

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARVANA, LLC,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Case No. 1:23-cv-8616 (KMK)

~~PROPOSED~~ CASE MANAGEMENT
AND SCHEDULING ORDER

KENNETH M. KARAS, District Judge:

At the conference before the Court held on December 12, 2023, this Case Management Plan and Scheduling Order was adopted in accordance with Rules 16-26(f) of the Federal Rules of Civil Procedure.

1. This case is to be tried to a jury.
2. No additional parties may be joined except with leave of the Court.
3. Amended pleadings may not be filed except with leave of the Court.
4. Initial disclosure pursuant to Rule 26(a)(1), Fed. R. Civ. P., will be completed not later than January 8, 2024.
5. All *fact* discovery is to be completed no later than June 28, 2024.
6. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the parties on consent without application to the Court, provided the parties meet the fact discovery completion date in paragraph 5 above:
 - a. Initial requests for production of documents to be served by January 12, 2024.
 - b. Interrogatories to be served by May 14, 2024.
 - c. Patent Disclosures. The party asserting infringement shall serve its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 6 by January 26, 2024; the party opposing a claim of infringement shall serve its Invalidity Contentions pursuant to Local Patent Rule 7 by March 11, 2024.
 - d. Claim Construction. The parties shall exchange a list of patent claims terms to be construed by March 15, 2024. The parties shall exchange proposed constructions by April 3, 2024. The parties shall file a Joint Disputed Claim Terms Chart under Local

Patent Rule 11 by April 17, 2024. Opening claim construction brief by May 3, 2024. Responsive claim construction brief by June 4, 2024. Reply brief due June 18, 2024. Sur-reply brief due July 2, 2024.

e. Opinion of Counsel. Each party that will rely on an opinion of counsel as part of a defense to a claim of willful infringement or inducement of infringement, or that a case is exceptional, must produce or make available for inspection and copying the opinion(s) and any other documents relating to the opinion(s) as to which attorney-client or work product protection has been waived as a result of such production by May 17, 2024.

f. Fact depositions to be completed by June 28, 2024.

i. Unless the parties agree or the Court so orders, depositions are not to be held until all parties have responded to initial requests for document production.

ii. There is no priority in depositions by reason of a party's status as plaintiff or defendant.

iii. Default Provision [Contested]: Unless the parties agree or the Court so orders, non-party depositions shall follow initial party depositions.

Carvana's Position: Seventeen individuals were named as inventors on the three patents at issue in this case and at least nine are believed to be non-parties not employed by IBM. Given the large number of named inventors that are not employees of IBM, non-parties may be deposed before or after parties.

IBM's Position: The Court's default is appropriate in this case. Given that IBM currently employs at least one inventor for each of the patents-in-suit, party depositions should come before non-party depositions.

iv. Additional Provision: Deposition Hours [Agreed Upon]: Each side may take 110 hours of fact depositions.

g. Requests to Admit to be served no later than May 14, 2024.

7. All *expert* disclosures, including reports, production of underlying documents and depositions are to be completed as follows:

a. Opening expert reports on issues where the party bears the burden of proof are due by 80 days after the *Markman* ruling; rebuttal expert reports are due 110 days after *Markman* ruling; reply expert reports are due 140 days after *Markman* ruling; expert depositions are to be complete within 161 days after *Markman* ruling.

8. Motions: All motions and applications shall be governed by the Court's Individual Practices, including pre-motion conference requirements. Summary Judgment or other dispositive motions are due at the close of discovery. Pursuant to the undersigned's

Individual Practices, the parties shall request a pre-motion conference in writing at least two (2) weeks prior to this deadline.

9. All counsel must meet for at least one hour to discuss settlement not later than two weeks following the close of fact discovery.
10. Settlement Conference
 - a. Counsel for the parties have discussed holding a settlement conference before a Magistrate Judge.
 - b. The parties request a settlement conference before a United States Magistrate Judge on or before July 12, 2024.
11. Court's Mediation Program
 - a. Counsel for the parties have discussed the use of the Court's Mediation Program.
 - b. The parties do not request that the case be referred to the Court's Mediation Program.
12. Privately-Retained Mediation
 - a. Counsel for the parties have discussed the use of a privately-retained mediator.
 - b. The parties do not intend to use a privately-retained mediator.
13. The parties shall submit a Joint Pretrial Order prepared in accordance with the undersigned's Individual Practices and Rule 26(a)(3), Fed.R.Civ.P. If this action is to be tried before a jury, proposed voir dire, jury instructions and a verdict form shall be filed with the Joint Pretrial Order. Counsel are required to meet and confer on jury instructions and verdict form in an effort to make an agreed upon submission.
14. Parties have conferred and Carvana's present best estimate of the length of trial is 7 days. IBM's present best estimate of the length of trial is 5 days.

TO BE COMPLETED BY THE COURT:

15. [Other directions to the parties:]

There will be no extensions of the deadline for completion of discovery past the date discovery is scheduled to be completed in this Order without the permission of the Court, nor should counsel assume that any extensions will be granted. Counsel may seek permission for extension of interim discovery deadlines from the magistrate judge to whom the case is referred. Counsel may seek permission for an extension of the deadline for completion of discovery past the date discovery is scheduled to be completed in this Order only after consenting to allowing the magistrate judge to handle the case for all purposes.

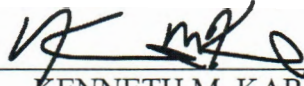
16. The next Case Management Conference is scheduled for 7/16/24 at noon.

The movant's pre-motion letter is due _____;

The non-movant's response is due _____.

SO ORDERED.

DATED: White Plains, New York
12/12/23



KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE