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

3 STERLING COMPUTERS CORPORATION,) AU:24-CV-00552-DII
)
4 Plaintiff,)
)
5 v.) AUSTIN, TEXAS
)
6 X CORP.,)
)
7 Defendant.) OCTOBER 21, 2024

8 **********
TRANSCRIPT OF INITIAL PRETRIAL CONFERENCE
9 BEFORE THE HONORABLE DUSTIN M. HOWELL
****
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APPEARANCES:
11

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24 Proceedings recorded by electronic sound recording, transcript

25 produced by computer.

1 (Telephone conference)
2 THE COURT: So I'm Dustin Howell. I'm the
3 magistrate judge assigned to your case, and any referrals
4 that the district judge makes in a case would come to me.
5 It's going to be handled by a magistrate judge.
6 Judge Pitman is the sole district judge here in the
7 Austin Division. So whether your case ends with an RP or
8 a DII, all those cases are being managed out of the
9 Pitman chambers.
10 And his courtroom deputy, just so you know --
11 so you've met Katherine Wallace, who is a courtroom
12 deputy in our clerk's office and is helping with this
13 call today, Julie Golden is the courtroom deputy assigned
14 to Judge Pitman's court. And so you may get
15 correspondence from her over the course of the -- of your
16 case.
17 As for the local rules, obviously, you want to
18 familiarize yourself with those, in particular, Rule 7,
19 which governs motion practice and sets deadlines for
20 dispositive and nondispositive motions, along with page
21 limits for those motions. Rule 5.2 governs sealing. And
22 so, to the extent you need to seal something, we ask that
23 you do so in accordance with Rule 5.2. If you don't,
24 your filing might not be sealed or it might be rejected.
25 Your hearings may be on Zoom or in person.

1 Judge Pitman and I both tend to set our hearings by
2 default to take place in person here in the courthouse.
3 Occasionally, I'll set hearings on Zoom if I look at it
4 and it and it seems like it will be the more efficient
5 thing to do.
6 If the parties want to request a hearing that's
7 been scheduled in person to be conducted by Zoom, you can
8 reach out to the courtroom deputy who scheduled the
9 hearing, or the law clerk, whoever you've been in
10 communication with, and we'll take that under
11 consideration.
12 I have a standing order that encourages
13 argument opportunities for newer lawyers. So if you've
14 got a young attorney who helped you with a motion or a
15 response and you want to give them an opportunity to
16 argue that motion, just reach out to my courtroom deputy
17 and let them know and we will -- you know, even if it's
18 something we wouldn't have normally set for a hearing, we
19 will set it for a hearing to give a new lawyer a chance
20 to argue a motion.
21 One rule that some parties overlook and has
22 happened here -- I'll let you know if it has in your
23 particular cases -- Rule -- Local Rule 16(b) requires the
24 parties to file a report of their 26(f) conference. And
25 so, if you haven't done that, I'll let you know. If you

1 haven't and you need to do it, there is a form on the
2 local rule's website. If you go over to the left side of
3 the page and click on appendixes. Appendix N, as in
4 November, is the 26(f) report form. You can fill that
5 out and get it on file and you'll be in compliance with
6 that.
7 As I said, we'll pick a trial date here today
8 for most of your cases. Some of you have contingent
9 deadlines, and so I'll take those up on a case-by-case
10 basis.
11 So those of you who are going to have a jury
12 trial scheduled, know that your jury selection might
13 occur on the Friday before your Monday start date of your
14 trial. And Judge Pitman will schedule your final
15 pretrial conference at some point in the future.
16 The parties can agree among themselves to
17 extend their discovery deadline and other deadlines from
18 the scheduling order except for the dispositive motion
19 deadline, because moving that date will almost certainly
20 necessitate a move of your trial date. And so even if
21 it's agreed, if you're wanting to move your dispositive
22 motion deadline, you need to file a motion for leave.
23 And with respect to trial dates, a couple of
24 things I want to point out. And this -- you can kind of
25 file this under the category of, you know, reasons to

1 consider consenting to the magistrate judge. Because
2 we've got one district judge in the Austin Division,
3 Judge Pitman's trial schedule is very full. And so for a
4 lot of you, when we're picking these dates -- and I
5 looked through the calendar before we started this call.
6 Many of you are going to be the fourth or fifth or, in
7 some cases, the sixth trial being set for that particular
8 day, and that doesn't include criminal trials that might
9 come in, and because of the Speedy Trial Act, it might
10 bump your trial date.
11 So be aware of that. We've got a very stacked
12 trial docket here. And also know that likely in the next
13 year or so there will be, in all likelihood, one or two
14 additional district judges here. And so -- or Judge Ezra
15 might take over some of the cases that are being set
16 today, so your trial date may move as result to that as
17 well.
18 So, to the extent you want to have more control
19 over your scheduling order and flexibility to move
20 deadlines and the trial date around, consider -- consider
21 that when you are considering consent, because my trial
22 schedule is not nearly as stacked up as Judge Pitman's.
23 So I can afford the parties a lot more flexibility in
24 terms of their schedule.
25 So that is it for my introductory remarks. So

now we can go case by case and talk about your particular schedule.

(Unrelated cases called for pretrial conference)

THE COURT: Next up is *Sterling v. X Corp.* Counsel has already made their announcements, and the case number is 1:24-CV-552-DII. Actually, for the sake of ensuring that the record is clear, if counsel for Plaintiff and Defendant will go ahead and state their appearances for this case.

MR. GOODPASTOR: Sure, Your Honor. Chris Goodpastor, DiNovo Price, for Plaintiff Sterling Computers Corporation. I'm joined by Sri Sankaran of Padmanabhan Group.

MR. OKANO: For defendant, David Okano at White & Case for Defendant X Corp. With me is Ethan Plail and Brady Schoenlein.

THE COURT: Good afternoon. Thank you. Okay.

So scrolling through the proposed order here, it looks like we've got the same dispute about noninfringement contention. And so -- and I reached the same conclusion I did with respect to the *Meta* case. Okay. Well, I guess there's more here.

All right. You-all want to talk about the damages contentions? I guess that's something that the defendant is proposing, or is that in the alternative?

1 MR. OKANO: Your Honor, this is David Okano,
2 White & Case. That is only in the alternative. If there
3 are no -- I guess we see no reason to depart from the
4 typical practice in most courts, and that would just mean
5 no inclusion of noninfringement contentions and no other
6 kind of alterations to Judge Albright's typical patent
7 proceedings schedule.
8 THE COURT: Okay. I agree. So we will leave
9 that with no deadline for noninfringement contentions.
10 Looks like you-all want to have your *Markman* in
11 October; is that right?
12 MR. SANKARAN: That is correct, Your Honor.
13 MR. OKANO: Yes, Your Honor.
14 THE COURT: How about October -- hold on just a
15 second to make sure. Okay. October 22nd, 2025, that's a
16 Wednesday at 10:00 a.m.
17 MR. SANKARAN: That's fine for Plaintiff,
18 Your Honor.
19 MR. OKANO: That is fine for Defendant as well,
20 Your Honor.
21 THE COURT: Okay. And you do have a
22 dispositive motion deadline here of October 27th, 2026.
23 It looks like we've got the page limit dispute here. I
24 reached the same conclusion on the page limits that I did
25 in the *Meta* case. We'll use the defendant's language.

1 The soonest trial date four months after your
2 proposed dispositive motion deadline would be March 2nd,
3 2026. How does that look for everybody?
4 MR. OKANO: Your Honor, this is David Okano,
5 White & Case. The parties actually discussed a potential
6 trail date in April, April 12th or 19th. But -- and so
7 if that is available, we would submit that to the Court.
8 But, obviously, if that isn't, we also take the Court's
9 guidance equally.
10 THE COURT: Actually, I'm sorry. I misspoke.
11 If your dispositive motion deadline is 2026, then the
12 trial date would be -- you said April?
13 MR. OKANO: That is correct.
14 THE COURT: I don't think Judge Pitman has
15 anything presently set. I don't have a 2027 calendar for
16 him, but I'm sure there are open trial dates in April.
17 So April 5th is the first Monday of 2027. How does that
18 look?
19 MR. SANKARAN: That's fine for Plaintiffs,
20 Your Honor.
21 MR. OKANO: That is fine for Defendant as well.
22 THE COURT: Okay. So we'll input the
23 scheduling order with the language we discussed for
24 Paragraph 6 and 20 and a *Markman* date of Wednesday,
25 October 22nd, 2025, at 10:00 a.m. and trial date of

April 5th, 2027.

Anything else for us to address while we're all here together?

MR. GOODPASTOR: Not from Plaintiffs, Your Honor.

MR. OKANO: Nothing for Defendant either.

Just one clarification is that the -- the case here also had the similar dispute on the interrogatory language, and I assume this Court will reach the same conclusions as it did in the *Meta* case on that dispute?

THE COURT: Yeah. Yeah. Same -- same conclusion, same reasoning. I think the rules are sufficient to address the -- the ground rules. And if there is a dispute that arises later on, then the parties can raise it in a motion.

MR. OKANO: Thank you, Your Honor.

THE COURT: Anything else?

MR. SANKARAN: Thank you, Your Honor.

THE COURT: Okay. Well, you're free to drop off. Thank you.

(End of transcript)

1 **REPORTER'S CERTIFICATE**

2 I, Arlinda Rodriguez, do hereby certify that the foregoing
3 was transcribed from an electronic recording made at the time
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5 the best of my ability, made from the proceedings in the
6 above-entitled matter, and that the transcript fees and format
7 comply with those prescribed by the Court and Judicial
8 Conference of the United States.
9
10 /S/ Arlinda Rodriguez November 1, 2024
11 ARLINDA RODRIGUEZ DATE
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