

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PARTEC AG and BF EXAQC AG,

Plaintiffs,

vs.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 2:24-cv-00433-RWS-RSP

JURY TRIAL DEMANDED

**PLAINTIFFS' OPPOSITION TO MICROSOFT'S MOTION
FOR EXTENSION OF DEADLINES AND CONTINUANCE OF TRIAL DATE**

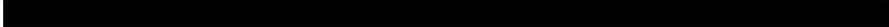


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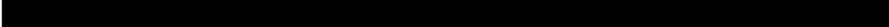
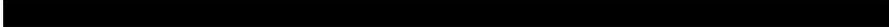


TABLE OF DEFINED TERMS

Abbreviation	Description
Dkt. No.	Filings on this Court’s docket.
Plaintiffs	Plaintiffs ParTec AG and BF exaQC AG.
Microsoft	Defendant Microsoft Corporation.
Mot.	Microsoft’s Motion for Extension of Deadlines and Continuance of Trial Date (Dkt. No. 144).
Ex. A–D	Exhibits filed with Microsoft’s Motion for Extension of Deadlines and Continuance of Trial Date. (Dkt. No. 143-1, 143-2, 144-2, 144-3).
Ex. 1	Exhibit attached to Declaration of Jacob B. Levin, filed contemporaneously with this opposition.
FIPA	Third-Party FIPA Frohwitter Intellectual Property AG.
IPCom	Third-Party IPCom GmbH & Co. KG.
LANL	Third-Party Los Alamos National Laboratory.
CUI	Controlled Unclassified Information.

Emphases added unless otherwise indicated.



I. INTRODUCTION

After sixteen months of discovery, Microsoft now seeks to extend case deadlines and continue the trial claiming it has too much left to do. But each basis Microsoft attempts to rely on in support of its request is directly traceable to its own lack of diligence. The trial date has already been pushed back once, which created ten extra weeks for fact discovery. *See* Dkt. No. 37. The Court should not delay the case again just because Microsoft squandered the ample time it had.

First, Microsoft invokes Plaintiffs’ recent service of supplemental infringement contentions, but Microsoft itself is responsible for this timing as it belatedly demanded supplementation after possessing Plaintiffs’ initial contentions for an *entire* year. Second, Microsoft claims it needs time to seek a supplemental protective order to obtain nonpublic documents from LANL, but it failed to diligently pursue discovery from LANL or seek the supposedly necessary order. Third, Microsoft contends it needs additional time to pursue discovery on its license counterclaims yet neglects to disclose that it waited until the tail end of discovery to assert those claims despite having known about the relevant license since this case was filed. Fourth, Microsoft’s complaint about the time remaining for depositions ignores that Microsoft chose to put its people up for deposition and take depositions of Plaintiffs’ personnel in the final month of discovery. Fifth, Microsoft asks to pause the trial for two Hague requests that it initiated late in discovery and that are unnecessary to its claims.

In short, Microsoft asks the Court to delay the vindication of Plaintiffs’ patent rights so that Microsoft can pursue endless discovery—much of it of questionable or speculative relevance—that it should have pursued months ago. The Court should deny Microsoft’s motion.

II. BACKGROUND

On June 10, 2024, Plaintiffs filed a complaint alleging that Microsoft’s Azure AI infrastructure infringes three patents (the “Asserted Patents”) that generally teach systems and

methods for dynamic resource management in heterogenous computing systems.¹ Dkt. No. 1. Discovery began on October 4, 2024, with the entry of the Discovery Order. Dkt. No. 23. The original Docket Control Order, with a November 17, 2025 fact discovery close and an April 6, 2026 trial date, was amended to extend both deadlines by ten weeks. *See* Dkt. Nos. 26, 37, 48. Fact discovery now closes on January 26, 2026, by which point the parties will have had nearly sixteen months of discovery. Dkt. No. 48. On December 15, 2025, Microsoft approached Plaintiffs about moving to extend discovery and trial an additional two months. Plaintiffs suggested that the parties could try to work on an amended schedule that would extend discovery without affecting the trial date. Microsoft refused even to consider Plaintiffs’ offer and instead filed the instant motion. Five specific aspects of discovery are relevant to Microsoft’s motion.

A. Plaintiff’s Infringement Contentions

On September 4, 2024, Plaintiffs served infringement contentions that identified the Accused Instrumentality as the “Azure AI infrastructure” based on Microsoft public documents and statements. Dkt. No. 96, Ex. 1. The parties relied on the definition of the Accused Instrumentality and Plaintiffs’ infringement contentions without issue for more than nine months. *See* Dkt. No. 96 at 5–9. Then, in July 2025—more than a year after the case was filed—Microsoft argued for the first time that Plaintiffs’ contentions charted separate instrumentalities together that needed to be charted separately: an “OpenAI Supercomputer” and Microsoft Azure AI infrastructure managed by a Microsoft service called “Singularity.” Although objecting to Microsoft’s attempt to redefine the Azure AI infrastructure solely for the purposes of this litigation and in a manner inconsistent with its public statements, Plaintiffs offered a compromise. At a meet and confer on August 15, Plaintiffs stated that they would supplement their contentions provided

¹ Microsoft’s motion incorrectly states that Plaintiffs “filed this action on June 21, 2024.” Mot. at 1; *see* Dkt. No. 1 (entering complaint on June 10, 2024).

Microsoft completed the production of long outstanding technical information, including source code and documents about the OpenAI Supercomputer that Microsoft admitted were relevant and in its possession but that Microsoft refused to produce. Microsoft never responded. Instead, more than a month later and one year after Plaintiffs served their initial contentions, Microsoft moved to compel supplemental infringement contentions on September 25. Dkt. No. 88. Plaintiffs opposed the motion and separately moved to compel the withheld OpenAI documents. *See* Dkt. Nos. 96, 97.

In early December, in the hopes of minimizing the number of outstanding matters pending before the Court, Plaintiffs agreed to voluntarily amend their infringement contentions as Microsoft requested while continuing to disagree with the merits of Microsoft’s arguments. *See* Dkt. No. 129. Recognizing the pending close of fact-discovery, Plaintiffs agreed to serve their supplemental contentions just two weeks after filing the joint status report. *Id.* The Court entered an order consistent with this agreement and directed the parties to provide an update on the contested OpenAI discovery by January 9. Dkt. No. 131.

B. Discovery from Los Alamos National Laboratory

On October 15 and November 13, 2024—*i.e.*, over one year ago—Microsoft served subpoenas on LANL seeking discovery related to the Roadrunner supercomputer. On March 17, 2025—more than five months after serving its first subpoena—Microsoft proposed its first set of search terms to LANL. Ex. C at 23–24. LANL proposed slightly modified search terms that would reduce the number of responsive documents from 1,467 to 717 and “help speed up the classification and export control review.” *Id.* at 21. Microsoft refused. *Id.* at 20. Instead, Microsoft told LANL—without consulting Plaintiffs or the Court—that “

[REDACTED]

[REDACTED].” *Id.* LANL responded that “[REDACTED]

[REDACTED].” *Id.* at 18.

Given Microsoft’s refusal to agree to a narrower set of search terms, LANL told Microsoft that it would take until November 2025 to complete its review. *Id.* at 15–16. Then, on October 10, LANL told Microsoft that its review was “[REDACTED]” and inquired about the possibility of an extension. *Id.* at 13. After being advised of the fact discovery deadline, LANL told Microsoft on October 28—at the tail end of the government shutdown—that it would [REDACTED]

[REDACTED]” and committed to scheduling a deposition before January 26, 2026. *Id.* at 9.

On November 20, LANL, without explanation, sent Microsoft “[REDACTED]

[REDACTED]”² *Id.* at 3. After sitting on this request for two weeks, Microsoft represented to Plaintiffs that LANL would only produce documents before the fact discovery deadline if “[REDACTED]

[REDACTED]” and asked Plaintiffs to agree to a draft supplemental protective order. Ex. D at 4. Microsoft did not share that the idea for a protective order was originally Microsoft’s, that LANL had previously stated [REDACTED]

[REDACTED], or that LANL had committed to completing its review by December 31, 2025. *Id.*

Plaintiffs told Microsoft that they could not agree to “the entry of a supplemental protective order along the lines proposed.” *Id.* at 2. Plaintiffs explained that because none of their officers or directors are U.S. persons, the terms of the protective order would exclude them from proceedings, including trial, when the documents were discussed, prejudicing Plaintiffs’ ability to prosecute their case. *Id.* Plaintiffs also objected to a provision in the order that would give LANL the ability

² Microsoft’s exhibit omits communications between Microsoft and LANL. *See* Ex. C.

[REDACTED]

to produce documents to Microsoft while prohibiting the sharing of those documents with Plaintiffs—even their U.S. counsel—in plain violation of this Court’s discovery order. *Id.* At a meet and confer, Microsoft agreed that it would contact LANL to see if it could put forward an alternative proposal for Plaintiffs’ consideration. *See id.* at 1. Microsoft never followed up with Plaintiffs. Instead, Microsoft told LANL on December 11 that it “plans on filing an opposed motion for entry of the supplemental order.” Ex. C at 1. Microsoft then waited nearly three weeks before filing its motion on December 29. Dkt. No. 151.

Despite Microsoft’s contention that LANL would produce documents only if the Court implements a supplemental protective order, LANL produced 887 responsive documents on December 18—the day before Microsoft filed the instant motion. Microsoft makes no mention of this production in its motion and only served the LANL discovery on Plaintiffs on December 23—the day before Christmas Eve. A deposition of an LANL witness was scheduled for January 8, 2026. Ex. D at 2. On December 31—New Year’s Eve—Microsoft decided to cancel the LANL deposition in favor of a yet to be determined date later in January.

C. Discovery from Third Parties ICom and FIPA

On April 9, 2018, Microsoft entered an agreement (the “ICom Agreement”) with third parties ICom and FIPA to settle ongoing patent infringement litigation in England and Germany.

The ICom Agreement [REDACTED]

[REDACTED]

[REDACTED].

Despite Microsoft being a signatory to this agreement and obviously aware of it from the day Plaintiffs filed their complaint, Microsoft waited *more than 15 months* to assert that it is licensed to the Asserted Patents under the ICom Agreement through some convoluted argument seeking to pierce the corporate veil—a delay that is telling of the merits of Microsoft’s theory. *See* Dkt. No. 89.

■

Microsoft seeks sweeping discovery into all aspects of FIPA and IPCom in the hopes of uncovering evidence to support its baseless theories. But rather than seek discovery from IPCom and FIPA through the Hague Convention, Microsoft instead mailed subpoenas to FIPA and IPCom in violation of German law, emailed subpoenas in contravention of the Hague Convention, and attempted to serve several U.S. lawyers that had previously represented IPCom and FIPA, all of whom told Microsoft that they were not authorized to accept the subpoenas. *See* Dkt. No. 116. After these improper service attempts failed, Microsoft waited *more than a month*, until November 3, 2025, to move for alternative service. *Id.* The Court promptly denied the motion for failure to show sufficient minimum contacts but granted Microsoft leave to renew. Dkt. No. 119. Microsoft then waited *an additional three weeks* to renew its motion, in which it chose to dispute the Court's understanding of the law rather than make the showing the Court told Microsoft was required under the circumstances. Dkt. No. 126. Given Microsoft's continued failure to properly seek service on FIPA and IPCom and its unexplained delays in the face of the close of fact discovery, Plaintiffs opposed Microsoft's renewed motion for alternative service which is currently pending.

D. Depositions

On December 11, six weeks before the close of fact discovery Microsoft served 30(b)(1) notices seeking depositions of five of Plaintiffs' officers and directors. On December 18, Microsoft served a notice for a sixth ParTec employee. Microsoft's 30(b)(1) notices all request deposition dates in January. Plaintiffs have already offered dates for the majority of the witnesses and are in the process of determining the availability of the remaining individuals. Plaintiffs will offer dates for the depositions to occur before the close of fact discovery.

Plaintiffs, rather than waiting until the final weeks of discovery to begin taking depositions, asked in mid-November for "dates in December" that several of Microsoft employees were available for deposition. Ex. 1 at 11. Microsoft responded *two weeks* later saying that, with one

exception, it would not make its employees available until January.³ *Id.* at 7–9. Plaintiffs subsequently accepted the deposition dates in January Microsoft proposed and noticed depositions for the remainder of its 30(b)(1) witnesses to take place before fact discovery closes. *Id.* at 3–6.

Microsoft and Plaintiffs served their 30(b)(6) notices on November 19 and 21 respectively. Plaintiffs promptly responded to Microsoft’s notice—despite the fact it contained 164 proposed topics—and indicated the topics on which it would designate a corporate representative to testify. Microsoft has yet to communicate with Plaintiffs regarding their response or Plaintiffs’ 30(b)(6) notice, which contains more than a hundred fewer topics.

E. Hague Discovery

Microsoft first moved to serve letters rogatory pursuant to the Hague Convention in February 2025—eight months after this suit began and four months after discovery opened. Dkt. No. 39. This first set included a request for evidence from the Jülich Supercomputing Centre in Germany—one of the two requests upon which Microsoft now bases its motion. At the time, Plaintiffs noted Microsoft’s delay:

Discovery has been open for four months and the information Microsoft seeks in the present letters relates to documents that Plaintiffs served with their preliminary infringement contentions on September 4, 2024. Yet Microsoft is only now asking the Court to issue the requested letters. Microsoft has not been diligent.

Dkt. No. 40. The other request on which relies—that seeking evidence from LuxProvide SA—was rather solicited two months later (i.e., six months after discovery began). *See* Dkt. No. 51, Ex. 10.

III. ARGUMENT

Under Fed. R. Civ. P. 16(b)(4) a schedule may be modified only for “good cause.” When considering whether such good cause exists, Courts consider: “(1) the explanation for the failure

³ Microsoft said one employee was available on December 10. Ex. 1 at 9. Plaintiffs had unavoidable conflicts on that date and proposed six other dates in December as alternatives. *Id.* at 8. Microsoft responded by offering to make the witness available in January. *Id.* at 7.

[REDACTED]

to [complete the discovery within the deadline]; (2) the importance of the [modification of the deadline]; (3) potential prejudice in allowing the [modification]; and (4) the availability of a continuance to cure such prejudice.” *Alexander v. Martin*, 2010 WL 11531247, at *3 (E.D. Tex. June 24, 2010). As for factors one and two, Microsoft’s motion fails because it cannot show, as it must, “that the deadlines cannot reasonably be met *despite the diligence of the party needing the extension.*” *Filgueira v. U.S. Bank Nat. Ass’n*, 734 F.3d 420, 422 (5th Cir. 2013) (quotation omitted). Microsoft’s dilatory conduct is not good cause and the discovery it seeks is not important enough to overlook its lack of diligence. As to factors three and four, Microsoft’s proposed extension to the schedule would seriously prejudice plaintiffs and is not curable by a continuance.

A. Microsoft Has Not Been Diligent

Microsoft offers five reasons why it contends a continuance is necessary in this case: (1) Plaintiffs’ supplemental infringement contentions, (2) Microsoft’s subpoena to LANL, (3) Microsoft’s motion for alternative service, (4) upcoming depositions, and (5) two pending Hague requests. But each purported reason is directly traceable to Microsoft’s lack of diligence and none involves discovery that warrants delaying trial and the vindication of Plaintiffs’ patent rights.

1. Supplemented Infringement Contentions Are Being Served Now at Microsoft’s Belated Demand

Microsoft’s motion argues that the supplemental infringement contentions Plaintiffs recently served are justification for a continuance while ignoring that Plaintiffs served supplemental contentions late in discovery because *Microsoft demanded supplemental contentions late in discovery*. Microsoft received Plaintiffs’ initial contentions on September 4, 2024 and then waited *nine months* to challenge their sufficiency. Microsoft’s claimed deficiencies—that Plaintiffs’ initial infringement contentions purportedly charted separate instrumentalities together and omitted theories for claim limitations—were not the sort that take nearly a year to recognize.

Microsoft’s delay was simply lack of diligence. Microsoft also waited an additional three months, until September 25, 2025, to move to compel supplemental contentions, compounding the delay and further showing a lack of diligence. Dkt. No. 88. While Microsoft’s motion was pending, Plaintiffs agreed to serve supplemental contentions to resolve the dispute and reduce the number of issues before the Court, and Plaintiffs did so. Microsoft cannot use the timing of Plaintiffs’ supplemental contentions as a reason for extending the case schedule when *Microsoft inexplicably demanded those supplemental contentions late in discovery*.

Microsoft’s argument that it needs time to “prepar[e] supplemental invalidity contentions” based on Plaintiffs’ supplemental infringement contentions is legally incorrect. Mot. at 8. Defendants do not “need[] ... infringement contentions in order to provide invalidity contentions which are based on the patent claims and the prior art.” *Sonrai Memory Ltd. v. Micron Tech., Inc.*, 2024 WL 5185359, at *2 (W.D. Tex. May 20, 2024). “Indeed, invalidity theories ... that compare the accused products to the prior art are improper.” *Id.* Plaintiffs’ supplemental contentions did not assert any additional claims or accuse additional products.

Microsoft’s contention that it requires additional time to “analyze ParTec’s new theories and prepare its responsive discovery” because “OpenAI—not Microsoft—operates the OpenAI Supercomputer” is disingenuous. Mot. at 8. Microsoft built and maintained the OpenAI Supercomputer and knows how it operated. *See, e.g.*, Dkt. No. 96, Ex. 2 at 2 ([REDACTED] [REDACTED]). Microsoft has already produced some discovery on the supercomputer and has access to much more as evidenced by the fact that Microsoft is unilaterally withholding documents about the supercomputer from production. Further, Microsoft has been on notice that the OpenAI Supercomputer is accused since at least September 4, 2024. *See* Dkt. No. 97 (noting that Plaintiffs’

initial infringement contentions reference or name the OpenAI Supercomputer thirty-four different times, not counting dependent claims that cite back to earlier independent claims or evidence). If Microsoft needed to subpoena OpenAI to prepare its defenses, it should have done so long ago.

Microsoft’s claim that it or OpenAI needs time to assess confidentiality concerns before deciding whether to produce outstanding discovery is similarly baseless. The OpenAI Supercomputer has been accused throughout this case, *see* Dkt. No. 97, and there can certainly be no doubt now that Plaintiffs have separately charted it as Microsoft wanted. Moreover, the existing protective order allows documents to be marked “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY,” with robust protections for both. Dkt. No. 30. Because the OpenAI Supercomputer is plainly accused and the protective order has robust protections for confidential information, neither Microsoft nor OpenAI have any basis to continue withholding discovery (not that they ever did). *See Holcombe v. Advanced Integration Tech.*, 2018 WL 3819974, at *5 (E.D. Tex. Aug. 10, 2018) (overruling “confidential and proprietary objections” because a “protective order already governs this case”). Microsoft simply needs to agree to produce the relevant documents. If Microsoft will not, then the Court should compel production, as Plaintiffs requested.

2. Microsoft Has Not Been Diligent in Pursuing Discovery from LANL or Fortright About the “Need” for a Supplemental Protective Order

Microsoft’s assertion that it has diligently sought discovery from third-party LANL does not bear scrutiny. Microsoft blames the October 2025 government shutdown for delays but ignores that it first served a subpoena on LANL *a year* before the shutdown, in October 2024. It then waited more than *five months* to even provide search terms. Ex. C at 23–24. And Microsoft at no point moved to compel production to ensure it had the discovery in time. Any delay in discovery is a result of Microsoft’s feet dragging. In all events, Microsoft appears to be receiving the discovery it seeks. LANL produced 887 documents on December 18—the day before Microsoft

[REDACTED]

explanation for why it waited *fifteen months* into litigation to add claims and defenses derived from a license that *it signed* years before this litigation began and that Microsoft thus knew about from the day this case was filed. Moreover, even after inexplicably delaying the assertion of its licensing arguments, Microsoft has failed to diligently pursue discovery to support its theory. Rather than immediately seek expedited discovery through the Hague Convention, Microsoft pursued a variety of improper attempts to serve German entities. After learning that its attempts to circumvent the Hague convention and serve FIPA and IPCom failed, Microsoft sat on its hands for a *month*. It then filed for alternative service on November 3. Dkt. No. 116. When the Court promptly denied that motion with leave to refile, Dkt. No. 119, Microsoft *waited three weeks* to renew its motion, Dkt. No. 126. Microsoft’s decision not to pursue discovery related to the IPCom Agreement immediately when the case was filed or diligently once the license claim was added are not adequate grounds for extending discovery or delaying trial.

The discovery Microsoft seeks from FIPA and IPCom is not fairly described as case “critical.” Mot. at 12. It is a fishing expedition that seeks to disregard corporate entities. Microsoft speculates that FIPA and IPCom are actually the alter egos of Bernhard Frohwitter, who is also the CEO of Plaintiffs ParTec and BFX. By extension, Microsoft argues, the IPCom License,

[REDACTED]

[REDACTED]

[REDACTED]. *See* Dkt. 89. Setting aside the legal problems with Microsoft’s convoluted and unprecedented application of corporate veil piercing, the Court should not delay the vindication of Plaintiffs’ patent rights so Microsoft can rummage around the records of third parties in hopes of uncovering evidence of its speculative theory. *See Monarch Assur. P.L.C. v. United States*, 244 F.3d 1356, 1365 (Fed. Cir. 2001) (stating that “the trial court is not expected

to, nor should it, simply allow [a party] to embark on a wide-ranging fishing expedition in hopes that there may be gold out there somewhere”).

4. Microsoft Decided to Wait Until the Final Month of Discovery to Seek and Schedule Depositions

Microsoft contends that there are numerous depositions outstanding that “cannot realistically be completed in the time remaining.” Mot. at 10. Left unstated, however, is that Microsoft decided to wait until the final month of discovery both to seek depositions of Plaintiffs’ employees and to make its own personnel available for depositions. Microsoft was free to take depositions earlier in discovery. Instead, Microsoft chose to spend the discovery period deposing six non-parties across Europe, all of which required foreign courts to hold hearings to conduct the examinations. Microsoft inexplicably waited until mid-December to serve all but one of its 30(b)(1) notices. All these notices requested depositions that would occur in January. Likewise, Microsoft did not cooperate with Plaintiffs’ attempts to schedule depositions of Microsoft witnesses in December. That said, all 30(b)(1) witnesses will be deposed before the end of discovery. Plaintiffs will make its witnesses available, and Microsoft is obligated to do the same.

Microsoft also gestures at the fact that the parties have not designated corporate representatives on their respective 30(b)(6) topics. Plaintiffs responded to Microsoft’s 30(b)(6) notice on December 15, and their 30(b)(1) witnesses will testify regarding the agreed upon topics before the close of discovery. Microsoft has not yet responded to Plaintiffs’ 30(b)(6) notice served nearly six weeks ago and it cannot justify an extension by unilaterally refusing to respond to deposition requests. Microsoft must make witnesses available before the end of discovery.

In short, January will certainly be a busy month, but Microsoft’s decision to wait until the eleventh hour to take depositions and make its witnesses available is not a reason to delay this trial. The depositions must and will take place before the discovery deadline.

5. Microsoft Did Not Diligently Pursue Discovery Through the Hague

Microsoft finally suggests that the Court should delay the trial because of two outstanding Hague requests. Microsoft first moved for the issuance of letters rogatory in February 2025 despite having the requisite information to submit those requests upon receiving Plaintiffs’ preliminary infringement contentions *five months* earlier. And one of the two outstanding requests was not even included in Microsoft’s first tranche of Hague requests but rather submitted an additional *two months* later in April 2025. The delays Microsoft attempts to attribute to the Hague process are thus traceable, yet again, to Microsoft.

Moreover, the discovery Microsoft seeks from its outstanding Hague requests to LuxProvide and Jülich Supercomputing Centre do not justify an extension. LuxProvide was not established until July 2019—well after the priority dates of all three Asserted Patents. *See* LuxProvide, *About Us*, <https://www.luxprovide.lu/who-are-we/> (last accessed December 24, 2025). It is unclear what information LuxProvide could provide “relating to the conception, development, and attribution of the asserted patents,” Mot. at 14, when it did not exist until after applications for all three patents were filed. Although the discovery sought from the Jülich Supercomputing Centre is potentially relevant, it is duplicative and cumulative. Microsoft has separately subpoenaed the director of the Jülich Supercomputing Centre—and inventor on the asserted patents—Thomas Lippert. Dr. Lippert has already produced relevant documents and will be deposed on January 14, 2026. *See Vanleave v. Linqvist*, 2024 WL 3834385, at *3 (E.D. Tex. Aug. 14, 2024) (finding subpoenas issued to non-parties were duplicative and cumulative where relevant information was “already obtained (or, at the minimum could have [been] obtained)”).

B. A Continuance Would Prejudice Plaintiffs

A continuance, based on Microsoft’s repeated and unjustified lack of diligence, would unfairly prejudice Plaintiffs. This Court and others have held repeatedly that plaintiffs have an

interest in the timely enforcement of their patent rights. *See, e.g., Uniloc 2017 LLC v. Samsung Elecs. Am., Inc.*, 2020 WL 1433960, at *4 (E.D. Tex. Mar. 24, 2020) (“[A] plaintiff has a right to timely enforce its patents.”). This is true “even when the patent holder has only sought monetary relief,” *VideoShare, LLC v. Meta Platforms Inc.*, 2022 WL 2718986, at *2 (W.D. Tex. July 12, 2022), and “could be made whole by money damages,” *Team Worldwide Corp. v. Wal-Mart Stores, Inc.*, 2018 WL 2722051, at *4 (E.D. Tex. June 6, 2018) (quotation omitted).

Microsoft’s reliance on *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307 (Fed. Cir. 2014), to argue that Plaintiffs would not be prejudiced is misplaced. *VirtualAgility* concerned a stay pending CBM review under the statutory framework provided for in AIA § 18(b)(1)—not the “good cause” inquiry of Fed. R. Civ. P. 16(b) at issue here. *Id.* at 1309. The Federal Circuit even contrasted an ordinary prejudice inquiry like the one at issue here with the “undue prejudice” standard called for by the statute which it described as akin to an “irreparable harm-type inquiry.” *Id.* at 1318. Even under the heightened standard, the Federal Circuit concluded that delayed realization of monetary damages “weigh[ed] slightly in favor of denying a stay” and only decided that a stay was warranted because the other factors cut “heavily” in the other direction. *Id.* at 1320. In short, *VirtualAgility* does not support the proposition that Microsoft’s lack of diligence is an excuse to delay the enforcement of Plaintiffs’ patent rights.

Finally, “[a] continuance would not cure this prejudice because the delay itself is prejudicial, and a continuance would unnecessarily delay trial.” *Bob Daemrich Photography, Inc. v. Scholastic, Inc.*, 2018 WL 6265025, at *1 (W.D. Tex. Aug. 22, 2018).

IV. CONCLUSION

For the foregoing reasons, the Court should deny Microsoft’s request for an extension of case deadlines.



Dated: January 2, 2026

Respectfully submitted,

/s/ Jacob B. Levin

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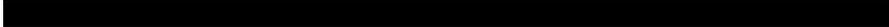
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CERTIFICATE OF SERVICE

This is to certify that on January 2, 2026, all counsel of record were served a copy of the foregoing via email.

/s/ Jacob B. Levin
Jacob B. Levin

[REDACTED]

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