

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

GRATUITY SOLUTIONS, LLC and
GRATUITY, LLC

Plaintiffs,

v.

TOAST, INC.

Defendant.

Case No.: 1:22-CV-11539-PBS

AMENDED JOINT CASE MANAGEMENT STATEMENT

Plaintiffs Gratuity Solutions, LLC and Gratuity, LLC (collectively, “Gratuity” or “GS”) and Defendant Toast, Inc. (“Toast” or “Defendant”) (collectively, “the Parties”) have conferred regarding the matters listed under Federal Rule of Civil Procedure 16(b) and Local Rules (“L.R.”) 16.1 and 16.6 regarding patent cases. Pursuant to the Court’s notice on June 7, 2023, the Parties respectfully submit this Amended Joint Case Management Statement reflecting the Parties’ positions on the matters in the Local Rules.

The Parties’ trial counsel previously met and conferred on January 5, 2023 and January 6, 2023 by phone and via e-mail correspondence. The parties further met and conferred from June 15 to 30, 2023 via e-mail correspondence. The parties have agreed to a Discovery Plan, set forth below.

A. Discovery Plan

Initial Disclosures. The parties will exchange the information required by Rule 26(a)(1) of the Federal Rules of Civil Procedure as set forth below in the proposed schedule. The parties

agree that supplemental disclosures under Rule 26(e) will be made promptly after the receipt of information by the party or counsel and, in any event, no later than the completion of fact discovery, unless good reason can be shown why such information was not available.

Electronic Discovery. The parties are in the process of meeting and conferring regarding electronic discovery and will submit an e-discovery agreement no later than July 28, 2023.

Protective Order. The parties are in the process of meeting and conferring regarding a protective order and will submit a protective order no later than July 28, 2023.

Fact Discovery. The parties agree that fact discovery shall be performed on an ongoing basis as described herein. The parties further agree to make initial disclosures and other mandatory disclosures on the dates set forth herein. The parties agree that each party shall timely serve discovery requests so that the rules allow for a response prior to the discovery deadline. The parties further agree as follows:

- a. To serve discovery requests, and responses to discovery requests, on each other in searchable .pdf format by e-mail or by secure file transfer.
- b. Requisite verifications of discovery responses must be served no later than fourteen (14) business days after the service of the discovery responses to which they pertain.
- c. Subject to the provisions of any Protective Order or confidentiality agreement for this Action, the Parties will serve each other with copies of any documents produced by third parties pursuant to subpoena within two (2) business days of receipt. Such service may be made by email, FTP, similar file-sharing service, or physical media, in accordance with the terms of this stipulation. The Parties reserve their rights to modify this provision and/or seek specific accommodations as may become necessary to ensure

the receipt of documents procured by subpoena sufficiently in advance of any relevant depositions.

- d. Nothing in this Joint Statement shall be interpreted as waiving a party's right to object to any discovery request including without limitation objections on the basis of relevance, responsiveness, overbreadth, privilege, or undue burden.
- e. The parties agree to serve expert disclosures and rebuttal disclosures according to the schedule included in the below table. The parties further agree that drafts of expert reports are not discoverable, including drafts created by expert's support personnel.

Discovery Limitations. In addition to the deadlines in the below table, the parties have agreed to further limit discovery as follows:

1. Depositions.

a. Duration & Limits

Each side is limited to a total of 50 hours of taking testimony by deposition upon oral examination of fact witnesses. The Parties agree that personal depositions will be limited to one day unless otherwise agreed. No witness shall be required to sit for more than seven (7.0) hours of time on the record in a single day unless by agreement of the interested parties involved. The Parties will meet and confer concerning the duration of corporate depositions, as well as depositions of witnesses that are both in one's personal capacity and as a corporate representative. The Parties also agree that if a witness will be deposed in his or her personal capacity and on behalf of a party, absent further negotiation on a case-by-case basis, the Parties will strive to ensure both depositions be conducted during the same seven (7.0) hour time period.

b. Location

For a witness located within the United States, the Parties agree to conduct the deposition at a location convenient to the witness as reasonably determined by the producing party. For a witness located outside of the United States, except as otherwise agreed, the Parties agree to conduct the deposition at the producing party's U.S. counsel's office, the city of the producing party's foreign headquarters or offices, or at another location reasonably agreeable to the witness, at the election of the producing party, provided that voluntary depositions are permitted under the laws of the local jurisdiction(s). The Parties agree that all

depositions, whether taken within or outside of the United States, shall be conducted in accordance with the Federal Rules of Civil Procedure and this Joint Statement.

When necessary, the Parties agree to make witnesses available in another jurisdiction where the deposition may legally proceed and to work cooperatively to identify a mutually-convenient jurisdiction. The Parties agree to coordinate depositions to the extent possible with the goal that all depositions to be taken in any foreign country may be taken during the same trip.

For a non-party witness, the Parties agree to conduct the depositions at a location reasonably agreeable to the non-party witness. Nothing in this subsection restricts a party's ability to seek compliance with applicable discovery rules and any ruling(s) by the Court with regard to party or nonparty witnesses.

The Parties recognize that depositions may be conducted remotely during the course of this action, subject to the provisions immediately above.

2. Interrogatories.

The interrogatory limit is 25 per side per Local Rule 26.1(c).

3. Document Requests and Requests for Inspection.

The parties agree that each side serves no more than the default two sets of requests for production per Local Rule 26.1(c).

4. Requests to Admit.

Each party will serve no more than 25 requests for admissions per side per Local Rule 26.1(c).

5. Supplementation of Discovery.

The parties do not have any further agreements regarding the supplementation of discovery.

6. Modifications

To the extent one or both parties believe that the agreed-upon limitations set forth above should be modified, such party or the parties may move the Court to modify the limits for good cause shown.

Protective Order: The parties agree that a protective order will be necessary to protect Confidential Business Information, including but not limited to, proprietary information, trade secrets, or other confidential information and documentation that will be produced by the parties and possibly third parties or otherwise disclosed in proceedings before the Court. The parties are conferring to provide a proposed Protective Order.

B. Other Agreed Upon Procedural Matters

Trial by Magistrate Judge: The parties do not consent to trial by magistrate judge at this time.

Claim Construction: Each side may seek claim construction of no more than five terms.

Page Limits: Counsel shall comply with local page limits for briefs.

Filing Documents Under Seal: The parties anticipate producing certain information, documents, and things containing confidential information, documents, and things containing confidential information, including sensitive, trade secret, and proprietary information. The parties will comply with the requirements set forth in the Local Rule 7.2 in filing documents under seal.

Settlement/Alternative Dispute Resolution: Pursuant to Local Rule 16.1(c), Gratuity presented a settlement proposal to Toast on January 6, 2023. Gratuity Solutions consents, but Toast does not consent to participating in the ADR program.

Service: The Parties consent to electronic service of any document filed with the Court.

Email service shall be sent to both the designated lead counsel for the respective parties and e-mail distribution lists that each party may hereafter identify in writing.

C. Proposed Pretrial Schedule

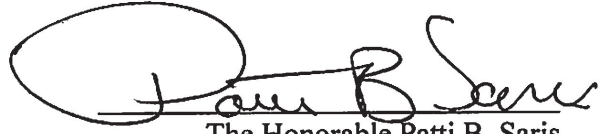
The Court has adopted the following dates:

DEADLINE OR EVENT	DEADLINE
Mandatory Initial Disclosures (L.R. 26.2(a))	July 28, 2023
Parties to Exchange Preliminary Infringement Contentions and Other L.R. 16.6(d)(1) Patent-Related Disclosures	August 11, 2023
L.R. 16.6(d)(2) Conference Regarding Preliminary Patent Disclosures	September 1, 2023
Parties to Exchange Preliminary Invalidity Contentions and Other L.R. 16.6(d)(4) Patent-Related Disclosures	September 22, 2023
Parties to Exchange a List of Proposed Terms for Construction and Proposed Constructions	October 27, 2023
L.R. 16.6(e)(1)(B) Conference regarding list of claim terms to be construed	November 10, 2023
L.R. 16.6(e)(1)(D) Parties to File Joint Claim Construction Chart with a list of constructions of disputed terms	November 17, 2023
Motions to Add Parties or to Amend Pleadings Without Leave of Court	November 17, 2023
L.R. 16.6(e)(2) Parties to File Claim Construction Briefs	December 15, 2023
L.R. 16.6(e)(3) Deadline for Deposition of Claim Construction Expert	January 12, 2024
L.R. 16.6(e)(4) Parties to File Responses to Claim Construction Briefs	January 26, 2024
L.R. 16.6(e)(6) Parties Submit Joint Written Claim Construction Tutorials	February 9, 2024
Claim Construction (Markman) Hearing	March 18, 2024
	*Or a date that is convenient for the Court

Substantial Completion of Document Production	April 19, 2024
Claim Construction Order	To be determined by the Court
L.R. 16.6(c)(3) Post Claim Construction Status Conference	To be determined by the Court
L.R. 16.6(f) Parties to disclose written opinions and related documentation and/or written summary of oral advice and related documentation if relying on advice of counsel	28 days after Court's Claim Construction Order
Fact Discovery Deadline	June 14, 2024
Expert Reports Served by Party with Burden of Proof	July 10, 2024
Rebuttal Expert Reports	August 7, 2024
Reply Expert Reports	August 28, 2024
Expert Discovery Deadline	September 18, 2024
Dispositive Motions and <i>Daubert</i> Motions	October 16, 2024
Oppositions to Dispositive Motions and <i>Daubert</i> Motions	November 13, 2024
Replies to Dispositive Motions and <i>Daubert</i> Motions	December 4, 2024
Hearing on Dispositive Motions and <i>Daubert</i> Motions	December 9, 2024
Conference to Prepare Joint Final Pretrial Statement and Settlement Conference	December 20, 2024
Pretrial Disclosures (L.R. 16.5(c) — no later than 28 days before the pretrial conference)	January 10, 2025
All Other Motions, including Motions <i>in Limine</i>	January 17, 2025
Opposition Briefs to Motions <i>in Limine</i>	January 24, 2025
Final Pretrial Memorandum	January 31, 2025
Final Pretrial Conference	February 24, 2025
Trial Begins	March 24, 2025

SO ORDERED.

SIGNED this 8 day of August, 2023



The Honorable Patti B. Saris