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

GENERAL VIDEO, LLC, Plaintiff, v. DELL INC. and DELL TECHNOLOGIES INC., Defendants.	Civil Action No. 1:24-cv-01530-ADA **JURY TRIAL DEMANDED**

PLAINTIFF GENERAL VIDEO, LLC.'S OPPOSED MOTION
FOR ENTRY OF SCHEDULING ORDER THAT "GENERALLY TRACKS"
THE COURT'S EXEMPLARY SCHEDULE

I. INTRODUCTION

Pursuant to the Court's OGP – Patent Cases (Version 1 Austin, Mar. 5, 2025, the "OGP")), the Court's April 3, 2025, Order requiring the parties to comply with the OGP, and emailed correspondence from the Court's Clerk on June 10, 2025, Plaintiff General Video, LLC ("GV") moves for entry of the Proposed Scheduling Order attached as Exhibit A hereto (the "PSO"). As the OGP requires, the PSO "generally tracks the exemplary schedule attached as [Appendix] A to th[e] OGP." (OGP § II(3).) In contrast, the initial Agreed Scheduling Order, entered March 24, 2025 (Dkt. No. 42, the "IASO"), one day before this case was transferred to Judge Albright, results in a wasteful and unnecessary five to six months of additional litigation. This delay is unjustified under any circumstances – but it would also prejudice GV with respect to *inter partes review* ("IPR") proceedings for which Dell has petitioned in the Patent Trial and Appeal Board ("PTAB").

II. PROCEDURAL BACKGROUND

On March 24, 2025, Judge Pitman entered the IASO. (Dkt. No. 42.) The next day, on March 25, 2025, this case was transferred to the Austin docket of Judge Albright. (Dkt. No. 47.) On April 3, 2025, the Court ordered that the "[p]arties shall comply with Judge Albright's [OGP]." (Emailed Remark, 4/3/2025.)

Because the IASO does not come close to "generally track[ing] the exemplary schedule attached as Appendix A to the OGP" (the "ES") – adding more than five months to the schedule – on May 1, 2025, GV proposed to Dell an Agreed Scheduling Order that *did* generally track the ES.. (Ex. B hereto, M. McAndrews email to R. Fulghum, 5/1/2025; *id.*, Ex. C hereto, email attachment, Proposed Order, 5/1/2025 (the "May 1 Proposed Order").)[1] The PSO attached as Exhibit A hereto also generally tracks the ES. It takes unnecessary bloat out of the schedule and includes important events required by the OGP that are absent from the IASO. The PSO also includes the parties' agreement reflected in the IASO to limited party discovery via interrogatories and open third-party discovery beginning before the *Markman* hearing. This pre-*Markman* discovery was agreed to for the purpose of ensuring that the case will remain on schedule despite necessary third-party discovery that falls outside the jurisdiction of this Court and, therefore, may take longer than party discovery.

On May 5, 2025, counsel for the parties met and conferred concerning the May 1 Proposed Order. Dell refused to join GV in seeking entry of that order. On May 7, 2025, counsel for GV

[1] The PSO submitted herewith differs from the May 1 Proposed Order. Specifically, the PSO moves back by approximately three weeks the deadlines proposed in the May 1 Proposed Order. The reason for this modification is because a June 5, 2025, deadline from the proposed May 1 Proposed Order has since passed as of this filing and because June 19 and July 1, 2025, deadlines from the proposed May 1 Proposed Order will likely have passed by the time the Court issues its ruling on this motion.

emailed the Court's Clerks advising that "[t]he parties … have a dispute concerning scheduling matters and request clarification on whether the dispute should be handled by motion or the email discovery dispute procedure described in Section IV of the Court's March 5, 2025, OGP." (Ex. D hereto, P. McAndrews email to Clerks, 5/7/2025 (addressed to TXWDml_LawClerks _JudgeAlbright @txwd.uscourts.gov).) Concerned that his email to the Court's Clerks was not sent to the correct email address, counsel for GV sent a follow up email on May 8, 2025. (Ex. E hereto, P. McAndrews email to Clerks, 5/8/2025 (addressed to TXWDml_LawClerks_WA_Judge Albright @txwd.us courts.gov).)

Recognizing the Court's busy docket and not having received a response to their emails of May 7 and May 8, 2025, pursuant to Section IV of the OGP, on May 30, 2025, counsel for GV emailed the Court's Clerks a table containing the parties' respective summaries of issues and specific requests for relief with respect to their scheduling dispute. (Ex. F hereto, M. McAndrews email to Clerks, 5/30/2025 (attachments not included).) On June 10, 2025, the Court's Clerk emailed counsel for the parties instructing that GV "submit this issue on the docket in the form of an Opposed Motion for Entry of Scheduling Order and attach the Proposed Scheduling Order." (Z. Ellis email to M. McAndrews and other counsel, 6/10/2025.) In response to an email from GV's counsel requesting clarification of the Court's preferred format for the parties' submissions, the Court's Clerk advised that "[f]or efficiency, the parties' respective positions can be included in a single filing. If the parties instead choose to follow the briefing schedule of the local rules and file a response and a reply, that is fine too." (Z. Ellis email to M. McAndrews, 6/10/2025.)

On June 11, 2025, counsel for GV emailed counsel for Dell proposing that the parties submit their previously submitted respective positions in a single filing. (Ex. G hereto, M. McAndrews email to R. Fulghum, 6/11/2025 (attachments not included).) On June 12, 2025,

counsel for Dell responded, indicating that it did not want to simply file the parties' previously-submitted positions but, instead, wished to proceed with the briefing schedule for an opposed motion under the Local Rules. (Ex. H hereto, R. Fulghum email to M. McAndrews, 6/12/2025.)

III. ENTRY OF THE PSO WILL FOSTER JUDICIAL ECONOMY AND PREVENT PREJUDICE TO GV

Dell opposes entry of the PSO, a schedule that generally tracks this Court's ES, is required by this Court's OGP, and would result in a significantly earlier time to trial. *Why the opposition?* Because Dell doesn't want its dispute with GV resolved in this Court. Dell's motive in this regard became clear on May 23, 2025, when it filed *inter partes review* ("IPR") petitions for two of the six patents-in-suit. On May 27, 2025, Dell filed two additional IPR petitions, each of which is directed to a third patent of the six patents-in-suit. If the PTAB institutes the IPRs, a final written decision ("FWD") would issue in approximately late-December 2026. If the PSO or a substantially similar schedule is entered, the validity of the patents-in-suit will be tried in this Court in approximately mid-October 2026 *before* the FWDs,[2] thereby rendering discretionary denial of IPR institution by the PTAB much more likely. *See* Interim Processes for PTAB Workload Management, dated March 26, 2025 (Ex. I hereto); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, at 3 (P.T.A.B., Mar. 20, 2020) (discretionary denial of IPR where "the parallel district court proceeding was scheduled to finish before the" FWD) (Ex. J hereto). If the IASO remains in place, this case would be tried beginning March 29, 2027 (Dkt. No. 42, IASO ¶ 16), after the FWDs, thereby rendering discretionary denial less likely. Accordingly, the IASO's lengthy time to trial is not only wasteful, but also prejudicial to GV.

[2] *See* Ex. A hereto, PSO (jury selection and trial to begin on October 19, 2026 (or as soon as practicable)).

Nothing unique to this case justifies an additional five or six months of litigation. Indeed, GV only alleged infringement of 10 patent claims in its Disclosure of Asserted Claims and Preliminary Infringement Contentions (served March 19, 2025). This is just a fraction of the threshold of 50 to 60 asserted claims for which "the Court will extend the schedule to provide extra time for the parties to adequately brief and prepare for the *Markman* hearing." (*See* Judge Albright Patent FAQ, Claim Construction, May 2020, *Scheduling for a large number of asserted claims*, https://www.txwd.uscourts.gov/for-attorneys/judge-albright-courtroom-faq/.)

Further, GV only agreed to the IASO after reviewing other scheduling orders Judge Pitman has entered in patent cases and determining that the IASO generally tracked those other schedules and Judge Pitman's preferred processes. Thus, GV's initial agreement to the IASO was understandable under the circumstances. The IASO also differs from the ES and PSO because it omits certain dates and procedures included in the ES and PSO designed to streamline issues for trial. (*See, e.g,* Ex. A hereto, PSO at 5 (meet-and-confers narrowing *Markman* issues), *id.* at 6 (motion *in limine* and pre-trial disclosure dispute narrowing processes).)

The more than five-month difference in time-to-trial, the lack of any reason to substantially depart from the OGP, and the understandable circumstances under which GV agreed to the IASO support entry of the PSO.

IV. CONCLUSION

The foregoing supports entry of the PSO, which closely tracks the Exemplary Schedule included in Judge Albright's OGP. Accordingly, GV respectfully moves that the Court adopt and enter the Proposed Scheduling Order attached as Exhibit A hereto and vacate the March 24, 2025, Agreed Scheduling Order (Dkt. No. 42).

Dated: June 18, 2025

Respectfully submitted,

/s/ Matthew G. McAndrews

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Attorneys for Plaintiff,
GENERAL VIDEO, LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing via electronic mail to all counsel of record.

/s/ Matthew G. McAndrews
Matthew G. McAndrews

CERTIFICATE OF CONFERENCE

The parties have complied with the meet and confer requirement and the motion is submitted as opposed.

/s/ Matthew G. McAndrews
Matthew G. McAndrews

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

GENERAL VIDEO, LLC, Plaintiff, v. DELL INC. and DELL TECHNOLOGIES INC., Defendants.	Civil Action No. 1:24-cv-01530-ADA **JURY TRIAL DEMANDED**

ORDER GRANTING MOTION
FOR ENTRY OF SCHEDULING ORDER (DKT. NO. 57)

On this day came to be heard Plaintiff's Opposed Motion for Entry of Scheduling Order (Dkt. No. 57). Having considered the motion, the Court finds that it should be and accordingly is GRANTED.

It is therefore ORDERED that the Scheduling Order attached as Exhibit A to Plaintiff's Opposed Motion for Entry of Scheduling Order (Dkt. No. 57) is hereby adopted and entered and that the March 24, 2025, Agreed Scheduling Order (Dkt. No. 42) is hereby vacated.

SIGNED this ___ day of June, 2025.

THE HONORABLE ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

EXHIBIT B

From:	Matthew G. McAndrews
To:	Speegle, Mark; Fulghum, Roger; Geoff Culbertson; Geoff Culbertson; Peter McAndrews; Brian P. Lynch; Annette Vonder Mehden; kbt@texarkanalaw.com; Janet Orr; Rajendra A. Chiplunkar
Cc:	EXT Dacus, Deron (Dell)
Subject:	General Video, LLC v. Dell Inc. et al, Case No. 1-24-cv-01530 (W.D. Tex., Pitman, J.)
Date:	Thursday, May 1, 2025 5:45:44 PM
Attachments:	image001.png McAndrews-Logo_321ead36-a59e-4ed1-9b90-b1b3e93b0006.PNG 2025-05-01 - Proposed Schedule - Per J. Albright"s OGP (Draft).docx

Roger and Mark,

Pursuant to § II(3) of Judge Albright's OGP and the court's order requiring the parties to comply with the OGP, I attach a proposed agreed Scheduling Order that generally tracks the exemplary schedule attached as Appendix A to the OGP. Please let us know your availability to discuss the Scheduling Order and other discovery and case process requirements under the OGP. If you reply with a few times that work for you tomorrow (Friday) afternoon or early next week, we'll do our best to make our schedules work around yours.

Best,

Matt

McAndrews
Matthew G. McAndrews

McAndrews, Held & Malloy, Ltd.
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EXHIBIT C

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

GENERAL VIDEO, LLC, Plaintiff, v. DELL INC. and DELL TECHNOLOGIES INC., Defendants.	CIVIL ACTION NO. 1:24-cv-01530-RP **JURY TRIAL DEMANDED**

SCHEDULING ORDER

Pursuant to the Court's April 3, 2025, order that the parties shall comply with this Court's Standing Order Governing Proceedings (OGP) – Patent Cases, the OGP and this Scheduling Order supersede the March 24, 2025, Agreed Scheduling Order (Dkt. No. 42).[1]

Date	Deadline
3/18/2025	Notwithstanding the stay of fact discovery until after the *Markman* hearing as set out in Section III of this Court's OGP, the parties previously agreed to, the previously-entered Agreed Scheduling Order (Dkt. No. 42) provided for, and this Court hereby permits the following limited discovery, which commenced on March 18, 2025: a. Defendants will produce copies of the following that can be found after a reasonable search: (1) communications between Defendants and MPEG LA concerning the DisplayPort Patent Portfolio; and (2) all dated versions of, and/or dated revisions to, "DisplayPort Attachment 1" received or obtained by Defendants before the August 30, 2024, filing of General Video's Complaint (Dkt. No. 1).

[1] *See* OGP § II(3) ("The parties shall file a **motion** to enter an agreed Scheduling Order *that generally tracks the exemplary schedule attached as Exhibit A* to th[e] OGP, which should suit most cases.") (bold emphasis in original; italicized emphasis added).

	b. Defendants will respond to up to five (5) interrogatories propounded by Plaintiff, which interrogatories will be directed to the following subject matters: • Non-infringement contentions; • Unit sales of the accused products as identified in Appendix A to the Complaint (Dkt. No. 1-15) by quarter beginning 6 years prior to the Complaint; • An identification, to the extent known and reasonably accessible, of the DisplayPort hardware and software components in Defendants' products (not limited to the accused products identified in Appendix A to the Complaint (Dkt. No. 1-15)) from the period from August 18, 2018, to the present; • Defendants' first awareness of each of the asserted patents and each version of, and/or revision to, "DisplayPort Attachment 1," including when Defendants received or obtained each dated version of, and/or dated revision to, "DisplayPort Attachment 1" produced pursuant to Subparagraph 9(a)(2) above. c. Plaintiff will respond to up to five (5) interrogatories propounded by Defendants, which interrogatories will be directed to the following subject matters: • Validity contentions; • For each Asserted Patent, the identification of each licensee and the terms of each associated license; • For each Asserted Patent, the ownership history of the patent and the terms of each transaction in the ownership chain; • FRAND commitments or other encumbrances on the Asserted Patents. d. Discovery from third parties is open.

Served on 3/19/2025	Plaintiff serves preliminary[2] infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (i.e., the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
5/19/2025	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, and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s).
6/5/2025	Parties exchange claim terms for construction.
6/19/2025	Parties exchange proposed claim constructions.
7/1/2025	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 identify the scope of the topics for the witness's expected testimony.[3] 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.
7/10/2025	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.

[2] The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

[3] Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

7/17/2025	Defendant files Opening claim construction brief, including any arguments that any claim terms are indefinite.
8/7/2025	Plaintiff files Responsive claim construction brief.
8/21/2025	Defendant files Reply claim construction brief.
8/21/2025	Parties to jointly email the law clerks (see OGP at 1) to confirm their Markman date and to notify if any venue or jurisdictional motions remain unripe for resolution.
9/4/2025	Plaintiff files a Sur-Reply claim construction brief.
9/8/2025	Parties submit Joint Claim Construction Statement and email the law clerks an editable copy. See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).
9/11/2025	Parties submit optional technical tutorials to the Court and technical advisor (if appointed).
10/1/2025[4] (or as soon as practicable)[5]	*Markman* Hearing at 9:00 a.m. This date is a placeholder and the Court may adjust this date as the *Markman* hearing approaches.
1 business day after *Markman* hearing	Fact Discovery (beyond the limited discovery commenced on March 18, 2025) opens; the parties previously served Initial Disclosures per Rule 26(a) on March 19, 2025.
6 weeks after *Markman* hearing	Deadline to add parties.
8 weeks after *Markman* hearing	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to infringement or invalidity contentions. This deadline does not relieve the parties of their obligation to seasonably amend if new information is identified after initial contentions.

[4] This proposed date exceeds by 13 days the interval between the parties' submission to the Court of optional technical tutorials and the *Markman* Hearing included in the exemplary schedule attached as Appendix A to the Court's OGP. The parties have modified this interval because lead counsel for Plaintiff is set to begin a trial before this Court on September 22, 2025.

[5] All deadlines hereafter follow the original *Markman* hearing date and do not change if the Court delays the *Markman* hearing.

16 weeks after *Markman* hearing	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
26 weeks after *Markman*	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's law clerk to arrange a teleconference with the Court to resolve the disputed issues.
30 weeks after *Markman* hearing	Close of Fact Discovery.
31 weeks after *Markman* hearing	Opening Expert Reports.
35 weeks after *Markman* hearing	Rebuttal Expert Reports.
38 weeks after *Markman* hearing	Close of Expert Discovery.
39 weeks after *Markman* hearing	Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. If it helps the parties determine these limits, the parties are encouraged to contact the Court's law clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
40 weeks after *Markman* hearing	Dispositive motion deadline and Daubert motion deadline. See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical advisor (if appointed). Deadline for parties desiring to consent to trial before the magistrate judge to submit Form AO 85, "Notice, Consent, And Reference Of A Civil Action To A Magistrate Judge," available at https://www.uscourts.gov/forms/civil-forms/notice-consent-and-reference-civil-action-magistrate-judge.
42 weeks after *Markman* hearing	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, deposition designations).

44 weeks after *Markman* hearing	Serve objections to pretrial disclosures/rebuttal disclosures.
45 weeks after *Markman* hearing	Serve objections to rebuttal disclosures; file motions *in limine*.
46 weeks after *Markman* hearing	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, deposition designations); file oppositions to motions *in limine*. From this date onwards, the parties are obligated to notify the Court of any changes to the asserted patents or claims. Such notification shall be filed on the docket within seven (7) days of the change and shall include a complete listing of all asserted patents and claims. If a change to the asserted patents or claims requires leave of court (for example, if a party is moving for leave to assert additional claims), notification shall not be required until the Court grants leave, at which point the notification must be filed within seven (7) days.
47 weeks after *Markman* hearing	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to file replies to motions *in limine*.
48 weeks after *Markman* hearing	Deadline to meet and confer regarding remaining objections and disputes on motions *in limine*.
8 weeks before trial	Parties to jointly email the Court's law clerk (See OGP at 1) to confirm their pretrial conference and trial dates.
3 business days before Final Pretrial Conference.	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions *in limine*.
49 weeks after Markman hearing (or as soon as practicable)	Final Pretrial Conference. Held in person unless otherwise requested.

52 weeks after *Markman* hearing (or as soon as practicable)[6]	Jury Selection/Trial.

SIGNED this ___ day of May 2025.

_____
ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

[6] If the actual trial date materially differs from the Court's default schedule, the Court will consider reasonable amendments to the case schedule post-*Markman* that are consistent with the Court's default deadlines in light of the actual trial date.

EXHIBIT D

From: Peter McAndrews
To: "TXWDml_LawClerks_JudgeAlbright@txwd.uscourts.gov"
Cc: Matthew G. McAndrews; Fulghum, Roger; Speegle, Mark; Geoff Culbertson; kbt@texarkanalaw.com; Janet Orr; EXT Dacus, Deron (Dell); GeneralVideo
Subject: General Video, LLC v. Dell Inc., et al., Case No. 1:24-cv-01530-ADA
Date: Wednesday, May 7, 2025 2:42:03 PM

Dear Law Clerks:

The parties in the above-captioned case have a dispute concerning scheduling matters and request clarification on whether the dispute should be handled by motion or the email discovery dispute procedure described in Section IV of the Court's March 5, 2025, OGP.

Respectfully submitted,

Peter J. McAndrews
Lead Attorney for Plaintiff,
General Video, LLC

EXHIBIT E

From: Peter McAndrews
To: "TXWDml_LawClerks_WA_JudgeAlbright@txwd.uscourts.gov"
Cc: Matthew G. McAndrews; Fulghum, Roger; Speegle, Mark; Geoff Culbertson; kbt@texarkanalaw.com; Janet Orr; EXT Dacus, Deron (Dell); GeneralVideo
Subject: RE: General Video, LLC v. Dell Inc., et al., Case No. 1:24-cv-01530-ADA
Date: Thursday, May 8, 2025 3:53:18 PM
Attachments: image001.png

Dear Law Clerks:

Apologies if my email below did not go to the correct email address or if you are now receiving the email for a second time. The email address used in my original email was taken from the email address link provided on Judge Albright's "Directory" page (https://www.txwd.uscourts.gov/team/alan-albright/) whereas the email address used for the present email is taken from Judge Albright's March 5, 2025, OGP. Just making sure this was not sent to a dead end.

Respectfully submitted,

Peter J. McAndrews
Lead Attorney for Plaintiff,
General Video, LLC

From: Peter McAndrews <PMCANDREWS@mcandrews-ip.com>
Sent: Wednesday, May 7, 2025 2:42 PM
To: 'TXWDml_LawClerks_JudgeAlbright@txwd.uscourts.gov' <TXWDml_LawClerks_JudgeAlbright@txwd.uscourts.gov>
Cc: Matthew G. McAndrews <MMcAndrews@mcandrews-ip.com>; Fulghum, Roger <Roger.Fulghum@BakerBotts.com>; Speegle, Mark <mark.speegle@bakerbotts.com>; Geoff Culbertson <gpc@texarkanalaw.com>; kbt@texarkanalaw.com; Janet Orr <jorr@texarkanalaw.com>; EXT Dacus, Deron (Dell) <ddacus@dacusfirm.com>; GeneralVideo <GeneralVideo@mcandrews-ip.com>
Subject: General Video, LLC v. Dell Inc., et al., Case No. 1:24-cv-01530-ADA

Dear Law Clerks:

The parties in the above-captioned case have a dispute concerning scheduling matters and request clarification on whether the dispute should be handled by motion or the email discovery dispute procedure described in Section IV of the Court's March 5, 2025, OGP.

Respectfully submitted,

Peter J. McAndrews
Lead Attorney for Plaintiff,
General Video, LLC

McAndrews

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EXHIBIT F

From: Matthew G. McAndrews
To: TXWDml_LawClerks_WA_JudgeAlbright@txwd.uscourts.gov
Cc: Peter McAndrews; Rajendra A. Chiplunkar; Annette Vonder Mehden; GeneralVideo; Geoff Culbertson; Kelly Tidwell; Janet Orr; Fulghum, Roger; Speegle, Mark; Jeff Seddon; EXT Dacus, Deron (Dell)
Subject: General Video, LLC v. Dell Inc., et al, Case No. 1-24-cv-01530 (W.D. Tex., Albright, J.)
Date: Friday, May 30, 2025 3:46:18 PM
Attachments: McAndrews-Logo_321ead36-a59e-4ed1-9b90-b1b3e93b0006.PNG
2025-05-30 - General Video, LLC v. Dell Inc., et al., 1-24-C-cv-01530-ADA - Schedule Dispute Chart.docx
Ex. A to General Video"s Summary of Issues - Proposed Schedule - Per J. Albright"s OGP (Draft).pdf
Ex. B to General Video"s Summary of Issues - Interim Processes-PTAB Workload Mgmt-20250326.pdf
Ex. C to General Video"s Summary of Issues - IPR2020-00019, Apple v. Fintiv, Paper 11 (3.20.20).pdf

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Dear Clerks,
Pursuant to Section IV of Judge Albright's OGP for Patent Cases (Version 1 Austin, Mar. 5, 2025), I attach a table containing the parties' respective summaries of issues and specific requests for relief with respect to their dispute concerning the case schedule.
The parties request a hearing on this matter. No confidential information will be presented during the hearing.
Respectfully submitted for the Parties,
/s/ Matthew G. McAndrews

Matthew G. McAndrews

McAndrews, Held & Malloy, Ltd.
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EXHIBIT G

From: Matthew G. McAndrews
To: Fulghum, Roger
Cc: GeneralVideo; Geoff Culbertson; Kelly Tidwell; Janet Orr; Speegle, Mark; Jeff Seddon; EXT Dacus, Deron (Dell)
Subject: RE: General Video, LLC v. Dell Inc., et al, Case No. 1-24-cv-01530 (W.D. Tex., Albright, J.)
Date: Wednesday, June 11, 2025 1:57:05 PM
Attachments: image002.png
image003.png
McAndrews-Logo_321ead36-a59e-4ed1-9b90-b1b3e93b0006.PNG
2025-06-11 General Video"s Opposed Motion for Entry of Scheduling Order (Redline for Dell).docx
Ex. A - 2025-06-11 - Proposed Scheduling Order (Redline for Dell"s Review).docx
Ex. A - 2025-06-11 - Proposed Scheduling Order.pdf
Ex. C to Opposed Motion for Entry of Scheduling Order - IPR2020-00019, Apple v. Fintiv, Paper 11 (3.20.20).pdf
Ex. B to Opposed Motion for Entry of Scheduling Order - Interim Processes-PTAB Workload Mgmt-20250326.pdf

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Hi Roger, et al.,

Further to Clerk Ellis's email below, I attach for your review (1) a draft Opposed Motion for Entry of Scheduling Order that sets forth the parties' respective positions, which include very minor redlines to GV's position statement (and the need for which is explained in the document's introduction), (2) a redlined version of the Proposed Scheduling Order (Ex. A to the motion), which includes the approximate two-week modification to the schedule (as explained in the draft motion), (3) a clean PDF of the Proposed Scheduling Order (Ex. A to the motion), and (4) Exhibits B and C to GV's position statement/motion.

When you have a moment, please call to discuss.

Best,

Matt

Matthew G. McAndrews

McAndrews, Held & Malloy, Ltd.
500 W. Madison St., 34th Floor | Chicago, IL 60661
P: 312-775-8115 M: 847-204-6704
MMcAndrews@mcandrews-ip.com
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EXHIBIT H

From: Fulghum, Roger
To: Matthew G. McAndrews
Cc: GeneralVideo; Geoff Culbertson; Kelly Tidwell; Janet Orr; Speegle, Mark; Jeff Seddon; EXT Dacus, Deron (Dell)
Subject: RE: General Video, LLC v. Dell Inc., et al, Case No. 1-24-cv-01530 (W.D. Tex., Albright, J.)
Date: Thursday, June 12, 2025 9:38:42 AM
Attachments: image001.png
image002.png

CAUTION: External Email From: Roger.Fulghum@BakerBotts.com

Matt,

We have conferred with Dell, and we would prefer the approach of an opposed motion under the Local Rules. We wanted to get back to you on this as soon as possible so that you could get your motion on file. Let me know if you would like to discuss.

Thanks, Roger.

From: Matthew G. McAndrews <MMcAndrews@mcandrews-ip.com>
Sent: Wednesday, June 11, 2025 4:01 PM
To: Fulghum, Roger <Roger.Fulghum@BakerBotts.com>
Cc: GeneralVideo <GeneralVideo@mcandrews-ip.com>; Geoff Culbertson <gpc@texarkanalaw.com>; Kelly Tidwell <kbt@texarkanalaw.com>; Janet Orr <jorr@texarkanalaw.com>; Speegle, Mark <mark.speegle@bakerbotts.com>; Jeff Seddon <jseddon@desmaraisllp.com>; EXT Dacus, Deron (Dell) <ddacus@dacusfirm.com>
Subject: RE: General Video, LLC v. Dell Inc., et al, Case No. 1-24-cv-01530 (W.D. Tex., Albright, J.)

[EXTERNAL EMAIL]

Confirmed – thanks, Roger.

Best,

Matt

McAndrews
Matthew G. McAndrews

McAndrews, Held & Malloy, Ltd.
500 W. Madison St., 34th Floor | Chicago, IL 60661
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From: Fulghum, Roger <Roger.Fulghum@BakerBotts.com>
Sent: Wednesday, June 11, 2025 3:59 PM
To: Matthew G. McAndrews <MMcAndrews@mcandrews-ip.com>
Cc: GeneralVideo <GeneralVideo@mcandrews-ip.com>; Geoff Culbertson <gpc@texarkanalaw.com>; Kelly Tidwell <kbt@texarkanalaw.com>; Janet Orr <jorr@texarkanalaw.com>; Speegle, Mark <mark.speegle@bakerbotts.com>; Jeff Seddon <jseddon@desmaraisllp.com>; EXT Dacus, Deron (Dell) <ddacus@dacusfirm.com>
Subject: RE: General Video, LLC v. Dell Inc., et al, Case No. 1-24-cv-01530 (W.D. Tex., Albright, J.)

CAUTION: External Email From: Roger.Fulghum@BakerBotts.com

Matt,

I saw that you called, and I am on and off calls this afternoon. We have reached out to our clients with regard to the issue of whether to proceed in a joint motion or as part of an opposed motion per the Local Rules, and we will get back with you quickly on this issue.

Thanks, Roger.

From: Matthew G. McAndrews <MMcAndrews@mcandrews-ip.com>
Sent: Wednesday, June 11, 2025 1:57 PM
To: Fulghum, Roger <Roger.Fulghum@BakerBotts.com>
Cc: GeneralVideo <GeneralVideo@mcandrews-ip.com>; Geoff Culbertson <gpc@texarkanalaw.com>; Kelly Tidwell <kbt@texarkanalaw.com>; Janet Orr <jorr@texarkanalaw.com>; Speegle, Mark <mark.speegle@bakerbotts.com>; Jeff Seddon <jseddon@desmaraisllp.com>; EXT Dacus, Deron (Dell) <ddacus@dacusfirm.com>
Subject: RE: General Video, LLC v. Dell Inc., et al, Case No. 1-24-cv-01530 (W.D. Tex., Albright, J.)

[EXTERNAL EMAIL]

Hi Roger, et al.,

Further to Clerk Ellis's email below, I attach for your review (1) a draft Opposed Motion for Entry of Scheduling Order that sets forth the parties' respective positions, which include very minor redlines to GV's position statement (and the need for which is explained in the document's introduction), (2) a redlined version of the Proposed Scheduling Order (Ex. A to the motion), which includes the approximate two-week modification to the schedule (as explained in the draft motion), (3) a clean PDF of the Proposed Scheduling Order (Ex. A to the motion), and (4) Exhibits B and C to GV's position statement/motion.

When you have a moment, please call to discuss.

Best,

Matt

Matthew G. McAndrews

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From: Zachary Ellis <zachary_ellis@txwd.uscourts.gov>
Sent: Tuesday, June 10, 2025 9:34 PM
To: Matthew G. McAndrews <MMcAndrews@mcandrews-ip.com>; TXWDml_LawClerks_WA_JudgeAlbright <TXWDml_LawClerks_WA_JudgeAlbright@txwd.uscourts.gov>
Cc: Peter McAndrews <PMCANDREWS@mcandrews-ip.com>; Rajendra A. Chiplunkar <RChiplunkar@mcandrews-ip.com>; Annette Vonder Mehden <AVONDERMEHDEN@mcandrews-ip.com>; GeneralVideo <GeneralVideo@mcandrews-ip.com>; Geoff Culbertson <gpc@texarkanalaw.com>; Kelly Tidwell <kbt@texarkanalaw.com>; Janet Orr <jorr@texarkanalaw.com>; Fulghum, Roger <roger.fulghum@bakerbotts.com>; Speegle, Mark <mark.speegle@bakerbotts.com>; Jeff Seddon <jseddon@desmaraisllp.com>; EXT Dacus, Deron (Dell) <ddacus@dacusfirm.com>
Subject: Re: General Video, LLC v. Dell Inc., et al, Case No. 1-24-cv-01530 (W.D. Tex., Albright, J.)

CAUTION: External Email From: zachary_ellis@txwd.uscourts.gov

Counsel,

For efficiency, the parties' respective positions can be included in a single filing. If the parties instead choose to follow the briefing schedule of the local rules and file a response and a reply, that is fine too.

Best,

Zachary H. Ellis
Law Clerk to the Honorable Alan D Albright

EXHIBIT I

MEMORANDUM

To: All PTAB Judges

From: Coke Morgan Stewart
Acting Under Secretary of Commerce for Intellectual Property
and Acting Director of the United States Patent and Trademark Office

Subject: Interim Processes for PTAB Workload Management

Date: March 26, 2025

The Patent Trial and Appeal Board (PTAB) is tasked with several statutory duties under 35 U.S.C. § 6(b), including deciding *ex parte* appeals from adverse examiner decisions by patent applicants and conducting America Invents Act (AIA) trial proceedings, such as *inter partes* reviews (IPRs) and post-grant reviews (PGRs). To ensure that the PTAB continues to meet its statutory obligations as to *ex parte* appeals, while continuing to maintain its capacity to conduct AIA proceedings, the Director will exercise her discretion on institution of AIA proceedings under 35 U.S.C. §§ 314(a) and 324(a) as outlined below.

First, decisions on whether to institute an IPR or PGR will be bifurcated between (i) discretionary considerations and (ii) merits and other non-discretionary statutory considerations. Under this interim procedure, the Director, in consultation with at least three PTAB judges, will determine whether discretionary denial of institution is appropriate. If it is appropriate, the Director will issue a decision denying institution. If it is not appropriate, the Director will issue a decision regarding that determination and refer the petition to a three-member panel of the PTAB assigned according to Standard Operating Procedure (SOP) 1 (Rev. 16). The three-member panel will then handle the case in the normal course including by issuing a decision on institution addressing the merits and other non-discretionary statutory considerations.

Second, to facilitate this bifurcated approach, the USPTO will permit parties to file separate briefing on requests for discretionary denial of institution. The discretionary denial briefing shall proceed as follows: (1) within two months of the date on which the PTAB enters a Notice of Filing Date Accorded to a petition, a patent owner may file a brief explaining any applicable bases for discretionary denial of institution; and (2) a petitioner may file an opposition brief no later than one month after the patent owner files its brief. Leave to file further briefing may be permitted for good cause. Consistent with 37 C.F.R. § 42.24, discretionary denial briefing will be limited to 14,000 words. A reply brief, if any, will be limited to 5,600 words. The merits briefing schedule and the schedule for requesting rehearing or Director Review as to a decision on institution remain unchanged.

Third, consistent with the discretionary considerations enumerated in existing Board precedent (including *Fintiv*, *General Plastic*, and *Advanced Bionics*[*]) and the Consolidated Trial Practice Guide (Nov. 2019), the parties are permitted to address all relevant considerations, which may include:

- Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims;
- Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;
- The strength of the unpatentability challenge;
- The extent of the petition's reliance on expert testimony;
- Settled expectations of the parties, such as the length of time the claims have been in force;
- Compelling economic, public health, or national security interests; and

[*] *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential); *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (Sept. 6, 2027) (precedential as to § II.B.4.i); *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (Feb. 13, 2020) (precedential).

- Any other considerations bearing on the Director's discretion.

The Director will also consider the ability of the PTAB to comply with pendency goals for *ex parte* appeals, its statutory deadlines for AIA proceedings, and other workload needs. *See* 35 U.S.C. § 316(b).

These processes aim to improve PTAB efficiency, maintain PTAB capacity to conduct AIA proceedings, reduce pendency in *ex parte* appeals, and promote consistent application of discretionary considerations in the institution of AIA proceedings. The processes described herein will be implemented in IPR and PGR proceedings where the deadline for the patent owner to file a preliminary response has not yet passed. In that situation, if the time for filing discretionary denial briefing as described herein has already elapsed, the patent owner may submit discretionary denial briefing within one month of the date of this memorandum.

The processes described herein are temporary in nature due, in part, to the current workload needs of the PTAB.

EXHIBIT J

Trials@uspto.gov
571-272-7822

Patent Trial and Appeal Board
PRECEDENTIAL
Standard Operating Procedure 2
Designated: 5/5/20

Paper No. 11
Entered: March 20, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

FINTIV, INC.,
Patent Owner.

Case IPR2020-00019
Patent 8,843,125 B2

Before WILLIAM M. FINK, *Vice Chief Administrative Patent Judge*, and LINDA E. HORNER and LYNNE E. PETTIGREW, *Administrative Patent Judges*.

FINK, *Vice Chief Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
Supplemental Briefing on Discretionary Denial
35 U.S.C. § 314(a) and 37 C.F.R. § 42.5(a)

I. INTRODUCTION

Petitioner, Apple, Inc., filed a Petition in this case on October 28, 2019, challenging certain claims of U.S. Patent No. 8,843,125 B2 (Ex. 1001, "the '125 patent") owned by Patent Owner, Fintiv, Inc. Paper 1 ("Pet."). Patent Owner filed a Preliminary Response on February 15, 2020. Paper 10 ("Prelim. Resp."). In its Preliminary Response, Patent Owner requests that the Board apply its discretion under 35 U.S.C. § 314(a) to deny institution of the requested proceeding due to the advanced state of a parallel district court litigation in which the same issues have been presented and trial has been set for November 16, 2020. Prelim. Resp. 22–26 (citing *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential, designated May 7, 2019)). Although Petitioner addressed the issue briefly in the Petition, at that time no trial date had been set. *See* Pet. 7. In light of the apparent change in status of the parallel proceeding, the panel has determined that supplemental briefing on the issue of discretionary denial is necessary in this case to give Petitioner an opportunity to respond. This Order discusses the factors relevant to the Board's decision on whether to apply its discretion under 35 U.S.C. § 314(a) to deny institution. This Order authorizes the parties to file supplemental briefing addressing facts in this case relevant to these factors.

II. DISCRETIONARY DENIAL UNDER *NHK*

In *NHK*, the patent owner argued the Board should deny institution under 35 U.S.C. § 314(a) because institution of a trial at the PTAB would be an inefficient use of Board resources in light of the "advanced state" of the parallel district court litigation in which the petitioner had raised the same invalidity challenges. IPR2018-00752, Paper 8. The Board denied

institution, relying in part on § 314(a). Specifically, under § 314(a) the Board considered the fact that the parallel district court proceeding was scheduled to finish before the Board reached a final decision as a factor favoring denial.[1] The Board found that the earlier district court trial date presented efficiency considerations that provided an additional basis, separate from the independent concerns under 35 U.S.C. § 325(d),[2] for denying institution. Thus, *NHK* applies to the situation where the district court has set a trial date to occur earlier than the Board's deadline to issue a final written decision in an instituted proceeding. In a case where, in contrast to the facts present in *NHK*, the district court has set a trial date *after* the Board's deadline to issue a final written decision in an instituted proceeding, the Board may be less likely to deny institution under 35 U.S.C. § 314(a) based on district court trial timing depending on other factors as set forth below.[3]

---

[1] *See* 35 U.S.C. § 316(a)(11) (2018) (requiring issuance of a final written decision within one year of institution, absent extension up to six months for good cause).

[2] Section 325(d) provides that the Director may elect not to institute a proceeding if the challenge to the patent is based on the same or substantially the same prior art or arguments previously presented to the Office.

[3] *See Polycom, Inc. v. directPacket Research, Inc.,* IPR2019-01233, Paper 21 at 13 (PTAB Jan. 13, 2020) (declining to apply discretion to deny institution when district court trial is scheduled to occur months after the statutory deadline for completion of the IPR); *Iconex, LLC v. MAXStick Products Ltd.*, IPR2019-01119, Paper 9 at 10 (PTAB Dec. 6, 2019) (same).

A. The Parties' Arguments

In the Petition, Petitioner argues that although a parallel district court proceeding is ongoing involving the challenged patent, the Board should not exercise authority to deny institution under *NHK* because, at the time of the Petition filing, "no preliminary injunction motion has been filed, the district court has not been presented with or invested any time in the analysis of prior art invalidity issues, and no trial date has been set." Pet. 7. Petitioner also argues that it timely filed its petition within the statutorily prescribed one-year window, and that declining to institute IPR here would "essentially render nugatory" the one-year filing period of § 315(b). *Id.* Petitioner also argues that declining to institute an IPR based on a parallel district court litigation "ignores the common scenario, contemplated by Congress, of obtaining a district court stay based on institution." *Id.*

In its Preliminary Response, Patent Owner has raised several factors that it contends weigh in favor of exercising authority to deny institution under *NHK*, including an earlier trial date (six months prior to the projected deadline for a final written decision if the Board institutes a proceeding),[4] significant overlap between issues raised in the Petition and in the district court proceeding (identical claims and arguments), and investment in the district court trial (claim construction already issued). *See* Prelim. Resp. 23–27.

[4] After the filing of the Petition, the district court entered a scheduling order setting a trial date to occur prior to projected deadline for a final written decision in this matter. Ex. 2009 (setting trial date of November 16, 2020).

B. Factors Related to a Parallel, Co-Pending Proceeding in Determining Whether to Exercise Discretionary Institution or Denial

As with other non-dispositive factors considered for institution under 35 U.S.C. § 314(a), an early trial date should be weighed as part of a "balanced assessment of all relevant circumstances of the case, including the merits."[5] Consolidated Trial Practice Guide November 2019 ("TPG")[6] at 58. Indeed, the Board's cases addressing earlier trial dates as a basis for denial under *NHK* have sought to balance considerations such as system efficiency, fairness, and patent quality.[7] When the patent owner raises an argument for discretionary denial under *NHK* due to an earlier trial date,[8] the Board's decisions have balanced the following factors:

---

[5] *See Abbott Vascular, Inc. v. FlexStent, LLC*, IPR2019-00882, Paper 11 at 31 (PTAB Oct. 7, 2019) (declining to adopt a bright-line rule that an early trial date alone requires denial in every case).

[6] *Available at* https://www.uspto.gov/TrialPracticeGuideConsolidated.

[7] *See Magellan Midstream Partners L.P. v. Sunoco Partners Marketing & Terminals L.P.*, IPR2019-01445, Paper 12 at 10 (PTAB Jan. 22, 2020) (citing "unnecessary and counterproductive litigation costs" where district court would most likely have issued a decision before the Board issues a final decision); *Intel Corp. v. VLSI Tech. LLC*, IPR2019-01192, Paper 15 at 11 (PTAB Jan. 9, 2020) ("When considering the impact of parallel litigation in a decision to institute, the Board seeks, among other things, to minimize the duplication of work by two tribunals to resolve the same issue."); *Illumina, Inc. v. Natera, Inc.*, IPR2019-01201, Paper 19 at 6 (PTAB Dec. 18, 2019) ("We have considered the positions of the parties and find that, on this record, considerations of efficiency, fairness, and the merits of the grounds in the Petition do not weigh in favor of denying the Petition.").

[8] To the extent we refer to such a denial of institution as a "denial under *NHK*," we refer to *NHK*'s § 314(a) denial due to the earlier trial date in the district court and not the independent basis for denial under § 325(d).

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the Board's exercise of discretion, including the merits.

These factors relate to whether efficiency, fairness, and the merits support the exercise of authority to deny institution in view of an earlier trial date in the parallel proceeding. As explained below, there is some overlap among these factors. Some facts may be relevant to more than one factor. Therefore, in evaluating the factors, the Board takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review. *See* TPG at 58 (quoting 35 U.S.C. § 316(b)).

1. whether a stay exists or is likely to be granted if a proceeding is instituted

A district court stay of the litigation pending resolution of the PTAB trial allays concerns about inefficiency and duplication of efforts. This fact has strongly weighed against exercising the authority to deny institution under *NHK*.[9] In some cases, there is no stay, but the district court has denied

[9] *See Precision Planting, LLC v. Deere & Co.*, IPR2019-01052, Paper 19 at 10 (PTAB Jan. 7, 2020) (finding that the district court stay of the parallel district court case rendered moot the patent owner's argument for discretionary denial of the petition); *Apotex Inc. v. UCB Biopharma Sprl*,

a motion for stay without prejudice and indicated to the parties that it will consider a renewed motion or reconsider a motion to stay if a PTAB trial is instituted. Such guidance from the district court, if made of record, suggests the district court may be willing to avoid duplicative efforts and await the PTAB's final resolution of the patentability issues raised in the petition before proceeding with the parallel litigation. This fact has usually weighed against exercising authority to deny institution under *NHK*,[10] but, for reasons discussed below, proximity of the court's trial date and investment of time are relevant to how much weight to give to the court's willingness to reconsider a stay.[11, 12] If a court has denied a defendant's motion for a stay

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IPR2019-00400, Paper 17 at 31–32 (PTAB July 15, 2019) (finding that the district court stay of the parallel district court case predicated on the *inter partes* review means that the trial will not occur before the Board renders a final decision).

[10] *See Abbott Vascular*, IPR2019-00882, Paper 11 at 30–31 (noting district court's willingness to revisit request for stay if Board institutes an *inter partes* review proceeding).

[11] *See DMF, Inc. v. AMP Plus, Inc.*, Case No. 2-18-cv-07090 (C.D. Cal. July 12, 2019) (denying defendants' initial motion to stay without prejudice to their renewing the motion should PTAB grant their IPR petition); *id.* (Dec. 13, 2019) (denying renewed motion to stay after PTAB instituted, in part, because in the interim claim construction order had issued, trial date was fast approaching, and discovery was in an advanced stage).

[12] It is worth noting that the district court, in considering a motion for stay, may consider similar factors related to the amount of time already invested by the district court and proximity of the trial date to the Board's deadline for a final written decision. *See Space Data Corp. v. Alphabet Inc.*, Case No. 16-cv-03260, slip op. at 3 (N.D. Cal. Mar. 12, 2019) (denying motion to stay where the court had ruled on a motion for partial summary judgment and issued a *Markman* order, and fact and expert discovery are closed, and thus "much work has been completed"); *Intellectual Ventures I LLC v. T-*

pending resolution of a PTAB proceeding, and has not indicated to the parties that it will consider a renewed motion or reconsider a motion to stay if a PTAB trial is instituted, this fact has sometimes weighed in favor of exercising authority to deny institution under *NHK*.

One particular situation in which stays arise frequently is during a parallel district court *and* ITC investigation involving the challenged patent. In such cases, the district court litigation is often stayed under 28 U.S.C. § 1659 pending the resolution of the ITC investigation. Regardless, even though the Office and the district court would not be bound by the ITC's decision, an earlier ITC trial date may favor exercising authority to deny institution under *NHK* if the ITC is going to decide the same or substantially similar issues to those presented in the petition. The parties should indicate whether there is a parallel district court case that is ongoing or stayed under 28 U.S.C. § 1659 pending the resolution of the ITC investigation. We

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Mobile USA, Inc., Case No. 2-17-cv-00577 (E. D. Tex. Dec. 13, 2018) (denying motion to stay after dispositive and *Daubert* motions had been filed and the court had expended material judicial resources to prepare for the pretrial in three weeks); *Plastic Omnium Advanced Innovation and Research v. Donghee Am., Inc.*, Case No. 1-16-cv-00187 (D. Del. Mar. 9, 2018) (denying motion for stay after PTAB's institution of *inter partes* reviews because the court "has construed the parties' disputed claim terms, handled additional discovery-related disputes, begun reviewing the parties' summary judgment and *Daubert* motions . . . and generally proceeded toward trial" and "[d]elaying the progress of this litigation . . . would risk wasting the Court's resources"); *Dentsply Int'l, Inc. v. US Endodontics, LLC*, Case No. 2-14-cv-00196, slip op. at 5 (E.D. Tenn. Dec. 1, 2015) (denying motion for stay pending *inter partes* review because a stay at this point in the proceedings "would waste a significant amount of the time and resources already committed to this case by the parties and the Court").

recognize that ITC final invalidity determinations do not have preclusive effect,[13] but, as a practical matter, it is difficult to maintain a district court proceeding on patent claims determined to be invalid at the ITC. Accordingly, the parties should also indicate whether the patentability disputes before the ITC will resolve all or substantially all of the patentability disputes between the parties, regardless of the stay.[14]

2. proximity of the court's trial date to the Board's projected statutory deadline

If the court's trial date is earlier than the projected statutory deadline, the Board generally has weighed this fact in favor of exercising authority to deny institution under *NHK*. If the court's trial date is at or around the same time as the projected statutory deadline or even significantly after the projected statutory deadline, the decision whether to institute will likely implicate other factors discussed herein, such as the resources that have been invested in the parallel proceeding.[15]

3. investment in the parallel proceeding by the court and parties

The Board also has considered the amount and type of work already completed in the parallel litigation by the court and the parties at the time of the institution decision. Specifically, if, at the time of the institution decision, the district court has issued substantive orders related to the patent

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[13] *See Texas Instruments v. Cypress Semiconductor Corp.*, 90 F.3d 1558 (Fed. Cir. 1996) (holding that an invalidity determination in an ITC section 337 action does not have preclusive effect).

[14] *See infra* § II.A.4.

[15] *See, e.g.*, *infra* § II.A.3, § II.A.4.

at issue in the petition, this fact favors denial.[16] Likewise, district court claim construction orders may indicate that the court and parties have invested sufficient time in the parallel proceeding to favor denial.[17] If, at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution under *NHK*.[18] This investment factor is related to the trial date factor, in that more work completed by the parties and court in the parallel proceeding tends to support the arguments that the parallel proceeding is more advanced, a stay may be less likely, and instituting would lead to duplicative costs.

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[16] *See E-One, Inc. v. Oshkosh Corp.*, IPR2019-00162, Paper 16 at 8, 13, 20 (PTAB June 5, 2019) (district court issued preliminary injunction order after finding petitioner's invalidity contentions unlikely to succeed on the merits).

[17] *See Next Caller, Inc. v. TRUSTID, Inc.*, IPR2019-00963, Paper 8 at 13 (PTAB Oct. 28, 2019) (district court issued claim construction order); *Thermo Fisher Scientific, Inc. v. Regents of the Univ. of Cal.*, IPR2018-01370, Paper 11 at 26 (PTAB Feb. 7, 2019) (district court issued claim construction order). We note that the weight to give claim construction orders may vary depending upon a particular district court's practices. For example, some district courts may postpone significant discovery until after it issues a claim construction order, while others may not.

[18] *See Facebook, Inc. v. Search and Social Media Partners, LLC*, IPR2018-01620, Paper 8 at 24 (PTAB Mar. 1, 2019) (district court proceeding in its early stages, with no claim constructions having been determined); *Amazon.com, Inc. v. CustomPlay, LLC*, IPR2018-01496, Paper 12 at 8–9 (PTAB Mar. 7, 2019) (district court proceeding in its early stages, with no claim construction hearing held and district court having granted extensions of various deadlines in the schedule).

As a matter of petition timing, notwithstanding that a defendant has one year to file a petition,[19] it may impose unfair costs to a patent owner if the petitioner, faced with the prospect of a looming trial date, waits until the district court trial has progressed significantly before filing a petition at the Office. The Board recognizes, however, that it is often reasonable for a petitioner to wait to file its petition until it learns which claims are being asserted against it in the parallel proceeding.[20] Thus, the parties should explain facts relevant to timing. If the evidence shows that the petitioner filed the petition expeditiously, such as promptly after becoming aware of the claims being asserted, this fact has weighed against exercising the authority to deny institution under *NHK*.[21] If, however, the evidence shows

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[19] *See* 35 U.S.C. § 315(b) (2018) (setting a one-year window from the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent in which to file a petition).

[20] *See* 157 Cong. Rec. S5429 (Sept. 8, 2011) (S. Kyl) (explaining that in light of the House bill's enhanced estoppels, it is important to extend the deadline for allowing an accused infringer to seek *inter partes* review from 6 months, as proposed in the Senate bill, to one year to afford defendants a reasonable opportunity to identify and understand the patent claims that are relevant to the litigation). Our discussion of this factor focuses on the situation where the petitioner also is a defendant in the parallel litigation. If the parallel litigation involves a party different than the petitioner, this fact weighs against exercising authority to deny institution under *NHK*. *See infra* § II.A.5.

[21] *See Intel Corp.*, IPR2019-01192, Paper 15 at 12–13 (finding petitioner was diligent in filing the petition within two months of patent owner narrowing the asserted claims in the district court proceeding); *Illumina*, IPR2019-01201, Paper 19 at 8 (finding petitioner was diligent in filing the

that the petitioner did not file the petition expeditiously, such as at or around the same time that the patent owner responds to the petitioner's invalidity contentions, or even if the petitioner cannot explain the delay in filing its petition, these facts have favored denial.[22]

4. overlap between issues raised in the petition and in the parallel proceeding

In *NHK*, the Board was presented with substantially identical prior art arguments that were at issue in the district court (as well as those previously addressed by the Office under § 325(d)). IPR2018-00752, Paper 8 at 20. Thus, concerns of inefficiency and the possibility of conflicting decisions were particularly strong. Accordingly, if the petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding, this fact has favored denial.[23] Conversely, if the petition includes materially different grounds, arguments,

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petition several months before the statutory deadline and in response to the patent being added to the litigation in an amended complaint).

[22] *See Next Caller, Inc. v. TRUSTID, Inc.*, IPR2019-00961, Paper 10 at 16 (PTAB Oct. 16, 2019) (weighing the petitioner's unexplained delay in filing the petition in favor of denial of the petition and noting that had the petitioner filed the petition around the same time as the service of its initial invalidity contentions, the PTAB proceeding may have resolved the issues prior to the district court).

[23] *See Next Caller*, IPR2019-00963, Paper 8 at 11–12 (same grounds asserted in both cases); *ZTE (USA) Inc. v. Fractus, S.A.*, IPR2018-01451, Paper 12 at 20 (PTAB Feb. 19, 2019) (same prior art and identical evidence and arguments in both cases).

and/or evidence than those presented in the district court, this fact has tended to weigh against exercising discretion to deny institution under *NHK*.[24]

In many cases, weighing the degree of overlap is highly fact dependent. For example, if a petition involves the same prior art challenges but challenges claims in addition to those that are challenged in the district court, it may still be inefficient to proceed because the district court may resolve validity of enough overlapping claims to resolve key issues in the petition. The parties should indicate whether all or some of the claims challenged in the petition are also at issue in district court. The existence of non-overlapping claim challenges will weigh for or against exercising discretion to deny institution under *NHK* depending on the similarity of the claims challenged in the petition to those at issue in the district court.[25]

5. whether the petitioner and the defendant in the parallel proceeding are the same party

If a petitioner is unrelated to a defendant in an earlier court proceeding, the Board has weighed this fact against exercising discretion to

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[24] *See Facebook, Inc. v. BlackBerry Limited*, IPR2019-00899, Paper 15 at 12 (PTAB Oct. 8, 2019) (different prior art relied on in the petition than in the district court); *Chegg, Inc. v. NetSoc, LLC*, IPR2019-01165, Paper 14 at 11–12 (PTAB Dec. 5, 2019) (different statutory grounds of unpatentability relied on in the petition and in the district court).

[25] *See Next Caller*, IPR2019-00961, Paper 10 at 14 (denying institution even though two petitions jointly involve all claims of patent and district court involves only a subset of claims because the claims all are directed to the same subject matter and petitioner does not argue that the non-overlapping claims differ significantly in some way or argue that it would be harmed if institution of the non-overlapping claims is denied).

deny institution under *NHK*.[26] Even when a petitioner is unrelated to a defendant, however, if the issues are the same as, or substantially similar to, those already or about to be litigated, or other circumstances weigh against redoing the work of another tribunal, the Board may, nonetheless, exercise the authority to deny institution.[27] An unrelated petitioner should, therefore, address any other district court or Federal Circuit proceedings involving the challenged patent to discuss why addressing the same or substantially the same issues would not be duplicative of the prior case even if the petition is brought by a different party.

6. other circumstances that impact the Board's exercise of discretion, including the merits

As noted above, the factors considered in the exercise of discretion are part of a balanced assessment of all the relevant circumstances in the case, including the merits.[28] For example, if the merits of a ground raised in the petition seem particularly strong on the preliminary record, this fact has

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[26] *See Nalox-1 Pharms., LLC. v. Opiant Pharms., Inc.*, IPR2019-00685, Paper 11 at 6 (PTAB Aug. 27, 2019) (distinguishing *NHK* because in *NHK*, "the Board considered 'the status of the district court proceeding *between* the parties'" and, in the *Nalox-1* case, the petitioner was not a party to the parallel district court litigations).

[27] *See Stryker Corp. v. KFx Medical, LLC*, IPR2019-00817, Paper 10 at 27–28 (PTAB Sept. 16, 2019) (considering a jury verdict of no invalidity, based in part on evidence of secondary considerations, weighed in favor of denying institution where the unrelated petitioner failed to address this evidence in the petition).

[28] TPG at 58.

favored institution.[29] In such cases, the institution of a trial may serve the interest of overall system efficiency and integrity because it allows the proceeding to continue in the event that the parallel proceeding settles or fails to resolve the patentability question presented in the PTAB proceeding.[30] By contrast, if the merits of the grounds raised in the petition are a closer call, then that fact has favored denying institution when other factors favoring denial are present.[31] This is not to suggest that a full merits analysis is necessary to evaluate this factor.[32] Rather, there may be strengths

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[29] *Illumina*, IPR2019-01201, Paper 19 at 8 (PTAB Dec. 18, 2019) (instituting when "the strength of the merits outweigh relatively weaker countervailing considerations of efficiency"); *Facebook, Inc. v. BlackBerry Ltd.*, IPR2019-00925, Paper 15 at 27 (PTAB Oct. 16, 2019) (same); *Abbott Vascular*, IPR2019-00882, Paper 11 at 29–30 (same); *Comcast Cable Commnc'ns., LLC v. Rovi Guides, Inc.*, IPR2019-00231, Paper 14 at 11 (PTAB May 20, 2019) (instituting because the proposed grounds are "sufficiently strong to weigh in favor of not denying institution based on § 314(a)").

[30] Were a final judgment entered on the patentability issues in the parallel proceeding, the parties may jointly request to terminate the PTAB proceeding in light of the fully resolved parallel proceeding. *See* 37 C.F.R. § 42.72.

[31] *E-One*, IPR2019-00162, Paper 16 at 8, 13, 20 (denying institution based on earlier district court trial date, weakness on the merits, and the district court's substantial investment of resources considering the invalidity of the challenged patent).

[32] Of course, if a petitioner fails to present a reasonable likelihood of prevailing as to unpatentability of at least one challenged claim, then the Board may deny the petition on the merits and may choose not to reach a patent owner's discretionary denial arguments.

or weaknesses regarding the merits that the Board considers as part of its balanced assessment.[33]

C. Other Considerations

Other facts and circumstances may also impact the Board's discretion to deny institution. For example, factors unrelated to parallel proceedings that bear on discretion to deny institution include the filing of serial petitions,[34] parallel petitions challenging the same patent,[35] and considerations implicated by 35 U.S.C. § 325(d).[36] The parties should explain whether these or other facts and circumstances exist in their proceeding and the impact of those facts and circumstances on efficiency and integrity of the patent system.

III. ORDER

The panel requests that the parties submit supplemental briefing, as set forth below, to present on the record facts in this case relevant to the factors discussed above. The supplemental briefing may be accompanied by

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[33] *See id.* at 13–20 (finding weaknesses in aspects of petitioner's challenges).

[34] *See Valve Corp. v. Elec. Scripting Prods., Inc.*, IPR2019-00064, Paper 10 (PTAB May 1, 2019) (precedential); *Valve Corp. v. Elec. Scripting Prods., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018); *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (PTAB Sept. 6, 2017) (precedential as to § II.B.4.i).

[35] TPG at 59–61.

[36] *See Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (PTAB Feb. 13, 2020) (discussing two-part framework for applying discretion to deny institution under 35 U.S.C. § 325(d)).

documentary evidence in support of any facts asserted in the supplemental briefing, but may not be accompanied by declaratory evidence.

Accordingly, it is

ORDERED that Petitioner is authorized to file a reply to the Preliminary Response, no more than ten (10) pages and limited to addressing the issue of discretionary denial under 35 U.S.C. § 314(a), by March 27, 2020; and it is

FURTHER ORDERED that Patent Owner is authorized to file a sur-reply to Petitioner's reply, no more than ten (10) pages and limited to the issue of discretionary denial under 35 U.S.C. § 314(a), by April 3, 2020.

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EXHIBIT A

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

GENERAL VIDEO, LLC, Plaintiff, v. DELL INC. and DELL TECHNOLOGIES INC., Defendants.	CIVIL ACTION NO. 1:24-cv-01530-ADA **JURY TRIAL DEMANDED**

SCHEDULING ORDER

Pursuant to the Court's April 3, 2025, order that the parties shall comply with this Court's Standing Order Governing Proceedings (OGP) – Patent Cases, the OGP and this Scheduling Order supersede the March 24, 2025, Agreed Scheduling Order (Dkt. No. 42).[1]

Date	Deadline
3/18/2025	Notwithstanding the stay of fact discovery until after the *Markman* hearing as set out in Section III of this Court's OGP, the parties previously agreed to, the previously-entered Agreed Scheduling Order (Dkt. No. 42) provided for, and this Court hereby permits the following limited discovery, which commenced on March 18, 2025: a. Defendants will produce copies of the following that can be found after a reasonable search: (1) communications between Defendants and MPEG LA concerning the DisplayPort Patent Portfolio; and (2) all dated versions of, and/or dated revisions to, "DisplayPort Attachment 1" received or obtained by Defendants before the August 30, 2024, filing of General Video's Complaint (Dkt. No. 1).

[1] *See* OGP § II(3) ("The parties shall file a **motion** to enter an agreed Scheduling Order *that generally tracks the exemplary schedule attached as Exhibit A* to th[e] OGP, which should suit most cases.") (bold emphasis in original; italicized emphasis added).

	b. Defendants will respond to up to five (5) interrogatories propounded by Plaintiff, which interrogatories will be directed to the following subject matters: • Non-infringement contentions; • Unit sales of the accused products as identified in Appendix A to the Complaint (Dkt. No. 1-15) by quarter beginning 6 years prior to the Complaint; • An identification, to the extent known and reasonably accessible, of the DisplayPort hardware and software components in Defendants' products (not limited to the accused products identified in Appendix A to the Complaint (Dkt. No. 1-15)) from the period from August 18, 2018, to the present; • Defendants' first awareness of each of the asserted patents and each version of, and/or revision to, "DisplayPort Attachment 1," including when Defendants received or obtained each dated version of, and/or dated revision to, "DisplayPort Attachment 1" produced pursuant to Subparagraph 9(a)(2) above. c. Plaintiff will respond to up to five (5) interrogatories propounded by Defendants, which interrogatories will be directed to the following subject matters: • Validity contentions; • For each Asserted Patent, the identification of each licensee and the terms of each associated license; • For each Asserted Patent, the ownership history of the patent and the terms of each transaction in the ownership chain; • FRAND commitments or other encumbrances on the Asserted Patents. d. Discovery from third parties is open.

Served on 3/19/2025	Plaintiff serve[d] preliminary[2] infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (i.e., the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
5/19/2025	Defendant serve[d] 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, and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s).
7/10/2025	Parties exchange claim terms for construction.
7/24/2025	Parties exchange proposed claim constructions.
7/31/2025	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 identify the scope of the topics for the witness's expected testimony.[3] 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.
8/7/2025	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.

[2] The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

[3] Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

8/14/2025	Defendant files Opening claim construction brief, including any arguments that any claim terms are indefinite.
9/4/2025	Plaintiff files Responsive claim construction brief.
9/18/2025	Defendant files Reply claim construction brief. Parties to jointly email the law clerks to confirm their *Markman* date and to notify if any venue or jurisdictional motions remain unripe for resolution.
10/2/2025	Plaintiff files a Sur-Reply claim construction brief.
10/7/2025	Parties submit Joint Claim Construction Statement and email the law clerks an editable copy. See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).
10/6/2025	Parties submit optional technical tutorials to the Court and technical advisor (if appointed).
10/16/2025 (or as soon as practicable)[4]	*Markman* Hearing at 9:00 a.m. This date is a placeholder and the Court may adjust this date as the *Markman* hearing approaches.
10/17/2025	Fact Discovery (beyond the limited discovery commenced on March 18, 2025) opens; the parties previously served Initial Disclosures per Rule 26(a) on March 19, 2025.
11/26/2025 (one day less than exemplary schedule to avoid Thanksgiving Holiday on 11/27/2025)	Deadline to add parties.
12/11/2025	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to infringement or invalidity contentions. This deadline does not relieve the parties of their obligation to seasonably amend if new information is identified after initial contentions.

[4] All deadlines hereafter follow the original *Markman* hearing date and do not change if the Court delays the *Markman* hearing.

2/5/2026	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
4/16/2026	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's law clerk to arrange a teleconference with the Court to resolve the disputed issues.
5/14/2026	Close of Fact Discovery.
5/21/2026	Opening Expert Reports.
6/18/2026	Rebuttal Expert Reports.
7/9/2026	Close of Expert Discovery.
7/16/2026	Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. If it helps the parties determine these limits, the parties are encouraged to contact the Court's law clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
7/23/2026	Dispositive motion deadline and Daubert motion deadline. See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical advisor (if appointed). Deadline for parties desiring to consent to trial before the magistrate judge to submit Form AO 85, "Notice, Consent, And Reference Of A Civil Action To A Magistrate Judge," available at https://www.uscourts.gov/forms/civil-forms/notice-consent-and-reference-civil-action-magistrate-judge.
8/6/2026	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, deposition designations).
8/20/2026	Serve objections to pretrial disclosures/rebuttal disclosures.
8/27/2026	Serve objections to rebuttal disclosures; file motions *in limine*.

9/3/2026	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, deposition designations); file oppositions to motions *in limine*. From this date onwards, the parties are obligated to notify the Court of any changes to the asserted patents or claims. Such notification shall be filed on the docket within seven (7) days of the change and shall include a complete listing of all asserted patents and claims. If a change to the asserted patents or claims requires leave of court (for example, if a party is moving for leave to assert additional claims), notification shall not be required until the Court grants leave, at which point the notification must be filed within seven (7) days.
9/10/2026	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to file replies to motions *in limine*.
9/24/2026	Deadline to meet and confer regarding remaining objections and disputes on motions *in limine*.
8/20/2026	Parties to jointly email the Court's law clerk (See OGP at 1) to confirm their pretrial conference and trial dates.
9/21/2026	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions *in limine*.
9/24/2026 (or as soon as practicable)	Final Pretrial Conference. Held in person unless otherwise requested.
10/19/2026 (or as soon as practicable)[5] (added one business day to exemplary schedule so trial starts on a Monday)	Jury Selection/Trial.

[5] If the actual trial date materially differs from the Court's default schedule, the Court will consider reasonable amendments to the case schedule post-*Markman* that are consistent with the Court's default deadlines in light of the actual trial date.

SIGNED this ___ day of June 2025.

_____
ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE