

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

LEXOS MEDIA IP, LLC,

Plaintiff,

v.

EBAY, INC.,

Defendant.

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Civil Action No. 6:22-cv-00648

SCHEDULING ORDER

Plaintiff Lexos Media IP, LLC's and eBay, Inc. filed a Joint Motion for Entry of Agreed Scheduling Order (ECF No. 32). Having considered the Motion and the schedule attached thereto, the Court GRANTS the Motion and ORDERS that the following schedule governs the above captioned case.

Deadline	Item
May 1, 2023	CRSR filed by Plaintiff Lexos Media IP, LLC
May 10, 2023	Plaintiff serves preliminary ¹² 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>i.e.</i> 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.
May 15, 2023	CMC deemed to occur pursuant to OGP 4.3 – Patent Cases
May 30, 2023	The Parties shall file a motion to enter an agreed Scheduling Order. If the parties cannot agree, the parties shall submit a separate Joint Motion for entry of Scheduling Order briefly setting forth their respective positions on items where they cannot agree. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.
June 13, 2023	Deadline to file a motion for inter-district transfer. After this deadline, movants must seek leave of Court and show good cause for the delay.

July 7, 2023	<p>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.</p> <p>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).</p>
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¹² 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.

July 17, 2023	Parties exchange claim terms for construction.
July 31, 2023	Parties exchange proposed claim constructions.
August 7, 2023	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. ¹³ 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.
August 14, 2023	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
August 21, 2023	Defendant files Opening claim construction brief, including any arguments that any claim terms are indefinite.
September 11, 2023	Plaintiff files Responsive claim construction brief.
September 27, 2023	Defendant files Reply claim construction brief.
September 25, 2023	Parties to jointly email the law clerks (<i>see</i> OGP at 1) to confirm their <i>Markman</i> date and to notify if any venue or jurisdictional motions remain unripe for resolution.
October 11, 2023	Plaintiff files a Sur-Reply claim construction brief.
October 13, 2023	Parties submit Joint Claim Construction Statement and email the law clerks an editable copy. <i>See</i> General Issues Note #7 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).
October 16, 2023 (at least 10 days before <i>Markman</i> hearing)	Parties submit optional technical tutorials to the Court and technical advisor (if appointed).

¹³ Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

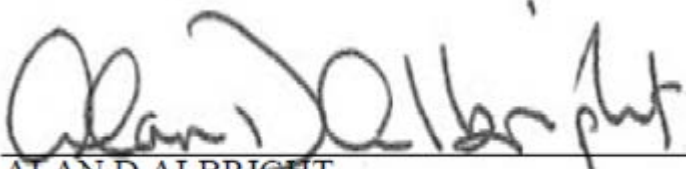
October 23, 2023 (or as soon as practicable) ¹⁴	<i>Markman</i> Hearing at 9:00 a.m. This date is a placeholder and the Court may adjust this date as the <i>Markman</i> hearing approaches.
October 24, 2023 (or 1 business day after <i>Markman</i> hearing)	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
December 5, 2023 (or 6 weeks after <i>Markman</i> Hearing)	Deadline to add parties.
December 19, 2023 (or 8 weeks after <i>Markman</i> 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.
February 13, 2024 (or 16 weeks after <i>Markman</i> 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.)
April 23, 2024 (or 26 weeks after <i>Markman</i> Hearing)	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.
May 21, 2024 (or 30 weeks after <i>Markman</i> Hearing)	Close of Fact Discovery.
May 28, 2024 (or 31 weeks after <i>Markman</i> Hearing)	Opening Expert Reports.
June 24, 2024 (or 35 weeks after <i>Markman</i> Hearing)	Rebuttal Expert Reports.
July 15, 2024 (or 38 weeks after <i>Markman</i> Hearing)	Close of Expert Discovery.
July 22, 2024 (or 39 weeks after <i>Markman</i> 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

¹⁴ All deadlines hereafter follow the original *Markman* hearing date and do not change if the Court delays the *Markman* hearing.

	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.
July 29, 2024 (or 40 weeks after <i>Markman</i> Hearing)	Dispositive motion deadline and <i>Daubert</i> motion deadline. See General Issues Note #7 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).
August 12, 2024 (or 42 weeks after <i>Markman</i> Hearing)	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
August 26, 2024 (or 44 weeks after <i>Markman</i> Hearing)	Serve objections to pretrial disclosures/rebuttal disclosures.
September 2, 2024 (or 45 weeks after <i>Markman</i> Hearing)	Serve objections to rebuttal disclosures; file Motions <i>in limine</i> .
September 9, 2024 (or 46 weeks after <i>Markman</i> Hearing)	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i>
September 16, 2024 (or 46 weeks after <i>Markman</i> 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 meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .
8 weeks before trial	Parties to jointly email the Court's law clerk (<i>See</i> 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 <i>in limine</i> .
October 7, 2024 (or 49 weeks after <i>Markman</i> hearing (or as soon as practicable))	Final Pretrial Conference. Held in person unless otherwise requested.

October 28, 2024 (or 52 weeks after <i>Markman</i> Hearing (or as soon as practicable)) ¹⁵	Jury Selection/Trial.
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SIGNED this 29th day of May, 2023.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

¹⁵ 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.