

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

B.E. TECHNOLOGY, L.L.C.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:12-cv-02830-JPM-tmp
)	
GOOGLE INC.,)	
)	
Defendant.)	
)	

JOINT MOTION (INCLUDING MEMORANDUM) OF
PLAINTIFF B.E. TECHNOLOGY, LLC and DEFENDANT GOOGLE INC.
TO MODIFY CERTAIN LOCAL PATENT RULES DEADLINES
AND RESTORE UNIFORMITY TO RELATED CASE SCHEDULES
(WITH CERTIFICATE OF CONSULTATION)

Plaintiff B.E. Technology, LLC (“plaintiff”) and defendant Google Inc. (“Google” or “defendant”) jointly move the Court to enter the accompanying proposed Order, modifying the deadlines for four events under the Local Patent Rules (LPR’s) in this action. This joint motion results from extensive consultation between counsel for these parties as well as the majority of the defendants in eighteen other, related actions filed by plaintiff in this Court. It is anticipated that at least the vast majority of those other defendants, including but not limited to all twelve represented by the same undersigned defense counsel, will join with plaintiff in equivalent motions in those other cases as well.

The effect of this motion and the ones to follow, if granted, would be to restore the uniformity of schedules in all affected actions that existed prior to the entry of stays of all

proceedings during the Court's consideration of motions to transfer their venue, for all cases whose venue is not transferred.

The four event deadlines encompassed by this motion (and the anticipated ones in the other cases) are for Google's service of non-infringement and invalidity contentions and production of related documents (LPR 3.3-3.6) and plaintiff's validity and enforceability contentions (LPR 3.7); and both parties' exchange of preliminary and final patent claim terms to be construed under LPR 4.1(a) and (c). Except for one minor change requested by plaintiff and agreed to by defendant(s), no amendment of other LPR deadlines would be necessary to the objective of this motion (and the ones to follow) because all other deadlines either follow intervals from the foregoing ones automatically under the LPR's, or will be tied to the Patent Scheduling Conference date not yet determined by the Court, or will not begin to run until the Court makes a Claim Construction Ruling. The total effect of the relief sought would be to establish the following amended deadlines for all the affected actions, measured from the date of entry of the last Order granting or denying a pending motion to transfer venue (the "Last Order"):

1. Initial Non-Infringement Contentions: Modified to 30 days from the Last Order;
2. Invalidity and Unforceability Contentions: Modified to 60 days from the Last Order;
3. Preliminary Identification of Claim Terms to be Construed: Modified to 65 days from the Last Order;
4. Validity and Enforceability Contentions: 42 days after Event 2, a modification of 21 days from the automatic LPR deadline;
5. Final Identification of Claim Terms to be Construed: Modified to 75 days from the Last Order;
6. Preliminary Claim Constructions and Supporting Material: Automatically 14 days from the preceding event;
7. Initial Expert Claim Construction Reports: Automatically 14 days from the preceding event;
8. Rebuttal Expert Claim Construction Reports: Automatically 14 days from the preceding event;

9. Completion of Expert Discovery: Automatically 14 days from the preceding event;
10. Final Claim Construction: Automatically 7 days from the preceding event;
11. Opening Claim Construction Briefs: Automatically 14 days from the preceding event;
12. Responsive Claim Construction Briefs: Automatically 30 days from the preceding event;
13. Joint Claim Construction and Prehearing Statement: Automatically 7 days from the preceding event;
14. Claim Construction Hearing: As set by the Court pursuant to LPR 4.6;
15. Remaining LPR events: Automatically timed from the Court's Claim Construction Ruling.

As further support and explanation for this joint motion, the parties respectfully show the following, all established from the Docket in this action and the eighteen other related cases:

1. Between September 7 and October 10, 2012, plaintiff filed nineteen actions in this Court against nineteen defendants, including this action against Google (filed September 21), alleging infringement of one or more of three U.S. Patents involving certain computer interface technology. A table identifying the docket numbers, defendants, filing dates, patent(s) asserted, and other logistical information referenced below, for each of the nineteen cases, is attached to this motion.

2. By previous unopposed motions in each case, the deadline for the "Responsive Pleading," as defined by the LPR's, was set at December 31, 2012 in every case except the one against Amazon Digital Services, Inc. ("Amazon"), which was set just a week later. Because all of the early disclosures and related actions of the parties under the LPR's are tied either directly or indirectly to the Responsive Pleading date, except events tied directly to the Patent Scheduling Conference date when set by the Court, the uniform Responsive Pleading dates had the effect of putting all of the actions on parallel schedules.

3. Parallel attributes of the schedules in these cases have substantial present and future value. Although the plaintiff and each of the defendants do not agree fully on formal

consolidation of the cases, a review of the Patent Scheduling Conference Notices filed by the parties in each case (*see* ECF numbers in the attached table) reveal that *all* parties agree that at least some concurrence of the schedules makes sense. And obviously, if the Court decides at a future time to schedule certain events in the cases together, concurrence of their schedules would assure the simultaneous readiness of all affected cases for those events.

4. Between December 18, 2012, and February 12, 2013, each of the nineteen defendants filed motions to transfer venue to another District under 28 U.S.C. 1404. Subsequently, each defendant moved to stay proceedings in its action pending the Court's decision on venue. After the Court began granting these individual stay motions, plaintiff did not oppose the remaining motions (although it did not consent to them). Within a short period, the Court entered stay Orders in all nineteen actions. The date of the stay Order in each action is included in the attached table. Each stay Order was entered at a varying point during the periods prescribed for each defendant to serve its initial non-infringement and invalidity contentions (with many subsequent deadlines flowing from those events as previously summarized). Understandably and consistent with the purpose of the stay Orders, the defendants suspended work on these matters, some of which would not be required at all in the proposed transferee forums.

5. On May 24, 2013, the Court denied defendant Google's motion to transfer and lifted the stay previously imposed in the instant case (ECF No. 45). As of the filing of this instant motion, the Court has not yet ruled on any of the other eighteen motions for transfer of the other cases, and the stays in all of those cases remain in effect.

6. For each action retained in this venue, the pending stay will of course be lifted. When that occurs, the time periods remaining for the above-mentioned contentions will vary considerably, and time periods for subsequent events will vary in like measure. Further and even

greater variations may occur due to varying dates when stays are lifted. Naturally, the parties do not presume to tell the Court, either directly or by some “forecast,” when the Court will or should rule on the remaining transfer motions in relation to the many other matters on the Court’s docket. Rather, the best method to restore uniformity to the schedules of all actions ultimately retained in this District is to re-initiate the schedule prescribed by the LPR’s, currently stayed in 18 of the 19 total actions, on an identical date – the date when all of the stays have been lifted.

7. The LPR’s give the Court broad discretion to “modify the obligations or deadlines set forth in the[m] ... based on the circumstances of any particular case, including, without limitation, the simplicity or complexity of the case as shown by the ... parties involved.” LPR 1.5. The Court has equivalent express power to manage schedules under Fed.R.Civ.P. 16 and 26, and equivalent inherent powers. The fact that this case, and each of the 18 others, involve a total of twenty parties and correspondingly extensive sets of activities for their preparation and disposition surely presents a situation of aggregate complexity contemplated in the LPRs’ provisions for scheduling flexibility. The relief sought here would restore uniformity to all nineteen case schedules (and even eliminate the original seven-day difference in the Amazon case schedule) or such smaller number as may remain in this district after the Court rules on all pending transfer motions.

8. In this instant action against Google and in the eighteen others, the stays also suspended the time for response to motions under Fed.R.Civ.P. 12 to strike defenses and/or dismiss counterclaims set forth in the defendants’ answers, and suspended the Court’s consideration of motions to enlarge that response time in certain actions. The Order denying transfer and lifting the stay in this action included a new deadline for Google to respond to such a

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