IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:23-CV-493-FL

INTERDIGITAL, INC.; INTERDIGITAL VC HOLDINGS, INC.; INTERDIGITAL PATENT HOLDINGS, INC.; INTERDIGITAL MADISON PATENT HOLDINGS SAS, Plaintiffs, v. LENOVO GROUP LIMITED, LENOVO (UNITED STATES) INC., AND MOTOROLA MOBILITY LLC, Defendants.	)	CASE MANAGEMENT ORDER

Pursuant to Federal Rule of Civil Procedure 26(f), the parties conducted pretrial conferences by telephone in this case starting on November 3, 2023.[1] After reviewing the parties' joint report and plan, filed November 17, 2023, the court orders the following:

A. Discovery

1. The parties exchanged on November 17, 2023, the information required by Federal Rule of Civil Procedure 26(a)(1).

2. Discovery will be necessary on the following subjects: reference is made to the

[1] The parties report that, as of the date of their conference, defendant Lenovo Group Limited had not been served and did not participate in the conference. All references to "defendants" herein are to defendant Lenovo (United States) Inc. and Motorola Mobility LLC. Nevertheless, any parties later joined to or appearing in this action are bound by this case management order unless otherwise ordered by the court.

discovery proposed to be undertaken in the parties' joint report and plan.

3. All fact discovery shall be commenced or served in time to be completed on a date to be determined 90 days after entry of a claim construction order.

4. The court incorporates herein by reference the parties' agreements regarding discovery of electronically stored information, privileged materials, and email service, set forth at sections IV.F., IV.G., and V.E., of the joint report and plan. The court also incorporates by reference the parties' intention, set forth at section II, "to work together to prepare a cross-use agreement so that certain materials produced in the [United States International Trade Commission case between the parties] may be treated by the parties as produced in this case." (Joint Report at 3). The court does not resolve herein plaintiffs' proposal that it need not log "privileged communications between a party client and counsel of record concerning disputes raised in this action," (Joint Report at 7), which proposal is disputed by defendants. Instead, issues arising from this proposal must be presented to the court in the context of an objection to a specific discovery request or response, and then through filing of a motion to compel or for protective order, without need for convening a telephonic conference with the court under section B.5. of this case management order.

5. Plaintiffs, collectively, shall serve no more than 25 interrogatories, including all discrete subparts and contention interrogatories. Defendants, collectively, shall serve no more than 25 interrogatories, including all discrete subparts and contention interrogatories. Responses are due 30 days after service of those interrogatories.

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6. Plaintiffs, collectively, shall serve no more than 40 requests for admissions. Defendants, collectively, shall serve no more than 40 requests for admissions. Responses are due 30 days after service of those requests for admissions. The parties agree that these limits do not include requests for admission for authentication of documents, which are not limited.

7. The parties agree to produce documents in their possession, custody, or control that are responsive to requests for production of documents promptly and on a rolling basis after service of objections and responses to such requests. Production of such documents shall be substantially completed on or before March 1, 2024 for any requests to produce documents served on or before December 15, 2023.

8. There shall be no more than 10 depositions of fact witnesses by plaintiffs collectively, and 10 by defendants collectively. The parties may depose disclosed experts, and any such depositions of disclosed experts shall not count against the limit on the number of depositions. A deposition taken pursuant to Fed. R. Civ. P. 30(b)(6) shall be considered a single deposition for purposes of the limit on the number of depositions, regardless of the number of individuals the responding party designates to testify. Each deposition shall be limited to 7 hours on a single day, unless otherwise agreed by the parties, except for the deposition(s) pursuant to Rule 30(b)(6), which shall be limited to 12 hours on two consecutive days.

9. Disclosures required by Federal Rule of Civil Procedure 26(a)(2), including reports from retained experts, shall be served **within 30 days** of the close of fact discovery. The parties shall serve any objections to such disclosures, other than objections

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pursuant to Federal Rules of Evidence 702, 703, or 705, Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999) or similar case law, **within 14 days** after service of the disclosures upon them. These objections should be confined to technical objections related to the sufficiency of the written expert disclosures (e.g., whether all of the information required by Rule 26(a)(2) has been provided, such as lists of prior testimony and publications). These objections need not extend to the admissibility of the expert's proposed testimony. If such technical objections are served, counsel shall confer or make a reasonable effort to confer before filing any motion based on those objections.

10. Supplementations of disclosures under Federal Rule of Civil Procedure 26(e) shall be served at such times and under such circumstances as required by the rule. In addition, such supplemental disclosures shall be served by **40 days before completion of fact discovery.** The supplemental disclosures served 40 days before the deadline for completion of fact discovery must identify the universe of all witnesses and exhibits that probably or even might be used at trial other than solely for impeachment. The rationale for the mandatory supplemental disclosures 40 days before the discovery deadline is to put opposing counsel in a realistic position to make strategic, tactical, and economic judgments about whether to take a particular deposition (or pursue follow-up "written" discovery) concerning a witness or exhibit disclosed by another party before the time allowed for discovery expires. Counsel should bear in mind that seldom should anything be included in

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the final Rule 26(a)(3) pretrial disclosures that has not previously appeared in the initial Rule 26(a)(1) disclosures or a timely Rule 26(e) supplement thereto; otherwise, the witness or exhibit probably will be excluded at trial. See Fed. R. Civ. P. 37(c)(1).

11. The court adopts and incorporates herein the parties' proposed schedule for deadlines governed by the Local Patent Rules. Disclosure of asserted claims and preliminary infringement contentions and accompanying documents pursuant to Local Patent Rule 303.1 and 303.2 shall be served by plaintiffs by **December 4, 2023**. Each party opposing a claim of patent infringement shall serve on all parties its preliminary non-infringement and invalidity contentions and accompanying documents pursuant to Local Patent Rule 303.3 and 303.4 by **January 18, 2024**. The parties shall exchange the proposed terms and claim elements for construction pursuant to Local Patent Rule 304.1 by **February 8, 2024** The parties shall exchange preliminary claim constructions and extrinsic evidence pursuant to Local Patent Rule 304.2 by **February 29, 2024**.

12. The parties shall file a joint claim construction statement pursuant to Local Patent Rule 304.3 by **March 18, 2024.** All claim construction discovery shall be completed by **April 17, 2024**. Opening briefs on claim construction shall be filed by **May 2, 2024**. Responsive briefs shall be filed by **May 23, 2024**.

13. To avoid the filing of unnecessary motions, the court encourages the parties to utilize stipulations regarding discovery procedures. However, this does not apply to extensions of time that interfere with the deadlines to complete all discovery, for

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the briefing or hearing of a motion, or for trial. See Fed. R. Civ. P. 29. Nor does this apply to modifying the requirements of Federal Rule of Civil Procedure 26(a)(2) concerning experts' reports.

14. Discovery in this case may be governed by a protective order. If the parties disagree concerning the need for, and/or the scope or form of, a protective order, the party or parties seeking such an order shall file an appropriate motion and supporting memorandum. If the parties agree concerning the need for and scope and form of a protective order, their counsel shall confer and then submit a jointly proposed protective order as soon as is practicable.

    a. A jointly proposed protective order shall include, in the first paragraph, a concise but sufficiently specific recitation of the particular facts in this case that would provide the court with an adequate basis upon which to make the required finding of good cause for issuance of the protective order pursuant to Federal Rule of Civil Procedure 26(c).

    b. Any proposed protective order shall set out the procedure for filing under seal confidential documents, things, and/or information, pursuant to the requirements of Stone v. University of Maryland Medical System Corp., 855 F.2d 178, 180-181 (4th Cir. 1988). Specifically, a proposed protective order shall include the following language: "Each time a party seeks to file under seal confidential documents, things, and/or information, said party shall accompany the request with a motion to seal and a supporting memorandum of law specifying (a) the exact documents, things, and/or

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information, or portions thereof, for which filing under seal is requested; (b) where it is necessary for the court to determine the source of the public's right to access before a request to seal may be evaluated, whether any such request to seal seeks to overcome the common law or the First Amendment presumption to access; (c) the specific qualities of the material at issue which justify sealing such material, taking into account the balance of competing interests in access; (d) the reasons why alternatives to sealing are inadequate; and, (e) whether there is consent to the motion. Finally, in addition to the motion and supporting memorandum, said party must set out such findings in a proposed order to seal for the court."

c. Before ruling on any motion to seal the court will give the public notice of the motion and a reasonable opportunity to challenge it. While individual notice is unwarranted, the court will docket the motion reasonably in advance of deciding the issue, or, where applicable, the court will notify persons present in courtroom proceedings of the motion. The court will rule favorably upon any motion to seal only after carefully weighing the interest advanced by the movant and those interests favoring public access to judicial documents and records, and only upon finding that the interests advanced by the movant override any constitutional or common law right of public access which may attach to the documents, things, and/or information at issue.

d. The parties are directed to Section V.G. of the court's Electronic Case Filing

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Administrative Policies and Procedures Manual, available online at http://www.nced.uscourts.gov/pdfs/cmecfPolicyManual.pdf, for information regarding how to file and serve sealed documents through the court's Case Management/ Electronic Case Filing system ("CM/ECF").

B. Motions

1. Any motion requesting relief shall be accompanied at time of filing with a proposed form of order, stating its requested relief.

2. Any motion for leave to join additional parties or to otherwise amend the pleadings shall be filed by **January 3, 2024.**

3. All potentially dispositive motions shall be filed 30 days after the close of expert discovery. All motions to exclude testimony of expert witnesses pursuant to Federal Rules of Evidence 702, 703, or 705, Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999), or similar case law, shall be filed by the deadline set for dispositive motions.[2] In conjunction with any such motion to exclude expert testimony or response thereto, the parties shall include where available all materials associated with the challenged expert, including resumes, reports, depositions, and objections to qualifications.

4. Any motion raising a disputed issue of or relating to discovery, including any

[2] Given the court's specific directives expressed herein, allowance by the Local Civil Rules for filing of motions in limine in advance of trial does not provide a renewed opportunity in this case to file motions to exclude testimony of expert witnesses, absent showing that issues raised in motions in limine could not have been raised at the time of deadline for filing dispositive motions.

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disputed motion to compel, for protective order, or to alter discovery requirements set forth herein (hereinafter, "discovery motions"), shall be filed and served within 30 days of the act or omission in discovery complained of, after good faith effort between the parties to resolve issue(s), unless upon good cause shown, time for filing such motion is extended. Before filing, the court requires notice of such disputed discovery issue(s) for its consideration in setting a telephonic discovery conference. The complaining party must notify the office of the case manager, by telephone at (252) 638-8534, of the discovery dispute, and provide the parties' mutually agreed to suggested dates and times for such conference. The complaining party then will be instructed by the case manager how to transmit discovery material directly bearing on the particular dispute(s), either by facsimile or email, to the court for its preview. Any material provided to the court shall be copied to the opposition. If the opposing party is desirous of supplementing discovery material for the court, counsel similarly shall contact the case manager by telephone, for transmittal instruction. The case manager promptly will notify counsel by email as to any conference setting. Discovery motions filed after the 30 day deadline and/or without advance conference with the court, absent extenuating circumstances, summarily will be denied. Discovery motions ordinarily will be referred to a magistrate judge for ruling.

5. Any motion to continue must conform with the requirements set forth in Local Civil Rule 6.1, and also include a detailed statement as to the reason for the requested continuance or extension of time together with the proposed order. Continuances

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will be granted only upon showing of good cause, particularly focusing upon the evidence of diligence by the party seeking delay and of prejudice that may result if the continuance is denied.

C. Alternative Dispute Resolution

1. A settlement procedure is required in virtually every case, to be conducted before the close of discovery if the case is automatically selected for mediation pursuant to Local Alternative Dispute Resolution Rule 101.1a(b), or before the final pretrial conference if not automatically selected.

2. This case has been automatically selected for mediation. Reference is made to Local Alternative Dispute Resolution Rule 101.1 et seq. for required deadlines. In addition, the parties state they intent to select a mediator and will advise the court of the selection within the time specified in Local Rule 101.1c.

3. If at any time a settlement is reached, it shall be reported immediately to this court. The parties shall refer to Local Alternative Dispute Resolution Rule 101.1e for their specific obligations.

D. Local Patent Rule 302.1 Matters

1. The parties agree that the general limits on discovery imposed by the Federal and Local Rules, as modified above, shall apply to discovery taken in this case. The parties agree that there is no need for specific limits on discovery related to claim construction.

2. The parties state that to the extent that a claim construction hearing is necessary, the parties do not anticipate a need for live testimony at the claim construction

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hearing. If the court desires, the parties can present a brief technology tutorial before the court hears arguments from the parties on claim construction.

3. The parties propose that arguments on claim construction should proceed a term-by-term basis with plaintiff's counsel presenting first as to a given term, followed by responsive arguments from defendant's counsel on that term. The parties intend to revisit these issues upon completion of claim construction briefing and will inform the court promptly in the event of any change in their current view.

4. At this time, the parties do not request a claim construction prehearing conference. The parties intend to revisit this issue upon completion of claim construction briefing and will inform the court promptly in the event of any change in their current view.

5. The parties do not propose bifurcation of discovery for infringement/noninfringement, validity/invalidity, or damages issues. The parties do not anticipate the need for a special master in this case. And, the parties are discussing whether modifications to the standard protective order are needed.

6. At the close of briefing on claim construction the parties are DIRECTED to file a joint report wherein the parties shall propose three alternative dates of availability for the claim construction hearing. The report shall also notify the court again whether the parties plan to elicit live testimony at hearing, whether argument will proceed on a term-by-term basis with plaintiff presenting first, whether the parties can present a brief technology tutorial before hearing arguments, and whether the parties request a claim construction prehearing conference.

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E. Rule 16(b) Conference

The court has considered defendants' request for a Rule 16(b) conference prior to entry of this case management order. The court dispenses with conference at this time because the facts and legal contentions are adequately presented in the materials before this court and conference would not aid the decisional process for the instant order.

F. Pretrial and Trial Scheduling

After the court has ruled on any dispositive motion(s), the court will enter a scheduling order governing deadlines and procedures for final pretrial conference and trial, as appropriate.

This case management order shall not be modified except by leave of court upon a showing of good cause, and all requirements set forth in the court's Local Civil Rules and Local Patent Rules governing pretrial and trial procedures not altered herein shall be strictly observed.

SO ORDERED, this the 30th day of November, 2023.

LOUISE W. FLANAGAN
United States District Judge

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:23-cv-00496-FL

INTERDIGITAL INC., INTERDIGITAL VC HOLDINGS, INC., INTERDIGITAL PATENT HOLDINGS, INC., and INTERDIGITAL MADISON PATENT HOLDINGS SAS,	)	
Plaintiffs,	)	
v.	)	**JURY TRIAL DEMANDED**
LENOVO GROUP LIMITED, LENOVO (UNITED STATES) INC., and MOTOROLA MOBILITY LLC.,	)	
Defendants.	)	

PROPOSED SCHEDULING ORDER

Event	Proposed Date
Parties to serve initial disclosures and accompanying documents pursuant to Fed. R. Civ. P. 26(a)(1)	November 17, 2023 (Friday)
Beginning of fact discovery	November 17, 2023 (Friday)
InterDigital to serve "Disclosure of Asserted Claims and Preliminary Infringement Contentions" and accompanying document production (Local Patent Rules 303.1 and 303.2)	December 4, 2023 (Monday)
Lenovo to serve "Preliminary Invalidity Contentions" and accompanying document production (Local Patent Rules 303.3 and 303.4)	January 18, 2024 (Thursday)

Event	Proposed Date
Parties to simultaneously exchange terms and claim elements for construction (Local Patent Rule 304.1)	February 8, 2024 (Thursday)
Parties to simultaneously exchange preliminary proposed constructions and provide preliminary identification of extrinsic evidence, including disclosures of percipient and expert witnesses (Local Patent Rule 304.2)	February 29, 2024 (Thursday)
Deadline for substantial completion of initial document production for requests to produce documents served on or before December 15, 2023.	March 1, 2024 (Friday)
Parties to file Joint Claim Construction Statement (Local Patent Rule 304.3)	March 18, 2024 (Tuesday)
Parties to complete all discovery relating to claim construction (Local Patent Rule 304.4)	April 17, 2024 (Wednesday)
Parties to file opening claim construction briefs (Local Patent Rule 304.5(a))	May 2, 2024 (Thursday)
Parties to file responsive claim construction briefs (Local Patent Rule 304.5(b))	May 23, 2024 (Thursday)
Claim construction hearing (Local Patent Rule 304.6)	At the Court's discretion if a hearing is deemed necessary
InterDigital to serve "Final Infringement Contentions" (Local Patent Rule 303.6(b))	No later than 30 days after entry of claim construction order

Event	Proposed Date
Lenovo to serve "Final Invalidity Contentions" (Local Patent Rule 303.6(d))	No later than 50 days after entry of claim construction order
Disclosure of reliance on advice of counsel (Local Patent Rule 303.8(a))	30 days prior to close of fact discovery
Close of fact discovery	90 days after entry of claim construction order
Parties to serve initial expert witness disclosures (including reports) on issues they bear the burden of proof (other than those addressed during claim construction) (Local Patent Rule 305.1(b))	30 days after close of fact discovery
Parties to serve expert witness disclosures (including reports) on issues on which the opposing party bears the burden of proof (Local Patent Rule 305.1(c))	30 days after opening expert reports
Parties to serve rebuttal expert witness disclosures (including reports) (Local Patent Rule 305.1(d))	14 days after responsive expert reports
Beginning of expert depositions (Local Patent Rule 305.2)	Within 7 days of service of rebuttal expert reports
Close of expert discovery	Within 30 days of commencement of expert deposition period
Deadline for filing dispositive motions and Daubert motions (Fed. R. Civ. P. 56(b); Local Civil Rule 7.1(a))	30 days after close of expert discovery

Event	Proposed Date
Final Pretrial Conference	TBD
Start of trial	TBD

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