UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Plaintiff(s),

v.

Defendant(s).
_____/

Case No.

Hon. George Caram Steeh

Mag. Judge

SCHEDULING ORDER FOR PATENT CASES

YOU WILL RECEIVE NO FURTHER NOTICE OF THESE DATES	
Witness Lists Exchanged By:	
Discovery Cutoff:	
Proposed Claim Construction Statement By: (60 days after Scheduling Order issued)	
Response to Proposed Claim Construction Statement By: (60 days later)	
Parties to Meet and Confer By: (21 days later)	
Joint Claim Construction Statement By: (15 days later)	
Claim Construction Hearing Date: (90 days later)	
Dispositive Motions Filed By: (after Claim Construction hearing)	
Stipulation for Mediation Submitted By:	
Final Pretrial Order Due:	
Final Pretrial Conference:	
Trial Date:	
Estimated Length of Trial	
Jury □ Non Jury □	

I. CLAIM CONSTRUCTION

A. Proposed Claim Construction Statement.

Within 60 days from the date of this Order, the party claiming patent infringement shall serve on all parties a "proposed claim construction statement," which shall contain the following:

1. An identification of the products or services claimed to infringe the patent in suit;

2. A list of each claim in the patent in suit alleged to be infringed;

3. Plaintiff's proposed claim construction for each claim listed in 2 above shall contain:

    a. identification and definition of any special or uncommon meanings of words or phrases in the claim;

    b. all references from the specification that support, describe, or explain each element of the claim;

    c. all material in the prosecution history that describes or explains each element of the claim;

    d. any extrinsic evidence that supports the proposed claim construction of the claim, including, but not limited to, expert testimony, inventor testimony, dictionary definitions and citations to learned treatises, as permitted by law;

    e. a brief analysis in accordance with 35 U.S.C. § 112 ¶ 6 defining and identifying the equivalents asserted by plaintiff, should any of the above listed claims include "means plus function" language; and

    f. Plaintiff's definition of the person of ordinary skill in the relevant art for each patent asserted.

B. Response to Proposed Claim Construction Statement.

No later than 60 days after service upon it of a Proposed Claim Construction Statement, each opposing party must serve on each party a "Response to Proposed Claim Construction Statement." The response shall contain the following information:

1. identification of any special or uncommon meanings of words or phrases in the claim in addition to or contrary to those disclosed by plaintiff;

2. all references from the specification that support, describe, or explain each element of the claim in addition to or contrary to those disclosed by plaintiff;

3. all material in the prosecution history that describes or explains each element of the claim in addition to or contrary to those disclosed by plaintiff; and

4. any extrinsic evidence that supports the proposed construction of the claim, including, but not limited to, expert testimony, inventor testimony, dictionary definitions and citations to learned treatises, as permitted by law.

C. Meet and Confer.

Within 21 days after the "Responses to Proposed Claim Construction Statement" have been served, all parties shall meet and confer for the purpose of preparing a Joint Claim Construction Statement.

D. Joint Claim Construction Statement.

Within 15 days after the parties meet and confer, the parties must complete and file a Joint Claim Construction Statement, which shall contain the following information:

1. The construction of those claims and terms on which the parties agree;

2. Each party's proposed construction of each disputed claim and term, supported by the same information that is required above;

3. The jointly agreeable dates for a claim construction hearing on all disputed issues of claim construction; and

4. For any party who proposes to call one or more witnesses at the claim construction hearing, the identity of each such witness, the subject matter of each witness' testimony and an estimate of the time required for the testimony.

E. Claim Construction Hearing.

After the parties have filed their Joint Claim Construction Statement and the party claiming patent infringement has filed its opening brief and supporting evidence, the Court will send a notice of the date and time of a Claim Construction Hearing (approximately 90 days after Joint Claim Construction Statement is filed).

F. Briefing Schedule.

With respect to a Claim Construction Hearing, the parties shall comply with the following briefing schedule:

Within 30 days after the parties have filed their Joint Claim Construction Statement, the party claiming infringement must serve and file its opening brief and supporting evidence;

Within 21 days after service of the opening brief, each opposing party must serve and file its responsive brief and supporting evidence; and

Within 14 days after service of the responsive briefs, the party claiming patent infringement must serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

II. Computation of time under this order and under any notice of any scheduling order or notice in this cause shall be in conformity and accordance with Federal Rule of Civil Procedure 6(a).

III. DISCOVERY.

A. The Court enforces Rule 26 discovery plans agreeable to all parties. The Court will convene conferences for scheduling discovery upon informal request. Depending on the complexity of the case, the Court will generally allow 3-6 months from the date of the answer for discovery. The Court requires disclosure of both expert and non-expert witnesses one month prior to the discovery cutoff.

B. Discovery motions are generally referred to the Magistrate Judge, and the Court does not use a blanket order regarding all discovery motions. Once a motion has been referred, all communication regarding that motion should be directed to the Magistrate Judge's chambers.

C. This Court will not order discovery to take place subsequent to the discovery cutoff date. Discovery can be extended both before and after the discovery cutoff date by stipulation only if the extension of time does not affect the motion cutoff, final pretrial conference, or trial dates; no motion is required. Extensions or adjournments of all other dates will only be considered upon the filing of a timely written motion.

D. The Court will not allow an out-of-state counsel not admitted in the Eastern District to practice upon a special motion. All inquiries regarding admission to the Eastern District must be directed to the Clerk's Office at (313) 234-5005.

IV. WITNESSES. The deadline for exchange of witness lists refers to all witnesses, lay and expert.

V. DISPOSITIVE MOTIONS. When filing motions for summary judgment, parties shall proceed in accordance with the following:

A. Before filing a motion for summary judgment or responding to such a motion, the parties are urged to familiarize themselves with Celotex Corp. v. Catrett, 477 U.S. 317 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986). An excellent summary of these cases appears in Street v. J.C. Bradford & Co., 886 F.2d 1472 (6th Cir. 1989). See also Schwarzer, Summary Judgment under the Federal Rules: Defining Genuine Issues of Material Fact, 99 F.R.D. 465 (1984).

B. Facts stated in the statement of material facts must be supported with citations to either the pleadings, interrogatories, admissions, depositions, affidavits, or documentary exhibits. The full text of any source cited should be filed with the Court as an appendix. The appendix shall contain an index.

C. Counsel are discouraged from employing elaborate boilerplate recitations of the summary judgment standard or lengthy string citations in support of well established legal principles. Instead, counsel should focus their analysis on a few well chosen cases, preferably recent and from controlling courts. Counsel are encouraged to supply the Court with copies of their main cases, with the relevant passages highlighted and tabbed. Where unpublished opinions or opinions published only in a specialty reporter are cited, copies of the cases must be submitted along with the brief. As to cited deposition testimony, counsel are also encouraged to supply the Court with a complete transcript, and citations should have page and line references.

D. The Court Clerk will send out a notice of the hearing date. The Court does not issue a briefing schedule. The Court enforces the response and reply due dates as set forth in Local Court Rules 7.1(d) and Fed. R. Civ. P. 6. even when the motion hearing is set far in advance. Attorneys who do not respond to motions in a timely fashion are not permitted to argue before the Court during oral argument. The Court requires strict compliance with Local Court Rule 7.1(a) regarding concurrence, and the Court will impose costs for failure to comply with the Local Court Rule. The parties are encouraged to present a proposed order at the hearing. The Court does not generally refer motions other than discovery motions to the Magistrate Judge except as required by Court procedure.

VI. STIPULATION FOR MEDIATION must be submitted by the date set. Referral to mediation panel will be made at the end of discovery. It is the responsibility of the attorneys to make sure that mediation is completed before the final pretrial conference.

VII. ORAL ARGUMENT ON MOTIONS. Attorneys who do not respond to motions in a timely fashion will not be permitted to argue before the Court during oral argument.

VIII. FINAL PRETRIAL CONFERENCE AND FINAL PRETRIAL ORDER. The Court has established a date for a final pretrial conference. Following is the procedure counsel are to utilize to prepare for the final pretrial conference and the final pretrial order:

A. Counsel for all parties are directed to confer in person (face to face) at their earliest convenience in order to (1) reach any possible stipulations narrowing the issues of law and fact, (2) deal with non-stipulated issues in the manner stated in this paragraph and (3) exchange documents that will be offered in evidence at the trial. It shall be the duty of counsel for plaintiff to initiate that meeting and the duty of other counsel to respond to plaintiff's counsel and to offer their full cooperation and assistance. If, after reasonable effort, any party cannot obtain the cooperation of other counsel, it shall be his or her duty to communicate with the Court. Counsels' meeting shall be had sufficiently in advance of the date of the scheduled Conference with the Court so that counsel for each party can furnish all other

counsel with a statement of the real issues the party will offer evidence to support, eliminating any issues that might appear in the pleadings about which there is no real controversy and including in such statement issues of law as well as ultimate issues of fact from the standpoint of each party. Counsel for plaintiff then will prepare a draft final pretrial order and submit it to opposing counsel, after which all counsel will jointly submit[1] the original and one copy of the final draft of the proposed pretrial order to the Judge's chambers (or in open court, if so directed) on the date fixed for submission. All instructions contained within this order must be followed carefully; they will be binding on the parties at trial. If there are any pending motions requiring determination in advance of trial,[2] they should specifically be called to the Court's attention not later than the date of submission of the final pretrial order.

The final pretrial order should provide for the signature of the Court, which, when signed, will become an Order of the Court. AN ORIGINAL AND ONE COPY IS TO BE FILED WITH THE COURT.

The proposed pretrial order shall strictly comply with the provisions and requirements of Local Rule 16.2, except as this Court may otherwise provide.

B. Parties shall attend the final pretrial conference along with the attorneys who will try the case. Those attorneys will familiarize themselves with the pretrial rules and will come to the conference with full authority to accomplish the purposes of Rule 16 (including simplifying the issues, expediting the trial and saving expense to litigants). Counsel shall be prepared to discuss compromise settlement possibilities at the conference without the necessity of obtaining confirmatory authorization from their clients. Parties themselves must attend the final pretrial conference unless the Court has agreed to other arrangements prior to the date of the conference.

IX. At least ONE WEEK prior to beginning of trial term all counsel shall furnish to the court the following:

1. In jury cases, any requests for VOIR DIRE and proposed JOINT JURY INSTRUCTIONS. In jury cases, the parties are hereby ordered to meet and confer prior to trial to discuss jury instructions. No later than one week prior to the first day of trial, the parties are to file with the court a single set of proposed, stipulated jury instructions. The Court will provide proposed opening and closing instructions, and counsel are responsible for all instructions related to their specific claims or

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[1] Counsel for plaintiff has primary responsibility for preparation of the final pretrial order and, in that respect, for its submission to opposing counsel in ample time for revision and timely filing. Nonetheless, full cooperation and assistance of all other counsel are required for proper preparation of the final pretrial order and must therefore be extended.

[2] This includes motions in limine, disputes over specific jury instructions or the admissibility of any evidence at trial upon which the parties desire to present authorities and argument to the Court.

defenses. All such instructions are to be typewritten and double spaced and shall contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"). In addition, each party shall separately file any additional proposed instructions to which any other party objects. The parties must make a concerted, good faith effort to narrow the areas of dispute and to discuss each instruction with a view to reaching agreement as to an acceptable form.

2. In non-jury cases, proposed FINDINGS OF FACT and CONCLUSIONS OF LAW.

3. A statement of claims or defenses, no longer than two pages, suitable to be read to the jury during opening instructions.

X. EXHIBITS DURING TRIAL.

1. Counsel are required to mark all proposed exhibits in advance of trial; the preferred method is to use the traditional "Plaintiff's Exhibit __" (yellow) and "Defendant's Exhibit __" (blue) stickers, but any clearly marked method is acceptable. A consecutive numbering system should be used, each party starting with Exhibit "1."

2. Counsel are required to keep track of all admitted exhibits during trial. See attached exhibit form.

3. If exhibits are voluminous, exhibits used for each witness should be bound separately, and binders should be provided to the Court and each juror.

4. Counsel must confer and purge from one set of binders or files all exhibits not admitted during the course of trial. Such exhibits should be ready to be turned over to the jury foreperson prior to closing jury instructions so that jury deliberations are not delayed.

5. It is the responsibility of the parties to see that the record is complete; all trial exhibits, briefs, etc. are to be filed with the Clerk's Office on the 5th floor in accordance with the local court rules.

XI. EXPERTS

See Local Rule 26.3. "The disclosure requirements of Fed.R.Civ. P. 26(a)(2) relating to experts shall apply, both as to timing and content, unless the Court orders otherwise." The Court requires full disclosure of computer generated visual or animated evidence and full disclosure of underlying data.

XII. Other matters:

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LR 16.2 Joint Final Pretrial Order

(a) Joint Final Pretrial Order. The parties shall furnish a joint final pretrial order in every civil case at, or if the judge requires, before the final pretrial conference.

(NOTE: THIS COURT REQUIRES THAT THE JOINT FINAL PRETRIAL ORDER BE FURNISHED AT LEAST ONE WEEK BEFORE THE TIME SET FOR THE FINAL PRETRIAL CONFERENCE.)

This joint final pretrial order shall fulfill the parties' disclosure obligations under Fed.R.Civ.P. 26(a)(3), unless the Judge orders otherwise. All objections specified in Rule 26(a)(3) shall be made in this order. Counsel for plaintiff(s) or a plaintiff without counsel shall convene a conference for all parties to confer and collaborate in formulating a concise joint final pretrial order. Counsel for plaintiff(s) or a plaintiff without counsel shall compile the order. Counsel for all parties and any party without counsel shall approve and sign the order. Counsel for plaintiff(s) or a plaintiff without counsel shall submit an original and one copy of the order to the assigned Judge for approval and adoption. The order shall provide for the signature of the Court and, when signed and filed in the Clerk's Office, becomes an order of the Court, superseding the pleadings and governing the course of trial unless modified by further order. The pretrial order shall not be a vehicle for adding claims or defenses. The order will not be filed in the Clerk's Office until the Judge has signed it.

(b) Contents of Order. The joint final pretrial order shall contain, under numbered and captioned headings, the following:

(1) Jurisdiction. The parties shall state the basis for Federal Court jurisdiction and whether jurisdiction is contested by any party.

(2) Plaintiffs' Claims. The statement of the claim or claims of plaintiffs shall include legal theories.

(3) Defendants' Claims. The statement of the defenses or claims of defendants, or third parties, shall include legal theories.

(4) Stipulation of Facts. The parties shall state, in separately numbered paragraphs, all uncontested facts.

(5) Issues of Fact to be Litigated.

(6) Issues of Law to be Litigated.

(7) Evidence Problems Likely to Arise at Trial. Include objections to exhibits and to the use of deposition testimony, including the objections required under Fed.R.Civ.P. 26(a)(3). The order shall list all motions *in limine* of which counsel or a party without counsel should reasonably be aware.

(8) Witnesses. Each party shall list all witnesses whom that party will call and all witnesses whom that party may call. This listing shall include, but is not limited to, the disclosures required under Fed.R.Civ.P. 26(a)(3)(A) and (B). A party may, without further notice, call a witness listed by another party as a "will call" witness. Except as permitted by the Court for good cause a party may not list a witness unless the witness was included on a witness list submitted under a prior order or has been deposed. The list shall state whether the witness is an expert and whether testimony will be offered by deposition. Only listed witnesses will be permitted to testify at trial, except for rebuttal witnesses whose testimony could not be reasonably anticipated before trial, or except for good cause shown. The provisions of Fed.R.Civ.P. 37(c)(1) shall apply to a failure to list a witness.

(9) Exhibits.[3] The parties shall number and list, with appropriate identification, each exhibit, including summaries, as provided in Fed.R.Civ.P. 26(a)(3)(C). Objections to listed exhibits must be stated in the joint pretrial order. Only listed exhibits will be considered for admission at trial, except for rebuttal exhibits which could not be reasonably anticipated before trial, or except for good cause shown. The provisions of Fed.R.Civ.P. 37(c)(1) shall apply to a failure to list an exhibit.

(10) Damages. The parties shall itemize all claimed damages and shall specify damages that can be calculated from objective data. The parties shall stipulate to those damages not in dispute.

(11) Trial.

(A) Jury or non-jury.

(B) Estimated length of trial.

(12) Settlement. Counsel or a party without counsel shall state that they have conferred and considered the possibility of settlement, giving the most recent place and date, and state the current status of negotiations and any plans for further discussions. They may state that they wish the Court to schedule a settlement conference.

(c) Failure to Cooperate. For failure to cooperate in preparing or submitting the joint final pretrial order or failure to comply strictly with the terms of the joint final pretrial order, the Court may dismiss claims, enter default judgment, refuse to permit witnesses to testify or to admit exhibits, assess costs and expenses, including attorney fees, or impose other appropriate sanctions.

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[3] COMMENT: Under LR 16.2(b)(9), any objections based on foundation or authenticity will be deemed waived if not raised before trial.

(d) Filing of Trial Briefs, Findings and Instructions. The joint final pretrial order shall further provide that trial briefs, proposed findings of facts and conclusions of law in nonjury cases or requests for instructions in jury cases shall be filed on the first day of trial.

(NOTE: THIS COURT REQUIRES THAT TRIAL BRIEFS, MOTIONS IN LIMINE, PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN NON-JURY CASES, OR REQUESTS FOR INSTRUCTIONS IN JURY CASES SHALL BE FILED ONE WEEK PRIOR TO THE DAY OF THE TRIAL TERM.)

(e) Additional Requirements. A Judge, in an appropriate case, may add additional requirements to the joint final pretrial order, or may suspend application of this Rule, in whole or in part.

(f) Juror Costs Attributable to Parties. Each party shall also acknowledge that the Court may assess juror expenses under LR 38.2.

s/George Caram Steeh
U.S. District Judge

Dated:

PLAINTIFF'S EXHIBITS

EXHIBIT NO.	DATE & TIME OFFERED	OBJECTED TO	RECEIVED
Pl. Exhibit No.			
Pl. Exhibit No.			
Pl. Exhibit No.			
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Pl. Exhibit No.			

DEFENDANT'S EXHIBITS

EXHIBIT NO.	DATE & TIME OFFERED	OBJECTED TO	RECEIVED
Def. Exhibit No.			
Def. Exhibit No.			
Def. Exhibit No.			
Def. Exhibit No.			
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