

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

RFCyber CORP.,	§	Case No. 6:22-cv-00697-ADA
	§	
Plaintiff,	§	<u>JURY TRIAL DEMANDED</u>
	§	
v.	§	
	§	
VISA U.S.A. INC.,	§	
	§	
Defendant.	§	
	§	

JOINT MOTION FOR ENTRY OF DISPUTED SCHEDULING ORDER

Plaintiff RFCyber Corp. and Defendant Visa U.S.A. Inc. (collectively “Parties”) file this Joint Motion for Entry of Disputed Scheduling Order.

RFcyber’s Position

RFcyber respectfully requests that the Court enter its default Scheduling Order calculated per Appendix A to the OGP, attached hereto as Exhibit 1. RFcyber’s proposal reflects a case management conference date deemed to occur on May 15, 2023, based on the filing of the case readiness status report, and includes a courtesy extension to the date for Visa’s invalidity contentions from July 3, 2023 to July 21, 2023.

RFcyber maintains that the Court’s default order is appropriate for this action. RFcyber understands that Visa does not oppose the substance of the schedule but opposes entry of any scheduling order until its Motion to Stay Pending *Inter Partes* Review has been decided. But it is Visa’s burden to show that it is entitled to a stay (it fails to do so), not RFcyber’s burden to show that the case should proceed as a threshold matter. Visa’s request amounts to a preemptive stay of litigation, which would be both premature and highly prejudicial to RFcyber. Moreover, Visa

cannot even show that it is likely to prevail on its motion to stay – two of the four patents asserted in this action are not subject to any requested or instituted petitions for *inter partes* review.

RFCyber respectfully submits that this action should proceed under the Court’s default schedule, attached hereto as Exhibit 1.

Visa’s Position

The Court should delay entering a scheduling order given that in less than six weeks, the PTAB is expected to issue final written decisions which will determine the validity of two patents asserted in this action and inform claim construction and arguments the parties may make on two other related patents. As outlined in Visa’s Motion to Stay pending *Inter Partes* Review (Dkt. 22), RFCyber will not suffer any prejudice from this very modest delay of several weeks, whereas moving forward with a scheduling order at this time would prove wasteful of both the parties’ and the Court’s time and resources. The parties can and should avoid potentially unnecessary, inconsistent, and duplicative invalidity contentions and claim construction mere days before the PTAB is expected to issue a decision.

RFCyber has not presented any reason it cannot wait a mere six weeks to allow the parties and the Court to benefit from the simplification of issues and claim construction analysis expected from the IPR Proceedings. Visa respectfully requests that entry of a scheduling order be deferred until a decision on Visa’s Motion to Stay, or a decision in the pending IPR Proceedings, expected in July 2023.

Dated: June 16, 2023

Respectfully submitted,

/s/ Jacob S. Ostling
Raymond W. Mort, III
Texas Bar No. 00791308
Email: raymort@austinlaw.com
THE MORT LAW FIRM, PLLC
100 Congress Avenue, Suite 2000

/s/ James C. Yoon
James C. Yoon
(CA Bar No. 177155)
jyoon@wsgr.com WILSON SONSINI
GOODRICH & ROSATI, P.C.
650 Page Mill Road

Austin, Texas 78701
Tel/Fax: 512-865-7950

OF COUNSEL:

Alfred R. Fabricant (pro hac vice to be filed)
NY Bar No. 2219392
Email: ffabricant@fabricantllp.com
Peter Lambrianakos (pro hac vice to be filed)
NY Bar No. 2894392
Email: plambrianakos@fabricantllp.com
Vincent J. Rubino, III
(pro hac vice to be filed)
NY Bar No. 4557435
Email: vrubino@fabricantllp.com
Richard Cowell (Pro Hac vice)
NY Bar No. 4617759 Email:
rcowell@fabricantllp.com
Jacob Ostling (Pro Hac vice)
NY Bar No. 5684824
Email: jostling@fabricantllp.com
FABRICANT LLP
411 Theodore Fremd Avenue,
Suite 206 South
Rye, New York 10580
Telephone: (212) 257-5797
Facsimile: (212) 257-5796

Attorneys For Plaintiff RFCyber Corp.

Palo Alto, CA 94304-1050
Telephone: (650) 493-9300
Fax: (650) 493-6811

Jamie Y. Otto
(CA Bar No. 229323) (*pro hac vice*)
jotto@wsgr.com
WILSON SONSINI GOODRICH &
ROSATI, P.C.
633 West Fifth Street, Suite 1550
Los Angeles, California 90071
Telephone: (323) 210-2900
Fax: (866) 974-7329

Lucy Yen (*pro hac vice*)
Cassie L. Black (*pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI
1301 Avenue of the Americas, 40th Fl.
New York, NY 10019
(212) 999-5800 (telephone)
(866) 974-7329 (facsimile)
lyen@wsgr.com
cblack@wsgr.com

Attorneys for Defendant VISA U.S.A. Inc.