UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

RED HAT, INC.,	)	
	)	
Plaintiff,	)	Case No. 5:24-cv-505-D-BM
	)	
v.	)	**REPORT OF THE PARTIES' PLANNING MEETING**
	)	
COMPETITIVE ACCESS SYSTEMS, INC.,	)	Fed. R. Civ. P. 26(f)
	)	
	)	
Defendant.	)	

REPORT OF THE PARTIES' PLANNING MEETING

1. The following persons participated in a Rule 26(f) conference on September 11, 2025, by telephone:

Brandon Brown and Yvonne Beeler, representing the plaintiff, Red Hat, Inc.

Scott Eidson, representing the defendant, Competitive Access Systems, Inc.

2. **Initial Disclosures.** The parties will exchange the initial disclosures required by Rule 26(a)(1) on or before September 25, 2025.

3. **Discovery Plan.** The parties propose this discovery plan:

(a) Discovery will be needed on these subjects:

i. The subjects on which discovery may be needed include: all claims, defenses, and damages alleged in the action by any party, including but not limited to the following:

ii. Resolution of any claim construction disputes;

iii. Whether Red Hat has directly infringed each of U.S. Patent Nos. 11,582,343, 11,418,641, 10,868,908, 9,350,649, 8,861,349, 8,228,801, 7,606,156 (the "Asserted Patents") under 35 U.S.C. § 271(a).

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iv. Whether Red Hat has indirectly infringed by inducing infringement of each of the Asserted Patents under 35 U.S.C. § 271(b).

v. Whether any asserted claim of the Asserted Patents is invalid or ineligible under 35 U.S.C. §§ 101, 102, 103, 112, and/or 116.

vi. Whether any asserted claim of the Asserted Patents is unenforceable, including under the doctrine of prosecution laches.

vii. Whether Red Hat does not infringe under the reverse doctrine of equivalents.

viii. Whether CAS's claims of patent infringement are barred by equitable estoppel, ensnarement, and/or waiver.

ix. Whether Red Hat's continued sale of Red Hat Enterprise Linux ("RHEL") following notice of the Asserted Patents constitutes willful infringement and entitles Plaintiff to trebled damages and an award of its reasonable attorneys' fees and expenses in this action.

x. Whether CAS's assertion of patent infringement and licensing demands against Red Hat violated the North Carolina Abusive Patent Assertion Act.

xi. The amount of proper compensatory damages under 35 U.S.C. § 284.

xii. Whether this case is exceptional pursuant to 35 U.S.C. § 285.

(b) Dates for commencing and completing discovery, including discovery to be commenced or completed before other discovery:

The parties do not believe that discovery should be conducted in phases or limited to or focused upon particular issues, except as set forth in the Local Patent Rules regarding claim construction, fact, and expert discovery deadlines. The parties have set forth a schedule for

conducting fact and expert discovery and preparing motions and briefing with respect to liability, damages, and patent claim construction issues in the Proposed Scheduling Order submitted herewith.

The parties have proposed specific dates through claim construction, and linked remaining dates to follow the issuance of the Court's claim construction order. In the parties' experience, this approach allows for the most efficient prosecution of the case, as certain fact and expert discovery issues are simplified by the issuance of the Court's claim construction order. The parties' proposal allows for sufficient time for the parties to engage in *Markman*-related discovery while ensuring that their experts' analyses will be focused only on the Court's actual *Markman* decisions. This approach has been adopted in this District previously, including by Judge Flanagan in *Shibumi Shade v. Beach Shade*, No. 5:21-cv-256-FL, D.I. 91 at 2, 10 (E.D.N.C. Mar. 14, 2023). Likewise, the parties request that the Court set a trial date after the claim construction order is entered or after dispositive motions are decided. All parties have requested trial by jury as to all issues so triable.

(c) Maximum number of interrogatories by each party to another party, along with the dates the answers are due:

The parties agree with maintaining the limitations set forth in Fed. R. Civ. P. 33(a)(1). Each party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. The answers, along with verification, are due 30 days after the date of service of the interrogatories. A party may seek leave to serve additional interrogatories as provided in Fed. R. Civ. P. 33.

(d) Maximum number of requests for admission, along with the dates responses are due:

Each party may serve on any other party no more than 50 requests for admission. The responses are due 30 days after the date of service of the requests. A party may seek leave to serve

additional requests for admission consistent with Rule 26(b)(1) and (2).

(e) Maximum number of depositions by each party:

The parties agree with maintaining the limits of ten depositions set forth in Fed. R. Civ. P. 30. A party may seek leave to take additional depositions as provided in Fed. R. Civ. P. 30(a)(2). The parties may depose disclosed expert witnesses, and any such depositions of disclosed experts shall not count against the limit on the number of depositions.

(f) Limits on the length of depositions, in hours:

Unless otherwise stipulated, the parties agree that each deposition of a witness, including 30(b)(6) witnesses, shall be limited to seven hours, as set forth in Fed. R. Civ. P. 30(d). The parties agree to meet and confer to negotiate additional deposition time if a witness is both designated to provide testimony under Rule 30b(6) and is also deposed in his or her individual capacity under Rule 30(b)(1) and the number of designated topics makes seven hours of deposition time insufficient.

Each expert witness can be deposed for up to 7 hours for each expert report submitted.

(g) Dates for exchanging reports of expert witnesses:

As set forth in Local Patent Rule 305.1, the parties will exchange expert reports after claim construction. The parties have set forth a schedule for conducting fact and expert discovery and preparing motions and briefing with respect to liability, damages, and patent claim construction issues in the Proposed Scheduling Order submitted herewith. Expert reports for issues on which each party bears the burden of proof will be exchanged 30 days after the close of fact discovery, pursuant to LPR 305.1(b). Expert reports for issues on which the opposing party bears the burden of proof will be exchanged 30 days after service of initial expert reports, pursuant to LPR 305.1(c). Rebuttal expert reports will be exchanged 14 days after service of reply expert reports, pursuant to

LPR 305.1(d).

(h) Dates for exchanging dispositive and *Daubert* motions:

The dispositive and *Daubert* motion cut-off will be 30 days after the close of expert discovery, pursuant to LR 7.1(a). Opposition briefs to dispositive and *Daubert* motions will be due 21 days after service of initial dispositive and *Daubert* motions, pursuant to LR 7.1(f)(1). Reply briefs for dispositive and *Daubert* motions are discouraged, but will be allowed within 14 days after service of response pursuant to LR 7.1(g).

(i) Dates for supplementations under Rule 26(e):

Seven (7) days prior to the Pretrial Conference as part of the parties' Pretrial submissions.

(j) Any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced:

The parties do not anticipate any issues arising from disclosure, discovery, or preservation of electronically stored information. The parties have met and conferred regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. The parties anticipate stipulating to an ESI Order that governs their obligations for producing such information.

(k) Any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502.

The parties agree that a protective order is appropriate and intend to adopt the Eastern District of North Carolina's Default Patent Protective Order, which will govern claims of privilege or of protection as to trial-preparation materials and confidential information exchanged during discovery.

4. Other Items:

(a) A date if the parties ask to meet with the court before a scheduling order:

The parties are not asking to meet with the court before a scheduling order.

(b) Requested dates for pretrial conferences:

At this time, the parties are not requesting dates for pretrial conferences. Because the schedule is based off of the issuance of the Court's claim construction order, the parties request that the Court defer setting a trial date and dates for pretrial conferences until after the claim construction order is entered or after dispositive motions are decided.

(c) Final dates for the parties to amend pleadings or to join parties:

December 2, 2025

(d) Final dates to file dispositive motions:

30 days after close of expert discovery

(e) State the prospects for settlement:

The parties are amenable to discussing settlement, but the parties have not engaged in settlement efforts to date. Key discovery or motions necessary to position the parties to negotiate a resolution include resolution of claim construction motions and discovery into the Accused Products and information pertinent to damages, including written discovery and depositions.

(f) Identify any alternative dispute resolution procedure that may enhance settlement prospects and the timing of such procedure:

Pursuant to Local ADR Rule 101, the parties intend to select a mediator and advise the Court of the selection by October 2, 2025 (21 days after the September 11, 2025 Rule 26(f) conference). The parties propose to conduct mediation near the close of fact discovery. Key discovery or motions necessary to position the parties to negotiate a resolution include resolution of claim construction motions and discovery into the Accused Products and information pertinent to damages, including written discovery and depositions.

(g) Final dates for submitting Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, and exhibit lists:

At this time, the parties do not propose final dates for submitting Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, or exhibit lists, as such scheduling is based off of the issuance of the Court's claim construction order.

(h) Final dates to file objections under Rule 26(a)(3):

At this time, the parties do not propose final dates for filing objections under Rule 26(a)(3), as such scheduling is based off of the issuance of the Court's claim construction order.

(i) Suggested trial date and estimate of trial length:

At this time, the parties suggest setting a trial date based off of the issuance of the Court's claim construction order. The parties disagree on the estimated length of trial.

Red Hat Position: Red Hat estimates a trial length of five to seven days.

CAS Position: CAS estimates a trial length of ten days.

(j) Other matters:

The parties agree that service of pleadings, discovery, and other materials in this case shall be by email to all counsel of record in this case.

The parties agree that responses to requests for production, requests for admission, and interrogatories shall be due 30 days from the date of email service.

Narrowing of Asserted Claims and Prior Art: The parties disagree on whether it is necessary at this time to require the parties to narrow the asserted claims and prior art and whether such a deadline must be included in the Court's Scheduling Order. The parties' positions are outlined below.

Red Hat Position Statement: Red Hat proposes a claim narrowing schedule which is set forth in the table below. The seven patents asserted in this case contain a total of 115 claims. Claim narrowing is necessary to "to aid in efficiency" including "prior to claim construction."

Round Rock Rsch., LLC v. Dell Inc., No. 4:11-CV-332, 2012 WL 8017390, at *2 (E.D. Tex. Mar. 26, 2012); *see also Network Prot. Scis., LLC v. Fortinet, Inc.*, No. C 12-01106 WHA, 2013 WL 1949051, at *2 (N.D. Cal. May 9, 2013) (patent owner unreasonably "imposed . . . a bone-crushing burden of conducting a prior art search for more than fifty patent claims").

Courts routinely order claim narrowing before and after Markman proceedings. *See VLSI Tech. LLC v. Intel Corp.*, No. 1:18-cv-00966-CFC, Dkt. 136 (D. Del. Apr. 22, 2019) (patent owner ordered to narrow from 82 claims across five patents to 25 claims prior to *Markman* and then to 18 claims 30 days after the *Markman* order); *Round Rock*, 2012 WL 8017390, at *2 (E.D. Tex. Mar. 26, 2012) (ordering patent owner to "reduce the number of asserted claims [from 82 claims across 10 patents] to forty (40) total claims" prior to *Markman*); *Omnitracs, LLC, et al. v. Motive Techs., Inc.*, No. 3:23-cv-05261-RFL, Dkt. 68 (N.D. Cal., May 9, 2024) (ordering claim narrowing two times prior to the *Markman* order, 14 days after the *Markman* order, and again before trial); *see also Universal Elecs. Inc. v. Roku Inc.*, 2019 WL 1878351, at *2 (C.D. Cal. Mar. 14, 2019) ("The weight of authority holds that claim limitation is proper prior to claim construction, particularly where defendants have already served invalidity contentions."); *Midwest Athletics & Sports All., LLC v. Xerox Corp.*, No. 6:19-CV-6036, 2020 WL 10458196, at *7 n.12 (W.D.N.Y. Feb. 3, 2020) (collecting cases where district courts exercised their authority "to narrow claims where the number of claims is infeasible or unmanageable for trial or dispositive motions"). CAS's assertion that claim narrowing "may be appropriate but only after a court considers the relevant factors" mischaracterizes the holding in *In re Katz*. In fact, the Federal Circuit never rejected claim narrowing as an appropriate approach for district courts or required a rigid list of factors to be met before narrowing any claims. *See In re Katz Interactive Call Processing Pat. Litig.*, 639 F.3d 1303, 1309–13 (Fed. Cir. 2011). Rather, the district court in *In re Katz* ordered the plaintiff to narrow

the case to no more than 40 asserted claims per defendant ***before*** discovery, with additional claim narrowing later. *See id.* The Federal Circuit affirmed and expressly rejected plaintiff's argument that claim narrowing denied it due process. *See id.* at 1311. Indeed, Red Hat's proposed claim narrowing is phased according to the Federal Circuit's guidance. CAS also relies on *Reiffin*, which confirms that claim narrowing is important for judicial efficiency because if claims are not narrowed, the court will "need to revisit claim construction as the litigation progresses." *Reiffin v. Microsoft Corp.*, No. C-98-0266 VRW, 2002 WL 31268220, at *8 (N.D. Cal. Apr. 30, 2002); *see also Arctic Cat, Inc. v. Polaris Indus. Inc.,* 2015 WL 3756409, at *4 (D. Minn. June 12, 2015) ("the vast majority of courts that have ordered claim reduction have done so prior to claim construction" and acknowledging that "reduction after claim construction is too late in the litigation"). Red Hat's claim narrowing schedule attempts to avoid imposing additional burden on the court and the parties during the litigation. Indeed, CAS's own case law from a district court within the Fourth Circuit with a total of 158 asserted claims—similar to the total number here—indicates that claim narrowing is in fact appropriate. *See Univ. of Virginia Pat. Found. v. Gen. Elec. Co.*, No. 3:14CV51, 2015 WL 6958073, at *5-7 (W.D. Va. Nov. 10, 2015) (requiring plaintiff to narrow from 158 claims down to 25 claims for one patent and 15 for another patent before claim construction and "further winnow the number of claims after the claims construction order" because "[i]t is not feasible to try the remaining 158 claims, from two patents, before a jury."); *see also Certusview Techs., LLC v. S & N Locating Servs., LLC*, No. 2:13CV346, 2014 WL 4930803, at *5 (E.D. Va. Oct. 1, 2014) ("the Court will order [plaintiff] to select FIFTEEN (15) representative claims" from 68 total asserted claims and plaintiff "may move the Court for leave to assert any unselected claims upon a showing of good cause."). CAS's citation to *Krausz Indus. Ltd.* is also inapposite as that case dealt with narrowing prior art references, not asserted claims.

See Krausz Indus. Ltd. v. Smith-Blair, Inc., No. 5:12-CV-570-FL, 2016 WL 1574042, at *5 (E.D.N.C. Apr. 19, 2016). Finally, CAS vaguely refers to narrowing prior art references in its position statement and did not make any specific proposal. This came only 24 hours before this submission and well after Red Hat proposed claim narrowing. Red Hat is amenable to narrowing the number of prior art references in response to and based on CAS's narrowing of claims, without which Red Hat cannot determine the scope of CAS's assertion or which prior art references can be streamlined. With respect to the Rule 16 conference that CAS requests, Red Hat defers to the Court on whether any briefing or a hearing is necessary.

Red Hat's Proposed Claim Narrowing Additions to the [PROPOSED] Scheduling Order
• Deadline for CAS to file Selection of Narrowed Asserted Claims (25 total): March 26, 2026 (30 days after service and filing of joint claim construction statement, accounting for the weekend) • Deadline for CAS to file Selection of Narrowed Asserted Claims (15 claims total): TBD (120 days after the entry of the claim construction order) • Deadline for CAS to file Selection of Narrowed Asserted Claims (5 claims total): TBD (7 days after the entry of the Court's order on dispositive motions)

CAS Position Statement: Neither the Local Civil Rules nor the Local Patent Rules of this Court require the parties to narrow the number of asserted claims or prior art references. Though CAS expects that it may narrow the number of asserted claims at the appropriate time (and that Red Hat will likely need to narrow the number of prior art references), requiring the parties to narrow these issues (to arbitrary and highly restrictive numbers proposed by Red Hat) before having the benefit of discovery, a claim construction order, and an opportunity to meet and confer does not advance principles of efficiency and is contrary to due process. Red Hat offers no explanation for its arbitrary imposition of claim narrowing, either with respect to timing or the number of asserted claims. The proposed schedule places arbitrary limits on the number of claims

at arbitrary times. For instance, Red Hat would have CAS reduce its number of asserted claims to 25 claims across seven patents before the parties even file opening claim construction briefs and well before the close of discovery. Red Hat's proposal is so draconian that it would limit CAS to five asserted claims before trial, regardless of how the Court may rule on dispositive motions. Notably, this limitation would penalize CAS such that it would be precluded from asserting more than one claim for each of its seven patents (or even one claim per patent). Red Hat offers no support for such limitations, either by way of logic or its out-of-circuit citations of law. As noted below, the Federal Circuit and district courts in the Fourth Circuit, including this Court, approach the issue in a much more nuanced fashion. Should the Court find claim narrowing is necessary at this time, CAS requests formal briefing and a Rule 16 hearing.

Contrary to Red Hat's assertion that claim narrowing is "necessary" at this time, it *may* be appropriate but only after a court considers relevant factors, including the number of claims, the extent to which the claims are duplicative, and the theories of infringement or invalidity revealed through discovery. *See In re Katz Interactive Call Processing Patent Litig.,* 639 F.3d 1303, 1311–13 (Fed. Cir. 2011). To comport with due process requirements, courts must also "be cognizant that claim limitation can 'come too early in the discovery process, denying the plaintiff the opportunity to determine whether particular claims might raise separate issues of infringement or invalidity in light of the defendants' accused products and proposed defenses.'" *Univ. of Virginia Pat. Found. v. Gen. Elec. Co.*, No. 3:14CV51, 2015 WL 6958073, at *5 (W.D. Va. Nov. 10, 2015) (quoting *In re Katz*, 639 F.3d at 1313 n. 9. As another district court in the Fourth Circuit noted, "Courts have reached a broad spectrum of conclusions concerning the stage of litigation at which it is appropriate to require claim reduction." *Univ. of Virginia Pat. Found. v. Gen. Elec. Co.*, No. 3:14CV51, 2015 WL 6958073, at *6 (W.D. Va. Nov. 10, 2015) (collecting cases). "A court's

objective with this consideration is to ***avoid unduly prejudicing plaintiffs*** by forcing them to choose representative claims before they possess the discovery to choose wisely." *Id*. (emphasis added); *see also* Certusview Techs., LLC v. S & N Locating Servs., LLC, No. 2:13CV346, 2014 WL 4930803, at *1 (E.D. Va. Oct. 1, 2014) (finding it "would have been premature to limit [plaintiff's] claims" during the discovery period when there were disputes with respect to claims and defenses, while noting the possibility at later juncture "if Plaintiff failed to 'adequately limit its claims within a timely manner after receiving the relevant discovery to which it is entitled.'"); Krausz Indus. Ltd. v. Smith-Blair, Inc. No. 5:12-CV-570-FL, 2016 WL 1574042, at *5 (E.D.N.C. Apr. 19, 2016) (denying a motion to limit defendant's number of prior art references and combinations at a stage in litigation well after the Court entered an order on claim construction and after the parties disclosed final infringement and invalidity contentions).

The asserted claims need not be narrowed before a *Markman* hearing, especially since courts are not required to construe every claim term and often focus only on core terms in dispute at claim construction. *See Reiffin v. Microsoft Corp*., No. C-98-0266 VRW, 2002 WL 31268220, at *8 (N.D. Cal. Apr. 30, 2002). Thus, litigants may wait to narrow claims until after claim construction and after infringement discovery, especially "as construction issues may crystallize as infringement issues develop." *Id*. Should the parties need to narrow issues for trial, including the number of asserted claims and number of prior art references, the parties may do so **after** claim construction and discovery but well before trial, especially since there is no trial date. CAS agrees to confer in good faith as to ways to efficiently present evidence at trial, including whether to narrow the number of asserted claims and asserted prior art.

Date: September 25, 2025

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Date: September 25, 2025

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[PROPOSED] SCHEDULING ORDER

Pursuant to Fed. R. Civ. P. 16(b), the parties, having met and conferred as required by Fed. R. Civ. P. 26(f), hereby submit this scheduling order, as set forth below.

- Initial disclosure deadline: September 25, 2025 (14 days after the September 11, 2025 Rule 26(f) conference)
- File Discovery Plan: September 25, 2025 (14 days after the September 11, 2025 Rule 26(f) conference)
- Parties to Select Mediator: October 2, 2025 (21 days after the September 11, 2025 Rule 26(f) conference per Local ADR Rule 101.1c(a))
- Disclosure of Asserted Claim & Infringement Contentions: October 24, 2025 (the parties propose extending to 43 days rather than 30 days after the Rule 26(f) conference)
- Disclosure of Preliminary Invalidity Contentions: December 8, 2025 (45 days after disclosure of infringement contentions)
- Deadline to amend pleadings: December 16, 2025
- Exchange of Proposed Terms and Claim Elements for Construction: January 9, 2025 (the parties propose extending to 32 days rather than 21 days after service of preliminary invalidity contentions to account for the winter holidays)
- Exchange of Preliminary Claim Construction and Extrinsic Evidence: January 26, 2026 (17 days after exchange of proposed terms and claim elements)
- Deadline to File Joint Claim Construction Statement: February 13, 2026 (the parties propose 67 days rather than 60 days after disclosure of preliminary invalidity contentions)

- Completion of Claim Construction Discovery: March 16, 2026 (30 days after service and filing of joint claim construction statement, accounting for the weekend)
- Deadline for Parties to Simultaneously File Opening Claim Construction Briefs: March 30, 2026 (45 days after service and filing of the joint claim construction statement)
- Deadline for parties to simultaneously file Responsive Claim Construction Briefs: April 20, 2026 (21 days after filing opening brief)
- Claim construction hearing: TBD (subject to the Court's calendar)
- Final infringement contentions: TBD (if an exception under LPR 303.6 applies, 30 days after entry of claim construction order)
- Final invalidity contentions: TBD (if an exception under LPR 303.6(d) applies, 50 days after entry of claim construction order)
- Deadline for disclosure for reliance on advice of counsel: TBD (30 days before close of fact discovery or 7 days after ruling on willfulness-related MSJ, whichever is earlier, pursuant to LPR 303.8)
- Mediated Settlement Conference: TBD (Local ADR Rule 101.1a(a), 90 days after entry of claim construction order)
- Close of fact discovery: TBD (120 days after entry of the claim construction order)
- Initial Expert Disclosures under Fed. R. Civ. P. 26 on the issues on which the party bears the burden of proof: TBD (30 days after close of fact discovery)
- Responsive Expert Disclosures on the issues on which the opposing party bears the burden of proof: TBD (30 days after Initial Expert Disclosures)

- Rebuttal Expert Reports Due: TBD (14 days after responsive expert disclosures)
- Expert depositions commence: TBD (7 days after rebuttal expert reports)
- Expert depositions close: TBD (30 days after commencement of expert depositions)
- Deadline to file dispositive and *Daubert* motions: TBD (30 days after close of expert discovery)
- Deadline to file opposition to dispositive and *Daubert* motions: TBD (21 days after opening dispositive and *Daubert* motions)
- Deadline to file reply in support of dispositive motions: TBD (14 days after oppositions)
- Hearing on dispositive motions: Subject to the convenience of the Court's calendar, TBD (at least 14 days following submission of final dispositive brief)
- Pretrial conference: Subject to the convenience of the Court's calendar, TBD (approximately two weeks before trial).
- Jury Trial: TBD

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **REPORT OF THE PARTIES' PLANNING MEETING** with the Clerk of Court using CM/ECF, which will give notice of such filing to all attorneys currently of record in the above-captioned case.

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Dated: September 25, 2025

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