UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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| DDC TECHNOLOGY, LLC, | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. 3:22-CV-1263-B |
| | § | |
| STRUCTURAL GRAPHICS, LLC d/b/a RED PAPER PLANE; PYRITE VR LTD d/b/a MAXBOX VR; LANDSBERG ORORA; and GOOGLE LLC; | § | |
| | § | |
| Defendants. | § | |

## SCHEDULING ORDER

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and the Local Rules of this Court, the Court, having considered the Joint Status Report (Doc. 102) submitted by the parties, finds that the schedule herein should govern the disposition of this case. Unless otherwise ordered or specified herein, all limitations and requirements of the Federal Rules of Civil Procedure and the Local Rules of this Court, including Miscellaneous Order No. 62 (except as modified herein) must be observed.

> **Please note that the Court has attempted to adhere to the schedule requested by the parties while satisfying the requirements of Amended Miscellaneous Order No. 62. In so doing, the Court assumes that the parties thoroughly discussed scheduling issues prior to submitting their status report and that the parties understand that the deadlines imposed in this Order are firmly in place, absent the few exceptions set forth below.**



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IPR2023-00708

## I. SUMMARY OF CRITICAL DATES

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| **January 9, 2023** | Comply with P.R.[1] 3-1 & 3-2[2] |
| **January 30, 2023** | Deadline for Joining Additional Parties. |
| **February 22, 2023** | Comply with P.R. 3-3 & 3-4.[3] |
| **March 8, 2023** | Comply with P.R. 4-1. |
| **March 29, 2023** | Comply with P.R. 4-2. |
| **April 5, 2023** | Comply with P.R. 4-3. |
| **January 30, 2023** | Amend Pleadings (It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings except to the extent the amendment seeks to add a new patent in suit. It is necessary to file a Motion for Leave to Amend after this date.) |
| **February 13, 2023** | Respond to Amended Pleadings |
| **May 5, 2023** | Discovery Deadline - Claims Construction Issues, P.R. 4-4. |
| **June 19, 2023** | Comply with P.R. 4-5 (a). |
| **July 3, 2023** | Comply with P.R. 4-5 (b). |
| **July 10, 2023** | Comply with P.R. 4-5 (c). |
| **July 17, 2023** | Submit Technology Tutorials[4] (P.R. 2-1(a)(3)) |
| **July 24, 2023** | Claim Construction Hearing - 10:00 a.m. |

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[1] "P.R. [#]" refers to the Patent Rules contained in Miscellaneous Order No. 62 in this District.

[2] Pursuant to P.R. 3-6, preliminary infringement contentions are deemed final unless amended as set forth in P.R. 3-6(a) or 3-7.

[3] Pursuant to P.R. 3-6, preliminary invalidity contentions are deemed final unless amended as set forth in P.R. 3-6(b) or 3-7.

[4] By June 16, 2023, the parties are to disclose whether technology tutorials will be submitted. Per the Joint Status Report (Doc. 102), the parties do not anticipate technology tutorials.

**[COURT WILL ISSUE CC RULING WITHIN 21 DAYS OF CC HEARING]**

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| **August 3, 2023** | Comply with P.R. 3-8. |
| **January 15, 2024** | Fact Discovery Deadline. |
| **September 29, 2023** | Party with the burden of proof to provide Expert Witness Designation, including reports, under Fed. R. Civ. P. 26(a)(2). |
| **October 29, 2023** | Designation of Rebuttal Expert Witnesses, including reports, under Fed. R. Civ. P. 26(a)(2). |
| **January 15, 2024** | Close of Expert Discovery. |
| **February 27, 2024** | Deadline for filing Dispositive Motions. |
| **March 28, 2024** | Deadline for filing *Daubert* and related motions. |
| **December 29, 2023** | Mediation Report Due. |
| **April 12, 2024** | Pretrial Disclosures Due. Objections due 14 days thereafter. |
| **May 13, 2024** | Joint Pretrial Order, Joint Proposed Jury Instructions, and Form of the Verdict. |
| **May 13, 2024** | Motions in Limine Due. Three (3) business days prior to the pre-trial conference provided for herein, the parties shall furnish a copy of their respective Motions in Limine to the Court. **Motions in limine should not be filed as a matter of course. Parties may file motions in limine** on no more than **TEN discrete topics** (no subparts) that are actually in dispute. (Good faith compliance with the conference requirements of Local Rule 7.1 will help to narrow issues that are *actually* in dispute). Motions in limine that contain boilerplate requests, that exceed ten topics or that cover undisputed issues will be stricken. The parties are directed to confer and advise the Court on or before 3:00 p.m. the day before the pre-trial conference which paragraphs are agreed to and those that need to be addressed at the conference. Oppositions to Motions in Limine shall be filed by July 8, 2011. |
| **May 24, 2024** | Pretrial Conference - 10:00 a.m. |

**May 27, 2024** Jury Selection - 9:00 a.m.

## II. ADDITIONAL SCHEDULING INSTRUCTIONS

1. Trial Date: This case is set for trial on this Court's four-week docket beginning May 27, 2024. Counsel and the parties shall be ready for trial on two days' notice at any time during this four-week period. Any potential conflicts must be called to the attention of the Court in writing within 10 days from the date of this Order.

2. Discovery Compliance: It is not a valid excuse for one party to refuse to fully and timely comply with the Federal and Local Rules on discovery because the other party has not so complied, has not made its disclosures, or because the sufficiency of the other party's disclosures are being challenged. The parties are further directed to familiarize themselves with P.R. 2-5 and 3-5(b).

3. Completion of Discovery**:** Claim Construction discovery shall be completed by May 5, 2023. By January 15, 2024, all fact discovery shall be completed. By January 15, 2024, all expert discovery shall be completed. The parties may agree to extend these discovery deadlines, provided (i) the extension does not affect the trial setting, dispositive motions deadline, challenges to experts deadline, or pretrial submission dates; and (ii) written notice of the extension is given to the Court.

4. Mediation: The parties shall file a Joint Report informing the Court of their choice of an agreed-upon mediator or of their inability to agree upon a mediator by January 23, 2023. In the event the parties are unable to agree upon a mediator, the Court will appoint one for them. At that time, a separate Mediation Order will be issued,

discussing the guidelines and requirements of the mediation. The mediation report shall be submitted by December 29, 2023.

5. Pretrial Disclosures and Objections: Unless otherwise directed by order, the parties must make the disclosures required by Rule 26(a)(3)(A)-(C) by April 12, 2024. With respect to the identification of witnesses who will be called by deposition, the parties must also identify the portions of the deposition transcript that they intend to use. (Modification of Rule 26(a)(3)(B)). Within 14 days thereafter, a party must serve and file a list disclosing any objections, together with the grounds therefor, to: (i) the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(B); (ii) the admissibility of materials identified under Rule 26(a)(3)(C); and (iii) the use of any witnesses (except for expert objections) identified under Rule 26(a)(3)(A)[5], if any. Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, are waived unless excused by the court for good cause.

6. Pretrial Materials: By May 13, 2024, all pretrial materials shall be filed. Specifically, by this date:

a. Pretrial Order: A joint pretrial order shall be submitted by the Plaintiff's attorney which covers each of the matters listed in Local Rule 16.4 and which states the estimated length of trial and whether the case is jury or non-jury. If an attorney for either party does not participate in the preparation of the joint pretrial order, the opposing attorney shall submit a separate pretrial order with an explanation of

[5] Requiring parties to file objections to witnesses disclosed under Rule 26(a)(3)(A) is a modification of the requirements of Rule 26(a)(3)(A), which only requires that the parties file objections to deposition designations (Rule 26(a)(3)(B)) and exhibits (Rule 26(a)(3)(C)).

why a joint order was not submitted (so that the court can impose sanctions, if appropriate). Each party may present its version of any disputed matter in the joint pretrial order; therefore, failure to agree upon content or language is not an excuse for submitting separate pretrial orders. (Modification of Local Rule 16.4). When the joint pretrial order is approved by the Court, it will control all subsequent proceedings in this case.

b. Witness List: A list of witnesses shall be filed by each party, which divides the persons listed into groups of "probable witnesses," "possible witnesses," "experts," and "record custodians" and which provides:

(i) the name and address of each witness;

(ii) a brief narrative summary of the testimony to be covered by each witness;

(iii) whether the witness has been deposed; and

(iv) the expected duration of direct or cross-examination of the witness.[6]

(Modification of Local Rule 26.2(b)).

c. Exhibit List and Deposition Testimony Designations: A list of exhibits (including demonstrative exhibits) and a designation of portions of depositions to be offered at trial shall be filed by each party. The list of exhibits shall describe with specificity the documents or things in numbered sequence. The documents or things to be offered as exhibits shall be numbered by attachment of gummed labels to correspond with the sequence on the exhibit list and identify the party submitting the exhibit. (Modification of Local Rule 26.2(b), (c)).

[6] Pursuant to Rule 16(c)(15) and Section VII of the United States District Court for the Northern District of Texas Civil Justice Expense and Delay Reduction Plan, the Court may impose a reasonable limit on the time allowed for presenting evidence in this case. *See* Commentary - 1993 Amendment to the Federal Rules of Civil Procedure (court should ordinarily impose time limits only after receiving appropriate submissions from the parties).

Each party's exhibit list shall be accompanied by a written statement, signed by counsel for each party and state that, as to each exhibit shown on the list,

(i) the parties agree to the admissibility of the exhibit; or

(ii) the admissibility of the exhibit is objected to, identifying the nature and legal basis of any objection to admissibility and the name(s) of the party or parties urging the objection.

All parties shall cooperate in causing such statements to be prepared in a timely manner for filing with the exhibit lists. Counsel for the party proposing to offer an exhibit shall be responsible for coordinating activities related to preparation of such a statement as to the exhibit the party proposes to offer. The Court may exclude any exhibit offered at trial unless such a statement regarding the exhibit has been filed in a timely manner.

A list of each party's exhibits to which no objection will be lodged (preadmitted) must be submitted at the pretrial conference.[7] The Court expects the parties to confer and agree to admit the majority of their exhibits prior to trial.

d. Jury Instructions: Requested jury instructions (annotated)[8] shall be filed by each party. Each party shall also send a Word or WordPerfect version to Boyle_Clerk@txnd.uscourts.gov.

e. Proposed Findings of Fact and Conclusions of Law (annotated)[9]: In a non-jury case, proposed findings of fact and conclusions of law shall be filed by each party having the burden of persuasion on an issue.

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[7] This does not change the sequential manner in which each side should number its exhibits. In other words, a party should not separately number its exhibits into "objected to" and "unobjected to" categories

[8] "Annotated" means that ***each*** proposed instruction or conclusion of law shall be accompanied by citation to statutory or case authority and/or pattern instructions. It is not sufficient to submit a proposed instruction or conclusion of law without citation to supporting authority. Because Fifth Circuit, Federal Circuit, and Supreme Court cases are the only precedent binding on this Court, the parties should—to the extent possible —rely on these sources and/or pattern instructions in proposing jury instructions.

[9] *See* n.8.

Within 5 days thereafter, any opposing party shall serve its proposed findings and conclusions (annotated)[10] on that issue, numbered in paragraphs corresponding to those earlier filed. (Modification of Local Rule 52.1).

f. Voir Dire: The parties shall file any proposed voir dire questions which the Court is requested to ask during its examination of the jury panel.

g. Trial Briefs: Trial briefs, may be filed by each party. In the absence of a specific order of the Court, trial briefs are not required, but are welcomed. The briefing should utilize Fifth Circuit, Federal Circuit, and/or Supreme Court authority or relevant state authority to address the issues the parties anticipate will arise at trial.

NOTE: Deadlines in this order regarding pretrial materials are dates for filing or delivery, not mailing dates.

7. Exchange of Exhibits: No later than three days before trial, counsel for each party intending to offer exhibits shall exchange a complete set of marked exhibits (including demonstrative exhibits) with opposing counsel and shall deliver a set of marked exhibits to the Court's chambers (except for large or voluminous items that cannot be easily reproduced).

8. Settlement Conference and Status Report:

(a) Settlement Conference: At least 10 days before the pretrial conference, the parties and their respective lead counsel shall hold a face-to-face meeting to discuss settlement of this case. Individual parties and their counsel shall participate in person, not by telephone or other remote means. All other parties shall participate by a representative or representatives, in addition to counsel, who shall have unlimited settlement authority and who shall participate in person, not by telephone

[10] *See* n.8.

or other remote means. If a party has liability insurance coverage as to any claim made against that party in this case, a representative of each insurance company providing such coverage, who shall have full authority to offer policy limits in settlement, shall be present at, and participate in, the meeting in person, not by telephone or other remote means. At this meeting, the parties shall comply with the requirements of Local Rule 16.3.

(b) Joint Settlement Report: Within seven days after the settlement conference, the parties shall jointly prepare and file a written report, which shall be signed by counsel for each party, detailing the date on which the meeting was held, the persons present (including the capacity of any representative), a statement regarding whether meaningful progress toward settlement was made, and a statement regarding the prospects of settlement.

9. Pretrial Conference: A pretrial conference in the case is set for May 24, 2024 at 10:00 A.M. Lead counsel for each party must attend, or, if the party is proceeding *pro se*, the party must attend. FED. R. CIV. P. 16 (c), (d). Lead counsel and *pro se* parties must have the authority to enter into stipulations and admissions that would facilitate the admission of evidence and reduce the time and expense of trial. *Id.* All pretrial motions not previously decided will be resolved at that time, and procedures for trial will be discussed. At the final pretrial conference, it should be possible to assign the specific date for trial during the four-week docket. Telephone calls about the probable trial date prior to the final pretrial conference will not likely be beneficial to counsel or the court staff.

10. Modification of Scheduling Order: As addressed above, this Order shall control the disposition of this case unless it is modified by the Court upon a showing of good cause and by leave of court. FED. R. CIV. P. 16(b). Any request that the trial date of this case be modified must be made (i) in writing to the Court; (ii) before the deadline for completion of discovery; and (iii) in accordance with the United States District Court for the Northern District of Texas Civil Justice Expense and Delay Reduction Plan ¶ V and Local Rule 40.1 (motions for continuance must be signed by the party as well as by the attorney of record).

11. Sanctions: Should any party or counsel fail to cooperate in doing anything required by this Order, such party or counsel or both may be subject to sanctions. If the *plaintiff* does not timely file the required (or other) pretrial material, the case will be dismissed. If the *defendant/third party* does not timely file the required (or other) pretrial material, a default will be entered or the defendant/third party will not be permitted to present witnesses or exhibits at trial. Fines or other sanctions, if appropriate, may also be imposed under Rule 16(f), P.R. 3-1(b), 3-3(b), 3-8(b). Failure to list a witness, exhibit, or deposition excerpt as required by this Order shall be grounds for exclusion of that evidence. This does not apply to testimony, exhibits, or deposition excerpts offered solely for impeachment; further, the use of unlisted witnesses, exhibits, or deposition excerpts for rebuttal shall be permitted if the attorneys could not have reasonably anticipated their need for that evidence.

12. Electronic Filing Procedures: This case has been designated for enrollment in the Electronic Case Filing System (CM/ECF). (For more information on the ECF system,

please see http://www.txnd.uscourts.gov/filing/ecf.html). Now that the case is designated an ECF case, all documents must be filed electronically; however, the Court still requires that courtesy copies of dispositive motions (and accompanying briefs and appendices) be sent to Chambers. Proposed orders are required to be submitted with EVERY motion. (Modification to Local Rule 7.1(c)). Proposed orders must be submitted via e-mail in a WordPerfect or Word-compatible format as instructed in the CM/ECF system's "Proposed Orders" Event. The proposed orders must be e-mailed to boyle_orders@txnd.uscourts.gov and include the case number and the document number of the referenced motion in the subject line.

13. Inquiries: Questions relating to this scheduling order or any other matters shall be directed to Chambers at (214) 753-2740. Questions regarding electronic notice or electronic case files shall be directed to the Help Desk at 1-(866) 243-2866.

**SO ORDERED.**

**SIGNED: December 19, 2022.**

**JANE J. BOYLE**
**UNITED STATES DISTRICT JUDGE**