

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

TIMEBASE PTY LTD.,

Plaintiff,

vs.

THE THOMSON CORPORATION,  
WEST PUBLISHING CORPORATION,  
and WEST SERVICES, INC.,

Defendants.

**Civil No. 07-1687 (JNE/JJG)**

**JOINT MOTION FOR  
MODIFICATION OF THE  
SECOND AMENDED PRETRIAL  
SCHEDULING ORDER**

**INTRODUCTION**

Plaintiff TimeBase Pty Ltd. and defendants The Thomson Corporation, West Publishing Corporation, and West Services, Inc. (collectively “the parties”), each acting through duly authorized counsel, hereby jointly move the Court pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 16.3 for an order modifying the Second Amended Pretrial Scheduling Order to provide for an extension of the discovery and remaining deadlines.

As set forth below, the parties believe that good cause exists for a modest extension of the schedule given the need to complete foreign discovery and other depositions in a timely and efficient manner, and in order for the parties to have time to complete expert discovery after the Claim Construction Hearing, which is scheduled for September 23, 2010 before Judge Ericksen. The parties agree on (or do not object to) each of the proposed revised dates set forth in the proposed Order submitted herewith,

except that the parties do not agree on what the revised deadline should be for dispositive motions or for the trial-ready date. Accordingly, for those dates, the parties have set forth their respective positions at the conclusion of this Joint Motion.

### **LOCAL RULE 16.3 STATEMENT**

Pursuant to Local Rule 16.3, the parties state as follows:

1. What Discovery Remains to Be Completed: As explained below, the parties have completed the bulk of discovery. In particular, the parties have completed discovery relating to claim construction and have largely completed written and document discovery. In addition, the parties have taken or are scheduled to take approximately 20 depositions before the original fact discovery cut-off of August 31, 2010. These depositions include third-party depositions scheduled for Australia in August, some of which may be conducted pursuant to letters rogatory.

The parties need to complete the scheduled depositions and additional third-party depositions. Although the bulk of these depositions have been scheduled to be completed before the current deadline, given the full calendar through the end of the current discovery period, it is anticipated that an extension will be required to schedule the few outstanding depositions that remain and to accommodate third parties who cannot make themselves available on the currently proposed dates. In addition, some further written and document discovery will likely arise out of the upcoming depositions, including the Australian depositions scheduled for the first part of August. Finally, expert discovery—which under the current schedule is not set to begin before October 1, 2010—needs to be

completed after the Court completes its Claim Construction Hearing and issues its Claim Construction Order.

2. What Discovery Has Been Completed: The parties have completed the bulk of discovery in this case except for fact depositions and expert discovery. The parties have exchanged and responded to numerous sets of written discovery, produced thousands of pages of documents, and completed discovery relating to claim construction (including the exchange of multiple Claim Charts and Prior Art Statements and briefing for the Claim Construction Hearing set for September 23, 2010 before Judge Ericksen). The parties also have taken or are scheduled to take approximately 20 depositions before the original discovery cut-off of August 31, 2010.

3. Why All Discovery Has Not Yet Been Completed: The current deadline for fact discovery is August 31, 2010. As noted above, the parties have completed the bulk of fact discovery and have been able to schedule most depositions within the original fact discovery deadline. Because much of August will be devoted to travel to Australia and conducting discovery of witnesses in Australia, however, the parties have been unable to efficiently schedule all remaining depositions by August 31, 2010, particularly additional third-party depositions. In addition, the parties believe that some additional time may be needed to complete some limited additional written and document discovery, particularly from third parties, arising out of the upcoming depositions.

With respect to expert discovery, the current deadline for initial expert reports of October 1, 2010 was set before the parties knew when the Claim Construction Hearing could be scheduled before Judge Ericksen. The Claim Construction Hearing is now set

for September 23, 2010. Because the parties' experts will need to apply the claim constructions decided upon by Judge Ericksen after she issues her Claim Construction Order, *see, e.g., Am. Med. Sys., Inc. v. Laser Peripherals, LLC*, Civil No. 08-4798(JNE/FLN), 2010 WL 1957479, \*8–\*9 (D. Minn. May 13, 2010) (Ericksen, J.) (granting motion to exclude technical expert's opinion because it did not apply the claim construction adopted by the court and thus was "based on incorrect legal standards"); *EZ Dock, Inc. v. Schafer Sys.*, No. Civ. 98-2364(RHK/AJB), 2003 WL 1610781, at \*12(D. Minn. Mar. 8, 2003) (Kyle, J.) (excluding expert opinion to the extent it did not apply the court's claim construction), and because Judge Ericksen will need a reasonable amount of time in which to issue such an order, the parties believe that additional time will be needed in order to prepare expert reports and complete expert discovery.

4. How Long It Will Take to Complete Discovery: The parties believe that a modest extension of approximately 60 days until October 29, 2010 will be sufficient in which to complete fact discovery.

For expert discovery, because the experts will need to apply the claim constructions as determined by Judge Ericksen in her Claim Construction Order, the parties agree on (or do not object to) an extension of the expert discovery schedule of approximately four months in order for Judge Ericksen to decide and issue her Claim Construction Order and for the parties to submit expert reports and complete expert discovery.

**PROPOSED REVISED PRETRIAL SCHEDULE**

**Agreed On (or Not Objected to) Dates.** Based on the foregoing, the parties agree on (or do not object to) the following revised dates for the pretrial schedule:

Activity	Current Deadline	Proposed Deadline
Close of Fact Discovery	8/31/10	10/29/10
Identification of Experts	8/31/10	1/5/11
Initial Expert Reports	10/1/10	2/7/11
Rebuttal Reports	11/5/10	3/11/11
Close of Expert Discovery	12/17/10	4/29/11
Nondispositive Motions for Fact Discovery	9/14/10	11/15/10
Nondispositive Motions for Expert Discovery	12/17/10	5/13/11

**Dates on Which There Is Disagreement.** The parties have not been able to agree on proposed revisions for two dates: the deadline for dispositive motions and the proposed trial-ready date.

*Plaintiff's Position.* Plaintiff proposes that the dispositive motion deadline be set at April 4, 2011 and that the trial-ready date remain at June 1, 2011. Plaintiff notes that the present schedule is the one requested by the defendants when plaintiff filed its second amended complaint last November. Although plaintiff does not object to the other extensions proposed above, plaintiff does not wish to alter the dispositive motion

deadline by more than two months or the trial ready date of June 1, 2011, especially where the earlier of these two cases has been pending in this Court since May 2007.

*Defendants' Position.* Defendants propose that the dispositive motion deadline be June 10, 2011. Defendants believe that the dispositive motion deadline needs to be set after the expert discovery cut-off of April 29, 2011 in order for the parties to effectively prepare motions for summary judgment. Otherwise, the parties would not be able to rely on expert depositions as part of their dispositive motions. Similarly, defendants propose August 1, 2011 as the trial-ready date (which is a modest extension of two months from the current trial-ready date of June 1, 2011). This date would allow the Court time to consider and rule on any dispositive motions before trial.

### **CONCLUSION**

For all of the foregoing reasons, the parties respectively request that the Court issue an Order in the form submitted herewith making their proposed changes to the Second Amended Pretrial Scheduling Order. For the Court's convenience, the proposed Order provided to the Court via e-mail contains the agreed-upon dates together with blank lines for the dispositive motion and trial-ready dates (the two dates on which the parties are unable to agree). In addition, the parties are submitting a red-line version of the proposed Order showing changes from the current Second Amended Pretrial Scheduling Order.

Dated: July 20, 2010

**NIRO, SCAVONE, HALLER & NIRO**

**FAEGRE & BENSON LLP**

By:

*s/ Joseph N. Hosteny*

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By:

*s/ Calvin L. Litsey*

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