

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

STERLING COMPUTERS CORPORATION,

Plaintiff,

v.

X CORP.,

Defendant.

CASE NO. 1:24-cv-552-DII

JURY TRIAL DEMANDED

AGREED SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 16, the following Agreed Scheduling Order is issued by the Court:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed no later than 60 days before the date of the trial setting.
2. The parties asserting non-declaratory claims for relief shall submit a written offer of settlement to opposing parties within two weeks after the close of fact discovery, and each opposing party shall respond, in writing, on or before two weeks after receipt of the initial written offer of settlement. All offers of settlement are to be private, not filed. The parties are ordered to retain the written offers of settlement and responses so the Court may use them in assessing attorney's fees and costs at the conclusion of the trial.
3. Each party shall complete and file the "Notice Concerning Reference to United States Magistrate Judge" on or before October 15, 2024.
4. On or before October 30, 2024, the parties shall file with the Court a proposed Protective Order relating to confidentiality and privileged materials (pursuant to Federal Rule of Evidence 502).

5. On or before December 18, 2024, Plaintiff shall serve preliminary patent infringement contentions in the form of claim charts 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.
6. On or before February 5, 2025, Defendant shall serve invalidity contentions in the form of claim charts setting forth where in the prior art references each element of the asserted claim(s) are found. Defendant shall also include an identification of any limitations that it contends are indefinite or lack written description under section 112, and an identification of any claims that Defendant contends are directed to ineligible subject matter under section 101. The § 101 contention shall (1) identify the alleged abstract idea, law of nature, and/or natural phenomenon in each challenged claim; (2) identify each claim element alleged to be well-understood, routine, and/or conventional; and (3) to the extent not duplicative of §§ 102/103 prior art contentions, prior art for the contention that claim elements are well-understood, routine, and/or conventional. 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.
7. Amendment of contentions: 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.

8. The following schedule shall apply to claim construction proceedings in this case:
- a) On February 26, 2025, the parties shall concurrently exchange a list of claim terms a party believes should be construed by the Court and identify any claim element a party contends should be governed by 35 U.S.C. § 112(f).
 - b) On March 19, 2025, the parties shall concurrently exchange proposed constructions.
 - c) On March 26, 2025, 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. 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.
 - d) On or before April 2, 2025, the parties shall meet and confer to narrow terms in dispute and exchange a revised list of terms and constructions.
 - e) On May 7, 2025, Defendant shall file its Opening Claim Construction Brief with supporting evidence.¹ The page limit for the Opening Claim Construction Brief shall be 30 pages.²

¹ Subject to the disclosure requirements of paragraph 9(c), any party may submit evidence or testimony from a rebuttal expert in response to a brief where expert testimony is relied upon by the other party. This is consistent with Judge Albright's Standing Order Governing Proceedings in Patent Cases at 14 n.14, which permits use of rebuttal experts. *See* <https://www.txwd.uscourts.gov/wp-content/uploads/2023/01/Standing-Order-Governing-Proceedings-Patent-Cases-01232024.pdf>.

² For all page limits set forth herein, the page count shall not include the caption, signature block, any certificate(s), and exhibits.

- f) On July 2, 2025, Plaintiff shall file its Responsive Claim Construction Brief with supporting evidence. The page limit for the Responsive Claim Construction Brief shall be 30 pages.
 - g) On August 13, 2025, Defendant shall file its Claim Construction Reply Brief. The page limit for the Reply Claim Construction Brief shall be 15 pages.
 - h) On August 27, 2025, Plaintiff shall file its Claim Construction Sur-Reply Brief. The page limit for the Sur-Reply Claim Construction Brief shall be 15 pages.
 - i) On September 12, 2025, the parties shall submit a Joint Claim Construction Statement to the Court including a final joint chart of claim terms to be construed with competing and agree constructions of terms.
 - j) Claim Construction Hearing: the date and time for the Claim Construction Hearing shall be October 22, 2025, at 10:00 a.m.
- 9. Fact discovery shall open on November 11, 2025.
 - 10. The deadline for the substantial completion of document production shall be March 3, 2026.
 - 11. The deadline to serve final infringement contentions and final invalidity contentions shall be January 14, 2026.
 - 12. The parties shall file all motions to amend or supplement pleadings or to join additional parties by March 17, 2026.
 - 13. The deadline for service of deposition notices or subpoenas under Fed. R. Civ. P. 30(b)(6) shall be April 14, 2026. Any notice of 30(b)(6) deposition must be served at least 21 days before the scheduled deposition date.
 - 14. The parties shall complete all fact discovery by June 9, 2026.

15. Non-dispositive motions relating to fact discovery shall be brought by June 23, 2026.
16. All parties with the burden of proof shall file their designation of testifying experts and serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) (“Opening Expert Report”) by July 14, 2026. Parties shall file their designation of rebuttal testifying experts and serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) (“Rebuttal Expert Report”) no later than 6 weeks after having been served with an Opening Expert Report.
17. The parties shall complete all expert discovery by September 22, 2026.
18. Non-dispositive motions relating to expert discovery shall be filed by October 13, 2026.
19. All dispositive motions and motions to strike expert testimony (including *Daubert* motions) shall be filed by October 27, 2026. Responses thereto shall be filed no later than 4 weeks after having been served with a motion. Replies in support of such motions shall be filed no later than 3 weeks after a response, but the Court need not wait for the reply before ruling on the motion. The number of motions for summary judgment (MSJs) or *Daubert* motions is not limited.
 - a) Page Limits: The cumulative page limit for opening briefs for all MSJs shall be 40 pages per side (regardless of the number of motions), and the cumulative page limit for all *Daubert* motions shall be 40 pages per side. Responsive MSJ and *Daubert* briefs are limited to 40 pages total, MSJ and *Daubert* reply briefs are limited to 20 pages total.
20. The Court will set this case for final pretrial conference at a later time. The final pretrial conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. The parties should consult Local Rule

CV-16(f) regarding matters to be filed in advance of the final pretrial conference. After the pretrial conference has been set, the parties shall meet and confer prior to the final pretrial conference to agree upon a schedule for the exchange of materials to be filed in advance of the final pretrial conference.

21. This case is set for jury trial commencing at 9:30 a.m. on April 5, 2027. **Jury selection may be conducted by a United States Magistrate Judge the Friday before the case is set for trial. Given that (1) many cases resolve before trial and (2) the Austin Division has only one active district court judge, the Court may set a criminal case and several civil cases for the same trial week. The Court recognizes the inconvenience this may cause counsel and parties if a trial is moved shortly before the trial date, but the Court must balance that inconvenience with its need to effectively deploy limited judicial resources.**

The parties may modify the deadlines in this Order by agreement, with the exception of the dispositive motions deadline and the trial date. Those dates are firm. The Court may impose sanctions under Federal Rule of Civil Procedure 16(f) if the parties do not make timely submissions under this Order. For cases brought pursuant to Freedom of Information Act (FOIA), the parties may instead follow the standard disclosure process and will have an initial pretrial conference only by request.

SIGNED on October 24, 2024.



ROBERT L. PITMAN
UNITED STATES DISTRICT JUDGE