

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES, *et al.*,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

No. 1:23-cv-00108-LMB-JFA

GOOGLE LLC'S MOTION TO RESET TRIAL DATE

PURSUANT TO Rule 40 of the Federal Rules of Civil Procedure, and Local Civil Rule 7(G), Defendant, Google LLC, moves to reset the trial date on the following grounds:

1. On Friday, February 2, 2024, Plaintiffs filed a motion to accelerate a previously scheduled March 22, 2024, status conference and to propose a schedule that included a proposed trial commencement date of July 8, 2024. (Dkt. No. 517 at 3.) Although Google opposed other relief sought in Plaintiffs' motion and intended to respond in a written filing, which Plaintiffs noted in their motion (Dkt. No. 517 at 2), Google was not intending to oppose the trial commencement date of July 8, 2024.

2. On Monday, February 5, 2024, the Court granted Plaintiffs' motion in part by accelerating the date of the status conference to February 23, 2024. In that order, the Court also set a trial commencement date of September 9, 2024. (Dkt. No. 525.)

3. Respectfully, Google alerts the Court to a current scheduling conflict. Specifically, Google's lead trial counsel, Karen L. Dunn, Esq. and William A. Isaacson, Esq. of the firm Paul, Weiss, Rifkind, Wharton & Garrison, LLP, are trial counsel of record for Defendants Qualcomm Inc., Qualcomm Technologies Inc., and Nuvia, Inc. ("Qualcomm") in the matter *ARM Ltd. v. Qualcomm Inc., et al*, No. 1:22-cv-01146-MN (D. Del.). That case has

been set for a five (5) day jury trial commencing on September 23, 2024. Prior to this Court's February 5, 2024 scheduling order, Qualcomm had already filed a motion to continue the September 23, 2024, trial to December 9, 2024, which the Plaintiff in that case has now opposed. In accordance with the rules in the District of Delaware, Qualcomm immediately notified that court and the opposing party of the conflict now presented. The Court in Delaware has not yet ruled.

4. Google also immediately notified Plaintiffs in this action and began the meet and confer process prior to filing this Motion.

5. Unless a continuance is granted in the *ARM v. Qualcomm* case, the September 9 trial date in this case presents a trial conflict for Google's lead counsel. While the parties might differ in their estimates of how long the jury trial in this case will be, they agree that it will be longer than two weeks.

6. To the extent the *ARM v. Qualcomm* court does not grant Qualcomm's motion to move the trial date in that case, Google respectfully asks the Court to reset the date of *U.S. v. Google* so as not to conflict with the *ARM v. Qualcomm* trial and at a date convenient to the Plaintiffs and the Court.

7. Pursuant to Rule 40, the Court has "broad discretion" when scheduling a trial. *See Clinton v. Jones*, 520 U.S. 681, 706-07 (1997); *see also Latham v. Crofters, Inc.*, 492 F.2d 913, 914 (4th Cir. 1974) (discretion to grant continuance). To justify the adjustment of a trial date, the movant must show "good cause." E.D. Va. Civ. R. 7(G). In scheduling matters for trial, "the District Court properly may give consideration to other demands upon the time and energies of counsel." *Freehill v. Lewis*, 355 F.2d 46, 48 (4th Cir. 1965). Google respectfully submits that the trial conflict of its lead trial counsel constitutes good cause to adjust the trial commencement date of this action until after the expected conclusion of the *ARM v. Qualcomm* case in Delaware to the extent that the *ARM v. Qualcomm* court does not grant Qualcomm's

motion to move the trial date in that case. *Cf. U.S. v. Powell*, 237 F. App'x 821, 824 (4th Cir. 2007) (“We conclude that the district court properly granted the Government’s motion for an extension because Powell’s attorney’s scheduling conflicts during the seventy-day trial window contributed to the need for an extension.”); *United States v. Daryl Bank*, 2020 WL 5913993, at *2 (E.D. Va. Oct. 6, 2020) (ordering continuance of trial where counsel for defendant was unavailable on date trial was scheduled to begin “given a scheduling conflict with a separate trial”).

7. Google has met and conferred with Plaintiffs, and Google includes the following statement requested by Plaintiffs: “Plaintiffs object to Defendant’s motion as premature until such time, if any, that the U.S. District Court in Delaware denies the pending request for an extension of the trial date in that matter. To the extent that the Delaware Court denies the pending request for an extension, Plaintiffs defer to this Court’s judgment as to how to balance the Plaintiffs’ objective in bringing this matter to prompt resolution against Defendant’s desire to have each of its trial counsel present for the entire duration of the trial.”

WHEREFORE, Google respectfully requests that the Court reset the trial date when the parties meet with the Court on February 23, 2024.

A proposed order is submitted herewith.

Dated: February 9, 2024

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Respectfully submitted,

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