

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Plaintiff,

v.

Case No.

Honorable Terrence G. Berg

Defendant.

NOTICE AND ORDER
SETTING SCHEDULING CONFERENCE IN PATENT
INFRINGEMENT CASE

Counsel are hereby notified to appear on _____ at _____ in the Chambers of Judge Terrence G. Berg, Theodore Levin U.S. Courthouse, 231 W. Lafayette, Detroit, Michigan for a Scheduling Conference in the above-referenced action.

The Court further **ORDERS** as follows:

- **MODEL RULE 26(F) REPORT AND SCHEDULING ORDER:** In order to efficiently manage patent infringement cases, this Court has adopted a Model Rule 26(f) Report and Proposed Scheduling Order, a copy of which is attached to this Notice and Order (an editable copy is located under the Court's Practice Guidelines on the Court's web site). The Court intends that the model

scheduling order guide the parties in the types of provisions and the timeline that the parties should propose to the Court as their discovery plan pursuant to Rule 26(f) of the Federal Rules of Civil Procedure. The Court schedules the typical patent infringement case for trial approximately 24-26 months after the Scheduling Conference. The parties may propose modifications and additional provisions to the model scheduling order and/or may propose an alternative timeline, as needed based upon the facts and circumstances of the particular case.

- **USE OF A TECHNICAL ADVISOR:** At the Scheduling Conference, the parties should be prepared to discuss the potential use of a technical advisor in this case, who would act a confidential advisor to the Court, similar to a judicial law clerk, on such issues as claim construction and dispositive motions.
- **SETTLEMENT:** At the Scheduling Conference, the parties should be prepared to discuss the likelihood of settlement. Before attending the Scheduling Conference, the attorneys should discuss settlement options with their clients, particularly the use of mediation/facilitation. Clients are not required to attend the Scheduling Conference.
- **INFORMAL TECHNOLOGY TUTORIAL:** Before any claim construction briefs are submitted, the Court typically schedules an informal tutorial on the technology involved in the case. The purpose of the informal tutorial is to give the Court an understanding and background of the technology at issue in the case. The tutorial is not on the record.
- **CLAIM CONSTRUCTION HEARING:** The Court typically does not hear live testimony at the claim construction hearing. However, on a case-by-case basis, the Court may allow live expert

testimony from a person of ordinary skill in the art. If the Court allows expert testimony, each side is typically limited to one hour of live testimony. A request for live testimony must be made by written motion.

- **DEFAULT PROTECTIVE ORDER:** The Court recognizes that during discovery the parties will likely need to disclose confidential and/or proprietary business information (e.g., trade secrets, financial information, etc.) that is not publicly available. In order to protect the parties' confidential and proprietary information, the Court will automatically enter a default protective order. The purpose of the default protective order is to allow the parties to begin discovery as soon as possible and to minimize the time and expense to the parties. The parties may propose modifications to the Court's default protective order, or agree to an entirely new protective order, but discovery should commence to the extent possible under the default protective order until a new or modified protective order has been entered.