

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WESTERN DIGITAL)	
CORPORATION AND)	
SUBSIDIARIES, ET AL.,)	
)	
Petitioner(s),)	
)	
v.)	Docket Nos. 18984-18,
)	4818-19.
COMMISSIONER OF INTERNAL)	
REVENUE,)	
)	
Respondent)	

ORDER

On February 3, 2020, the Court issued an Order setting the consolidated cases for an October 12, 2021, trial and directing the parties to adhere to the pretrial order requested by the parties. On July 20, 2020, the parties jointly moved to amend the pretrial order.

Upon due consideration, it is

ORDERED that the parties' joint motion to amend pretrial scheduling Order, filed July 20, 2020, is granted. It is further

ORDERED that the six-week special session of the Court set to begin at 10:00 a.m. on Tuesday, October 12, 2021, is continued, and that the trial of this case will commence in San Francisco, California, on May 16, 2022. It is further

ORDERED that if a party intends to serve a non-party subpoena for the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, that party shall provide notice to the other party by serving notice and a copy of any such non-party subpoena on the other party at least five days before the subpoena is served on a non-party. It is further

ORDERED that the Court's February 3, 2020, Order is amended with all remaining deadlines in that Order replaced with the following revised pretrial schedule:

(a) December 1, 2020: Last date for serving interrogatories, requests for production, and requests for admissions except as set forth in paragraph (k) below;

(b) February 8, 2021: Last date for identifying expert witnesses by exchanging: (i) the expert's name and business address, (ii) the expert's curriculum vitae, (iii) a list of all publications authored by the expert within the preceding ten years, (iv) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years, and (v) a summary of anticipated topics of the expert's testimony;

(c) February 18, 2021: Last date to provide notice of fact-witness depositions. The parties will use their best efforts to agree on the number, scheduling, location, and process of interviews or depositions no later than January 15, 2021. This deadline does not apply to any fact witnesses the parties had not previously interviewed or deposed that an expert identifies in an opening report, as set forth in paragraph (1) below;

(d) February 22, 2021: Last date to serve on non-parties any subpoenas for the production of documents, electronically stored information, or tangible things or the inspection of premises before trial except as set forth in paragraph (k) below;

(e) March 18, 2021: Last date to file motions with respect to all fact-witness depositions for which notification was provided by February 18, 2021;

(f) March 26, 2021: Last date to file: (i) motions to compel responses to interrogatories and requests for production and (ii) motions to review the sufficiency of the answers or objections to requests for admissions, except as set forth in paragraph (q) below;

(g) April 8, 2021: Last date to supplement identification of expert witnesses (by exchanging the information listed in paragraph (b)) in the event opposing party has identified an expert in a particular area not covered by the other party;

(h) May 21, 2021: End interview and deposition period with respect to party and non-party fact-witnesses except as set forth in paragraph (1) below;

(i) September 2, 2021: Exchange opening expert reports and submit them to the Court;

(j) September 9, 2021: Exchange expert workpapers relating to opening expert reports. Expert workpapers include: (i) any facts, data, documents, or other information considered by the expert witness in forming the opinions to be offered by the expert (the "Opinions"), including assumptions that the party's attorney provided and that the expert relied on in forming the Opinions, (ii) copies of any sources not generally publicly available, (iii) worksheets, schedules, and other documents reflecting computations considered by the expert in forming the Opinions, and (iv) any exhibits that will be used as a summary of or support for the Opinions (this does not apply to exhibits under Federal Rule of Evidence 1006);

(k) September 23, 2021: Last date to serve nonparty subpoenas, interrogatories, requests for production, and requests for admissions relating to any factual information reasonably first learned by a party from the other party's opening expert reports;

(l) September 23, 2021: Last date to provide notice of interviews or depositions for fact witnesses who an expert identifies in an opening report and the parties had not previously interviewed or deposed. Any such interviews or depositions shall be limited to specific topics not addressed in any prior interviews or depositions. The parties will use their best efforts to agree on the number, scheduling, location, and process of these interviews or depositions no later than August 27, 2021;

(m) October 1, 2021: Last date to file dispositive motions;

(n) October 8, 2021: Last date to file motions with respect to all fact-witness depositions for which notification was provided by September 23, 2021;

(o) October 15, 2021: Last date to file oppositions to motions with respect to fact-witness depositions filed by October 8, 2021;

(p) November 5, 2021: Last date to complete agreed interviews or depositions of fact witnesses who an expert identifies in an opening report and the parties had not previously interviewed or deposed;

(q) November 8, 2021: Last date to file (solely with respect to the limited additional fact discovery contemplated in paragraph (k)): (i) motions to compel responses to interrogatories and requests for production and (ii) motions to review the sufficiency of the answers or objections to requests for admissions;

(r) December 2, 2021: Exchange rebuttal expert reports and submit them to the Court;

(s) December 9, 2021: Exchange expert workpapers relating to rebuttal expert reports. Expert workpapers include the information listed in paragraph (j);

(t) January 10, 2022: Begin expert deposition period. The parties will use their best efforts to agree on the number, scheduling, location, and process of the depositions no later than December 17, 2021;

(u) February 25, 2022: End of expert deposition period;

(v) March 4, 2022: Last date to file motions to compel stipulation;

(w) March 18, 2022: Last date to file responses to motions to compel stipulation;

(x) March 28, 2022: Exchange pretrial memoranda and submit them to the Court. The pretrial memoranda must set forth (i) the issues to be tried, (ii) a summary of the pertinent facts and applicable law, (iii) a description of any major evidentiary issues expected to arise at trial, and (iv) a description of any other significant problems on which a ruling will be required. The pretrial memoranda shall also list all witnesses who will or may testify at trial, including all experts, and provide brief summaries of the anticipated testimony of those witnesses. Witnesses who are not identified will not be permitted to testify at trial without leave of Court upon sufficient showing of good cause, but either party may separately call any fact-witness who is listed as a witness but not called by the other party;

(y) April 4, 2022: Exchange documents not previously stipulated or exchanged that either party plans to introduce into evidence. This excludes trial demonstratives and documents to be used solely for impeachment;

(z) April 18, 2022: Last date to file motions in limine;

(aa) May 2, 2022: Last date to file responses to motions in limine;

(bb) May 16, 2022: Trial commences.

**(Signed) Patrick J. Urda
Judge**

Dated: Washington, D.C.
September 9, 2020