

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

_____,

Plaintiff,

v.

_____,

Defendant.

Case No.

Honorable Laurie J. Michelson
Magistrate Judge

MODEL CASE MANAGEMENT AND SCHEDULING ORDER FOR PATENT CASES

This case having come before the Court pursuant to Federal Rule of Civil Procedure 16 and the parties having submitted a proposed discovery plan(s), the Court enters the following schedule to manage the progress of this case:

Event	Time Allowed Under This Order	Total Time (In Weeks) From Entry of Scheduling Order ¹
Plaintiff serves complaint and summons alleging patent infringement		
Defendant serves answer denying infringement and counterclaims that patent is invalid. Fed. R. Civ. P. 12(a)(1).	21 days from service of complaint	
Court Enters Case Management and Scheduling Order	Approximately 28 days after Defendant serves answer.	
PATENT INITIAL DISCLOSURES (Section 2)		
Start of Fact Discovery. Section 1.3. Initial Disclosures. Section 2.1.	14 days after Court enters Case Management and Scheduling Order	2
Plaintiff's Initial Infringement	14 days after Initial	4

¹ The timing set forth in this chart assumes that Plaintiff filed a claim of patent infringement, that Defendant counterclaimed asserting invalidity, that the Court entered a scheduling order four weeks after Defendant's answer, and that the parties will use the full time allowed under this Model Order. For other types of cases the chart will be modified accordingly.

Contentions. Section 2.2.	Disclosures	
Defendant's Initial Non-Infringement, Unenforceability, and Invalidity Contentions. Section 2.3. Defendant supplements Initial Disclosures. Section 2.4.	14 days after Initial Infringement Contentions	6
Plaintiff's Initial Response to Invalidity Contentions. Section 2.5.	14 days after Initial Non-Infringement and Invalidity Contentions	8
FINAL CONTENTIONS (Section 3)		
Plaintiff's Final Infringement Contentions. Section 3.1. Defendant's Final Unenforceability and Invalidity Contentions. Section 3.1. Defendant's Document Production Accompanying Final Invalidity Contentions. Section 3.3.	21 weeks after Initial Infringement Contentions	25
Plaintiff's Final Contentions in Response to any Final Unenforceability and Invalidity Contentions. Section 3.2. Defendant's Final Non-infringement Contentions. Section 3.2.	28 days after Final Infringement Contentions.	29
Final Date to Seek Stay Pending Reexamination. Section 3.5.	Same. (28 days after Final Infringement Contentions.)	Same. (29)
CLAIM CONSTRUCTION PROCEEDINGS (Section 4)		
Exchange of Proposed Claim Terms To Be Construed Along With Proposed Constructions. Section 4.1(a).	28 days after Plaintiff's Final Contentions in Response to any Final Unenforceability and Invalidity Contentions and Defendant's Final Non-infringement Contentions	33
Meet and Confer to Select (up to) Ten Claim Terms for Construction. Section 4.1(b).	7 days after Exchange of Proposed Claim Terms To Be Construed Along With Proposed Constructions	34
Close of Fact Discovery (including depositions of witnesses testifying in support of claim construction). Section 1.3; <i>see also</i> Section 4.1(a).	28 days after Exchange of Proposed Claim Terms To Be Construed Along With Proposed Constructions	37
Joint Pre-Claim Construction Hearing Statement and Technology Tutorial. Section 4.1.1.	21 days after Close of Fact Discovery	40
Cross-Motions for Claim Construction.	14 days after Technology	42

Section 4.2(a)	Tutorial	
Responsive Claim Construction Briefs. Section 4.2(c).	14 days after Cross-Motions for Claim Construction	44
Joint Claim Construction Chart. Section 4.2(f).	7 days after Responsive Claim Construction Briefs	45
Claim Construction Hearing Section 4.3.	28 days after Responsive Claim Construction Briefs	48
Claim Construction Ruling		Approximately 52 ²
Discovery Concerning Opinions of Counsel. Section 3.6.	35 days prior to Close of Post-Claim Construction Discovery Period	53
Final Day For Filing Motion to Amend Final Contentions Post Claim Construction Ruling. Section 3.4.	14 days after Claim Construction Ruling	54
Close of Post-Claim Construction Discovery Period (assuming motion for resumption of fact discovery granted). <i>See</i> Section 1.3.	42 days after Claim Construction Ruling	58
EXPERT WITNESSES (Section 5)		
Initial Expert Witness Disclosures. Section 5.1(b).	21 days after Close of Post- Claim Construction Discovery Period (or 21 days after Claim Construction Ruling if motion for resumption of fact discovery denied)	61 (or 55)
Rebuttal Expert Witness Disclosures. Section 5.1(c).	35 days after Initial Expert Witness Disclosures	66
Depositions of Experts.	35 days after Rebuttal Expert Witness Disclosures	71
DISPOSITIVE MOTIONS (Section 6)		
Final Day for Filing Dispositive Motions. Section 6.1.	28 days after Depositions of Experts	75
Ruling on Dispositive Motions.		Approximately 96
PRE-TRIAL (Section 7)		
Letters Regarding Proposed Joint Final Pretrial Order Section 7.1(b).	7 days prior to E.D. Mich. LR 16.2(a) Conference	Around 99
E.D. Mich. LR 16.2(a) Conference.	Prior to Submission of Proposed Joint Final Pretrial Order	Around 100
Submission of Proposed Joint Final	27 weeks after Final Day for	102

² The Court will endeavor to rule on claim construction approximately four weeks after the hearing, schedule permitting.

Pretrial Order. Section 7.1.	Filing Dispositive Motions	
Final Day for Filing Motions in Limine. Section 7.2.	Same. (27 weeks after Final Day for Filing Dispositive Motions.)	102
Submission of Proposed Joint Jury Instructions and Proposed Joint Verdict Forms. Section 7.3.	14 days after Submission of Proposed Joint Final Pretrial Order	104
Final Pretrial Conference. Section 7.4.	14 days after Submission of Proposed Joint Jury Instructions and Proposed Joint Verdict Forms	106
Final Pretrial Order, Final Jury Instructions, and Final Verdict Form. Section 7.5.	7 days after Final Pretrial Conference	107
TRIAL (Final Pretrial Order Will Govern)		

1. GENERAL PROVISIONS

1.1 Source of Requirements and Construction

Except for Section 7, and except where indicated by square brackets (“[]”) or ellipses (“...”), each numbered requirement set forth below is identical to the Northern District of Illinois Local Patent Rule (adopted September 28, 2009) of the same number including any comments accompanying the Northern District of Illinois Local Patent Rule. For example, Section 1.3 of this Order, including the comment, is, except where indicated by square brackets or ellipses, identical to N.D. Ill. LPR 1.3. The deviations from the Northern District of Illinois’s local patent rules reflected in this Order were primarily derived from the Northern District of California’s Local Patent Rules (as revised on December 1, 2009), the District of Utah’s Local Patent Rules (effective December 1, 2013), and the Court’s own policies and procedures for civil cases.

Should a dispute over the language of this Order arise, the Court will look first to case law of the district from which the requirement was derived. To the extent that the Court’s requirement is similar in all material respects to a Northern District of California patent local rule, this Court may also rely on case law from that judicial district. *See James Ware & Brian Davy, The History, Content, Application and Influence of the Northern District of California’s Local Rules*, 25 Santa Clara Computer & High Tech. L.J. 965, 1011-14 (2009) (explaining that the Northern District of California was the first federal judicial district to adopt local patent rules and that other districts have, to varying degrees, used language from the Northern District of California’s local patent rules).

1.2 [Reserved]

1.3 Fact Discovery

Fact discovery shall commence upon the date for the Initial Disclosures under [Section] 2.1 and shall be completed twenty-eight (28) days after the date for exchange of claim terms and phrases under [Section] 4.1. Fact discovery may resume upon entry of a claim construction ruling and shall end forty-two (42) days after entry of the claim construction ruling.

Comment

[This requirement] states that resumption of fact discovery upon entry of a claim construction ruling “may” occur. [It] does not provide that discovery shall automatically resume as a matter of right. It is intended that parties seeking further discovery following the claim construction ruling shall submit a motion explaining why further discovery is necessitated by the claim construction ruling.

1.4 Confidentiality

The protective order [attached as Appendix A to this Order (which is largely based on the protective order found at Appendix B to the Northern District of Illinois's local patent rules)] shall be deemed to be in effect as of the date for each party's Initial Disclosures. Any party may move the Court to modify the Appendix [A] protective order for good cause. The filing of such a motion does not affect the requirement for or timing of any of the disclosures required by [this Order].

1.5 Certification of Disclosures

All disclosures made pursuant to [Sections] 2.2, 2.3, 2.4, 2.5, 3.1, and 3.2 must be dated and signed by counsel of record (or by the party if unrepresented by counsel) and are subject to the requirements of Federal Rules of Civil Procedure 11 and 26(g).

1.6 Admissibility of Disclosures

The disclosures provided for in [Section] 2.2, 2.3, 2.4, and 2.5 are inadmissible as evidence on the merits.

Comment

The purpose of the initial disclosures pursuant to [Sections] 2.2 – 2.5 is to identify the likely issues in the case, to enable the parties to focus and narrow their discovery requests. Permitting use of the initial disclosures as evidence on the merits would defeat this purpose. A party may make reference to the initial disclosures for any other appropriate purpose.

1.7 Relationship to Federal Rules of Civil Procedure

A party may not object to mandatory disclosures under Federal Rule of Civil Procedure 26(a) or to a discovery request on the ground that it conflicts with or is premature under [this Order], except to the following categories of requests and disclosures:

- (a) requests for a party's claim construction position;
- (b) requests to the patent claimant for a comparison of the asserted claims and the accused apparatus, device, process, method, act, or other instrumentality;
- (c) requests to an accused infringer for a comparison of the asserted claims and the prior art;
- (d) requests to an accused infringer for its non-infringement contentions; and
- (e) requests to the patent claimant for its contentions regarding the presence of claim elements in the prior art.

Federal Rule of Civil Procedure 26's requirements concerning supplementation of disclosure and discovery responses apply to all disclosures required under [this Order.]

[1.8 Disputes Over Discovery or Disclosures]

Neither discovery motions nor motions relating to the contentions and disclosures required by this Order are to be filed until the parties have complied with the following procedures:

First: The parties must meet and confer in a good faith effort to resolve their differences without Court intervention. Failure of a party to make itself available for this conference may result in an award of sanctions.

Second: In the event these good faith efforts are unsuccessful, the moving party is required to schedule a telephonic conference with the Court in a further effort to try to resolve the discovery dispute prior to filing any motion. Counsel shall contact the Court's case manager to schedule the conference.

Third: If the dispute still cannot be resolved following the telephonic conference, the Court will entertain or refer to the assigned Magistrate Judge the relevant discovery motion.

Failure to comply with these steps may result in an award of costs and reasonable attorney's fees against the non-complying party.]

[1.9 Local Counsel]

An attorney admitted to practice in the Eastern District of Michigan who appears as attorney of record and is not an active member of the State Bar of Michigan must specify local counsel with an office in this district. Local counsel must enter an appearance and otherwise comply with Local Rule 83.20(f). All inquiries regarding admission to this district should be directed to the Clerk's office at (313) 234-5005.]

[1.10 Briefing and Courtesy Copies]

Unless specifically addressed in the Court's Notice of Hearing or elsewhere in this Order,

(a) the time limits prescribed in the Eastern District of Michigan Local Rules apply for filing responses and replies to motions;

(b) all briefs must strictly comply with Local Rules 5.1 and 7.1;

(c) a "courtesy" copy of all motions and briefs must be sent to the chambers via first class mail the same day the document is e-filed or hand-delivered not later than the next business day after the document is e-filed. The courtesy copy should consist of the actual e-filed document and contain the electronic file stamp on the top of each page. It may be bound in any manner other than via a prong fastener. Exhibits must be tabbed and the relevant portions highlighted.]

[1.11 Case Evaluation or Facilitation

Parties may stipulate to case evaluation, mediation, or request a settlement conference with the District or Magistrate Judge at any time. It is the responsibility of the attorneys to make sure that case evaluation is completed before the final pretrial conference. If the parties elect to submit the case to case evaluation pursuant to E.D. Mich. LR 16.3 or to private facilitation, they must complete the Court's form orders of reference which are attached to this Order following Appendix A.]

2. PATENT INITIAL DISCLOSURES

Comment

[Sections] 2.2 – 2.5 supplement[] the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1). As stated in the comment to [Section] 1.6, the purpose of these provisions is to require the parties to identify the likely issues in the case, to enable them to focus and narrow their discovery requests. To accomplish this purpose, the parties’ disclosures must be meaningful—as opposed to boilerplate—and non-evasive. These provisions should be construed accordingly when applied to particular cases.

2.1 Initial Disclosures

The plaintiff and any defendant that files an answer or other response to the complaint shall exchange their initial disclosures under Federal Rule of Civil Procedure 26(a)(1) (“Initial Disclosures”) within fourteen (14) days [of entry of this Order]. As used in this [Section], the term “document” has the same meaning as in Federal Rule of Civil Procedure 34(a)[.]

(a) A party asserting a claim of patent infringement shall produce or make the following available for inspection and copying along with its Initial Disclosures, to the extent they are in the party’s possession, custody or control[:]

(1) all documents concerning any disclosure, sale or transfer, or offer to sell or transfer, of any item embodying, practicing or resulting from the practice of the claimed invention prior to the date of application for the patent in suit. Production of a document pursuant to this Rule is not an admission that the document evidences or is prior art under 35 U.S.C. § 102;

(2) all documents concerning the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or a priority date otherwise identified for the patent in suit, whichever is earlier;

(3) all documents concerning communications to and from the U.S. Patent Office for each patent in suit and for each patent on which a claim for priority is based; . . .

(4) all documents concerning ownership of the patent rights by the party asserting patent infringement[;]

[(5) all licenses, D. Utah LPR 2.2(a)(5); and

(6) the date from which it alleges damages, if claimed, began to accrue; or, if that date is not known, how the date should be determined, D. Utah LPR 2.2(a)(6).]

The producing party shall separately identify by production number which documents correspond to each category.

(b) A party opposing a claim of patent infringement shall produce or make the following available for inspection and copying, along with its Initial Disclosures:

(1) documents sufficient to show the operation and construction of all aspects or elements of each accused apparatus, product, device, component, process, method or other instrumentality identified with specificity in the pleading of the party asserting patent infringement; . . .

(2) a copy of each item of prior art of which the party is aware that allegedly anticipates each asserted patent and its related claims or renders them obvious or, if a copy is unavailable, a description sufficient to identify the prior art and its relevant details[;]

[(3) the accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”), *see* D. Utah LPR 2.2(b)(3); and

(4) an estimate for the relevant time frame of the quantity of each Accused Instrumentality sold and the gross sales revenue, D. Utah LPR 2.2(b)(4).]

2.2 Initial Infringement Contentions

A party claiming patent infringement must serve on all parties “Initial Infringement Contentions” containing the following information within fourteen (14) days after the Initial Disclosure under [Section] 2.1:

(a) identification [of] each claim of each patent in suit that is allegedly infringed by the opposing party, including for each claim the applicable statutory subsection of 35 U.S.C. § 271;

(b) separately for each asserted claim, identification of each . . . Accused Instrumentality of the opposing party of which the party claiming infringement is aware. Each Accused Instrumentality must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(c) a chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by [former] 35 U.S.C. § 112(6) [now 35 U.S.C. § 112(f)], a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(d) identification of whether each element of each asserted claim is claimed to be present in the Accused Instrumentality literally or under the doctrine of equivalents. For any claim under the

doctrine of equivalents, the Initial Infringement Contentions must include an explanation of each function, way, and result that is equivalent and why any differences are not substantial;

(e) for each claim that is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. If alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

(f) for any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

(g) identification of the basis for any allegation of willful infringement; and

(h) if a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own or its licensee's apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted patent, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim, including whether it is marked with the patent number.

[Without leave of court, a party claiming infringement must limit the allegedly infringed claims to ten (10) per asserted patent. *See* D. Utah LPR 2.4.]

2.3 Initial Non-Infringement, Unenforceability and Invalidity Contentions

Each party opposing a claim of patent infringement or asserting invalidity or unenforceability shall serve upon all parties its "Initial Non-Infringement, Unenforceability and Invalidity Contentions" within fourteen (14) days after service of the Initial Infringement Contentions. Such Initial Contentions shall be as follows:

(a) Non-Infringement Contentions shall contain a chart, responsive to the chart required by [Section] 2.2(c), that identifies as to each identified element in each asserted claim, to the extent then known by the party opposing infringement, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality and, if not, the reason for such denial and the relevant distinctions.

(b) Invalidity Contentions must contain the following information to the extent then known to the party asserting invalidity:

(1) identification, with particularity, of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under

[35 U.S.C. § 102(a)(1) (effective Mar. 16, 2013)³ or] 35 U.S.C. § [102(a), (b) (2012)] shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. [If applicable,] [p]rior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. [If applicable,] [p]rior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(2) a statement of whether each item of prior art allegedly anticipates each asserted claim or renders it obvious. If a combination of items of prior art allegedly makes a claim obvious, each such combination, and the reasons to combine such items must be identified;

(3) a chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by [former] 35 U.S.C. § 112(6) [now 35 U.S.C. § 112(f)], a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(4) a detailed statement of any grounds of invalidity based on [35 U.S.C. § 101,] indefiniteness under [former] 35 U.S.C. § 112(2) [now 35 U.S.C. § 112(b)] or enablement or written description under 35 U.S.C. § 112(1) [now 35 U.S.C. § 112(a)].

(c) Unenforceability contentions shall identify the acts allegedly supporting and all bases for the assertion of unenforceability.

[Without leave of court, a party asserting invalidity must limit prior art references to twelve (12) per asserted patent. *See* D. Utah LPR 2.4.]

2.4 Document Production Accompanying Initial Invalidity Contentions

With the Initial Non-Infringement and Invalidity Contentions under [Section] 2.3, the party opposing a claim of patent infringement shall supplement its Initial Disclosures and, in particular, must produce or make available for inspection and copying:

(a) any additional documentation showing the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its [Section] 2.2 chart; and

³ Section 102 was modified by the America Invents Act, signed into law on September 16, 2011, effective upon the expiration of the eighteen-month period beginning September 16, 2011.

(b) a copy of any additional items of prior art identified pursuant to [Section] 2.3 that does not appear in the file history of the patent(s) at issue.

2.5 Initial Response to Invalidity Contentions

Within fourteen (14) days after service of the Initial Non-Infringement and Invalidity Contentions under [Section] 2.3, each party claiming patent infringement shall serve upon all parties its “Initial Response to Invalidity Contentions.” The Initial Response to Invalidity Contentions shall contain a chart, responsive to the chart required by [Section] 2.3(b)(3), that states as to each identified element in each asserted claim, to the extent then known, whether the party admits to the identity of elements in the prior art and, if not, the reason for such denial.

2.6 Disclosure Requirement in Patent Cases Initiated by Complaint for Declaratory Judgment

In a case initiated by a complaint for declaratory judgment in which a party files a pleading seeking a judgment that a patent is not infringed, is invalid, or is unenforceable, [Sections] 2.2 and 2.3 shall not apply unless a party makes a claim for patent infringement. If no claim of infringement is made, the party seeking a declaratory judgment must comply with [Sections] 2.3 and 2.4 within twenty-eight (28) days after the Initial Disclosures.

3. FINAL CONTENTIONS

3.1 Final Infringement, Unenforceability and Invalidity Contentions

A party claiming patent infringement must serve on all parties “Final Infringement Contentions” containing the information required by [Section] 2.2 (a)-(h) within twenty-one (21) weeks after the due date for service of Initial Infringement Contentions.

Each party asserting invalidity or unenforceability of a patent claim shall serve on all other parties, no later than the same time that the Final Infringement Contentions are due, “Final Unenforceability and Invalidity Contentions” containing the information required by [Sections] 2.3 (b) and (c).

[Final Infringement Contentions may rely on no more than eight (8) asserted claims, from the set of previously-identified asserted claims, per asserted patent without an order of the court upon a showing of good cause and absence of unfair prejudice to opposing parties. D. Utah LPR 3.1.

Final Unenforceability and Invalidity Contentions may rely on no more than ten (10) prior art references, from the set of previously-identified prior art references, per asserted patent without an order of the court upon a showing of good cause and absence of unfair prejudice to opposing parties. D. Utah LPR 3.1.]

3.2 Final Non-infringement, Enforceability and Validity Contentions

Each party asserting non-infringement of a patent claim shall serve on all other parties “Final Non-infringement Contentions” within twenty-eight (28) days after service of the Final Infringement Contentions, containing the information called for in [Section] 2.3(a). Each party asserting patent infringement shall serve, at the same time the “Final Non-Infringement Contentions” are due, [“]Final Contentions in Response to any []Final Unenforceability and Invalidity Contentions.”

3.3 Document Production Accompanying Final Invalidity Contentions

With the Final Invalidity Contentions, the party asserting invalidity of any patent claim shall produce or make available for inspection and copying: a copy or sample of all prior art identified pursuant to [Section] 3.2, to the extent not previously produced, that does not appear in the file history of the patent(s) at issue. If any such item is not in English, an English translation of the portion(s) relied upon shall be produced. The translated portion of the non-English prior art shall be sufficient to place in context the particular matter upon which the party relies.

The producing party shall separately identify by production number which documents correspond to each category.

3.4. Amendment of Final Contentions

A party may amend its Final Infringement Contentions; Final Non-infringement, Unenforceability and Invalidity Contentions; or Final Contentions in Response to any Unenforceability and Invalidity Contentions only by order of the Court upon a showing of good cause and absence of unfair prejudice to opposing parties, made [within 14 days] upon discovery of the basis for the amendment. An example of a circumstance that may support a finding of good cause, absent undue prejudice to the non-moving party, includes a claim construction by the Court different from that proposed by the party seeking amendment. A motion to amend final contentions due to a claim construction ruling shall be filed, with proposed amendment(s), within fourteen (14) days of the entry of such ruling.

The duty to supplement discovery responses does not excuse the need to obtain leave of court to amend contentions.

3.5 Final Date to Seek Stay Pending Reexamination

Absent exceptional circumstances, no party may file a motion to stay the lawsuit pending reexamination in the U.S. Patent Office after the due date for service of the Final Contentions pursuant to [Section] 3.2.

3.6 Discovery Concerning Opinions of Counsel

(a) The substance of a claim of reliance on advice of counsel offered in defense to a charge of willful infringement, and other information within the scope of a waiver of the attorney-client privilege based upon disclosure of such advice, is not subject to discovery until thirty-five (35) days prior to the close of the period of fact discovery that, under [Section] 1.3, follows the court's claim construction ruling.

(b) On the day advice of counsel information becomes discoverable under [Section] 3.6(a), a party claiming reliance on advice of counsel shall disclose to all other parties the following:

- (1) All written opinions of counsel upon which the party will rely;
- (2) All information provided to the attorney in connection with the advice;
- (3) All written attorney work product developed in preparing the opinion that the attorney disclosed to the client; and
- (4) Identification of the date, sender and recipient of all written and oral communications with the attorney or law firm concerning the subject matter of the advice by counsel.

(c) After advice of counsel information becomes discoverable [Section] 3.6(a), a party claiming willful infringement may take the deposition of any attorneys preparing or rendering the advice relied upon and any persons who received or claims to have relied upon such advice.

(d) This [Section 3.6] does not address whether materials other than those listed in [Section] 3.6(b)(1-4) are subject to discovery or within the scope of any waiver of the attorney client privilege.

SAMPLE

4. CLAIM CONSTRUCTION PROCEEDINGS

4.1 Exchange of Proposed Claim Terms To Be Construed Along With Proposed Constructions

(a) Within [twenty-eight (28)] days after service of the Final Contentions pursuant to [Section] 3.2, each party shall serve a list of (i) the claim terms and phrases the party contends the Court should construe; (ii) the party's proposed constructions; (iii) identification of any claim element that the party contends is governed by [former] 35 U.S.C. § 112(6) [now 35 U.S.C. § 112(f)]; and (iv) the party's description of the function of that element, and the structure(s), act(s), or material(s) corresponding to that element, identified by column and line number with respect to the asserted patent(s).

[Each party shall also identify all references from the specification or prosecution history that support its proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. Extrinsic evidence shall be identified by production number or by producing a copy if not previously produced. *See* N.D. Cal. LPR 4-2(b).

If a party intends to offer the testimony of a witness in support of its claim construction, it must serve on all parties a sworn declaration by the witness setting forth the substance of the witness' proposed testimony. *See* N.D. Ill. LPR 4.2(a). The party must also promptly make the witness available for deposition concerning the proposed testimony. *See* N.D. Ill. LPR 4.2(a). Per Section 1.3, fact discovery must be completed within twenty-eight (28) days of the date for exchange of proposed claim terms as set forth in this subsection; this includes depositions of witnesses testifying in support of a proposed claim construction.]

(b) Within seven (7) days after the exchange of claim terms and phrases, the parties must meet and confer and agree upon no more than ten (10) terms or phrases to submit for construction by the court. No more than ten (10) terms or phrases may be presented to the Court for construction absent prior leave of court upon a showing of good cause. The assertion of multiple non-related patents shall, in an appropriate case, constitute good cause. If the parties are unable to agree upon ten terms, then five shall be allocated to all plaintiffs and five to all defendants. For each term to be presented to the Court, the parties must certify whether it is outcome-determinative.

Comment

In some cases, the parties may dispute the construction of more than ten terms. But because construction of outcome-determinative or otherwise significant claim terms may lead to settlement or entry of summary judgment, in the majority of cases the need to construe other claim terms of lesser importance may be obviated. The limitation to ten claim terms to be presented for construction is intended to require the parties to focus upon outcome-determinative or otherwise significant disputes.

[4.1.1 Joint Pre-Claim Construction Hearing Statement and Technology Tutorial

(a) Within twenty-one (21) days after the fact discovery deadline set forth in Section 1.3, the parties must provide an off-the-record Technology Tutorial where counsel for each side will explain the technology at issue to the Court. The parties are not to argue their proposed claim constructions, infringement, or invalidity (or other claim or defense) and may not rely upon any statement made in the tutorial for any purpose. The parties should schedule this presentation by contacting the Court's case manager immediately after service of the Final Contentions pursuant to Section 3.2.

(b) At least one day before the technology presentation set forth in subsection (a), the parties must file a "Joint Pre-Claim Construction Hearing Statement" providing

(1) each party's proposed construction of each disputed term, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction or to oppose any other party's proposed construction, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses, N.D. Cal. LPR 4-3(b);

(2) the anticipated length of time necessary for the claim construction hearing, *see* N.D. Cal. LPR 4-3(d);

(3) whether any party proposes to call one or more witnesses at the Claim Construction Hearing, the identity of each such witness, and for each witness, a summary of his or her testimony including, for any expert, each opinion to be offered related to claim construction, N.D. Cal. LPR 4-3(e);

(4) a proposed schedule of proceedings for the claim construction hearing; and

(5) a Joint Appendix containing the patent(s) in dispute and the prosecution history for each patent. *See* N.D. Ill. LPR 4.2(b). The prosecution history must be paginated, and all parties must cite to the Joint Appendix when referencing the materials it contains in the Joint Pre-Claim Construction Hearing Statement and subsequent claim construction briefs (*see* Section 4.2). Any party may file a separate appendix to its claim construction brief containing other supporting materials. *See* N.D. Ill. LPR 4.2(b). A text-searchable version of the Joint Appendix must also be submitted to the Court in .pdf format.]

4.2 Claim Construction Briefs

[(a) No later than fourteen (14) days after the Technology Tutorial, the parties shall file simultaneous Cross-Motions for Claim Construction, which may not exceed thirty-five (35)

pages absent prior leave of court.⁴ The briefs shall identify any intrinsic evidence with citation to the Joint Appendix under Section 4.1.1(b)(5) and shall separately identify any extrinsic evidence a party contends supports its proposed claim construction. *See* D. Utah LPR 4.2(a).]

(b) [Moved to 4.1.1(b)(5).]

[(c) No later than fourteen (14) days after the Cross-Motions for Claim Construction, the parties shall file simultaneous Responsive Claim Construction Briefs, which may not exceed thirty-five (35) pages absent prior leave of court. The briefs shall identify any intrinsic evidence with citation to the Joint Appendix under Section 4.1.1(b)(5) and shall separately identify any extrinsic evidence a party contends supports its proposed claim construction. The brief shall also describe all objections to any extrinsic evidence identified in the Cross-Motions for Claim Construction. *See* D. Utah LPR 4.2(c).]

[(d) No reply or surreply briefs shall be filed unless requested by the court. D. Utah LPR 4.2(d).]

[(e) The presence of multiple alleged infringers with different products or processes shall, in an appropriate case, constitute good cause for allowing additional pages in the Cross-Motions for Claim Construction or Responsive Claim Construction Briefs or for allowing separate briefing as to different alleged infringers. D. Utah LPR 4.2(e).]

[(f) No later than seven (7) days after filing of the Responsive Claim Construction briefs, the parties shall file and submit to the Court in Microsoft Word format a joint claim construction chart. The chart should include a series of columns listing the complete language of each disputed claim term, each party's proposed claim constructions in separate columns, a column for the court to enter its claim construction and a reference to where the disputed term appears in the asserted patent. "Agreed" entered in the column for the court's construction will indicate agreed claim constructions. *See* D. Utah LPR 4.2(f).]

4.3 Claim Construction Hearing

Unless the Court orders otherwise, a claim construction oral argument or hearing [will] be held within twenty-eight (28) days after filing of the [Responsive Claim Construction briefs] Any exhibits, including demonstrative exhibits, to be used at a claim construction hearing must be exchanged no later than three (3) days before the hearing.

⁴ Eastern District of Michigan LR 5.1 requires 14 point font.

5. EXPERT WITNESSES

5.1 Disclosure of Experts and Expert Reports

Unless the Court orders otherwise,

- (a) for issues other than claim construction to which expert testimony shall be directed, expert witness disclosures and depositions shall be governed by this [Section];
- (b) within twenty-one (21) days after the claim construction ruling or the close of discovery after the claim construction ruling, whichever is later,⁵ each party shall make its initial expert witness disclosures required by Federal Rule of Civil Procedure 26 on issues for which it bears the burden of proof;
- (c) within thirty-five (35) days after the date for initial expert reports, each party shall make its rebuttal expert witness disclosures required by Federal Rule of Civil Procedure 26 on the issues for which the opposing party bears the burden of proof.

5.2 Depositions of Experts

Depositions of expert witnesses shall be completed within thirty-five (35) days after exchange of expert rebuttal disclosures.

5.3 Presumption Against Supplementation of Reports

Amendments or supplementation to expert reports after the deadlines provided herein are presumptively prejudicial and shall not be allowed absent prior leave of court upon a showing of good cause that the amendment or supplementation could not reasonably have been made earlier and that the opposing party is not unfairly prejudiced.

⁵ Under Section 1.3, “[i]t is intended that parties seeking further discovery following the claim construction ruling shall submit a motion explaining why further discovery is necessitated by the claim construction ruling.” If the motion is granted, “[f]act discovery may resume upon entry of a claim construction ruling and shall end forty-two (42) days after entry of the claim construction ruling.”

6. DISPOSITIVE MOTIONS

6.1 Final Day for Filing Dispositive Motions

All dispositive motions shall be filed within twenty-eight (28) days after the scheduled date for the end of expert discovery.

Comment

This [Section] does not preclude a party from moving for summary judgment at an earlier stage of the case if circumstances warrant. . . . [The Court, however, may defer a motion raising claim construction issues until after claim construction hearing is held. Also, Eastern District of Michigan Local Rule 7.1(b) requires a party to obtain the Court's leave to file more than one motion for summary judgment.]

[6.2 Form of Summary Judgment Motions

(a) Moving Party's Statement of Material Facts: A summary judgment motion filed in this Court must begin with a "Statement of Material Facts." The Statement must identify the facts as to which the moving party contends there is no genuine dispute and that entitle the moving party to judgment as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Each fact must be briefly and directly stated in a separate numbered paragraph, with citations to specific supporting evidence.

(b) Opposing Party's Counter-Statement of Material Facts: A response to a summary judgment motion filed in this Court must begin with a "Counter-Statement of Material Facts." The Counter-Statement must recite each of the numbered paragraphs of the Statement of Material Facts and clearly and specifically indicate whether it is undisputed or disputed for purposes of the motion. Any dispute must be supported with citation to specific evidence. *See Anderson*, 477 U.S. at 257. All material facts set forth in the Statement of Material Facts will be deemed to be undisputed for purposes of the motion unless controverted by the Counter-Statement of Material Facts. The Counter-Statement may also contain any additional facts that require the denial of summary judgment, briefly and directly stated in a separately numbered paragraph, with citations to specific supporting evidence.

(c) The Statement of Material Facts and Counter-Statement of Material Facts should not contain argument. Argument as to whether a particular fact is or is not material under the governing case law should be presented in the briefs.

(d) The Statement of Material Facts and Counter-Statement of Material Facts count against the page limits for the briefs stated in LR 5.1(d)(3). No separate narrative facts section will be permitted.

(e) The full text of any evidence cited must be filed in a Fact Appendix. Each party's Fact Appendix shall contain an index followed by tabbed exhibits. Place all pages from the same deposition or document at the same tab. Although the Court does not require the parties to do so, the Court would prefer that the parties submit a single, joint appendix containing all summary-judgment evidence relied upon by all parties.

]

SAMPLE

7. PRE-TRIAL

7.1 The Proposed Joint Final Pretrial Order

(a) Within twenty-seven (27) weeks after the final day for filing dispositive motions as set forth in Section 6.1, the parties must submit, for the Court’s approval, a “Proposed Joint Final Pretrial Order.”⁶ The parties are to adhere to E.D. Mich. LR 16.2 in preparing the Proposed Joint Final Pretrial Order.

Comment

The aim of the Final Pretrial Order is to set forth the procedures that will govern at trial: “The [Proposed Joint Final Pretrial Order] shall provide for the signature of the Court and, when signed and filed . . . , becomes an order of the Court, superseding the pleadings and governing the course of trial unless modified by further order.” E.D. Mich. LR 16.2(a). The greater the effort in drafting the Proposed Joint Final Pretrial Order, the smoother the trial will run.

(b) One week in advance of the conference contemplated by E.D. Mich. LR 16.2(a), each party is to prepare a letter to all opposing parties setting forth its position on the following topics:

- (1) whether trial should be bifurcated (e.g., one for infringement and invalidity, another for willfulness and damages) and, if trial is to be bifurcated, the timing of the trials and whether the trials will be before the same jury;
- (2) whether each juror should be provided a notebook containing materials relevant to the case (e.g., the patent and the Court’s claim constructions) and, if so, which materials are to be included in the jurors’ notebooks;
- (3) the use of special verdict forms or written questions, *see* Fed. R. Civ. P. 49, and the sequence and substance of any such questions;
- (4) the content of proposed preliminary instructions to the jury describing, at least, the basics of the patent system (the Court will show the jury the Federal Judicial Center’s video, *An Introduction to the Patent System*), a claim of infringement and its associated burden of proof, a claim for invalidity and its associated burden of proof (if invalidity is at issue), the technology at issue, and the issues that the jury will be called upon to decide;
- (5) a time limitation (e.g., 20 hours) that each party will have to present its case at trial;
- (6) the *substance* of any motions in limine that will be filed;

⁶ The Court will attempt to rule on all dispositive motions within 21 weeks (5 months) of the last day to file dispositive motions, thus leaving the parties six weeks after the Court’s ruling to submit a Proposed Joint Final Pretrial Order.

- (7) the order that evidence will be presented;
 - (8) whether, in a case involving a claim of inequitable conduct, unenforceability will be tried separately from infringement and invalidity, and whether a jury will be asked to render an advisory opinion on issues of materiality or intent;
 - (9) the use of a model patent jury instruction;
 - (10) a limitation on the number of asserted claims (e.g., 3 per patent) and asserted prior art references (e.g., 3 per claim);
 - (11) any other aspects of trial unique to a patent trial.
- (c) At the conference contemplated by E.D. Mich. LR 16.2(a), the parties must engage in meaningful discussion of the positions taken in the letters served pursuant to Section 7.1(b) and attempt to resolve any differing positions and finalize the language for the Proposed Joint Final Pretrial Order.
- (d) The contents of the Proposed Joint Final Pretrial Order must include,
- (1) the information required by E.D. Mich. LR 16.2;
 - (2) any additional trial procedures or requirements resulting from the discussions pursuant to subsection (c);
 - (3) the following language regarding trial exhibits:

Exhibits

- (a) Counsel are required to mark all proposed exhibits in advance of trial. The preferred method is to use the traditional “Plaintiff’s Exhibit __” and “Defendant’s Exhibit __” in sequential order, but any clearly marked method is acceptable (e.g., numbers and letters). The parties are required to exchange marked exhibits three (3) days prior to the start of trial.
- (b) On the first day of trial, the parties are to provide the Court with a set of the marked proposed exhibits. They are to be placed in a three-ring binder with the exhibit number displayed prominently on the tab corresponding to the exhibit. The binder should include an index which adheres to the following format:

Exhibit	Description	Received
---------	-------------	----------

Number		
--------	--	--

An “S” is to be placed in the column labeled “Received” for all stipulated exhibits.

(c) Counsel are required to keep track of all admitted exhibits during trial. Counsel must confer and maintain one set of admitted exhibits which should be ready to be turned over to the jury prior to the closing jury instructions.

(d) The provisions of Federal Rule of Civil Procedure 37 will apply for failure to list an exhibit.

(4) if a bench trial, the following language on bench trials:

Bench Trial

Fourteen (14) days before a bench trial, each party must serve on opposing counsel their proposed Findings of Fact and Conclusions of Law. Each party should review the other’s proposed Findings and Conclusions, and then make changes to their own proposed Findings and Conclusions as necessary.

Seven (7) days before a bench trial, each party shall submit to the Court a courtesy copy of its proposed Findings of Fact and Conclusions of Law (at the address provided above), and email the Court an editable Word version (at the address provided above). If modifications have been made, each party shall re-serve their proposed Findings and Conclusions on the other parties.

During the course of trial, parties shall be prepared to submit to the Court, and to exchange among themselves, supplemental Findings of Fact and Conclusions of Law.

(e) The parties are to draft the Proposed Joint Final Pretrial Order in the language and style of an order.

7.2 Motions In Limine

Motions in limine are to be filed no later than at the same time that the Proposed Joint Final Pretrial Order is submitted. *See* Section 7.1(a). Such motions are not to recast issues previously presented in summary judgment or discovery motions. Rather, motions in limine serve the limited purpose of alerting the Court to significant evidentiary issues that should be addressed prior to trial.

The Court will generally decide the motions at the Final Pretrial Conference, *see* Section 7.4, but will exercise its discretion in deferring a decision until trial.

7.3 Proposed Joint Jury Instructions and Proposed Joint Verdict Forms

(a) Within two (2) weeks of submitting the Proposed Joint Final Pretrial Order, the parties are to submit to the Court “Proposed Joint Jury Instructions” and a “Proposed Joint Verdict Form.” The parties are to consult model patent jury instructions. (Both the Federal Circuit Bar Association and the Northern District of California provide model patent jury instructions; the Northern District of California instructions include a sample special verdict form and comments on using the sample form.)

(b) The parties are to meet and confer to prepare the Proposed Joint Jury Instructions and the Proposed Joint Verdict Form. If, after a good faith effort, the parties cannot agree upon a particular jury instruction or question, each party must submit its proposed instruction or question followed by a brief, one paragraph statement supporting its version. All instructions and questions, both agreed and disputed, shall be presented in sequential order and in a single document. If a proposed instruction or question is based on one from a model source, the parties should include a citation to the model instruction or question and indicate any alterations from the model instruction or question.

(d) The Proposed Joint Jury Instructions and Proposed Joint Verdict Form are to be submitted to the Court’s case manager via electronic mail (Jane_Johnson@mied.uscourts.gov) in Microsoft Word format and a courtesy copy mailed or hand-delivered to chambers.

7.4 Final Pretrial Conference

Approximately two (2) weeks after the parties file their Proposed Joint Jury Instructions and Proposed Joint Verdict Form, the Court will hold a Final Pretrial Conference to discuss with the parties, among other things, (1) the Proposed Joint Final Pretrial Order, (2) the Proposed Joint Jury Instructions, (3) the Proposed Joint Verdict Form, and (4) any outstanding motion in limine.

Trial counsel must be present at the Final Pretrial Conference and have settlement authority.

7.5 Final Pretrial Order, Final Jury Instructions, and Final Verdict Form

(a) Not later than seven (7) days after the Final Pretrial Conference, the parties shall finalize the Proposed Joint Final Pretrial Order and resubmit the Proposed Joint Final Pretrial Order to the Court. The Court will review the submission, make changes if necessary, and enter a “Final Pretrial Order.” The Final Pretrial Order will govern the trial proceedings and will not be modified absent a showing of good cause.

(b) Also not later than seven (7) days after the Final Pretrial Conference, the parties shall finalize the Proposed Joint Jury Instructions as “Jury Instructions” and the Proposed Joint Verdict Form

as “Verdict Form” and submit the Jury Instructions and the Verdict Form to the Court. The Jury Instructions and the Verdict Form are those that will be provided to the jury and will not be modified absent a showing of good cause.

SAMPLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

_____,

Plaintiff,

v.

_____,

Defendant.

Case No.

Honorable Laurie J. Michelson
Magistrate Judge

[MODEL] PROTECTIVE ORDER

The Court enters the following Protective Order pursuant to Federal Rule of Civil Procedure 26(c)(1).

1. Findings:

The Court finds that the parties to this case may request or produce information involving trade secrets or confidential research and development or commercial information, the disclosure of which is likely to cause harm to the party producing such information.

2. Definitions:

a. “Party” means a named party in this case. “Person” means an individual or an entity. “Producer” means a person who produces information via the discovery process in this case. “Recipient” means a person who receives information via the discovery process in this case.

b. “Confidential” information is information concerning a person’s business operations, processes, and technical and development information within the scope of Rule

APPENDIX A (to Model Case Management and Scheduling Order)

26(c)(1)(G), the disclosure of which is likely to harm that person's competitive position, or the disclosure of which would contravene an obligation of confidentiality to a third person or to a court.

c. "Highly Confidential" information is information within the scope of Rule 26(c)(1)(G) that is current or future business or technical trade secrets and plans more sensitive or strategic than Confidential information, the disclosure of which is likely to significantly harm that person's competitive position, or the disclosure of which would contravene an obligation of confidentiality to a third person or to a court.

d. Information is not Confidential or Highly Confidential if it is disclosed in a printed publication, is known to the public, was known to the recipient without obligation of confidentiality before the producer disclosed it, or is or becomes known to the recipient by means not constituting a breach of this Protective Order. Information is likewise not Confidential or Highly Confidential if a person lawfully obtained it independently of this litigation.

3. Designation of information as Confidential or Highly Confidential:

a. A person's designation of information as Confidential or Highly Confidential means that the person believes in good faith, upon reasonable inquiry, that the information qualifies as such.

b. A person designates information in a document or thing as Confidential or Highly Confidential by clearly and prominently marking it on its face as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." A producer may make documents or things containing Confidential or Highly Confidential information available for inspection and copying

APPENDIX A (to Model Case Management and Scheduling Order)

without marking them as confidential without forfeiting a claim of confidentiality, so long as the producer causes copies of the documents or things to be marked as Confidential or Highly Confidential before providing them to the recipient.

c. A person designates information in deposition testimony as Confidential or Highly Confidential by stating on the record at the deposition that the information is Confidential or Highly Confidential or by advising the opposing party and the stenographer and videographer in writing, within fourteen days after receipt of the deposition transcript, that the information is Confidential or Highly Confidential.

d. A person's failure to designate a document, thing, or testimony as Confidential or Highly Confidential does not constitute forfeiture of a claim of confidentiality as to any other document, thing, or testimony.

e. A person who has designated information as Confidential or Highly Confidential may withdraw the designation by written notification to all parties in the case.

f. If a party disputes a producer's designation of information as Confidential or Highly Confidential, the party shall notify the producer in writing of the basis for the dispute, identifying the specific document(s) or thing(s) as to which the designation is disputed and proposing a new designation for such materials. The party and the producer shall then meet and confer in a good-faith attempt to resolve the dispute without involvement of the Court. In the event these good faith efforts are unsuccessful, the producer is required to schedule a telephonic conference with the Court in a further effort to try to resolve the dispute prior to filing any motion. Counsel shall contact the Court's case manager to schedule the conference. If the dispute is not resolved during the telephonic

APPENDIX A (to Model Case Management and Scheduling Order)

conference, the proposed new designation shall be applied fourteen (14) days after notice of the dispute unless within that fourteen day period the producer files a motion with the Court to maintain the producer's designation. The producer bears the burden of proving that the information is properly designated as Confidential or Highly Confidential. The information shall remain subject to the producer's Confidential or Highly Confidential designation until the Court resolves the motion. A party's failure to contest a designation of information as Confidential or Highly Confidential is not an admission that the information was properly designated as such.

4. Use and disclosure of Confidential or Highly Confidential information:

a. Confidential and Highly Confidential information may be used exclusively for purposes of this litigation, subject to the restrictions of this Protective Order.

b. Absent written permission from the producer or further order by the Court, the recipient may not disclose Confidential information to any person other than the following:

(i) a party's outside counsel of record, including necessary paralegal, secretarial and clerical personnel assisting such counsel;

(ii) a party's in-house counsel;

(iii) a party's officers and employees directly involved in this case whose access to the information is reasonably required to supervise, manage, or participate in this case;

APPENDIX A (to Model Case Management and Scheduling Order)

(iv) a stenographer and videographer recording testimony concerning the information;

(v) subject to the provisions of paragraph 4(d) of this Protective Order, experts and consultants and their staff whom a party employs for purposes of this litigation only; and

(vi) the Court and personnel assisting the Court.

c. Absent written permission from the producer or further order by the Court, the recipient may not disclose Highly Confidential information to any person other than those identified in paragraph 4(b)(i), (iv), (v), and (vi).

d. A party may not disclose Confidential or Highly Confidential information to an expert or consultant pursuant to paragraph 4(b) or 4(c) of this Protective Order until after the expert or consultant has signed the “Undertaking of _____” form attached as Appendix 1 to this Protective Order. The party obtaining the undertaking must serve it on all other parties within ten days after its execution.

At least ten days before the first disclosure of Confidential or Highly Confidential information to an expert or consultant (or member of their staff), the party proposing to make the disclosure must serve the producer with a written identification of the expert or consultant and a copy of his or her curriculum vitae. If the producer has good cause to object to the disclosure (which does not include challenging the qualifications of the expert or consultant), it must serve the party proposing to make the disclosure with a written objection within ten days after service of the identification. Unless the parties resolve the dispute within ten days after service of the objection, the producer must

APPENDIX A (to Model Case Management and Scheduling Order)

schedule a telephonic conference with the Court in a further effort to try to resolve the dispute prior to filing any motion. Counsel shall contact the Court's case manager to schedule the conference. If the dispute is not resolved during the telephonic conference, the producer must move the Court promptly for a ruling, and the Confidential or Highly Confidential information may not be disclosed to the expert or consultant without the Court's approval.

e. Notwithstanding paragraph 4(b) and (c), a party may disclose Confidential or Highly Confidential information to:

- (i) any employee or author of the producer;
- (ii) any person, no longer affiliated with the producer, who authored the information in whole or in part; and
- (iii) any person who received the information before this case was filed.

f. A party who wishes to disclose Confidential or Highly Confidential information to a person not authorized under paragraph 4(b) or 4(c) must first make a reasonable attempt to obtain the producer's permission. If the party is unable to obtain permission, it should schedule a telephonic conference with the Court. Counsel shall contact the Court's case manager to schedule the conference. If the dispute is not resolved during the telephonic conference, the party may move the Court to obtain permission.

5. Copies: A party producing documents as part of discovery must, upon request, furnish the requesting party with one copy of the documents it requests, at the requesting party's expense.

APPENDIX A (to Model Case Management and Scheduling Order)

Before copying, the parties must agree upon the rate at which the requesting party will be charged for copying.

6. Inadvertent Disclosure: Inadvertent disclosures of material protected by the attorney-client privilege or the work product doctrine shall be handled in accordance with Federal Rule of Evidence 502.

7. Filing with the Court:

a. This Protective Order does not, by itself, authorize the filing of any document under seal. No document may be filed under seal without prior leave of court. A party wishing to file under seal a document containing Confidential or Highly Confidential information must move the Court, consistent with Local Rule 5.3 and prior to the due date for the document, for permission to file the document under seal. If a party obtains permission to file a document under seal, it must also (unless excused by the Court) file a public-record version that excludes any Confidential or Highly Confidential information.

b. If a party wishes to file in the public record a document that another producer has designated as Confidential or Highly Confidential, the party must advise the producer of the document no later than five business days before the document is due to be filed, so that the producer may move the Court to require the document to be filed under seal.

8. Document Disposal: Upon the conclusion of this case, each party must return to the producer all documents and copies of documents containing the producer's Confidential or Highly Confidential information, and must destroy all notes, memoranda, or other materials derived from or in any way revealing confidential or highly confidential information.

APPENDIX A (to Model Case Management and Scheduling Order)

Alternatively, if the producer agrees, the party may destroy all documents and copies of documents containing the producer's Confidential or Highly Confidential information. The party returning and/or destroying the producer's Confidential and Highly Confidential information must promptly certify in writing its compliance with the requirements of this paragraph.

Notwithstanding the requirements of this paragraph, a party and its counsel may retain one complete set of all documents filed with the Court, remaining subject to all requirements of this Protective Order.

9. Originals: A legible photocopy of a document may be used as the "original" for all purposes in this action. The actual "original," in whatever form the producing party has it, must be made available to any other party within ten days after a written request.

10. Survival of obligations: This Protective Order's obligations regarding Confidential and Highly Confidential information survive the conclusion of this case.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

_____,

Plaintiff,

v.

_____,

Defendant.

Case No.

Honorable Laurie J. Michelson
Magistrate Judge

UNDERTAKING OF [name]

I, _____, state the following under penalties of perjury as provided by law:

I have been retained by [party's name] as an expert or consultant in connection with this case. I will be receiving Confidential [and Highly Confidential] information that is covered by the Court's Protective Order dated [fill in date]. (Dkt. [docket number for Protective Order].) I have read the Court's Protective Order and understand that the Confidential [and Highly Confidential] information is provided pursuant to the terms and conditions in that order.

I agree to be bound by the Court's Protective Order. I agree to use the Confidential [and Highly Confidential] information solely for purposes of this case. I understand that neither the Confidential [and Highly Confidential] information nor any notes concerning that information may be disclosed to anyone that is not bound by the Court's Protective Order. I agree to return the Confidential [and Highly Confidential] information and any notes concerning that information to the attorney for [name of retaining party] or to destroy the information and any notes at that attorney's request.

APPENDIX 1 (to Model Protective Order)

I submit to the jurisdiction of the Court that issued the Protective Order for purposes of enforcing that Order. I give up any objections I might have to that Court's jurisdiction over me or to the propriety of venue in that Court.

[signature of expert]

Subscribed and sworn to before me, _____, this __ day of _____, 2014.

Notary Public [signature of notary public]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Plaintiff,

v.

Defendant.

Case No.

Hon. Laurie J. Michelson

Mag. Judge _____

ORDER FOR FACILITATION

The parties having agreed with the approval of the Court that this case be submitted to facilitation, IT IS ORDERED THAT:

1. _____ is appointed Facilitator in this matter.
2. The Facilitator shall be paid at the rate of \$_____ per hour, with the parties dividing the costs equally.
2. The Facilitation shall take place on _____ at _____.
4. The following persons shall be present:
 - A. Attorneys in principal charge of the case;
 - B. Plaintiff(s);
 - C. Defendant(s);
 - D. Representatives of the parties with complete settlement authority.
5. Oral or written statements made for or during facilitation by anyone are inadmissible in any evidentiary proceeding. The facilitator may not be called to testify about the facilitation.

Attorney for Plaintiff(s)

Date

Attorney for Defendant(s)

Date

LAURIE J. MICHELSON
United States District Judge

Date

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Plaintiff,

v.

Defendant.

Case No.

Hon. Laurie J. Michelson

Mag. Judge _____

CONSENT TO PARTICIPATE IN MEDIATION

In accordance with United States District Court for the Eastern District of Michigan Local Rule 16.3, the parties in this case hereby voluntarily consent to participate in case evaluation and agree that all portions of Rule 16.3 shall apply to this mediation.

The parties further agree to be bound by the provisions of the case evaluation rule contained in Michigan Court Rule 2.403 including the provisions allowing for imposition of costs and attorneys' fees as sanctions.

Attorney for Plaintiff(s), P#

Dated

Attorney for Plaintiff(s), P#

Dated

Attorney for Defendant(s), P#

Dated

Attorney for Defendant(s), P#

Dated

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

<i>Plaintiff</i>)	Civil Action No.
v.)	Honorable
<i>Defendant</i>)	Magistrate Judge

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a Magistrate Judge's availability. A United States Magistrate Judge of this Court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States Court of Appeals like any other judgment of this court. A Magistrate Judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a Magistrate Judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a Magistrate Judge's authority. The following parties consent to have a United States Magistrate Judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Parties' printed names</i>	<i>Signatures of parties or attorneys</i>	<i>Dates</i>

Reference Order

IT IS ORDERED: This case is referred to a United States Magistrate Judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

District Judge's signature

Printed name and title

Note: Return this form to the Clerk of the Court **ONLY IF** all parties have consented **ON THIS FORM** to the exercise of jurisdiction by a United States Magistrate Judge. Return the first page of this form by e-filing a PDF version under "Notices".

LR 73.1 Special Designation to Exercise Civil Consent Authority

(a) Authority of a Magistrate Judge. Upon consent of all of the parties, and upon approval of the district judge to whom the case is assigned through entry of an order of reference, a magistrate judge may conduct all proceedings in a civil case and order entry of judgment in the case.

(b) Notice of Consent Option. Upon the filing of a complaint or notice of removal in a civil case, the clerk will give the plaintiff or plaintiff's counsel or the removing defendant or removing defendant's counsel a notice/consent form (form) informing the parties that they may consent to have a magistrate judge conduct all proceedings in the case and order the entry of final judgment. The parties or their attorneys must sign the form if they consent to the exercise of dispositive authority by the magistrate judge. Plaintiff or plaintiff's counsel must attach a copy of the form to each copy of the complaint and summons served. A removing defendant or removing defendant's counsel must include the form with the notice of removal required under 28 U.S.C. §1446(a). Additional copies of the form may be furnished to the parties at later stages of the proceedings. The parties are free to withhold consent without adverse consequences, and any notice or other communication from the court under authority of this LR will so advise them. This section will not apply if the district judge so instructs the clerk.

(c) Execution of Consent. If all of the parties in a civil case consent to have the magistrate judge exercise the authority described in (a), the plaintiff or plaintiff's counsel must file with the clerk the form described in (b), signed by all parties or their attorneys. The clerk will not accept the form without all such signatures, and neither the form nor its contents may be made known or available to a district judge or magistrate judge if it lacks any signatures required under this LR. A party's decision regarding consent will not be communicated to a district judge or magistrate judge before a fully-executed form is filed. Consent in a civil case under (a) may be entered until 30 days before scheduled trial of the case unless otherwise ordered by the district judge.

(d) Reference of Civil Consent Case. Upon filing of an executed form as described in (c), the clerk will send it to the district judge. The district judge may then refer the case to the magistrate judge for all further proceedings. A magistrate judge may exercise consent jurisdiction only if the district judge enters an order specifically referring the case.

(e) Party Added After Consent Occurs. A party added to a civil case after reference of the case to a magistrate judge on consent will be given an opportunity to consent to the continued exercise of case-dispositive authority by the magistrate judge. The clerk will give the party a copy of the form described in (b). A party choosing to consent must, within 30 days of appearance, file with the clerk the form signed by the party or attorney. The case will be returned to the district judge for all further proceedings unless a form is properly signed and filed.

Comment: Review of matters referred under LR 73.1 is in the court of appeals. Review of matters referred under LR 72.1 is by the district judge.

September 08, 1998