

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**AGIS SOFTWARE DEVELOPMENT,
LLC,**

Plaintiff,

v.

APPLE, INC.,

Defendant.

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Case No. 2:17-CV-0516-JRG

JURY TRIAL DEMANDED

SECOND AMENDED DOCKET CONTROL ORDER

In accordance with the scheduling conference held in this case, it is hereby ORDERED that the following schedule of deadlines is in effect until further order of this Court:

Current Deadline	Proposed Deadline	Event
January 7, 2019	March 4, 2019	*Jury Selection – 9:00 a.m. in Marshall, Texas
December 10, 2018	February 4, 2019	*Pretrial Conference – 9:00 a.m. in Marshall, Texas before Judge Rodney Gilstrap
December 5, 2018	January 30, 2019	*Notify Court of Agreements Reached During Meet and Confer The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i> . The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.
December 3, 2018	January 28, 2019	*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, Responses to Motions <i>in Limine</i> , Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations

Current Deadline	Proposed Deadline	Event
November 26, 2018	January 21, 2019	*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, Shelly Holmes, at shelly_holmes@txed.uscourts.gov.
November 19, 2018	January 14, 2019	File Motions <i>in Limine</i> The parties shall limit their motions <i>in limine</i> to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.
November 19, 2018	January 14, 2019	Serve Objections to Rebuttal Pretrial Disclosures
November 12, 2018	January 7, 2019	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
October 29, 2018	December 21, 2018	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof
October 4, 2018	December 7, 2018	*File Motions to Strike Expert Testimony (including <i>Daubert</i> Motions) No motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.
September 28, 2018	December 7, 2018	*File Dispositive Motions No dispositive motion may be filed after this date without leave of the Court. <u>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</u>

Current Deadline	Proposed Deadline	Event
September 24, 2018	December 3, 2018	Deadline to Complete Expert Discovery
September 10, 2018	November 5, 2018	Serve Disclosures for Rebuttal Expert Witnesses
August 22, 2018	October 15, 2018	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
August 15, 2018	October 15, 2018	Deadline to Complete Fact Discovery and File Motions to Compel Discovery
July 30, 2018	September 28, 2018	Deadline to Complete Mediation The parties are responsible for ensuring that a mediation report is filed no later than 5 days after the conclusion of mediation.
July 23, 2018	September 21, 2018	Comply with P.R. 3-7 (Opinion of Counsel Defenses)
July 2, 2018	August 31, 2018	*Claim Construction Hearing – 1:30 p.m. in Marshall, Texas before Judge Rodney Gilstrap
June 18, 2018	August 17, 2018	*Comply with P.R. 4-5(d) (Joint Claim Construction Chart)
July 25, 2018	August 15, 2018	Plaintiff shall serve a Final Election of Asserted Claims, which shall identify no more than 15 claims per asserted patent and no more than 38 claims in total. Not later than 14 days after Plaintiff's election Defendants to elect no more than 15 prior art references against each patent and no more than a total of 40 references.
June 11, 2018	August 10, 2018	*Comply with P.R. 4-5(c) (Reply Claim Construction Brief)
June 4, 2018	August 3, 2018	Comply with P.R. 4-5(b) (Responsive Claim Construction Brief)

Current Deadline	Proposed Deadline	Event
May 21, 2018	July 20, 2018	Comply with P.R. 4-5(a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any) Good cause must be shown to submit technical tutorials after the deadline to comply with P.R. 4-5(a).
May 21, 2018	July 20, 2018	Deadline to Substantially Complete Document Production and Exchange Privilege Logs Counsel are expected to make good faith efforts to produce all required documents as soon as they are available and not wait until the substantial completion deadline.
May 7, 2018	July 6, 2018	Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery)
April 30, 2018	June 29, 2018	File Response to Amended Pleadings
April 16, 2018	June 15, 2018	*File Amended Pleadings It is not necessary to seek leave of Court to amend pleadings prior to this deadline unless the amendment seeks to assert additional patents.
April 9, 2018	June 8, 2018	Comply with P.R. 4-3 (Joint Claim Construction Statement)
March 19, 2018	May 18, 2018	Comply with P.R. 4-2 (Exchange Preliminary Claim Constructions)
February 26, 2018	April 27, 2018	Comply with P.R. 4-1 (Exchange Proposed Claim Terms)
February 12, 2018	Unchanged	Plaintiff shall serve a Preliminary Election of Asserted Claims, which shall identify no more than 17 claims per asserted patent and no more than 85 claims in total. Not later than 14 days after Plaintiff's election Defendant to preliminarily elect no more than 20 prior art reference against each patent and no more than a total of 60 references.

(*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

ADDITIONAL REQUIREMENTS

Notice of Mediator: The parties are to jointly file a notice that identifies the agreed upon mediator or indicates that no agreement was reached. If the parties do not reach an agreement, the Court will appoint a mediator. The parties should not file a list of mediators to be considered by the Court.

Summary Judgment Motions, Motions to Strike Expert Testimony, and Daubert Motions: For each motion, the moving party shall provide the Court with two (2) copies of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in D-three-ring binders, appropriately tabbed. All documents shall be single-sided and must include the CM/ECF header. For expert-related motions, complete digital copies of the relevant expert report(s) and accompanying exhibits shall be submitted on a single flash drive. These copies shall be delivered as soon as briefing has completed.

Indefiniteness: In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules' normal page limits.

Motions for Continuance: The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:

- (a) The fact that there are motions for summary judgment or motions to dismiss pending;
- (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

Amendments to the Docket Control Order (“DCO”): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion to amend the DCO shall include a proposed order that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines and the changes, if any, to those deadlines, rather than needing to also refer to an earlier version of the DCO.

Proposed DCO: The Parties' Proposed DCO should also follow the format described above under “Amendments to the Docket Control Order (‘DCO’).”