

the total number of depositions the parties are allowed to conduct; and (4) the mediator the parties wish to appoint. On October 27, 2025, the parties appeared for the Scheduling Conference requesting that the Court intervene to help resolve the four disputed issues raised by the parties in the Report. At the Scheduling Conference, after hearing arguments from both sides, the Court resolved all of the issues except the claim narrowing deadlines—which the Court decided to take under advisement.² Thus, the sole remaining issue for the Court to decide is whether it should adopt Plaintiffs or Defendants’ proposed claim narrowing deadlines. Accordingly, the Court issues this Order to address this sole remaining issue.

Plaintiffs argue that the Court should adopt its proposed claim narrowing deadlines (Dkt. #78 at pp. 1–2). More specifically, Plaintiffs argue that its proposed deadlines should be adopted based solely on the fact that they are consistent with the EDTX Model Order Focusing Patent Claims and Prior Art to Reduce Costs (the “Model Patent Order”) (Dkt. #78 at p. 2). Additionally, Plaintiffs also contend that if the Court adopts Defendants proposed claim narrowing deadlines—which requires Plaintiffs to significantly narrow its asserted claims very early in the case—it would prejudice its ability to fully prepare and present its infringement case (Dkt. #78 at p. 2).³ On the other hand, Defendants argue that the Court should adopt its proposed claim narrowing deadlines

² The Court made the following rulings at the Scheduling Conference: (1) the Court decided that the trial date entry shall remain on the final scheduling order; (2) the Court appointed Judge Folsom as the mediator to oversee the mediation scheduled in this case but provided that, if needed, the parties could revisit the issue later; and (3) the Court decided that it would not impose a 10 witness deposition limit on the parties and instead adopted a limit of 50 hours for depositions.

³ In addition, Plaintiffs argue that the Court should not adopt Defendants proposed claim narrowing deadlines since they are far more aggressive than those provided for in the Model Patent Order (Dkt. #78 at p. 2). Indeed, Plaintiffs contend that Defendants proposed deadlines would require Plaintiffs to narrow to 32 claims about four months prior to the P.R. 4-4 deadline and further would further require Plaintiffs to get down to 16 claims before the claim construction process has even started and two months before the P.R. 4-4 claim construction discovery deadline (Dkt. #78 at p. 2).

which, if adopted, would require Plaintiffs to significantly narrow its asserted claims at a much earlier date than the Model Patent Order calls for (Dkt. #78 at pp. 2–3).⁴ Indeed, Defendants contend that an order requiring Plaintiffs to narrow its asserted claims at an earlier date than the Model Patent Order provides is particularly warranted in this case given the unique circumstances it presents (Dkt. #78 at pp. 2–3). Specifically, Defendants point to the fact that Plaintiffs have asserted the “patents-in-suit”⁵ in at least four prior litigations, including through trial, which resulted in receipt of at least four sets of invalidity contentions (Dkt. #78 at p. 2). Additionally, the Court has also had an opportunity to construe more than fifteen (15) terms across the four prior litigations (Dkt. #78 at p. 2). Thus, Defendants contend that Plaintiffs should know which of its more than 200 claims it intends to assert against each Defendant at their respective trials (Dkt. #78 at p. 2). Accordingly, Defendants claim that adopting its proposed early claim narrowing deadlines increases efficiencies (i.e., saving time, money, and judicial resources) for both the parties and the Court (Dkt. #78 at pp. 2–3). Lastly, Defendants argue that its request to modify the deadlines in the Model Patent Order and require claim narrowing deadlines to occur before claim construction is supported by the Federal Circuit’s decision in *In re Katz Interactive Call Processing Pat. Litig.*, 639

⁴ Defendants proposed claim narrowing deadlines would require Plaintiffs to do the following: (1) by no later than November 6, 2025, Plaintiffs shall assert no more than 10 claims per patent and no more than 32 claims total; and (2) by no later than December 29, 2025, Plaintiffs shall serve Final Election of Asserted Claims, which shall assert no more than 16 total claims (*See* Dkt. #78 at p. 3; Dkt. #78-2 at p. 2).

⁵ The “patents-in-suit” include five total patents: (1) U.S. Patent No. 8,924,192 (“the ‘192 Patent”); (2) U.S. Patent No. 9,298,864 (“the 864 Patent”); (3) U.S. Patent No. 9,971,678 (“the ‘678 Patent”); (4) U.S. Patent No. 10,353,811 (“the ‘811 Patent”); and (5) U.S. Patent No. 10,691,579 (“the ‘579 Patent”) (Dkt. #1 at ¶ 68).

F.3d 1303 (Fed. Cir. 2011) [hereinafter *In re Katz*].⁶ As discussed below, the Court agrees with Defendants.

The Model Patent Order at issue in this case addresses claim and reference narrowing twice during litigation: “(1) after claim-construction discovery is completed but before claim construction, and (2) after claim construction has ended but before expert reports.” *Morris Routing Techs., LLC v. AT&T Inc.*, 2025 WL 993359, at *3 (E.D. Tex. Apr. 2, 2025) [hereinafter *Morris Routing*]; see also General Order No. 13-20, General Order Adopting Model Order Focusing Patent Claims and Prior Art to Reduce Costs (E.D. Tex. Oct. 29, 2023) at ¶¶ 2–3. The Model Patent Order does not, however, “address claim and reference narrowing *before* discovery.” *Morris Routing*, 2025 WL 993359 at *3 (emphasis added). Nevertheless, it is well-established that “the district court has the inherent authority to perform such narrowing so as to achieve the orderly and expeditious disposition of cases.” *Id.* (citation modified). Indeed, the Federal Circuit has expressly authorized “the district court’s use of pre-discovery claim narrowing in *In re Katz Interactive Call Processing Pat. Litig.*, 639 F.3d 1303, 1312–13 (Fed. Cir. 2011).” *Id.* More importantly, guided by the *In re Katz* decision, courts in this District have routinely order early (pre-discovery) claim narrowing. *Id.* (citation omitted).

Here, the Court finds that this case warrants entry of an order requiring Plaintiffs to narrow its asserted claims at a time before claim construction begins. Plaintiffs correctly assert that this Court has previously required Plaintiffs (and numerous other parties) to agree to the deadlines set forth in the Model Patent Order in prior litigation involving claims akin to the ones presently at

⁶ More specifically, Defendant highlights the section of the *In re Katz* decision where the Federal Circuit affirmed the district court’s decision ordering plaintiffs to initially select no more than 40 claims per defendant group and after discovery to narrow the number of selected claims to 16 per defendant group after finding that the early claim narrowing procedure did not violate plaintiffs’ due process rights.

issue. Plaintiffs' argument, however, fails to consider the unique circumstances presented by this case, which requires the Court to exercise its inherent authority to order early claim narrowing to ensure that the orderly and expeditious disposition of this case is achieved. More specifically, Plaintiffs proposed claim narrowing deadlines fail to account for the other, nearly identical, prior litigation that Plaintiffs have been involved in before this Court. Starting in July 2018 and continuing through December 2023, Plaintiffs filed seven different patent infringement lawsuits against numerous other corporate defendants asserting most, if not all, of the patents-in-suit involved in this case.⁷ Indeed, across all seven cases, Plaintiffs' Complaints use either *identical* or *nearly identical* language to describe the patented invention, the relevant field of technology, and the allegations that support its infringement position.⁸ Thus, Plaintiffs should already know which of its more than 200 claims it intends to assert in this case against Defendants and requiring them to engage in claim construction is a needless waste of both the parties and the Court's time and resources. Accordingly, the Court finds that early claim narrowing is appropriate in this case.

Notwithstanding the fact that the Court agrees with Defendants on the disputed issue of entering an order requiring early claim narrowing in this case, it does not, however, agree with the deadlines proposed by Defendants. The Court recognizes that the parties just appeared before this

⁷ See *Wapp Tech Limited Partnership et al. v. Hewlett-Packard Enter. Co.*, No. 4:18-cv-468 (E.D. Tex. 2018) (alleging infringement of Patent Nos. '192, '864, and '678); *Wapp Tech Limited Partnership et al. v. Micro Focus Int'l PLC*, No. 4:18-cv-496 (E.D. Tex. 2018) (alleging infringement of Patent Nos. '192, '864, and '678); *Wapp Tech Limited Partnership et al. v. Wells Fargo & Co.*, No. 4:18-cv-501 (E.D. Tex. 2018) (alleging infringement of Patent Nos. '192, '864, and '678); *Wapp Tech Limited Partnership et al. v. Bank of America Corp.*, No. 4:18-cv-519 (E.D. Tex. 2018) (alleging infringement of Patent Nos. '192, '864, and '678); *Wapp Tech Limited Partnership et al. v. Bank of America, N.A.*, No. 4:21-cv-670 (E.D. Tex. 2021) (alleging infringement of Patent Nos. '192, '864, '678, '811, and '579); *Wapp Tech Limited Partnership et al. v. Bank of America, N.A.*, No. 4:21-cv-670 (E.D. Tex. 2021) (alleging infringement of Patent Nos. '192, '864, '678, '811, and '579); *Wapp Tech Limited Partnership et al. v. JP Morgan Chase Bank, N.A.*, No. 4:23-cv-1137 (E.D. Tex. 2023) (alleging infringement of Patent Nos. '192, '864, '678, '811, and '579).

⁸ Compare *Wapp Tech Limited Partnership et al. v. JP Morgan Chase Bank, N.A.*, No. 4:23-cv-1137 (Dkt. #1 at ¶¶ 7-30) with *Wapp Tech Limited Partnership et al. v. Apple et al.*, No. 4:25-cv-230 (Dkt. #1 at ¶¶ 44-67).

Court on October 28, 2025—which is only nine (9) days before Defendants first proposed claim narrowing deadline⁹—to try and resolve the issue that is the subject of this Order. Furthermore, the Court did not issue this controlling Order until several days after the conference, which leaves the parties approximately five (5) business days to try and get in contact with each other, align their schedules, and engage in a meaningful meet and confer. Similarly, the Court finds that Defendants’ second proposed claim narrowing deadline (December 29, 2025) is also unworkable. However, the asserted claim narrowing deadlines that the parties agree to during the meet and confer must still occur *before* the parties proceed with claim construction.

Lastly, the Court will briefly address the concern raised by Plaintiffs in the Report that early claim narrowing would unfairly prejudice its ability to fully prepare and present its infringement claims (Dkt. #78 at p. 2). Notwithstanding the foregoing, the Court will allow Plaintiffs to add any claims back upon a showing of good cause. Accordingly, the Court finds that any such prejudice alleged by Plaintiffs is remedied by allowing it to reassert claims upon a showing of good cause.

The Court hereby **ORDERS** that the parties meet and confer to reach an agreement on an agreeable date by which Plaintiffs must narrow its asserted claims and Defendant must narrow its prior art references in this case. However, the earlier date that the parties agree to during the meet and confer must be before the parties proceed with claim construction. It is further **ORDERED** that the parties shall file their agreement resulting from the meet and confer with the Court by no later than **November 16, 2025**. It is further **ORDERED** that the parties in this case shall, moving forward, comply with the other claim-narrowing deadlines and limits set forth in the Model Patent

⁹ Defendants first proposed claim narrowing deadline is November 6, 2025 (*See* Dkt. #78-2 at p. 2)

Order that the parties agree on including, but not limited to, the numerical limits on asserted claims and prior art references.

IT IS SO ORDERED.

SIGNED this 29th day of October, 2025.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE