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

Intellectual Ventures I LLC and Intellectual Ventures II LLC, **Plaintiffs/Counter-Defendants,** **v.** **VMware, Inc.,** **Defendant/Counter-Plaintiff.**	**Civil Action No. 1:19-CV-01075-ADA**

ORDER GOVERNING PROCEEDINGS – PATENT CASE

This Order shall govern proceedings in this case. The following deadlines, limitations and procedures are hereby set:

DISCOVERY

Except with regard to discovery necessary for claim construction, all other discovery is stayed until after the *Markman* hearing. Notwithstanding this general stay of discovery, the Court will permit limited discovery by agreement of the parties, or upon request, where exceptional circumstances warrant.

Following the *Markman* hearing, the following discovery limits will apply to this case. The Court will consider reasonable requests to increase these limits should circumstances warrant.

1. Interrogatories: 30 per side
2. Requests for Admission: 45 per side, except that the parties may have unlimited requests for authentication of documents.
3. Requests for Production: 75 per side
4. Fact Depositions: 80 hours per side (for both party and non-party witnesses combined). Neither party will unreasonably withhold consent for increasing the number of hours per side up to 85 for cause shown. Increases beyond 85 hours will require a showing of good cause.
5. Expert Depositions: 7 hours per report[1]

[1] For example, if a single technical expert submits reports on both infringement and invalidity, he or she may be deposed for up to 14 hours in total.

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Electronically Stored Information. As a preliminary matter, the Court will not require general search and production of email or other electronically stored information (ESI), absent a showing of good cause. If a party believes targeted email/ESI discovery is necessary, it shall propose a procedure identifying custodians and search terms it believes the opposing party should search. The opposing party can oppose, or propose an alternate plan. If the parties cannot agree, they shall contact chambers to schedule a call with the Court to discuss their respective positions.

DISCOVERY DISPUTES

A party may not file a Motion to Compel discovery unless: (1) lead counsel have met and conferred in good faith to try to resolve the dispute, and (2) the party has contacted the Court (with opposing counsel) to arrange a telephone conference to summarize the dispute and the parties' respective positions. After hearing from the parties, the Court will determine if further briefing is required.

PROTECTIVE ORDER

Pending entry of the final Protective Order, the Court issues the following interim Protective Order to govern the disclosure of confidential information in this matter:

> If any document or information produced in this matter is deemed confidential by the producing party and if the Court has not entered a protective order, until a protective order is issued by the Court, the document shall be marked "confidential" or with some other confidential designation (such as "Confidential – Outside Attorneys Eyes Only") by the disclosing party and disclosure of the confidential document or information shall be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s).
>
> If a party is not represented by an outside attorney, disclosure of the confidential document or information shall be limited to one designated "in house" attorney, whose identity and job functions shall be disclosed to the producing party 5 days prior to any such disclosure, in order to permit any motion for protective order or other relief regarding such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this local rule shall keep it confidential and use it only for purposes of litigating the case.

CLAIM CONSTRUCTION ISSUES

Terms for Construction. The Court does not have a specific limit on the number of asserted claims or claim terms to be construed; however, the Court encourages the parties to focus on their top ten claim terms in order of importance. In cases with an unusually large number of patents or asserted claims, the Court may revisit this topic and will be open to suggestions from the parties.

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Claim Construction Briefing. The Court will require simultaneous claim construction briefing with the following default page limits; however, the Court will entertain reasonable requests to increase the limits should circumstances warrant:

1. Opening Briefs – 40 pages
2. Responsive Briefs – 40 pages
3. Reply Briefs – 20 pages

Unless otherwise agreed by the parties, all simultaneous filings will take place at 5:00 p.m. CT.

Conduct of the Markman Hearing. The Court intends to set aside one full day for the *Markman* hearing; however, the Court is open to reserving more or less time, depending on the complexity of the case and input from the parties. The Court is open to the presentation of live technology tutorials when they may be of benefit. The Court will consider the parties' suggestions on the order of argument at the Markman hearing. However, if the parties do not suggest a different procedure, the Court will allow the Plaintiff to pick the first term and then alternate by term. As a general rule, if one side proposes "plain and ordinary meaning" as its construction or asserts that a term is indefinite, the other party shall go first.

GENERAL ISSUES

1. The Court does not have a limit on the number of motions for summary judgment (MSJs); however, absent leave of Court, the cumulative page limit for Opening Briefs for all MSJs is 50 pages per side.

2. The Court encourages the submission of briefs longer than 10 pages via audio file so that the Court can listen to the arguments. The Court considers the submission of audio files particularly useful with regard to claim construction briefing. The recordings shall be made in a neutral fashion, citations and legal authority sections need not be read as part of the recording, and each such file shall be served on opposing counsel. Counsel should contact chambers for procedures to submit audio files.

3. The Court will entertain reasonable requests to streamline the case schedule and discovery and encourages the parties to contact the Court (with opposing counsel) when such interaction might help streamline the case.

SO ORDERED.

Signed this 9th day of December, 2020.

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APPENDIX A – SCHEDULE

Deadline	Item
January 15, 2020	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions, (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s), and (3) summary, annual sales information for the accused product(s) for the prior two years, unless the parties agree to some other timeframe.
January 31, 2020	Parties exchange claim terms for construction.
February 12, 2020	Parties exchange proposed claim constructions.
February 19, 2020	Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall also provide a summary of the witness's expected testimony including the opinions to be expressed and a general description of the basis and reasons therefore. A failure to summarize the potential expert testimony in a good faith, informative fashion may result in the exclusion of the proffered testimony. With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.

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February 26, 2020	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
March 6, 2020	Parties file Opening claim construction briefs, including any arguments that any claim terms are indefinite.
March 27, 2020	Parties file Responsive claim construction briefs.
April 10, 2020	Parties file Reply claim construction briefs.
April 17, 2020	Parties submit Joint Claim Construction Statement and consolidated briefing collated by Opening, Response, and Reply in Microsoft Word format. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.
May 1, 2020	***Markman* Hearing at 9:00 a.m.**
May 8, 2020	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
June 12, 2020	Deadline to add parties.

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July 1, 2020	Deadline to serve Final Infringement and Invalidity Contentions.
July 31, 2020	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or claims.
October 16, 2020	Close of Fact Discovery.
October 23, 2020,	Opening Expert Reports.
November 20, 2020	Rebuttal Expert Reports.
December 21, 2020	Close of Expert Discovery.
January 6, 2021	Deadline to meet and confer to discuss narrowing the number of claims asserted and prior art references at issue. The parties shall file a report within 5 business days regarding the results of the meet and confer.
January 13, 2021	Dispositive motion deadline and *Daubert* motion deadline.
Six (6) weeks before pretrial conference	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).

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Five (5) weeks before pretrial conference	Serve objections to pretrial disclosures/rebuttal disclosures.
Four (4) weeks before the pretrial conference	Serve objections to rebuttal disclosures and **File** Motions *in limine.*
Three (3) weeks before the pretrial conference	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions *in limine*
Two (2) weeks before the pretrial conference	Deadline to meet and confer regarding remaining objections and disputes on motions *in limine.*
Three (3) business days before Final Pretrial Conference	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions *in limine.*
March ___, 2021 (subject to Court's availability)	Final Pretrial Conference. The Court expects to set the Pretrial Conference within 2-4 weeks of the trial date.
	Jury Selection/Trial. The Court expects to set this date at the conclusion of the *Markman* Hearing.

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(Early) April ___, 2021 (subject to Court's availability)	

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