivated by the *Fintiv* factors regarding discretionary denial by the PTAB and how the Court's schedule will affect Defendant Cloudflare's pending IPR petitions rather than genuine concern about the Parties' ability to present the merits of this case.

Defendants' Statement: Defendants respectfully read the Court's email as extending the date of the *Markman* hearing by a total of 5 weeks consistent with the two-fold manner Defendants requested, *i.e.* extension of the preliminary invalidity contentions/related production deadline and additionally of the *Markman* date, once Plaintiffs narrow the asserted claims. Plaintiffs' interpretation, in effect, is that the Court extended the preliminary invalidity contentions/related production deadline by four weeks and then moved *Markman* **backwards** by three weeks relative to the default schedule as extended. That is, if the 1-week extension of *Markman* is not additional to the earlier 4-week extension, the net effect would be to **shorten** the time for the parties to brief and prepare for *Markman* (*contra* the Court's FAQ guidance), because Plaintiffs are unwilling to reduce their 113 total asserted claims down to 45-90 claims for *Markman* (45 claims in each case) until after preliminary invalidity

Plaintiffs respectfully request the Court deny Defendants' request that the Court reconsider its August 16 Email Order providing for a one-week extension of the *Markman* Hearing date, which would set a December 15, 2021 *Markman* Hearing.

The parties will submit a proposed schedule based on a *Markman* date of January 12, 2022 (*i.e.*, a 5-week total extension of the *Markman* hearing based on the 4-week extension for preliminary invalidity contentions and related production and the additional 1-week extension for the *Markman* hearing following Plaintiffs' claim reduction).

contentions. Plaintiffs' position would create undue burden and inefficiency, for example in that Plaintiffs currently propose the parties exchange claim terms and prepare proposed constructions before Plaintiffs reduce their asserted claims from 113 claims to 45-90 claims.		
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Best regards,

Luke Nelson

Luke Nelson

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From: Jun Zheng <Jun_Zheng@txwd.uscourts.gov>

Sent: Monday, August 16, 2021 1:28 PM

To: Daniel Hipskind <dph@bergerhipskind.com>; Luke Nelson <lnelson@ccrglaw.com>

Cc: Dorian Berger <dsb@bergerhipskind.com>; Erin McCracken <eem@bergerhipskind.com>; Elizabeth DeRieux <ederieux@capshawlaw.com>; Heidi Peterson <hpeterson@capshawlaw.com>; Emerson, Russ

<Russ.Emerson@haynesboone.com>; Sivinski, Stephanie <Stephanie.Sivinski@haynesboone.com>; Fox, Caroline

<Caroline.Fox@haynesboone.com>; Anthony Garza <agarza@ccrglaw.com>; John Heuton <jheuton@ccrglaw.com>;

Steven Callahan <scallahan@ccrglaw.com>; Chris Bovenkamp <cbovenkamp@ccrglaw.com>

Subject: RE: Sable Networks, Inc., et al. v. Riverbed Technology, Inc., No. 6:21-cv-00175-ADA and Sable Networks, Inc., et al. v. Cloudflare, Inc., No. 6:21-cv-00261-ADA - Request for Telephone Conference

Counsel,

Given that the plaintiff has asserted over 100 claims, the Court will allow a 4-week extension for preliminary invalidity contentions and related production. The Court will also allow a 1-week extension for the Markman hearing date. Please meet and confer and submit a proposed scheduling order according to these extensions.

-Jun

Jun Zheng

Law Clerk to the Honorable Alan D Albright

United States District Court, Western District of Texas

From: Daniel Hipskind <dph@bergerhipskind.com>

Sent: Friday, August 13, 2021 12:36 PM

To: Jun Zheng <Jun_Zheng@txwd.uscourts.gov>; Luke Nelson <lnelson@ccrglaw.com>

Cc: Dorian Berger <dsb@bergerhipskind.com>; Erin McCracken <eem@bergerhipskind.com>; Elizabeth DeRieux <ederieux@capshawlaw.com>; Heidi Peterson <hpeterson@capshawlaw.com>; Emerson, Russ

<Russ.Emerson@haynesboone.com>; Sivinski, Stephanie <Stephanie.Sivinski@haynesboone.com>; Fox, Caroline

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Subject: RE: Sable Networks, Inc., et al. v. Riverbed Technology, Inc., No. 6:21-cv-00175-ADA and Sable Networks, Inc., et al. v. Cloudflare, Inc., No. 6:21-cv-00261-ADA - Request for Telephone Conference

CAUTION - EXTERNAL

Mr. Zheng,

Thank you for your email. Please find below a table summarizing the Parties' issues and the requested relief.

Summary of Issue	Plaintiffs' Requested Relief	Defendants' Requested Relief
<p>The Parties have presented competing proposed case schedules. See Case No. 21-cv-175, Dkt. 16; Case No. 21-cv-261, Dkt. 23 ("Joint Motion"). The Parties' positions are explained fully in the Joint Motion.</p> <p><u>Plaintiffs' Statement:</u> (1) Plaintiffs' proposed schedule incorporates the Court's Default Schedule from the Order Governing Proceedings; (2) Defendants seek significant departures from the Court's Default Schedule—15 weeks to serve invalidity contentions (instead of the standard 7) and a further 4 week extension to the Court's standard <i>Markman</i> Hearing; (3) this case is no more complex than those routinely handled by this Court; (4) Plaintiffs have already agreed to reduce the number of asserted claims in each case to 45 or fewer before the <i>Markman</i> exchanges begin; and (5) Plaintiffs are concerned Defendants' proposed departures to the Court's default Scheduling Order are actually motivated by the schedule of pending <i>Inter Partes</i> Review petitions rather than a good-faith need for more time here.</p> <p><u>Defendants' Statement:</u></p> <p>Defendants submit that there are two main issues in dispute:</p> <p><u>First issue:</u> Defendants request an 8-week extension (to October 13, 2021) of the deadline for <u>preliminary invalidity contentions and related production</u>.</p> <p>Basis: Plaintiffs currently assert 113 total patent claims in the two actions (6 asserted patents total; 110 asserted patent claims in case no. 21-175 against Riverbed, 90 patent claims in case no. 21-261 against Cloudflare, and 87 claims overlapping between the two cases). (The Motion recites 121 total asserted claims; Plaintiffs dropped 8 claims against both Defendants on August 12, 2021).</p> <p>Defendants' position is that Plaintiffs' proposed deadline of August 18, 2021 (the Court's default timing, 7 weeks</p>	<p>Plaintiffs respectfully request the Court enter Plaintiffs' Proposed Schedule attached as Exhibit B to the Parties' Joint Motion.</p>	<p>Defendants respectfully request the Court enter Defendants' Proposed Schedule attached as Exhibit C to the Motion.</p>

after the CMC date) is unduly burdensome given the large number of patents and asserted claims, and fails to take into account this Court's past guidance. *E.g.*, *Onstream Media Corp. v. Facebook Inc.*, No. 1:20-CV-00214-ADA (W.D. Tex. June 30, 2020) (ECF No. 34 at 5-6 (hearing transcript) ("I'm going to make sure that I adjust the schedule to make sure that the defendant has a sufficient amount of time to do everything that it needs to do in terms of invalidity contentions If it's 90 claims, all those seem to kind of exponentially ramp up the amount of work that a defendant would have to do and I want to – I'm very conscious of that additional work.")).

Second issue: Defendants respectfully request a further 4-week extension (to March 2, 2022) of the Markman timeline.

Basis: Plaintiffs have agreed to reduce, at a future date, the number of asserted claims to **45 claims per case— i.e., between 45 and 90 total asserted patent claims for Markman**. Defendants' position is that a modest extension of the *Markman* timeline is needed in order for the parties to have time to properly consider, confer, and attempt to narrow and brief claim-construction issues after Plaintiffs reduce the number of asserted claims (particularly in light of the Court's presumed limit of 12 claim terms at *Markman*, on the 6 total patents at issue here).

Remaining dates: Defendants propose other pre-*Markman* dates based on the above-requested 12-week total extension of *Markman* (not "nearly five months," as Plaintiffs assert in the Motion at 4), and Defendants propose a *Markman*-to-trial timeline consistent with the Court's default *Markman*-to-trial interval (i.e., trial at 52 weeks after *Markman*).

Best regards,

Dan Hipkind

From: Jun Zheng <Jun_Zheng@txwd.uscourts.gov>

Sent: Thursday, August 12, 2021 5:18 PM

To: Luke Nelson <lnelson@ccrglaw.com>

Cc: Daniel Hipkind <dph@bergerhipskind.com>; Dorian Berger <dsb@bergerhipskind.com>; Erin McCracken <eem@bergerhipskind.com>; Elizabeth DeRieux <ederieux@capshawlaw.com>; Heidi Peterson <hpeterson@capshawlaw.com>; Emerson, Russ <Russ.Emerson@haynesboone.com>; Sivinski, Stephanie <Stephanie.Sivinski@haynesboone.com>; Fox, Caroline <Caroline.Fox@haynesboone.com>; agarza_ccrglaw.com <agarza@ccrglaw.com>; John Heuton <iheuton@ccrglaw.com>; Steven Callahan <scallahan@ccrglaw.com>; Chris

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