

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

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	Civil Action No. 2:22-cv-00263-JRG-RSP
v.	§	
	§	
SAMSUNG ELECTRONICS CO., LTD., ET	§	
AL.,	§	
	§	
<i>Defendants.</i>	§	
	§	

SECOND AMENDED DOCKET CONTROL ORDER

In accordance with the Joint Motion for Second Amended Docket Control Order, **Dkt. No. 119**, it is hereby **ORDERED** that the following schedule of deadlines is in effect until further order of this Court:

Original Dates	Amended Dates	Event
March 4, 2024	July 8, 2024	*Jury Selection – 9:00 a.m. in Marshall, Texas
7 days before Jury Selection		*Defendant to disclose final invalidity theories, final prior art references/combinations, and final equitable defenses. ¹
10 days before Jury Selection		*Plaintiff to disclose final election of Asserted Claims. ²

¹ The proposed DCO shall include this specific deadline. The deadline shall read, “7 days before Jury Selection,” and shall not include a specific date.

² Given the Court’s past experiences with litigants dropping claims and defenses during or on the eve of trial, the Court is of the opinion that these additional deadlines are necessary. The proposed DCO shall include this specific deadline. The deadline shall read, “10 days before Jury Selection,” and shall not include a specific date.

February 5, 2024	June 10, 2024	*If a juror questionnaire is to be used, an editable (in Microsoft Word format) questionnaire shall be jointly submitted to the Deputy Clerk in Charge by this date. ³
January 29, 2024	June 5, 2024 at 9:00 a.m.	*Pretrial Conference – in Marshall, Texas before Judge Roy Payne
January 22, 2024	May 29, 2024	*Notify Court of Agreements Reached During Meet and Confer The parties are ordered to meet and confer on any outstanding objections or motions in limine. 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.
January 22, 2024	May 29, 2024	*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, Responses to Motions in Limine, Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations
January 16, 2024	May 21, 2024	*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, Shawn McRoberts, at shawn_mcroberts@txed.uscourts.gov.
January 11, 2024	May 15, 2024	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.
January 11, 2024	May 15, 2024	Serve Objections to Rebuttal Pretrial Disclosures
January 5, 2024	May 8, 2024	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures

³ The Parties are referred to the Court's Standing Order Regarding Use of Juror Questionnaires in Advance of Voir Dire.

December 18, 2023	April 24, 2024	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof
December 14, 2023	April 16, 2024	*Response to Dispositive Motions (including <i>Daubert</i> Motions). Responses to dispositive motions that were filed <u>prior</u> to the dispositive motion deadline, including <i>Daubert</i> Motions, shall be due in accordance with Local Rule CV- 7(e), not to exceed the deadline as set forth in this Docket Control Order. ⁴ Motions for Summary Judgment shall comply with Local Rule CV-56.
November 30, 2023	April 2, 2024	*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.
November 30, 2023	April 2, 2024	*File Dispositive Motions No dispositive motion may be filed after this date without leave of the Court. Motions shall comply with Local Rule CV-56 and Local Rule CV-7. <u>Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</u>
November 20, 2023	March 22, 2024	Deadline to Complete Expert Discovery
November 8, 2023	March 4, 2024	Serve Disclosures for Rebuttal Expert Witnesses
October 18, 2023	February 13, 2024	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
October 12, 2023	February 6, 2024	Deadline to Complete Fact Discovery and File Motions to Compel Discovery

⁴ The parties are directed to Local Rule CV-7(d), which provides in part that “[a] party’s failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.” If the deadline under Local Rule CV 7(e) exceeds the deadline for Response to Dispositive Motions, the deadline for Response to Dispositive Motions controls.

October 4, 2023	January 30, 2024	Final Pre-Trial Election of Asserted Claims and Prior Art Plaintiff shall serve a Final Pre-Trial Election of Asserted Claims, which shall identify no more than 5 claims per asserted patent from among the previously identified claims and no more than 16 claims in total. Not later than 14 days after Plaintiff's election, Defendants shall elect no more than 6 prior art references against each patent from among the previously identified references and no more than 20 references in total.
September 22, 2023	November 22, 2023	Comply with P.R. 3-7 (Opinion of Counsel Defenses)
September 1, 2023	November 3, 2023 at 9:00 a.m.	*Claim Construction Hearing – 9:00 a.m. in Marshall, Texas before Judge Roy Payne
	October 18, 2023	Revised P.R. 4-5(d) Joint Claim Construction Chart
	October 11, 2023	Plaintiff's Supplemental Reply Claim Construction Brief Addressing Any New Disputed Terms.
	October 4, 2023	Defendants' Supplemental Responsive Claim Construction Brief Addressing Any New Disputed Terms.
	September 20, 2023	Plaintiff's Supplemental Opening Claim Construction Brief Addressing Any New Disputed Terms.
	September 5 2023	Joint notice concerning any additional disputed terms and proposed constructions for briefing.

(*) 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

Mediation: While certain cases may benefit from mediation, such may not be appropriate for every case. The Court finds that the Parties are best suited to evaluate whether mediation will benefit the case after the issuance of the Court's claim construction order. Accordingly, the Court **ORDERS** the Parties to file a Joint Notice indicating whether the case should be referred for mediation **within fourteen days of the issuance of the Court's claim**

construction order. As a part of such Joint Notice, the Parties should indicate whether they have a mutually agreeable mediator for the Court to consider. If the Parties disagree about whether mediation is appropriate, the Parties should set forth a brief statement of their competing positions in the Joint Notice.

Summary Judgment Motions, Motions to Strike Expert Testimony, and Daubert Motions: For each motion, the moving party shall provide the Court with two (2) hard copies of the completed briefing (opening motion, response, reply, and if applicable, sur-reply), excluding exhibits, in D-three-ring binders, appropriately tabbed. All documents shall be single-sided and must include the CM/ECF header. These copies shall be delivered to the Court within three (3) business days after briefing has completed. For expert-related motions, complete digital copies of the relevant expert report(s) and accompanying exhibits shall be submitted on a single flash drive to the Court. Complete digital copies of the expert report(s) shall be delivered to the Court no later than the dispositive motion deadline.

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.

Lead Counsel: The Parties are directed to Local Rule CV-11(a)(1), which provides that “[o]n the first appearance through counsel, each party shall designate a lead attorney on the pleadings or otherwise.” Additionally, once designated, a party’s lead attorney may only be changed by the filing of a Motion to Change Lead Counsel and thereafter obtaining from the Court an Order granting leave to designate different lead counsel. The true lead counsel should be designated early and should not expect to parachute in as lead once the case has been largely developed.

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

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