

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL/NORTHERN DIVISION

Date: 6/20/03

Time: 4:13 pm

Mag: David Nuffer

Caldera Systems, Inc.,  
Plaintiff,

Case No. 2:03 CV 294 DAK

vs.

SCHEDULING ORDER

International Business Machines,  
Defendant.

Pursuant to Fed.R. Civ P. 16(b), Magistrate Judge David Nuffer received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for August 13, 2003 at 9:30 a.m. is VACATED.

This case is referred to Magistrate Judge David Nuffer only for Initial Pretrial Scheduling under DUCivR 16-1(b) and is NOT referred under DUCivR 72-2 (b) or (c). Therefore, the name of Magistrate Judge David Nuffer should NOT appear on the caption of future pleadings. The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

**\*\*ALL TIMES 5 PM UNLESS INDICATED\*\***

I. PLEADINGS/MOTIONS:	DATE	TIME
a. Cutoff for Motion to Amend Pleadings (Includes Motion to Add Parties)	<u>10/1/03</u>	_____
b. Cutoff for Dispositive Motions	<u>11/10/04</u>	_____
II DISCLOSURE		
a. Was Rule 26(f)(1) Conference held?	<u>Yes</u>	_____
b. Was 26(a)(1) Initial Disclosure Completed?	<u>9/4/03</u>	_____
c. Has Attorney Planning Meeting Form been submitted?	<u>yes</u>	_____
d. Date(s) for Other 26(a)(1) proceedings	_____	_____
e. Rule 26(a)(2) Reports from Retained Experts <sup>1</sup>		
Plaintiff(s)	<u>8/25/04</u>	_____
Defendant(s)	<u>9/24/04</u>	_____
Counter Reports	<u>10/8/04</u>	_____

23

**SCHEDULING ORDER -2**

f.	Rule 26(a)(3) Pretrial Disclosures <sup>2</sup>		<u>DATE</u>	<u>TIME</u>
	Plaintiff(s)		<u>2/11/05</u>	_____
	Defendant(s)		<u>2/25/05</u>	_____
III.	<b>DISCOVERY CUTOFF</b>		<u>8/4/04 - fact *</u>	
	*If additional fact discovery is made necessary by expert reports or depositions, it may take place until 10/22/04.		<u>10/22/04 - expert</u>	
IV.	<b>DISCOVERY STIPULATIONS AND ORDERS</b>		_____	_____
V.	<b>PRETRIAL CONFERENCES:</b>			
	a. Special Attorney Conference <sup>3</sup> on or before		<u>3/11/05</u>	_____
	b. Settlement Conference <sup>4</sup> on or before		<u>3/11/05</u>	_____
	c. Final Supplementation			_____
	d. Final Pretrial Conference		<u>3/28/05</u>	2:30 p.m.
VI.	<b>TRIAL</b>	<u>LENGTH</u>	<u>TIME</u>	<u>DATE</u>
	a. Bench Trial			
	b. Jury Trial	<u>5 weeks</u>	<u>8:30 a.m.</u>	<u>4/11/05</u>
	Jurors:                      Six		Twelve ✓	
VII.	<b>ALTERNATIVE DISPUTE RESOLUTION</b>			
	a. Referral to Court-Annexed Mediation		<u>NO</u>	
	b. Referral to Court-Annexed Arbitration		<u>NO</u>	
VIII.	<b>LIMITATIONS ON DISCOVERY</b>			<u>NUMBER</u>
	a. Maximum Number of Depositions by Plaintiff(s)			<u>40 (non-expert)</u>
	b. Maximum Number of Depositions by Defendant(s)			<u>40 (non-expert)</u>
	c. Maximum Number of Hours for Taking Depositions (unless extended by agreement of parties) *except for 2 witnesses which can be 2 days of 7 hours each day.			<u>7 *</u>
	d. Maximum Interrogatories by any Party to any Party			<u>25</u>
	e. Maximum requests for admissions by any Party to any Party			<u>25</u>

**SCHEDULING ORDER -3**

**IX. OTHER MATTERS:**

- a. **Nature of Claim:**
  
- b. **Settlement Potential:**
  
- c. **Other:** Where practicable, documents will be produced electronically or via CD to avoid unnecessary expense and effort. Originals will be made available for inspection upon request.

**Appearances by Plaintiff(s):**

**Appearances by Defendant(s):**

**Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial.**

Dated this 10 day of July, 2003.

**BY THE COURT:**



**David Nuffer**  
**U.S. Magistrate Judge**

1. The identity of experts and the subject of their testimony shall be disclosed as soon as an expert is retained or, in the case of an employee-expert, as soon as directed to prepare a report. Within 14 days of the expert report deadlines, the parties shall make their respective experts available for deposition.
  
2. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
  
3. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
  
4. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference. DUCivR 16-3(c).

United States District Court  
for the  
District of Utah  
July 11, 2003

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cv-00294

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Brent O. Hatch, Esq.  
HATCH JAMES & DODGE  
10 W BROADWAY STE 400  
SALT LAKE CITY, UT 84101  
EMAIL

Fred O. Goldberg, Esq.  
BERGER SINGERMAN  
200 S BISCAYNE BLVD STE 1000  
MIAMI, FL 33131

Mark J. Heise, Esq.  
BOIES SCHILLER & FLEXNER  
100 SE 2ND ST STE 2800  
MIAMI, FL 33131  
EMAIL

Stephen Neal Zack, Esq.  
BOIES SCHILLER & FLEXNER  
100 SE 2ND ST STE 2800  
MIAMI, FL 33131  
EMAIL

Debra Weiss Goodstone, Esq.  
BOIES SCHILLER & FLEXNER  
100 SE 2ND ST STE 2800  
MIAMI, FL 33131  
EMAIL

David Boies, Esq.  
BOIES SCHILLER & FLEXNER  
100 SE 2ND ST STE 2800  
MIAMI, FL 33131

Mr. Alan L Sullivan, Esq.  
SNELL & WILMER LLP  
15 W SOUTH TEMPLE STE 1200  
GATEWAY TOWER W  
SALT LAKE CITY, UT 84101  
EMAIL

Evan R. Chesler, Esq.  
CRAVATH SWAINE & MOORE  
825 EIGHTH AVE  
NEW YORK, NY 10019