

NYIPLA

Proposed Local Patent Rules

for the

U.S. District Court

for the

Southern District of New York

Nineteen
Hundred and Twenty-two

NYIPLA

The New York Intellectual Property Law Association

Starting August 8th, 2006, the U.S. District Court for the Southern District of New York began considering a set of specialized rules proposed by the NYIPLA for use in patent cases which are brought in that Court (“Proposed Rules”). Then Chief Judge Mukasey sent the following email to all the Judges of the Court: “As mentioned at our last Board of Judges meeting, I am circulating for your use a set of rules for patent cases proposed by the New York Intellectual Property Law Association. They are optional and can be adapted in whatever fashion you think is useful.”

These Proposed Rules, a set of which are reprinted as an insert to this publication, were developed over time by a task force initially assembled two years ago by the Board of Directors. The Proposed Rules take into consideration (but vary from) other local patent rules adopted by other district courts, including the District Courts for the Northern District of California, the Northern District of Georgia and the Western District of Pennsylvania. After several months, many meetings, and many revisions, and much input from many members of this association, the NYIPLA Board proposed Rules which it believes provide an ideal framework for litigating patent cases as both a patentee and accused infringer.

For instance, the Proposed Rules provide procedures for exchanging, along with the automatic initial disclosures required by Fed. R. Civ. P. 26(a)(1), documents particularly relevant to patent cases, such as those relating to on sale, the patents-in-suit, their file histories, the accused devices and prior art. The Proposed Rules further require a patentee to disclose automatically its infringement contentions, along with supporting documentation, as well as an accused party to disclose automatically its invalidity contentions and supporting documentation.

In addition, the Proposed Rules contain procedures for effectively managing the “Markman Hearing” process by, for instance, providing a schedule for the exchange of proposed claim constructions, for the preparation of a joint claim terms chart, and for the filing of claim construction briefs. Other issues peculiar to patent cases, such as willfulness and waiver, and the exchange of expert reports, are also addressed.

In short, the NYIPLA’s Proposed Rules will make patent cases much more manageable for the Court and more predictable for the litigants, ultimately streamlining patent cases, and reducing costs for all parties involved. We hope the Judges of the Southern District, and parties before the Court, use our Proposed Rules and achieve these results.

**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK**

PROPOSED LOCAL PATENT RULES

1. SCOPE OF RULES

LPR 1.1. Title.

These are the Proposed Local Rules of Practice for Patent Cases before the United States District Court for the Southern District of New York. They should be cited as “LPR __.”

LPR 1.2. Objective.

These proposed rules are intended to facilitate the speedy, fair and efficient resolution of patent disputes. The Local Civil Rules of this Court shall also apply to these actions, except to the extent that they are inconsistent with these Proposed Local Patent Rules. The Court may accelerate, extend, eliminate, or modify the obligations or deadlines set forth in these Proposed Local Patent Rules based on the circumstances of any particular case, including, without limitation, the complexity of the case or the number of patents, claims, products, or parties involved. If a party believes the Proposed Local Patent Rules require modification, or should not be followed, the party must file a written motion with the Court specifically identifying the Local Patent Rule, the proposed modification and the reason for said modification.

LPR 1.3. Effective Date.

These Proposed Local Patent Rules shall take effect on July 1, 2006. Relevant provisions of these Rules may be applied to any pending case by the Court, on its own motion or on motion by any party after a meet and confer.

LPR 1.4. Privilege and Work Product.

These Proposed Local Patent Rules are not intended to supersede a party’s right to assert the attorney-client privilege or work product immunity, and required production hereunder shall be subject to a party’s right to claim such privilege or work product immunity.

2. GENERAL PROVISIONS

LPR 2.1. Governing Procedure.

Initial Scheduling Conference (“ISC”). When the parties confer with each other pursuant to Fed. R. Civ. P. 26(f), in addition to the matters covered by Fed. R. Civ. P. 26, the parties must discuss and address in the statement filed pursuant to Fed. R. Civ. P. 26(f), the following topics:

- (a) Proposed modification of the deadlines provided for in these Proposed Local Patent Rules and/or set forth in the Court’s Scheduling Order (see Model

Scheduling Order at Appendix “A” for types of deadlines that might be included) and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;

(b) The need for and any specific procedures or limits on discovery relating to claim construction, including depositions of witnesses, including expert witnesses;

(c) A brief description of the technology at issue, and whether the Court should consider the use of a Special Master for technical assistance;

(d) The prospects for settlement; and

(e) The need for a protective order and the submission of a proposed joint protective order, specifically identifying any issues upon which the parties cannot agree, and which the Court should address at the ISC. The parties shall not be relieved of their obligations to produce documents or other information under these Proposed Local Patent Rules or the Federal Rules of Civil Procedure pending resolution of any disputes regarding, or entry by the Court of, an appropriate protective order. In such instances, all documents and information so produced before the entry of an appropriate protective order shall be limited to review by outside counsel of record only if so designated by the producing party, until such time as the protective order is entered.

LPR 2.2. Certification of Initial Disclosures.

All statements, disclosures, or charts filed or served in accordance with these Proposed Local Patent Rules must be dated and signed by counsel of record (or by the party if unrepresented by counsel) pursuant to Rules 11 and 26(g) of the Federal Rules of Civil Procedure.

LPR 2.3. Admissibility of Disclosures.

Except as hereinafter provided, statements, disclosures, or charts governed by these Proposed Local Patent Rules are admissible to the extent permitted by the Federal Rules of Evidence or Procedure. However, the statements or disclosures provided for in LPR 4.1 and 4.2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Proposed Local Patent Rules must be taken.

LPR 2.4. Relationship to Federal Rules of Civil Procedure.

Except as provided in this paragraph, other rules of this Court, or as otherwise ordered, it shall not be a legitimate ground for objecting to an opposing party’s discovery request (e.g., interrogatory, document request, deposition question) or request for admission, or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26(a)(1), that the discovery request, request for admission or disclosure requirement is premature in light of or otherwise conflicts with, these Proposed Local Patent Rules. A party may object, however, to

the following categories of discovery requests or requests to admit (or decline to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in the Proposed Local Patent Rules:

- (a) Requests seeking to elicit a party's claim construction position;
- (b) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, device, process, method, act, or other instrumentality; and
- (c) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art.

Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) as set forth above, that party shall provide the requested information on the date on which it is required to provide the requested information to an opposing party under these Proposed Local Patent Rules, unless there exists another legitimate ground for objection.

The parties are reminded that the obligations under Fed. R. Civ. P. 26(e) to supplement disclosure and discovery responses shall apply to all disclosures required under these Proposed Local Patent Rules.

LPR 2.5. Modification of Scheduling Order.

At any time prior to the end of expert discovery, the parties may jointly seek modification of the scheduling order and, if the parties cannot agree, the Court may amend the schedule on motion upon a showing of good cause.

3. PATENT INITIAL DISCLOSURES

LPR 3.1. Initial Disclosures.

Along with the initial disclosures required by Fed. R. Civ. P. 26(a)(1) ("Initial Disclosures"),

- (a) The party asserting a claim of patent infringement shall produce or make available for inspection and copying, among other items:
 - (1) All documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreement, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell or other manner of transfer, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(2) All documents constituting communications to and from the U.S. Patent Office for each patent in suit and for each patent or application on which a claim for priority is based; and

(3) Documents evidencing the accused aspects or elements of each accused apparatus, product, device, process, method, act or other instrumentality (“Accused Instrumentality”) which form the basis for the allegations of infringement.

The producing party shall, within thirty (30) calendar days of production, separately identify by production number which documents correspond to each above category.

(b) With the Initial Disclosures of the party opposing a claim of patent infringement, such party shall produce or make available for inspection and copying:

(1) Publicly accessible documentation sufficient to show the operation of any accused aspects or elements of each accused apparatus, product, device, process, method or other instrumentality identified explicitly (by name, product number, or other specific designation) in the pleading of the party asserting patent infringement. In instances, however, where the pleading contains only a general allegation of infringement by product or class of products and fails to contain a detailed allegation of the specific aspects or elements of each Accused Instrumentality, then this subpart (b)(1) shall not apply; and

(2) A copy of each item of prior art, of which the opposing party is aware, that allegedly anticipates or renders obvious each asserted patent claim.

LPR 3.2. Disclosure of Asserted Claims and Infringement Contentions.

Not later than thirty (30) calendar days after the Initial Scheduling Conference, a party claiming patent infringement must serve on all parties a “Disclosure of Asserted Claims and Infringement Contentions.” Separately for each opposing party, the “Disclosure of Asserted Claims and Infringement Contentions” shall contain the following information:

(a) Identification of each claim of each patent in suit that is allegedly infringed by each opposing party;

(b) Separately for each asserted claim identified in part (a) above, identification of each Accused Instrumentality of each opposing party of which the party claiming infringement is aware. This identification shall specify and shall include at least identification of the Accused Instrumentality and all accused aspects or elements thereof;

(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 35 U.S.C. § 112(6), 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) Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality, and if present under the doctrine of equivalents, the asserting party shall also explain why it contends that any differences are not substantial;

(e) Separately for each asserted claim identified in part (a) above, identify the earliest invention date to which each such asserted claim allegedly is entitled, the basis therefor, and identify all documents evidencing the conception and reduction to practice 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; and

(f) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality.

LPR 3.3. Document Production Accompanying Disclosure.

With the “Disclosure of Asserted Claims and Infringement Contentions,” the party claiming patent infringement shall supplement its Initial Disclosures, if applicable, and, to the extent not previously produced by any party, shall produce to the other party all documents supporting the asserting party’s Disclosure of Asserted Claims and Infringement Contentions under LPR 3.2(b) above.

LPR 3.4. Invalidity Contentions.

Not later than thirty (30) calendar days after service upon it of the “Disclosure of Asserted Claims and Infringement Contentions,” each party opposing a claim of patent infringement, shall serve upon all parties its “Invalidity Contentions.” Invalidity Contentions shall contain the following information:

(a) The identity of each item of prior art that a party then contends allegedly anticipates or renders obvious each asserted claim. 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(b) 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. Prior 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. Prior 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);

(b) 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 motivation to combine such items, must be identified;

(c) 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 35 U.S.C. § 112(6), 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

(d) Any grounds of invalidity under 35 U.S.C. § 112 of any of the asserted claims.

LPR 3.5. Document Production Accompanying Invalidity Contentions.

With the “Invalidity Contentions,” the party opposing a claim of patent infringement shall supplement its Initial Disclosures, if applicable, and shall produce to the asserting party, to the extent not previously produced by any party, all documents supporting the opposing party’s Invalidity Contentions under LPR 3.4(a) above.

LPR 3.6. Disclosure Requirement in Patent Cases Initiated by Declaratory Judgment.

(a) **Invalidity Contentions If No Claim of Infringement.** In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, LPR 3.2 and 3.3 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in its answer to the complaint, no later than thirty (30) calendar days after the Initial Scheduling Conference, the party seeking a declaratory judgment must serve upon each opposing party its Invalidity Contentions that conform to LPR 3.4 and produce or make available for inspection and copying the documentation described in LPR 3.5.

(b) **Inapplicability of Rule.** This LPR 3.6 shall not apply to cases in which a claim for a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable is filed in a pleading or counterclaim filed in response to a complaint filed in this Court for infringement of the same patent.

LPR 3.7. Amendment to Contentions.

(a) Amendments, supplementations, or modifications of the Infringement Contentions or the Invalidity Contentions are permissible, subject to other applicable rules of

procedure and disclosure requirements, if made in a timely fashion and asserted in good faith and without purpose of delay. The Court's ruling on claim construction may support a timely amendment, supplementation, or modification of the Infringement Contentions or the Invalidity Contentions.

(b) In addition to the permissible amendments, supplementations, or modifications under LPR 3.7(a) above, unless a party's Contentions are Final under LPR 3.7(c), a party must amend, supplement, or modify its Infringement or Invalidity Contentions within sixty (60) days of the occurrence of any of the following events:

- (1) the discovery that such party's contentions are substantially erroneous or deficient;
- (2) a determination that new prior art or evidence supports an invalidity contention; or
- (3) the discovery of a new Accused Instrumentality.

(c) Each party's Infringement and Invalidity Contentions, whether or not amended, supplemented, or modified under this LPR 3.7, shall be deemed that Party's Final Contentions automatically sixty (60) calendar days after the Court's Final ruling on claim construction. No changes shall be made to any Party's Final Contentions without leave of Court and then only for good cause shown.

LPR 3.8. Willfulness or Exceptional Case.

Unless a later date of production is selected by the Court (due to bifurcation of willfulness or any other reason), not later than thirty (30) calendar days after service by the Court of its final ruling on dispositive motions, each party opposing a claim of patent infringement that will rely on an opinion of counsel as part of a defense to a claim of willful infringement or that a case is exceptional shall:

- (a) Produce or make available for inspection and copying the opinion(s) and any other documents relating to the opinion(s) as to which that party agrees the attorney-client or work product protection has been waived; and
- (b) Serve a privilege log identifying any other documents which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party opposing a claim of patent infringement who does not comply with the requirements provided for in LPR 3.8 shall not be permitted to rely on an opinion of counsel as part of a defense to a claim that infringement was willful or a case was exceptional absent a stipulation of all parties or by order of the Court, which shall be entered only upon a showing of good cause.

4. CLAIM CONSTRUCTION PROCEEDINGS

LPR 4.1. Exchange of Proposed Constructions for Claim Terms and Phrases.

Not later than forty-five (45) calendar days after service of the Invalidity Contentions pursuant to LPR 3.4, each party shall simultaneously exchange a list of claim terms and phrases, and proposed constructions for each, which that party contends should be construed by the Court, and identify any claim element which that party contends should be governed by 35 U.S.C. § 112(6).

LPR 4.2. Preparation and Filing of Joint Disputed Claim Terms Chart.

Not later than seven (7) calendar days after the exchange set forth in LPR 4.1, the parties shall meet and confer to identify claim terms and phrases that are in dispute, and claim terms and phrases that are not in dispute. Not later than ten (10) calendar days after the meet and confer, the parties shall prepare and file a Joint Disputed Claim Terms Chart listing claim terms and phrases, and each party's proposed construction, for each disputed claim term and phrase, asserted by each party.

LPR 4.3. Claim Construction Briefing and Extrinsic Evidence.

(a) Not later than thirty (30) calendar days after filing of the Joint Disputed Claim Terms Chart pursuant to LPR 4.2, the party asserting infringement, unless otherwise stipulated by the parties, shall serve and file an Opening Claim Construction Brief including a proposed construction of each claim term and phrase which the parties collectively have identified as being in dispute. Such Opening Claim Construction Brief shall also, for each element which the party contends is governed by 35 U.S.C. § 112(6), describe the claimed function of that element and identify the structure(s), act(s), or material(s) corresponding to that element in the patent specification. Such Opening Claim Construction Brief shall further include a statement of the anticipated length of time necessary for the party to present its case at the claim construction hearing.

(b) At the same time the party serves its Opening Claim Construction Brief, that party shall serve and file an identification of extrinsic evidence, including testimony of lay and expert witnesses the party contends supports its claim construction. The party shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, lay or expert, the party shall also serve and file an affidavit signed by the witness that sets forth the substance of that witness' proposed testimony sufficient for the opposing party to conduct meaningful examination of the witness(es).

(c) Not later than thirty (30) calendar days after service of the Opening Claim Construction Brief, the opposing party shall serve and file a Response to Opening Claim Construction Brief including the party's proposed construction of each claim term and phrase which the parties collectively have identified as being in dispute. Such Response shall also, for each element which the opposing party contends is governed by 35 U.S.C. § 112(6), describe the

claimed function of that element and identify the structure(s), act(s), or material(s) corresponding to that element. Such Response shall further include a statement of the anticipated length of time necessary for the party to present its case at the Claim Construction Hearing and a concise statement not to exceed five (5) pages as to whether the party objects to the opening party's offer of extrinsic evidence.

(d) At the same time the opposing party serves its Response, that party shall serve and file an identification of extrinsic evidence, including testimony of lay and expert witnesses the party contends supports its claim construction. The party shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, lay or expert, the party shall also serve and file an affidavit signed by the witness that sets forth the substance of that witness' proposed testimony sufficient for the opposing party to conduct meaningful examination of the witness(es).

(e) Not later than seven (7) calendar days after service of the Response, the opening party may serve and file a Reply, not to exceed ten (10) pages, solely rebutting the opposing party's Response. Such Reply shall further include a concise statement not to exceed five (5) pages as to whether the party objects to the opposing party's offer of extrinsic evidence.

(f) Not later than five (5) calendar days after service of the Reply, the opposing party shall have the option of serving and filing a Sur-Reply, not to exceed five (5) pages, solely rebutting the opening party's Reply.

(g) Prior to the Claim Construction Hearing, the Court may issue an order stating whether it will receive extrinsic evidence and, if so, the particular evidence that it will exclude and that it will receive, and any other matter the Court deems appropriate concerning the conduct of the hearing.

LPR 4.4. Claim Construction Hearing.

Subject to the convenience of the Court's calendar, fifteen (15) calendar days following submission of the Reply specified in LPR 4.3(e), the Court shall conduct a Claim Construction Hearing.

5. EXPERT WITNESSES

LPR 5.1. Disclosure of Experts and Expert Reports.

(a) For issues other than claim construction to which expert testimony shall be directed, expert witness disclosures and depositions shall be governed by this Rule.

(b) No later than sixty (60) calendar days after the Court's ruling on claim construction each party shall make its initial expert witness disclosures required by Rule 26 on the issues on which each bears the burden of proof ("First Round Disclosures").

(c) No later than thirty (30) calendar days after service of the First Round Disclosures, each party shall make its initial expert witness disclosures required by Rule 26 on the issues on which the opposing party bears the burden of proof (“Second Round Disclosures”).

(d) Unless otherwise ordered by the Court, no later than fifteen (15) calendar days after the Second Round of Disclosures, each party shall make any rebuttal expert witness disclosures permitted by Rule 26 (“Rebuttal Reports”).

LPR 5.2. Depositions of Experts.

Depositions of expert witnesses disclosed under this Rule, if any, shall be completed within forty-five (45) calendar days after service of the Rebuttal Reports.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

Plaintiff, v. Defendant.)) Civil Action No.

MODEL SCHEDULING ORDER FOR USE IN PATENT CASES

AND NOW, this _____ day of _____ 20 _____,

IT IS ORDERED that this action is placed under the Proposed Local Patent Rules of this Court for pretrial proceedings and all provisions of these Rules will be strictly enforced.

IT IS FURTHER ORDERED that counsel shall confer with their clients prior to all scheduling, status, or pretrial conferences to obtain authority to participate in settlement negotiations which may be conducted or ordered by the Court.

IT IS FURTHER ORDERED that compliance with provisions of Local Rule 16 and the Proposed Local Patent Rules shall be completed as follows:

- (1) The parties shall move to amend the pleadings or add new parties by _____;
- (2) The party claiming patent infringement must serve on all parties a Disclosure of Asserted Claims and Infringement Contentions, and make any required Document Production by _____; *[30 calendar days after the Initial Scheduling Conference; LPR 3.2 and 3.3]*
- (3) The party claiming invalidity must serve on all parties Invalidation Contentions, and make any required Document Production by _____; *[30 calendar days after service of Disclosure of Asserted Claims and Infringement Contentions; LPR 3.4 and 3.5]*
- (4) Each party will simultaneously exchange Proposed Claim Terms and Phrases for Construction by _____; *[45 calendar days after service of the Invalidation Contentions; LPR 4.1]*
- (5) The parties shall meet and confer by _____ to identify claim terms and phrases that are in dispute, and claim terms and phrases that are not in dispute; *[Not later than seven (7) calendar days after the exchange of proposed claim terms and phrases; LPR 4.2]*
- (6) Each party shall also file by _____ a Joint Disputed Claim Terms Chart listing claim terms and phrases, and each party's proposed constructions, for each disputed claim term and phrase, asserted by each party; *[Not later than ten (10) calendar days after the meet and confer; LPR 4.2]*

- (7) Plaintiff shall file and serve an Opening Claim Construction Brief and an identification of extrinsic evidence by _____; [30 calendar days after filing of the joint disputed claim terms chart; LPR 4.3 (a) and (b)]
- (8) The Opposing Party shall file and serve a response to the Opening Claims Construction Brief, an identification of extrinsic evidence and any objections to extrinsic evidence by _____; [30 calendar days after service of the opening claim construction brief; LPR 4.3 (c) and (d)]
- (9) The opening party may serve and file a Reply directly rebutting the opposing party's Response, and any objections to extrinsic evidence by _____; [7 calendar days after opposing party's response is served; LPR 4.3(e)], and the opposing party may submit a Sur-Reply by _____; [5 calendar days after the Reply is served; LPR 4.3(f)]
- (10) The Court will conduct a hearing on the issue of Claim Construction on _____, [15 calendar days after submission of the reply; LPR 4]
- (11) The parties shall complete fact discovery by _____ and all interrogatories, depositions, requests for admissions, and requests for production shall be served within sufficient time to allow responses to be completed prior to the close of fact discovery; [recommended 60 days after the court's ruling on claim construction]
- (12) Each party shall make its initial expert witness disclosures, as required under Rule 26, on the issues on which each bears the burden of proof by _____, [60 days after court's ruling on claim construction; LPR 5.1(b)]
- (13) Each party shall make its initial expert witness disclosures, as required under Rule 26, on the issues on which the opposing party bears the burden of proof by _____; [30 days after the first round of expert disclosures; LPR 5.1(c)]
- (14) Rebuttal expert witness disclosures are to be made by _____; [15 calendar days after second round of expert disclosures; LPR 5.1(d)]
- (15) Expert depositions, if any, shall be completed by _____; [45 days after service of the Rebuttal Reports; LPR 5.2]
- (16) Motions for summary judgment with evidentiary material and accompanying brief, if appropriate, shall be filed by _____, and responses to such motions shall be filed within __ days thereafter. Reply and surreply briefs shall not be filed unless approved/requested by the Court;
- (17) All parties shall file an indication whether or not they are willing to proceed to trial in front of a Magistrate Judge by _____;
- (18) The parties shall submit a pretrial order by _____.

(19) The Court shall conduct a pretrial conference on _____, at _____ (time) Room _____, _____, New York, and all trial counsel must attend; and

(20) The trial shall commence on _____ 20__, at _____ (time), Courtroom No. _____.

United States District Judge

cc: All Counsel of Record.

Nineteen Hundred and Twenty-two

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The New York Intellectual Property Law Association