

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

NETWORK-1 TECHNOLOGIES, INC.,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY,  
HEWLETT PACKARD ENTERPRISE  
COMPANY,

Defendants.

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**CIVIL ACTION NO. 6:13-CV-00072-RWS**

**ORDER**

Before the Court is Plaintiff Network-1 Technologies, Inc. (“Network-1”) and Defendants Hewlett-Packard Company and Hewlett Packard Enterprise Company’s (collectively, “HP”) Joint Opposed Submission with Respect to Network-1’s Motion for a Brief Continuance of the Pretrial Conference Trial Dates (Docket No. 300). In the Joint Submission, Network-1 asks for a two-week continuance of the Pretrial Conference (currently scheduled for July 15, 2021) and a corresponding continuance of the trial (currently scheduled to begin August 2, 2021). HP opposes both requests. For the reasons below, Network-1’s request for a continuance of the Pretrial Conference is **GRANTED** and its request for a continuance of the trial is **DENIED**. The Pretrial Conference is hereby **RESET** from July 15, 2021 to **July 22, 2021 at 9:30 a.m.**

Network-1 asks to push the Pretrial Conference and trial because its lead attorney is currently trying a case in California Superior Court in San Diego. Docket No. 300 at 1; *Retrovirox, Inc. v. The Scripps Research Institute*, Case No. 37-2018-00040727-CU-BC-CTL (California Superior Court for San Diego County). Network-1 says it originally believed that the *Retrovirox*

trial would end before July 15, 2021, but that the trial is now scheduled to finish on July 22, 2021 or later. *Id.* at 1, 3. Network-1 believes its lead attorney's potential absence from the Pretrial Conference here provides good cause justifying a brief continuance. Docket No. 300 at 2–10 (arguing that each of the four good-cause factors from *Reliance Ins. Co. v. The Louisiana Land & Exploration Co.*, 110 F.3d 253, 257 (5th Cir. 1997), weigh in favor of a continuance). It also asks the Court to continue the trial by two weeks so the parties can fully incorporate the Court's rulings on their outstanding disputes into their trial preparation and strategy. Docket No. 300 at 7.

HP opposes moving either the Pretrial Conference or the trial. It claims that continuing the trial at this late stage would cause it substantial prejudice because it has already cleared the schedules of dozens of people, including its client representatives, its fact witnesses, its expert witnesses and its trial counsel. *Id.* at 11. HP has also made nonrefundable arrangements for things like hotel rooms, office space, office equipment and catering. *Id.* at 10–11. HP also points out that Network-1 has not identified an actual conflict with the current trial setting, but instead used a conflict with the Pretrial Conference to push for a full continuance. *Id.* at 11. HP also represents that many individuals that are important to its defense are not available for a trial in late August, as Network-1 requests. *Id.* at 11–12. Finally, HP argues that moving the Pretrial Conference is unwarranted here because Network-1 waited until so late to notify the Court of its attorney's conflict and because he is not needed at the Pretrial Conference, given that he missed multiple similar hearings before the previous trial in this case. *Id.* at 13–14.

Network-1 has not shown good cause to continue the current trial setting. Courts in the Fifth Circuit consider four factors in determining whether good cause exists: (1) the explanation for the failure to meet 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. *Reliance Ins.*, 110 F.3d at 257. Here, Network-1's explanation for its inability to meet the current trial setting (factor 1) provides little justification for Network-1's request (factor 2), particularly in light of the potential prejudice to HP (factor 3).

Network-1's only explanation for being unable to maintain the current trial setting is that its lead trial counsel cannot attend the currently scheduled Pretrial Conference.<sup>1</sup> But lead counsel's other trial will have finished by August 2 and so Network-1 has not shown any actual conflict with the current trial setting. While pushing the Pretrial Conference closer to the start of trial will increase the burden on both parties in preparing for trial, it will not do so unreasonably. No doubt, the Court's rulings will affect how the parties choose to present their cases. But this is not the first time the parties have tried this case and that previous trial will allow them to streamline their efforts this time around. The Court also hopes to resolve many of the parties' disputes at the Pretrial Conference, and the remainder very shortly thereafter, giving the parties roughly 10 days to incorporate those rulings rather than the 17 days provided under the current schedule.

Even if the parties had agreed to a short continuance of several weeks of the trial setting, the Court could not accommodate that request given the Court's current calendar. Within the past three months, the Court has tried six jury trials to verdict and held many hearings. The Court's upcoming schedule is similarly congested. Any continuance in this matter will likely result in a three- to four-month delay of the trial. It is thus

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<sup>1</sup> In evaluating Network-1's request for a trial continuance, it is perplexing that Network-1 waited until now to raise lead counsel's unavailability. It waited until July 7 to raise the potential conflict with HP and July 8 to raise it with the Court. Docket No. 300-1 (Email correspondence between counsel for Network-1 and HP). It has provided little explanation for that delay.

**ORDERED** that Network-1's request to continue the Pretrial Conference is **GRANTED**.

The Pretrial Conference is **RESET** from July 15, 2021 to **July 22, 2021 at 9:30 a.m.** in Texarkana,

Texas. Network-1's request to continue the trial is **DENIED**.

**SIGNED this 12th day of July, 2021.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE