

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

VOIP-PAL.COM, INC.

Plaintiff,

v.

AMAZON.COM, INC.;  
AMAZON.COM SERVICES LLC; and  
AMAZON WEB SERVICES, INC.,

Defendants.

CIVIL ACTION NO. 6:20-cv-672-ADA

**PLAINTIFF VOIP-PAL.COM'S REPLY IN SUPPORT OF OPPOSED MOTION  
FOR ENTRY OF FIRST AMENDED SCHEDULING ORDER**

Amazon's arguments for delaying entry of a case schedule until the Court rules on VoIP-Pal's motion for reconsideration lack merit. Contrary to what Amazon claims, VoIP-Pal has not elected to prolong the claim construction process in this case. *See* Dkt. No. 92 at 1. Claim construction can occur at any time through the end of trial. *See Yeti Coolers, LLC v. RTIC Coolers, LLC*, No. A-15-CV-597-RP, 2017 U.S. Dist. LEXIS 11163, at \*9 (W.D. Tex. Jan. 27, 2017) (quoting *Mediatek Inc. v. Freescale Semiconductor, Inc.*, No. 11-cv- 5341 YGR, 2014 U.S. Dist. LEXIS 31461, at \*9 (N.D. Cal. Mar. 5, 2014) ("Accordingly, the final determination of the construction of any claim occurs at the close of trial and manifests itself in the form of jury instructions.")). The Court's original Scheduling Order, however, provides that discovery begins the day after the claim construction hearing—May 18, 2022. *See* Dkt. No. 61 at 4. VoIP-Pal served written discovery on that day. *See* Exs. 4-5. Because the Court stayed this case two weeks later, Amazon still has not responded to VoIP-Pal's discovery and refuses to do so until the Court enters an amended scheduling order. Because the Court has since lifted the stay (Dkt. No. 81), Amazon has no legitimate basis to oppose

entry of a scheduling order or to refuse to provide discovery. The fact that VoIP-Pal has filed a motion for reconsideration of the Court's Final Claim Construction Order has nothing to do with whether discovery should proceed and whether a schedule should be entered.

Amazon's claim that VoIP-Pal's infringement contentions make no assertion that any routing messages in the accused system have a time-to-live field is misleading. Dkt. No. 92 at 1. VoIP-Pal served Preliminary Infringement Contentions (PICs) on November 16, 2021—fifteen months *before* the Court issued its Final Claim Construction Order. So of course, VoIP-Pal's PICs do not account for the Court's claim construction. In the original Scheduling Order, the time period between the start of discovery and the deadline to serve Final Infringement Contentions (FICs) (May 18, 2022–July 12, 2022) was intended, at least in part, to give VoIP-Pal an opportunity to conduct discovery and modify its PICs as needed in light of the Court's claim construction. *See* Dkt. No. 61 at 4. Because the Court stayed the case and has not entered a subsequent scheduling order, VoIP-Pal has not had that opportunity and Amazon's refusal to provide discovery until the Court enters a new scheduling order unfairly denies VoIP-Pal that opportunity.

Contrary to what Amazon suggests, Amazon did not produce any documents in response to VoIP-Pal's discovery requests. *See* Dkt. No. 92 at 2. Rather, Amazon merely designated documents produced in another case between the parties for use in this case. *See* Dkt. No. 90-2. Those documents, however, concern a different case involving different patents, a different set of discovery requests, and a different claim construction order. Thus, it is unreasonable to assume that Amazon's designated production addresses the issues specific to this case, such as the Court's construction of "routing message."

Amazon's suggestion that VoIP-Pal does not have a Rule 11 basis for its infringement contentions is a red herring. Amazon has not sent VoIP-Pal a Rule 11 letter or otherwise invoked the

strict requirements of Rule 11. Additionally, VoIP-Pal does not seek a scheduling order for the purpose of conducting a fishing expedition. Amazon asserts that “Amazon’s system does not have any routing message that contains such a [time to live] field.” Dkt. No. 90-2 at 4. VoIP-Pal should be allowed to assess that assertion and to assess the soundness of its infringement position through discovery. VoIP-Pal’s Request for Production Nos. 10 (documents supporting answer), 11 (documents supporting interrogatory responses), and 14 (documents to be relied on at trial) and Interrogatory No. 3 (factual basis for noninfringement affirmative defense) relate directly to this issue. *See* Ex. 4 at 8, Ex. 5 at 8.

Waiting to enter a scheduling order until after the Court resolves VoIP-Pal’s motion for reconsideration will only inject further delay into this case. Amazon’s reasons for waiting improperly assume that the Court will deny VoIP-Pal’s motion for reconsideration. Regardless of how the Court decides VoIP-Pal’s motion, VoIP-Pal should be given a period between the restart of discovery and the deadline for serving FICs to reassess its infringement position. There is no reason why that period should not commence now, particularly if Amazon intends to bring a dispositive motion if the Court denies VoIP-Pal’s motion for reconsideration. If the Court does so, then adopting Amazon’s approach would deny VoIP-Pal a period to conduct discovery and assess its infringement position.

For all of these reasons, the Court should grant this Motion and enter a scheduling order. VoIP-Pal notes, however, that under its proposed scheduling order, the deadlines are calculated based on the February 15 Claim Construction Hearing. Accordingly, should the Court grant this Motion, VoIP-Pal respectfully requests that the Court order the parties to recalculate the dates based on the date of the Court’s order granting this Motion.

Dated: April 3, 2023

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

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**CERTIFICATE OF SERVICE**

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the forgoing PLAINTIFF VOIP-PAL.COM'S REPLY IN SUPPORT OF OPPOSED MOTION FOR ENTRY OF FIRST AMENDED SCHEDULING ORDER via the Court's CM/ECF system pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5(b)(1) this 3rd day of April 2023.

By: /s/Lewis E. Hudnell, III  
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