LOCAL RULES

OF

CIVIL PRACTICE AND PROCEDURE

OF THE

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF DELAWARE

(Amended Effective August 1, 2016)

Preface to the 2016 Amendments

It has been six years since the Local Rules of Civil Practice and Procedure were amended by the Court. Since the last amendments were made effective, the Federal Rules of Civil Procedure have been amended in several respects, including rules relating to computation of time. The amendments made herein are meant to reflect these amendments and to address other practices of the Court and of the Bar.

The Judges of the Court take this opportunity to thank the members of the Bar named below who gave the Court their time and advice regarding this project.

Members of the U. S. District Advisory Committee

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I. SCOPE OF THE RULES

RULE 1.1. **Scope of the Rules.**

(a) Title and Citation. The rules that follow shall be known as the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware (hereinafter referred to as "the Rules"). The Rules shall be cited as "D. Del. LR __."

(b) Effective Date. The Rules become effective on _____. The Rules supercede any local rules effective prior thereto and shall govern all civil proceedings pending on the effective date, unless otherwise ordered.

(c) Application. The Rules shall be construed consistent with 1 U.S.C. §§ 1-5 and shall be followed insofar as they are not inconsistent with the Federal Rules of Civil Procedure (hereinafter "Fed. R. Civ. P."). The Rules, as well as all procedures promulgated by either the Clerk of Court ("the Clerk") or any Judge's chambers, shall be on the Court's website at **www.ded.uscourts.gov.**

(d) Modification. The application of the Rules in any case or proceeding may be modified by the Court in the interests of justice.

RULE 1.2. **Availability of the Local Rules.**

(a) Copies. Copies of the Rules, as amended and with any appendices attached hereto, can be viewed on and downloaded from the Court's website, **www.ded.uscourts.gov.** Paper copies are available from the Clerk for a reasonable charge to be determined by the Court.

(b) Amendments. Consistent with Fed. R Civ. P. 83 and 28 U.S.C. § 2071, notice shall be provided of:

(1) Any amendments to the Rules;

(2) The ability of the public to comment thereon; and

(3) Final adoption of the amendments.

RULE 1.3. **Sanctions.**

(a) In General. Sanctions may be imposed, at the discretion of the Court, for violations of the Rules, as well as for violations of the Fed. R. Civ. P. and any order of the Court. Such sanctions may include, but are not limited to, costs, fines and attorneys' fees imposed on the offending party and that party's attorney.

(b) Substantive Sanctions. In addition to financial penalties, failure of counsel to comply with the Rules relating to trial preparation may be considered an abandonment or a failure to prosecute or defend diligently, and judgment may be entered against the

defaulting party either with respect to a specific issue or the entire case. Likewise, failure of counsel to comply with the Rules relating to motions may result in the determination of the motion against the offending party.

II. COMMENCEMENT OF ACTION; PROCESS; SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

RULE 3.1. **Civil Cover Sheet.**

(a) In General. Except for civil actions initiated by prisoners who are not represented by counsel, every party initiating a civil action in the Court shall complete and file with the Clerk a civil cover sheet, a form available from the Clerk. To the extent that counsel for a plaintiff has not completed the entire civil cover sheet accurately, counsel for a defendant shall bring such missing or inaccurate information to the attention of the Clerk, all parties, and the Court.

(b) Indication of Related Actions. Counsel for a plaintiff in a civil action shall indicate on the civil cover sheet if said action is related to any other civil action previously decided or pending in this or any other federal district court. Civil actions are related if they:

(1) Arise from the same or substantially identical transactions, happenings, or events as the case at bar;

(2) Involve the same or substantially the same parties or property;

(3) Involve the same patent or the same trademark; or

(4) For other reasons would entail substantial duplication of labor if heard by different judges.

RULE 3.2. **Patent Cases.**

In all patent cases, copies of the patents at issue shall be attached and filed with the complaint.

RULE 4.1. **Service of Process.**

(a) Summons. Except as to those cases proceeding pursuant to 28 U.S.C. § 1915(d), upon or after the filing of a complaint, plaintiff or plaintiff's counsel must present to the Clerk, for the Clerk's signature and seal, a completed form of summons for each named defendant. Upon issuance, the Clerk shall provide the summons to plaintiff or plaintiff's counsel who shall be responsible for prompt service of the summons and a copy of the complaint on each named defendant.

(b) Affidavit of Mailing. In an action in which the plaintiff serves process pursuant to 10 Del. C. § 3104, or § 3113, plaintiff or plaintiff's counsel shall file an affidavit stating that a nonresident defendant has been served by mail and has either accepted or refused the notice required by statute. The affidavit, along with the defendant's return receipt, shall be filed within 14 days of the receipt by plaintiff or by plaintiff's counsel of that return receipt. The affidavit and return receipt need not be served upon the parties.

RULE 5.1. **Filing.**

(a) Unless specifically exempted by Court order or rule, all documents submitted for filing with the Court shall be filed in accordance with the Court's Administrative Procedures Governing Filing and Service by Electronic Means, which may be amended from time to time by the Court (the "CM/ECF Procedures").

(b) When computing time periods for filing pursuant to Fed. Civ. P. 6(a)(3), the Clerk's Office shall be deemed inaccessible at any time when the Clerk's office is closed due to inclement weather.

RULE 5.1.1. **General Format of Papers Presented for Filing.**

(a) General Format. To the extent applicable and consistent with CM/ECF Procedures, all pleadings, motions, and other papers presented for filing shall be on 8½ by 11 inch white paper and shall be plainly typewritten or printed and double-spaced, except for quoted material and footnotes. All printed matter must appear in at least 12 point type and all margins shall not be less than 1 inch. Each page shall be numbered consecutively. Such papers shall set forth the date of filing and a brief descriptive title indicating the purpose of the paper. Unless otherwise ordered, the name, Delaware state bar identification number, address, telephone number, and email address of local counsel shall be typed or printed under the signature line.

(b) Exceptions. This rule does not apply to:

(1) Exhibits submitted for filing;

(2) Letters submitted to the Court;

(3) Documents filed in removed actions prior to removal from the state courts.

(c) Additional requirements applicable to briefs, memoranda of points and authorities and appendices are set forth in D. Del. LR 7.1.3.

RULE 5.1.2. **The Filing of Nonconforming Papers.**

If a document is filed that does not conform to the Rules governing the form of papers, the Court, in its discretion:

(a) May give notice to the filing party that no action will be taken by the Court on the matter raised in the paper until the defect is corrected; or

(b) Take such other action as the Court deems appropriate.

RULE 5.1.3. **Filing Documents under Seal.**

Documents placed under seal must be filed in accordance with CM/ECF Procedures, unless otherwise ordered by the Court.

RULE 5.2. **Service.**

(a) CM/ECF. If all parties to a case are participants in CM/ECF, the Court's Notice of Electronic Filing ("NEF"), automatically generated for each document filed, shall serve as the certificate of service; *i.e.*, no separate certificate of service shall be filed.

(b) Non-CM/ECF. If the parties to a case are **not** all participants in CM/ECF, or if a document is not filed electronically because, e.g., it is filed under seal or is voluminous, the original of any pleading or other paper filed with the Court and required to be served shall have attached either:

(1) A certificate of service by a member of the Bar of this Court; or

(2) In *pro se* cases, a certification by the *pro se* party showing how service has been made.

RULE 5.3. **Originals and Copies of Filed Documents.**

When a party electronically files a document, the electronically filed copy is deemed the original. One paper copy of the following papers shall be furnished to the Clerk, unless otherwise ordered by the Court: pleadings, stipulations, motions, responses to motions, briefs, memoranda of points and authorities, appendices, and proposed pretrial orders in conformance with D. Del. LR 16.3(c).

RULE 5.4. **Discovery Materials.**

(a) Service With Filing. In cases involving *pro se* parties, all requests for discovery under Fed. R. Civ. P. 26, 30, 31, 33 through 36, and answers and responses thereto, shall be served upon other counsel or parties and filed with the Court.

(b) Service Without Filing. Consistent with Fed. R. Civ. P. 5(a), in cases where all parties are represented by counsel, all requests for discovery under Fed. R. Civ. P. 26, 30, 31, 33 through 36 and 45, and answers and responses thereto, and all required disclosures under Fed. R. Civ. P. 26(a), shall be served upon other counsel or parties but shall not be filed with the Court. In lieu thereof, the party requesting discovery and the party serving responses thereto shall file with the Court a "Notice of Service" containing

a certification that a particular form of discovery or response was served on other counsel or opposing parties, and the date and manner of service.

(1) Filing the notice of taking of oral depositions required by Fed. R. Civ. P. 30(b)(1) and 30(b)(6), and filing of proof of service under Fed. R. Civ. P. 45(b)(3) in connection with subpoenas, will satisfy the requirement of filing a "Notice of Service."

(2) The party responsible for service of the request for discovery and the party responsible for the response shall retain the originals and become the custodians of them. The party taking an oral deposition shall be custodian of the original deposition transcript; no copy shall be filed except pursuant to subparagraph (3). Unless otherwise ordered, in cases involving out-of-state counsel, local counsel shall be the custodians.

(3) If depositions, interrogatories, requests for documents, requests for admissions, answers, or responses are to be used at trial or are necessary to a pretrial or post trial motion, the verbatim portions thereof considered pertinent by the parties shall be filed with the Court when relied upon.

(4) When discovery not previously filed with the Court is needed for appeal purposes, the Court, on its own motion, on motion by any party, or by stipulation of counsel, shall order the necessary material delivered by the custodian to the Court.

(5) The Court on its own motion, on motion by any party, or on application by a non-party, may order the custodian to file the original of any discovery document.

III. PLEADINGS AND MOTIONS

RULE 7.1.1. **Statement Required to be Filed with Nondispositive Motions.**

Except for civil cases involving *pro se* parties or motions brought by nonparties, every nondispositive motion shall be accompanied by an averment of counsel for the moving party that a reasonable effort has been made to reach agreement with the opposing party on the matters set forth in the motion. Unless otherwise ordered, failure to so aver may result in dismissal of the motion. For purposes of this Rule, "a reasonable effort" must include oral communication that involves Delaware counsel for any moving party and Delaware counsel for any opposing party.

RULE 7.1.2. **Motions.**

(a) In General. Unless otherwise ordered, all requests for relief shall be presented to the Court by motion. A moving party must clearly articulate within the body of the motion the relief requested and the grounds in support thereof, or must accompany the motion with either a supporting brief or a memorandum of points and authorities. Unless otherwise ordered, the responsive papers shall be in the form adopted by the

moving party; *i.e.*, if the moving party files a motion accompanied by a brief, the responsive paper should be a brief. An appendix may be filed with any brief.

(b) Schedule. Unless otherwise ordered, once a motion has been deemed served, the response thereto shall be filed within 14 days, as calculated consistent with Fed. R. Civ. P. 6(a) and CM/ECF Procedures. Once the responsive papers have been deemed served, the moving party may file a reply within 7 days, as calculated consistent with Fed. R. Civ. P. 6(a) and CM/ECF Procedures. Except for the citation of subsequent authorities, no additional papers shall be filed absent Court approval.

(c) Bankruptcy Appeals. Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

RULE 7.1.3. **Form and Contents of Briefs, Memoranda of Points and Authorities, and Appendices.**

(a) To the extent applicable and consistent with CM/ECF Procedures, papers shall comply with the following requirements regarding form, unless otherwise ordered:

(1) Covers. On the front cover of each brief, memorandum of points and authorities, and appendix, there shall be the name of the Court, the caption of the case, the civil action number, a description of the paper's nature, the date of filing, the name and designation of the party for whom the paper is filed, and the name, Delaware bar identification number, address, and telephone number of counsel by whom it is filed.

(2) Format. All briefs and memoranda shall be printed in at least 12 point type, and shall be double-spaced with at least 1 inch margins. To the extent paper copies of briefs, memoranda, and/or appendices are filed with the Court, they shall be firmly bound at the left margin.

(3) Page Numbering of Appendices. Pages of an appendix shall be numbered separately at the bottom. Transcripts and other papers reproduced in a manner authorized by this Rule shall be included in the appendix both with original and appendix pagination.

(4) Length. No opening or answering brief shall exceed 20 pages, and no reply brief shall exceed 10 pages, in each instance exclusive of any table of contents or table of citations.

(5) Form of Citations. Citations shall be made in accordance with "A Uniform System of Citation," published and distributed from time to time by the Harvard Law Review Association. Citations to the National Reporter System must be included, except as to United States Supreme Court decisions where the official citation shall be used.

(6) Citation by Docket Number. References to earlier-filed papers in any civil action shall include a citation to the docket item number as maintained by the Clerk in the following format: "D.I." followed by the docket item number of the paper.

(7) Unreported Opinions. If an opinion is cited which is neither reported in the National Reporter System nor available on either WESTLAW or LEXIS, a copy of such opinion shall be attached to the document which cites it or shall otherwise be provided to the Court.

(b) Contents of Memoranda of Points and Authorities. Memoranda of points and authorities shall include the legal propositions urged by the party, succinctly stated, as well as citations to those cases and legal authorities supporting each such legal proposition. No further legal argument shall be included.

(c) Contents of Briefs.

(1) Opening and Answering Briefs. The opening and answering brief shall contain the following, under distinctive titles, in the listed order:

(A) A table of contents setting forth the page number of each section, including all headings, designated in the body of the brief.

(B) A table of citations of cases, statutes, rules, textbooks and other authorities, alphabetically and/or numerically arranged. If a brief does not contain any citations therein, a statement to this effect should be placed under this heading.

(C) A statement of the nature and stage of the proceedings.

(D) A summary of argument, setting forth in separately numbered paragraphs the legal propositions upon which the party relies.

(E) A concise statement of facts, with supporting references to the record, presenting the background of the questions at issue. Each party shall be referred to as "plaintiff" or "defendant," as the case may be, or by the name or other appropriate designation which makes identity clear. The answering counterstatement of facts need not repeat facts recited in the opening brief.

(F) An argument, divided under appropriate headings distinctly setting forth separate points.

(G) A short conclusion stating the precise relief sought.

(2) Reply Briefs. The party filing the opening brief shall not reserve material for the reply brief which should have been included in a full and fair opening brief. There shall not be a repetition of materials contained in the opening brief. A table of contents and a table of citations, as required above, shall be included in the reply brief.

(d) Contents of Appendices. Each appendix shall contain a paginated table of contents and may contain such parts of the record relevant to the questions presented. The portions of the record included in the appendix shall be arranged in chronological order. Duplication of material shall be avoided. If evidence in a foreign language is included in any appendix, an English translation (along with a certification that the translation is true and correct) shall also be included in the appendix.

(e) Joint Appendix. The parties may agree on a joint appendix, which shall be bound separately.

(f) Bankruptcy Appeals. Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, provided, however, that this Court may accept documents that do not meet all of the requirements of Federal Rule of Bankruptcy Procedure 8015.

RULE 7.1.4. **Oral Argument.**

Oral argument on any motion may be scheduled upon the application of a party, or *sua sponte* by Court order. An application for oral argument shall be in writing and shall be made no later than 7 days after service of a reply brief. An application for oral argument may be granted or denied, in the discretion of the Court. Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

RULE 7.1.5. **Reargument.**

(a) Motions for reargument shall be sparingly granted. If a party chooses to file a motion for reargument, said motion shall be filed within 14 days after the Court issues its opinion or decision, with the exception of motions filed pursuant to Fed. R. Civ. P. 59(e), which shall be filed in accordance with the time limits set forth in Fed. R. Civ. P. 59(e). The motion shall briefly and distinctly state the grounds there for. Within 14 days after filing of such motion, the opposing party may file a brief answer to each ground asserted in the motion. Motions for reargument and any answers thereto shall not exceed 10 pages. The Court will determine from the motion and answer whether reargument will be granted.

(b) Motions for reargument on a ruling made by a Magistrate Judge pursuant to Fed. R. Civ. P. 72 are not permitted. A party seeking review of an order, decision or recommendation disposition issued by a Magistrate Judge pursuant to Fed. R. Civ. P. 72 shall be limited to the filing of objections permitted under Fed. R. Civ. P. 72 and D. Del. LR 72(b). In conformance with D. Del. LR 72(b), a party filing such objections shall identify the appropriate standard of review in presenting such objections.

(c) Bankruptcy appeals shall be exempt from the requirements of this Rule, and shall instead conform to the requirements of the Federal Rules of Bankruptcy Procedure and Part VIII of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

RULE 9.2. **Request for Three-Judge District Court**.

If a party believes a civil action or proceeding must be heard by a three-judge district court, the notation "Three-Judge District Court Requested" or the equivalent shall be included on the front page immediately following the title of the first pleading filed in such action or proceeding. The basis for the request shall be set forth in the pleading or in a brief statement attached thereto. The words "Three-Judge District Court Requested" or the equivalent on a pleading is a sufficient request under 28 U.S.C. § 2284.

RULE 9.4. **Pleading Claim for Unliquidated Damages.**

(a) Demand for damages. A pleading setting forth a claim for relief in the nature of unliquidated monetary damages shall state in the *ad damnum* clause a demand specifying the nature of the damages claimed, e.g., "compensatory," "punitive," or both, but shall not claim any specific sum. The statement of jurisdiction required by Fed. R. Civ. P. 8(a)(1) shall set forth any minimum amount needed to invoke jurisdiction of the Court, but no other.

(b) Statement of damages. Within 14 days after service of a written request by another party, the party filing the pleading shall furnish the requesting party with a written statement of the amount of damages claimed. Unless required by Court order, such statement shall not be filed with the Court.

RULE 15.1. **Form of a Motion to Amend and Its Supporting Documentation.**

A party who moves to amend a pleading shall attach to the motion:

(a) The proposed pleading as amended, complete with a handwritten or electronic signature; and

(b) A form of the amended pleading which shall indicate in what respect it differs from the pleading which it amends, by bracketing or striking through materials to be deleted and underlining materials to be added.

If the motion to amend is granted, the proposed amended pleading, as executed above, shall be docketed by the Court as the amended pleading. Service shall be accomplished consistent with the Fed. R. Civ. P. and these Rules.

RULE 16.1. **Fed. R. Civ. P. 16(b) Scheduling Conference.**

(a) Parties to confer. When, in its discretion, the Court directs counsel for the parties and any unrepresented parties to participate in a Fed. R. Civ. P. 16(b) scheduling

conference, the parties shall confer prior to the conference to discuss pretrial management issues, including the possibility of settlement.

(b) Matters to consider. Matters to be considered at the scheduling conference may include, in addition to the items specified in Fed. R. Civ. P. 16(b) and 16(c), the following matters:

(1) The schedule applicable to the case, including a trial date, if appropriate;

(2) The number of interrogatories and requests for admissions to be allowed by any party and the number and location of depositions;

(3) How discovery disputes are to be resolved;

(4) The briefing practices to be employed in the case, including what matters are or are not to be briefed and the length of briefs; and

(5) The possibility of settlement.

RULE 16.2. **Exemptions from Fed. R. Civ. P. 16(b) and 26(f).**

The following categories of action are exempt from the scheduling conference and order requirements of Fed. R. Civ. P. 16(b) and 26(f):

(a) All actions in which one of the parties appears *pro se* and is incarcerated;

(b) All actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;

(c) Prize proceedings, actions for forfeitures and seizures, for condemnations, or for foreclosure of mortgages or sales to satisfy liens of the United States;

(d) Bankruptcy appeals;

(e) Proceedings for admission to citizenship or to cancel or revoke citizenship;

(f) Proceedings for *habeas corpus* or in the nature thereof, whether addressed to federal or state custody;

(g) Proceedings to compel arbitration or to confirm or set aside arbitration awards;

(h) Proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;

(i) Proceedings to compel the giving of testimony or production of documents in connection with discovery, or testimony *de bene esse*, or for perpetuation of testimony for use in a matter pending or contemplated in a United States District Court of another District;

(j) Proceedings for the temporary enforcement of orders of the National Labor Relations Board;

(k) Civil actions for recovery of erroneously paid educational assistance; and

(l) Proceedings for execution on a judgment pursuant to Fed. R. Civ. P. 64 or 69 or 28 U.S.C. Chapter 127.

RULE 16.3. **Pretrial Conference and Procedure.**

(a) In general. Unless otherwise ordered, in all civil cases for which a trial is scheduled, a pretrial conference shall be held. If no trial date has been scheduled, any party may request a pretrial conference following the completion of discovery and any scheduled motion practice.

(b) Attendance by counsel. Unless otherwise ordered, counsel who will conduct the trial are required to attend the pretrial conference. Failure to so attend or to otherwise cooperate in trial preparation may result, after notice, in the imposition of sanctions.

(c) Proposed pretrial order. Prior to the pretrial conference, counsel for all parties shall meet and confer in order to premark and exchange all trial exhibits and otherwise discuss the contents of the proposed pretrial order, which shall include the following:

(1) A statement of the nature of the action, the pleadings in which the issues are raised (e.g., third amended complaint and answer) and whether counterclaims, crossclaims, etc., are involved;

(2) The constitutional or statutory basis of federal jurisdiction, together with a brief statement of the facts supporting such jurisdiction;

(3) A statement of the facts which are admitted and require no proof;

(4) A statement of the issues of fact which any party contends remain to be litigated;

(5) A statement of the issues of law which any party contends remain to be litigated, and a citation of authorities relied upon by each party;

(6) A list of premarked exhibits which each party intends to offer at trial, along with citations to the Federal Rules of Evidence to note any objections thereto lodged by any other party;

(7) The names of all witnesses a party intends to call to testify, whether the witness will testify in person or by deposition and, if by deposition, a list of deposition designations;

(8) A brief statement of what plaintiff intends to prove in support of plaintiff's claims, including the details of the damages claimed or of other relief sought;

(9) A brief statement of what the defendant intends to prove as defenses;

(10) Statements by counterclaimants or crossclaimants comparable to that required of plaintiff;

(11) Any amendments of the pleadings desired by any party with a statement whether it is unopposed or objected to and, if objected to, the grounds therefore;

(12) A certification that the parties have engaged in a good faith effort to explore the resolution of the controversy by settlement;

(13) Any other matters which the parties deem appropriate.

(d) Unless otherwise ordered or agreed to by the parties and approved by the Court:

(1) The plaintiff shall provide a draft pretrial order to all other parties no less than 30 days before the pretrial order is to be filed with the Court. The draft shall include proposed language for the sections of the pretrial order jointly submitted by all parties, as well as the sections relating to the plaintiff's case. If the parties have not yet exchanged trial exhibits, the plaintiff shall provide all other parties with a copy of, or reasonable access to, the plaintiff's proposed trial exhibits.

(2) No less than 14 days before the pretrial order is to be filed with the Court, all other parties shall provide the plaintiff and each other party with their responses to the plaintiff's draft order. Such responses shall include the party's response to the plaintiff's proposed language for the sections of the pretrial order to be jointly submitted by all parties, as well as the sections relating to the party's case. f the parties have not yet exchanged trial exhibits, the party shall provide plaintiff and each other party with a copy of, or reasonable access to, the party's proposed trial exhibits.

(3) The parties shall thereafter meet and confer in good faith such that the plaintiff may file the pretrial order in conformity with this Rule.

(4) At least 7 days prior to the pretrial conference, the plaintiff shall file with the Clerk an executed copy of the proposed pretrial order, which shall include the matters described in subsection (c) above, as well as the following language:

> "This order shall control the subsequent course of the action, unless modified by the Court to prevent manifest injustice."

RULE 16.4. **Requests for Extensions of Deadlines.**

Unless otherwise ordered, a request for an extension of deadlines for completion of discovery or postponement of the trial shall be made by motion or stipulation prior to expiration of the date deadline, and shall include the following:

(a) The reasons for the request; and

(b) Either a supporting affidavit by the requesting counsel's client or a certification that counsel has sent a copy of the request to the client.

IV. PARTIES

RULE 23.1. **Designation of "Class Action" in the Caption.**

In any case sought to be maintained as a class action, the complaint or other pleading asserting a class action shall include, next to its caption, the legend "Class Action."

V. DEPOSITIONS AND DISCOVERY

RULE 26.1. **Form of Certain Discovery Papers.**

(a) Sequential Numbering. Each party shall number sequentially each interrogatory or request it submits; the responses thereto shall be numbered consistently. Each subpart of an interrogatory or request shall be counted as a separate interrogatory or request.

(b) Form of Responses. The party answering, responding, or objecting to interrogatories or requests served pursuant to Fed. R. Civ. P. 33, 34 or 36 may state any general objections and then shall quote each such interrogatory or request in full immediately preceding the substance of the answer, response, or objection thereto.

RULE 26.2. **Confidentiality.**

If any documents are deemed confidential by the producing party and the parties have not stipulated to a confidentiality agreement, until such an agreement is in effect, disclosure shall be limited to members and employees of the firm of trial counsel who

have entered an appearance and, where appropriate, have been admitted *pro hac vice*. Such persons are under an obligation to keep such documents confidential and to use them only for purposes of litigating the case.

RULE 30.1. **Reasonable Notice for Taking Depositions.**

Unless otherwise ordered by the Court, "reasonable notice" for the taking of depositions under Fed. R. Civ. P. 30(b)(1) and 30(b)(6) shall be not less than 10 days.

RULE 30.2. **Deposition Motions.**

Pending resolution of any motion under Fed. R. Civ. P. 26(c) or 30(d), or such other form of application for relief as the Court may prescribe, neither the objecting party, witness, nor any attorney is required to appear at a deposition to which a motion is directed until the motion is resolved.

RULE 30.3. **Who May Attend Deposition.**

Unless otherwise ordered by the Court, or agreed to by all parties, a deposition may be attended only by:

(a) The deponent;

(b) Counsel for any party and members and employees of their firms;

(c) A party who is a natural person;

(d) An individual who has been designated by counsel to represent a party that is not a natural person;

(e) Counsel for the deponent; and

(f) Any consultant or expert designated by counsel for any party.

If a protective order has been entered, any person who is not authorized under the order to have access to documents or information designated confidential may be excluded while a deponent is being examined about such confidential document or information.

RULE 30.4. **Procedures for Recording Depositions.**

(a) Beginning. An oral deposition to be electronically or magnetically recorded shall begin by the operator stating on the record:

(1) The operator's name and address;

(2) The name and address of the operator's employer;

(3) The date, time and place of the deposition;

(4) The caption of the case;

(5) The name of the deponent; and

(6) The party on whose behalf the deposition is being taken.

(7) The officer before whom the deposition is taken shall then identify himself or herself and swear the deponent on the record.

(b) Conclusion. At the conclusion of the deposition, the operator shall state on the record that the deposition is concluded. When the length of the deposition requires the use of more than one electronic file or recorded media, the end of each file or recorded media and the beginning of each succeeding file or recorded media shall be announced on the record by the operator.

(c) Timing by Digital Clock. The deposition shall be timed by a digital clock on the record which shall record and show continually each hour, minute and second of the deposition.

(d) Custody. Counsel for the party taking the deposition shall take custody of and be responsible for the safeguarding of the recorded media. The custodian shall permit the viewing of the electronic file or recorded media, and shall provide a copy of such upon the request and at the cost of a party.

RULE 30.5. **Original Deposition Transcripts.**

It shall be the duty of the party on whose behalf the deposition was taken to make certain that the officer before whom it was taken has delivered the original transcript to such party.

RULE 30.6. **Depositions Upon Oral Examination.**

From the commencement until the conclusion of deposition questioning by an opposing party, including any recesses or continuances, counsel for the deponent shall not consult or confer with the deponent regarding the substance of the testimony already given or anticipated to be given, except for the purpose of conferring on whether to assert a privilege against testifying or on how to comply with a court order.

RULE 37.1. **Discovery Motions to Include the Discovery at Issue.**

Any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 shall include, in the motion itself or in a memorandum, a verbatim recitation of each interrogatory, request, answer, response, or objection which is the subject of the motion or shall have attached a copy of the actual discovery document which is the subject of the motion.

VI. TRIALS

RULE 38.1. **Notation of "Jury Demand" on the Pleading.**

If a party demands a jury trial by endorsing it on a pleading, as permitted by Fed. R. Civ. P. 38(b) , a notation shall be placed in the caption of the pleading stating "Demand For Jury Trial" or the equivalent. This notation will serve as a sufficient demand under Fed. R. Civ. P. 38(b).

RULE 40.1. **Assignment of Cases; Duty Judge**.

(a) Assigned Judge. Each case will be assigned to a Judge. All matters pertaining to a case will be heard by the Judge to whom it has been assigned, unless otherwise ordered.

(b) Duty Judge. Each week on a rotating basis, one judge will be designated as "Duty Judge." The Duty Judge may perform the following functions, among others:

(1) Act upon any motion for a preliminary injunction, temporary restraining order or other relief in a case which has not yet been assigned to a Judge;

(2) Act in lieu of the Judge to whom a case is assigned, whenever the assigned Judge is absent from the courthouse and cannot feasibly return prior to the expiration of the time within which judicial action is required;

(3) Admit attorneys to the Bar of this Court.

RULE 41.1. **Dismissal for Failure to Prosecute.**

Subject to the provisions of Fed. R. Civ. P. 23 and 23.1, in each case pending wherein no action has been taken for a period of 3 months, the Court may, on its motion or upon application of any party, and after reasonable notice and opportunity to be heard, enter an order dismissing such case unless good reason for the inaction is given. After any such application or notice from the Court, no application for a continuance or any proceeding taken under the discovery rules shall be deemed to toll the operation of this Rule.

RULE 43.1. **Witnesses Conferring with Counsel During Testimony.**

Once direct examination of a witness is concluded and until cross examination of that witness is concluded, counsel offering the witness on direct examination shall not:

(a) Consult or confer with the witness regarding the substance of the witness' testimony already given or anticipated to be given, except for the purpose of conferring on whether to assert a privilege against testifying or on how to comply with a court order; or

(b) Suggest to the witness the manner in which any questions should be answered.

RULE 47.1. **Voir Dire of Jurors.**

(a) Voir Dire Conducted by the Court. Unless otherwise ordered by the Court:

(1) The voir dire of the petit jury panel shall be conducted by the Court:

(2) Any party desiring special voir dire questions of the jury panel must file a suggested form of voir dire questions at least 3 business days before the pretrial conference.

(b) Challenges. After all challenges for cause have been exercised and determined, the deputy clerk shall draw and announce the members of the panel as to which peremptory challenges may be exercised. Except when the Court has directed otherwise, peremptory challenges to which each party may be entitled under 28 U.S.C. § 1870 shall be exercised as follows: The plaintiff and defendant each may exercise 3 challenges, with plaintiff having the first, third and fifth opportunities to challenge and the defendant having the second, fourth, and last opportunities.

RULE 47.2. **Communications with Jurors.**

Unless otherwise permitted to do so by the Court, a lawyer shall not communicate with a prospective juror, or with a juror after discharge of the jury.

RULE 48.1. **Number of Jurors.**

The jury in all civil jury cases shall consist of not fewer than 6 and not more than 12 members, except that the parties may stipulate that the jury in any such case shall consist of any number less than 6.

RULE 51.1. **Instructions to the Jury and Special Verdicts and Interrogatories**.

Unless otherwise ordered by the Court:

(a) Instructions 3 Business Days Before Pretrial Conference. Prior to the pretrial conference of any jury trial, counsel for all parties must confer about the instructions and, at least 3 business days before the pretrial conference, counsel for plaintiff shall file written instructions reasonably anticipated to be made upon which all parties agree. If there are differences that cannot be resolved, each party shall submit its own form of proposed jury instructions in the specific area or areas where there is disagreement, accompanied by citation to supporting authority.

(b) Format. The written instructions shall contain a table of contents. All proposed jury instructions shall carry a descriptive title and all pages of the proposed jury

instructions shall be numbered in such a way as to identify, next to each number, whether it has been submitted jointly, by plaintiff(s) or by defendant(s).

(c) Special Verdict or Interrogatories 3 Business Days Before Pretrial Conference. Any party desiring a special verdict or interrogatories, as provided for in Fed. R. Civ. P. 49, must file a suggested form of special verdict or suggested interrogatories at least 3 business days before the pretrial conference.

VII. JUDGMENTS

RULE 54.1. **Taxation of Costs**.

(a) Costs.

(1) Unless otherwise ordered by the Court, the prevailing party shall be entitled to costs. The party shall, within 14 days after the time for appeal has expired or within 14 days after the issuance of the mandate of the appellate court, file a bill of costs. Failure to comply with the time limitations of this Rule shall constitute a waiver of costs, unless the Court otherwise orders or counsel are able to agree on the payment of costs. In the latter case, no bill of costs need be filed.

(2) The bill of costs shall clearly describe each item of cost and comply with the provisions of 28 U.S.C. § 1924.

(3) Within 14 days after service by any party of a bill of costs, any other party may serve and file specific objections to any item, with detailed justification.

(4) Not less than 28 days after receipt of a party's bill of costs, the Clerk, after consideration of any objections, shall tax costs and serve copies of the bill of costs as allowed on all parties in accordance with Fed. R. Civ. P. 5.

(b) Items Taxable as Costs.

(1) In General. Costs shall be taxed in conformity with the provisions of 28 U.S.C. §§ 1920, 1921, and 1923, and such other provisions of law as may be applicable and the remaining paragraphs of subpart (b) of this Rule.

(2) Transcripts Fees. The costs of the originals of a trial transcript, a daily transcript and a transcript of matters prior or subsequent to trial, furnished to the Court, are taxable when requested by the Court or prepared pursuant to stipulation. Mere acceptance by the Court does not constitute a request. Copies of transcripts for counsel’s own use are not taxable.

(3) Deposition Costs. The reporter's reasonable charge for the original and one copy of a deposition and the reasonable cost of taking a deposition electronically or magnetically recorded are taxable only where a substantial portion of the deposition is used in the resolution of a material issue in the case. Charges for counsel's copies and the expenses of counsel in attending depositions are not taxable, regardless of which party

took the deposition. Notary fees incurred in connection with taking depositions are taxable.

(4) Witness Fees, Mileage and Subsistence. The rates for witness fees, mileage and subsistence are fixed by 28 U.S.C. § 1821. Such fees are taxable even though the witness does not take the stand, provided the witness attends Court. Witness fees and subsistence are taxable only for the reasonable period during which the witness is within the district.

Subsistence to the witness under 28 U.S.C. § 1821 is allowable if the distance from the Court to the residence of the witness is such that mileage fees would be greater than subsistence fees, if the witness were to return to his/her residence from day to day.

No party shall receive witness fees for testifying in its own behalf, but this shall not apply where a party is subpoenaed to attend Court by the opposing party. Witness fees for officers of a corporation are taxable if the officers are not defendants and recovery is not sought against the officers individually. Unless otherwise provided by statute, fees of expert witnesses are not taxable in an amount greater than that statutorily allowable for ordinary witnesses. The reasonable fee of an interpreter is taxable if the fee of the witness involved is taxable.

(5) Exemplification and Copies of Papers. The cost of copies of an exhibit necessarily attached to a document required to be filed and served is taxable. The cost of one copy of a document is taxable when admitted into evidence. The cost of copies obtained for counsel's own use is not taxable. The fee of an official for certification or proof concerning the nonexistence of a document is taxable. The reasonable fee of a translator is taxable if the document translated is taxable. Notary fees are taxable if actually incurred, but only for documents which are required to be notarized and filed.

The cost of patent file wrappers and prior art patents are taxable at the rate charged by the Patent Office. Expenses for services of persons checking Patent Office records to determine what should be ordered are not taxable.

(6) Cost of Maps and Charts. The cost of maps and charts is taxable if they are admitted into evidence. The cost of photographs, 8" x 10" in size or less, is taxable if admitted into evidence, or attached to documents required to be filed and served on opposing counsel. Enlargements greater than 8" x 10" are not taxable except by order of the Court. The cost of models, compiling summaries, computations, and statistical comparisons are not taxable.

(7) Fees to Masters. Fees to masters shall be assessed in accordance with Fed. R. Civ. P. 53(a).

(8) Removed Cases. In a case removed from the state court, costs incurred in the state court prior to removal, including but not limited to the following, are taxable in favor of the prevailing party in this Court:

(A) Fees paid to the clerk of the state court;

(B) Fees for services of process in the state court;

(C) Costs of exhibits attached to documents required to be filed in the state court.

(9) Admiralty. Fees for compensation for keepers of boats and vessels attached or libeled are taxable in accordance with 28 U.S.C. § 1921.

(10) Bonds. The reasonable premiums or expenses paid on bonds or security stipulations shall be allowed when furnished by requirements of the law or rule of Court, by an order of the Court or where required to enable a party to receive or preserve some right accorded the party in an action or proceeding.

(11) Other Costs. Claims for costs other than those specifically mentioned in the preceding paragraphs of subpart (b) of this Rule ordinarily will not be allowed, unless the party claiming such costs substantiates the claim by reference to a statute or binding court decision.

(c) Party Entitled to Costs. The determination of the prevailing party shall be within the discretion of the Court in all cases except where such determination is inconsistent with statute or the Fed. R. Civ. P. or the rules of the appellate courts. If each side recovers in part, ordinarily the party recovering the larger sum will be considered the prevailing party. The defendant is the prevailing party upon a dismissal or summary judgment or other termination of the case without judgment for the plaintiff on the merits. No costs shall be allowed to either party if the Court is unable to determine the prevailing party.

(d) Review of Costs. In accordance with Fed. R. Civ. P. 54(d), the opposing party may, within 7 days of service, file a motion for review of the decision of the Clerk in the taxation of costs.

(e) Appellate Costs. The certified copy of the judgment or the mandate of the Court of Appeals, without further act by the District Court, is sufficient basis for issuance by the Clerk of a writ of execution to recover costs taxed by the appellate court.

RULE 54.2. **Jury Cost Assessment**.

Juror costs, including Marshal’s fees, mileage and per diem, may be assessed against the parties and/or their counsel in any civil action that is settled or otherwise resolved less than 3 full business days before jury selection is scheduled to begin.

RULE 54.3. **Award of Attorney's Fees.**

(a) Judgment on Less than all Claims. Where a judgment is not a final judgment on all claims, failure to apply for attorneys' fees shall not prevent a party from applying for fees after entry of final judgment.

(b) Settled Cases. Applications for attorneys' fees in connection with settled cases shall be filed no later than 21 days after the settlement is approved by the Court. Where Court approval is not sought, motions for fees shall be filed no later than 21 days after the settlement agreement is executed by the parties.

(c) Applicable Statute or Regulation. The time provisions specified above shall control unless an applicable statute or regulation provides a different period of time (e.g., The Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(B)).

VIII. PROVISIONAL AND FINAL REMEDIES

RULE 58.1.1. **Entry of Judgment by Confession and Execution Thereon**.

(a) Judgment by confession as authorized by 10 Del. C. § 2306 shall be entered by the Clerk, provided that the following documents are filed:

(1) A notice directed to the Clerk that includes:

(A) A short and plain statement of the grounds upon which the Court's jurisdiction depends; and

(B) The following form signed by the person exercising the warrant of attorney:

"Please commence proceedings pursuant to D. Del. LR 58.1.1 to confess judgment on behalf of [Plaintiff] against [Debtor's Name] of [Address] for $ [Real Debt] and $_____ accrued interest to date together with interest thereon at __% per annum from _____ plus attorneys' fees of $_____ and costs of $_____.
Date: _____
Person exercising warrant of attorney"

(2) The original document authorizing confession of judgment together with a photocopy for the Clerk.

(3) In the case of a debtor who was a nonresident at the time of the execution of the original document authorizing confession of judgment, plaintiff shall also file the affidavit required by 10 Del. C. § 2306(c), together with a photocopy, for the Clerk.

(4) A completed notice letter as required by 10 Del. C. § 2306(b) for each debtor against whom judgment is requested.

(b) The Clerk shall return the original document authorizing confession of judgment and, if applicable, the original affidavit required by 10 Del. C. § 2306(c) to the plaintiff presenting it and file the copy or copies as the authority for commencing the procedure set forth in this Rule.

(c) The Clerk shall docket a "tentative" judgment as of the date of filing. Subsequently, the Clerk shall make a notation on the docket of the mailing and publication dates provided for in paragraphs (d) and (f).

(d) The notice letter required by paragraph (a)(4) shall be mailed by the plaintiff to each debtor by certified mail, return receipt requested, together with a copy of the instrument authorizing confession of judgment and, where applicable, a copy of the affidavit required by 10 Del. C. § 2306(c). An affidavit of mailing shall be filed by the plaintiff with the Clerk. The notice letter, on a form supplied by the Clerk, shall contain the following information:

(1) Plaintiff intends to obtain judgment against the debtor in the United States District Court for the District of Delaware based on the enclosed document for the following amounts:

Principal: _____
Accrued Interest: _____
Attorneys' Fees: _____
Plus Interest and Costs: _____

(2) Plaintiff alleges the debtor has waived any rights to notice and hearing prior to the entry of judgment.

(3) The entry of such a judgment will result in a lien against all the debtor's real estate and the means in default of payment, whereby the Marshal can levy against and ultimately sell at public auction the debtor's personal property and real estate for credit against the debt.

(4) In default of payment in appropriate cases, the Marshal may seize some portion of the debtor's wages for credit against the debt.

(5) The debtor may file with the Court (giving an address for the Clerk) an objection to the entry of judgment by a date 2 weeks following the date on which the notice letter for the entry of judgment was mailed. When the objection is filed, a hearing will be scheduled by the Court. At the hearing, the plaintiff will be required to prove that the debtor has effectively waived any rights to notice and a hearing prior to the entry of judgment.

(6) No objection is required but, if no objection is made, judgment will be entered by default.

(e) When service is effected by certified mail, the person exercising the warrant of attorney shall file the return receipt with the Clerk.

(f) If the certified mail sent pursuant to paragraph (d) is returned undelivered, the person exercising the warrant of attorney shall notify the Clerk accordingly in writing and shall accomplish service by publication of the notice provided for in paragraph (a)(4) once per week for 2 weeks in a newspaper of general circulation in the county in which the instrument is to be recorded. If the residence of the debtor is other than the county in

which the judgment is sought to be entered, then publication shall also be made once per week for 2 weeks in a newspaper of general circulation in the county in Delaware in which the debtor resides or is last known to have resided. The notice shall include the date on which debtor must file objections to the entry of judgment, which date shall be at least 2 weeks following the last publication. An affidavit of publication shall be filed by the plaintiff with the Clerk.

(g) Judgment shall be entered against a debtor who fails to object after service as provided for herein.

(1) If the debtor objects, a hearing date will be scheduled by the Court. At the hearing, the burden shall be on the plaintiff to prove that the debtor effectively waived any right to notice and a hearing prior to the entry of judgment against the debtor. Costs are to be assessed against the plaintiff if the plaintiff fails to carry that burden. Costs are to be assessed against the debtor if judgment is entered against the debtor.

(2) When a judgment is obtained pursuant to this Rule, a notation to that effect shall then be entered in the judgment records and said judgment shall be final to the same extent as a judgment entered after trial. The lien of said judgment shall relate back to the time of its original docketing.

(h) The following procedure must be complied with prior to the issuance of the first writ of execution on a confessed judgment:

(1) The judgment creditor shall file the following with the Clerk:

(A) A praecipe directed to the Clerk requesting the particular execution writ, together with a form of that writ obtained from the Superior Court of the State of Delaware.

(B) A notice letter as required by 10 Del. C. § 2306(j) for each debtor against whom execution is requested.

(2) The Clerk shall docket the praecipe. Subsequently, the Clerk shall make a notation on the docket of the mailing and publication dates as provided for in paragraph (h)(3) and (h)(5).

(3) The notice letter required by paragraph (h)(1)(B) shall be mailed by the plaintiff to each debtor by certified mail, return receipt requested. An affidavit of mailing shall be filed with the Clerk. The notice letter, on a form supplied by the Clerk, shall contain the following information:

(A) The judgment creditor has requested the Court to issue a writ of execution against the debtor based on the confessed judgment entered on a certain date.

(B) A writ of execution can be used to attach wages in appropriate cases and seize the debtor's personal property and real estate and ultimately sell them for credit against the debt.

(C) The debtor may file with the Court (giving an address for the Clerk) an objection to the issuance of the execution process by a date 2 weeks following the date on which the notice letter for the issuance of the execution process was mailed. When the objection is filed, a hearing will be scheduled by the Court. At said hearing, the debtor may raise any appropriate defenses.

(D) No objection is required but, if no objection is made, a warning that the writ of execution sought by the judgment creditor and other subsequent writs will be issued whereby the Marshal could attach the debtor's wages in appropriate cases, or seize the debtor's personal property and real estate and ultimately sell them for credit against the debt.

(E) The judgment creditor is claiming the debtor owes $_____ plus accrued interest of $_____ to the date of judgment, plus interest at the legal rate from the date of judgment plus attorneys' fees of $_____ plus costs.

(F) If the debtor has any questions about these matters, an attorney should be consulted immediately.

(4) When service is effected by certified mail, the plaintiff shall file the return receipt with the Clerk.

(5) If the certified mail sent pursuant to paragraph (h)(3) is returned undelivered, the judgment creditor shall notify the Clerk accordingly in writing and shall accomplish service by publication of the notice provided for in paragraph (h)(1)B once per week for 2 weeks in a newspaper of general circulation in the county in which execution is to occur. If the residence of the debtor is other than the county in which execution is sought, then publication shall also be made once per week for 2 weeks in a newspaper of general circulation in the county in Delaware in which the debtor resides or is last known to have resided. The notice shall include the date by which debtor must file objections to the issuance of the execution process, which date shall be at least 2 weeks following the last publication. An affidavit of publication shall be filed by the plaintiff with the Clerk.

(6) The writ of execution requested and any appropriate writ thereafter shall issue against a debtor who fails to object after service as provided for herein.

(7) If the debtor objects, a hearing date will be scheduled by the Court. At the conclusion of the hearing, the Court shall make such orders as are appropriate, including for the assessment of costs.

RULE 58.1.2. **Entry of Judgment by Confession in Open Court**.

(a) A judgment by confession may be entered in open court, either for money due or to become due, or to secure the obligee against a money contingent liability or both, on the application by the obligee or assignee of a bond, note or other obligation containing a warrant for an attorney-at-law or other person to confess judgment.

(b) Application for the entry of judgment by confession in open court shall be as follows:

(1) The plaintiff may appear at a time set by the Court, together with the defendant obligor.

(2) A court reporter shall make a record of the proceedings.

(3) The plaintiff shall provide the Court with the following:

(A) A notice in the form prescribed by D. Del. LR 58.1.1(a)(1).

(B) The original document authorizing confession of judgment, together with a photocopy for the Clerk and each defendant obligor against whom judgment is requested.

(4) The plaintiff shall prove:

(A) The genuineness of the obligation, the signature of the defendant obligor against whom judgment is sought and the identity of the defendant obligor appearing in the Court.

(B) The defendant obligor has effectively waived any constitutional rights concerning the entry of judgment and the right to execution thereon.

(5) The Court shall make such orders as are appropriate, including for the assessments of costs. Any judgment entered shall be final to the same extent as a judgment entered after a trial.

(c) Execution of judgments confessed hereunder shall be as provided for in D. Del. LR 58.1.1(h).

RULE 67.2. **Moneys Deposited in the Custody of the Court**.

(a) Cases Not Covered by Fed. R. Civ. P. 67 -- Registry Accounts. The funds shall be kept in a registry account and shall be deposited into an interest bearing account in accordance with the general policy governing registry funds, unless otherwise ordered by the Court.

(b) Cases Covered by Fed. R. Civ. P. 67. The party depositing the money shall prepare a proposed order to be submitted to the Court which instructs the Clerk to deposit the funds. All orders to deposit money must be personally served on either the Clerk, Chief Deputy Clerk or Financial Administrator. It is recommended that the Clerk's Office be contacted for information and copies of proposed orders for depositing funds with the Court.

(c) Money Invested at Interest. The Clerk shall make the investment promptly after being advised the check has cleared. If the funds deposited into the Court must be held pending verification that the institution depositing the funds has pledged sufficient collateral pursuant to Treasury Circular No. 176, the Clerk shall have 7 days

from the date of notice that the designated depository has complied with the collateralization requirements to make the investment, during which time the obligation to invest at interest shall not attach.

(d) Fee Deducted by the Clerk. In all cases or proceedings where money is to be invested at interest, the Clerk shall deduct from the income earned on the investment a fee, whenever such income becomes available and without further order of the Court. In cases where funds are ultimately disbursed to the United States or to agencies or officials thereof, the Clerk shall refund the registry fee to those agencies or officials of the United States upon application filed with the Court.

RULE 67.3. **Withdrawal of a Deposit Pursuant to Fed. R. Civ. P. 67.**

Any person seeking withdrawal of money which was deposited in the Court pursuant to Fed. R. Civ. P. 67 and which was subsequently deposited into an interest bearing account or instrument as required by Fed. R. Civ. P. 67, shall file a motion to withdraw the funds. In addition, the filing party shall file separately, under seal, a notice which includes the social security number or tax identification number of the ultimate recipient of the funds. This separate notice, without retention of a copy by the Court, shall be forwarded by the Court directly to the institution holding the money.

RULE 68.1. **Offers of Judgment Filed Only if Accepted.**

An offer of judgment made pursuant to Fed. R. Civ. P. 68 shall not be filed with the Court unless it is accepted, in which event filing may be made as provided for in that rule.

RULE 69.1. **Execution.**

Proceedings on executions shall be in accordance with Fed. R. Civ. P. 69. In all cases in which a party seeks a writ of execution, the parties shall submit the completed proposed form of the writ to the Clerk.

RULE 71A.1. **Condemnation Cases.**

When the United States files separate land condemnation actions and concurrently files a single declaration of taking relating to those separate actions, the Clerk is authorized to establish a master file so designated, in which the declaration of taking shall be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it relates when reference is made thereto in the separate actions.

IX. UNITED STATES MAGISTRATE JUDGES

RULE 72.1. **Magistrate Judges; Pretrial Orders.**

A Magistrate Judge is authorized to perform all judicial duties assigned by the Court that are consistent with the Constitution and the laws of the United States which include, but are not limited to, the following described civil duties. The method for assignment of duties to a Magistrate Judge shall be made in accordance with orders of the Court or by special designation or reference by a District Judge.

(a) Duties in Civil Matters.

(1) Alternative Dispute Resolution Processes. Conduct various alternative dispute resolution processes, including but not limited to judge-hosted settlement conferences, mediation, arbitration, early neutral evaluation, and summary trials (jury and nonjury).

(2) Nondispositive Motions. Hear and determine any pretrial motion or other pretrial matter, other than those motions specified in subsection (a)(3) below, in accordance with 28 U.S.C. §636(b)(1)(A) and Fed. R. Civ. P. 72.

(3) Dispositive Motions. Hear and conduct such evidentiary hearings as are necessary or appropriate and submit to a District Judge proposed findings of fact and recommendations for the disposition of motions for proposed injunctive relief (including temporary restraining orders and preliminary injunctions), for judgment on the pleadings, for summary judgment, to dismiss or permit maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, to involuntarily dismiss an action, for judicial review of administrative determinations, for review of default judgments, and for review of prisoners' petitions challenging conditions of confinement, in accordance with 28 U.S.C. § 636(b)(1)(B) and (C) and Fed. R. Civ. P. 72.

(4) Civil Case Management.

(A) Exercise general supervision of the civil calendars of the Court, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the District Judges.

(B) Conduct scheduling and pretrial conferences as set forth in Fed. R. Civ. P. 16 and 26(f), which include but are not limited to scheduling, settlement, discovery, preliminary and final pretrial conferences, and entry of appropriate orders.

(5) Other Duties.

(A) Issue subpoenas, writs of habeas corpus *ad testificandum* or *habeas corpus ad prosequendum*, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

(B) Conduct examinations of judgment debtors, in accordance with Fed. R. Civ. P. 69.

(C) Issue warrants or entering orders permitting entry into and inspection of premises, and/or seizure of property, in noncriminal proceedings, as authorized by law, when properly requested by the IRS or other governmental agencies.

(D) Serve as a special master in an appropriate civil action pursuant to 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. A Magistrate Judge may, where the parties consent, serve as a special master in any civil action. The entry of final judgment in the civil action, however, shall be made by a District Judge or at the direction of a District Judge with the consent of the parties.

(E) Administer oaths and affirmations and take acknowledgments, affidavits, and depositions.

(F) Supervise proceedings conducted pursuant to 28 U.S.C. § 1782 with respect to foreign tribunals and to litigants before such tribunals.

(G) Adjudicate nondispositive sanctions under the Fed. R. Civ. P., rules of this Court or applicable statutes.

(b) Objections to a Magistrate Judge's Rulings. Objections to an order, decision or recommendation disposition made by a Magistrate Judge pursuant to Fed. R. Civ. P. 72 shall identify the appropriate standard of review.

(c) Duties in Proceedings for Postconviction Relief. A Magistrate Judge may perform any or all of the duties imposed upon a District Judge by the rules governing proceedings in the United States district courts under § 2254 and § 2255 of Title 28, United States Code. In so doing, a Magistrate Judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a District Judge a report containing proposed findings of fact and recommendations for disposition of the petition by the District Judge. Any order disposing of the petition may only be made by a District Judge.

RULE 73.1. **Magistrate Judges; Trial by Consent.**

Where the parties consent, a Magistrate Judge may conduct a jury or nonjury trial in any civil action and order the entry of final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73-76. In the course of conducting proceedings in any civil action upon the consent of the parties, a Magistrate Judge may hear and determine any and all pretrial and post trial motions including case dispositive motions.

(a) The Clerk shall notify the parties in all cases that they may consent to have a Magistrate Judge conduct any or all proceedings in the case and order the entry of a final judgment.

(b) The Clerk shall not accept a consent form for filing unless it has been signed by all the parties in a case. Plaintiff shall be responsible for securing execution and filing of such a consent form. No consent form will be made available, nor will its contents be made known to any District Judge or Magistrate Judge, unless all stated parties have consented to the reference to a Magistrate Judge.

(c) The consent form shall be filed with the Clerk not later than the final pretrial conference, unless otherwise ordered.

(d) After the consent form has been executed and filed, the Clerk shall so advise the District Judge to whom the case has been assigned. At the direction of the District Judge, the Clerk shall prepare, for the District Judge's signature, an order referring the case to the Magistrate Judge. Once the case has been referred, a Magistrate Judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk to enter a final judgment in the same manner as if a District Judge presided.

X. DISTRICT COURTS AND CLERKS

RULE 77.1. **Hours of the Clerk's Office.**

The business hours of the Clerk's office shall be 8:30 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

RULE 77.2. **Orders and Judgments by the Clerk.**

(a) Orders by the Clerk. The Clerk is authorized, without further direction of a judge, to sign and enter orders specifically delineated as allowed to be signed by the Clerk under the Fed. R. Civ. P. , and also the following:

(1) Orders specifically appointing persons to serve process in accordance with Fed. R. Civ. P. 4.

(2) Orders on consent noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default.

(3) Orders of dismissal on consent, with or without prejudice, except in cases to which Fed. R. Civ. P. 23, 23.1 or 66 apply.

(4) Orders entering default for failure to plead or otherwise defend in accordance with Fed. R. Civ. P. 55.

(5) Any other orders which, pursuant to Fed. R. Civ. P. 77(c), do not require direction by the Court.

(6) Consent orders extending, for not more than 21 days in any instance, the time to file the record on appeal in the appellate court.

(b) Action by the Court. Any order entered by the Clerk under this Rule may be suspended, altered or rescinded by the Court upon cause shown.

RULE 79.1. **Custody and Return of Exhibits.**

(a) Custody. The Clerk shall have custody of every exhibit admitted in evidence, or which is the subject of an offer of proof. The Court may, upon stipulation or application, order an original exhibit returned to the party to whom it belongs with a copy of the exhibit approved and initialed by the opponent to be filed in place of the original.

(b) Return. Upon the conclusion of an action (as defined hereinafter) and unless the Court otherwise orders:

(1) Any party shall be entitled to have such exhibits returned to the party or person to whom they belong, without the necessity of filing any copies thereof; and

(2) The Clerk shall notify counsel to remove the exhibits within 30 days and, upon counsel's failure to do so, the Clerk may dispose of them as the Clerk sees fit and at the expense of counsel.

(c) Conclusion of an Action. An action shall be deemed concluded when:

(1) A stipulation is filed that serves to waive or abandon the right to a rehearing or new trial or to an appeal; or

(2) The time to file an appeal has expired; or

(3) The action has been fully resolved on appeal.

RULE 79.2. **Custody of Files and Documents not in Electronic Format.**

All files of the Court shall remain in the custody of the Clerk and no record or paper belonging to the Court's files shall be taken from the Clerk's custody without a special order of the Court and a proper receipt signed by the person obtaining the record or paper. No such order will be entered except in extraordinary circumstances.

RULE 80.1. **Court Reporting Fees.**

A current schedule of transcript fees, as established by the Judicial Conference, is posted in the Clerk's Office and is available from the official court reporters.

XI. MISCELLANEOUS PROVISIONS

RULE 81.1. **Caption on Removed Cases.**

In a removed case, the caption on any pleading, including the petition, shall be identical, insofar as the parties are concerned, as in the state court.

RULE 81.2. **Cases Transferred or Removed to this Court.**

In any case transferred or removed to this Court, within 21 days of the filing of the case with the Clerk, the parties shall submit a statement identifying all pending matters which require judicial action.

RULE 83.2. **Photographs and Broadcasting.**

Broadcasting, televising, recording or taking of photographs in connection with any judicial proceedings within the United States Courthouse at Wilmington, Delaware, whether or not such judicial proceedings are actually in session, is prohibited, except that the Court may authorize:

(a) The use of electronic or photographic means as a presentation of evidence and for the perpetuation of a record; and

(b) The broadcasting, televising, recording or photographing of investiture, ceremonial or naturalization proceedings, law school moot court proceedings, and activities sponsored by the bar association for continuing legal education.

RULE 83.4. **Security of the Court.**

The Court or any Judge may, from time to time, make such orders or impose such requirements as may be reasonably necessary to assure the security of the Court and of all persons in attendance.

XII. ATTORNEYS

RULE 83.5. **Bar Admission**.

(a) The Bar of this Court. The Bar of this Court shall consist of those persons heretofore admitted to practice in this Court and those who may hereafter be admitted in accordance with these Rules.

(b) Admission. Any attorney admitted to practice by the Supreme Court of the State of Delaware may be admitted to the Bar of this Court on motion of a member of the Bar of this Court made in open court and upon taking the following oath and signing the roll:

> "I, _____, do solemnly swear (or affirm) that I will conduct myself, as an attorney and counselor of this Court, uprightly, and according to law; and that I will support the Constitution of the United States."

(c) Admission *Pro Hac Vice*. Attorneys admitted, practicing, and in good standing in another jurisdiction, who are not admitted to practice by the Supreme Court of the State of Delaware, may be admitted *pro hac vice* to the Bar of this Court in the discretion of the Court, such admission to be at the pleasure of the Court. Unless otherwise ordered by the Court, or authorized by the Constitution of the United States or

acts of Congress, an applicant is not eligible for permission to practice *pro hac vice* if the applicant:

(1) Resides in Delaware; or

(2) Is regularly employed in Delaware; or

(3) Is regularly engaged in business, professional, or other similar activities in Delaware.

Any judge of the Court may revoke, upon hearing after notice and for good cause, a *pro hac vice* admission. The form for admission *pro hac vice*, which may be amended by the Court as prescribed by standing order, is appended to these rules.

(d) Association with Delaware counsel required. Unless otherwise ordered, an attorney not admitted to practice by the Supreme Court of the State of Delaware may not be admitted *pro hac vice* in this Court unless associated with an attorney who is a member of the Bar of this Court and who maintains an office in the District of Delaware for the regular transaction of business ("Delaware counsel"). Consistent with CM/ECF Procedures, Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. Unless otherwise ordered, Delaware counsel shall attend proceedings before the Court.

(e) Time to Obtain Delaware Counsel. A party not appearing *pro se* shall obtain representation by a member of the Bar of this Court or have its counsel associate with a member of the Bar of this Court in accordance with D. Del. LR 83.5(d) within 30 days after:

(1) The filing of the first paper filed on its behalf; or

(2) The filing of a case transferred or removed to this Court.

Failure to timely obtain such representation shall subject the defaulting party to appropriate sanctions under D. Del. LR 1.3(a).

(f) Association with Delaware counsel not required.

(1) Attorneys who are members in good standing of the bar of the highest Court of any state, territory, or the District of Columbia may, after submitting themselves to the jurisdiction of this Court in writing, act as an attorney in this Court on behalf of the United States or any of its departments, agencies or officials (in their official or individual capacities).

(2) Attorneys who are admitted to the Bar of this Court and in good standing, but who do not maintain an office in the District of Delaware, may appear on behalf of parties upon application to the Court.

RULE 83.6. **Attorney Discipline.**

(a) Attorneys Convicted of Crimes.

(1) Upon the filing of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted of a serious crime in any Court of the United States or the District of Columbia, or of any state, territory, commonwealth or possession of the United States:

(A) The Court shall enter an order immediately suspending that attorney from the practice of law before the Court. A copy of such order shall be served upon the attorney.

(B) A certified copy of a judgment of conviction shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction, whether the conviction resulted from a plea of guilty or *nolo contendere* or from a verdict after trial or otherwise, and regardless of the pendency of any appeal.

(C) The term "serious crime" shall include any felony and any lesser crime, a necessary element of which involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime." The elements of the crime of conviction shall be determined by the statutory or common law definition of such in the jurisdiction where the judgment was entered.

(D) The Court shall, in addition to suspending that attorney, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court. The sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(2) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime", the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may, in its discretion, make no reference with respect to convictions for minor offenses.

(3) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction has been reversed. The reinstatement, however, will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(b) Discipline Imposed by Other Courts.

(1) When another jurisdiction imposes discipline against an attorney admitted to practice in this Court, the same discipline is automatically effective in this Court without further action by this Court and shall remain in effect in this Court unless

and until this Court issues an order that renders the discipline ineffective or imposes different discipline pursuant to these rules.

(2) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a Court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of such action.

(3) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that any attorney admitted to practice before this Court has been disciplined by another Court or upon becoming informed of such a judgment or order, this Court shall forthwith issue a notice directed to the attorney containing:

(A) A copy of the judgment or order from the other Court; and

(B) An order to show cause directing that the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (5) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

(4) In the event the discipline imposed in the other jurisdiction has been stayed, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

(5) Upon expiration of 30 days from service of the notice issued pursuant to the provisions of (3) above, this Court shall maintain the imposition of the identical discipline unless the Court finds that:

(A) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(B) There was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(C) The imposition of the same discipline by this Court would result in grave injustice; or

(D) The misconduct established is deemed by this Court to warrant substantially different discipline.

To the extent the Court finds any of the above, it shall enter such other order as it deems appropriate.

(6) In all other respects, a final adjudication in another Court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.

(7) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(c) Disbarment on Consent or Resignation in Other Courts. Any attorney admitted to practice before the Court who has been disbarred on consent or who has resigned for disciplinary reasons from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States, shall promptly inform the Clerk of such. Upon the filing of a certified copy of the judgment or order accepting such disbarment on consent or resignation, the attorney shall cease to be permitted to practice before the Court and shall be stricken from the roll of attorneys admitted to practice before the Court.

(d) Standards for Professional Conduct. Subject to such modifications as may be required or permitted by federal statute, court rule, or decision, all attorneys admitted or authorized to practice before this Court, including attorneys admitted on motion or otherwise, shall be governed by the Model Rules of Professional Conduct of the American Bar Association ("Model Rules"), as amended from time to time.

(e) Disciplinary proceedings.

(1) Professional Misconduct Complaint. Where the Rules do not already provide a procedure, the Chief Judge of this Court shall evaluate information coming to the Court's attention, by complaint or from other sources, alleging misconduct by, or in the incapacity of, a lawyer subject to the jurisdiction of this Court (herein, the "respondent"). The Chief Judge or another Judge of the Court shall determine as a threshold matter whether the information, if true, would constitute misconduct or incapacity such as to warrant investigation. If an investigation is warranted, the Chief Judge or another Judge of the Court may appoint counsel from the Bar of this Court to conduct a confidential investigation of the matter. Complaints, and any files based on them, shall be treated as confidential unless otherwise ordered for good cause shown.

(2) Investigation and Recommendation. If the Court appoints counsel pursuant to paragraph (e)(1), such counsel shall conduct an investigation as directed by the Court. As part of the investigation, at a time deemed appropriate by counsel, counsel shall notify the respondent in writing of the substance of the matter and afford the respondent an opportunity to be heard. At the conclusion of the investigation, counsel shall prepare a confidential report and recommendation for the Court. The report and recommendation shall set forth the results of counsel's investigation and shall state whether cause exists to find that a violation of the Model Rules has occurred. If counsel recommends that cause does not exist to find a violation of the Model Rules, and the Court accepts counsel's recommendation, the complaint shall be dismissed.

(3) Show Cause Hearing. If counsel recommends that cause exists to find a violation of the Model Rules, and the Court accepts counsel's recommendation, then the Court shall issue a confidential order for the respondent to show cause within 30 days after service of that order upon respondent, personally or by mail, why the respondent should not be disciplined. For good cause shown, the time to show cause may be extended. The respondent shall be provided a copy of counsel's recommendation and

may submit a written response to counsel's recommendation in advance of the show cause hearing. The show cause hearing shall be conducted by one or more Judges of the Court, as determined by the Chief Judge, and may include the Chief Judge. If the hearing results from an allegation of misconduct brought by a Judge of this Court, that Judge shall not participate in the show cause hearing. The show cause proceedings shall be confidential, unless the attorney subject to discipline requests that the proceedings be public.

(4) Sanctions. After a show cause hearing, the Court may impose such sanctions as the circumstances warrant, including private admonition, public reprimand, suspension, or disbarment.

(f) Disbarment on Consent While under Disciplinary Investigation or Prosecution.

(1) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that the attorney:

(A) Is not being subjected to coercion or duress and is fully aware of the implications of so consenting, which consent is freely and voluntarily rendered;

(B) Is aware that there is a presently pending investigation or proceeding involving specifically identified allegations of the misconduct;

(C) Acknowledges that the material facts so alleged are true; and so consents because the attorney knows that, if charges were predicated upon the matters under investigation or if the proceeding were prosecuted, the attorney could not successfully maintain a defense.

(2) Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

(3) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(g) Reinstatement.

(1) After Disbarment or Suspension. An attorney suspended for 3 months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than 3 months or disbarred may not resume practice until reinstated by order of this Court.

(2) Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least 5 years from the effective date of the disbarment.

(3) Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before 1 or more Judges of this Court provided, however, that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge or, if there are less than 3 Judges eligible to serve, or the Chief Judge was the complainant, by the Chief Judge of the Court of Appeals for this Circuit. The Judge or Judges assigned to the matter shall, within 30 days after referral, schedule a hearing at which the petitioner shall have the burden of demonstrating, by clear and convincing evidence, that petitioner has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

(4) Duty of Counsel. In all proceedings upon a petition for reinstatement, cross examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

(5) Deposit for Costs of Proceeding. Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceeding.

(6) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him or her provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the respondent-attorney has been suspended or disbarred for 5 years or more, reinstatement may be conditioned, in the discretion of the Judge or Judges before whom the matter is heard and upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction, of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(h) Successive Petitions. No petition for reinstatement under this Rule shall be filed within 1 year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(i) Attorneys Specially Admitted. Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (*pro hac*

vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(j) Service of Papers and Other Notices. Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown on the records of this Court. Unless stated otherwise, service of any other papers or notices required by these Rules shall be deemed to have been made if such service is made by method permissible under the Rules of the Court.

(k) Appointment of Counsel. Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court shall appoint as counsel one or more members of the Bar of this Court. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

(l) Duties of the Clerk.

(1) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk shall promptly obtain a certificate and file it with this Court.

(2) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

(3) Whenever it appears that any attorney who has been convicted of any crime or disbarred or suspended, or censured or disbarred on consent by this Court, is admitted to practice law in any other jurisdiction or before any other Court, the Clerk shall, within 14 days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other Court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence address of the defendant or respondent.

(4) The Clerk, likewise, shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

(m) Jurisdiction. Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over

proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

(n) Pre-existing Proceedings. If any formal disciplinary proceeding is pending before this Court on the effective date of these Rules, it shall be concluded under the procedure existing prior to the effective date of these Rules.

RULE 83.7. **Substitution and Withdrawal of Attorney.**

An attorney may withdraw an appearance for a party without the Court's permission when such withdrawal will leave a member of the Bar of this Court appearing as counsel of record for the party. Otherwise, no appearance shall be withdrawn except by order on a motion duly noticed to each party and served on the party client, at least 14 days before the motion is presented, by registered or certified mail addressed to the client's last known address.

Form for Motion for Admission *Pro Hac Vice*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

)
) Civil Action No.
)

MOTION AND ORDER FOR
ADMISSION *PRO HAC VICE*

Pursuant to Local Rule 83.5 and the attached certification, counsel moves the admission *pro hac vice* of _____ to represent_____ in this matter.

Signed:_____
(Movant's Name and Delaware State
Bar Identification Number)
(Movant's Address)
(Movant's Telephone Number)

Date:_____ Attorney for _____

ORDER GRANTING MOTION

IT IS HEREBY ORDERED counsel's motion for admission *pro hac vice* is granted.

Date:_____ _____
United States District Judge

CERTIFICATION BY COUNSEL TO BE ADMITTED PRO HAC VICE

Pursuant to Local Rule 83.5, I certify that I am eligible for admission to this Court, am admitted, practicing and in good standing as a member of the Bar of _____ and pursuant to Local Rule 83.6 submit to the disciplinary jurisdiction of this Court for any alleged misconduct which occurs in the preparation or course of this action. I also certify I am generally familiar with this Court's Local Rules. In accordance with Standing Order for District Court Fund effective 7/23/09, I further certify that the annual fee of $25.00 has been paid ☐ to the Clerk of Court, or, if not paid previously, the fee payment will be submitted ☐ to the Clerk's Office upon the filing of this motion.

Dated: _____ Signed: _____
(Applicant's Address)

December 2019
For Patent Cases[1]

SCHEDULING ORDER

This ____ day of _____, 202_, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within five days of the date of this Order.

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before _____, 202_.

3. Discovery.

a. Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before _____, 202_.

b. Document Production. Document production shall be substantially complete by _____, 202_.

c. Requests for Admission. A maximum of ___ requests for admission are permitted for each side.

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[1] For ANDA cases, the form should be modified as necessary by, for example, deleting paragraphs 11 and 15 and modifying paragraph 16 to reflect a three-day bench trial with trial days from 8:30 to 5:00 (10 ½ hours per side).

d. Interrogatories. A maximum of ___ interrogatories, including contention interrogatories, are permitted for each side.

e. Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of __ hours of taking testimony by deposition upon oral examination.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court or by agreement of the parties. A defendant who becomes a cross-claimant or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

f. Discovery Matters and Disputes Relating to Protective Orders. Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact the Court's Case Manager to schedule an in-person conference/argument. Unless otherwise ordered, by no later than seven business days prior to the conference/argument, any party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and its position on those issues. By no later than five business days prior to the conference/argument, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's opposition. A party should include with its letter a proposed order with a detailed issue-by-issue ruling such that, should the Court agree with the party on a particular issue, the Court could sign the proposed order as to that issue, and the opposing party would be able to

understand what it needs to do, and by when, to comply with the Court's order. Any proposed order shall be e-mailed, in Word format, simultaneously with filing to rga_civil@ded.uscourts.gov.

If a discovery-related motion is filed without leave of the Court, it will be denied without prejudice to the moving party's right to bring the dispute to the Court through the discovery matters procedures set forth in this Order.

g. Miscellaneous Discovery Matters.

i. The parties may, if they choose, agree to a timetable for initial patent disclosures either as set forth in the Delaware Default Standard for Discovery or as agreed to by the parties, and the parties should set forth any such agreement in the scheduling order.

ii. The parties should set forth a statement identifying any other pending or completed litigation including IPRs involving one or more of the asserted patents. Plaintiff[2] should advise whether it expects to institute any further litigation in this or other Districts within the next year. Defendant should advise whether it expects to file one or more IPRs and, if so, when.

iii. The parties, if they think it necessary, should set times in the schedule for reducing the number of asserted claims and asserted prior art used for anticipation and obviousness combinations. The usual points where the Court will consider such limits are before claim construction and after a ruling on claim construction.

iv. If one or more of the patents-in-suit have already been licensed or

[2] Plaintiff and Defendant refer to the party or parties asserting infringement and the party or parties accused of infringement. The parties should modify the language as necessary, for example, in a declaratory judgment action.

the subject of a settlement agreement, either (1) Plaintiff shall provide the licenses and/or settlement agreements to Defendant no later than the time of the initial Rule 16(b) scheduling conference, or (2) if Plaintiff requires a Court Order to make such disclosures, Plaintiff shall file any necessary proposed orders no later than twenty-four hours before the initial Rule 16(b) scheduling conference. Plaintiff shall represent in the scheduling order that it is complying or has complied with this requirement. All parties shall be prepared to discuss at the conference what their preliminary views of damages are.

4. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten days from the date of this Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 3(f) above.

Any proposed protective order must include the following paragraph:

> Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

5. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk the required number of copies as directed in paragraph 6. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed

document.

6. Courtesy Copies. The parties shall provide to the Court two courtesy copies of all briefs and one courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

7. Claim Construction Issue Identification. On or before _____, 202_, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be filed no later than _____, 202_. The Joint Claim Construction Chart, in Word format shall be e-mailed simultaneously with filing to rga_civil@ded.uscourts.gov. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

8. Claim Construction Briefing[3]. Plaintiff shall serve, but not file, its opening brief,

[3] As each brief is written and provided to the opposing party, the individual responsible for verifying the word count will represent to the other party that it has so verified and by what means. These verifications should not be provided to the Court unless a dispute arises about them. Pictures, Figures copied from the patent, and other illustrations do not count against the word limit. Plaintiff should include with its opening brief one or more representative claims with the disputed terms italicized. Should Defendant want to add additional representative claims, Defendant may do so. The representative claims and the agreed-upon claim constructions do not

not to exceed 5,000 words, on _____. Defendant shall serve, but not file, its answering brief, not to exceed 7,500 words, on _____. Plaintiff shall serve, but not file, its reply brief, not to exceed 5,000 words, on _____. Defendant shall serve, but not file its sur-reply brief, not to exceed 2,500 words, on _____. No later than _____, the parties shall file a Joint Claim Construction Brief. The parties shall copy and past their unfiled briefs into one brief, with their positions on each claim term in sequential order, in substantially the form below.

JOINT CLAIM CONSTRUCTION BRIEF

I. Representative Claims

II. Agreed-upon Constructions

III. Disputed Constructions

A. [TERM 1][4]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

B. [TERM 2]
    1. Plaintiff's Opening Position
    2. Defendant's Answering Position
    3. Plaintiff's Reply Position
    4. Defendant's Sur-Reply Position

Etc. The parties need not include any general summaries of the law relating to claim construction. If there are any materials that would be submitted in an appendix, the parties shall count against the word limits.

[4] For each term in dispute, there should be a table or the like setting forth the term in dispute and the parties' competing constructions. The table does not count against the word limits.

submit them in a Joint Appendix.

9. Hearing on Claim Construction. Beginning at _____ a.m. on _____, 202_, the Court will hear argument on claim construction. Absent prior approval of the Court (which, if it is sought, must be done so by joint letter submission no later than the date on which answering claim construction briefs are due), the parties shall not present testimony at the argument, and the argument shall not exceed a total of three hours. When the Joint Claim Construction Brief is filed, the parties shall simultaneously file a motion requesting the above-scheduled claim construction hearing, state that the briefing is complete, and state how much total time the parties are requesting that the Court should allow for the argument.

10. Disclosure of Expert Testimony.

a. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before _____, 202_. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before _____, 202_. Reply expert reports from the party with the initial burden of proof are due on or before _____, 202_. No other expert reports will be permitted without either the consent of all parties or leave of the Court. If any party believes that an expert report does not comply with the rules relating to timely disclosure or exceeds the scope of what is permitted in that expert report, the complaining party must notify the offending party within one week of the submission of the expert report. The parties are expected to promptly try to resolve any such disputes, and, when they cannot reasonably be resolved, use the Court's Discovery Dispute Procedure or the complaint will be waived.

Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition. Depositions of experts shall be completed on or before _____, 202_.

b. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

11. Case Dispositive Motions. All case dispositive motions shall be served and filed on or before _____, 202_. No case dispositive motion under Rule 56 may be filed more than ten days before the above date without leave of the Court. Absent an order of the Court upon a showing of good cause, each side is limited to one forty-page opening brief, one forty-page answering brief, and one twenty-page reply brief for all of its Daubert and case dispositive motions.

12. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

13. Pretrial Conference. On _____, 202_, the Court will hold a Rule 16(e) final pretrial conference in Court with counsel beginning at _____ a.m. The parties shall file a joint proposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5 p.m. on the fourth business day before the date of the final pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the

preparation of the proposed joint final pretrial order.

14. Motions *in Limine*. Motions *in limine* shall be separately filed, with each motion containing all the argument described below in one filing for each motion. Any supporting documents in connection with a motion *in limine* shall be filed in one filing separate from the motion *in limine*. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the *in limine* request may add a maximum of one additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three page submission (and, if the moving party, a single one page reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

15. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1, the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms no later than 6 p.m. on the fourth business day before the date of the final pretrial conference. Areas of dispute shall be identified as narrowly as possible and in a manner that makes it readily apparent what the dispute is. The parties shall submit simultaneously with filing each of the foregoing four documents in Word format to rga_civil@ded.uscourts.gov.

16. Trial. This matter is scheduled for a five (5) day[5] jury trial beginning at 9:30 a.m. on _____, 202_, with the subsequent trial days beginning at 9:30 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 5:00 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

17. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution. This matter is referred to a magistrate judge to handle all discovery disputes including any that arise in connection with expert reports. (The second referral is optional, and should be deleted unless all parties agree to it.)

_____
UNITED STATES DISTRICT JUDGE

[5] Five days (i.e., about ten to thirteen hours per side) is the presumptive length of a patent jury trial. If the parties think it is obvious that this will not be enough, they may put in a different length and should be prepared to explain why at the Rule 16 conference. A final decision on the precise length of trial will not be made before the final pretrial conference.

VOIR DIRE

Good morning, ladies and gentlemen. I am Judge Andrews. We are going to select a jury in a civil case called _____.

I am going to ask you a series of questions to help the Court and the attorneys in the jury selection process. Before I ask any questions, I am going to ask the Deputy Clerk to swear the jury panel to answer any questions truthfully. (To Deputy, Please swear the panel).

If any of you answer "yes" to any of the questions that I ask, please raise your hand, and, when recognized by me, please stand, state your name and your jury number. At the end of the questions, the Deputy Clerk will ask some of you to take seats in the jury box, and, after that, the lawyers and I may ask those of you who answered "yes" to one or more questions to come up to the bench to discuss your answers with the lawyers and me.

The presentation of evidence in this case is expected to take ____ days, but jury deliberations could extend your service beyond that. The schedule that I expect to keep over the days of evidence presentation will include a morning break of fifteen minutes, a lunch break of an hour, and an afternoon break of fifteen minutes. We will start at 9:30 a.m. and finish no later than 5 p.m. each day.

1. Does the schedule that I have just mentioned present a special problem to any of you?

2. (Description of the case). This is a patent lawsuit involving washing machines. The Plaintiff is LG Electronics. LG owns patents relating to washing machines. It has sued the defendants, who are ASKO Appliances, Daewoo Electronics, and Digital Symphony Corporation. The Defendants manufacture or sell washing machines. LG, the Plaintiff, says some of those washing machines infringe its patents. The Defendants deny infringement and also say that the patents are invalid. The jury in this case will be asked to decide whether the washing machines infringe the patents, and whether the patents are valid. For those of you who end up being on the jury, I will give more detailed instructions on the law later in the case.

Have any of you heard or read anything about this case?

3. The lawyers and law firms involved in this case are: (*typed list to be supplied by the parties*). Do any of you or your immediate families, such as spouse, child, parent, or sibling, know any of the attorneys or law firms I have just named?

4. Have any of you or your immediate families had any business dealings with, or been employed by, any of these attorneys or law firms?

5. Have any of you or your immediate families ever been employed by LG Electronics, ASKO Appliances, Daewoo Electronics, or Digital Symphony Corp.?

6. Have any of you or your immediate families ever owned stock in any of these

companies?

7. Have any of you or your immediate families ever had a business relationship with any of these companies?

8. Have any of you or your immediate families ever had any experience, good or bad, with any of these companies, that might keep you from being a fair and impartial juror in this case?

9. Do you possess any opinions about any of these companies that might keep you from being a fair and impartial juror in this case?

10. The potential witnesses in this case are: (*typed list to be supplied by the parties*). Are you familiar with any of these potential witnesses?

11. Have you or any member of your immediate family ever been employed by the United States Patent and Trademark Office?

12. Have you or any member of your immediate family ever applied for, or obtained, a United States or foreign patent?

13. Have you or any member of your immediate family ever been involved in a dispute about patent rights?

14. Do you have any opinions about patents, patent rights, or the United States Patent and Trademark Office that might make it difficult for you to be a fair and impartial juror in this case?

14A. Have you served on a jury in a civil case within the last fifteen years?

15. If you are selected to sit as a juror in this case, are you aware of any reason why you would be unable to render a verdict based solely on the evidence presented at trial?

16. If you are selected to sit as a juror in this case, are you aware of any reason why you would not be able to follow the law as I give it to you?

17. Is there anything, such as poor vision, difficulty hearing, difficulty understanding spoken or written English, that would make it difficult for you to serve on this jury?

18. Do you have any experience with the design or manufacture of washing machines?

19. Have you ever been employed to repair washing machines?

20. This is the last question. Is there anything else, including something you have remembered in connection with one of the earlier questions, that you think you would like to tell

me in connection with your service as a juror in this case?

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

STANDING ORDER REGARDING BRIEFING IN ALL CASES

IT IS HEREBY ORDERED this **9th** day of **December, 2019**, that the following briefing option shall apply IN ALL CASES where parties are represented by counsel.

For all double-spaced submissions where there are page limits specified by Order or Rule, the parties may alternatively use a word count limit. The word count limit is 250 words per page and shall not exceed the total word count for the page limit specified in the Order or Rule. For example, if the page limit specified is 20 pages, the maximum number of words for the submission is 5,000 (20 x 250). To the extent that a word count is used, a certification as to the total number of words must be attached as part of the submission.

United States District Judge

PLEASE NOTE: Unless ordered differently by the Court, two hard copies of a filing must be provided to the Court no later than noon the day after the filing is made electronically.

Judge Connolly's form scheduling orders were revised as of March 2, 2020.

For patent cases, the substantive revisions (1) confirm that a party shall not combine into a single summary judgment motion multiple motions and shall file a separate concise statement of facts with each summary judgment motion; (2) require the parties to meet and confer after they file the Joint Claim Construction Brief but before the Markman hearing in an attempt to reduce the number of disputed claim terms; and (3) require the parties to file 21 days before the Pretrial Conference the joint final pretrial order, proposed voir dire, preliminary and final jury instructions, and any special verdict forms.

For non-patent cases, the substantive revisions (1) confirm that a party shall not combine into a single summary judgment motion multiple motions and shall file a separate concise statement of facts with each summary judgment motion; (2) require the parties to file as Exhibit A to the Order all relevant deadlines and dates established by the Order; and (3) require the parties to file 21 days before the Pretrial Conference the joint final pretrial order, proposed voir dire, preliminary and final jury instructions, and any special verdict forms.

Filing Info

All motions must be accompanied by a draft order for the Court's signature that identifies with specificity the relief sought by the party.

Important Note concerning Summary Judgment Motions
Should the parties stipulate or otherwise request to have their dispositive motion deadline extended, and a trial date is currently set on the court's calendar in the case, the parties will lose their trial date upon the court's granting the extension. No new trial date will be given until the dispositive motion(s) have been decided.

Claim Construction: The Court's form patent case scheduling orders require the parties to submit with the Joint Claim Construction Chart **separate** text-searchable pdfs **for each** asserted patent(s). Parties shall file the separate pdfs electronically using CM/ECF. Each separate pdf shall be labeled using the last three digits of the number of the patent in question so that it is possible to determine from looking at the docket sheet the patent in a particular exhibit. The parties should NOT email the pdfs to chambers with the Joint Claim Construction Chart.

Disputes Relating to Discovery Matters and Protective Orders. Should counsel find they are unable to resolve a dispute relating to a discovery matter or protective order, the parties shall contact the Court's Case Manager to schedule an in-person conference/argument. Unless otherwise ordered, by no later than 72 hours prior to the conference/argument, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and the party's position on those issues. The party shall submit as attachments to its letter (1) an averment of counsel that the parties made a reasonable effort to resolve the dispute and that such effort included oral communication that involved Delaware counsel for the parties, and (2) a draft order for the Courts signature which identifies with specificity the relief sought by the party. By no later than 48 hours prior to the conference/argument, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's reasons for its opposition. Two courtesy copies of the parties letters and attachments must be provided to the Court within one hour of e-filing the document(s). If a motion concerning a discovery matter or protective order is filed without leave of the Court, it will be denied without prejudice to the moving party's right to bring the dispute to the Court through the procedures set forth in this paragraph.

Claim Construction: The Court's form patent case scheduling orders require the parties to submit with the Joint Claim Construction Chart **separate** text-searchable pdfs **for each** asserted patent(s). Parties shall file the separate pdfs electronically using CM/ECF. Each separate pdf shall be labeled using the last three digits of the number of the patent in question so that it is possible to determine from looking at the docket sheet the patent in a particular exhibit. The parties should NOT email the pdfs to chambers with the Joint Claim Construction Chart.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:

USE OF FACE MASK/COVERINGS	**:**	**SECOND REVISED**
IN PUBLIC AREAS OF THE DISTRICT	**:**	**STANDING ORDER**
AND BANKRUPTCY COURTS	**:**	

WHEREAS, on August 10, 2021, Governor Carney announced that State employees and visitors to State facilities must wear masks indoors, regardless of vaccination status, beginning August 16, 2021, and the Delaware State Courts issued an Order effective August 16, 2021 requiring face mask or covering in all judicial facilities:

NOW THEREFORE, it is **HEREBY ORDERED** that:

1. All persons, regardless of vaccination status, must wear a face mask/covering in the public areas of the Court (lobby, corridors, elevators, restrooms, etc.).
2. Judges retain the discretion to impose mask requirements in their courtrooms as they see fit.
3. This Order shall remain in effect until amended or vacated by the Court.

August 11, 2021
Wilmington, Delaware

Colm F. Connolly
Chief Judge

Revised March 2, 2020

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

PLAINTIFF,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. [ ]
	:	
DEFENDANT,	:	
	:	
Defendant.	:	

SCHEDULING ORDER FOR PATENT CASES
IN WHICH INFRINGEMENT IS ALLEGED

This __ day of _____, 20__, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration:

IT IS ORDERED that:

1. Relevant Deadlines and Dates. All relevant deadlines and dates established by this Order are set forth in the chart attached as Exhibit A.

2. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) within five days of the date of this Order.

3. Disclosure of Asserted Claims and Infringement Contentions. Unless otherwise agreed to by the parties, not later than 30 days after the date of this Order, a party claiming patent infringement shall 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) Each claim of each asserted patent that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. §271 asserted;

(b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus shall be identified by name or model number, if known. Each method or process shall 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 and how each limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that such party contends is governed by 35

U.S.C. § 112(f), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(d) For each claim 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. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

(e) Whether each limitation of each asserted claim is alleged to be present literally or under the doctrine of equivalents in the Accused Instrumentality;

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

(g) 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 shall identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim;

(h) The timing of the point of first infringement, the start of claimed damages, and the end of claimed damages; and

(i) If a party claiming patent infringement alleges willful infringement, the basis for such allegation.

4. Document Production Accompanying Disclosure of Asserted Claims and Infringement Contentions. With the "Disclosure of Asserted Claims and Infringement Contentions," the party claiming patent infringement shall produce to each opposing party or make available for inspection and copying:

(a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, 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 any public use of, the claimed invention prior to the date of application for the asserted patent(s);

(b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the asserted patent(s) or the priority date identified pursuant to paragraph 3(f) of this Order, whichever is earlier;

(c) A copy of the file history for each asserted patent;

(d) All documents evidencing ownership of the patent rights by the party asserting patent infringement;

(e) If a party identifies instrumentalities pursuant to paragraph 3(g) of this Order, documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims;

(f) All agreements, including licenses, transferring an interest in any asserted patent;

(g) All agreements that the party asserting infringement contends are comparable to a license that would result from a hypothetical reasonable royalty negotiation;

(h) All agreements that otherwise may be used to support the party asserting infringement's damages case;

(i) If a party identifies instrumentalities pursuant to paragraph 3(g) of this Order, documents sufficient to show marking of such embodying accused instrumentalities; and if the party wants to preserve the right to recover lost profits based on such products, the sales, revenues, costs, and profits of such embodying accused instrumentalities; and

(j) All documents comprising or reflecting a F/RAND commitment or agreement with respect to the asserted patent(s).

The producing party shall separately identify by production number the documents that correspond to each category set forth in this paragraph. A party's production of a document as required by this paragraph shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102.

5. Invalidity Contentions. Unless otherwise agreed to by the parties, not later than 45 days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions," each party opposing a claim of patent infringement shall serve on all parties its "Invalidity Contentions" which shall contain the following information:

(a) The identity of each item of prior art that the party alleges anticipates each asserted claim or renders the claim obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication, and, where feasible, author and publisher. Each alleged sale or public use 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. For pre-AIA claims, 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. For pre-AIA claims, 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 anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;

(c) A chart identifying specifically where and how in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that such party contends is governed by 35 U.S.C. § 112(f), 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 based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(b), or lack of enablement or insufficient written description under 35 U.S.C. § 112(a) of any of the asserted claims.

6. Document Production Accompanying Invalidity Contentions. With the "Invalidity Contentions," the party opposing a claim of patent infringement shall produce or make available for inspection and copying:

(a) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its chart produced pursuant to paragraph 3(c) of this Order;

(b) A copy or sample of the prior art identified pursuant to paragraph 5(a) that does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon shall be produced;

(c) All agreements that the party opposing infringement contends are comparable to a license that would result from a hypothetical reasonable royalty negotiation;

(d) Documents sufficient to show the sales, revenue, cost, and profits for Accused Instrumentalities identified pursuant to paragraph 3(b) of this Order for any period of alleged infringement; and

(e) All agreements that may be used to support the damages case of the party that is denying infringement.

The producing party shall separately identify by production number the documents that correspond to each category set forth in this paragraph.

7. Amendment to Contentions. Amendment of the Infringement Contentions or the Invalidity Contentions may be made only by order of the Court upon a timely showing of good cause. Non-exhaustive examples of circumstances that may, absent undue prejudice to the non-moving party, support a finding of good cause include (a) recent discovery of material prior art despite earlier diligent search and (b) recent discovery of nonpublic information about the Accused Instrumentality which was not discovered, despite diligent efforts, before the service of the Infringement Contentions. The duty to supplement discovery responses does not excuse the need to obtain leave of the Court to amend contentions.

8. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before _____.

9. Discovery.

(a) Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before _____.

(b) Document Production. Document production shall be completed on or before _____.

(c) Requests for Admission. A maximum of __ requests for admission are permitted for each side.

(d) Interrogatories. A maximum of __ interrogatories, including contention interrogatories, are permitted for each side.

(e) Depositions.

(1) Limitation on Hours for Deposition Discovery. Each side is limited to a total of ___ hours of taking testimony by deposition upon oral examination.

(2) Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this District Court must ordinarily be required, upon request, to submit to a deposition at a place designated within this District. Exceptions to this general rule may be made by order of the Court or by agreement of the parties. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

10. Pinpoint Citations. Pinpoint citations are required in all briefing, letters, and concise statements of facts. The Court will ignore any assertions of controverted facts and controverted legal principles not supported by a pinpoint

citation to, as applicable: the record, an attachment or exhibit, and/or case law or appropriate legal authority. *See United States v. Dunkel*, 927 F.2d 955, 956 ("Judges are not like pigs, hunting for truffles buried in briefs.").

11. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten days from the date of this Order.

Any proposed protective order must include the following paragraph:

> Other Proceedings. By entering this Order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this Order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this Order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

12. Disputes Relating to Discovery Matters and Protective Orders. Should counsel find they are unable to resolve a dispute relating to a discovery matter or protective order, the parties shall contact the Court's Case Manager to schedule an in-person conference/argument.

(a) Unless otherwise ordered, by no later than 72 hours prior to the conference/argument, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and the party's position on those issues. The party shall submit as attachments to its letter (1) an averment of counsel that the parties made a reasonable effort to resolve the dispute and that such effort included oral communication that involved Delaware counsel for the parties, and (2) a draft order for the Court's signature that identifies with specificity the relief sought by the party. The party shall file concurrently with its letter a motion that in no more than one paragraph sets forth the relief sought.

(b) By no later than 48 hours prior to the conference/argument, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's reasons for its opposition.

(c) Two hard copies of the parties' letters and attachments must be provided to the Court within one hour of e-filing the document(s). The hard copies shall comply with paragraphs 10 and 14 of this Order.

(d) If a motion concerning a discovery matter or protective order is filed without leave of the Court that does not comport with the procedures set forth in this paragraph, the motion will be denied without prejudice to the

moving party's right to bring the dispute to the Court through the procedures set forth in this paragraph.

13. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and two copies of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

14. Hard Copies. The parties shall provide to the Court two hard copies of all letters filed pursuant to paragraph 12 of this Order, all briefs, and any other document filed in support of any such letters and briefs (i.e., the concise statement of facts filed pursuant to paragraph 20 of this Order, appendices, exhibits, declarations, affidavits, etc.). This provision also applies to papers filed under seal. Exhibits and attachments shall be separated by tabs. Each exhibit and attachment shall have page numbers of some sort such that a particular page of an exhibit or attachment can be identified by a page number. The parties shall take all practical measures to avoid filing multiple copies of the same exhibit or attachment. The parties should highlight the text of exhibits and attachments they wish the Court to read. The parties are encouraged to include in an exhibit or attachment only the pages of the document in question that (1) identify the document (e.g., the first page of a deposition transcript or the cover page of a request for discovery) and (2) are relevant to the issue(s) before the Court.

15. Claim Construction Issue Identification. On or before _____, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be filed no later than _____. The Joint Claim Construction Chart, in Word format, shall be e-mailed simultaneously with filing to cfc_civil@ded.uscourts.gov. The text for the Joint Claim Construction Chart shall be 14-point and in Times New Roman or a similar typeface. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A separate text-searchable PDF of each of the patent(s) in issue shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument. Each party shall file concurrently with the Joint Claim Construction Chart a "Motion for Claim Construction" that requests the Court to adopt the claim construction position(s) of that party set forth in the Joint Claim Construction Chart. The motion shall not contain any argument and shall simply state that the

party "requests that the Court adopt the claim construction position[s] of [the party] set forth in the Joint Claim Construction Chart (D.I. [ ])."

16. Claim Construction Briefing. The Plaintiff shall serve, but not file, its opening brief, not to exceed 5,500 words, on _____. The Defendant shall serve, but not file, its answering brief, not to exceed 8,250 words, on _____. The Plaintiff shall serve, but not file, its reply brief, not to exceed 5,500 words, on _____. The Defendant shall serve, but not file, its sur-reply brief, not to exceed 2,750 words, on _____. The text for each brief shall be 14-point and in Times New Roman or a similar typeface. Each brief must include a certification by counsel that the brief complies with the type and number limitations set forth above. The person who prepares the certification may rely on the word count of the word-processing system used to prepare the brief.

No later than _____, the parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their untitled briefs into one brief, with their positions on each claim term in sequential order, in substantially the form below.

JOINT CLAIM CONSTRUCTION BRIEF

I. Agreed-upon Constructions

II. Disputed Constructions

A. [TERM 1]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

B. [TERM 2]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

Etc. The parties need not include any general summaries of the law relating to claim construction. If there are any materials that would be submitted in an appendix, the parties shall submit them in a Joint Appendix. Citations to intrinsic evidence shall be set forth in the Joint Claim Construction Brief. Citations to expert declarations and other extrinsic evidence may be made in the Joint Claim Construction Brief as the parties deem necessary, but the Court will review such extrinsic evidence only if the Court is unable to construe the disputed claim terms based on the intrinsic evidence. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584 (Fed. Cir. 1996). Declarations shall not contain legal argument or be used to circumvent the briefing word limitations imposed by this paragraph. The Joint Claim Construction Brief and Joint Appendix shall comply with paragraphs 10 and 14 of this Order.

17. Meet and Confer Confirmation and Amended Claim Chart. On or before _____, local and lead counsel for the parties shall meet and confer and thereafter file an Amended Joint Claim Construction Chart that sets forth the terms that remain in dispute. During the meet and confer, the parties shall attempt to reach agreement on any disputed terms where possible and to narrow the issues related to the remaining disputed terms. The parties shall file with the Amended Joint Claim Construction Chart a letter that identifies by name each individual who participated in the meet and confer, when and how (i.e., by telephone or in person) the meet and confer occurred, and how long it lasted. If no agreements on constructions have been reached or if no dispute has been narrowed as a result of the meet and confer, the letter shall so state and the parties need not file an Amended Joint Claim Construction Chart.

18. Hearing on Claim Construction. Beginning at _____ _.m. on _____, the Court will hear argument on claim construction. Absent prior approval of the Court (which, if it is sought, must be done by joint letter submission no later than the date on which answering claim construction briefs are due to be served), the parties shall not present testimony at the argument, and the argument shall not exceed a total of three hours.

19. Disclosure of Expert Testimony.

(a) Expert Reports. For the party with the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before _____. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before _____. Reply expert reports from the party with the initial burden of proof are due on or before _____. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall provide the dates and times of their experts' availability for deposition. Depositions of experts shall be completed on or before _____.

(b) Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

20. Case Dispositive Motions.

(a) No Early Motions Without Leave. All case dispositive motions and the opening briefs and affidavits supporting such motions shall be served and filed on or before _____. No case dispositive motion under Rule 56 may be filed more than ten days before this date without leave of the Court.

(b) Motions to be Filed Separately. A party shall not combine into a single motion multiple motions that rely in whole or in part on different facts.

(c) Word Limits Combined with *Daubert* Motion Word Limits. Each party is permitted to file as many case dispositive motions as desired; provided, however, that each SIDE will be limited to a combined total of 10,000 words for all opening briefs, a combined total of 10,000 words for all answering briefs, and a combined total of 5,000 words for all reply briefs regardless of the number of case dispositive motions that are filed. In the event that a party files, in addition to a case dispositive motion, a *Daubert* motion to exclude or preclude all or any portion of an expert's testimony, the total amount of words permitted for all case dispositive and *Daubert* motions shall be increased for each SIDE to 12,500 words for all opening briefs, 12,500 words for all answering briefs, and 6,250 words for all reply briefs.

The text for each brief shall be 14-point and in Times New Roman or a similar typeface. Each brief must include a certification by counsel that the brief complies with the type and number limitations set forth above. The person who prepares the certification may rely on the word count of the word-processing system used to prepare the brief.

(d) Concise Statement of Facts Requirement. Any motion for summary judgment shall be accompanied by a separate concise statement detailing each material fact as to which the moving party contends that there are no genuine issues to be tried that are essential for the Court's determination of the summary judgment motion (not the entire case).[1] A party must submit a separate concise statement of facts for each summary judgment motion. Any party who opposes the motion shall file and serve with its opposing papers a separate document containing a single concise statement that admits or disputes the facts set forth in the moving party's concise statement, as well as sets forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

[1] The party must detail each material *fact* in its concise statement of facts. The concise statements of facts play an important gatekeeping role in the Court's consideration of summary judgment motions.

(e) Focus of the Concise Statement. When preparing the separate concise statement, a party shall reference only the material facts that are absolutely necessary for the Court to determine the limited issues presented in the motion for summary judgment (and no others), and each reference shall contain a citation to a particular affidavit, deposition, or other document that supports the party's interpretation of the material fact. Documents referenced in the concise statement may, but need not, be filed in their entirety if a party concludes that the full context would be helpful to the Court (e.g., a deposition miniscript with an index stating what pages may contain key words may often be useful). The concise statement shall particularly identify the page and portion of the page of the document referenced. The document referred to shall have relevant portions highlighted or otherwise emphasized. The parties may extract and highlight the relevant portions of each referenced document, but they shall ensure that enough of a document is attached to put the matter in context. If a party determines that an entire deposition transcript should be submitted, the party should consider whether a miniscript would be preferable to a full-size transcript. If an entire miniscript is submitted, the index of terms appearing in the transcript must be included, if it exists. When multiple pages from a single document are submitted, the pages shall be grouped in a single

exhibit. Concise statements of fact shall comply with paragraphs 10 and 14 of this Order.

(f) Word Limits for Concise Statement. The concise statement in support of or in opposition to a motion for summary judgment shall be no longer than 1,750 words. The text for each statement shall be 14-point and in Times New Roman or a similar typeface. Each statement must include a certification by counsel that the statement complies with the type and number limitations set forth above. The person who prepares the certification may rely on the word count of the word-processing system used to prepare the statement.

(g) Affidavits and Declarations. Affidavits or declarations setting forth facts and/or authenticating exhibits, as well as exhibits themselves, shall be attached only to the concise statement (i.e., not briefs).

(h) Scope of Judicial Review. When resolving motions for summary judgment, the Court shall have no independent duty to search and consider any part of the record not otherwise referenced in the separate concise statements of the parties. Further, the Court shall have no independent duty to review exhibits in their entirety, but rather will review only those portions of the exhibits specifically identified in the concise statements. Material facts set forth in the moving party's concise statement

will be deemed admitted unless controverted by a separate concise statement of the opposing party.

21. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

22. Pretrial Conference. On _____, the Court will hold a Rule 16(e) final pretrial conference in court with counsel beginning at _____ _.m. The parties shall file a joint proposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5:00 p.m. on_____ [21 days before the Pretrial Conference]. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the preparation of the proposed joint final pretrial order. The joint pretrial order shall comply with paragraphs 10 and 14 of this Order.

23. Motions *in Limine*. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. Each *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the *in limine* request may add a maximum

of one additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three-page submission (and, if the moving party, a single one-page reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court. Motions *in limine* shall comply with paragraphs 10 and 14 of this Order.

24. Compendium of Cases. A party may submit with any briefing two courtesy copies of a compendium of the selected authorities on which the party would like the Court to focus. The parties should not include in the compendium authorities for general principles or uncontested points of law (e.g., the standards for summary judgment or claim construction). An authority that is cited only once by a party generally should not be included in the compendium. An authority already provided to the Court by another party should not be included in the compendium. Compendiums of cases shall not be filed electronically with the Court, but a notice of service of a compendium of cases shall be filed electronically with the Court. Compendiums shall comply with paragraph 14 of this Order.

25. Jury Instructions, Voir Dire and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1, the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms no later than 5:00 p.m. on

_____ [21 days before the Pretrial Conference]. The parties shall submit simultaneously with filing each of the foregoing four documents in Word format to cfc_civil@ded.uscourts.gov.

26. Trial. This matter is scheduled for a ___-day _____ trial beginning at 8:30 a.m. on _____, with the subsequent trial days beginning at 9:00 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

27. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

_____
The Honorable Colm F. Connolly
United States District Court Judge

Revised March 2, 2020

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

PLAINTIFF,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. [ ]
	:	
DEFENDANT,	:	
	:	
Defendant.	:	

SCHEDULING ORDER FOR PATENT CASES IN WHICH ONLY INVALIDITY AND NOT INFRINGEMENT IS ALLEGED

This ____ day of _____, 20__, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration:

IT IS ORDERED that:

1. Relevant Deadlines and Dates. All relevant deadlines and dates established by this Order are set forth in the chart attached as Exhibit A.

2. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) within five days of the date of this Order.

3. Invalidity Contentions. Unless otherwise agreed to by the parties, not later than 30 days after the date of this Order, a party alleging that a claim of a patent is invalid or not enforceable shall serve on all parties its "Invalidity Contentions" which shall contain the following information:

(a) The identity of each item of prior art that the party alleges anticipates each asserted claim or renders the claim obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication, and, where feasible, author and publisher. Each alleged sale or public use 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. For pre-AIA claims, 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. For pre-AIA claims, 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 anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;

(c) A chart identifying specifically where and how in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that such party contends is governed by 35 U.S.C. § 112(f), 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 based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(b), or lack of enablement or insufficient written description under 35 U.S.C. § 112(a) of any of the asserted claims.

4. Document Production Accompanying Invalidity Contentions. With the "Invalidity Contentions," the party shall produce or make available for inspection and copying a copy or sample of the prior art identified pursuant to paragraph 3(a) that does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon shall be produced.

5. Amendment to Contentions. Amendment of the Invalidity Contentions may be made only by order of the Court upon a timely showing of good cause. The duty to supplement discovery responses does not excuse the need to obtain leave of the Court to amend contentions.

6. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before _____.

7. Discovery.

(a) Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before _____.

(b) Document Production. Document production shall be completed on or before _____.

(c) Requests for Admission. A maximum of __ requests for admission are permitted for each side.

(d) Interrogatories. A maximum of __ interrogatories, including contention interrogatories, are permitted for each side.

(e) Depositions.

(1) Limitation on Hours for Deposition Discovery. Each side is limited to a total of ___ hours of taking testimony by deposition upon oral examination.

(2) Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this District Court must ordinarily be required, upon request, to submit to a deposition at a place designated within this District. Exceptions to this general rule may be made by order of the Court or by agreement of the parties. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

8. Pinpoint Citations. Pinpoint citations are required in all briefing, letters, and concise statements of facts. The Court will ignore any assertions of controverted facts and controverted legal principles not supported by a pinpoint citation to, as applicable: the record, an attachment or exhibit, and/or case law or appropriate legal authority. *See United States v. Dunkel*, 927 F.2d 955, 956 ("Judges are not like pigs, hunting for truffles buried in briefs.").

9. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten days from the date of this Order.

Any proposed protective order must include the following paragraph:

> Other Proceedings. By entering this Order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this Order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this Order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

10. Disputes Relating to Discovery Matters and Protective Orders. Should counsel find they are unable to resolve a dispute relating to a discovery matter or protective order, the parties shall contact the Court's Case Manager to schedule an in-person conference/argument.

(a) Unless otherwise ordered, by no later than 72 hours prior to the conference/argument, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and the party's position on those issues. The party shall submit as attachments to its letter (1) an averment of counsel that the parties made a reasonable effort to resolve the dispute and that such effort included oral communication that involved Delaware counsel for the parties, and (2) a draft order for the Court's signature that identifies with specificity the relief sought by the

party. The party shall file concurrently with its letter a motion that in no more than one paragraph sets forth the relief sought.

(b) By no later than 48 hours prior to the conference/argument, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's reasons for its opposition.

(c) Two hard copies of the parties' letters and attachments must be provided to the Court within one hour of e-filing the document(s). The hard copies shall comply with paragraphs 8 and 12 of this Order.

(d) If a motion concerning a discovery matter or protective order is filed without leave of the Court that does not comport with the procedures set forth in this paragraph, the motion will be denied without prejudice to the moving party's right to bring the dispute to the Court through the procedures set forth in this paragraph.

11. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and two copies of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

12. Hard Copies. The parties shall provide to the Court two hard copies of all letters filed pursuant to paragraph 10 of this Order, all briefs, and any other document filed in support of any such letters and briefs (i.e., the concise statement

of facts filed pursuant to paragraph 18 of this Order, appendices, exhibits, declarations, affidavits, etc.). This provision also applies to papers filed under seal. Exhibits and attachments shall be separated by tabs. Each exhibit and attachment shall have page numbers of some sort such that a particular page of an exhibit or attachment can be identified by a page number. The parties shall take all practical measures to avoid filing multiple copies of the same exhibit or attachment. The parties should highlight the text of exhibits and attachments they wish the Court to read. The parties are encouraged to include in an exhibit or attachment only the pages of the document in question that (1) identify the document (e.g., the first page of a deposition transcript or the cover page of a request for discovery) and (2) are relevant to the issue(s) before the Court.

13. Claim Construction Issue Identification. On or before _____, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be filed no later than _____. The Joint Claim Construction Chart, in Word format, shall be e-mailed simultaneously with filing to cfc_civil@ded.uscourts.gov. The text for the Joint Claim Construction Chart shall be 14-point and in Times New Roman or a similar typeface. The parties'

Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A separate text-searchable PDF of each of the patent(s) in issue shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument. Each party shall file concurrently with the Joint Claim Construction Chart a "Motion for Claim Construction" that requests the Court to adopt the claim construction position(s) of that party set forth in the Joint Claim Construction Chart. The motion shall not contain any argument and shall simply state that the party "requests that the Court adopt the claim construction position[s] of [the party] set forth in the Joint Claim Construction Chart (D.I. [ ])."

14. Claim Construction Briefing. The Plaintiff shall serve, but not file, its opening brief, not to exceed 5,500 words, on _____. The Defendant shall serve, but not file, its answering brief, not to exceed 8,250 words, on _____. The Plaintiff shall serve, but not file, its reply brief, not to exceed 5,500 words, on _____. The Defendant shall serve, but not file, its sur-reply brief, not to exceed 2,750 words, on _____. The text for each brief shall be 14-point and in Times New Roman or a similar typeface. Each brief must include a certification by counsel that the brief complies with the

type and number limitations set forth above. The person who prepares the certification may rely on the word count of the word-processing system used to prepare the brief.

No later than _____, the parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their untitled briefs into one brief, with their positions on each claim term in sequential order, in substantially the form below.

JOINT CLAIM CONSTRUCTION BRIEF

I. Agreed-upon Constructions

II. Disputed Constructions

A. [TERM 1]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

B. [TERM 2]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

Etc. The parties need not include any general summaries of the law relating to claim construction. If there are any materials that would be submitted in an appendix, the parties shall submit them in a Joint Appendix. Citations to intrinsic

evidence shall be set forth in the Joint Claim Construction Brief. Citations to expert declarations and other extrinsic evidence may be made in the Joint Claim Construction Brief as the parties deem necessary, but the Court will review such extrinsic evidence only if the Court is unable to construe the disputed claim terms based on the intrinsic evidence. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584 (Fed. Cir. 1996). Declarations shall not contain legal argument or be used to circumvent the briefing word limitations imposed by this paragraph. The Joint Claim Construction Brief and Joint Appendix shall comply with paragraphs 8 and 12 of this Order.

15. Meet and Confer Confirmation and Amended Claim Chart. On or before _____, local and lead counsel for the parties shall meet and confer and thereafter file an Amended Joint Claim Construction Chart that sets forth the terms that remain in dispute. During the meet and confer, the parties shall attempt to reach agreement on any disputed terms where possible and to narrow the issues related to the remaining disputed terms. The parties shall file with the Amended Joint Claim Construction Chart a letter that identifies by name each individual who participated in the meet and confer, when and how (i.e., by telephone or in person) the meet and confer occurred, and how long it lasted. If no agreements on constructions have been reached or if no dispute has been narrowed

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(b) Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

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(b) Motions to be Filed Separately. A party shall not combine into a single motion multiple motions that rely in whole or in part on different facts.

(c) Word Limits Combined with *Daubert* Motion Word Limits. Each party is permitted to file as many case dispositive motions as desired; provided, however, that each SIDE will be limited to a combined total of 10,000 words for all opening briefs, a combined total of 10,000 words for all answering briefs, and a combined total of 5,000 words for all reply briefs

regardless of the number of case dispositive motions that are filed. In the event that a party files, in addition to a case dispositive motion, a *Daubert* motion to exclude or preclude all or any portion of an expert's testimony, the total amount of words permitted for all case dispositive and *Daubert* motions shall be increased for each SIDE to 12,500 words for all opening briefs, 12,500 words for all answering briefs, and 6,250 words for all reply briefs. The text for each brief shall be 14-point and in Times New Roman or a similar typeface. Each brief must include a certification by counsel that the brief complies with the type and number limitations set forth above. The person who prepares the certification may rely on the word count of the word-processing system used to prepare the brief.

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[1] The party must detail each material *fact* in its concise statement of facts. The concise statements of facts play an important gatekeeping role in the Court's consideration of summary judgment motions.

judgment motion. Any party who opposes the motion shall file and serve with its opposing papers a separate document containing a single concise statement that admits or disputes the facts set forth in the moving party's concise statement, as well as sets forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

(e) Focus of the Concise Statement. When preparing the separate concise statement, a party shall reference only the material facts that are absolutely necessary for the Court to determine the limited issues presented in the motion for summary judgment (and no others), and each reference shall contain a citation to a particular affidavit, deposition, or other document that supports the party's interpretation of the material fact. Documents referenced in the concise statement may, but need not, be filed in their entirety if a party concludes that the full context would be helpful to the Court (e.g., a deposition miniscript with an index stating what pages may contain key words may often be useful). The concise statement shall particularly identify the page and portion of the page of the document referenced. The document referred to shall have relevant portions highlighted or otherwise emphasized. The parties may extract and highlight the relevant portions of each referenced document, but they shall ensure that enough of a document is attached to put the matter in context. If a party

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consider any part of the record not otherwise referenced in the separate concise statements of the parties. Further, the Court shall have no independent duty to review exhibits in their entirety, but rather will review only those portions of the exhibits specifically identified in the concise statements. Material facts set forth in the moving party's concise statement will be deemed admitted unless controverted by a separate concise statement of the opposing party.

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pretrial order. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. Each *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the *in limine* request may add a maximum of one additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three-page submission (and, if the moving party, a single one-page reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court. Motions *in limine* shall comply with paragraphs 8 and 12 of this Order.

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Court, but a notice of service of a compendium of cases shall be filed electronically with the Court. Compendiums shall comply with paragraph 12 of this Order.

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24. Trial. This matter is scheduled for a ___-day _____ trial beginning at 8:30 a.m. on _____, with the subsequent trial days beginning at 9:00 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

25. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

_____
The Honorable Colm F. Connolly
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

STANDING ORDER FOR SUMMARY JUDGMENT PRACTICE IN PATENT CASES ASSIGNED TO JUDGE CONNOLLY

A wise judge who once sat on this Court was fond of saying that winning summary judgment in a patent case is like hitting a hole in one.[1] The judge's point was that the complexity, voluminous record, competing expert testimony, and scorched-earth lawyering in the typical patent case make it almost inevitable that a disputed material fact will preclude summary judgment.

The former judge's observation about the slim chances for success in summary judgment motion practice is well-known among many if not most of the patent lawyers who regularly appear before this Court. You might think that word of the judge's comments would have bred restraint in summary judgment practice in the patent cases we see, but the judge's observation—or at least the logic behind the observation—appears to have produced the opposite result. Patent lawyers seem to have concluded that precisely because the probability of winning summary

[1] According to the Professional Golfers' Association of America, the odds of hitting a hole in one are 12,500 to 1. *See* https://www.pga.com/story/odds-of-a-hole-in-one-albatross-condor-and-golfs-unlikely-shots.

judgment is so low, the solution is to file more motions to increase your odds of success. Six or more summary judgment motions in a patent case is not unusual.

The proliferation of meritless summary judgment motions in patent cases is substantially taxing the Court's—and litigants'—time and resources. Like Professor Miller, I find that

> the process of making, responding, and adjudicating the motion has become protracted, resource consumptive, and, when granted, vulnerable to reversal on appeal. One suspects that in many instances it might be more efficient to try the case, raising the question of what really motivates the widespread invocation of the motion.

Arthur R. Miller, *What Are Courts for? Have We Forsaken the Procedural Gold Standard?*, 78 La. L. Rev. 739, 771–72 (2018). *See also* Steven S. Gensler & Lee H. Rosenthal, *Managing Summary Judgment*, 43 Loy. U. Chi. L.J. 517, 521 (2012) ("Exhaustively prepared summary judgment motions that address every possible issue consume enormous resources—both from the parties and the court—and much of it is simply a waste of time, effort, and money."); Emery G. Lee III & Thomas Willging, Fed. Judicial Ctr., *Litigation Costs in Civil Cases: Multivariate Analysis Report to The Judicial Advisory Committee on Civil Rules*, 6, 8 (2010) (finding that, all other things being equal, summary judgment increased litigation costs by 24% for plaintiffs and 22% for defendants). The irony, of course, is that

summary judgment practice was implemented in the federal courts to increase efficiencies and conserve resources. *See Zweig v. Hearst Corp*., 521 F.2d 1129, 1135–36 (9th Cir. 1975) ("Summary judgment has, as one of its most important goals, the elimination of waste of the time and resources of both litigants and the courts[.]"), *abrogated on other grounds by Hollinger v. Titan Cap. Corp*., 914 F.2d 1564 (9th Cir. 1990).

Judges have long struggled to manage summary judgment practice. Some judges have limited the number of motions that can be filed; others have required litigants to submit letters to request permission to file a summary judgment motion. I find neither of these restrictions very satisfying. I don't favor placing a cap on the number of summary judgment motions in a case, as I remain of the view that a smartly-run summary judgment practice can avoid "unwarranted consumption of public and private resources," *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). And I find that the letters seeking permission to file a summary judgment motion are simply condensed summary judgment briefs that save neither time nor resources since they require the Court to address the merits of the requested motion.

My form scheduling order for patent cases allows a party to file as many summary judgment motions as it wishes. But I limit the total number of words that

can be used in the briefing filed in support of the filed motion or motions. I also require the parties to file competing statements of facts to help me determine as a gatekeeping matter whether there is a disputed material fact. I had thought that these requirements would deter the filing of meritless summary judgment motions. I was wrong.

I have not given up hope, however, that an effectively managed summary judgment practice can bring about efficiencies and cost savings. To that end, and to further deter parties from filing meritless motions, I have decided to revise my summary judgment practice. For any summary judgment motion filed by a party after today, as a general rule, I will not review the motion if I have previously denied a summary judgment motion filed by that party in the case. While I may make an exception to the general rule (for example, if my decision to deny a previous motion had been a close call), exceptions will be rare. Thus, parties should presume that I will not consider a summary judgment motion if I have denied a previous summary judgment motion.

Now therefore, at Wilmington on this Thirtieth day of April in 2021, it is HEREBY ORDERED that effective immediately in all patent cases assigned to me:

1. A party that files more than one summary judgment motion shall number each motion to make clear the order the party wishes the Court to consider the motions in question. The first motion the party wishes the Court to consider shall be designated #1, the second motion shall be designated #2, and so on.
2. The Court will review the party's summary judgment motions in the order designated by the party. If the Court decides to deny a motion filed by the party, barring exceptional reasons determined *sua sponte* by the Court, the Court will not review any further summary judgment motions filed by the party.

Colm F. Connolly
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

STANDING ORDER REGARDING BRIEFING IN PATENT CASES

WHEREAS, Judge Connolly's form scheduling order for patent cases was updated on April 22, 2019; and

WHEREAS, the April 22, 2019 revised form order sets forth various provisions regarding briefing, case dispositive motions, papers filed under seal, hard copies, motions in limine, and word limitations,

IT IS HEREBY ORDERED this 18th day of June 2019 that:

The provisions regarding briefing, case dispositive motions, papers filed under seal, hard copies, motions in limine, and word limitations set forth in the April 22, 2019 revised form order for patent cases shall apply in IN ALL PATENT CASES in which the parties are represented by counsel, regardless of when the case was filed, and specifically including: (1) cases in which the Court has already entered a Scheduling Order; and (2) cases in which a Scheduling Order has not yet been entered and a party seeks to file a motion to dismiss, motion for a preliminary injunction, or other filing before the entry of a Scheduling Order.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

[PLAINTIFF],	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 00-0000 (MN)
	)	
[DEFENDANT],	)	
	)	
Defendant.	)	

PATENT FORM SCHEDULING ORDER (ANDA)

This _____ day of _____, 20_____, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS HEREBY ORDERED that:

1. Rule 26(a)(l) Initial Disclosures and E-Discovery Default Standard.

Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(l) within five (5) days of the date this Order is entered by the Court. If they have not already done so, the parties are to review the Court's Default Standard for Discovery, Including Discovery of Electronically Stored Information ("ESI"), which is posted at http://www.ded.uscourts.gov (*see* Other Resources, Default Standard for Discovery) and is incorporated herein by reference.

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before **[DATE]**. Unless otherwise ordered by the Court, any motion to join a party or motion to amend the pleadings shall be made pursuant to the procedures set forth in Paragraphs 7(g) and 8.

3. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten (10) days from the date the Court enters this Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 7(g) below.

Any proposed protective order must include the following paragraph:

> Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" [the parties should list any other level of designation, such as "highly confidential," which may be provided for in the protective order] pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

4. Papers Filed Under Seal. In accordance with section G of the Revised Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

5. Courtesy Copies. The parties shall provide to the Court two (2) courtesy copies of all briefs and any other document filed in support of any briefs (*i.e.*, appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal. All courtesy copies shall be double-sided.

6. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

7. Discovery. Unless otherwise ordered by the Court or agreed to by parties, the limitations on discovery set forth in the Federal Rules shall be strictly observed.

(a) Fact Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before **[DATE]**.

(b) Document Production. Document production shall be substantially complete by **[DATE]**.

(c) Requests for Admission. A maximum of ___ requests for admission are permitted for each side.

(d) Interrogatories.

i. A maximum of ___ interrogatories, including contention interrogatories, are permitted for each side.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers shall be judged by the level of detail each party provides (*i.e.*, the more detail a party provides, the more detail a party shall receive).

(e) Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of _____ hours of taking testimony by deposition upon oral examination.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court. A defendant who becomes a

counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

(f) Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule of Civil Procedure 26(a)(2) disclosure of expert testimony is due on or before **[DATE]**. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before **[DATE]**. Reply expert reports from the party with the initial burden of proof are due on or before **[DATE]**. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

ii. Expert Report Supplementation. The parties agree they [will] [will not] permit expert declarations to be filed in connection with motions briefing (including case-dispositive motions).

iii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than fourteen (14) days after the close of expert discovery, unless otherwise ordered by the Court. Briefing will be presented pursuant to the Court's Local Rules.

iv. Expert Discovery Cut Off. All expert discovery in this case shall be initiated so that it will be completed on or before **[DATE]**.

(g) Discovery Matters and Disputes Relating to Protective Orders.

i. Any discovery motion filed without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures.

ii. Should counsel find, after a reasonable effort pursuant to Local Rule 7.1.1. that they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact the Court's Judicial Administrator to schedule an argument.

iii. On a date to be set by separate order, generally not less than four (4) days prior to the conference, the party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but generally not less than three (3) days prior to the conference, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition.

iv. The parties shall provide to the Court two (2) courtesy copies of its discovery letter and any other document filed in support of any letter (*i.e.*, appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal. All courtesy copies shall be double-sided.

v. Should the Court find further briefing necessary upon conclusion of the conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the conference and will, in that event, cancel the conference.

8. Motions to Amend / Motions to Strike.

(a) Any motion to amend (including a motion for leave to amend) a pleading or any motion to strike any pleading or other document shall be made pursuant to the discovery dispute procedure set forth in Paragraph 7(g) above.

(b) Any such motion shall attach the proposed amended pleading as well as a "redline" comparison to the prior pleading or attach the document to be stricken.

9. Technology Tutorials. Although technology tutorials are not required by the Court, they are appreciated and, if any party chooses to file such a tutorial, it shall be submitted on or before the date that the Joint Claim Construction Brief is filed.

10. Claim Construction Issue Identification. On **[DATE]**, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted two weeks prior to service of the opening claim construction brief. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. Intrinsic evidence (including copies of the patent(s) at issue) shall NOT be attached to the joint claim construction chart and, instead, the parties shall include a joint appendix with the joint claim construction brief, and the joint appendix shall include a copy of the patent(s) at issue and portions of all relevant intrinsic evidence that would have otherwise been included with the joint claim construction chart, as well as any additional evidence cited in the parties' briefing.

11. Claim Construction Briefing. The Plaintiff shall serve, but not file, its opening brief, not to exceed 20 pages, on **[DATE]**. The Defendant shall serve, but not file, its answering brief, not to exceed 30 pages, on **[DATE]**. The Plaintiff shall serve, but not file, its reply brief, not to exceed 20 pages, on **[DATE]**. The Defendant shall serve, but not file, its sur-reply brief, not to exceed 10 pages, on **[DATE]**. No later than **[DATE]**, the parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their unfiled briefs into one brief, with their positions on each claim term in sequential order, in substantially the form below. If the joint brief as submitted is more than 80 pages, the parties must certify that the page limits (or equivalent word counts) in the Scheduling Order have been complied with and provide a brief explanation (e.g., formatting issues, listing of agreed-upon terms) as to why the brief is longer than 80 pages.

JOINT CLAIM CONSTRUCTION BRIEF

I. Agreed-Upon Constructions

II. Disputed Constructions

[TERM 1]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

[TERM 2]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

The parties need not include any general summaries of the law relating to claim construction. If there are any materials that would be submitted in an index, the parties shall submit them in a Joint Appendix.

12. Hearing on Claim Construction. Beginning at _____ on **[DATE]**, the Court will hear argument on claim construction. The parties need not include any general summaries of the law relating to claim construction in their presentations to the Court. The parties shall notify the Court, by joint letter submission, no later than the date on which their joint claim construction brief is filed: (i) whether they request leave to present testimony at the hearing; and (ii) the amount of time they are requesting be allocated to them for the hearing.

Provided that the parties comply with all portions of this Scheduling Order, and any other orders of the Court, the parties should anticipate that the Court will issue its claim construction order within sixty (60) days of the conclusion of the claim construction hearing. If the Court is unable to meet this goal, it will advise the parties no later than sixty (60) days after the conclusion of the claim construction hearing.

13. Supplementation. Absent agreement among the parties, and approval of the Court, no later than **[DATE]** the parties must finally supplement, *inter alia,* the identification of all accused products and of all invalidity references.

14. Case Dispositive Motions. Absent agreement between the parties, and prior approval from the Court, the Court will not hear case dispositive motions in ANDA cases.

15. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion filed with the Clerk. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

16. Motions *in Limine.* Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each ***SIDE*** shall be limited to three (3) *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three (3) pages of argument, may be opposed by a maximum of three (3) pages of argument, and the side making the *in limine* request may add a maximum of one (l) additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three (3) page submission (and, if the moving party, a single one (1) page reply), unless otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

17. Pretrial Conference. On **[DATE]**, the Court will hold a pretrial conference in Court with counsel beginning at _____. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the joint proposed final pretrial order in compliance with Local Rule 16.3(c) and the Court's Preferences and Procedures for Civil Cases not later than seven (7) days before the pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d)(1)-(3) for the preparation of the joint proposed final pretrial order.

The parties shall provide the Court two (2) double-sided courtesy copies of the joint proposed final pretrial order and all attachments. The proposed final pretrial order shall contain a table of contents and the paragraphs shall be numbered.

18. Trial. This matter is scheduled for a _____ day bench trial beginning at 9:30 a.m. on **[DATE]**, with the subsequent trial days beginning at 9:00 a.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases..

19. Post-Trial Briefing. The parties will address the post-trial briefing schedule and page limits in the proposed final pretrial order.

The Honorable Maryellen Noreika
United States District Judge

Counsel Shall Provide a Chart of All Relevant Deadlines

EVENT	DEADLINE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

[PLAINTIFF],	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 00-0000 (MN)
	)	
[DEFENDANT],	)	
	)	
Defendant.	)	

[PROPOSED] SCHEDULING ORDER [PATENT, NON-ANDA]

This _____ day of _____, 20____, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS HEREBY ORDERED that:

1. Rule 26(a)(l) Initial Disclosures and E-Discovery Default Standard. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(l) within five (5) days of the date the Court enters this Order. If they have not already done so, the parties are to review the Court's Default Standard for Discovery, Including Discovery of Electronically Stored Information (''ESI"), which is posted at http://www.ded.uscourts.gov (*see* Other Resources, Default Standard for Discovery) and is incorporated herein by reference.

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before **[DATE]**. Unless otherwise ordered by the Court, any motion to join a party or motion to amend the pleadings shall be made pursuant to the procedures set forth in Paragraphs 8(g) and 9.

3. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten (10) days from the date the Court enters this Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 8(g) below.

Any proposed protective order must include the following paragraph:

> Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" [the parties should list any other level of designation, such as "highly confidential," which may be provided for in the protective order] pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

4. Papers Filed Under Seal. In accordance with section G of the Revised Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

5. Courtesy Copies. The parties shall provide to the Court two (2) courtesy copies of all briefs and any other document filed in support of any briefs (*i.e.*, appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal. All courtesy copies shall be double-sided.

6. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

7. Disclosures. Absent agreement among the parties, and approval of the Court:

(a) By **[DATE]**, Plaintiff shall identify the accused product(s), including accused methods and systems, and its damages model, as well as the asserted patent(s) that the accused product(s) allegedly infringe(s). Plaintiff shall also produce the file history for each asserted patent.

(b) By **[DATE]**, Defendant shall produce core technical documents related to the accused product(s), sufficient to show how the accused product(s) work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications. Defendant shall also produce sales figures for the accused product(s).

(c) By **[DATE]**, Plaintiff shall produce an initial claim chart relating each known accused product to the asserted claims each such product allegedly infringes.

(d) By **[DATE]**, Defendant shall produce its initial invalidity contentions for each asserted claim, as well as the known related invalidating references.

(e) By **[DATE]**, Plaintiff shall provide final infringement contentions.

(f) By **[DATE]**, Defendant shall provide final invalidity contentions.

8. Discovery. Unless otherwise ordered by the Court or agreed to by parties, the limitations on discovery set forth in the Federal Rules shall be strictly observed.

(a) Fact Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before **[DATE]**.

(b) Document Production. Document production shall be substantially complete by **[DATE]**.

(c) Requests for Admission. A maximum of ___ requests for admission are permitted for each side.

(d) Interrogatories.

i. A maximum of ___ interrogatories, including contention interrogatories, are permitted for each side.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers shall be judged by the level of detail each party provides (*i.e.*, the more detail a party provides, the more detail a party shall receive).

(e) Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of __ hours of taking testimony by deposition upon oral examination.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

(f) Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule of Civil Procedure 26(a)(2) disclosure of expert testimony is due on or before **[DATE]**. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before **[DATE]**. Reply expert reports from the party with the initial burden of proof are due on or before **[DATE]**. No other

expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

ii. Expert Report Supplementation. The parties agree they **[will] [will not]** permit expert declarations to be filed in connection with motions briefing (including case-dispositive motions).

iii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court. Briefing on such motions is subject to the page limits set out in connection with briefing of case dispositive motions.

iv. Expert Discovery Cut-Off. All expert discovery in this case shall be initiated so that it will be completed on or before **[DATE]**.

(g) Discovery Matters and Disputes Relating to Protective Orders.

i. Any discovery motion filed without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures.

ii. Should counsel find, after a reasonable effort pursuant to Local Rule 7.1.1 that they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact the Court's Judicial Administrator to schedule an argument.

iii. On a date to be set by separate order, generally not less than four (4) days prior to the conference, the party seeking relief shall file with the Court a letter, not to exceed

three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but generally not less than three (3) days prior to the conference, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition.

iv. The parties shall provide to the Court two (2) courtesy copies of its discovery letter and any other document filed in support of any letter (*i.e.*, appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal. All courtesy copies shall be double-sided.

v. Should the Court find further briefing necessary upon conclusion of the conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the conference and will, in that event, cancel the conference.

9. Motions to Amend / Motions to Strike.

(a) Any motion to amend (including a motion for leave to amend) a pleading or any motion to strike any pleading or other document shall be made pursuant to the discovery dispute procedure set forth in Paragraph 8(g) above.

(b) Any such motion shall attach the proposed amended pleading as well as a "redline" comparison to the prior pleading or attach the document to be stricken.

10. Technology Tutorials. Although technology tutorials are not required by the Court, they are appreciated and, if any party chooses to file such a tutorial, it shall be submitted on or before the date that the Joint Claim Construction Brief is filed.

11. Claim Construction Issue Identification. On **[DATE]**, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent

to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted two weeks prior to service of the opening claim construction brief. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. Intrinsic evidence (including copies of the patent(s) at issue) shall NOT be attached to the joint claim construction chart and, instead, the parties shall include a joint appendix with the joint claim construction brief, and the joint appendix shall include a copy of the patent(s) at issue and portions of all relevant intrinsic evidence that would have otherwise been included with the joint claim construction chart, as well as any additional evidence cited in the parties' briefing.

12. Claim Construction Briefing. The Plaintiff shall serve, but not file, its opening brief, not to exceed 20 pages, on **[DATE]**. The Defendant shall serve, but not file, its answering brief, not to exceed 30 pages, on **[DATE]**. The Plaintiff shall serve, but not file, its reply brief, not to exceed 20 pages, on **[DATE]**. The Defendant shall serve, but not file, its sur-reply brief, not to exceed 10 pages, on **[DATE]**. No later than **[DATE]**, the parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their unfiled briefs into one brief, with their positions on each claim term in sequential order, in substantially the form below. If the joint brief as submitted is more than 80 pages, the parties must certify that the page limits (or equivalent word counts) in the Scheduling Order have been complied with and provide a brief explanation (e.g., formatting issues, listing of agreed-upon terms) as to why the brief is longer than 80 pages.

JOINT CLAIM CONSTRUCTION BRIEF

I. Agreed-Upon Constructions

II. Disputed Constructions

[TERM 1]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

[TERM 2]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

The parties need not include any general summaries of the law relating to claim construction. If there are any materials that would be submitted in an index, the parties shall submit them in a Joint Appendix.

13. Hearing on Claim Construction. Beginning at _____ on **[DATE]**, the Court will hear argument on claim construction. The parties need not include any general summaries of the law relating to claim construction in their presentations to the Court. The parties shall notify the Court, by joint letter submission, no later than the date on which their joint claim construction brief is filed: (i) whether they request leave to present testimony at the hearing; and (ii) the amount of time they are requesting be allocated to them for the hearing.

Provided that the parties comply with all portions of this Scheduling Order, and any other orders of the Court, the parties should anticipate that the Court will issue its claim construction

order within sixty (60) days of the conclusion of the claim construction hearing. If the Court is unable to meet this goal, it will advise the parties no later than sixty (60) days after the conclusion of the claim construction hearing.

14. Supplementation. Absent agreement among the parties, and approval of the Court, no later than **[DATE]** the parties must finally supplement, *inter alia,* the identification of all accused products and of all invalidity references.

15. Case Dispositive Motions.

(a) All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before **[DATE]** [a date approximately four months prior to the pretrial conference, the four months being calculated from the conclusion of the briefing]. Briefing will be presented pursuant to the Court's Local Rules. No case dispositive motion under Rule 56 may be filed more than ten (10) days before the above date without leave of the Court.

(b) Concise Statement of Facts Requirement. Any motion for summary judgment shall be accompanied by a separate concise statement, not to exceed six (6) pages, which details each material fact which the moving party contends is essential for the Court's resolution of the summary judgment motion (not the entire case) and as to which the moving party contends there is no genuine issue to be tried. Each fact shall be set forth in a separate numbered paragraph and shall be supported by specific citation(s) to the record.

Any party opposing the motion shall include with its opposing papers a response to the moving party's concise statement, not to exceed six (6) pages, which admits or disputes the facts set forth in the moving party's concise statement on a paragraph-by-paragraph basis. To the extent a fact is disputed, the basis of the dispute shall be supported by specific citation(s) to the

record. Failure to respond to a fact presented in the moving party's concise statement of facts shall indicate that fact is not in dispute for purposes of summary judgment. The party opposing the motion may also include with its opposing papers a separate concise statement, not to exceed four (4) pages, which sets forth material facts as to which the opposing party contends there is a genuine issue to be tried. Each fact asserted by the opposing party shall also be set forth in a separate numbered paragraph and shall be supported by specific citation(s) to the record.

The moving party shall include with its reply papers a response to the opposing party's concise statement of facts, not to exceed four (4) pages, on a paragraph-by-paragraph basis. Failure to respond to a fact presented in the opposing party's concise statement of facts shall indicate that fact remains in dispute for purposes of summary judgment.

(c) Page limits combined with Daubert motion page limits. Each party is permitted to file as many case dispositive motions as desired provided, however, that each ***SIDE*** will be limited to a combined total of 40 pages for all opening briefs, a combined total of 40 pages for all answering briefs, and a combined total of 20 pages for all reply briefs regardless of the number of case dispositive motions that are filed. In the event that a party files, in addition to a case dispositive motion, a Daubert motion to exclude or preclude all or any portion of an expert's testimony, the total amount of pages permitted for all case dispositive and Daubert motions shall be increased to 50 pages for all opening briefs, 50 pages for all answering briefs, and 25 pages for all reply briefs for each ***SIDE***.[1]

[1] The parties must work together to ensure that the Court receives no more than a *total* of *250 pages* (*i.e.*, 50 + 50 + 25 regarding one side's motions, and 50 + 50 + 25 regarding the other side's motions) of briefing on all case dispositive motions and *Daubert* motions that are covered by this scheduling order and any other scheduling order entered in any related case that is proceeding on a consolidated or coordinated pretrial schedule.

16. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

17. Motions *in Limine.* Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each ***SIDE*** shall be limited to three (3) *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three (3) pages of argument, may be opposed by a maximum of three (3) pages of argument, and the side making the *in limine* request may add a maximum of one (l) additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three (3) page submission (and, if the moving party, a single one (1) page reply), unless otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

18. Pretrial Conference. On **[DATE]**, the Court will hold a pretrial conference in Court with counsel beginning at _____. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the joint proposed final pretrial order in compliance with Local Rule 16.3(c) and the Court's Preferences and Procedures for Civil Cases not later than seven (7) days before the pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d)(1)-(3) for the preparation of the joint proposed final pretrial order.

The parties shall provide the Court two (2) double-sided courtesy copies of the joint proposed final pretrial order and all attachments. The proposed final pretrial order shall contain a table of contents and the paragraphs shall be numbered.

19. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1 the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms seven (7) business days before the final pretrial conference. This submission shall be accompanied by a courtesy copy containing electronic files of these documents, in Microsoft Word format, which may be submitted by e-mail to mn_civil@ded.uscourts.gov.

20. Trial. This matter is scheduled for a ___ day jury trial beginning at 9:30 a.m. on **[DATE]**, with the subsequent trial days beginning at 9:00 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

21. Judgment on Verdict and Post-Trial Status Report. Within seven (7) days after a jury returns a verdict in any portion of a jury trial, the parties shall jointly submit a form of order to enter judgment on the verdict. At the same time, the parties shall submit a joint status report, indicating among other things how the case should proceed and listing any post-trial motions each party intends to file.

22. Post-Trial Motions. Unless otherwise ordered by the Court, all ***SIDES*** are limited to a maximum of 20 pages of opening briefs, 20 pages of answering briefs, and 10 pages of reply briefs relating to any post-trial motions filed by that side, no matter how many such motions are filed.

The Honorable Maryellen Noreika
United States District Judge

Counsel Shall Provide a Chart of All Relevant Deadlines

EVENT	DEADLINE

PREFERENCES & PROCEDURES FOR CIVIL CASES
THE HONORABLE MARYELLEN NOREIKA
(SEPTEMBER 2019)

Opportunities for Newer Attorneys:

The Court encourages newer attorneys – *i.e.*, those attorneys who have been practicing for less than seven years – to participate in courtroom proceedings. To the extent that a party wishes to inform the Court that a newer attorney will be participating in oral argument or in trial proceedings, the party may do so and the Court welcomes receiving such notice.

Page Limits (Double Spaced Submissions Only):

Where page limits are specified by Order or Rule, the parties may alternatively use a word count limit. The word count limit is 250 words per page and shall not exceed the total word count for the page limit specified in the Order or Rule. For example, if the page limit specified is 20 pages, the maximum number of words for the submission is 5,000 (20 x 250). To the extent that a word count is used, a certification as to the total number of words must be attached as part of the submission.

Telephone Calls to Chambers:

Local counsel shall be involved on all calls to Chambers.

Citations:

All citations (including to cases and to record cites) shall be in the body of the text and not in footnotes or endnotes.

Font:

All pleadings, motions, briefs, claim construction charts, proposed orders, and letters to the Court shall be in Times New Roman font of at least 12-point size. Footnotes in such submissions must also appear Times New Roman font of at least 12-point size.

Local Rule 7.1.1 Statements:

In instances where a motion is filed seeking relief that is both dispositive and non-dispositive (*e.g.*, a Motion to Dismiss or, in the Alternative, to Transfer), a Local Rule 7.1.1 Statement shall be provided for the non-dispositive portion(s) of said motion.

All Local Rule 7.1.1 Statements shall clearly state whether the opposing party consents to the motion or has indicated that it will be opposing the motion.

Amended Pleadings:

A redlined version of any amended pleading shall be provided to the Court regardless of whether the amendment is by matter of course, stipulation, or motion. If by matter of course, counsel shall email a PDF version of the amended pleading to the Court's judicial administrator, Diana Welham, at diana_welham@ded.uscourts.gov. Otherwise, the redlined version shall be attached to the stipulation or motion.

Jury Trials:

There shall be eight jurors. The Court will conduct jury selection through the "struck juror" method, beginning with the Court reading *voir dire* to the jury panel in the courtroom, continuing by meeting with jurors individually in Chambers or at sidebar and there addressing any challenges for cause, and concluding with peremptory strikes.

Jury trial days generally run from 9:00 a.m. to 4:30 p.m. with two 15-minute breaks (morning and afternoon) and a lunch break.

Bench Trial Days:

Bench trial days will be determined on a case-by-case basis.

Timed Proceedings:

Civil trials (both jury and bench) are timed. Counsel must complete their case, including opening statements, examination of witnesses, and closing arguments, in the allotted time. If evidentiary disputes must be resolved by the Court, the time the parties take to present the dispute will be charged against them. If the Court determines that the dispute was frivolous or brought in bad faith, the Court may charge the losing party with all the time dedicated to resolving the issue.

Exhibit Lists and Use of Exhibits:

The pretrial order contains the maximum universe of exhibits to be used by any party (other than solely for impeachment) as well as all objections to the admission of such exhibits. Exhibits not listed will not be admitted unless good cause is shown.

No exhibit will be admitted unless offered into evidence through a witness, who must at least be shown the exhibit. Exhibits may not be published, displayed, or otherwise shown to the jury until after they have been admitted into evidence. Once admitted, counsel may publish exhibits to the jury without requesting to do so.

Exhibits not objected to will be received into evidence by the operation of the Final Pretrial Order without the need for additional foundation testimony, provided they are shown to a witness.

Demonstrative exhibits may be admitted only by agreement of the parties.

On the first day of trial, each party shall provide a completed AO Form 187 exhibit list to the Courtroom Deputy. All exhibits shall be pre-marked and include the prefix PTX, DTX or JTX, the exhibit number (all PTX, DTX, and JTX should start at exhibit 1) as well as the Civil Action Number. To the extent practicable, the parties shall identify duplicate exhibits and decide on an appropriate form of identification. In a jury trial, the "original" exhibits are given to the Courtroom Deputy once they have been admitted. In a bench trial, the "original" exhibits are maintained by the parties.

The Court will not accept copies of trial exhibits in advance of trial. For any notebooks given to a witness, the Court requests the following copies to be provided:

1. Witness
2. Judge
3. Law Clerk
4. Court Reporter

Evidentiary / Demonstrative Disputes:

Counsel are expected to bring potential disputes to the Court's attention prior to the witness taking the stand, the exhibit being offered, and / or the demonstrative being used. These disputes should be brought to the Court prior to or at the end of a trial day. Failure to conform to this procedure may result in having the objection denied without hearing.

Testimony by Deposition:

The pretrial order contains the maximum universe of deposition designations, counter-designations, and objections to admission of deposition testimony; none of the foregoing shall be supplemented without approval of all parties or leave of the Court, on good cause shown.

Counsel shall confer prior to trial to determine what testimony will be offered by deposition. If there are objections that remain to be resolved, the party calling the witness by deposition shall, no later than two (2) calendar days before the witness is to be called at trial, submit, on behalf of all parties: (i) A copy of the entire deposition testimony of the witness at issue, clearly highlighting the designations, counter-designations, and pending objections; and (ii) a cover letter clearly identifying the pending objections as well as a brief indication (*i.e.*, no more than one sentence per objection) of the basis for the objection and the offering party's response to it. Failure to comply with these procedures, absent an agreement by the parties and approval by the Court, will result in waiver of the use of the deposition testimony or waiver of objection to the use of the deposition testimony.

All irrelevant and redundant material, including colloquy between counsel and objections, will be eliminated when the deposition is read or viewed at trial.

When the witness is called to testify by deposition at trial, the party calling the witness shall provide the Court with two copies of the transcript of the designations and counter-designations that will be read or played. An additional copy shall be provided to the court reporter. The parties will be charged for all time that elapses from the time the witness is called until the next witness is called, according to the proportions to be provided by the parties.

Mode and Order of Presentation:

Examination of witnesses shall be limited to direct, cross and redirect.

Expert Testimony:

In the pretrial order, the parties shall provide their position(s) as to whether the Court should rule at trial on objections to expert testimony as outside the scope of prior expert disclosures, taking time from the parties' trial presentation to argue and decide such objections; or whether the Court should instead defer ruling on all such objections unless renewed in writing following trial, subject to the proviso that a party prevailing on such a post-trial objection will be entitled to have all of its costs associated with a new trial paid for by the party that elicited the improper expert testimony at the earlier trial.

Post-Trial Briefing Following a Jury Trial:

Briefing shall conform to D. Del. LR 7.1.3, unless otherwise ordered.

Post-Trial Briefing Following a Bench Trial:

If the parties desire a detailed opinion from the Court post-trial, counsel should include a proposed post-trial briefing schedule, including page limits, in the proposed pretrial order.

Along with the initial brief, each party shall provide proposed Findings of Fact, separately stated in numbered paragraphs, constituting a detailed listing of the relevant material facts the party believes it has proven, in a simple narrative form, along with citations to the record. The parties shall propose page limits for the proposed Findings of Fact in the pretrial order.

- Only ***admitted trial exhibits*** may be relied upon in post-trial briefing.
- No appendices shall be submitted with post-trial briefs.
- Trial exhibits shall be referred to by exhibit number (PTX-, DTX- or JTX-)
- Any admitted trial exhibit that is not specifically addressed in the post-trial submissions shall be deemed stricken from the record.

Submission of Trial Exhibits After Trial:

In patent cases, the Court would like to receive hyperlinked versions of the parties' post-trial papers within a week of the filing of the last post-trial brief. When hyperlinked versions of the briefs are submitted, the Court does not require hard copies of the trial exhibits.

In all cases where hyperlinked versions of the briefs are not submitted, the Court requires that the trial exhibits be submitted, within a week of the filing of the last post-trial brief, in the following format:

- Double-sided;
- Stapled or bound;
- Each exhibit in its own file folder clearly labeled; and
- Electronically on a flash/thumb drive clearly labeled with each exhibit saved separately and clearly identified by Exhibit Number only

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

[PLAINTIFF],	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 00-0000 (MN)
	)	
[DEFENDANT],	)	
	)	
Defendant.	)	
	)	
	)	

JOINT CLAIM CONSTRUCTION CHART

[Introductory language to be filled in by the parties].

The parties have agreed to the following construction(s) [or whatever agreed-upon language the parties deem appropriate]:

Claim Term	Joint Proposed Construction
"agreed-upon term" ('XXX Patent, claims 1, 2 & 8; 'YYY Patent, claim 7) [*i.e.*, list asserted claim(s) by patent in which the term appears]	"agreed-upon construction"

The parties dispute the construction(s) of the following term(s) [or whatever agreed-upon language the parties deem appropriate]:

No.	Claim Term	Plaintiff's Proposed Construction	Plaintiff's Intrinsic Evidence	Defendant's Proposed Construction	Defendant's Intrinsic Evidence
1.	"disputed term 1" ('XXX Patent, claims 1, 2 & 8; 'YYY Patent, claim 7) [*i.e.*, list asserted claim(s) by patent in which the term appears]				
2.	"disputed term 2" ('XXX Patent, claims 1, 2 & 8; 'YYY Patent, claim 7) [*i.e.*, list asserted claim(s) by patent in which the term appears]				
3.	"disputed term 3" ('XXX Patent, claims 1, 2 & 8; 'YYY Patent, claim 7) [*i.e.*, list asserted claim(s) by patent in which the term appears]				

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANDING ORDER REGARDING	)
CERTAIN CLAIM CONSTRUCTION	)
PROCEDURES IN PATENT CASES	)
BEFORE JUDGE NOREIKA	)

STANDING ORDER

WHEREAS, in patent cases before the undersigned judge, the parties are required to file a joint claim construction chart that includes a copy of the patent(s) at issue as well as portions of the intrinsic evidence relied upon by the parties;

WHEREAS, in those cases, the parties also often file a joint appendix with the joint claim construction brief to include additional evidence cited in the parties' briefing; and

WHEREAS, the undersigned believes that certain efficiencies can be achieved by modifying the procedures relating to joint claim construction charts submitted by the parties.

THEREFORE, IT IS HEREBY ORDERED this 30th day of October 2019 that:

1. Intrinsic evidence (including copies of the patent(s) at issue) shall NOT be attached to the joint claim construction chart and, instead, the parties shall include a joint appendix with the joint claim construction brief, and the joint appendix shall include a copy of the patent(s) at issue and portions of all relevant intrinsic evidence that would have otherwise been included with the joint claim construction chart, as well as any additional evidence cited in the parties' briefing; and

2. All joint claim construction charts shall be in substantially the same form as the sample joint claim construction chart posted on Judge Noreika's website, available at https://www.ded.uscourts.gov/sites/ded/files/chambers/Sample%20Joint%20Claim%20Chart.pdf.

IT IS FURTHER ORDERED that these new procedures relating to joint claim construction charts shall apply in ALL PATENT CASES regardless of when the case was filed, and specifically including cases where the Court has already entered a Scheduling Order, except those cases in which the parties' joint claim construction brief has already been filed.

The Honorable Maryellen Noreika
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANDING ORDER REGARDING NEW SCHEDULING ORDER PROVISIONS IMPLEMENTED IN APRIL 2021	)))

STANDING ORDER

At Wilmington, this 22nd day of October 2021:

WHEREAS, in April 2021, Judge Noreika's form scheduling orders were updated to include, *inter alia*, new provisions regarding Pretrial Orders and the time by which the proposed voir dire, preliminary jury instructions, final jury instructions, and special verdict forms must be filed; and

WHEREAS, these provisions were intended to be adopted in all civil matters, including those where a Scheduling Order is already in place, but there has been confusion as to whether these new procedures govern such already pending matters.

THEREFORE, IT IS HEREBY ORDERED that:

1. All Pretrial Orders must contain a table of contents and the paragraphs set forth in the body of the Pretrial Order must be numbered;

2. The proposed voir dire, preliminary jury instructions, final jury instructions, and special verdict forms must be filed seven (7) days[1] before the Pretrial Conference; and

[1] The updated form Scheduling Orders changed the deadline from three (3) full business days to seven (7) full ***business*** days before the pretrial conference. To be clear, this Standing Order supersedes that change and the requisite pretrial papers are now due seven days (*i.e.*, not ***business*** days) before the Pretrial Conference.

3. This Standing Order and the procedures set forth herein shall apply to all civil matters before the undersigned Judge, including any pending civil matters where a Scheduling Order has already been entered (so long as the Proposed Pretrial Order has not been filed).

Maryellen Noreika

The Honorable Maryellen Noreika
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANDING ORDER REGARDING NEW SCHEDULING ORDER PROVISIONS IMPLEMENTED IN JANUARY 2019	)))

STANDING ORDER

WHEREAS, in January 2019, Judge Noreika's form scheduling orders have been updated to include new provisions regarding courtesy copies and summary judgment; and

WHEREAS, these provisions shall be adopted in all civil matters in which the parties are represented by counsel, including those in which Scheduling Orders are already in place.

THEREFORE, IT IS HEREBY ORDERED this 9th day of January 2019, that:

1. The new provisions relating to courtesy copies shall apply in ALL CIVIL CASES in which the parties are represented by counsel, regardless of when the case was filed, and specifically including cases in which the Court has already entered a Scheduling Order; and

2. The new provisions relating to summary judgment shall apply in ALL CIVIL CASES in which the parties are represented by counsel, regardless of when the case was filed, and specifically including cases in which the Court has already entered a Scheduling Order, except those cases in which summary judgment briefing is complete or currently underway.

The Honorable Maryellen Noreika
United States District Judge

Case Management Checklist

Case Name and Number _____

Counsel

Lead Counsel for _____ _____
Delaware Counsel for _____ _____

Lead Counsel for _____ _____
Delaware Counsel for _____ _____

Meet and Confer

Counsel have met and conferred and have made good faith efforts to discuss, in person and/or by telephone, each of the topics listed in the Checklist below, and will be prepared to address these topics at the Case Management Conference ("CMC").

Discovery

- What are the core technical documents?

- Does any party intend to request production of electronic mail? If so, why? How many custodians should be searched? What methods will be used to search for electronic documents (e.g., key word searches, predictive coding)?

- How can the Court best assist the parties to provide meaningful interrogatory responses to avoid discovery disputes over the adequacy of such responses?

- If sourcecode is going to be produced, when, where, and how will it be made available?

Claim Construction

- What are the 1 or 2 most important claim terms requiring construction?

- Should the Court consider a "super-early" limited claim construction hearing on those most important terms?

- What is the maximum number of claim terms the parties will ask the Court to construe?

- How can the parties help the Court achieve its goal of ruling on claim construction disputes within 60 days of the claim construction hearing?

Narrowing the Case

- At what point(s) in the case will it be appropriate to limit/reduce the number of accused devices/functionalities, asserted patents, asserted claims, invalidity defenses (including obviousness combinations), and prior art references?

- Are there products that are not colorably different than the currently-accused products that Plaintiff expects or Defendant should expect will be added to the case?

- Should damages or any other portion of the case be bifurcated?

Related Cases

- What related cases are pending, in any Court, and what is their filing date and current status?

- Does Plaintiff plan to file additional related cases and, if so, on what schedule and how should that plan affect how this case will proceed?

- Has any patent-in-suit been litigated before and how soon is Plaintiff willing to produce the results of any such litigation, including settlement agreements?

Remedies

- What initial revenue/sales information does Plaintiff need to assess the value of the case and how soon is Defendant willing to produce such information?

- What type of relief is Plaintiff seeking: lost profits, reasonable royalties, injunction, and/or any other form of relief?

- What does Plaintiff contend is the "smallest saleable unit"?

- Has the patent been licensed or offered for any license and how soon is Plaintiff willing to produce licensing information?

Amendments

- What will be the deadline for proposed amendments to the pleadings, including adding allegations of indirect and/or willful infringement as well as inequitable conduct?

- What will be the deadline for adding or altering the accused devices/functionalities, asserted claims, and prior art?

Supplementation

- Will expert declarations/affidavits be permitted to be filed with case-dispositive and other motions, without other parties' agreement or leave of the Court?

- What will be the deadline for supplementing infringement, invalidity, damages, and other contentions?

Protective Order

- Are there any reasons this case requires provisions that are not typical of the protective order generally entered in this Court's patent cases?

Motions to Dismiss/Transfer/Stay

- Have any of these motions been filed and/or does any party anticipate filing such a motion?

- Will the parties consent to magistrate judge jurisdiction at least for the limited purpose of resolving these motions?[1]

- Should discovery and other exchanges of information (e.g., Default Standards ¶ 4 disclosures) be stayed during pendency of these motions?

Motions for Summary Judgment

- Are there any motions that are potentially fully case dispositive – or that would be dispositive of such a significant portion of the case that its resolution would greatly enhance the likelihood of a cost-effective pre-trial disposition – and that the parties agree the Court should hear early?

- If the Court is to hear any early summary judgment motion, which, if any, other parts of the case should be stayed?

- If the Court is to hear any early summary judgment motion, what is the moving party going to give up (e.g., the opportunity to file a motion on the same subject matter later in the case)?

Other Matters

- Are any post-grant review procedures underway or planned that might affect the manner in which this case should proceed?

- Would the Plaintiff be willing to stipulate to a maximum damages figure in exchange for restrictive discovery and an accelerated trial date?

- How soon can this case be ready for alternative dispute resolution?

Scheduling

- Address each matter listed in the Revised Patent Form Scheduling Order and submit, along with this Checklist, a joint proposed scheduling order, clearly identifying points of disagreement.

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[1]The identity of any party or parties declining to consent should not be disclosed to the Court at any point, only the fact that there is not unanimous consent.

DEFAULT STANDARD FOR DISCOVERY, INCLUDING DISCOVERY OF ELECTRONICALLY STORED INFORMATION ("ESI")

1. **General Provisions**

a. **Cooperation.** Parties are expected to reach agreements cooperatively on how to conduct discovery under Fed. R. Civ. P. 26-36. In the event that the parties are unable to agree on the parameters and/or timing of discovery, the following default standards shall apply until further order of the Court or the parties reach agreement.

b. **Proportionality.** Parties are expected to use reasonable, good faith and proportional efforts to preserve, identify and produce relevant information.[1] This includes identifying appropriate limits to discovery, including limits on custodians, identification of relevant subject matter, time periods for discovery and other parameters to limit and guide preservation and discovery issues.

c. **Preservation of Discoverable Information.** A party has a common law obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control.

(i) Absent a showing of good cause by the requesting party, the parties shall not be required to modify, on a going-forward basis, the procedures used by them in the ordinary course of business to back up and archive data; provided, however, that the parties shall preserve the non-duplicative discoverable information currently in their possession, custody or control.

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[1]Information can originate in any form, including ESI and paper, and is not limited to information created or stored electronically.

(ii) Absent a showing of good cause by the requesting party, the categories of ESI identified in Schedule A attached hereto need not be preserved.

d. **Privilege.**

(i) The parties are to confer on the nature and scope of privilege logs for the case, including whether categories of information may be excluded from any logging requirements and whether alternatives to document-by-document logs can be exchanged.

(ii) With respect to information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

(iii) Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

(iv) Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502. Until a non-waiver order is entered, information that contains privileged matter or attorney work product shall be immediately returned if such information appears on its face to have been inadvertently produced or if notice is provided within 30 days of inadvertent production.

2. **Initial Discovery Conference.**

a. **Timing.** Consistent with the guidelines that follow, the parties shall discuss the parameters of their anticipated discovery at the initial discovery conference (the "Initial Discovery Conference") pursuant to Fed. R. Civ. P. 26(f), which shall take place before the Fed. R. Civ. P. 16 scheduling conference ("Rule 16 Conference").

b. **Content.** The parties shall discuss the following:

(i) The issues, claims and defenses asserted in the case that define the scope of discovery.

(ii) The likely sources of potentially relevant information (i.e., the "discoverable information"), including witnesses, custodians and other data sources (e.g., paper files, email, databases, servers, etc.).

(iii) Technical information, including the exchange of production formats.

(iv) The existence and handling of privileged information.

(v) The categories of ESI that should be preserved.

3. **Initial Disclosures.** Within 30 days after the Rule 16 Conference, each party shall disclose:

a. **Custodians**. The 10 custodians most likely to have discoverable information in their possession, custody or control, from the most likely to the least likely. The custodians shall be identified by name, title, role in the instant dispute, and the subject matter of the information.

b. **Non-custodial data sources.**[2] A list of the non-custodial data sources that are most likely to contain non-duplicative discoverable information for preservation and production consideration, from the most likely to the least likely.

c. **Notice.** The parties shall identify any issues relating to:

(i) Any ESI (by type, date, custodian, electronic system or other criteria)

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[2]That is, a system or container that stores ESI, but over which an individual custodian does not organize, manage or maintain the ESI in the system or container (e.g., enterprise system or database).

that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(C)(i).

(ii) Third-party discovery under Fed. R. Civ. P. 45 and otherwise, including the timing and sequencing of such discovery.

(iii) Production of information subject to privacy protections, including information that may need to be produced from outside of the United States and subject to foreign laws.

Lack of proper notice of such issues may result in a party losing the ability to pursue or to protect such information.

4. **Initial Discovery in Patent Litigation.**[3]

a. Within 30 days after the Rule 16 Conference and for each defendant,[4] the plaintiff shall specifically identify the accused products[5] and the asserted patent(s) they allegedly infringe, and produce the file history for each asserted patent.

b. Within 30 days after receipt of the above, each defendant shall produce to the plaintiff the core technical documents related to the accused product(s), including but not limited to operation manuals, product literature, schematics, and specifications.

c. Within 30 days after receipt of the above, plaintiff shall produce to each defendant an initial claim chart relating each accused product to the asserted claims each product allegedly infringes.

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[3]As these disclosures are "initial," each party shall be permitted to supplement.

[4]For ease of reference, "defendant" is used to identify the alleged infringer and "plaintiff" to identify the patentee.

[5]For ease of reference, the word "product" encompasses accused methods and systems as well.

d. Within 30 days after receipt of the above, each defendant shall produce to the plaintiff its initial invalidity contentions for each asserted claim, as well as the related invalidating references (e.g., publications, manuals and patents).

e. Absent a showing of good cause, follow-up discovery shall be limited to a term of 6 years before the filing of the complaint, except that discovery related to asserted prior art or the conception and reduction to practice of the inventions claimed in any patent-in-suit shall not be so limited.

5. **Specific E-Discovery Issues.**

a. **On-site inspection of electronic media.** Such an inspection shall not be permitted absent a demonstration by the requesting party of specific need and good cause.

b. **Search methodology.** If the producing party elects to use search terms to locate potentially responsive ESI, it shall disclose the search terms to the requesting party. Absent a showing of good cause, a requesting party may request no more than 10 additional terms to be used in connection with the electronic search. Focused terms, rather than over-broad terms (e.g., product and company names), shall be employed. The producing party shall search (i) the non-custodial data sources identified in accordance with paragraph 3(b); and (ii) emails and other ESI maintained by the custodians identified in accordance with paragraph 3(a).

c. **Format.** ESI and non-ESI shall be produced to the requesting party as text searchable image files (e.g., PDF or TIFF). When a text-searchable image file is produced, the producing party must preserve the integrity of the underlying ESI, i.e., the

original formatting, the metadata (as noted below) and, where applicable, the revision history. The parties shall produce their information in the following format: single page TIFF images and associated multi-page text files containing extracted text or OCR with Concordance and Opticon load files containing all requisite information including relevant metadata.

d. **Native files.** The only files that should be produced in native format are files not easily converted to image format, such as Excel and Access files.

e. **Metadata fields.** The parties are only obligated to provide the following metadata for all ESI produced, to the extent such metadata exists: Custodian, File Path, Email Subject, Conversation Index, From, To, CC, BCC, Date Sent, Time Sent, Date Received, Time Received, Filename, Author, Date Created, Date Modified, MD5 Hash, File Size, File Extension, Control Number Begin, Control Number End, Attachment Range, Attachment Begin, and Attachment End (or the equivalent thereof).

SCHEDULE A

1. Deleted, slack, fragmented, or other data only accessible by forensics.

2. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.

3. On-line access data such as temporary internet files, history, cache, cookies, and the like.

4. Data in metadata fields that are frequently updated automatically, such as last-opened dates.

5. Back-up data that are substantially duplicative of data that are more accessible elsewhere.

6. Voice messages.

7. Instant messages that are not ordinarily printed or maintained in a server dedicated to instant messaging.

8. Electronic mail or pin-to-pin messages sent to or from mobile devices (e.g., iPhone and Blackberry devices), provided that a copy of such mail is routinely saved elsewhere.

9. Other electronic data stored on a mobile device, such as calendar or contact data or notes, provided that a copy of such information is routinely saved elsewhere.

10. Logs of calls made from mobile devices.

11. Server, system or network logs.

12. Electronic data temporarily stored by laboratory equipment or attached electronic

equipment, provided that such data is not ordinarily preserved as part of a laboratory report.

13. Data remaining from systems no longer in use that is unintelligible on the systems in use.

Effective today, July 1, 2014, Chief Judge Stark will be following his **new** procedures for Discovery Matters and **new** procedures for Motions to Strike and Motions to Amend in **ALL CIVIL CASES**. These new procedures apply to all patent cases (ANDA and non-ANDA), and to all other civil cases, regardless of when they were filed.

"Discovery Matters" Procedures	
a.	Any discovery motion filed without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures.
b.	Should counsel find, after good faith efforts – including **verbal** communication among Delaware and Lead Counsel for all parties to the dispute – that they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall submit a joint letter in substantially the following form:
Dear Judge Stark:	
	The parties in the above-referenced matter write to request the scheduling of a discovery teleconference.
	The following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party, participated in a verbal meet-and-confer (in person and/or by telephone) on the following date(s): _____
	Delaware Counsel: _____
	Lead Counsel: _____
	The disputes requiring judicial attention are listed below:

	[provide here a non-argumentative list of disputes requiring judicial attention]
c.	On a date to be set by separate order, generally not less than forty-eight (48) hours prior to the conference, the party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but generally not less than twenty-four (24) hours prior to the conference, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition.
d.	Each party shall submit two (2) courtesy copies of its discovery letter and any attachments.
e.	Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the teleconference.

Motions to Amend	
a.	Any motion to amend (including a motion for leave to amend) a pleading shall **NOT** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the proposed amended pleading as well as a "blackline" comparison to the prior pleading.
b.	Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

c.	Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to amend.

Motions to Strike

a.	Any motion to strike any pleading or other document shall **NOT** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the document to be stricken.
b.	Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.
c.	Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to strike.

Honorable Leonard P. Stark, District of Delaware

Revised Procedures for Managing Patent Cases

(June 18, 2014)

As a result of the invaluable discussions in which I participated as part of the District of Delaware's Patent Study Group, and as previewed in my presentation to our District's chapter of the Federal Bar Association last month, I describe below the Revised Procedures that I will follow in handling patent cases.

Applicability

Unless otherwise ordered, these Revised Procedures will govern all ***non-ANDA*** patent cases filed on or after ***July 1, 2014*** that are assigned to me.

General Principles

Early investment of judicial resources, both from myself and Magistrate Judge Burke, will lead more often to identification of the "best" schedule for each case, promoting overall efficiency in the processing of cases on my docket.

Each patent case will initially be treated as its own case, even if it is related to a case or cases that have already been filed.

I have attempted to identify – and, as best as possible, reduce or eliminate – the areas that generally provide the highest likelihood for lengthy delays.

Referral Order

Within seven (7) days of a new patent case being assigned to me, my staff will docket the following Referral Order:

> This case will be governed by Judge Stark's Revised Procedures for Managing Patent Cases (see www.ded.uscourts.gov). In accordance with the Revised Procedures,
>
> IT IS HEREBY ORDERED that:
>
> 1. any and all matters relating to scheduling, including entry of a Scheduling Order, are referred to Magistrate Judge Burke;
>
> 2. any and all motions to dismiss, stay, and/or transfer venue, relating to all or any part of the case, whenever such motions may be filed, are referred to Judge Burke for disposition or report and recommendation, to the full extent

permitted by the Constitution, statute, and rule; and

3. within seven (7) days of the date of this Referral Order, the plaintiff(s) shall file the Procedures Order, which is found on Judge Stark's website (see www.ded.uscourts.gov).

Procedures Order

Within seven (7) days after the Court enters the Referral Order, the plaintiff(s) will be responsible for filing the following proposed Procedures Order, which the Court will then "so order" on the docket:

IT IS HEREBY ORDERED that, subject to any subsequent order of the Court, the following procedures shall govern proceedings in this matter:

1. "Discovery Matters" Procedures.

a. Any discovery motion filed without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures.

b. Should counsel find, after good faith efforts – including ***verbal*** communication among Delaware and Lead Counsel for all parties to the dispute – that they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall submit a joint letter in substantially the following form:

Dear Judge Stark:

The parties in the above-referenced matter write to request the scheduling of a discovery teleconference.

The following attorneys, including at least one Delaware Counsel and at least one Lead

Counsel per party, participated in a verbal meet-and-confer (in person and/or by telephone) on the following date(s):

_____

Delaware Counsel: _____
Lead Counsel: _____

The disputes requiring judicial attention are listed below:

[provide here a non-argumentative list of disputes requiring judicial attention]

c. On a date to be set by separate order, generally not less than forty-eight (48) hours prior to the conference, the party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but generally not less than twenty-four (24) hours prior to the conference, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition.

d. Each party shall submit two (2) courtesy copies of its discovery letter and any attachments.

e. Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the conference.

2. Motions to Amend.

a. Any motion to amend (including a motion for leave to amend) a pleading shall ***NOT*** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the proposed amended pleading as well as a "blackline" comparison to the prior pleading.

b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to amend.

3. Motions to Strike.

a. Any motion to strike any pleading or other document shall ***NOT*** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the document to be stricken.

b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed

two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to strike.

4. Scheduling Order. The foregoing procedures shall be repeated in the scheduling order to be entered in this case.

Scheduling and Case Management

As noted in the Referral Order, scheduling will be managed by Judge Burke, who will have full authority to work with the parties to craft a schedule appropriate to the particular circumstances of each patent case. Judge Burke's decisions with respect to scheduling are subject to reversal only for abuse of discretion.

Within ten (10) days after any defendant has filed a responsive pleading (e.g., answer, counterclaim, cross-claim) or a motion in lieu of (or in addition to) a responsive pleading, my staff or Judge Burke's staff will docket the following Case Management Order:

> At least one defendant in this matter having filed a responsive pleading or a motion in lieu of (or in addition to) a responsive pleading,
>
> IT IS HEREBY ORDERED that:
>
> The parties shall meet and confer and discuss, in person and/or by telephone, each of the matters listed on the Court's Case Management Checklist ("Checklist"). Within thirty (30) days of the date of this Order, the parties shall jointly file the Checklist and their proposed scheduling order (consistent with the Court's Revised Patent Form Scheduling Order). Thereafter, the Court will schedule an in-person Case Management Conference/Rule 16 Scheduling Conference ("CMC") to be held with Judge Stark and/or Judge Burke. The Checklist and Revised Patent Form Scheduling Order can be found on the Court's website (www.ded.uscourts.gov).

A copy of the Checklist is available on the Court's website (www.ded.uscourts.gov). I recognize that some of the questions on the Checklist may relate to case strategy. Nonetheless, I expect counsel to make good faith efforts to discuss, in person and/or by telephone, each of the topics listed.

A copy of the Revised Patent Form Scheduling Order is available on the Court's website (www.ded.uscourts.gov).

The Case Management Conference ("CMC"), which also serves as the scheduling conference pursuant to Federal Rule of Civil Procedure 16, will be held in chambers or in the courtroom, on the record, with Judge Stark and/or Judge Burke. A court reporter will be present. At the CMC, each party must be represented by Lead Counsel and Delaware Counsel and be prepared to discuss each matter on the Checklist as well as any other matter that will be helpful or necessary to determining the most appropriate manner of managing the case. If there is a topic which a party thinks is inappropriate or premature to discuss, that party will have to explain its reasons for that view.

After the CMC, the Court may order the submission of a revised proposed scheduling order.

Where there are multiple related cases involving unrelated defendants, any party may request that the Court defer scheduling the CMC until a later date. Any party requesting such a deferral must accompany the request with a proposed order that, if entered, will require the parties to provide regular status reports advising the Court as to when they believe the case will be ready for a CMC and scheduling order. The greater the agreement among the parties to the related cases that deferral is appropriate, the more likely it is that deferral will be granted.

With rare exceptions, we will schedule trial upon entry of the scheduling order, setting a maximum number of trial days, double- and triple-tracking trials on my calendar as necessary.

If an early trial date is desired, the parties are reminded that if they unanimously consent to the jurisdiction of a Magistrate Judge, Judge Burke will almost always be able to proceed to trial more quickly than Judge Stark.

Where there are multiple related cases involving unrelated defendants, the Court will determine at some point (possibly as late as the pretrial conference) which defendant(s) will be tried first.

Motions to Dismiss, Transfer, or Stay

As noted in the Referral Order, any and all motions to dismiss, transfer, and/or stay will be referred to Judge Burke. Parties are reminded that they may consent to the jurisdiction of a Magistrate Judge for the limited purpose of final resolution of any motion, which has the effect of eliminating the right to file objections in the District Court, essentially giving the Magistrate Judge the same authority a District Judge would have with respect to that motion.

Generally, we will not defer the CMC and scheduling process solely due to the pendency of any of these motions.

Motions to Amend or Strike

As noted in the Procedures Order, any and all motions to amend (or motions for leave to amend) and/or strike will not be accompanied by full briefing but will, instead, be channeled into the "discovery matters" procedures.

Narrowing the Case

In order to manage my docket, and to ensure that litigation proceeds efficiently, I will be highly receptive to reasonable proposals to reduce, at an appropriate stage or stages of a case, the number of: patents-in-suit, asserted claims, accused products, invalidating references, combinations of invalidating references, invalidity defenses, and claim construction disputes.

Discovery

I have modified my discovery matters procedures in several ways, most notably as follows:

- there is no longer a requirement that counsel call chambers to request a discovery teleconference. Instead, counsel are required to submit a joint, non-argumentative letter, representing that Delaware Counsel and Lead Counsel have ***spoken*** about the issues in dispute, listing the issues on which counsel believe judicial intervention is required, and requesting the scheduling of a discovery dispute teleconference (a form for the letter is included with the Procedures Order)

- there is no longer a requirement that the parties submit copies of sealed documents within an hour after filing their letters

- parties are required to submit two (2) courtesy copies of their discovery letters and attachments

Discovery teleconferences will continue to be limited to approximately 30-45 minutes each.

Default Standards/Exchange of Contentions

Absent agreement among the parties or an order of the Court, the scheduling order will include dates for the exchange, in steps, of the following:

- Plaintiff shall identify the accused product(s), including accused methods and systems, and its damages model, as well as the asserted patent(s) that the accused product(s) allegedly infringe(s). Plaintiff shall also produce the file history for each asserted patent.

- Defendant shall produce core technical documents related to the accused product(s), sufficient to show how the accused product(s)

work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications. Defendant shall also produce sales figures for the accused product(s).

- Plaintiff shall produce an initial claim chart relating each known accused product to the asserted claims each such product allegedly infringes.

- Defendant shall produce its initial invalidity contentions for each asserted claim, as well as the known related invalidating references.

- Plaintiff shall provide final infringement contentions.

- Defendant shall provide final invalidity contentions.

Also absent agreement among the parties or an order of the Court, the scheduling order will include a date by which all parties must finally supplement, *inter alia*, the identification of all accused products and of all invalidity references.

The foregoing are the same procedures contained in Judge Robinson's recently issued "Patent Case Scheduling Order" ("SLR Order") (see ¶ 1.c, 1.f, 1.g).

Markman

I have set an aspirational goal of issuing all Markman rulings within 60 days after a Markman hearing. If I determine (due to, for example, an outsized number of claim disputes, deficiencies with the briefing, or scheduling congestion) that I will be unable to meet my goal, I will advise counsel of this fact.

Although I will continue to prefer having only a single Markman hearing in each case, and even just a single Markman hearing across all of any number of related cases, I do not plan to adhere rigidly to this preference. The parties should be prepared to discuss at the CMC whether a case or cases would be more efficiently handled by construing certain terms at an earlier point than other terms.

While I am not adopting Judge Robinson's requirement that "[f]or any contested claim limitation, each party must submit a proposed construction; i.e., 'plain and ordinary' meaning generally is not helpful to either the court or a jury" (SLR Order ¶ 5.b), I agree with her reasoning and am usually not persuaded that "plain and ordinary meaning" is an appropriate resolution of a material dispute over the scope of a claim term.

Summary Judgment/Daubert (Motions to Preclude/Exclude)

I will continue to permit parties to file as many summary judgment and Daubert (i.e., motions to exclude or preclude anticipated expert testimony, in whole or in part) motions as they wish, subject to the restriction that each side is limited to no more than a total of fifty (50) pages of combined opening briefs in support of any and all such motions, no more than fifty (50) pages of combined answering briefs in opposition to the motions, and no more than twenty (20) pages of combined reply briefs in support of their motions.

The parties must work together to ensure that the Court receives no more than a ***total*** of ***250 pages*** (i.e., 50 + 50 + 25 regarding one side's motions, and 50 + 50 + 25 regarding the other side's motions) of briefing on all case dispositive motions and Daubert motions that are covered by this scheduling order and any other scheduling order entered in any related case that is proceeding on a consolidated or coordinated pretrial schedule.

I will generally include in the scheduling order a date for argument on any motions for summary judgment and Daubert motions. Such a hearing will typically be held approximately two months prior to the pretrial conference. Generally, counsel should expect they will be given a total of no more than forty-five (45) minutes per side to present their arguments on all pending motions.

Pretrial Order

I have revised my form pretrial order. (See "Proposed Final Pretrial Order – Patent" at www.ded.uscourts.gov.) I note some of the more important changes below.

I have clarified that when parties estimate the anticipated length of trial, they must do so not only in terms of trial days but also in terms of a specific request for a number of hours they need for their trial presentations. In formulating such a request, counsel should assume that they will be charged time for: opening statements, examination of witnesses (including by playing or reading deposition testimony), closing arguments, arguing objections (including in the mornings before trial begins), and arguing motions (including for judgment as a matter of law). I usually do not charge time for jury selection, opening and final jury instructions, and arguments regarding jury instructions. Counsel should also assume that in a typical trial day we can usually get in 5 ½ - 6 ½ hours in a jury trial and 6 - 7 hours in a bench trial.

Counsel need to indicate whether, in connection with efforts to impeach a witness with prior testimony, they wish to permit objections for incompleteness and/or lack of inconsistency.

Counsel need to indicate whether, in connection with objections to expert testimony as being beyond the scope of previous expert disclosures, they request that the Court rule on such objections at trial or defer ruling unless and until the objections are renewed in connection with post-trial motions (with costs of the new trial to be charged entirely to the party whose trial conduct necessitates a new trial).

With respect to motions for judgment as a matter of law pursuant to Fed. R. Civ. P. 50, counsel need to indicate whether they request such motions: (i) be made at sidebar while the jury remains in the courtroom, (ii) be made immediately at the appropriate point during trial, and (iii) be supplemented in writing (and, if so, when).

Pretrial Conference

I expect to continue to conduct pretrial conferences largely as I have done to this point, although I will generally limit them to two (2) hours or less.

Jury Instructions, Voir Dire, Verdict Sheet

Where a case is to be tried to a jury, the parties must provide the Court with courtesy copies of the required documents – proposed voir dire, preliminary jury instructions, final jury instructions, and special verdict forms – as computer files. These courtesy copies may be sent by e-mail to my staff. The files may be in either WordPerfect or Microsoft Word format.

Trial

I expect to continue to conduct trials largely as I have done to this point.

After the jury returns a verdict, I will generally order the preparation of a joint status report, in which the parties should indicate, after meeting and conferring, how they believe the case should proceed, including whether (and when) additional briefing and/or in-court proceedings will be required.

The joint status report should identify the post-trial motions and issues on which any party intends to seek relief.

The joint status report should be accompanied by a proposed order to enter judgment on the verdict.

Post-Trial Motions

Unless otherwise ordered, briefing is according to Local Rules, no matter how many motions are filed by a party. That is, each side may file a maximum total of twenty (20) pages of opening briefing, twenty (20) pages of answering briefing, and ten (10) pages of reply briefing, ***regardless of how many motions are filed***.

Where possible, I will try to advise the parties as to my inclinations with respect to the issues that they plan to raise in their post-trial motions, so the parties may better assess whether I am likely to disturb the verdict of the jury.

REVISED July 1, 2014

REVISED PATENT FORM SCHEDULING ORDER (ANDA)

[NOTE: text in brackets is for guidance and should be deleted from proposed schedules submitted for the Court's consideration]

This ____ day of _____, 201_, the Court having conducted a Case Management Conference/Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(a) and Judge Stark's Revised Procedures for Managing Patent Cases (which is posted at http://www.ded.uscourts.gov,; see Chambers, Judge Leonard P. Stark, Patent Cases) on _____ 201_, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS HEREBY ORDERED that:

1. Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within five (5) days of the date of this Order. If they have not already done so, the parties are to review the Court's Default Standard for Discovery, Including Discovery of Electronically Stored Information ("ESI") (which is posted at http://www.ded.uscourts.gov; see Other Resources, Default Standards for Discovery, and is incorporated herein by reference).

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before _____, 201_.

3. Application to Court for Protective Order. Should counsel find it will be

necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten (10) days from the date of this Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 8(g) below.

Any proposed protective order must include the following paragraph:

> Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" [the parties should list any other level of designation, such as "highly confidential," which may be provided for in the protective order] pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

4. Papers Filed Under Seal. In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

Should any party intend to request to seal or redact all or any portion of a transcript of a court proceeding (including a teleconference), such party should expressly note that intent at the start of the court proceeding. Should the party subsequently choose to make a request for sealing or redaction, it must, promptly after the completion of the transcript, file with the Court a motion for sealing/redaction, and include as attachments (1) a copy of the complete transcript highlighted

so the Court can easily identify and read the text proposed to be sealed/redacted, and (2) a copy of the proposed redacted/sealed transcript. With their request, the party seeking redactions must demonstrate why there is good cause for the redactions and why disclosure of the redacted material would work a clearly defined and serious injury to the party seeking redaction.

5. Courtesy Copies. Other than with respect to "discovery matters," which are governed by paragraph 8(g), and the final pretrial order, which is governed by paragraph 20, the parties shall provide to the Court two (2) courtesy copies of all briefs and one (1) courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

6. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

7. Discovery. Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

a. Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before _____, 201_.

b. Document Production. Document production shall be substantially complete by _____, 201_.

c. Requests for Admission. A maximum of ___ requests for admission are permitted for each side.

d. Interrogatories.

i. A maximum of ___ interrogatories, including contention interrogatories, are permitted for each side.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers shall be judged by the level of detail each party provides; i.e., the more detail a party provides, the more detail a party shall receive.

e. Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of __ hours of taking testimony by deposition upon oral examination.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

f. Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of

expert testimony is due on or before _____, 201_. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before _____, 201_. Reply expert reports from the party with the initial burden of proof are due on or before _____. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

ii. Expert Report Supplementation. The parties agree they [will] [will not] [CHOOSE ONE] permit expert declarations to be filed in connection with motions briefing (including case-dispositive motions).

iii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court. Briefing on such motions is subject to the page limits set out in connection with briefing of case dispositive motions.

g. Discovery Matters and Disputes Relating to Protective Orders.

i. Any discovery motion filed without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures.

ii. Should counsel find, after good faith efforts – including ***verbal*** communication among Delaware and Lead Counsel for all parties to the dispute – that they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall submit a joint letter in substantially the following form:

Dear Judge Stark:

The parties in the above-referenced matter write to request the scheduling of a discovery teleconference.

The following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party, participated in a verbal meet-and-confer (in person and/or by telephone) on the following date(s):

_____

Delaware Counsel: _____

Lead Counsel: _____

The disputes requiring judicial attention are listed below:

[provide here a non-argumentative list of disputes requiring judicial attention]

iii. On a date to be set by separate order, generally not less than forty-eight (48) hours prior to the conference, the party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but generally not less than twenty-four (24) hours prior to the conference, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition.

iv. Each party shall submit two (2) courtesy copies of its discovery letter and any attachments.

v. Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the conference.

8. Motions to Amend.

a. Any motion to amend (including a motion for leave to amend) a pleading shall ***NOT*** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the proposed amended pleading as well as a "blackline" comparison to the prior pleading.

b. Within seven (7) days after the filing of a motion in compliance with this

Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to amend.

9. Motions to Strike.

a. Any motion to strike any pleading or other document shall ***NOT*** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the document to be stricken.

b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to strike.

10. Tutorial Describing the Technology and Matters in Issue. Unless otherwise ordered by the Court, the parties shall provide the Court, no later than the date on which their opening claim construction briefs are due, a tutorial on the technology at issue. In that regard, the parties may separately or jointly submit a DVD of not more than thirty (30) minutes. The tutorial should focus on the technology in issue and should not be used for argument. The parties may choose to file their tutorial(s) under seal, subject to any protective order in effect. Each

party may comment, in writing (in no more than five (5) pages) on the opposing party's tutorial. Any such comment shall be filed no later than the date on which the answering claim construction briefs are due. As to the format selected, the parties should confirm the Court's technical abilities to access the information contained in the tutorial (currently best are "mpeg" or "quicktime").

11. Claim Construction Issue Identification. On _____, 201_, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted on _____, 201_. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

12. Claim Construction Briefing. The parties shall contemporaneously submit initial briefs on claim construction issues on _____, 201_. The parties' answering/responsive briefs shall be contemporaneously submitted on _____, 201_. No reply briefs or supplemental papers on claim construction shall be submitted without leave of the Court. Local Rule 7.1.3(4) shall control the page limitations for initial (opening) and responsive (answering) briefs.

13. Hearing on Claim Construction. Beginning at _____ _.m. on _____, 201_, the Court will hear argument on claim construction. The parties shall notify the Court, by joint letter submission, no later than the date on which their answering claim construction briefs are due: (i) whether they request leave to present testimony at the hearing; and (ii) the amount of time they are requesting be allocated to them for the hearing.

Provided that the parties comply with all portions of this Scheduling Order, and any other orders of the Court, the parties should anticipate that the Court will issue its claim construction order within sixty (60) days of the conclusion of the claim construction hearing. If the Court is unable to meet this goal, it will advise the parties no later than sixty (60) days after the conclusion of the claim construction hearing.

14. Interim Status Report. On _____, 201_, counsel shall submit a joint letter to the Court with an interim report on the nature of the matters in issue and the progress of discovery to date. Thereafter, if the Court deems it necessary, it will schedule a status conference.

15. Supplementation. Absent agreement among the parties, and approval of the Court, no later than _____ the parties must finally supplement, *inter alia*, the identification of all accused products and of all invalidity references.

16. Case Dispositive Motions. [Absent agreement between the parties, the Court will generally not hear case dispositive motions in ANDA cases.]

17. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion filed with the Clerk. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

18. Pretrial Conference. On _____, 201_, the Court will hold a pretrial conference in Court with counsel beginning at _____ _.m. [The parties should request a date approximately 2-4 weeks prior to their requested trial date.] Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the joint proposed final pretrial order with the information required by the form of Revised Final Pretrial Order – Patent, which can be found on the Court's website (www.ded.uscourts.gov), on or before _____, 201_. [The parties should insert a date no less than seven (7) days before the requested pretrial conference date.] Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d)(1)-(3) for the preparation of the joint proposed final pretrial order.

The parties shall provide the Court two (2) courtesy copies of the joint proposed final pretrial order and all attachments.

As noted in the Revised Final Pretrial Order – Patent, the parties shall include in their joint proposed final pretrial order, among other things:

a. a request for a specific number of ***hours*** for their trial presentations, as well as a requested number of days, based on the assumption that in a typical bench trial day there will be 6 to 7 hours of trial time;

b. their position as to whether the Court should allow objections to efforts to impeach a witness with prior testimony, including objections based on lack of completeness and/or lack of inconsistency;

c. their position as to whether the Court should rule at trial on objections to

expert testimony as beyond the scope of prior expert disclosures, taking time from the parties' trial presentation to argue and decide such objections, or defer ruling on all such objections unless renewed in writing following trial, subject to the proviso that a party prevailing on such a post-trial objection will be entitled to have all of its costs associated with a new trial paid for by the party that elicited the improper expert testimony at the earlier trial; and

d. their position as to how to make motions for judgment as a matter of law, whether it be immediately at the appropriate point during trial or at a subsequent break and whether such motions may be supplemented in writing.

19. Motions *in Limine*. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each ***SIDE*** shall be limited to three (3) *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three (3) pages of argument and may be opposed by a maximum of three (3) pages of argument, and the side making the *in limine* request may add a maximum of one (1) additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three (3) page submission (and, if the moving party, a single one (1) page reply), unless otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

20. Trial. This matter is scheduled for a __ day bench trial beginning at 8:30 a.m. on _____, 201_, with the subsequent trial days also beginning at 8:30 a.m. The trial day will end no later than 5:00 p.m. each day.

21. Post-Trial Briefing. The parties will address the post-trial briefing schedule and page limits in the proposed final pretrial order.

_____
UNITED STATES DISTRICT JUDGE

REVISED June 2014

REVISED PATENT FORM SCHEDULING ORDER

[NOTE: text in brackets is for guidance and should be deleted from proposed schedules submitted for the Court's consideration]

This ____ day of _____, 201_, the Court having conducted a Case Management Conference/Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(a) and Judge Stark's Revised Procedures for Managing Patent Cases (which is posted at http://www.ded.uscourts.gov.; see Chambers, Judge Leonard P. Stark, Patent Cases) on _____ 201_, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS HEREBY ORDERED that:

1. Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within five (5) days of the date of this Order. If they have not already done so, the parties are to review the Court's Default Standard for Discovery, Including Discovery of Electronically Stored Information ("ESI") (which is posted at http://www.ded.uscourts.gov; see Other Resources, Default Standards for Discovery, and is incorporated herein by reference).

2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before _____, 201_.

3. Application to Court for Protective Order. Should counsel find it will be

necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten (10) days from the date of this Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 8(g) below.

Any proposed protective order must include the following paragraph:

> Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" [the parties should list any other level of designation, such as "highly confidential," which may be provided for in the protective order] pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

4. Papers Filed Under Seal. In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

Should any party intend to request to seal or redact all or any portion of a transcript of a court proceeding (including a teleconference), such party should expressly note that intent at the start of the court proceeding. Should the party subsequently choose to make a request for sealing or redaction, it must, promptly after the completion of the transcript, file with the Court a motion for sealing/redaction, and include as attachments (1) a copy of the complete transcript highlighted

so the Court can easily identify and read the text proposed to be sealed/redacted, and (2) a copy of the proposed redacted/sealed transcript. With their request, the party seeking redactions must demonstrate why there is good cause for the redactions and why disclosure of the redacted material would work a clearly defined and serious injury to the party seeking redaction.

5. Courtesy Copies. Other than with respect to "discovery matters," which are governed by paragraph 8(g), and the final pretrial order, which is governed by paragraph 20, the parties shall provide to the Court two (2) courtesy copies of all briefs and one (1) courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

6. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

7. Disclosures. Absent agreement among the parties, and approval of the Court:

a. By _____, Plaintiff shall identify the accused product(s), including accused methods and systems, and its damages model, as well as the asserted patent(s) that the accused product(s) allegedly infringe(s). Plaintiff shall also produce the file history for each asserted patent.

b. By _____, Defendant shall produce core technical documents related to the accused product(s), sufficient to show how the accused product(s) work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications. Defendant shall also produce sales figures for the accused product(s).

c. By _____, Plaintiff shall produce an initial claim chart relating each known accused product to the asserted claims each such product allegedly infringes.

d. By _____, Defendant shall produce its initial invalidity contentions for each asserted claim, as well as the known related invalidating references.

e. By _____, Plaintiff shall provide final infringement contentions.

f. By _____, Defendant shall provide final invalidity contentions.

8. Discovery. Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

a. Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before _____, 201_.

b. Document Production. Document production shall be substantially complete by _____, 201_.

c. Requests for Admission. A maximum of ___ requests for admission are permitted for each side.

d. Interrogatories.

i. A maximum of ___ interrogatories, including contention interrogatories, are permitted for each side.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers shall be judged by the level of detail each party provides; i.e., the more detail a party provides, the more detail a party shall receive.

e. Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of __ hours of taking testimony by deposition upon oral examination.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

f. Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before _____, 201_. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before _____, 201_. Reply expert reports from the party with the initial burden of proof are due on or before _____. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the

expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

ii. Expert Report Supplementation. The parties agree they [will] [will not] [CHOOSE ONE] permit expert declarations to be filed in connection with motions briefing (including case-dispositive motions).

iii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court. Briefing on such motions is subject to the page limits set out in connection with briefing of case dispositive motions.

g. Discovery Matters and Disputes Relating to Protective Orders.

i. Any discovery motion filed without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures.

ii. Should counsel find, after good faith efforts – including ***verbal*** communication among Delaware and Lead Counsel for all parties to the dispute – that they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in

the discovery matter or protective order dispute shall submit a joint letter in substantially the following form:

Dear Judge Stark:

The parties in the above-referenced matter write to request the scheduling of a discovery teleconference.

The following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party, participated in a verbal meet-and-confer (in person and/or by telephone) on the following date(s):

_____

Delaware Counsel: _____

Lead Counsel: _____

The disputes requiring judicial attention are listed below:

[provide here a non-argumentative list of disputes requiring judicial attention]

iii. On a date to be set by separate order, generally not less than forty-eight (48) hours prior to the conference, the party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but generally not less than twenty-four (24) hours prior to the conference, any party opposing

the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition.

iv. Each party shall submit two (2) courtesy copies of its discovery letter and any attachments.

v. Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the conference.

9. Motions to Amend.

a. Any motion to amend (including a motion for leave to amend) a pleading shall ***NOT*** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the proposed amended pleading as well as a "blackline" comparison to the prior pleading.

b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to amend.

10. Motions to Strike.

a. Any motion to strike any pleading or other document shall ***NOT*** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed

three (3) pages, describing the basis for the requested relief, and shall attach the document to be stricken.

b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to strike.

11. Tutorial Describing the Technology and Matters in Issue. Unless otherwise ordered by the Court, the parties shall provide the Court, no later than the date on which their opening claim construction briefs are due, a tutorial on the technology at issue. In that regard, the parties may separately or jointly submit a DVD of not more than thirty (30) minutes. The tutorial should focus on the technology in issue and should not be used for argument. The parties may choose to file their tutorial(s) under seal, subject to any protective order in effect. Each party may comment, in writing (in no more than five (5) pages) on the opposing party's tutorial. Any such comment shall be filed no later than the date on which the answering claim construction briefs are due. As to the format selected, the parties should confirm the Court's technical abilities to access the information contained in the tutorial (currently best are "mpeg" or "quicktime").

12. Claim Construction Issue Identification. On _____, 201_, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the

Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted on _____, 201_. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

13. Claim Construction Briefing. The parties shall contemporaneously submit initial briefs on claim construction issues on _____, 201_. The parties' answering/responsive briefs shall be contemporaneously submitted on _____, 201_. No reply briefs or supplemental papers on claim construction shall be submitted without leave of the Court. Local Rule 7.1.3(4) shall control the page limitations for initial (opening) and responsive (answering) briefs.

14. Hearing on Claim Construction. Beginning at _____ _.m. on _____, 201_, the Court will hear argument on claim construction. The parties shall notify the Court, by joint letter submission, no later than the date on which their answering claim construction briefs are due: (i) whether they request leave to present testimony at the hearing; and (ii) the amount of time they are requesting be allocated to them for the hearing.

Provided that the parties comply with all portions of this Scheduling Order, and any other orders of the Court, the parties should anticipate that the Court will issue its claim construction order within sixty (60) days of the conclusion of the claim construction hearing. If the Court is

unable to meet this goal, it will advise the parties no later than sixty (60) days after the conclusion of the claim construction hearing.

15. Interim Status Report. On _____, 201_, counsel shall submit a joint letter to the Court with an interim report on the nature of the matters in issue and the progress of discovery to date. Thereafter, if the Court deems it necessary, it will schedule a status conference.

16. Supplementation. Absent agreement among the parties, and approval of the Court, no later than _____ the parties must finally supplement, *inter alia*, the identification of all accused products and of all invalidity references.

17. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before _____, 201_. Briefing will be presented pursuant to the Court's Local Rules, as modified by this Order.

a. No early motions without leave. No case dispositive motion under Rule 56 may be filed more than ten (10) days before the above date without leave of the Court.

b. Page limits combined with Daubert motion page limits. Each party is permitted to file as many case dispositive motions as desired; provided, however, that each ***SIDE*** will be limited to a combined total of 40 pages for all opening briefs, a combined total of 40 pages for all answering briefs, and a combined total of 20 pages for all reply briefs regardless of the number of case dispositive motions that are filed. In the event that a party files, in addition to a case dispositive motion, a Daubert motion to exclude or preclude all or any portion of an expert's testimony, the total amount of pages permitted for all case dispositive and Daubert motions shall be increased to 50 pages for all opening briefs, 50 pages for all answering briefs,

and 25 pages for all reply briefs for each ***SIDE***.[1]

c. Hearing. The Court will hear argument on all pending case dispositive and Daubert motions on _____ beginning at _____. [The parties should propose a date approximately two months prior to the requested pretrial conference date.] Subject to further order of the Court, each side will be allocated a total of forty-five (45) minutes to present its argument on all pending motions.

18. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion filed with the Clerk. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

19. Pretrial Conference. On _____, 201_, the Court will hold a pretrial conference in Court with counsel beginning at _____ _.m. [The parties should request a date approximately 2-4 weeks prior to their requested trial date.] Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the joint proposed final pretrial order with the information required by the form of Revised Final Pretrial Order – Patent, which can be found on the Court's website (www.ded.uscourts.gov), on or before _____, 201_. [The parties should insert a date no less than seven (7) days before the requested pretrial conference date.] Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d)(1)-(3) for the preparation of the joint

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[1]The parties must work together to ensure that the Court receives no more than a ***total*** of ***250 pages*** (i.e., 50 + 50 + 25 regarding one side's motions, and 50 + 50 + 25 regarding the other side's motions) of briefing on all case dispositive motions and Daubert motions that are covered by this scheduling order and any other scheduling order entered in any related case that is proceeding on a consolidated or coordinated pretrial schedule.

proposed final pretrial order.

The parties shall provide the Court two (2) courtesy copies of the joint proposed final pretrial order and all attachments.

As noted in the Revised Final Pretrial Order – Patent, the parties shall include in their joint proposed final pretrial order, among other things:

a. a request for a specific number of ***hours*** for their trial presentations, as well as a requested number of days, based on the assumption that in a typical jury trial day (in which there is not jury selection, jury instruction, or deliberations), there will be 5 ½ to 6 ½ hours of trial time, and in a typical bench trial day there will be 6 to 7 hours of trial time;

b. their position as to whether the Court should allow objections to efforts to impeach a witness with prior testimony, including objections based on lack of completeness and/or lack of inconsistency;

c. their position as to whether the Court should rule at trial on objections to expert testimony as beyond the scope of prior expert disclosures, taking time from the parties' trial presentation to argue and decide such objections, or defer ruling on all such objections unless renewed in writing following trial, subject to the proviso that a party prevailing on such a post-trial objection will be entitled to have all of its costs associated with a new trial paid for by the party that elicited the improper expert testimony at the earlier trial; and

d. their position as to how to make motions for judgment as a matter of law, whether it be immediately at the appropriate point during trial or at a subsequent break, whether the jury should be in or out of the courtroom, and whether such motions may be supplemented in writing.

20. Motions *in Limine*. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each ***SIDE*** shall be limited to three (3) *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three (3) pages of argument and may be opposed by a maximum of three (3) pages of argument, and the side making the *in limine* request may add a maximum of one (1) additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three (3) page submission (and, if the moving party, a single one (1) page reply), unless otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

21. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47 and 51 the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms three (3) business days before the final pretrial conference. This submission shall be accompanied by a courtesy copy containing electronic files of these documents, in WordPerfect or Microsoft Word format, which may be submitted by e-mail to Judge Stark's staff.

22. Trial. This matter is scheduled for a __ day ____ trial beginning at 9:30 a.m. on _____, 201_, with the subsequent trial days beginning at 9:00 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

23. Judgment on Verdict and Post-Trial Status Report. Within seven (7) days after a jury returns a verdict in any portion of a jury trial, the parties shall jointly submit a form of order to enter judgment on the verdict. At the same time, the parties shall submit a joint status report, indicating among other things how the case should proceed and listing any post-trial motions each party intends to file.

24. Post-Trial Motions. Unless otherwise ordered by the Court, all ***SIDES*** are limited to a maximum of 20 pages of opening briefs, 20 pages of answering briefs, and 10 pages of reply briefs relating to any post-trial motions filed by that side, no matter how many such motions are filed.

UNITED STATES DISTRICT JUDGE

STANDING ORDER REGARDING COURTESY COPIES

Unless a specific Order to the contrary is entered in a case, all parties shall provide to the Court two (2) courtesy copies of all briefs and one (1) copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.